a significant achievement. Similarly, some speculate about "what could have happened" had the negotiations not been underway. Imposition of trade restrictions might have launched international trading partners into an all out trade war. Those same people now conclude that these codes can block the protectionist tide that has been swelling these last five years.

Conclusion of the agreements was significant in and of itself, and it did, no doubt, prevent a deterioration in trade relations. But it was only the first stage of the Tokyo Round. The second stage—the present stage—is to draft and approve implementing legislation. This translation of the agreements is a measure of the national commitment to a fair and open trade policy. But the real test of the effectiveness of the MTN will be the willingness of the signatory nations to live up to the obligations they have assumed.

In recent weeks this Committee and its counterpart in the Senate have held closed door sessions to consider what changes are appropriate to bring US law into compliance with the international codes. These statutory changes, along with other arrangements already granted to select sectoral interest groups, will be the real indicators of the impact of the new MTN codes will have on U.S. trade policy. An inadequate translation into domestic law could reverse the intent of the codes. Too many concessions made to get political support could negate the progress made in the negotiations. It is up to this committee and the entire House of Representatives to see that the same spirit of fair and open trade embodied in the Geneva agreements is implemented into US law.

The League believes that in determining what is necessary and appropriate to implement these codes, your overall objective should be to meet the standards established in the codes themselves. These alone are numerous and we would not presume to draw up an exhaustive list of these obligations. Many other witnesses representing various sectoral interests will speak to these and other issues which the Committee may find advisable to consider during its deliberations of the implementing legislation.

There are several items which do concern the League, particularly in the subsidies/countervailing duty measures code. We highlight this code because, far and above the rest, this one goes to the heart of the Tokyo Round. As a result of these negotiations, nations have accepted stricter controls on tax export subsidies and in return the U.S. has agreed to accept an injury test as part of the CVD law. By accepting an injury test, the U.S. has finally agreed that it is the effect, not the fact of a subsidy that is the relevant factor in levying countervailing duties. The League applauds this action and urges Congress to uphold the express terms of the code.

In particular, the code specifies that "injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry * * * ." U.S. countervailing duty law should therefore state clearly that it is material injury, meaning "important and consequential," not merely de minimis injury that is being tested.

Another aspect of the subsidy code we consider significant is the time period to be permitted for domestic countervailing duty investigations. The agreement specifies that parties be given a "reasonable opportunity" to make their cases, but that investigations be concluded within one year after their initiation, except in special circumstances. No doubt an argument can be made for shorter time periods for investigations in order to bring speed and effectiveness to the law. But, so too, a case can be made for taking more time in order that due process can be accorded both the domestic and importing agencies. Recommendations made so far range from 75 days to six months for a preliminary investigation and equally varying time periods for a final determination and injury proceeding. It would seem that "a reasonable opportunity" is best afforded everyone by a longer not shorter time period and, thus, the LWV would prefer that the legislation not establish a minimum investigation period that might only serve to encourage determinations based on inadequate information simply to meet statutory deadlines. What we want is good decision, not just a decision. Of course, the investigating agency should proceed as rapidly as possible, but the LWV urges that the committee throughly consider the benefits of allowing up to six months for a preliminary investigation with a final subsidy determination to come within 60 days of that and a finding on the question of material injury within 120 days of the preliminary subsidy finding. Based on other experiences with similar investigative proceedings, this would seem a fair time period and still well within the one year limit established by the code itself.

Once the existence of a subsidy and a positive finding of injury has been determined, the administering agency must decide whether the amount of the countervailing duty is to be the full amount of the subsidy or less than the amount of subsidy. On this, the code leaves room for discretion but advises that "the duty be

less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry." Thus, it would seem the intention is that when possible a less than total duty be imposed. US law should not therefore require an amount in excess of what is "adequate to remove the injury to a domestic industry."

These issues are our primary concerns in the subsidy/countervailing measures code. But due process is also an important consideration in the proposed amendments to the antidumping law. We would urge that consideration of time limits in dumping cases also take into account the importance of due process so that decisions are not only speedy, but also founded on as thorough an understanding of the evidence as possible.

The League of Women Voters urges that this Committee, the Administration and Congress undertake to implement the standards established in the trade agreements. If we are unwilling to adopt into practice that which has been accepted by our government, then we call into question our credibility and reliability in future negotiations. Certainly U.S. trade law has been well in advance of any other nation. That does not mean that we can make exceptions for ourselves. It means that we have a tradition to uphold and must prove that in the face of adverse pressures, we too can hold up our part of the bargain.

MTN: BREAKING THE NONTARIFF BARRIER

The new multilateral trade agreements are the subject of newspaper headlines, TV talk shows and congressional hearings. And for good reason. They touch the lives of all of us—manufacturers, retailers, farmers, workers and consumers. Now, from years of talk and inches-thick documents, real breakthroughs in international cooperation are emerging. It's worth some effort to master the jargon of the trade world and the veiled language of diplomacy to get at the meat of the agreements, which are the product of nearly six years of multilateral trade negotiations (MTN). Most of what remains to be done in finalizing the agreements is dotting the i's and crossing the t's—and getting each nation to endorse what the negotiators have wrought. In the United States, that means persuading Congress to enact changes in existing laws, to bring them into alignment with the international agreements that Administration officials have agreed to.

The Tokyo Round, as it is called, began in 1973 as an outgrowth of an economic summit meeting convened in Tokyo by the major trading nations (though Geneva has been the site of the negotiations themselves). It is the seventh such round since 1947, when the multilateral (many-nation) approach to trading was first established through the General Agreement on Tariffs and Trade (GATT). GATT is not only the first of the sequence of MTN agreements but also the institutional arrangement that monitors and facilitates trade relations among nations.

Participants in the Tokyo Round (98 nations in all) had a double mandate. The first was **to continue working toward eliminating tariffs** (taxes on imports). Earlier negotiations have brought tariffs down to an average of only 8 to 10 percent, and the new agreements will reduce them by about another third. The second mandate—**to devise codes of conduct** (shortened, usually, to *codes*) **governing the use of nontariff measures** that affect trade—was a new task. And though the successive reductions in tariffs have never been easy, negotiations on nontariff barriers (usually called NTBs) have proven to be even more difficult.

Whereas a tariff is indisputably a barrier to trade, the protectionist intent of many NTBs is often much more difficult to pinpoint, because they often stem from domestic policies whose primary purposes are not trade-related. For example, if a health standard has the effect of excluding another nation's food products, is that standard an NTB? When do subsidies, which all nations use to achieve domestic goals, constitute an artificial advantage in another country's market place? The answer partially depends on whose ox is gored.

And because NTBs often arise from domestic policy, they present an extremely delicate international negotiating situation. Governments don't like other countries to tell them what is and what is not an acceptable domestic policy. It is something of a political miracle that so many governments agreed to sit down and bargain on the use of nontariff measures, and even more astonishing that they reached agreement on these politically sensitive issues.

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The agreements in brief

Though the MTN agreement is commonly spoken of in the singular, it is really a package of trade agreements including:

- **Tariff reductions** (as noted above);
- **Concessions on product quotas** (a quota is one form of an NTB that is expressly trade-restrictive);
- **Agricultural agreements** (which are only consultative);
- **Codes of conduct** (which will govern the use of NTBs).

It is the series of codes of conduct that is the distinctive feature of the Tokyo Round. While provisions vary from code to code, overall themes and goals do emerge. One of the most important is that trade decision making is made more open and accessible—made more "transparent," as the negotiators like to say. The codes generally allow greater scrutiny and input—both by governments and by the private sector—than ever before. They set stricter guidelines for information sharing and consultations, establish open procedures (such as public hearings and comment periods on proposed rules) and strengthen dispute-settlement mechanisms. The net effect should be greater predictability for those engaged in international trade.

The codes

Of the six new codes of conduct governing NTBs—subsidies, safeguards, government procurement, standards, customs valuation and licensing—the first five, which are expected to receive greatest attention, are described below.

Subsidies and countervailing duties

Existing GATT rules governing the uses of subsidies have been weak and ineffective. The new subsidies code imposes greater discipline on this most politically sensitive and most complicated of all the NTBs. Many governments give a fiscal incentive to firms producing for export (an export subsidy) or prop up an "infirm" industry with loans, grants or other fiscal incentives (a domestic subsidy). When these subsidized products

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are traded internationally, they have an unfair competitive advantage, because their selling price does not reflect true costs of production and marketing.

All nations use some form of subsidy, but some use this NTB more extensively than others. The European Community uses both export and domestic subsidies vigorously. Developing countries, too, employ a wide range of subsidy practices.

The United States, which does not use subsidies extensively, has countered the unfair competitive advantage of subsidized imports by levying a countervailing duty (CVD) on them. This duty, or tax, brings the price of the import to the level it would have been without the subsidy, thus raising it closer to its market value. U.S. officials recognize that levying a CVD does not address the real problem: the use of subsidies. Therefore, in the 1974 Trade Act, Congress authorized the President to negotiate in order to limit the ways subsidies are used. That is what the subsidies code is all about.

The code flatly prohibits the use of *export* subsidies for industrial products and nonprimary mineral products. Furthermore, although export subsidies for agricultural products are not prohibited (the European Community uses export subsidies for farm products extensively as part of its agricultural policy), the rules governing their use are tightened.

The code also establishes, for the first time, international rules governing *domestic* subsidies. Nations signing the code (signatories) agree to try not to use domestic subisides in ways that could adversely affect other countries' trade interests; even more important, when subsidies *do* affect trade adversely, businesses may seek redress under the code.

These curbs on subsidies will be implemented through agreed-upon definitions of what constitutes a subsidy; agreements on how and for what reasons redress can be sought; and mechanisms for dispute settlement.

Definition

In order to clarify what is and what is not an export subsidy, the code appends an illustrative list of export subsidy practices. It includes outright rebates to producers on products for export and more subtle practices, such as granting more favorable terms for internal shipping on products for export than on products for domestic consumption. The illustrative list cites the *remitting* of indirect taxes at a higher level than that *levied* on products for domestic consumption. The European Community's value added tax has been the classic example. The VAT (similar to states' sales taxes) is levied on products for domestic consumption, but not on products for export sales; just as states do not levy sales taxes on sales to another state. The Community could not rebate this internal tax on products for export at a higher level than that charged on products consumed domestically.

Many countries, including the United States, have complicated tax-incentive systems that may or may not constitute export subsidy practices. These systems have not been addressed substantively in the MTN. An international tax conference may be convened after the MTN to try to grapple with the issue.

Redress/dispute settlement

The code establishes two avenues through which to complain about violations. One track is unilateral, when the domestic market is involved: a business can complain to its own government, which investigates the complaint and determines whether countervailing duties are warranted. This recourse already exists.

The second, multilateral, track created by the code enables businesses to seek redress if subsidized products are displacing their products in *third-country* markets. Under this approach, a government can complain to the international subsidies committee created by the code. If the committee finds for the complainant, it authorizes the complaining country to take countermeasures, that is, to withdraw a GATT benefit from the offending country (the complaining country obviously could not take *direct* action—such as levying a CVD—against the subsidized product going into the third-country market).

A country can seek redress even against subsidized agricultural products, even though these export subsidies are allowed; a country may not use export subsidies to gain more than its "equitable" share of world agricultural trade, defined in part by its share of trade over a previous three-year representative period. The code also stipulates that a country may not use export subsidies to significantly depress world prices.

If a country is not satisfied with an investigation or a finding, it can activate the dispute-settlement mechanism established by the code. Considered the most stringent of the dispute-settlement provisions in any of the codes, it guarantees a review by a panel of experts and a determination within 150 days.

Injury: a new factor for the United States

In exchange for these concessions on subsidies, the United States had to agree to the principle that it is the *effect* of a subsidy and not its *existence* that determines an unfair trade practice. In other words, the U.S. negotiators had to agree that the United States will *not* levy countervailing duties unless the subsidized import causes or threatens to cause injury to domestic producers. This means that the United States, which is the only major trading nation that does not require an injury test, must amend its CVD law to include one.

Some people in the United States consider this concession unacceptable. They argue that the present CVD law was designed to *prevent* injury and that the new code would eliminate that protection. In response, U.S. negotiators point to specific code provisions, especially the injury test, which is actually less stringent than that in the U.S. 1974 Trade Act (see Safeguards below). The latter requires that increased imports be shown to be "important and not less important" than any other factor that could be contributing to a domestic producer's injury (such as domestic environmental protection laws or changes in demand), whereas the new code does not attempt to weight the importance of the subsidy against any other factor that could be causing injury. Moreover, proof of injury is not always required. If a country uses prohibited export subsidies, it has violated the agreement and countermeasures would be authorized through the multilateral track described above.

Safeguards

Much foreign competition is not unfair competition, but it can be disruptive to domestic industry. Recognizing that a rapid influx of imports can cause injury to domestic firms, current GATT rules (spelled out in Article XIX) authorize countries to take *safeguard action,* that is, impose a tariff or quota temporarily to protect an industry and give it time to adjust. (In the United States, taking safeguard action is called "invoking the escape clause," and the methods and procedures a business must follow to seek relief under the escape clause are governed by the U.S. Trade Act of 1974.)

The General Agreement on Tariffs and Trade limits the kind of safeguard action that can be taken and stipulates that a safeguard action must be applied equally against *all* countries from which a product is being imported. This principle of nondiscrimination, known as the *most-favored-nation* (MFN) principle, governs trade expansion as well as trade restrictions.

Article XIX has not been widely used by nations. This does not mean, however, that nations have not taken action to exclude imports. Industry-to-industry arrangements have been made, outside the GATT, whereby one country's industry "voluntarily" agrees to limit its exports to another's home market (the recent European Community-Japan steel arrangement is an example). Since these arrangements are taken outside the GATT, there is no set of guidelines that nations must follow.

The new safeguards code revises the existing GATT code to allow a nation to take "selective" safeguard action against the specific country (or countries) whose product is causing the injury, without applying the action across-the-board. Some people criticize this change as undermining the MFN principle. Others defend it, arguing that selectivity is the necessary price for bringing under GATT governance actions that are already in practice and will remain in practice. When the new code is in effect, GATT can set conditions for use of safeguard action, including transparency (i.e., notification and consultations) when such action is contemplated and limits on when

and how a selective safeguard can be applied.

As the negotiations come to their conclusion in Geneva, it becomes increasingly uncertain whether or not negotiators will be able to reach agreement on a safeguards code. Developing countries, who fear that they will bear the brunt of selectivity, are pushing hard for strict standards for the application of selective safeguards. Among their demands are prior approval of selective safeguard action by the international safeguards committee established by the code; prohibition of the use of the safeguard if the committee disapproves it; requiring that a selective safeguard be applied against all major suppliers of a product, thereby limiting its selectivity; and allowing retaliation even if all code provisions are adhered to. The European Community, which is particularly interested in having selective safeguards, is unwilling to accept these strict guidelines, and thus it may be impossible to conclude this code.

Government procurement

Government purchase of goods is big business. It has been a subject of discussion in the Tokyo Round because countries have adopted methods of procurement that discriminate against other countries. The U.S. "Buy America" law, for instance, stipulates that a contracting federal agency must give the contract to an American bidder even if the bid is 6-12 percent higher than that of a foreign bidder (for purchases that are deemed national defense procurements, the percentage preference is 50 percent).

Other countries, too, have procurement practices that give their businesses preferential treatment. Some maintain lists of "eligible bidders" that do not include foreign firms. Some give out such meager information that foreign bidders know too little to place an intelligent bid. And sometimes contracts are "advertised" in such obscure places that in fact there is no notification to those who are not in the know.

This code establishes rules, where now they are nonexistent, that give each bidder "treatment no less favorable" than any other bidder, through the use of open procedures and time limits for: notification, submission of bids, specifications of the contract and qualification of suppliers, and the award of contracts. In addition, firms that do not win a contract will be able to find out, through their governments, why they did not win it. National security procurements, services, and government purchases under agricultural support programs are exempted.

The minimum amount (threshold) of contracts that would be covered is about $180,000. U.S. administration officials estimate that this will open some $25 billion of government purchases in foreign markets and $10-12 billion in the U.S. market to international bidding. The code prohibits a country from dividing a contract into separate contracts in order to reduce the amount below the threshold and thus avoid complying with the code. Only procurements by national governments are covered, but these central governments are to "encourage" subsidiary government entities to adhere to the code.

Lastly, only those nations that sign the code are eligible to receive its benefits. Governments may continue to discriminate against nonsignatories.

Customs valuation

Because governments use a wide variety of methods to calculate the value of an import, customs valuation is often an impediment to trade. It causes problems for importers and exporters alike, mainly because frequently neither can predict with certainty the value of an item until a customs officer actually assigns it one.

One U.S. valuation method worth mentioning because it has historically created controversy is the American Selling Price (ASP). ASP assigns an import value equal to its American-made equivalent, rather than on its actual value. Once widely used, ASP is now used only for some chemical and some footwear imports.

Under the code, ASP and a host of valuation methods will be replaced by a simplified, streamlined system of five methods. The preferred one will be "transaction value": the actual amount the importer pays to the exporter. Trade experts estimate that 90 to 95 percent of U.S. imports will be valued by this method.

As do the other codes, this one provides consultation and dispute-settlement mechanisms. Significantly, it also provides for full administrative and judicial reviews when disagreements between business executives and customs officials arise, a benefit now available only in the United States.

Many trade experts consider this code a "sleeper," that will have an immediate, positive impact. They praise the code for its simplicity and the predictability it will bring to importing and exporting.

Standards

Just as customs valuation methods vary widely among nations, so do product standards. Since imports must conform to those standards to gain access to a country's market, many countries manipulate them to protect a domestic industry. Some countries literally use a double standard, requiring that an import meet more stringent requirements than its domestic counterpart. A Catch-22 certification procedure is another in a long list of NTBs raised via the standard-setting process. Some countries require their own officials to certify compliance with standards during successive stages of a product's manufacture—yet refuse to send those officials to another country that is turning out the product for export.

It would be impossible to harmonize product standards throughout the world. Instead, this code brings openness and scrutiny to standard-setting and certification procedures and ensures that certification is applied evenhandedly. Signatories are encouraged to accept certification in the producing country when they are satisfied that the certification is being performed by a technically competent entity. Existing standards and certification procedures will not be subject to the terms of the code, but new and revised ones will be.

The code encourages the use of existing international standards "where appropriate." Also, where appropriate, nations are to specify standards in terms of performance (i.e., what the product must do) rather than design (i.e., what it looks like) in an attempt to reduce artificial product standards. As with the government procurement code, the standards code will apply only to national governments, but these are to encourage subsidiary governments and nongovernmental standard-setters to adhere to the terms of the code.

GATT framework

In addition to the various codes and other agreements, negotiating nations agreed to changes in the overall GATT framework, which "houses" the set of principles to which trade actions must conform and through which they achieve their legal basis. The framework agreement addresses four issues.

- The new agreement legitimates the practice of granting "special and differential treatment" to developing countries (see Developing Countries).
- Nations affirmed the principle that trade restrictions are an inappropriate response to balance-of-payment (BOP) problems and agreed that any such restrictions taken for BOP reasons should be measures that minimize trade distortion. Currently, only quotas, a most distortionary form of import curbs, are allowed under the GATT; the change would legitimate surcharges, which are less distortionary.
- Nations recommitted themselves to effective procedures for the settlement of trade disputes, including expeditious review and access to impartial and expert review panels.
- Nations agreed that differences over the use of export restrictions (such as export quotas and embargoes) will be subject to dispute settlement and that a full review of existing GATT rules will receive priority attention following the implementation of the MTN.

Agricultural trade

In previous rounds, trade negotiators had attempted to grapple with agricultural trade problems, but their efforts fell short; in fact, some U.S. farm groups describe their efforts as "selling farmers down the river."

This time, U.S. farmers started early to make sure they got some of the benefits of a trade agreement. Their thinking is easy to understand: in no other sector does the United States have such a clear and overwhelming competitive advantage. And, in fact, trade in agricultural products has been increasing dramatically. Last year alone, over half the total U.S. wheat and soybean production was exported. As Agriculture Secretary Bob Bergland has noted, these gains were made in an atmosphere of protectionist sentiment and pressures. U.S. agriculture interests wanted to make sure that provisions in the agreement reduced these pressures.

In the estimation of U.S. trade officials and some farmers' groups, U.S. agriculture *will* gain from the MTN agreement. As Administration representatives put it, the MTN protects U.S. farmers' existing export markets through the limit on use of export subsidies, and it cracks open new doors that have been closed to us. The most publicized of these new markets are Japan and the European Community, which have agreed to accept more high-quality meat. In addition, Japan, the European Community and other developed countries are now prepared to import such secondary farm products as canned peaches, pears and fruit cocktail. These concessions give U.S. producers the opportunity to move away from their traditional role as suppliers of generally low-cost grains to serve a more affluent foreign market with higher-cost food items.

Agricultural information-sharing agreements were also negotiated, including the Bovine Meat Arrangement, which creates an International Meat Council, and the International Dairy Arrangement, which creates a similar Dairy Products Council. The latter also sets prices below which commercial trade in dairy products is prohibited.

Developing countries

For the first time, many developing countries participated in the MTN, and it is hoped that some 20 to 25 of them will sign. This is a significant development in the world's trading network, for it recognizes what is already fact: that developing nations play an increasingly important role in world trade.

Most of the codes in the trade agreement contain special provisions for developing countries; for instance, they will be allowed to use subsidies more extensively than will developed countries. In order to have these special provisions in the codes, nations had to agree to changes in the GATT framework—the set of general rules and principles to which specific trade actions must conform.

Currently under GATT, trade actions are governed by the principles of nondiscrimination—the most-favored-nation concept mentioned earlier—and reciprocity, meaning that concessions granted must be reciprocated in kind. However, these principles work better among economic equals than they do between developed and developing countries, a fact previously recognized when developed countries were permitted to waive the MFN and reciprocity principles and allow some developing-country products to enter their markets duty-free.

Since this waiver will expire in 1980, one objective of the Tokyo Round was to build the option of "special and differential treatment" into the GATT framework itself.

Granting special and differential treatment to developing countries brings them in from the periphery of the world trading system and requires them to assume obligations and responsibilities under the GATT. These obligations will be strengthened by the principle of "graduation," under which developing nations agree to relinquish special treatment—sector by sector—as their development continues. Developed countries, moreover, are authorized to retract special concessions, if in their judgment, they are no longer required.

The road ahead

On January 4, 1979, when President Carter sent to Congress his notification of intent to enter a new trade agreement, he set in motion the procedures established in the 1974 Trade Act. In that act, Congress gave itself a larger role than in the past in approving trade agreements: while the President is authorized to raise or lower tariffs, the other elements of the trade package are subject to its approval.

During the consultation process that began on January 4, Congress and the Administration are to discuss the ramifications of the package for U.S. law and the U.S. trading posture. This period is a minimum of 90 calendar days and could be longer. At the end of it (April 4 or sometime thereafter) the Administration will send to the Hill an omnibus bill to implement the agreement. This bill will have a number of elements, because several U.S. laws must be brought into conformity with the international trade agreement. The Administration may also submit other legislative proposals (such as export promotion proposals) as a part of the bill implementing the trade agreement.

Congress will then have about 90 *legislative* days to act on it. The House Ways and Means and the Senate Finance Committees will have primary jurisdiction. Other committees, such as the Agriculture Committees, will be deeply involved. After it is reported from committee, both houses will vote on it. Unlike most bills, it will be nonamendable: if either House rejects one part of it, the entire package will be disapproved. The three-month consultation period, therefore, is the critical time for congressional input.

It is impossible to predict with certainty just when Congress will complete action on the trade bill. First of all, the actual negotiations are not complete in all respects, and slippages in the negotiations mean time lags in Congress. Legislative days can be extended by not officially ending the day, and recesses will also extend the time period. As one Senate Finance Committee aide puts it, "It is easy to imagine a scenario in which congressional consideration extends into 1980."

Trade among nations does mean more than the exchange of goods and services across national borders. Trade is the main way that nations relate to one another. Good trading relations can help pave the way for better cooperation in all international and national endeavors in which an action by one nation affects the interests and the security of other nations. Conversely, a breakdown of cooperation in trade can signal the deterioration of relations in many areas. Viewed in this context, the MTN is much more than the technical package of agreements. It is a blueprint that nations pledge to follow in an effort to avoid disharmony and misunderstanding. It is, finally, in this context that all of us, both as individuals and as nations, must judge the agreement.

Researched and written by Joan E. Twiggs, department head, LWVEF International Relations Department.

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Mr. VANIK. Well, thank you very much. I appreciate your statement.

I want to urge you to do two things. One is, as you know, we have an adjustment assistance bill that is up before the Rules Committee and we are waiting to get it cleared for floor action, but we don't have administrative support for the money that we need for that program. I would appreciate the League getting some kind of communication to the money watchers over at OMB and suggest to them that if we don't get a piece of the trade adjustment program we are not going to be very likely to give them the MTN that they want. I think they are very much related.

I think our promise to people is we are going to put into place a meaningful adjustment assistance program. I think there is about a $150 million difference. They don't plan anything more than they appropriated last year and we feel that is totally inadequate. Some members of the committee don't feel that we should go as far as we did but in any event we need considerably more than the administration suggested.

The other thing is that this business of the MTN is very little understood by the people throughout America and those that are hurt by it and many will be very quick and prompt to put political pressure on their representative, so I think it is very important for you to try to get as much influence as you can and try to be sure that all sections of America in which you have so many fine, active groups at least have a discussion with your representative in an effort to let him know what the legislative position is and try to find out what his position is, because otherwise he would only be inclined to hear from those who might oppose him.

Ms. ROBBINS. Mr. Chairman, we are doing not only that but we have gone a step further. We have just embarked on a trade project and we had our first conference in Racine, Wis., a few weeks ago to which 45 states in this country sent representatives. As a result of this conference and this meeting, 45 women will be going back to 45 States putting on trade projects that will explain to their communities the state of the State's economy in trade.

Mr. VANIK. That should be very helpful.

Mr. Vander Jagt.

Mr. VANDER JAGT. No questions.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I want to thank the witness for her excellent testimony, too, and inquire as to what kind of a position this is of the league. Obviously the treaty has just been inititaled and some of the code is in there or not in there. How does the league take this position? Is this its executive board?

Ms. ROBBINS. Oh, no, no, no. The League of Women Voters has a position in support of liberalizing trade as a benefit not only to the U.S. economy but to the economy of the world and when a piece of legislation or a treaty comes up that would impinge on this position, either further it or contract it, then the national board would make the decision on what was appropriate but we would no more take action on anything without knowing that we had the members' support behind us because we could not accomplish much or we could not be effective if we did that.

Mr. FRENZEL. I see. So you took a standing resolution.

Ms. ROBBINS. That is right. Our last reevaluation of our trade position was done in 1976 and it was overwhelmingly reaffirmed by league members all over the country.

Mr. FRENZEL. Thank you very much. Your position is excellent and I only wish that was our position on campaign financing.

Ms. ROBBINS. We will work on it. [Laughter.]

Mr. VANIK. Mr. Fisher.

Mr. FISHER. Thank you.

I simply want to compliment you on your testimony and thank you for it. I, for one, look to the League of Women Voters for a broad-based and objective analysis on matters of this kind and I have not been disappointed to date.

Ms. ROBBINS. Thank you.

Mr. VANIK. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. VANIK. Thank you very much.

Ms. ROBBINS. Thank you, Mr. Chairman.

Mr. VANIK. Next is the Joint Industry Working Group composed of Richard D. Langer, vice president, Control Data Corp.; Saul Sherman of Rivkin, Sherman & Levy; Irving Levine, director, international tariffs and trade, NCR Corp.; and James R. Gorson, director, Facilitation, Air Transportation Association of America.

Mr. Langer.

STATEMENT ON BEHALF OF THE JOINT INDUSTRY WORKING GROUP, BY RICHARD D. LANGER, VICE PRESIDENT, CONTROL DATA CORP.; SAUL L. SHERMAN, ESQ., PARTNER IN THE FIRM OF RIVKIN, SHERMAN & LEVY, NEW YORK CITY; JOSEPH DeROSE, DIRECTOR OF CUSTOMS, IBM CORP.; AND JAMES R. GORSON, DIRECTOR-FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA, WASHINGTON, D.C., ACCOMPANIED BY DAVID J. ELLIOTT, MANAGER, INTERNATIONAL TRADE AFFAIRS, PROCTER & GAMBLE CO.

Mr. LANGER. I am Richard Langer, vice president of Control Data Corp. With me are a number of other gentlemen here who will complete this panel.

On my right is Mr. Joseph DeRose from IBM who will replace Mr. Irving Levine who, because of the delay in getting on the agenda, had to catch an aircraft so Mr. DeRose will take his place.

Mr. VANIK. Mr. Frenzel reminds me that you are constituents of his so we have to be especially nice to you.

Mr. LANGER. Thank you, Mr. Frenzel.

On my far right is Mr. James Gorson. On my near left is Mr. Saul Sherman. On my far left is Mr. David Elliott who will not be giving testimony but is here as an expert in the event of questions on this subject.

We will follow your suggestion and file our detailed statement and in the interest of time proceed only to highlight its main points for you.

We are here on behalf of the Joint Industry Working Group, a coalition of 15 trade associations broadly representative of those segments of American business involved in international trade including exporters, importers, carriers, customs brokers, and others. Mr. Chairman, forming a coalition of this many trade associations

is in itself a minor miracle and perhaps second only to the negotiation of the MTN agreement itself.

This coalition has a particular interest in the customs valuation agreement negotiated in Geneva which we believe is probably among the most important of the MTN agreements since it will affect the majority of the international trade transactions.

Over 50 years ago the writer of an excellent book called "Through the Customs Maze," noted, "If you but let me write the administrative act, I care not who sets the rates of duty." Those of us who are involved in international trade on a daily basis have learned well how true those words are as they relate to the various customs valuation systems now used throughout the world. Other countries have used uplifts or fair market valuation systems to significantly increase their effective rates of duty. We in the United States have used the American selling price system to do the same on a relatively narrow range of goods but have established administrative complexities that have become intolerable for the Customs Service and the importer alike.

We think it is a remarkable achievement to have negotiated this valuation agreement among the major trading nations of the world. It will eliminate many problems and will establish a uniform trade neutral system with effective dispute settlement procedures. We point out that the essence of the agreement will be its reciprocal character among the nations that have agreed to sign it. Clearly if we are to achieve the benefits from this agreement that we seek for our exports, we must effectively implement the agreement ourselves. Without question the agreement is the product of negotiations and as Ambassador Strauss has noted "You get nothin' for nothin' ."

We are aware of the difficulties experienced in persuading Canada to participate in the agreement and we are deeply appreciative of the suport that this committee gave to Ambassador Strauss in his successful effort to secure this participation. We understand that many less developed countries are also somewhat reluctant to participate. We hope that the members of this committee will support Ambassador Strauss' efforts in this direction as well.

Before turning this discussion over to our technical experts I would like to make two further observations. First, the United States went into the negotiations on the valuation agreement as virtually a minority of one, confronting a world which by and large had adopted the Brussels Definition of Value. Our negotiators came out with a system incorporating the best of both existing U.S. law and the Brussels Definition of Value. We believe the results are a major success for the United States and will help facilitate U.S. exports.

Second, the valuation systems of other countries concerned us because of the latitude and discretion their customs authorities have been endowed with to impose duties arbitrarily by assigning valuations based on national concepts. The key feature secured in the Geneva negotiations was to minimize such administrative discretion and to keep the valuations subject to relatively factual and subjective criteria. Although our own current law on customs valuation must be repealed as a result of this agreement, the new law

which will replace it will not be substantially different from the main stream of our existing valuation practices.

We also point out that other countries will probably imitate the way we implement this law ourselves, and as a result we are likely to find these countries treating our exports in a manner similar to our treatment of their imports. Therefore, great care is required in developing the implementing legislation for this agreement.

At this time I would like to present Saul Sherman, partner in Rivkin, Sherman & Levy of New York who will discuss specifics relative to the implementation.

Mr. SHERMAN. Thank you.

Mr. Chairman, gentlemen, this subject of customs valuation until now has been a matter for individual regulation by each of the nations, including of course our own. Now if the Geneva agreement resulting from the MTN is adopted, as we hope it will be, it is clearly understood, I think, that our existing valuations statutes in this country will have to be replaced and brought into line with the agreement, which at the same time does not represent a major departure though it will require a great deal of change in detail.

We do not yet have a text of a proposed statute that is being considered for introduction in the Congress and so we have no paper before us on which we can offer detailed comments. We hope that we soon will have an opportunity to look at a draft, especially in view of the fact that amendment will be impossible after this legislation is introduced; and we are in touch with the staff about that.

Mr. VANIK. The staff will carefully review your recommendations. We hope that they are going to be part of what you suggested.

Mr. SHERMAN. Thank you very much, sir.

I would like to offer a few general and very brief comments if I may based on what we have understood of what is being considered and what is not, even that we don't have a text. As Mr. Langer indicated, one of the key objectives of the agreement is to reduce administrative discretion, and for that reason we hope that to the extent possible the statute emanating from the Congress will itself lay down the guidelines for valuation in accordance with the Geneva agreement and that it will not be left in our country to administrative regulation or discretion. And we hope that will set a pattern whereby the same kind of discretion will be denied to the administrative authorities in other countries to which we are exporting.

There is one section, section 500, in our code which today permits, or speaks of, conferring authority on our administrators to use all reasonable ways and means to arrive at customs valuation, a phrase dear to the heart of this committee but which we feel is quite inappropriate for conferring of powers on the Customs Service; and we would hope that that phrase at least can be eliminated.

There are a great many details and in particular three subjects of major importance that received rather short shrift at the end of the Geneva negotiations on which we feel that a good deal of clarification—more than implementation—will be required, but I think that can be handled with the staff. I will stop now unless the committee has questions.

Mr. VANIK. Yes. Now you now our schedule. We are going to finish up the public hearings this week and then we are going to try to get 4 days next week for consultations. We are not sure. We have Monday for beef and the countercyclical program, so I am hopeful that we will be assigned the rest of next week. That is when we expect to conclude our work under our present objective.

Thank you.

Mr. SHERMAN. Thank you, sir.

Mr. LANGER. Next is Mr. Joseph DeRose of IBM who will address the statement of administrative action.

Mr. DEROSE. Mr. Chairman, gentlemen, recognizing that the statement of the administrative action will become a major part of the legislative history indicating how the valuation law will be applied and in many cases disclose the true meaning behind the statutory provisions, our written statement comments on those aspects of the administrative action upon which we are most concerned. I would like to briefly highlight four of the most important matters.

The first is the use of generally accepted accounting principles in developing dutiable values. We believe this is a cardinal rule to the valuation agreement and should be specifically identified as having general application.

Second, the computed value article of the code is not intended to be accompanied by an indication of current U.S. constructed value law. In fact, the code and interpretive notes indicate that the accounting principles applicable in a country of exportation apply when developing computed value. It appears inconsistent and improper to have the administration's statement test the elements of constructed value as the method for computing value under article 6.

Third, the administration is contemplating requiring an importer to request a written explanation of valuation and make his election between deductive or computed value at the time of entry. It is clearly premature to require this action before an importer is told that the transaction value which is supposed to be used as often as possible will not be used for valuation purposes. It is, in our opinion, more appropriate for the Customs Service, when notifying an importer under article 1, paragraph 2(a), that the transaction value will not be used, to then request election of deductive or computed valued and advise the importer of his right to a detailed statement of appraisement if formally requested.

Fourth and last, a current customs practice results often in the payment of duties more than once on the value of an assist. If an importer provides a mold to a foreign manufacturer, customs requires amortization of the total mold value over the manufacturer's production. If the importer then switches foreign suppliers and the mold is transferred, its current value is again amortized over the second manufacturer's production. This results in the payments of duties more than once on the value of what in many cases is a U.S. produced mold. For any further points I refer you to our written statement, the recommendations.

Thank you.

Mr. VANIK. Thank you.

Mr. LANGER. Mr. James Gorson, Director-Facilitation, Air Transport Association of America, will now address the issue of collecting duties on an f.o.b. service.

Mr. GORSON. Thank you.

I would like to spend merely one minute on the subject of CIF cost and insurance and freight value. As you probably know, Mr. Chairman, for over 150 years since well before the United States developed into a continental economy, our country has not included international freight and insurance in customs dutiable value. The advantage of our present system has been that it does not discriminate in the amount of duty between ports of entry or between transportation modes. If we were to move to collecting duties on a cost insurance and freight basis, duties would be higher for example at Great Lakes ports than east coast ports. They would also be higher in cases where airfreight is used rather than ocean freight or where U.S.-flag marine carriers are used rather than unconferenced flag and convenience ships. As noted, users of airfreight transportation at ports of entry would be discriminated against. Not only would the dutiable commodity vary according to the mode of freight transport but you would also vary on the U.S. customs port of entry where duties were actually assessed.

For example, Mr. Chairman, imports from Tokyo destined to Cleveland on a flight stopping at Seattle would have one set of duties if assessed at Seattle and another if assessed at Cleveland. Now while most of the United States trading partners do use the CIF approach, our reciprocal negotiations almost over the last half century have been conducted with these systems in mind. If we were to now change, our interrelationships with other countries would be adversely affected. This would seriously complicate the task of negotiating adjustments to our duty rates to compensate for the change to a cost, insurance, and freight basis. It is difficult to see any advantage that would result from making such a unilateral change. There is no problem, for example, with respect to U.S. statistics since they are already collected on a CIF basis, but two disadvantages of CIF as noted are clear.

That concludes my brief remarks, sir.

[The prepared statement follows:]

STATEMENT OF THE JOINT INDUSTRY WORKING GROUP

Good morning. My name is Richard D. Langer, Vice President of Control Data Corporation of Minneapolis, Minnesota. I am appearing here on behalf of the Joint Industry Working Group, an ad hoc coalition interested in the subject of Customs valuation, from the exporting and importing points of view. Together with me on the panel are Irving Levine, Esq., Director, International Tariffs & Trade for the NCR Corporation, Dayton, Ohio, Saul L. Sherman, Esq., partner in the firm of Rivkin, Sherman & Levy, New York City and James R. Gorson, Director—Facilitation, Air Transport Association of America, Washington, D.C. Also accompanying me are Joseph DeRose, Director of Customs, IBM Corporation and David J. Elliott, Manager, International Trade Affairs, Proctor & Gamble Company. Our testimony is directed toward the Customs Valuation Agreement which has emerged from the Geneva Multilateral Trade Negotiations.

The Joint Industry Working Group is composed of the following associations and the businesses they represent:

1. The Air Transport Association of America, which represents nearly all scheduled airlines of the United States.

2. The American Electronics Association, which has over 900 high technology and electronics companies. Its members are mostly small to medium in size, with two-thirds of its members employing less than 200 employees.

3. The American Importers Association, representing over 1,100 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.
4. The American Retail Federation, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.
5. The Chamber of Commerce of the United States, representing 79,000 companies and 4,000 state and local Chambers of Commerce.
6. The Cigar Association of America, which includes 75% of all U.S. cigar sales and major cigar tobacco leaf dealers.
7. The Computer & Business Equipment Manufacturers Association, including nearly forty members with 750,000 employees and $45 billion in worldwide revenues. Members range from the smallest to the largest in the industry.
8. The Council of American-Flag Ship Operators, which represents the interests of the American Liner industry.
9. The Electronic Industries Association, its 287 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25–50 million annual sales range, have plants in every State in the Union.
10. The Foreign Trade Association of Southern California, which represents 450 firms in Southern California in the import-export trade.
11. The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75% of all imported hardwood products and range in size from small private businesses to the largest in the industry.
12. The Motor Vehicle Manufacturers Association, whose eleven members produce 99 percent of all U.S.-made motor vehicles.
13. The National Committee on International Trade Documentation, which includes many of the major U.S. industrial industrial and service companies.
14. The Scientific Apparatus Makers Association, manufacturers and distributors of sceintific, industrial and medical instrumentation and related equipment.
15. The U.S. Council of the International Chamber of Commerce, a business policy-making organization which represents and serves the interests of several hundred multinational corporations before relevant national and international authorities.

SUMMARY OF TESTIMONY

I. The Customs Valuation Agreement does an excellent job on a difficult subject, and many of us believe it could be the most important of all the non-tariff measures negotiated in the Tokyo Round. While the other agreements will usually affect only limited segments of international trade, this Agreement will affect the majority of transactions in dutiable goods.

The Agreement will benefit our exports particularly, since it reduces the present leeway for foreign customs to arbitrarily increase values for duty collection purposes. It will required major changes in other nations' valuation systems. Relatively fewer changes are required in U.S. law. These changes will alleviate numerous administrative and technical problems and simplify operations both for U.S. Customs and for importers. It will lend added predictability to duty assessements.

II. Experiences with current U.S. law—significant parts of which remain inadequately defined 20 years after enactment—show that our legislative implementation should be comprehensive and specific. Only the necessary minimum should be left to administrative discretion, to regulations, and to judicial clarification. Likewise, the overly broad valuation mandate of Section 500 ("all reasonable ways and means") must be amended.

Certain complex technical issues, particularly royalties and "assists" (production aids contributed by the importer), need clarification in the legislation.

On the vital subject of dispute prevention and resolution, legislation is needed to assist American exporters by affording United States government assistance in training foreign customs officials and in invoking the international dispute resolution machinery provided for in the Agreement.

III. The way in which the Agreement will be administered is also most important. Therefore, it is appropriate that the Statement of Administrative Action adequately reflect those parts of the Agreement and its Notes not amenable to codification. It is also necessary that it select carefully between those parts of current administrative practice that are consistent with the Agreement and those that are not. In particular, it is desirable to avoid the need for special accounting for customs purposes.

IV. It is necessary for the U.S. to maintain its traditional practice of excluding international freight and insurance from valuations for customs purposes.

STATEMENT

I. Overview

The Joint Industry Working Group strongly endorses the Valuation Agreement—we think that all in all a remarkably good job was done in Geneva on this subject. Valuation is hardly a glamorous subject, but it is one that—unlike dumping or subsidies or safeguards—affects the majority of day-in-day-out import and export transactions. Much of its importance arises because manipulation of customs values is a way by which some nations not too subtly enhance the protection offered by their tariffs. Securing international agreement to forego these "hidden" duties and to adopt a trade-neutral system is a remarkable achievement. Many knowledgeable people in the business community regard the Valuation Agreement as a "sleeper" which will do more than any on the other MTN agreements to smooth the workaday flow of trade.

Most tariffs are expressed as a percentage of the value of the merchandise. If the percentage is reduced but the value goes up, an importer could find himself paying the same duty despite a supposed tariff reduction. Hence, the concern of the international trade community about the subject of valuation. In addition, the complexities, uncertainties and delays which are sometimes involved in valuation problems can act as a serious non-tariff barrier to trade. If an importer does not know what his duty assessment will be until after he resells his merchandise, he may be forced to assume the worst, and the commercial impact in the marketplace may be the same as if a higher rate of duty had been in effect.

The prominence of the subject of valuation in the Tokyo Round negotiations stems partly from the fact that American Selling Price (ASP), a U.S. trade barrier which particularly incensed some of our trading partners in previous negotiations, takes the form of a valuation provision. Under ASP, duty value is based not on prices in the import market but on the price of the competing domestic product—in other words, the domestic manufacturer sets the duty value for his import competition! The Kennedy Round side-agreement designed to eliminate ASP was not presented to the Congress and so did not take effect. In the Tokyo Round the elimination of ASP has been accepted in principle by our negotiatiors, and by the American chemical industry, for whose benefit it was originally enacted in 1921. The discussion has centered around the alternatives and the compensation to be received in return by way of duty rate increases and otherwise. It is to be emphasized that the Valuation Agreement aspect of the ASP problem is essentially non-controversial—no one has ever seriously proposed that ASP be made a part of a worldwide system of valuation to be used by all countries.

The essence of the Agreement is reciprocity, at least among the developed nations. To get the valuation benefits we seek for our exports, we must agree to apply the Agreement ourselves. Indeed, the basic premise of the Geneva negotiations on valuation was that each signatory would have the same rules applied to its exports as to its imports. The awareness that each major signatory would have this balanced interest was largely responsible for the success of the negotiations. In this connection, a word should be said about the great importance of Canada's accession to the Valuation Agreement.

In view of the large volume of our trade with it, the American business community was concerned about Canada's initial reluctance to participate. The Group wishes to express its deep appreciation for the support that this Committee gave to Ambassador Strauss in his successful effort to secure Canadian participation. We understand that the Ambassador is similarly striving to secure participation by the Lesser Developed Countries. We hope that the members of this Committee will support these endeavors just as they did with the Canadian situation.

We have two further observations about the course of the negotiations in Geneva: The first is that we went into the negotiations as virtually a minority of one, confronting a world which had by and large adopted the Brussels Definition of Value (BDV). We came out with a system very close to the best of existing United States law. The result may properly be considered a major success for the United States delegation. Second, the thing we objected to the most in other valuation systems was the discretion extended to customs authorities to raise duties arbitrarily by raising duty valuations arbitrarily. One of the key features of the system we espoused and secured in the Geneva negotiations was to minimize administrative discretion and keep valuation subject to relatively tight control. Thus, in terms of implementation, while our old law on customs valuation must be repealed, the new law which will replace it will not be drastically different from the mainstream of our existing valuation law. Our new provision must take the form of Congressional legislation, with less rather than more left to administrative regulation or discretion.

II. Legislative implementation

This is not the occasion for a detailed review of the substance of the Agreement, but a few essentials regarding the problem, the objectives, and the solutions adopted should be mentioned.

1. A moment's reflection will make it obvious that the same merchandise will very likely have different values in different circumstances. There is no one "right" value for an article, even at a given time and place, nor is there one right way to arrive at a value. The valuation problem is thus inherently complex and difficult.

2. The Agreement does not and could not realistically seek to arrive at uniform duties or even uniform values for a given article in all countries or in all transactions. The Agreement seeks only to establish a uniform method of arriving at dutiable value; and even this uniform approach lays down a series of alternatives, to be applied in sequence until a proper fit is obtained, since no signle method fits every situation.

3. The agreement is trade neutral. The key objectives have been simplicity, predictability and a factual basis in commercial reality. For example, today U.S. duty values are generally based on prices prevailing at the date of exportion. The Agreement provides that where the parties to the transaction set their price at an earlier date, that price (whether higher or lower than the price on the date of export) shall normally prevail for duty valuation. Another important provision is the requirement that generally accepted accounting principles be applied in customs valuation. While this is plainly a neutral provision, it has not always been followed in the past and it is important in ensuring predictability and rationality.

4. The basic standard of value in the Agreement is Transaction Value—the price the parties themselves adopt in the marketplace. Departures from this standard are held to a minimum and are permitted only for good reason. That approach to valuation may seem very obvious, and most systems have, as a matter of practical necessity, normally adopted the invioice price as the duty value in practice. But we know of no other system—including existing United States law and the Brussels Definition of Value—which expressly makes invoice price the starting point. The benefits in terms of simplicity and predictability are obvious.

5. The principal departure from Transaction Value which the Agreement permits occurs where the exporter and importer are related and the relationship distorts the price. In such cases a series of alternative bases of value are invoked in sequence—the price of identical goods, the price of similar goods, the importers' resale price less a usual reseller's mark-up , and lastly the manufacturer's cost plus a usual manufacturer's mark-up. The sequence of the last two standards can be reversed at the importer's option. All of these are defined in the Agreement with precision and will have to be similarly defined in our legislative implementation. Even the fall-backs permitted in the rare case where none of these methods will work are narrowly confined—to avoid leaving loopholes which could permit arbitrary increases in value and defeat the purpose of the Agreement.

6. One of the most difficult and sensitive areas dealt with in the Agreement is assists and royalties. Assists are contributions by the importer to the process of manufacture abroad—for example, furnishing tools and dies. Royalties are payments for rights involved in the manufacture and/or marketing of the products. Typically, neither assists nor royalties are included in the invoice price. Just which assists and royalties should be added to the invoice price to arrive at a fair duty value has been a vexing problem particularly under United States law. The Agreement draws lines to indicate which are to be included and which excluded. The complexities are such, and the speed with which these subjects are dealt with in the closing days of the Geneva negotiations was such, that these areas of the Agreement are in need of clarification in the process of implementation.

Turning finally to some of the mechanics of the implementing legislation, the Agreement itself is very close to a statute in its precision and should be closely followed in legislative drafting.

The Joint Group has enjoyed a good working relationship with the Administration as it has developed its legislative implementation strategy. While not all of our suggestions have been accepted, all have been given due consideration. We have been unable to review specific proposed legislative language and at this time cannot comment or suggest any changes that may appear to be desirable or appropriate. We urge that draft legislation be made public for appropriate review as soon as possible. However, certain key points are worth mentioning:

1. The General Note on Generally Accepted Accounting Principles should be reflected in the legislative language.

2. The following elements of the Interpretive Notes should be reflected in the legislative language:

Note to Article 1—all.

Note to Article 1.2—Paragraph No. 1, with succeeding paragraphs re-phrased in legislative language.

Notes to Articles 2 and 3—Paragraph No. 2.

Note to Article 5—Paragraphs Nos. 5, 6 (with "relevant" in the last sentence being supplemented by "objective and quantified"), 7, 8, and 9.

Note to Article 6—Paragraphs Nos. 2, 3, 4, 5 (with "relevant" in the final sentence being supplemented by "objective and quantified"), 6 (as an addition to our later noted necessity for the inclusion of Article 16 in the statute), 7 and 8.

Note to Article 8—Paragraphs Nos. 1, 2, 3, 4 (with the addition that "Customs may not require that more than the cost or value of that portion of the estimated useful life of the tools, dies, molds, and similar items consumed in the production of the goods being valued be added to the price paid or payable to determine their customs value."), 5, 6, 11, 12, 13, and 14 (first sentence).

The extent to which the above parts of the Interpretive Notes should be set forth in the sections providing for the valuation systems or in a definitions section should be determined as the legislation is developed.

3. It appears preferable that Article 7 be treated as a separate value approach in the hierarchy, rather than an as amendment to Section 500. Section 500 provides Customs with the authority to appraise merchandise, and is not and should not be a basis of appraisement. Accordingly, we emphasize the need for also rewriting Section 500. The current law is overly broad and tends to mislead customs field offices with its apparent mandate to use "all reasonable ways and means" to appraise goods, rather than the valuation statute. The field has too often used Section 500 as the basis for appraisement, resulting in the need for corrective action by Customs Headquarters and the Courts.

4. Article 8 and its Interpretive Notes dealing with royalties and assists require clarification. We suggest adding the following wording to the text permitting additions for royalties and license fees: "Royalties and license fees related to the production of the goods being valued which the buyer is required to discharge directly or indirectly as a condition of the sale of goods for export to the United States and to the extent that such royalties and fees are not included in the price acutally paid or payable."

In order to eliminate serious administrative problems arising under Article 8.1 (b)(iv) clarification is needed. We recommend the following language in the paragraph succedding that providing for adjustments under Article 8.1 (b)(iv): "The phrase 'undertaken elsewhere than in the country of importation' does not include assistance provided outside the country of importation incidental to work undertaken within the country of importation."

5. Price adjustments anticipated at the time of importation should be reflected in the Transaction Value, even though only ascertained later. Adjustments to Transaction Value should be permitted where the price's based in whole or in part upon the proceeds of resale in the U.S. even though resale price is not known at the time of importation.

6. The right provided by Article 16 should be guaranteed by law. Existing United States law affords importers the domestic remedies—both administrative and judicial review—called for by the Valuation Agreement. (These remedies are not now generally available abroad, but will become available as a result of this Agreement.)

Appropriate provision will be required regarding United States participation in the international mechinery called for in the Agreement for resolving valuation disputes. Of special important is provision for assistance to American exporters in obtaining the treatment to which they will be entitled under the Agreement. This assistance will involve the dispute resolution machinery as a last resort, but the first resort, and one we hope will also receive strong support from the Congress, will be assistance to other countries which seek help in training their customs officials to understand and apply the Agreement as its authors intended it to be applied.

Because of our extensive resources (both manpower and machinery) and the comparative lack thereof in any other countries, some of our trading partners are likely to follow the U.S. lead in implementing the Agreement. Consequently, the manner in which we implement the Agreement, to apply to imports into the U.S. is likely to be reflected in corresponding treatment for exports when they arrive abroad.

III. Statement of administrative action

The Joint Group has had an opportunity to review an early draft of the Statement of Administrative Action. Overall it relects our understanding of the proper administration of the Agreement. However some clarifications are needed:

A. Transaction value

Changes in price subsequent to arrival determined in accordance with procedures specified before importation should be taken into account in determining transaction value. For example, contracts with Italian machinery manufacturers often require price adjustments based upon costs incurred prior to shipment that are not known until after shipment. The basis for making these adjustments is usually spelled out in the contract.

We suggest that the example of indirect payment be replaced by one which refers to the situation where an importer negotiates a price reduction as a means of amortizing a debt owed him by the seller, e.g., because of prior shipments of defective merchandise. This is not an infrequent occurrence, particularly where the exporting country maintains currency control regulations and, therefore, the seller finds it difficult to obtain authority to make refunds for such purposes on a timely basis. In these circumstances importers frequently negotiate price reductions as a means of collecting the debt. This suggestion is made not because the example in the draft is incorrect, but because the suggested example is more concrete and is one with which importers and customs officials are familar.

B. Adjustments

1. *Buying commissions.*—We are concerned that the description of a buying commission is unnecessarily narrow. We believe that attempts to re-define buying commissions should be avoided. We suggest that the term buying commissions be described as having the same meaning it has under current law as interpreted by the customs courts.

2. *Royalties.*—We believe that the intent of the Agreement is to assess duties on royalties consistent with current U.S. law. To accomplish this, we suggest the following language:

"Adjustments must also be made for royalties and license fees related to the production of the goods being valued, that the buyer must pay, either directly or indirectly, as a condition of sale for export to the United States to the extent that such royalties and fees are not included in the price actually paid or payable.

"The royalties and license fees include, among other things, payments in respect to patents covering processes required to produce the goods, but not to royalties paid for the use of trademarks and copyrights, which enhance sales rather than the product and are selling expenses rather than part of the cost of production. However, the charges for the right to reproduce the imported goods in the United States or for the right to manufacture in the United States with the use of imported goods shall not be added to the price actually paid or payable for the imported goods in determining the customs value. The right to reproduce imported goods is understood to cover the following classes of merchandise: original or copies of artistic or scientific works, original or copies of models and industrial drawings, prototypes and biological species.

"Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods.

3. *Inland charges.*—We suggest that language be added making it clear that whether merchandise is to be appraised on an ex-factory or F.O.B. basis depends upon the terms of the transaction. This point is implicit in the Statement but we believe that it should be explicit. We suggest that "containerization" be added to the list of charges not included as part of value. This is consistent with current Customs practice. finally, we suggest that language be added specifically excluding import brokerage fees from value.

C. Generally accepted accounting principles

We recommend that the discussion of Generally Accepted Accounting Principles ("GAAP") be covered in a separate heading. The use of GAAP is a cardinal principle of the Agreement and we believe it is of sufficient importance to warrant separate treatment.

D. Assists

The treatment of assists should include a statement that assists are to be valued in accordance with their "useful life." It should also be made clear that multiple dutying of assists is not permitted. We understand that some believe that this latter point is included in the concept of "useful life." We suggest that the connection is not a necessary one and recommend that the prohibition against multiple dutying of assists be covered separately.

E. Transaction value of identical and similar goods

We believe that the discussion of "identical goods" and "similar goods" is vague. We suggest the following language: Goods shall not be regarded as "identical goods" or "similar goods" where on the one hand goods incorporate or reflect engineering, development, art work, design work, plans and sketches for which no adjustment has been made because such elements were undertaken in the United States, and on the other hand, adjustments reflecting similar intangible assists were made because such elements were undertaken outside of the United States.

F. Sequential order and importers options

1. *Options.*—We object to the requirement that an importer make an election between deductive and computed value at the time an entry package is presented. Such a requirement presupposes that in many situations transaction value will be inappropriate, and will predispose Customs officials to disregard transaction value. A primary goal of the Agreement is to require the use of transaction value wherever possible and to discourage arbitrary use of other valuation methods. It is our belief that the proposed wording encourages disregard of transaction value. Accordingly, we believe that in the few instances where transaction value will be inappropriate, the importer should be allowed to choose between deductive and computed value at the time he is informed by the appropriate Customs official that transaction value will not be used as the basis of Customs valuation. This could be accomplished through the use of existing mechanisms, specifically Customs Form C.F. 29, Notice of Advice.

2. *Statement of validation.*—We believe it unwise to require that importers desiring a written explanation of the basis of valuation from the Customs Service make that request at the time of entry or as part of the entry package. We believe that many if not all importers will, as a matter of course, make the request, placing an unnecessary burden on the Customs Service. It would be far more efficient to permit an importer to make a request at a time prior to liquidation becoming final, thereby limiting requests to situations where the information is necessary.

G. Computed value

The Group firmly believes that the treatment of the calculation of computed value should be reexamined. It is our clear understanding that in calculating computed value appraising officials will be required to rely upon GAAP in the country of exportation. Indeed, this point is explicitly made earlier in the Statement. The Statement as now drafted sets forth virtually verbatim the current method of computing Constructed Value. We believe that this is inconsistent with both the spirit and letter of Article 6 of the Agreement and suggest strongly that this entire section be redrafted. Principles established by the Customs Service in calculating Constructed Value under different law, and often requiring duplication and unnecessary additional accounting and record keeping should be avoided. Elimination of such burdens has been basic to the spirit of the negotiations leading to the Agreement.

H. Nominal value

Several years ago, Customs of necessity established the concept of "nominal value" for business records (which are generally duty free) and a limited number of other items. The Agreement does not change the necessity for this concept and it seems appropriate to confirm it in the Statement. The relevant Treasury Decision should also be expanded very slightly to facilitate the importation of such records for production for export, because curent limitations create difficulties in this regard.

IV. The C.I.F. option

For over 150 years—since well before the U.S. developed a continental economy—we have not included international freight and insurance in dutiable value. The advantage of this system has been that it does not discriminate in amount of duty between ports of entry or between transportation mode. If we were to move to collecting duties on a cost, insurance and freight (C.I.F.) basis, duties would be higher, for example, at Great Lakes ports than at East Coast ports. They would also be higher where air freight were used rather than ocean freight, or where U.S. flag-marine carriers were used rather than non-conference flag of convenience carriers.

While most of our trading partners do use the C.I.F. approach, our reciprocal duty rate negotiations over the past 45 years have been conducted with these systems in mind. If we were to change, our interrelationships with other countries could be adversely affected. This would seriously complicate the task of negotiating adjustments of our duty rates to compensate for the change to a C.I.F. basis. It is difficult

to see any advantage that could result from our making a unilateral change (statistics are already collected on a C.I.F. basis). The disadvantages are clear.

Mr. VANIK. Thank you very much.

Are there any questions?

Mr. Fisher?

Mr. Vander Jagt?

Mr. Frenzel?

Mr. FRENZEL. No questions.

Mr. VANIK. Mr. Moore?

Mr. MOORE. No questions.

Mr. VANIK. Well, I think this idea that you offered was suggested by Senator Long and I was opposing it. I think there is a lot to be said for it but I am just afraid that we are so far along in this business that I don't know that we can really reopen it in this kind of a consideration. I know businessmen tell me about the problems they have in this evaluation problem.

Well, I am going to bring that up to the committee. I think you make a good case and I am going to try to get the committee's reaction on it next week and see if we can give it another look. We discussed it during our initial round and I think we will just check on the basis of your testimony and see if we should not reopen it.

I would appreciate it if you might get a letter addressed to every member of the Trade Committee just to be sure that they get the issue because it is very difficult for me to try to do that by the time we get to a markup, so I would appreciate your trying that procedure to see if we can't have a meaningful consideration of the proposition.

I want to thank you very much for your splendid contribution. We appreciate it very much.

[The following was subsequently received:]

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., April 26, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You requested additional information on our concern of a possible change from an f.o.b. valuation to a c.i.f. valuation for imported goods during my testimony before the Subcommittee on Trade on 24 April 1979. I testified as one member of a panel of the Joint Industry Working Group, an ad hoc coalition interested in the general subject of Customs valuation, in connection with the U.S. legislative implementation of the Tokyo Round of Multilateral Trade Negotiations.

United States Customs duties on imported merchandise are collected on an f.o.b. basis—that is, the value of goods excluding international transportation (freight), insurance and other related costs. However, we understand that consideration is being given to a change in the current U.S. dutiable value of commodities imported into the United States—that is, from essentially a free on board (f.o.b.) valuation, to one of cost, insurance and freight (c.i.f.).

As noted in my testimony, for over 150 years—since well before the United States developed into a continental economy, our country has used the f.o.b. basis and has not included international freight and insurance costs in Customs dutiable value. Use of the c.i.f. valuation would mean that a different import duty would be charged on two identical articles of the same cost merely because they arrived via two different modes of transportation. Not only would the dutiable value of the same commodity vary according to the mode of freight transport, but it would also vary within the same mode depending upon the U.S. Customs port-of-entry where duties were actually assessed.

I cited the example where imports from Tokyo destined to Cleveland on a flight stopping at Seattle would have one set of duties if assessed at Seattle and another

set if assessed at Cleveland. Another example of discrimination—duties would also be higher at Great Lakes ports than at East Coast ports.

If we were now to change to a c.i.f. valuation, our interrelationships with other countries could be adversely affected; this would seriously complicate the task of negotiating adjustments to our duty rates to compensate for such a change in valuation.

It is difficult to see any advantage that would result from making such a unilateral change. However, the disadvantages of a c.i.f. valuation as outlined above are clear.

Sincerely,

JAMES R. GORSON,
Director, Facilitation.

Mr. VANIK. The final witness is Richard A. Maxwell, first vice president of American Importers Association.

We are very happy to hear from you at this point, Mr. Maxwell. Do you want to identify the gentlemen who are with you?

STATEMENT OF RICHARD A. MAXWELL, FIRST VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION, ACCOMPANIED BY GERALD O'BRIEN, EXECUTIVE VICE PRESIDENT, AND DAVID P. HOULIHAN AND DONALD B. CAMERON, JR., COUNSEL

Mr. MAXWELL. Thank you, Mr. Chairman.

My name is Richard Maxwell. I am vice president of Associated Dry Goods Corp. with headquarters in New York City. My company operates 16 quality department store divisions throughout the country, as well as the Sycamore Specialty Stores in the Midwest. Included in the associated family of stores are the nationally known Lord & Taylor, Goldwater's Arizona, H. & G. Poague in Cincinnati, and Pavilion Dry Goods in Minneapolis, just to name a few. However, I appear here today in my capacity as first vice president of the American Importers Association.

With me today is Gerald O'Brien on my left. On my right is our counsel, Mr. David Houlihan and Mr. Donald Cameron of Daniels, Houlihan & Palmeter. We do welcome this opportunity to present our views on issues related to——

Mr. VANIK. I was going to suggest your entire statement will be admitted in the record as submitted and you can excerpt from it.

Mr. MAXWELL. I will be as brief as I can.

Mr. VANIK. Give us the key points.

Mr. MAXWELL. Yes.

In the Trade Act of 1974, the Congress gave the President an unprecedented mandate to go forward and negotiate with our trading partners for the "development of an open, nondiscriminatory and fair world economic system." The results of these negotiations as they may be implemented into U.S. law are now before us and we are told that the goals established by Congress have been achieved, but we are not so sure.

It is clear from many of the actions taken by the Administration that the price being paid for this reportedly trade liberalizing package is escalating. Products ranging from steel to textiles, from dinnerware to dairy products, actually may be subject to even more restrictive import regimes than apply now. Because these matters are outside of the scope of implementing legislation, we will not devote our testimony to a discussion of them. Suffice it to say, however, that as a consequence of these actions we wonder wheth-

er the overall results of the Multilateral Trade Negotiations will in fact be trade liberalizing. We wonder further what other prices will be paid in order to obtain the support—or the absence of opposition—of protectionist elements in the United States. We do suggest to this Committee and to the Congress that the price the import community and consumers will be asked to pay to obtain approval of the MTN package may be too high.

Before addressing specific proposals that Congress is recommending for the implementing legislation, we would like to make two general comments.

First, the American Importers Association strongly urges that Congress and the administration include in the implementing legislation package only—and I do repeat only—such changes in the existing laws as are necessary to give effect to the new trade agreements. Any other changes in existing law should be required to go through the normal legislative process, not the yes or no system prescribed in the Trade Act of 1974.

Second, our proposals address a number of specific issues regarding the Countervailing Duty Law and the Antidumping Act. We urge this committee to consider not only our specific objections and recommendations but also the cumulative impact of the proposed amendments to these laws. In our opinion, that cumulative impact is such as to transform these laws from fair trade laws into "legal" barriers to trade in which it is impossible, because of unreasonable time limits and other features, to obtain fair and probative investigations and determinations.

To comply with the time limits today, I will very briefly summarize AIA's major areas of concern together with some of our recommendations.

COUNTERVAILING DUTIES

This subcommittee has recommended that the time limits for conducting a countervailing duty investigation be reduced significantly. In our opinion, the proposed time limits are inadequate to permit a complete and fair resolution of the case.

We do recommend the following time limits: (1) Preliminary determination within 6 months; (2) Final determination within 60 days after the preliminary; (3) Withholding of appraisement upon a preliminary affirmative determination; and (4) Following a preliminary determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

The proposed shortened time limits would make it impossible for information from foreign governments or foreign exporters to be collected and analyzed fully by Treasury prior to a preliminary determination.

Under our recommendation, domestic industries would be able to get relief within 6 months of the filing of a petition because withholding of appraisement would go into effect immediately upon a preliminary affirmative determination.

We also support this committee's apparent intention of using the term "material injury" in the implementing legislation and urge that it be defined in a meaningful way.

Since our counsel is here with us and they have technical knowledge in answering any of these specific questions that you may

have on our written testimony, I would like to just particularly review a few of the items that remain on our recommendations under countervailing duties.

We feel that legislation should not limit the criteria to calculate the net benefit derived from certain subsidies. We feel there should be confidentiality at the administration level. We feel that importers must be allowed to apply a general term bond to cover provisional countervailing and antidumping duties. We also feel the injury provision should extend to all countries that have acceded to the code and not be restricted though that would only implement the code on antidumping.

The Senate Finance Committee has proposed that the time period for an antidumping investigation be shortened significantly. We recommend, based on the nature of the antidumping process and recent GAO study, that there be no reduction in the time permitted to conduct an antidumping investigation. Specifically, by reducing the time allowed for a preliminary determination, it would not be possible in the ordinary cases for information to be received and analyzed fully prior to a preliminary determination. As with countervailing duties, the absence of adequate time will force decisionmakers to rely increasingly on personal bias and this benefits no one.

The Senate Finance Committee has tentatively decided that estimated dumping duties be paid upon entry for products under a dumping finding. This proposal adds a punitive feature to the antidumping law—not only would an exporter have to raise his price in order to avoid dumping duties on current entries but the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for the past practices of the foreign exporters. Now this double penalty could have the very real consequence of forcing a number of small American importers out of business. In the overwhelming majority of cases, dumping ceases after the imposition of the dumping finding because the choice is a simple one between eliminating the margin by, for instance, raising the price—thereby putting the money in the exporter's pocket—or not eliminating the dumping margins—thereby putting the money into Treasury's pocket.

The proper solution to the problem is to strengthen the resources and procedures used by the Customs Service so that Master Lists can be properly administered while continuing the current practice of requiring bond until such time as goods have been determined actually to be dumped.

While not addressed by Congress, we recommend, based upon inconsistency with the Antidumping Code and the recent GAO study, that section 205(b) referring to cost of production and section 206(a) which mandates arbitrary addition of 10 percent for general expenses and 8 percent for profit be eliminated from the Antidumping Act.

The Senate Finance Committee tentatively has decided that assessment of dumping duties be carried out with the use of sampling techniques and averaging to compare United States and foreign market value and that insignificant adjustments could be ignored at the agency's discretion. We suggest that, as difficult as the duty

assessment process is, every importer have the right to have its duties assessed on the individual merits of that entry.

ESCAPE CLAUSE INVESTIGATIONS

This committee and the Finance Committee have recommended various alternatives which would shorten the time limits necessary for an escape clause investigation. We recommend that no changes be made in the time limits for the escape clause because there is no demonstrated need for either of these proposals. Moreover, while 90 days may be sufficient time to conduct an injury investigation in antidumping cases, parties to those investigations and the ITC are aware of those investigations ahead of time. There is no such advance warning in the case of escape clause investigations.

With respect to customs valuation, the American Importers Association has been directly involved in the development of the new valuation code. Since we are a member of the Joint Industry Group and we support their testimony which provides you with extensive analysis and recommendations on the code and implementing legislation, we will not duplicate these facts now. However, since a Senate Finance Committee proposal calls for a change in the U.S. method of customs valuation from f.o.b. to c.i.f., we recommend that the f.o.b. basis of customs valuation be retained. Imposition of c.i.f. values would discriminate between U.S. ports and increase costs to the consumer. In addition, any such change would require compensation to our trading partners which could only be achieved through a whole new round of tariff cutting negotiations.

Last, with respect to import licensing, this subcommittee is considering a limited grant of discretionary authority to the President to auction import licenses. Any such scheme would place small importing companies at an enormous disadvantage and significantly reduce competition in those products under license. It would increase the wholesale and retail costs of those products. We recommend that such a program not be initiated by the Congress.

The subcommittee is also considering an automatic licensing system to monitor imports prior to customs entry. Such a system would be expensive, difficult to administer, and trade inhibiting. Initiation of automatic licensing at this time would contravene the intent of the import licensing code which seeks to diminish the application of licensing policies.

In conclusion, the AIA does wish to reiterate its concern over the price Americans are being asked to pay in the form of one protectionist concession after another. AIA urges this committee to enact only the legislation necessary to implement the package, not the widely rumored appropriate sweetners.

Moreover, we urge the committee to seriously consider our proposals not in terms of free trade versus protectionism but in terms of what is necessary to provide for fair and competent administration of these laws.

I thank you very much. We are here to answer any questions if there are any.

[The prepared statement follows:]

STATEMENT OF RICHARD MAXWELL, VICE PRESIDENT, ASSOCIATED DRY GOODS CORP., AND FIRST VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION

Mr. Chairman and members of the committee, my name is Richard Maxwell. I am Vice President of Associated Dry Goods Corporation of New York City. My company operates 16 quailty department store divisions throughout the country, as well as the Sycamore Specialty Stores in the Midwest. Included in the Associated family of stores are the nationally known Lord & Taylor, Robinson's in California, and Goldwater's in Phoenix. I appear here in my capacity as First Vice President of the American Importers Association (AIA), 420 Lexington Avenue, New York. I am accompanied by Gerald O'Brien, Executive Vice President of AIA.

The American Importers Association is a nonprofit organization formed in 1921 to foster and protect the importing business in the United States. As the only association of national scope representing American companies engaged in the import trade, AIA is the recognized spokesman for importers throughout the nation.

We welcome this opportunity to present our views on issues relating to implementation of the Multilateral Trade Negotiations (MTN). Our remarks here today should not be construed as necessarily endorsing or opposing the overall package that we understand enentually will be presented to the Congress by the President. AIA's position on that simple yes or no vote will be determined by its Board of Directors after we have examined the final result of this ongoing process in which we are pleased to be able to participate.

INTRODUCTION

In the Trade Act of 1974, the Congress gave the President an unprecedented mandate to go forward and negotiate with our trading partners for the "development of an open, nondiscriminatory and fair world ecnomic system." Congress expressed its concern that barriers to international trade were "preventing the development of open and nondiscriminatory trade among nations." Accordingly, Congress authorized the President to enter into trade agreements providing for the harmonization, reduction, or elimination of these barriers and distortions.

The results of these negotiations as they may be implemented into U.S. law are now before us, and we are told that the goals established by Congress have been achieved.

We are not so sure.

It is clear from many of the actions taken by the Administration that the price being paid for this reportedly trade liberalizing package is escalating. Products ranging from steel to textiles, from dinnerware to dairy products, actually may be subject to even more restrictive import regimes than apply now. Because these matters are outside of the scope of implementing legislation, we will not devote our testimony to a discussion of them. Suffice it to say that as a consequence of these actions, we wonder whether the overall results of the Multilateral Trade Negotiations (MTN) will in fact be trade liberalizing. We wonder further what other prices will be paid in order to obtain the support—or the absence of opposition—of the protectionist elements in the United States. We suggest to this Committee and to the Congress that the price importers and consumers will be asked to pay to obtain approval of the MTN package may be too high.

While we are dealing here with extremely technical considerations we believe it important not to lose sight of the broad effects of changing American trade laws. American consumers, particularly the poor, the American pensioners and the would-be retirees are concerned with action by the Congress and the Administration which contributes to inflation. The protectionist tribute exacted by special interests is clearly inflationary. It lowers the American standard of living and reduces our purchasing power to the detriment of other Americans and potentially could harm manufacturers, workers and farmers in the export sector.

Before addressing specific proposals that Congress is recommending for the implementing legislation, we would like to make two general comments.

First, the American Importers Association strongly urges that Congress and the Administration include in the implementing legislation package only, repeat only, such changes in the existing laws as are necessary to give effect to the new trade agreements. Any other changes in existing law should be required to go through the normal legislative process, not the yes or no system prescribed in the Trade Act of 1974.

Second, our proposals address a number of specific issues regarding the Countervailing Duty Law and the Antidumping Act. We urge this Committee to consider not only our specific objections and recommendations, but also the cumulative impact of the proposed amendments to these laws. In our opinion, that cumulative

impact is such as to transform these laws from fair trade laws into "legal" barriers to trade in which it is impossible, because of unreasonable time limits and other features to obtain fair and probative investigations and determinations.

To comply with your time limits, I will summarize AIA's major areas of concern together with our recommendations. A fuller explanation is provided in the attached memorandum which we are submitting for the record.

A. Countervailing duties

1. *Shortened time limits.*—This Subcommittee has recommended that the time limits for conducting a countervailing duty investigation be reduced significantly. In a simple case, this proposal calls for a preliminary determination within 95 days, a final determination of a subsidy within 170 days, and a final determination on the matter of injury within 45 days of the final subsidy determination. The Senate Finance Committee recommends even shorter time limits. In our opinion, the proposed time limits are inadequate to permit a complete and fair resolution of the case.

We recommend the following time limits: (1) Preliminary determination within six months; (2) Final determination within 60 days after the preliminary; (3) Withholding of appraisement upon a preliminary affirmative determination; (4) Following a preliminary determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

The shortened time limits tentatively recommended by Congress would make it impossible for information from foreign governments or foreign exporters to be collected and analyzed fully by Treasury prior to a preliminary determination. In the absence of adequate time to gather and analyze the facts, decision-makers will rely increasingly on their own personal bias. Such a result benefits neither the domestic industry concerned nor the importing community.

Under our recommendation, domestic industries would be able to get relief within six months of the filing of a petition because withholding of appraisement would go into effect immediately upon a preliminary affirmative determination. Under current practice, relief is not possible until after a final determination, which generally is not made until one year after the petition has been filed. Because relief will now be imposed at the preliminary stage, however, it makes it doubly important that adequate time be permitted for a full investigation to be made prior to the preliminary determination.

2. *Material Injury.*—Both this Subcommittee and the Senate Finance Committee have deleted reference to the concept of "material" injury. We recommend that the implementing legislation use the term "material" injury, which should be defined as "important and consequential." Omission of the term "material" injury would violate the international obligations so recently undertaken in the Subsidies/Countervailing Duty Code.

3. *Net subsidy.*—This Subcommittee and the Senate Finance Committee would impose limitations on the ability of Treasury to calculate the net benefit derived from certain subsidies. This would result in an overstatement of the actual subsidy received in some cases. These limitations would unfairly discriminate against developing countries which do not rebate indirect taxes upon exportation as permitted internationally, as well as against countries which give regional aid to offset proven cost disclocations. We recommend that the implementing legislation not limit the criteria for calculating the net subsidy.

4. *Protective order.*—Both this Subcommittee and the Senate Finance Committee have recommended that confidential information be made available to counsel for interested parties under an administrative protective order. There is a real risk that, despite this protective order, highly confidential proprietary business information could be revealed to competitors. In order to insure that these proceedings are not used by petitioners as a discovery process, and to insure full responses to inquiries by foreign respondents, confidentiality of information should be totally preserved at the administrative level.

5. *Provisional bonding or cash deposits.*—This Subcommittee has recommended that provisional measures can be applied at the time of a preliminary determination in the form of a special entry bond for each entry or a cash deposit. These provisions would unnecessarily penalize importers prior to a final determination of these matters. Moreover, such measures are unnecessary to protect the revenue, which can be protected adequately by merely extending the general term bond coverage to cover such provisional duties.

6. *Discretionary application of the injury provision.*—The Senate Finance Committee tentatively has decided that any new law would apply only to those countries that, in the opinion of the President, have fully acceded to and are implementing the Code. We recommend that the injury provisions should extend to all countries

that have acceded to the Code. The Code contains sufficient remedies to insure compliance with its provisions. Particularly, this section could operate to deny the injury provisions to developing countries. Those who have acceded to the Code have committed themselves to endeavor to reduce or eliminate export subsidies. This will be a painful transition process involving difficult judgements as to the proper pace. These judgements should be made in an international forum—not through elimination of the application of the injury provision which would controvene the Code. If there is disagreement over the pace of these phase-outs, the United States still retains the right to apply countervailing duties if those subsidies are causing injury. If those subsidies are not causing injury, the application of countervailing duties to countries that have signed the Code would explicitly violate the provisions of the Code.

B. Antidumping

1. *Shortening of time limits.*—The Senate Finance Committee has proposed that the time period for an antidumping investigation be shortened significantly. Under its proposal, the time for reaching a preliminary determination of sales at less than fair value (LTFV)—when withholding of an appraisement occurs—would be reduced to 120 days from the date of receipt of petition. This compares to the present statute which allows approximately 7 months. The Committee has proposed an additional 75 days for the final fair value decision—extendable by 60 days upon request of petitioners or respondents—with an additional 45 days for an injury determination by the ITC. We recommand, based on the nature of the antidumping process and recent GAO study, that there be no reduction in the time permitted to conduct an antidumping investigation. Specifically, by reducing the time allowed for a preliminary determination, it would not be possible in the ordinary cases for information to be received and analyzed fully prior to a preliminary determination. As with countervailing duties, the absence of adequate time will force decision-makers to rely increasingly on personal bias. This benefits no one.

2. *Payment of estimates dumping duties upon entry.*—The Senate Finance Committee tentatively has decided that estimated dumping duties be paid upon entry for products under a dumping finding. This proposal adds a punitive feature to the antidumping law—not only would an exporter have to raise his price in order to avoid present dumping duties on the entry, the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for the past practices of the foreign exporters. This double penalty could have the very real consequence of forcing a number of small importers out of business. Moreover, the payment of estimated dumping duties does nothing to solve the real problem with the assessment process, which lies in the failure of the Customs Service to administer the Master Lists. We recommend a continuation of the current practice of requiring bond until such time as goods have been determined actually to be dumped. Congress should legislate time limits on the assessment process. To the extent that delays in the preparation of Master Lists are incurred because of exporters, Customs can remedy the problem by using the best information available if that information is not forthcoming in a reasonable amount of time. To require a payment of estimated dumping duties would penalize importers in cases where dumping actually has been eliminated, thereby erecting a totally unjustified non-tariff barrier.

3. *Deletion of cost of production and minimum percentage markups.*—While not addressed by Congress, we recommend, based upon inconsistency with the Antidumping Code and the recent GAO study, that Section 205(b) referring to cost of production and Section 206(a) which mandates arbitrary addition of 10 percent for general expenses and 8 percent for profit, be eliminated from the Antidumping Act.

4. *Use of averaging in the assessment process.*—The Senate Finance Committee tentatively has decided that assessment of dumping duties be carried out with the use of sampling techniques and averaging to compare U.S. and foreign market value, and that "insignificant adjustments" could be ignored at the agency's discretion. We recommend that, as difficult as the duty assessment process is, every importer has a right to have its duties assessed on the individual merits of that entry. Any solution seeking to accelerate the process by disregarding the rights of importers should be rejected as fundamentally inconsistent with our system of law.

C. Section 201 of the Trade Act of 1974

Expedited procedure and proposed shortened time limits.—The Trade Subcommittee and the Finance Committee have recommended various alternatives which would shorten the time limits necessary for an Escape Clause. We recommend that no changes be made in the time limits for the Escape Clause because there is no demonstrated need for either of these proposals. Moreover, while 90 days may be sufficient time to conduct an injury investigation in antidumping cases, parties to

those investigations and the ITC are aware of those investigations ahead of time. There is no such advance warning in the case of Escape Clause investigations, with the result that a mere 90-day or 120-day investigation with a hearing scheduled at the approximate mid-point (six weeks after initiation of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case or for the ITC to conduct an adequate investigation.

D. Customs valuation

1. *Valuation code.*—AIA has worked closely with our negotiators in Geneva in order to develop a new violation system. U.S. law should be amended to give full effect to the new Valuation Code which is based on "transaction value" and rigidly prescribes the manner and extent to which Customs authorities may deviate from this standard.

2. *F.O.B. v. C.I.F.*—It has been proposed that the United States change its method of Customs valuation from F.O.B. to C.I.F. We recommend that the F.O.B. basis of Customs valuation be retained because imposition of C.I.F. would discriminate between U.S. ports, and increase costs to the consumer. In addition, any such change would require compensation to our trading partners which could be achieved only through a whole new round of tariff-cutting negotiations.

E. Import licensing

This Subcommittee is considering a limited grant of discretionary authority to the President to auction import licenses. Any such scheme would place small importing companies at an enormous disadvantage and significantly reduce competition in those products under license. It would increase the wholesale and retail costs of these products. We recommend that such a program not be initiated by the Congress.

The Subcommittee is also considering an automatic licensing system to monitor imports prior to Customs entry. Such a system would be expensive, difficult to administer, and trade inhibiting. Initiation of automatic licensing at this time would contravene the intent of the Import Licensing Code which seeks to diminish the application of licensing policies.

CONCLUSION

In conclusion, Mr. Chairman, AIA wishes to reiterate its concern over the price consumers and importers apparently are being asked to pay, in the form of one protectionist concession after another, to secure implementation of the reportedly liberalizing MTN package. To this end, we urge the Committee to enact only the legislation necessary to implement the package, not the widely-rumored "appropriate sweeteners."

Moreover, we urge the Committee to consider our other proposals, such as those regarding time limits, not in terms of free trade versus protectionism, but in terms of what is necessary to provide for fair and competent administration of these laws. The use of unreasonable time limits can create both unwarranted barriers to trade and incompetent administration of the laws. Again, we feel this serves no one—surely not the interest of the American public.

We appreciate this opportunity to express our views. We look forward to working with you and your staff in the coming weeks in what we hope will be an effective dialogue "to promote the development of an open, nondiscriminatory, and fair world economic system."

MEMORANDUM OF RECOMMENDATION

A. COUNTERVAILING DUTIES

1. Problem: Time Periods for Countervailing Duty Investigation

It tentatively has been decided by the Trade Subcommittee that time periods for countervailing duty investigations be shortened to the following: (i) Preliminary determination of a bounty or grant within 95 days from the date the petition is received—165 days in a complex case—(present law is six months); (ii) final determination of a bounty or grant within an additional 75 days (present law is an additional six months); (iii) immediately following a preliminary affirmative determination, there would be a withholding of appraisement (no withholding under current law); and (iv) upon preliminary affirmative determination, immediate referral to the International Trade Commission for a concurrent injury proceeding with the injury determination due 45 days after the final determination of subsidy

(presently, in the case of duty-free products, the ITC injury determination is due three months after the final determination of a bounty or grant by Treasury).

The Finance Committee differs only in that it recommends that the deadlines for a preliminary determination by 75 days—150 days in the case of a complex case. The other time limits are the same.

Recommendation

(i) Preliminary determination within six months;
(ii) Final determination within 60 days after the preliminary;
(iii) Withholding of appraisement upon a preliminary affirmative determination;
(iv) Following a preliminary affirmative determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

Reasons

1. The shortened time periods tentatively decided by Congress would make it impossible for information from foreign governments or exporters to be collected and analyzed by Treasury prior to a preliminary determination and would make withholding of appraisement inevitable. In most countervailing duty investigations, the issue of a bounty or grant depends on the extent to which a number of producers actually utilize the government programs at issue. In these cases, foreign governments must ask the companies involved for a full accounting of the benefits received, which can be a very involved accounting process. Prior to a preliminary determination, a questionnaire must be prepared based upon the petition; it must be presented in the foreign capital by our embassy; a response must be prepared by the foreign exporters or governments which usually entails a detailed accounting and analysis; the response must be delivered to Treasury; the response must be verified by Treasury officials visiting the foreign country; and last, but not least, Treasury must analyze the response, which often involves follow-up questions requiring additional answers from a foreign government. It simply is not possible for this process to be accomplished in less than six months. Moreover, shorter time limits would result in excluding the petitioners from this stage of the investigation because the lack of time would not permit Treasury to consult with them at this stage. As a result, the proposed time limits would make the investigatory process meaningless.

2. Time limits need not be shortened in order for domestic industries to get quicker relief. Under our recommendation, relief would be imposed within six months by means of a withholding of appraisement at the time of the preliminary determination. This means that all goods entering after the withholding will be subject to any countervailing duty eventually declared. Under current practice, relief is not possible until after a final determination, which generally is not made until one year after the petition has been filed.

3. Under the Senate and House time limits, providing for immediate referral to the ITC after a 75-day or 95-day preliminary determination and a final determination within 45 days of the final Treasury determination, the amount of the final subsidy determined by Treasury will not be known by the ITC until very late in its investigation—probably after the hearing. This will not allow an adequate finding to be made on the essential element of causation. The level of the subsidy is crucial to any examination of the causal relationship between the subsidy and material injury—whether material injury is "by reason of" the subsidy.

Our recommendation provides the same amount of time for the ITC determination as the Senate and House—120 days. However, we would shorten the time between Treasury's preliminary and final determination from 75 to 60 days. This is possible if adequate time is given for the preliminary stage. Under this proposal the ITC would know the final subsidy level prior to hearings, enabling the ITC to explore the causation issue fully.

This proposal would lengthen the entire process by only 105 days (Senate version) or 85 days (House). The truncated Congressional limits simply would not allow for probative investigations and fair analysis. In the absence of adequate time to gather and analyze the facts, decision-makers will rely increasingly on their personal bias. Such a result benefits neither the domestic industry concerned nor the importing community.

2. Problem: Material Injury

The Trade Subcommittee and the Finance Committee tentatively has decided to delete the word "material" as a modifier of the word "injury". This explicitly conflicts with the Subsidies/Countervailing Duty Code just negotiated and with Article VI of the GATT.

Recommendation

The implementing legislation should specifically use the term "material" injury, which should be defined as "important and consequential".

Reasons

1. "Material" injury is a higher standard than mere "injury" as pointed out by the Senate Finance Committee in its Report on the Trade Act of 1974—which provided the negotiating authority for these negotiations: "The term 'injury', which is unqualified by adjectives such as 'material' or 'serious' has been consistently interpreted by the Commission [in antidumping investigations] as being that degree of injury which the law will recognize and take into account. Obviously, the law will not recognize trifling, immaterial, insignificant, or inconsequential injury. Immaterial injury connotes spiritual injury, which may exist inside of persons not industries. Injury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial." (Emphasis added).

2. Omission of the term "material" injury would violate the international obligations so recently undertaken in the Subsidies/Countervailing Duty Code.

3. Problem: Calculation of "Net Subsidy"

The Trade Subcommittee and the Senate Finance Committee would impose limitations on the ability of Treasury to calculate the net benefit derived from certain subsidies. This would result in an overstatement of the amount of subsidy received in some cases.

Recommendation

The statute should not limit calculation of "net subsidy".

Reasons

1. In administering the Countervailing Duty Law, Treasury traditionally has sought to determine the level of "unfair advantage", not merely the amount of the gross payment. The Subsidies/Countervailing Duty Code speaks of subsidies "granted with the aim of giving an advantage to certain enterprises." Because of the variety of different programs worldwide, it is necessary for Treasury to have the flexibility to measure this "net advantage" in keeping with the facts of each case.

2. In the case of regional development programs, for instance, payments given in return for proven cost dislocations incurred by the recipients are not considered a bounty or grant—a payment given merely to offset proven cost dislocations does not give an advantage but merely equalizes conditions of competition. In the case of developing countries with indirect tax systems similar to the Value Added Tax, the indirect tax often is not rebated on export. Instead, these countries make direct export payments. Because rebates of indirect taxes directly related to the product are internationally recognized and approved (such as the U.S. rebate of excise taxes upon exportation), Treasury does not consider that portion of the export payments which take the place of non-rebated indirect taxes to be a subsidy. In other words, Treasury considers the Substance of the program, not its form.

3. The case of proven cost dislocations and non-rebated indirect taxes are the same, conceptually, as the offsets considered by the Trade Subcommittee and the Finance Committee. Rather than attempting to delineate and forecast all circumstances in which offsets are legitimate, this determination should be left to Treasury based on the facts of each case with judicial review being the safeguard against abuse of this discretion.

4. Problem: Protective Order

The Trade Subcommittee and the Senate Finance Committee have recommended that confidential information be made available to counsel for interested parties under administrative protective order.

Recommendation

The confidentiality of information should be totally preserved at the administrative level.

Reasons

1. There is a real risk that, despited a protective order, highly confidential proprietary business information could be revealed to competitiors. Fear of this risk, even if unfounded in a particular case, could inhibit full cooperation by foreign interests unfamiliar with our procedures.

2. The nature of these proceedings under both the Countervailing Duty Law and the Antidumping Act are investigatory, not adversary. Parties have a right to

assure themselves that the Treasury Department is conducting an investigation properly. Parties do not have a right to the information Treasury collects in the course of that investigation. Otherwise, parties will be encouraged to use these proceedings as a discovery process.

3. To the extent that parties are dissatisfied with Treasury's determinations, they have a right to judicial review under which the factual basis for Treasury's determination can be obtained under a protective order. The difference is that this would be an adjudicative proceeding and the court possesses the necessary procedural safeguards to protect the process. Treasury does not.

5. Problem: Provisional Coutervailing Duty Measures

This Subcommittee has tentatively decided that provisional measures can be applied at the time of a preliminary determination in the form of a special entry bond or a cash deposit.

Recommendation

Importers should be allowed to apply their general term bond coverage to cover provisional countervailing duties and to cover antidumping duties.

Reasons

1. These provisions unnecessarily would penalize importers prior to a final determination of the cases. The purpose of provisional measures is solely to protect the revenue—this should be done in the least punitive way possible.

2. The general term bond adequately protects the revenue. Customs has consistently required adequate bond coverage for both its own routine entry purposes and for special duties. At the same time, it has encouraged the use of a general term bonds to ease its own administrative burden and to enable the importer to avoid extra costs and paperwork. Particularly under Customs' new computerized bond record system, there is no reason not to allow Customs and importers to continue to take advantage of the benefits of the general term bond.

6. Problem: Discretionary Application of the Injury Provision

The Senate Finance Committee tentatively has decided that the existing Countervailing Duty Law, which does not require an injury determination, remain in effect. The new injury provisions would apply only to countries that have both fully acceded to the Code and, in the opinion of the President, are fully implementing the Code.

Recommendation

The new law should extend to all countries that have fully acceded to the Code.

Reasons

1. The Code contains sufficient remedies to insure compliance with its provisions—that is its purpose. The Code also provides that countervailing duties cannot be applied in the absence of material injury. Therefore, the United States should uphold strictly the integrity of the Code by applying the injury standard to signatories if it expects others to adhere to the Code.

2. Particularly, this section could operate to deny the injury provisions to developing countries. Those who have acceded to the Code have committed themselves to endeavor to reduce or eliminate export subsidies. This will be a painful transition process involving difficult judgments as to the proper pace. These judgements should be made in an international forum—not through elimination of the application of the injury provision which would contravene the Code. If there is disagreement over the pace of these phase-outs, the United States still retains the right to apply countervailing duties if those subsidies are causing injury. If those subsidies are not causing injury, the application of countervailing duties to countries that have signed the Code would explicitly violate its provisions.

B. ANTIDUMPING

1. Problem: Time Periods for Antidumping Investigations

The Senate Finance Committee tentatively had decided that the time periods for an antidumping investigation be shortened to the following:

(i) Initiation within 20 days after filing of a petition (current law is 30 days);

(ii) ITC determination within 45 days after a petition is filed on question of whether there is a "reasonable" indication that injury to a domestic industry by

reason of dumped imports exists (current laws gives the ITC 30 days from the time Treasury refers the case to the ITC);

(iii) Preliminary determination of sales at Less Than Fair Value within 120 days, 165 days if it is a complicated case. (Current law gives Treasury six months from the date of initiation, nine months if it is determined to be a complicated case);

(iv) Final determination within 75 days, or 135 days upon request (present law provides for a final determination within three months after a preliminary determination);

(v) Final determination of injury by the ITC within 120 days of the preliminary determination of sales at Less Than Fair Value or 45 days after the final determination of Less Than Fair Value sales if that determination was extended (present law provides for an injury determination within three months of a final determination of sales at Less Than Fair Value).

Recommendation

There should be no reduction in the time permitted to conduct an antidumping investigation.

Reasons

1. The present time limits are necessary because of the extremely involved nature of an antidumping investigation. This conclusion is supported fully by the evaluation of the current administration of the Antidumping Act by the General Accounting Office. If anything, the conclusion to be drawn from the GAO study is that time limits should be extended in order to permit Treasury and ITC officials time to adequately perform their tasks A shortening of the existing time limits will have only one result—a denial of due process to exporters and importers because of the procedural inability of the agencies to obtain and analyze the data. These shortened deadlines also will operate to deny petitioning parties meaningful participation in the investigation prior to a preliminary determination.

2. As is the case with the proposed Countervailing Duty time limits, it would be impossible for information from foreign producers to be received and analyzed properly prior to a preliminary determination. It would thus make witholding of appraisement inevitable, thereby raising a non-tariff barrier to trade. Prior to a preliminary determination, a questionaire must be presented by the embassy to the foreign exporters; a response must be prepared, generally by a number of foreign exports, which involves a complete accounting of their business for a six-month period; the responses must be delivered to Treasury; the responses must be verified by Treasury officials visiting each of the reponding exporters; finally, Treasury must analyze the responses. This process takes a minimum of six months to complete in the most ordinary of cases.

3. Under current procedures, effective relief is obtained by domestic industries within six months if the preliminary determination is affirmative—there is a withholding of appraisement which immediately subjects all entries as of that date to potential dumping liability. Thus, if a dumping duties be paid upon entry for products under a dumping finding ultimately is made, these entries will be subject to dumping duties if they, in fact, have been dumped. The 60 days by which the process is shortened makes an adequate investigation impossible and the additional protection to the domestic industry is marginal. It would also increase reliance on the personal bias of the decision-makers.

2. Problem: Payment of Estimated Dumping Duties Upon Entry

The Senate Finance Committee tentatively decided that estimated dumping duties be paid upon entry for products under a dumping finding. This would place an extreme burden on importers because the duty would be required regardless of whether the goods had, in fact, been dumped or not.

Recommendation

Following a finding of dumping, an importer should be required to post only a bond until such time as his goods may be found to have been dumped.

Reasons

1. In the overwhelming majority of cases, dumping ceases after the imposition of the dumping finding because the choice is a simple one between eliminating the margin by, for instance, raising the price (thereby putting the money in the exporter's pocket) or not eliminating the dumping margins (thereby putting the money into Treasury's pocket). The purpose of the Antidumping Act is remedial, not punitive. The statutory and administrative scheme has been designed, up to now, to encourage an exporter to adjust prices to eliminate any margins. If this is done,

dumping duties can be avoided because the statutory purpose has been accomplished—dumping has been eliminated.

2. The proposal to require the payment of estimated dumping duties would have a real punitive feature—not only would an exporter have to raise its price in order to avoid present dumping duties on the entry, the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for past practices of the exporters. The importer would therefore have to pay a double penalty. The cash flow result of such a requirement, particularly in these times of inflation, could force many small importers into bankruptcy—in spite of the fact that steps had been taken to eliminate the dumping complained of. The reimbursement of estimated dumping duties three or four years after the fact would be cold comfort to importers who have gone bankrupt because of these requirements.

3. The underlying problem which this proposal is meant to address is the lax assessment of dumping duties after a finding has been made. This proposal, however, will do nothing to speed up the processing of Master Lists by the Customs Service, which is the cause of the assessment problem. Delays in administration are caused not by failure of exporters or importers to respond, but by the difficulties in administration of Master Lists by the Customs Service. To the extent that delays are incurred because of exporters, Customs can use the best information available if that information is not forthcoming in a reasonable period of time.

4. The proper solution to the problem is to strengthen the resources and procedures used by the Customs Service so that Master Lists can be properly administered. Time limits should be placed on the periodic assessment of dumping duties which would force the proper administration of Master Lists both at headquarters and at the ports. Once this occurs, there will be no further need to seek out a scapegoat—in this case, the "nonpayment of estimated dumping duties at the time of importation"—in order for the law to accomplish its purpose of a protection against dumping.

3. Problem: Deletion of the Cost of Production and Minimum Percentage Markups

While not proposed by Congress, this recommendation is based on inconsistency with the antidumping Code and the recent GAO study.

Section 205 (b) of the Antidumping Act provides that if sales in the home market have been made at prices below the cost of production, these sales shall be disregarded. If there are then insufficient home market or third country sales to serve as the basis for establishing "fair value", then the constructed value provisions of the Act—Section 206 (a) requiring the arbitrary addition of at least ten percent for general expenses and eight percent for profit—must be used. Originally designed as an exception to the general rule, these two provisions have become the rule with disastrous results.

Recommendations

These provisions should be deleted from the Antidumping Act.

Reasons

1. The Comptroller General has recommended to Congress that these sections be deleted.

2. As noted by the Comptroller General, these provisions are responsible for many of the burdensome delays occasioned by Treasury in its administration of the Antidumping Act. Furthermore, the GAO study points out that it is not possible to do an adequate cost of production analysis under the time constraints of the Antidumping Act. By the simple exclusion of these two provisions, a whole host of recent problems which have surrounded the administration of the Antidumping Act—including the necessity of the Trigger Price Mechanism (TPM)—would not exist.

3. The provision does not make economic sense in that it speaks of home market sales below cost, not U.S. sales which are the concern of the Antidumping Act.

4. The minimum markup requirements of eight percent profit and ten percent for general expenses do not, in the case of a great many industries, jibe with reality. The result is an artificially inflated fair value in which dumping margins are all but automatic.

5. The cost of production provision and the minimum requirement of an eight percent profit and ten percent for general expenses violate the Antidumping Code.

4. Problem: Use of Averaging in Assessment Process

The Senate Finance Committee tentatively has decided, in connection with assessment of dumping duties, that: "The administering agency would use sampling

techniques or averaging to compare U.S. and foreign market values when a significant number of adjustments to prices are required. Adjustments related to operations of exporters of insignificant quantities of dumped products would not delay appraisement, and insignificant adjustments could be ignored in the agency's discretion."

Recommendation

Duty assessment under dumping findings should be administered on an entry by entry basis without the use of sampling or averaging with each adjustment taken into consideration.

Reasons

1. Each taxpayer has a right to have his taxes assessed on the merits of his individual case. The IRS cannot disregard adjustments merely because it feels they are "insignificant". Similarly, American Importers have the same rights with regard to the amount of duties—i.e., taxes—which they must pay.

2. The impetus behind this proposal—a speeding up of the assessment process—would better be served by requiring the Customs Service to effectively administer Master Lists, rather than seeking to accelerate the process by disregarding the rights of importers.

C. SECTION 201 OF THE TRADE ACT OF 1974

1. Problem: Reduced Time Limits

The Trade Subcommittee of the Ways and Means Committee has proposed that the time limits for Escape Clause investigations be shortened to the following:

(i) Four months for the ITC investigation—six months in exceptional cases (present law gives the ITC six months to conduct its investigation);

(ii) 45 days for a Presidential determination on whether and in what form to provide relief (present law provides 60 days);

(iii) Ten days for a Presidential request for a supplemental report from the ITC with a 20-day limit on the ITC response (current limits are 15 days and 30 days respectively).

The Finance Committee has tentatively decided on an expedited procedure for an escape clause investigation under "exceptional circumstances". These new provisions would provide for an ITC investigation to be completed within three months and a Presidential determination within 30 days.

Recommendation

There should be no reduction in the time permitted to conduct an escape clause investigation.

Reasons

1. There is no demonstrated need for these provisions. To our knowledge there have been no prior cases in which the present time limits were inadequate for an industry. No industry went bankrupt or was threatened with bankruptcy, or any serious difficulty, because of the six-month escape clause investigation. The only result of such an expedited procedure, then, would be to deprive the ITC and the President of the time necessary to complete an adequate investigation.

2. The shortening of the time limits to 90 days or 120 days for the ITC investigation would be particularly unfair to importers and exporters. In contrast to the 90 day injury investigation under the Antidumping Act, where importers and exporters are already represented by counsel and aware of the pendency of the proceedings, importers and exporters have no notice prior to the filing and initiation of an escape clause investigation—although the complainant, of course, has all the time in the world to prepare his side of the case. Considerable time is needed in these cases merely to get organized and obtain information. A 90 day investigation with a hearing scheduled at the approximate mid-point (6 weeks after initiating of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case.

D. CUSTOMS VALUATION

1. Valuation Code

AIA, in the last several years, has been directly involved in the development of this Code in Geneva. In late 1972 and early 1973 the then Tariff Commission held hearings on a proposal by its staff for a possible new valuation system which could be adopted as a uniform international standard. This Tariff Commission staff pro-

posal would have put the United States on a slightly modified version of the Brussels Definition of Value.

The American Importers Association responded with a paper which in many ways was the father of the MTN Valuation Code. Its basic premise was that both the U.S. and the Brussels valuation system should be discarded and replaced by a new system based on "transaction value." That is just what has now emerged from the Geneva negotiations.

U.S. law should be amended to give full effect to the new Valuation Code which is based on transaction value, and rigidly prescribes the manner and extent which Customs authorities may deviate from this standard.

In order to avoid unnecessary repetition, AIA will not, in this statement, offer specific comments on the Code or necessary implementing legislation. Rather, we endorse and adopt the testimony of the Joint Industry Group panel which deals extensively with this subject. AIA is a member of the Joint Industry Group.

2. Problem: F.O.B. v. C.I.F.

It has been proposed that the United States change its method of Customs valuation from F.O.B. to C.I.F.

Recommendation

The present F.O.B. basis of Customs valuation should be retained.

Reasons

1. F.O.B. excludes the costs involved for insurance and freight for duty purposes. The United States, Canada and Austrialia have used F.O.B. for many years because all three countries are continental economies and none wanted to discriminate against ports which happened to be further from the point of exportation.

2. If levied on an actual C.I.F. basis, such a system will automatically translate into higher wholesale and retail prices on the same item and wide variations over the United States, dependent upon distance from port of export. In New York, for instance, on goods moving all-water from the Orient, it will mean higher prices than in other areas of the country, because of increased ocean freight costs. On the other hand, if these goods are unloaded by rail or truck ("minibridge"), using C.I.F. would seriously affect stevedoring firms and dock labor in the New York Port area because of loss of business. It would also be particularly harmful to Buffalo because of much higher costs of moving goods from Europe and the Orient into the Great Lakes. If levied to include "minibridge" charges, C.I.F. would distort trade and traffic patterns with serious economic and distributional effects.

3. It is questionable whether such a method is constitutional, as the amount of duty would vary from port to port on the same merchandise. Whether constitutional or not, such a practice would be discriminatory.

4. The U.S. would have to compensate its trading partners because of the increase in duties. If the U.S. tried to use compensation formulas to avoid discriminatory and inflationary effects already mentioned, such calculations would have to be done on a trade-weighted averaging basis for each of the 18,000 tariff schedule items; these would then have to be recalculated, based upon changes in shipping patterns and ordering procedures which would result from imposition of the new system. This effort alone would impose a costly and burdensome obligation on the government in both installation and administration.

5. If compensation is not given to negatively affected exporting countries, and if not averaged to produce a single C.I.F. value in all ports, it will be inflationary. All prices on imports will be increased because of higher duties resulting from the higher base (C.I.F. vs. F.O.B.) on which they will be levied, or as a result of higher duties in ports more distant from the point of export.

E. IMPORT LICENSING

1. Problem: Authority to Auction Import Licenses

Subcommittee Release PR No. 14 states that the Subcommittee decided to grant the President authority to auction import licenses as applicable to certain statutory provisions.

Recommendation

The President should not be authorized to auction import licenses.

Reasons

1. While new revenue would accrue to the government under a licensing auction scheme, foreign experience has shown that any such program would be enormously burdensome to administer, thus decreasing the financial benefits.

2. License auctioning places the small importer at an extraordinary disadvantage. The effect of such a scheme would be further concentration of an industry once dominated by small companies and reduced competition in those products under license. Retail and wholesale costs of licensed products would increase further as parties enter the import transaction chain to broker quota licenses.

2. Problem: Automatic Import Licensing

The Subcommittee has proposed an automatic import licensing system as an "early warning" device to monitor imports prior to Customs entry.

Recommendation

An automatic import licensing system should not be adopted.

Reasons

1. There is nothing in the Import Licensing Code under which U.S. adoption of an automatic licensing scheme is either necessary or appropriate. Such a system would be expensive, difficult to administer, and trade-inhibiting. There is no demonstration that it could provide accurate and timely warning of import "surges" given the wide variations in the import industry for the time elapsed between placing an order and making customs entry.

2. Licensing is a recognized barrier to trade whether on exports or imports. The new code seeks elimination of this barrier, and urges its use only under stringent circumstances. Our exporters are urging reduction of U.S. licensing barriers to trade. For Congress to add new ones, on the import side, is to use the occasion of approval of the codes to deny their intent.

Mr. FISHER [presiding]. Thank you very much.

Mr. Frenzel, are you going to go vote now?

Mr. FRENZEL. I think I might.

Mr. FISHER. I think I should, also. The chairman is coming back right away so I will recess these proceedings for a few minutes and if he does not show right away I will return directly after I vote.

Mr. MAXWELL. OK, sir.

[Whereupon, the subcommittee recessed.]

Mr. VANIK. Are you finished with your statement?

Mr. MAXWELL. Yes, sir, we are. We are ready for questions.

Mr. VANIK. What about your colleagues?

Mr. MAXWELL. I only made the statement, sir.

Mr. VANIK. I want to point out you made some good suggestions on countervailing and the other issues involved. As you know, we are planning the markup and we plan to finish that up in the next weeks so I hope you keep in close touch with the staff, because we want to have an input that will give us the best approach to the many, many issues that are fielded. I want you to know there are political problems that are looming up all over on this trade bill.

I discovered a few minutes ago that we have to deal with the New England caucus. So as we get certain sections of America that are going to be appraising this we are going to make an effort to deal with them on an area-wide basis. I just want you to know that our task is very complex and there is a time factor, because we do have a time limitation. I hope everybody that is involved in this realizes that we are going to do our very best within the time frame to arrive at a bill sufficient to get us through both the House and the Senate.

I want to thank you very much for your time. I am sorry we had the interruptions but that is the nature of our operations.

Mr. MAXWELL. Thank you, sir.

Mr. VANIK. Mr. William H. Barringer of Arter Hadden & Hemmendinger is not here, so without objection his statement will be entered into the record.

[The statement follows:]

STATEMENT OF WILLIAM H. BARRINGER, ON BEHALF OF ARTER HADDEN & HEMMENDINGER

SUMMARY

1. The time periods suggested by the Subcommittee for Countervailing Duty Investigations in its March 13, 1979, press release are unrealistically short; a minimum of 120 days is needed for an adequate preliminary investigation.

2. Access by counsel for all interested parties to confidential information through protective orders will further complicate and lengthen investigations under both laws; the non-confidential summaries required in antidumping investigations are sufficient.

3. In both dumping and countervailing duty investigations, a "material" injury standard should be adopted.

4. Provisional measures in both countervailing and antidumping investigations, particularly cash deposits, are unnecessary and punitive in nature.

5. Treasury should be allowed broad discretion in countervailing duty investigations to apply offsets in determining net subsidies.

6. The time periods for antidumping investigations should remain unchanged; shorter investigatory periods will harm both the interests of complainants and respondents.

7. Treasury's discontinuance policy in antidumping investigations should be continued and expanded.

STATEMENT

I am a partner in the Washington, D.C. law firm of Arter Hadden & Hemmendinger and am appearing here today in place of Noel Hemmendinger. Our law firm, formerly Stitt Hemmendinger & Kennedy, is presently associated with firms in Cleveland and Columbus, Ohio.

The purpose of my testimony today is to offer the Subcommittee the views of members of our firm based on our many years of experience in representing U.S. importers and foreign exporters in proceedings under the escape clause, the antidumping act, and the countervailing duty law. During the past year, we have represented importers and exporters in connection with: countervailing duty cases involving textiles and men's and boys' apparel from Brazil, Colombia, the Phillipines, Thailand, and Malaysia; the TPM system as it concerns steel from Japan; dumping cases involving nails and cement from Canada; and escape clause matters involving specialty steel from Japan, footwear from various sources, and ferrochromium from Yugoslavia.

This testimony is given on behalf of the law firm, and not on behalf of its clients. I would draw your attention, however, to the fact that the law firm is registered under the Foreign Agents' Registration Act for the Japan Iron and Steel Exporters' Association and related Japanese steel export associations, the Banco do Brazil, and the Japanese Government acting through the U.S.-Japan Trade Council.

GENERAL OBSERVATIONS

As a general matter, I wish to indicate that we support the presentation made on behalf of the American Importers Association. We are a member of the AIA and participate in the work of a number of it's committees.

My testimony today is devoted principally to consideration of legislative changes in the antidumping and countervailing duty laws. While I will review and comment on a number of the proposed changes in the substantive standards of the statutes, I wish to emphasize proposed changes in the procedures for investigation which, from the perspective of a practitioner representing foreign export interests and U.S. import interests, I believe will operate as substantial barriers to full and fair investigations. I will focus here on proposals to alter the timetables for investigations. Second, I wish to call the Subcommittee's attention to the increasingly adjudicative nature of investigations under the statutes and the adverse impact this has on meeting current or proposed time limits. In this connection I would suggest that increasing access by counsel for interested parties beyond that currently available

in antidumping proceedings, that is access through a non-confidential summary, will result in a further increase in the adjudicative nature of these proceedings. Third, I wish to briefly call the Subcommittee's attention to such substantive issues as the proposed standard of injury in the countervailing duty law, the calculation of net subsidies, the requirements of bonding or payment of estimated duties in either countervailing duty or antidumping investigations, and the "settlement" of investigations.

COUNTERVAILING DUTY LAW

1. *Time period for countervailing duty investigations.*—In its press release of March 13, 1979 the Subcommittee tentatively agreed to reduce the time period for investigations from 1 year in the present law to a total period of 215 to 335 days. While in my opinion it may be feasable to conduct a countervailing duty investigation within a period of 215 days, I believe it will prove to be extremely difficult in all but the most simple cases. The Subcommittee's suggested time period would, for example, require a preliminary determination by the Treasury Department within 90 days of the receipt of a petition and only 75 days after Treasury's determination to initiate an investigation. Such a time period would, without question, make it impossible for foreign governments or foreign industries to receive a decision on the merits at the preliminary determination stage of the investigation. It is not possible between day 20 when Treasury initiates the investigation and day 90 to prepare an adequate questionnaire, distribute that questionnaire to the interested foreign parties, for the foreign parties to collect data in order to respond to the questionnaire, for the Treasury Department to analyze data received, for a non-confidential summary to be analyzed and commented on by the complaining party, and for the Treasury review and approval process to take place. If, as indicated in your press release of March 13, there is to be verification of information submitted, even more time is required. In effect, the shorter time periods suggested by the Subcommittee would virtually guarantee that the preliminary determination in countervailing duty cases would be based on the information received from the complaining party as "best evidence" available. This fact, if accompanied by suspension of liquidation after the preliminary determination, literally guarantees that a complainant can, at least temporarily, completely disrupt trade in the products being investigated. The risk of trade in the product being investigated would be too great.

It is suggested that if any shortening of time periods in countervailing duty investigations in contemplated, that the period to be shortened is the period between the preliminary and final Treasury determination. In my view, and based on substantial experience, the preliminary determinations should not take place until 180 days after initiation. Final determination could as a practical matter be accomplished within 60 days of that time, unless the investigation were a more complicated one. The ITC could receive the case after the preliminary determination and be given 120 days from that date to make it's final decision.

A formulation of the time period for investigations such as given above will allow the Treasury Department sufficient time to undertake an adequate investigation, while simultaneously protecting the interest of domestic industries in obtaining adequate relief. Furthermore, it will have the added advantage of allowing the domestic petitioners to consult with Treasury during the preliminary stages of the investigation, which consultations could not take place under the time limits proposed in the Subcommittee's March 13 release.

2. *Confidentiality.*—The suggestion in the Subcommittee's release of March 13 that non-confidential summaries of submissions be available on request to any party and that counsel for interested parties could seek access to confidential information under an administrative court or protective order is disturbing. Putting aside the difficulty which will arise in making public confidential government to government communications, implementation of the proposals in the press release will make the pursuit of investigations extremely difficult. As I am sure any Custom's or Treasury official will testify, current requirements of non-confidential summaries in antidumping cases have geometrically increased the complexity of these cases.

Dumping investigations are no longer impartial and objective proceedings carried out by the Department of Treasury, but quasi-adjudicative proceedings with all parties analyzing and commenting on other parties submissions, submitting volumes of data and counter data, preparing legal and factual arguments whether frivolous or serious, and with an abundance of lawyers submitting procedural and substantive protests. Increased access through the availability of a protective order would further and substantially complicate these cases.

Furthermore, to insert an essential adjudicative procedure, the protective order, into a proceeding which is not governed by the Administrative Procedures Act and

which, therefore, provides few if any procedural safeguards to parties submitting information, operates as a substantial deterrrent to full cooperation with the investigative procedures and compromises the rights of parties seeking to import into the United States.

In my opinion, and that of the lawyers working for our firm, the purpose of nonconfidential summaries and disclosure by the Treasury Department to complaining parties has been to allow them to monitor the adequacy and legality of the Treasury Department's investigation. This has reached extremes, but nevertheless the process is still functioning. To allow opposing counsel access to confidential information will allow that counsel to function in the role prosecutor or plaintiff's counsel and will make these investigations into adjudicative proceedings without procedural safeguards. It is suggested that conducting countervailing duty investigations, or antidumping investigations, in an adjudicative manner is inappropriate.

Countervailing duty investigations are essentially Government to Government proceedings which call into question practices which a foreign government believes to be appropriate in light of its own economy. This is not a problem which lends itself to an adjudicative resolution. With respect to both countevailing duty and dumping investigations, increasingly adjudicatives procedures act as a barrier to the interests of the domestic industry in a prompt decision and are contrary to the public interest in assuring full and fair decisions with a minimum of unnecessary disruption. Finally, the astronomical costs which adjudicative procedures impose on exporting industries is equivalent to a non-tariff barrier. It would indeed be ironic if the MTN which has focused on the elimination of non-tariff barriers to trade resulted in implementing legislation which increased rather than decreased such barriers.

3. *Injury.*—We strongly urge that the committee take into the U.S. law the expression "material" injury which has long been the standard of the GATT and which is now contained in the international codes. To decline to do so invites quite unnecessary discord with our trading partners who have long objected that the absence of the word "material" created an undue difference in the U.S. practice from that provided in the GATT and followed by other countries. We recognize that the United States has long maintained that it's actual practice is consistent with the expression "material" and we concede that there are many cases which permit this proposition to be defended. However, there are also cases of recent date in which it is not easy to defend this practice as meeting the standard of "material" injury.

The basic reason of course, for giving significant value to the expression "material" injury is the same as the reason that no doubt caused it to be originally used in the General Agreement. Namely, that it does not make economic sense to put a penalty upon importations into the United States at low prices, to the benefit of the American consumer, unless there is really a significant degree of prejudice to some producing sector of the United States economy.

In the last analysis, the application of this test implies a weighing of interests on the part of the International Trade Commission, and the public should not be denied the benefits of low priced imports unless there is a clear prejudice to a U.S. competitor. This applies equally to dumping or countervailing duty investigations.

4. *Provisional measures.*—Our comments on provisional measures in connection with dumping amendments—that there is no justification except a punitive attitude—also apply to such measures in connection with countervailing duties.

5. *Definition of net subsidy.*—We submit that the definition of a net subsidy which is found in press release 14 (paragraph 5) is deficient and that regardless of provisions placed in the law, the discretion of the administering authority to determine the net subsidies should not be limited. It is difficult to conceive of all of the circumstances which may be applicable and which may cause the values of governmentally furnished aid to be affected. We are aware from our experience as practitioners of at least two situations in which Treasury Department discretion would be required. One is in the case where a nominal credit representing a percentage of the export value is given to the exporter and is usable only for the payment of certain taxes. In practice it has been demonstrated that many exporters are not able to utilize such credits and the real value to them of the subsidy is a small percent of the nominal value. Countries should have the opportunity to demonstrate such circumstances. We would suggest, therefore, that point 2 of paragraph 4 of the Subcommittees press release number 14 should include loss in the value of the benefit resulting from the inability to fully utilize the benefit.

The other situation, one which the Committee may have intended to disallow, is offsets from indirect taxes levied directly on the product in the country of exportation which are allowable as rebates upon export under the GATT, but which are not

organically related in the legislation of the exporting country to any credit which is granted. In this connection, we earnestly submit that to disallow these offsets is to create unnecessary discord with friendly trading nations who believe that they have been acting in complete accordance with internationally accepted principles. They should not be required to change their domestic legislation in order to obtain recognition that their credits given upon exportation are properly regarded as offsets of the indirect taxes. Such examples call for discretionary authority being given to the Administering Agency.

6. *Suspension of investigations.*—The provision for suspension outlined in press release number 11 is one of the potentially most valuable in the law. It is entirely appropriate that countervailing duty investigations should be regarded as economic issues arising between the United States and friendly foreign governments to be adjusted where possible by agreement between them. An opportunity should be provided in the law and in practice for resolutions which are consistent with the interests and needs of the exporting country and which avoid serious prejudice to the American producer. Such agreements may be quantitative limitations or other non-price undertakings which eliminate the possibility of injury. We would suggest that the Committee in terms of the law or the legislative history should also indicate that where we in fact already have quantitative limitations by reason of escape clause actions or special arrangements such as those that prevail so widely in textiles, there may well be no need for special measures under the countervailing duty law. It is very difficult for supplying countries to understand that, having been required as a condition of continuing to sell their goods to the United States to agree to quantitative limitations in the interest of avoiding injury to the domestic industry, they should also be subjected to countervailing duties. One form of protection should be sufficient.

ANTIDUMPING ACT

1. *Time period for investigations.*—My comments in regard to proposed time limits in countervailing duty investigations apply to antidumping investigations with few exceptions. An antidumping investigation is a complex proceeding involving an extensive analysis of prices, selling costs, differences in merchandise, differences in circumstances of sale and, in most cases some elements of production costs. Preparing a response to an extensive Treasury questionnaire alone requires 30 to 45 days. If one adds to this two weeks for preparation of an appropriate questionnaire by Treasury, a week for verification and the preparation of a verification report, adequate time for Customs to analyze the data and decide major issues, and time for the Treasury review process, it is clear that six months is required for a tentative determination.

It is perhaps difficult to expect individuals not directly involved in the process to realize the complexity of these investigations. Let me attempt to explain by drawing on a concrete example, the investigation of motorcycles from Japan. In this case alone, the submissions by all parties, including responses to questionnaires, correspondence with Treasury, and briefing of issues during the Treasury phase would, if piled one on top of the other, be taller than a normal man. On one issue alone, adjustments to reflect differences in the merchandise sold in the U.S. and Japan, a technical expert had to compare virtually each and every one of more than 100 motorcycle models sold in the United States with the most similar models sold abroad to determine the basis for appropriate adjustment. The Customs Service had to examine the prices and adjustments for literally hundreds of thousands of sales.

The Treasury Department had to evaluate and decide numerous legal and factual issues such as the existence of a model year in the motorcycle industry, the treatment of various selling costs, and the application of regulations to novel adjustments. The proceeding as a whole could not have been more thorough and could not have been completed in less than one year without seriously compromising the interests of both the domestic industry and the importers. To be sure, all investigations are not so complex. However, complex investigations are the rule today, rather than the exception. To legislate unrealistic time limits serves no interest, but only results in arbitrary decisions which are as damaging to the interests of the U.S. industry as they are to importers.

In summary, any change in the time limits for the Treasury phase of an antidumping investigation would seriously undermine the functioning of the statute.

2. *Remedies.*—As attorneys who have frequently represented exporter's and importer's involved in dumping cases, we believe the conception of tightening up the provisions for provisional remedies is based upon a fundamental misunderstanding. Suspension of liquidation and the necessity to file bond on products entered into the United States while there is still substantial uncertainty with respect to the final

duties to be due is a very heavy and serious sanction at present. We have no great familiarity with the experience in the television cases, but we believe that those cases have their own peculiar history and are not typical of what happens when there is a suspension of appraisement or a final dumping determination.

The fact is that in the large majority of cases, the mere filing of a dumping complaint is a deterrent to trade because many parties will not wish to take the risks. That deterrent effect increases as a dumping case proceeds through the tentative determination to the final dumping finding, if there is one. A requirement that bonds be posted earlier than now provided or that estimated duties be deposited after a finding, is punitive in it's nature and unjustified.

We are not aware of any situations under current practice in which the government's ability to collect the duties has been inadequate. We think it is not sufficiently well understood that differential pricing is normal business practice and is highly apropriate in many circumstances. Only when it injures are counter measures justified and they should not be regarded as penalties. It is also insufficiently understood that the dumping calculations are usually complex, and that whether there has been dumping at all is frequently not known to the parties until the investigation has proceeded through it's preliminary stages. As soon as he can discern what the direction of the Treasury's finding is likely to be, a prudent exporter modifies his prices to be sure that there will be no further dumping. Thus, in the normal situation, earlier bonding requirements or a requirement of cash deposits would be punitive.

Finally, the idea of basing estimated duties on the margins found during the initial period of investigation is particularly unfair and unsound. Any duties that are collected must in fairness be based upon the latest information which is supplied by the parties. Thus, in most cases there never will be a dumping duty collected. This should not in the least be regarded as poor enforcement of the law, but rather as success in accomplishing the purposes of the law.

3. *Discontinuance of investigations.*—We believe that there are situations in which the interest of all parties are best served by settlement through a discontinuance procedure. We hope this committee will encourage the Administering Agency to terminate as many cases as possible before a dumping finding, particularly in two situations. The first is where the exporter was not a deliberate dumper, so far as can be judged, has shown a zeal to eliminate margins, and is willing to give the desired assurances, although the margins as found were more than 2% or so allowed in current Treasury practice. I assure you as a practitioner who has helped clients go through the complex calculations, that because of the peculiarities of the Treasury fair value calculations margins well over 2 percent are quite possible without intentional dumping and in some cases without any dumping at all in a business sense. Discontinuance's in this situation should be permitted regardless of the petitioner's consent. In order to protect the public interest against price undertakings given in the absence of injury, the ITC should review the effect of the discontinuance on the injury question.

Second, it should be possible to settle any case before a dumping finding with the consent of the petitioner upon a type of consent order. Such an order would have, of course, to be scrutinized carefully to be sure it is not simply a vehicle for a collusive agreement in restraint of trade. There should be no direct contact between petitioner and exporter or their representatives. A settlement should originate in a proposal by the exporter to the Administering Agency, which should examine to determine if there are fair grounds, and then sound out the petitioner. The Administering Authority should not be just a post office, but should actively explore the possibilities for an agreed solution consistent with the public interest. The ITC should be asked to determine injury preliminarily and, the proposed consent undertaking should be published and submitted to an interdepartmental committee for approval.

The philosophy behind these proposals is that there is a public interest in the expeditions settlement of a dumping controversy like any other, whether you regard it as a dispute in the public or the private arena. There is an antitrust problem, but the greatest threat to competition comes from the antidumping act itself and it would be quite out of proportion to refuse to countenance settlements on this ground.

We note that the countervailing duty law amendments contemplated by this subcommittee do recognize the possibility of consent settlements, and we think this idea should also be applied in antidumping cases.

Thank you for the opportunity to appear.

Mr. VANIK. The subcommittee will adjourn now and meet at 10 o'clock tomorrow morning to resume hearings on the scheduled witnesses. We will meet tomorrow in room 1100, Longworth Building.

[Whereupon, at 4 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, April 25, 1979.]

MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, APRIL 25, 1979

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

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

Mr. VANIK. The subcommittee will come to order.

The first witnesses today will be the American Iron & Steel Institute, Robert B. Peabody, president.

Is anyone appearing with you, Mr. Peabody?

STATEMENT OF ROBERT B. PEABODY, PRESIDENT, AMERICAN IRON & STEEL INSTITUTE, ACCOMPANIED BY DOMINIC B. KING, ASSISTANT GENERAL COUNSEL, UNITED STATES STEEL CORP.

Mr. PEABODY. Yes, sir, Mr. Chairman. Dom King, assistant general counsel, United States Steel Corp., is here with me today.

Mr. VANIK. Thank you very much.

Your entire statement will be entered in the record and you can either read from it or excerpt from it, whichever suits your convenience and whichever brings the issues to the attention of the subcommittee.

Mr. PEABODY. Thank you, Mr. Chairman.

As you said, I am Robert B. Peabody, president of the American Iron & Steel Institute.

Accompanying me is Dominic B. King, assistant general counsel of United States Steel Corp.

GENERAL POSITION

From the inception of the Trade Act of 1974 the domestic steel industry has supported the objectives underlying the multilateral trade negotiations. We recognized, as did others, that international trade rules were being ignored to the point where the trade balance of the United States was being seriously eroded and important segments of American industry, specifically the domestic steel industry, were being injured by unfair trade practices.

The steel trade deficit in 1978 was $5.6 billion. This was exceeded only by oil imports and over 3 million cars—each of which contains about a ton of foreign steel. That is precisely why our industry has been so intensely concerned with the MTN, its codes, and now the U.S. implementing legislation.

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Mr. VANIK. On that particular point I think you have heard me discuss several times the fear that I had that the steel coming in fabricated or in automobiles would be substantially increased. You will recall at the beginning of this year we had about a half billion cars from one country in inventory. After the Iranian cirsis, they were all sold off, and the importers or the dealers are not even advertising any more, because they are making about all the sales they need to make by people just walking in and picking up an automobile that competitively is very attractive. I am not upset about this, because if it had not been for the imported cars, it might be 1999 before the American automobile industry might have realized that they were going out of business. They are not going to have the kind of time to adopt.

I have always been distressed about their failure to respond to the energy crisis by producing gasoline efficient automobiles at a price that the average person could reach. In the meanwhile, we waste millions and millions of barrels of gasoline and fuel oil, because of the failure to have this kind of design. So I am very much afraid that the "effective" steel import figures for this year are going to be high, because of this circumstance which is pretty much the fault of our own auto industry. We will have to very carefully study that.

We hope that the reliance on the more gasoline efficient imported car will subside as the American industry wakes up in the remaining hours that it has to address itself to this problem. Competition here has forced and is forcing a very reluctant huge American industry into a slow awakening of what the problem is. The imported automobile field provides a wide spectrum of choice and on the American side we have little practically to offer to the American consumer. Frankly, it is not your problem, excepting that every ton of steel that comes in in this other form is a ton less that you are making in the American industry.

Mr. PEABODY. The domestic automobile industry is very important to the domestic United States steel industry.

Mr. VANIK. I just hope that you can advise the automobile industry in some way about the way the hourglass is running. It is not an hourglass now, the sand is just rushing out and the time is running short for them to come to recognize the very desperate situation America is going to be in as we are tightened by higher gasoline prices or less oil. When I was in the Soviet Union last week, we talked about human rights, and I told them every American believes that he has a human right to drive an automobile aimlessly and endlessly, with unlimited supplies of gasoline, and I said they would have to reckon with that problem pretty soon.

Thank you very much. I didn't mean to interrupt your trend of thought.

Mr. PEABODY. No, sir.

Mr. VANIK. I just happen to listen better when I talk a little in between.

Mr. PEABODY. Our interest is to give you the benefit of our thoughts and to receive the benefit of yours.

Clearly, a better means of remedying unfair trade practices and making more transparent the procurement practices of national

governments has been needed. The Congress is now involved in accomplishing that.

But the question is, will the international codes and other agreements signed in Geneva on April 12 in fact be responsive to the needs of the United States and the world trading system in the decade ahead?

The answer is: we don't know. And we won't know until the President's implementing bill is actually introduced in Congress.

Until the language of the implementing bill is available for review, our reaction and comments must necessarily be directed to the public announcements that have been issued by this committee and the Senate Finance Committee.

It is clear to us that if the implementing bill introduced by the Administration adequately expresses in statutory language the recommendations contained in those public announcements, there will have been substantial improvements made to our trade laws. Nonetheless, we are concerned about a number of key issues that are of considerable importance to us.

Mr. Chairman, I would like to comment on several of them.

The first one is I expect the definition of injury. The injury provision in both the antidumping and countervailing statutes should be any injury which is more than immaterial or inconsequential. This is the test used by the ITC under the current antidumping statute.

The second item of importance to us is the causation standard. The addition of an injury test to the countervailing duty law should not result in a causation standard more stringent than the current antidumping statute test.

Another element of importance to us is the discontinuance of a proceeding. We agree with the concept that the U.S. Government should have the discretion to discontinue, when appropriate, pending antidumping or countervailing duty proceedings. However, to avoid an abuse of this discretion, proper safeguards must be structed in the statutes in order to condition the exercise of this discretion. It is our recommendation that the discontinuance, based on price assurances, of a pending dumping or countervailing duty proceeding should only be permitted when the price assurance eliminates the full amount of the net subsidy or the dumping margin. In addition there should be a published notice that a discontinuance is contemplated, thereby giving interested parties an opportunity to challenge the discontinuance. Further, once a discontinuance is granted on the basis of an assurance given by a foreign producer, Treasury or other administrating agencies must monitor in order to insure compliance. Penalties must be provided if a foreign producer defaults on the assurance.

Finally, with respect to the definition of subsidy, the implementing legislation should broadly define both export and internal subsidies.

In calculating the amount of a net subsidy, the allowable offsets should be limited and should relate directly to the subsidy benefit. The legislation should state that the burden of proving an offset rests with the party alleging the offset.

The implementing legislation should stipulate the manner in which internal subsidies should be apportioned over units of production.

Mr. Chairman, that is the extent of our statement at this time. We thank you very much for the opportunity to present our views. We would be more than pleased to answer any questions that you may have of us.

Mr. VANIK. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

I want to ask a related question about which you may or may not be able to provide me the details. The domestic steel industry imports a great deal of iron pellets for the production of steel, is that correct?

Mr. PEABODY. I don't know the quantity, Mr. Jenkins, but I know there are substantial quantities that come in principally, I believe, from Canada.

Mr. JENKINS. Do you know what percentage of foreign imports of iron pellets are used in the domestic steel industry?

Mr. PEABODY. I don't know offhand, sir. We can find that out, I expect. It is not going to be a high number.

Mr. JENKINS. I would like to know the percentage. An iron pellet industry which employs a number of citizens in my district is closing primarily because of imports of iron pellets by the domestic steel industry. While we complain about the import of steel, sometimes the domestic steel industry itself may complicate our problems in some industries by importing iron pellets.

Mr. PEABODY. Yes, sir. There is no question imported pellets occur. I am not expertised on the iron ore companies but I expect that their basic interest is to the extent that it is practicable to do so to take it from the iron ore country here, principally Minnesota and Michigan, the Mesabi.

Mr. JENKINS. Well, like all other industries I imagine it is where it can be obtained the cheapest.

Mr. PEABODY. Well, I don't know that it is necessarily in the case of iron ore where you can get it the cheapest, it is where you can get it.

Mr. JENKINS. Not necessarily. We have it in my district but I think the steel industry found they could buy it cheaper from a foreign source. Now 300 people are out of work in my district because Brazil, I believe, is the source of the iron pellets. I would like to have those figures if you might provide them to me.

Mr. PEABODY. Yes, sir.

[The information follows:]

Total domestic consumption of iron ore—please note these figures are not just pellets but all iron ore—in 1978 was 129,876,000 net tons. Of that amount, 83,482,000 net tons or 64.3 percent were supplied from domestic sources. (The Southern region—Florida, Alabama, Georgia, Missouri, New Mexico, Tennessee, Texas, and Virginia supplied 2,021,000 net tons or 1.6 percent.) Canada supplied 19 percent or 24,744,000 net tons and all other countries supplied 21,650,000 net tons or 16.7 percent.

Mr. JENKINS. Thank you, Mr. Peabody.

Thank you, Mr. Chairman.

Mr. VANIK. Mr. Cotter.

Mr. COTTER. No questions, Mr. Chairman.

Mr. VANIK. I would like to inquire whether or not the implementing language as you know it meets substantially most of the objectives or the goals or the desires of your organization.

Mr. PEABODY. I will respond to it this way if I may, Mr. Chairman, and I am not trying to fence with you in the slightest. What has come out has been in the form of the releases through your committee and the releases through the other committee. We and you are well aware of the problem of converting concepts into statutory language. On the basis of what we have seen in the press releases conceptually we are very clear that substantial improvements are going to take place and occur in the trade laws of this country if the administration in its implementing bill that it sends up to Congress follows the guidance that this committee here and the other committee have given it.

There are some things that the committee has announced that we would like to see upon reflection, upon further thought, the committee to do something about. I guess my basic hedge is that these conceptual provisions can be drafted in numbers of different ways but assuming that the drafted statutory languages comes down in a way that reflects, I expect, full intent of the committee we are very well satisfied that a very substantial improvement in our trade laws is going to occur. We have concern about this injury problem, we have concern about the subsidy problem and the discontinuance, and as I understand it the committee is still not signed off in that area. Assuming they are satisfactorily resolved, a great improvement in our laws is going to take place.

Mr. VANIK. Well, you know, we have not made any decisions on antidumping.

Mr. PEABODY. Yes, sir.

Mr. VANIK. That is one of my prime concerns. I was hoping you would tell me that the climate was good for supporting that.

Mr. PEABODY. We would love to lead the parade, Mr. Chairman.

Mr. VANIK. Well, I sure need some leaders. Everybody has been telling me over the last couple of days what is wrong with it.

Mr. PEABODY. No, sir. We think you are going down the right path. There are a couple of jogs in it we would like to see smoothed out.

Mr. VANIK. The record will be open for a few days. If you have recommendations that will strengthen and fortify your positions, let us have those so that we can have the direction or at least have some guidance as to the things that remain unresolved that give you deep concern.

Mr. PEABODY. Yes, sir.

[The following was subsequently received:]

POSITION OF AMERICAN IRON & STEEL INSTITUTE REGARDING CERTAIN PROVISIONS OF MTN IMPLEMENTING LEGISLATION

Definition of injury

The definition of injury in the amended antidumping and countervailing duty laws should cover any injury more than immaterial or inconsequential. This is true whether the term used is "injury" or "material injury". If the term "material injury" is used, it should be stated that prior definitions or interpretations of the word material are to be disregarded. The definition should contain a list of criteria, the presence of which would be indicative of injury; but it should be clearly stated that the presence or absence of any of such criteria would not be conclusive as to the presence or absence of injury.

Definition of Subsidy

There should be a broad definition of subsidy in the countervailing duty law. This definition should cover both export and internal subsidies. Offsets to be deducted from gross subsidies in calculating net subsidies should be permitted only in certain clearly specified situations directly related to the subsidy. The definition should contain a provision specifying the manner in which a net subsidy is to be deemed applicable to particular units of production.

Discontinuance of Proceedings

Antidumping and countervailing duty proceedings, once instituted, should normally proceed to a final decision. However, it is in the national interest that there be a manner in which proceedings can be discontinued prior to final determination on the basis of clearly defined undertakings on the part of the foreign manufacturers or the foreign government in question.

In antidumping proceedings, discontinuance should be permitted only after foreign manufacturers agree to terminate exports to the United States or to raise their prices by the full amount of the dumping margin.

In countervailing duty proceedings relating to export subsidies, discontinuance should be available if there is an undertaking to terminate exports to the United States, terminate the subsidy, impose an export tax equal to the amount of the next subsidy or raise prices on exports to the United States in the amount equal to the net subsidy.

In countervailing duty cases relating to internal subsidies, discontinuance should be available on the basis of undertakings to terminate exports to the United States, to increase prices on exports to the United States in an amount equal to the net subsidy or to restrict exports to the United States to a level such that the injury to the domestic industry is fully removed.

All discontinuances should be permitted only after a preliminary determination of the margin of dumping or the margin of subsidization in the proceeding, only after there has been notice of the proposed discontinuance and opportunity for interested parties to comment and appeal and only if the undertakings are monitored in the same manner in which a final antidumping or countervailing duty determination would be monitored. Default in the performance and undertaking should result in the imposition of regular antidumping or countervailing duties.

Time Limits in Proceedings

The government agencies involved in making determinations as to the existence of dumping and subsidization and injury caused thereby should have adequate time to carry out their tasks, but the various statutory deadlines should be as short as possible in view of the possibility of continuing injury to domestic industry and workers during the pendency of investigations. Rather than unnecessarily extend permitted investigatory periods, additional staff and resources should be made available to the agencies responsible for the investigations, particularly in complex cases. It is clear that present resources are grossly inadequate. It is also clear that there has in the past been a disinclination on the part of government agencies to vigorously administer the trade laws in the manner contemplated by Congress.

DEFINITION OF INJURY—ANTIDUMPING

SUMMARY

In order to prove that a foreign manufacturer engaged in dumping, it is necessary to establish that (1) the foreign producer sold goods in the U. S. market at less than foreign market value and (2) that such goods injured the U. S. industry. The attached definition of injury reflects basically the current test used by the United States International Trade Commission. This language avoids placing on the domestic industry a greater burden in establishing injury than the burden which currently exists.

The language also includes a definition for determining the domestic industry in question for the purpose of proving that sales at less than foreign market value have injured the "domestic industry". It is for this reason that a statutory definition of "domestic industry" is necessary in order to avoid ambiguities. The attached definition defines "domestic industry" as those entities or portions thereof which produce merchandise "of the same class or kind" as the imported merchandise under investigation for dumping. In addition, the definition adopts a regional market test if it is established that the U. S. producers located within a region supply that region.

PROPOSED STATUTORY PROVISIONS

Injury shall mean (a) material injury to a domestic industry, (b) the threat of such injury, or (c) the prevention of the establishment of a domestic industry, by reason of less than foreign market value imports. Material injury notwithstanding any prior law or construction of "material" thereunder to the contrary, shall mean any injury which is more than immaterial or inconsequential.

In making a determination of injury, the Commission shall take into account all economic factors which it considers relevant and significant under the circumstances, including without limitation the following: the volume of less than foreign market value imports, either in absolute terms or relative to production or consumption in the United States; the effect of less than foreign market value imports on prices in the domestic market for like products; the impact of less than foreign market value imports on the domestic industry in respect of actual of potential decline in output, sales, market share, profit, return on investment, and utilization of capacity; actual and potential negative effect on cash flow, inventories, employment, wages, ability to raise capital, or investment; and past, present, or potential loss of business to less than foreign market value imports. No one or more factors shall be essential to a finding of injury.

In determining whether injury has been caused by less than foreign market value imports, the Commission shall not weigh against the effects of the less than foreign market value imports other factors which may, at the same time also be injuring the domestic industry. In reaching its decision of whether an industry in the United States is being, or is threatened to be injured by reason of less than foreign market value imports, the Commission finding shall be in the affirmative if the less than foreign market value imports contribute toward causing more than immaterial or inconsiquential injury to a domestic industry or toward preventing the estabsishment of such an industry. Less than foreign market value imports need not be a principal cause, a major cause or a substantial cause of injury to an industry when other factors may also be contributing to injury to an industry.

If, prior to the determination by the Commission of injury in any antidumping proceeding, there shall for products of the same class or kind be a final determination of sale at less than foreign market value in any other antidumping proceeding or a preliminary determination of sale at less than foreign market value in the same or any other antidumping proceeding which shall have been suspended on the basis of assurances by the manufacturers, the Commission shall cumulate the imports from such proceeding with the imports involved in the injury determination before the Commission for the purpose of determining injury in such proceeding.

The term "domestic industry" or "industry in the United States" means any subdivision or portion of the commercial organization in the United States manufacturing, assembling, processing, extracting, growing, selling or otherwise producing, marketing or handling articles or merchandise of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported from the operations of such organizations involving othe articles or merchandise. A "domestic industry" or "industry in the United States" shall include a regional industry if the U. S. producers located within a regional market sell in that regional

market all or almost all of the articles or merchandise of the same class or kind as the merchandise or articles imported.

Definition of Injury—Contervailing Duty

SUMMARY

Under the new contervailing duty code, it will be necessary to prove in all cases that the importation of goods benefiting from the bestowal of a bounty or grant has injured a U.S. industry. The attached definition reflects the new requirements under the Code and is parallel to the injury test proposed for the antidumping statute.

PROPOSED STATUTORY PROVISIONS

Injury shall mean (a) material injury to a domestic industry; (b) the threat of such injury; or (c) the prevention of the establishment of a domestic industry, by reason of the importation of articles or merchandise on which a bounty or grant has been bestowed. Material injury, notwithstanding any prior provision of law or the prior construction of material thereunder to the contrary, shall mean any injury which is more than immaterial or inconsequential. In making a determination of injury, the Commission shall take into account all economic factors which it considers relevant and significant under the circumstances, including without limitation the following: the volume of subsidized imports, either in absolute terms or relative to production or consumption in the United States; the effect of subsidized imports on prices in the domestic market for like products; the impact of subsidized imports on the domestic industry in respect of actual or potential decline in output, sales, market share, profit, return on investment, and utilization of capacity; actual and potential negative effect on cash flow, inventories, employment, wages, growth, ability to raise capital or investment; any past, present, or potential loss of business to subsidized imports, potential increase in the level of inventories of such products in the United States. No one or more factors shall be essential to a finding of injury.

In determining injury caused by subsidized imports, the Commission shall not weigh against the effects of the subsidized imports other factors which may, at the same time, also be injuring the domestic industry.

Subsidized imports need not be a principal cause, a major cause or a substantial cause of injury to an industry when other factors may also be contributing to injury to an industry.

If, prior to the determination by the Commission of injury in any countervailing proceeding, there shall for the same or like products be a final determination of the existence of a bounty or grant in any other countervailing proceeding or a preliminary determination of the existence of a bounty or grant in the same or any other countervailing duty proceeding which shall have been suspended on the basis of assurances by the foreign government or the foreign manufacturers, the Commission shall cumulate the imports from such proceeding with the imports involved in the injury determination before the Commission for the purpose of determining injury in such proceeding.

The term "domestic industry" or "industry in the United States" means any subdivision or portion of the commercial organization in the United States manufacturing, assembling, processing, extracting, growing, selling or otherwise producing, marketing or handling articles or merchandise of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported from the operations of such organizations involving other articles or merchandise. A "domestic industry" or "industry in the United States" shall be considered regional in character if the U.S. producers located within such regional market sell in that regional market all or almost all of the articles or merchandise of the same class or kind as the merchandise or articles imported.

Definition of Bounty or Grant

SUMMARY

To aid in the determination of what kinds of aids are to be considered a bounty or grant under the Countervailing Duty Statute, the attached language provides an illustrative list of many export and domestic subsidies which are considered to be

covered by the Countervailing Duty Statute. The list is adopted from Annex A of the Subsidies/Countervailing Duty Code. It is not intended that the responsible authority be limited to the listed subsidies in making its determination.

STATUTORY LANGUAGE

(1) Whenever in this chapter the terms "bounty or grant" are used, they shall be construed to include but not be limited to the following export subsidies:

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance;

(b) Currency retention schemes or any similar practices which involve a bonus on exports;

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments;

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption;

(e) The full or partial exemption, remission, or deferral specifically related to exports, direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged;

(g)[1] The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption;

(h)[2] The exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes of goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product;

(i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years;

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programs, of insurance or guarantee programs against increases in the costs of exported products or of exchange risk programs, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programs;

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms; provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least 12 original signatories to the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade are parties as of January 1, 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of other relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Statute; and

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[1][Editorial Note: Footnote 1 to Annex A of the Subsidies/Countervailing Duty Code includes definition of direct taxes, import charges, indirect taxes, prior stage indirect taxes, and cumulative indirect taxes.]

[2][Editorial Note: Footnote 3 to Annex A of the Subsidies/Countervailing Duty Code states: "Paragraph (h) does not apply to value added tax systems, and border tax adjustment in lieu thereof and the problem of the excessive remission of value added taxes is exclusively covered by paragraph (g)."]

(1) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement on Tariffs and Trade and the following domestic subsidies when provided or mandated by government action to a specific enterprises or industry or group of enterprises or industries, and whether paid or bestowed directly or indirectly on the manufacture, production or export of any class or kind of merchandise;

(i) The provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations;

(ii) The provision of goods and services at preferential rates;

(iii) The grant of funds or forgiveness of debt to cover operating losses; and

(iv) The assumption of any costs or expenses of manufacture, production or distribution.

Whenever any subsidy is provided for the acquisition of capital assets which are, in the normal course of business, subject to depreciation or amortization (whether such assets are related to start-up, replacement, expansion, relocation or any other purpose), the amount of such subsidy, together with an amount equal to interest on the remaining balance thereof at a rate equal to what would be an appropriate commercial lending rate under the circumstances, shall be deemed applicable to the units of production during * * *.

Discontinuance of Countervailing Duty

SUMMARY

Present law does not explicitly permit the government to discontinue an investigation before it has been completed. However, the government has assumed this power. The attached language gives the government the right to discontinue an investigation under clearly stated conditions. In general, a discontinuance would be permitted if the subsidy or the effect of the subsidy is eliminated. The discontinuance could only be granted after public notice and opportunity for a public hearing.

PROPOSED STATUTORY PROVISIONS

(A) (1) Any investigation under this section into the existence of an export of domestic subsidy may be discontinued at any time if the government or entity which is the source of the bounty or grant agrees to eliminate the bounty or grant completely on all goods entering or being withdrawn from consumption within 60 days from the time an agreement to discontinue the investigation is reached provided that the level of exports of the subject merchandise to the United States does not increase during the period or the government or the entity which is the source of the bounty or grant or the exporter of the merchandise subject to the investigation (i) agree to stop the export of the merchandise benefiting from the bounty or grant within 60 days of the time an agreement to discontinue the investigation is reached provided that the level of exports of the subject merchandise to the United States may not increase during that 60-day period or (ii) agrees to price adjustments which reflect the full amount of the net bounty or grant effective 60 days after the time an agreement to discontinue an investigation is reached, or (iii) agrees to the imposition of an export tax equal to the full amount of the net bounty or grant effective 60 days after the time an agreement or discontinue an investigation is reached.

(2) Any investigation under this section into the existence of a domestic bounty or grant may be terminated at any time if the government or entity which is the source of the bounty or grant or the exporter of the merchandise subject to the investigation agree to restrict the quantity of such merchandise exported to the United States within 60 days of the time an agreement to discontinue an investigation is reached so as to insure that there will not be injury to a domestic industry or the threat of such injury or that a domestic industry will be prevented from being established by reason of the importation of such merchandise provided that the President makes public a determination that such an agreement is necessary to prevent prejudice and severe damage to our national security and foreign policy and the Committee on Ways and Means of the U.S. House of Representatives at least 60 days before the effective date of the agreement to discontinue the investigation and at the same time publishes the terms of such agreement in the Federal Register. Any petitioner shall have the right to appeal such discontinuance to the International Trade Commission within 30 days of the publication of the notice of the discontinuance. The Commission shall determine whether the restrictions are sufficient to insure that there will not be injury to a domestic industry or the threat of such injury or that a domestic industry will be prevented from being established by reason of the importation of such merchandise.

(B) (1) Compliance with the terms of such discontinuance shall be monitored for a period of at least three years after the effective date of an agreement on the same basis as a Countervailing Duty Order is monitored. The Authority may require of a party to a discontinuance such pertinent information as is needed to monitor compliance with the agreement. If a violation of an agreement is found, the Authority shall immediately suspend liquidation on the merchandise covered by the agreement, retoroactive to 90 days before the date of the violation, and enter a final determination of the existence of a bounty or grant and begin collecting countervailing duties with respect to all entries subject to the suspension of liquidation.

(2) The Authority shall publish notice of a proposed discontinuance at least 30 days before its effective date and shall hold hearing as required under subsection (10). The Authority shall publish notice of the discontinuance of an investigation as required under subsection (9) and shall include in such notice the terms of the the discontinuance and the means which will be used to monitor compliance with the agreement.

(3) At the same time a discontinuance under this section is granted, the Authority shall publish its preliminary determination if such a preliminary determination has not theretofore been published.

Discontinuance of Antidumping Proceedings

SUMMARY

Presently, the Treasury Department has taken upon itself broad discretion to discontinue a pending antidumping investigation. Discontinuance of an antidumping proceeding is, with proper safeguards, appropriate. These safeguards do not presently exist. For this reason, the attached statutory language permits discontinuances of pending antidumping proceedings by Treasury but establishes certain conditions which must be met before a discontinuance could be granted. For instance, there must be a published notice that a discontinuance is contemplated thereby giving interested parties the opportunity to challenge the contemplated discontinuance. Further, once a discontinuance is granted on the basis of an assurance given by a foreign producer, Treasury is obligated to monitor in order to be satisfied that the foreign producer is complying with the assurance. Penalties are provided for default.

PROPOSED STATUTORY PROVISIONS

An antidumping duty proceeding shall be discontinued only if:

(a) a preliminary determination of sale at less than foreign market value has been made;

(b) 30 days has elapsed following notice in the Federal Register of intention to discontinue such proceeding, which notice, in the event the proposed discontinuance is to be on the basis of an undertaking with respect to the United States price, shall include a detailed statement as to the manner in which the undertaking would be monitored by the Secretary which shall be in all material ways comparable to the manner in which dumping findings are monitored;

(c) the foreign manufacturer undertakes that for a period of not less than three years commencing within three months following the date of the preliminary determination of sale at less than foreign market value it will notify the United States importers of the terms of its undertakings and of the provisions hereof which are applicable in the event of any default in respect of those undertakings, and either (i) cause the termination of export of the products in question to the United States or (ii) cause the United States price of the products in question to be increased by an amount not less than the margin of sale at less than foreign market value in the preliminary determination; and

(d) in the case of a discontinuance on the basis of an undertaking with respect to United States price, the Commission has, within 30 days following a request for a determination by the petitioner in such proceeding made within 30 days following the giving of public notice of intention to discontinue such proceeding, determined that such undertaking is adequate fully to offset the margin of sale at less than foreign market value on exports to the United States.

In the event of any discontinuance of a proceeding, suspension of liquidation and payment of provisional duties shall continue until the Secretary finds and states in a notice published in the Federal Register that full performance of the undertaking which was the basis for such discontinuance is in effect.

Following discontinuance of a proceeding, the Secretary shall continuously monitor the performance of the undertaking which was the basis for the discontinuance. If there is default in the performance of such undertaking, the Secretary shall

immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries. Default by a foreign manufacturer in the performance of such an undertaking or by an importer who has been notified of such undertaking and who knows or reasonably should know of such default, and who imports goods covered by such undertaking, shall consititute a violation of 19 U.S.C. § 1592 and the penalties provided therein shall apply.

Not less than semiannually, the Secretary shall cause a report as to his monitoring of the performance of each undertaking which was the basis for the discontinuance of a proceeding to be published in the Federal Register. Such report shall include a detailed statement of the facts ascertained, the method of verification used and any problems encountered.

From time to time subsequent to six months following the discontinuance of any proceeding on the basis of an undertaking as to export price, the Commission, upon the request of the petitioner in such proceeding and upon a showing of a material change in the facts or of evidence of default in the performance of the undertaking, shall determine the adequacy of the undertaking fully to offset the margin of sale at less than foreign market value which may currently exist on exports to the United States or whether there had been such a default, as the case may be. If the undertaking is determined by the Commission not to be adequate to offset the then margin of sale at less than foreign market value, the Commission shall specify the revision necessary in the undertaking that will cause it to be adequate, and publish the revised undertaking in the Federal Register. If, within 30 days of such publication, the foreign manufacturer has not put into effect the revised undertaking as determined by the Commission, the Secretary shall immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries; and if the Commission determined that there had been a default in performance of the original or any revised undertaking, the Secretary shall immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries.

Time Limits for Preliminary Findings in Antidumping Cases

The suspension of liquidation (withholding of appraisement) is a key factor in determining the scope and effectiveness of relief under the antidumping and countervailing duty laws. For all practical purposes, the remedial duties are imposed only on imports entering after the suspension of liquidation. Dumped or subsidized imports which come in before suspension are not subject to antidumping or countervailing duties. The suspension order is the vehicle which enables the Treasury to reach back following the final determination to assess antidumping or countervailing duties on goods entered during the investigation and adjudication process.

Early suspension of liquidation, is therefore, crucial to any injured party who will find it imperative that this take place as soon as possible after filing of the complaint. On the other hand, the importer does not want suspension until there is a finding of dumping or subsidization. It is necessary to accommodate those conflicting interests by requiring a preliminary determination of the likelihood of an affirmative finding and concurrent suspension of liquidation as rapidly as the most efficient adjudication permits.

Such a preliminary finding and suspension of liquidation can be reasonably accomplished in countervailing duty cases within 90 days from the filing of a proper complaint. Antidumping determinations take somewhat longer. Therefore, a preliminary finding and suspension of liquidation should normally be able to be made within 120 days from the date of the filing of the complaint for antidumping proceedings. In order to meet the 120 days in antidumping, however, it will be necessary to provide adequate staff and to devise better administrative procedures that will allow such a determination to be made within that period of time.

The Treasury has sought 170 days in which to make a preliminary finding in an antidumping proceeding. As the authority responsible for investigating and determining whether there are less than fair value sales in antidumping cases, the Treasury would naturally seek as much time as it felt was required to complete its task in a fair and efficient manner. Although we believe a properly staffed and administered investigatory body should be able to complete the preliminary finding within 120 days after receipt of a complaint, we certainly feel that Congress should not allow time limits even greater than those sought by Treasury.

APRIL 11, 1979.

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

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

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

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

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

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

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

We would very much appreciate your early response.

Sincerely,

CHARLES A. VANIK,
Chairman.

Mr. VANIK. How is the trigger price mechanism working?

Mr. PEABODY. Well, as you know——

Mr. VANIK. The pressures from Japan are down, the imports are down.

Mr. PEABODY. Yes, sir, that is true, but you have to be careful in how you look to that. There was something pushing 21 million tons of steel that came in last year. I have only seen the numbers for the first 2 months of this year and if you annualize them it is something pushing 16 million tons.

Mr. VANIK. Of course our greatest source of unhappiness has been the specialty steel and some of the other groups that are involved.

Mr. PEABODY. Yes, sir.

Mr. VANIK. We are very much concerned about those and want to be sure we address ourselves to that problem.

Well, if you can supplement, don't hesitate to give us that. We will finish the markup next week so give us your supplementary ideas and let's get them in the record, not only for big steel, but we would like to have those from the specialty steels and the others that are involved.

Mr. PEABODY. Yes, sir.

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

Mr. PEABODY. Thank you, Mr. Chairman. We appreciate the opportunity to testify.

Mr. VANIK. The next witness is with the Distilled Spirits Council of the United States and Kentucky Distillers Association, Mr. John F. McCarren, general counsel; and the representative of Heublein, Inc., Mr. Christopher Carriuolo.

I will let Mr. Cotter introduce Mr. Carriuolo.

Mr. COTTER. Thank you, Mr. Chairman.

It gives me a great deal of pleasure to have Mr. Christopher Carriuolo of Heublein, Inc., which is one of the largest manufacturing concerns in my district, with us. Mr. Carriuolo is the executive vice president and has been very active in civic affairs and is one of the outstanding citizens of the State of Connecticut.

Thank you, Mr. Chairman.

Mr. VANIK. Before you proceed I want to report to you that in my observations in the Soviet Union, there is a tremendous market for American bourbon, and the younger it is the better they like it; don't age it. There is a tremendous market that you ought to be aware of from my very quick observation. I cannot speak about some of the other products, but I get the feeling that there is a great untapped reservoir of interest in things that make Americans happy. I just want to say that this trade business works two ways and that you ought to be aware of the fact there may be some advantages and expanded markets that might be of some great value to you.

We are very happly to have you. Mr. McCarren, you will lead off and then we will have the statement by Mr. Carriuolo.

STATEMENT OF JOHN F. McCARREN, GENERAL COUNSEL, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC., ALSO ON BEHALF OF THE KENTUCKY DISTILLERS ASSOCIATION

Mr. MCCARREN. Thank you for this opportunity to appear before the subcommittee, Mr. Chairman. I am John McCarren, general counsel of the Distilled Spirits Council of the United States, Inc., otherwise known as DISCUS, the national trade association of the distilling industry whose members produce approximately 85 percent of all distilled spirits in the United States. Many DISCUS member companies also have substantial interests in the importation of distilled spirits.

I am authorized to state that the Kentucky Distillers Association joins in the views expressed herein.

As you are aware, DISCUS has opposed a change in the wine gallon method of assessing tax and duty on below-proof distilled spirits. However, a substantial minority of the DISCUS membership has been in favor of a change in the method so that the tax on all distilled spirits would be assessed on a proof gallon basis. It now appears that the Special Trade Representative has made promises to various foreign countries which, if approved by the Congress, would require a change in the method of taxation and implementing legislation to accomplish the change.

Other witnesses scheduled to appear before you today will discuss the proposal of the Special Trade Representative to eliminate the wine gallon method and you will hear the pro's and con's of this issue on which the members of our association are divided. I wish to focus on other related matters on which the entire distill-

ing industry is in agreement. On these matters we hope the Congress will take appropriate action in connection with its consideration of the Multilateral Trade Agreements.

There are several areas within the jurisdiction of this subcommittee where concessions could be made within the framework of the implementing legislation, which would lessen to some extent the adverse impact of the trade negotiations on the domestic industry, although we can offer no proposals for concessions to entirely offset the impact of a change in the method of taxation. I would like to stress again that while the DISCUS membership is divided on the issue of changing the method of assessing tax, it is unanimous in support of our proposals for concessions. These proposals have also received the endorsement of ISAC No. 1, the industry advisory body established by the Special Trade Negotiator.

Our proposal for concessions may be summarized as follows:

I. EXTENSION OF TAX DEFERRAL PERIOD

Extend the deferral period for payment of tax on distilled spirits withdrawn from domestic distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands for an additional period of 30 days.

II. ALL IN BOND

All operations at distilled spirits plants—production, storage, bottling—would be conducted under bond, including the right to transfer spirits to other bonded premises.

II.A. REPEAL OF RECTIFICATION TAX

Repeal is recommended only if all-in-bond system (item II above) is adopted.

III. EXTENSION OF ALL-IN-BOND CONCEPT TO WHOLESALE LEVEL

Within 1 year of extension of the tax deferral period, which I discussed as our first item, at distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands, extend the point of tax payment of distilled spirits shipped in bond to wholesalers (including control States), those States which have a monopoly of the controlled distilled spirits within their border, who have chosen to bond their facilities and have otherwise complied with relevant government requirements. This proposal is supported by the national association of the control States.

IV. REFORM OF FEDERAL ALCOHOL ADMINISTRATION ACT

At the present time a violation of provisions of section 5 of the act relating to trade practices may be prosecuted as a criminal offense under section 7 of the act. Most of these "violations" would at the most be subject to civil sanctions if any product other than beverage alcohol were involved. We propose the act be amended to make such violations civil only while retaining criminal penalties for such activities as engaging in business without the required Government permit.

V. DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT

Our final proposal is that bourbon, a distinctive American product, be designated as such. Now this could not be done directly by the Congress as we see it. What we are asking is that a commitment should be made by the Government to support industry efforts within the EEC and other foreign government representatives to obtain recognition of bourbon whiskey as a distinctive American product.

Under the U.S. regulations, products such as Scotch whiskey, Irish whiskey, Canadian whiskey and cognac are recognized as distinctive products of Scotland, Ireland, Canada and the Cognac region of France respectively. No alcoholic beverage sold in the United States can be called Scotch or Irish or Canadian whiskey or cognac unless it has been produced in the appropriate country in compliance with the laws of that country. Similar recognition should be given by foreign nations to bourbon whiskey which was originated in this country and is not produced in accordance with the standards of identity for bourbon in any other country in the world. This distinctive product of the United States should be accorded in other countries the same treatment which we give to these products which can claim a unique quality.

The Congress has recognized bourbon as a distinctive product of the United States. See Senate Concurrent Resolution 19, 88th Congress, second session.

Of these concessions we are discussing this morning the most important by far is the proposal for extending the time allowed domestic producers for payment of the heavy excise tax on their products. We feel that the request which the industry is making is a matter of simple justice.

In the distilled spirits industry, the Federal excise tax comprises about 64 percent of the value of shipments from the distiller to the wholesaler. Since current provisions require payment of the excise tax 15 days following the end of each half monthly tax period, distillers are paying a burdensome excise tax well before the product reaches the retail level.

Based on a comprehensive survey of wholesalers, about 60 days elapse between the time a shipment of distilled spirits leaves a supplier's warehouse and the time it leaves the wholesaler's warehouse. These 60 days—the period between initial shipment by the supplier and shipment by the wholesaler—may be regarded as nonproductive.

Consequently, the distillers request that payment of the excise tax be deferred a period of time long enough so that payment of the excise tax by the supplier approximates the date of shipment from the wholesaler to the retailer. Since the current excise tax payment provisions require remittance 15 days following the close of the tax period, distillers request that payment be deferred an additional 30-days.

This additional 30-day deferral is nothing more than a lag, not a reduction, in revenue to Treasury. Based on current levels of Federal excise tax receipts and short-term Treasury bill rates, the cost to Treasury of financing the lag in Federal excise tax receipts would be about $1 million per day. Since the distilled spirits indus-

try will be saving about $1.2 million per day, this cost is higher because private industry must pay higher interest rates than the Government, revenues from corporate income taxes will rise. These additional corporate taxes will reduce the net cost to Treasury to about $0.5 million per day. Thus, total cost to Treasury of the additional 30-day deferral will be about $15 million.

That is the end of my statement, Mr. Chairman. I thank you again.

Mr. VANIK. Thank you very much.

Mr. Carriuolo, do you have a statement?

Mr. CARRIUOLO. Yes, Mr. Chairman.

Mr. VANIK. I thought I would have you both testify before I go to the questioning of witnesses, if that is agreeable.

You may proceed.

STATEMENT OF CHRISTOPHER W. CARRIUOLO, CHAIRMAN OF THE BOARD, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC., AND EXECUTIVE VICE PRESIDENT, HEUBLEIN, INC.

Mr. CARRIUOLO. I am Christopher Carriuolo. I am from Farmington, Conn. Today I wear two hats. I am chairman of the Distilled Spirits Council of the United States as well as executive vice president of Heublein, Inc.

I noted what you said, Mr. Chairman, about your trip to Russia and I would like to import vodka from there. We are the largest producers of vodka outside of Russia and if you will give me a note to see somebody——

I would like to first put on the first hat, Mr. Chairman, as Chairman of the Board of DISCUS and support pretty much what our General Counsel John McCarren has said. These five proposals that we are talking about today that John just mentioned are almost unanimously endorsed by the industry. We just heard this past week that one of the largest segments of our industry, the WSWA, the wholesalers, 850 members, and I think they employ some 30,000 salesmen, warehousemen, and so forth, have also supported us in this package of concessions for the domestic industry.

Now I have a chart presentation here and since I prepared it I didn't want to throw it away. I didn't realize it was going to be such a big room. You have in your packet these charts reproduced. I am going to the fifth from the back, chart No. 15, and talk just a little bit, one second, about the extension of the tax deferral period. I don't know whether you realize it or not but 64 percent of the value of shipments from distiller to wholesaler is the Federal excise tax. Since the current provision provides that we have to pay our tax in 15 days at each half monthly period, this puts a tremendous burden on the American distiller because the importer does not pay the tax, the tax is paid by the wholesaler when he gets around to shipping the goods to the ultimate retailer.

Now we have to borrow money to pay our taxes and at the high cost of money today this is very important. There are about 60 nonproductive days before the goods move on to the retailer. If these 30 extra days were granted, it would save the U.S. distiller about $1.2 million per day and the benefits of the tax deferral would look something like this, that the deferral would be phased

in over a 5 year period. In other words, an extension of 6 days each year for 5 years and the saving would be $7.2 million. However, the cost to the government as John McCarren said would only be at the end of the fifth year, $15 million. The saving to the industry would be $18 million. Of course the rest is in income tax.

The second one, and I just want to talk about this because there is a lot of confusion, all in bond. All in bond simply means that the distilled spirits premises today is all in bond except for the bottling line. The bottling line currently is not in bond. The Government wants this. It would eliminate some supervisory people and it does not really mean anything to the industry and I think it saves the Government money so we are putting this in our package. There is no cost to the Government, really no saving to the industry. There is a saving, we feel, to the Government. That is all in bond at the distilled spirits premises.

The next one is the repeal of the rectification tax. This is the tax that only distillers pay. Importers do not pay this tax even though their goods are blended. It costs us about $25 million today to pay this tax but if we go all in bond, you pay one price, $10.50. As it is today we blend wine and we pay 30 cents and we pay 67 cents for the wine that is fortified and $1 for flavored spirits but now with all in bond there is really a $4 million saving to the industry with the repeal of the rectification tax which puts us on a par with the importers. By the way, this would cost the importers if they had to pay this tax about 62 cents a case.

The other one is extension of all in bond and this is chart 19, the next to the last in your packet. Within a year we would like to go and have the same treatment as imported products. This is quite a saving to our industy, about 38 cents per case, and it gives us the same advantage as the importers in that the wholesaler on a voluntary basis would pay the tax when he ships the goods, 15 days after he ships the goods to the retailer.

Of course, the last is the designation of bourbon. We feel this is important for the bourbon producers as a distinctive product of the United States.

Now that is so much for my hat as chairman of the DISCUS. I would like now to talk as executive vice president of Heublein and talk just a little bit about the $10.50 tax and the wine gallon proof gallon. Here you see that bottled goods at 80 proof pays $10.50 excise tax per gallon the same as if it came in a barrel at 100 proof and U.S bottled at 80 proof so there is a 20 percent differential. This is chart 1 in your packet.

Chart 2 shows that this has not been a detriment to the importers because look what has happened since 1960 to domestic spirits which in 1960 had 87 percent of the market and it is now down to 72 percent and all foreign spirits from 14 percent up to 28 percent. What is even more dramatic is when you look at the whisky share back in 1960 the domestic whisky had 84 percent of the whisky market; it is now down to 54 percent. The imported whisky market share was 16 percent in 1960 and it has gone up to 46 percent in 1976.

Take a look at the next chart which is Scotch whisky imports. You can see imports move from about 47 million gallons up to just under 60 million gallons in a 10-year period from 1969 to 1978.

Obviously the wine gallon has not been a problem for the importers. Look at the Canadian whisky imports from 32 million gallons in 1969 to 53 million gallons in 1978. Look what the whisky is a share of the total importers spirit market. Ninety percent of all the spirits come into the United States as whisky, only 10 percent liquors, brandy, gin, and other distilled products.

You might ask why we didn't ask for a lot of concessions originally as far as tariffs go. If you eliminated all the foreign tariffs for domestic products, it would not mean much because we have such an insignificant share of the foreign market and this is not primarily because tariffs are important but it is the nontariff barriers that prevent us from doing business in Canada, the United Kingdom and the rest of the common market—France, Italy, and Japan.

You can see here that the United States has a 3 percent share of the Canadian market, 1 percent of the United Kingdom, a quarter of 1 percent in France, a sixth of 1 percent in Italy, and 1 percent in Japan—really not enough to worry about. We are just not doing the export business because of not only the tariff barriers but the nontariff barriers as well.

Now there has been a tremendous imbalance in the trade deficit of distilled spirits. In 1967 it was $387 million and in 1977, 10 years later, $635 million. this is the imbalance of trade in distilled spirits. Also the foreign tariffs on U.S whisky, you say the wine gallon is a tariff barrier. Well, then why don't they eliminate the tariff barriers they have in the same country we are doing trading with? They have two tax systems, one for goods two liters or under—and that is a higher tax because it is bottled—and then they have a lower tax for two liters and above. That is still there, that has not been eliminated.

Now talking about jobs, there has been a lot of talk about how many jobs might be lost or none. There was a report that was widely circulated just a few weeks ago down here that the special trade representative quoted to me as though it were the gospel and it said that there are only 80 to 100 jobs lost in the industry because of the wine gallon tax. I know that there are more jobs in my own company that will be lost but what I don't understand about the discrepancy—this appeared a couple of years ago in the Glasgow Herald which said that is a campaign to create 6,000 more Scotch whisky jobs and this is taken when the wine gallon has disappeared and this discrimination is eliminated and the jobs will come back to Scotland.

Now here is one that appeared in the Washington Post on April 14 and here are some headlines from the Peoria paper, "Hiram Walker Will Close Its Distiling Plant." Now that is 1,150 jobs by their own admission, 850 permanent and 300 seasonal jobs. I don't begrudge them for closing this plant but I think it is the tip of the iceberg, it is what you are going to see more of if you don't give some benefits to the domestic industry. You are going to see more and more plants going out of business and closing down.

I think it is significant that this release came 2 days after the wine gallon was put into Mr. Strauss' package. Mr. Frank Fitzsimmons sent a letter and he has done some figuring and he has said the industry will probably lose 25,000 jobs. I think Leo Vernon is going to speak to this in more detail.

Now talking about prices, somebody said will the prices be lowered because of the wine gallon? I think there has been testimony that says no, we are not going to lower the price. What they are going to do is they are going to spend this money in marketing expansion to get a bigger share of the market. It is a sad commentary that this happens but this is what they are going to do.

Now we have been reducing tariffs, as you know, for some time. We have gone from $5 a proof gallon on Scotch whisky to 51 cents. We have gone from $5 on Canadian whisky down to 62 cents. In all those years I don't recall any price decrease at the shelf level.

Mr. VANIK. Well, if you are not going to lower the price, are all these jobs going to be lost just because of advertising?

Mr. CARRIUOLO. They will get a bigger share of business and we will get a significantly lower share. That line will go up faster and we will have a lower share.

That is really my testimony. I am concerned. I am concerned that we have an industry that is in trouble and I think that you should support any package that may give the domestic industry some help or else it will go the way of the beer business; you will have a couple of big producers and you will have all the little fellows going out of business.

That is the end of my statement.

[The prepared statement and charts follow:]

STATEMENT OF CHRISTOPHER W. CARRIUOLO, CHAIRMAN OF THE BOARD, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, AND EXECUTIVE VICE PRESIDENT OF HEUBLEIN, INC.

Mr. Chairman and members of the subcommittee, I am Christopher Carriuolo of Farmington, Conn., I am here today wearing two hats—as chairman of the board of directors of the Distilled Spirits Council of the United States and as the Executive Vice President of Heublein, Inc.

As chairman of the Board of DISCUS, the trade association composed of the producers of 85 percent of the distilled spirits produced in the United States and the major importers of similar beverages, I associate myself fully with the testimony which you have just heard from the association's General Counsel, John McCarren. The five proposals he has outlined are endorsed almost unanimously by all engaged in the business of producing and importing distilled spirits in this country. They also are endorsed by the national trade association representing wine and spirits wholesalers, and by the Industry Sector Advisory Committee to the Special Trade Negotiator representing the food and beverage industries.

Let me speak in a little more detail about these proposals.

CHART 15 (EXTENSION OF THE TAX DEFERRAL PERIOD)

Extend the deferral period for payment of excise taxes on distilled spirits for an additional 30 days.

The Federal Excise Tax comprises about 64 percent of the value of shipments from distiller to wholesaler. Since the current provisions require payment of the tax 15 days following the end of each half-monthly tax period, distillers are paying a tax well before it reaches the sales point at the retail level.

Under present arrangements the American distiller is not allowed as long a period for payment of the excise tax as is his competitor, the importer of distilled spirits from abroad. Within an average period of 23 days after distilled spirits leave the distillery—while they are normally still in the hands of a wholesaler and before the producer receives payment for them—the distiller must pay the excise tax. On imports, however, the tax becomes due 23 days on the average after the imported beverages leave the bonded premises of a wholesaler.

The American producer must borrow to pay the tax when the importer does not have to. Or, if not forced to borrow, the American producer must tie up his capital by early payment of the tax when the importer does not have to. Imports thus enjoy a cost advantage of about 38 cents per case due to the cost of money. What we are

proposing would be a step toward equalizing the time granted the American producer and the importer to pay the excise tax.

About 60 days elapse between the time a shipment leaves the domestic supplier's warehouse and the time it leaves the wholesaler's warehouse. There 60 days are "non-productive."

U.S. producers are asking for just half that time as an additional tax deferral period in payment of the Federal Excise Tax.

This could be phased in at a rate of six additional deferral days per year, so that a total of 30 days delay would be in effect in the fifth year.

This would save U.S. distillers about $1.2 million per day. If started in 1980, it would have these results:

CHART 16 (BENEFITS FROM TAX DEFERRAL)

	Million
1980	$7.2
1981	14.4
1982	21.6
1983	28.8
1984 and beyond	36.0

Since this would result in an increase in corporate income taxes the net cost to the U.S. Treasury would be about $500 thousand per day, or at the time of the full 30-day delay, about $15 million per year.

CHART 17 (ALL-IN-BOND)

As another concession U.S. distillers ask that all operations at distilled spirits plant (production, storage, bottling) be conducted under bond, including the right to transfer spirits to other bonded premises.

CHART 18 (REPEAL OF THE RECTIFICATION TAX)

This is recommended only if the All-In-Bond recommendation is adopted.

The rectification or blending of distilled spirits is presently taxed at the rate of 30 cents per gallon and amounts to about $25 million annually. This tax is not paid by foreign producers. The tax loss of this concession would be offset if spirits were taxed on a proof gallon basis.

CHART 19 (EXTENSION OF ALL-IN-BOND CONCEPT TO THE WHOLESALE LEVEL)

Within one year of extension of the tax deferral period U.S. producers recommend that you extend the point of tax payment of distilled spirits shipped in bond to wholesalers (including Control States) who have chosen to bond their facilities and have otherwise complied with relevant government requirements.

Presently wholesalers may purchase bottled imports in bond paying the Federal Excise Tax only after the removal of the product from the wholesalers' warehouse. This option is not available on purchases of domestic products.

U.S. distillers recommend that wholesalers be accorded the same privilege of purchasing U.S. distilled spirits in bond, paying the FET based on the current provisions requiring payments of the FET on imported products.

Cost of this would be nil to the Treasury if the 30-day deferral of the FET were in effect.

CHART 20 (DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT)

Commitment should be made by the U.S. Government to support industry efforts with the E.E.C. and other foreign governments to obtain recognition of bourbon whiskey as a distinctive American product.

As I said, a total of all these measures would offer some relief but certainly not compensating balance for the competitive advantages granted foreign producers in the U.S. market, as a result of the proposed change to a proof-gallon method of taxation.

Now, Mr. Chairman, I want to change hats and speak to you as the Executive Vice President of Heublein, Inc., on the subject of the proposal of the Special Trade Representative to eliminate the wine-gallon system of calculating duty and excise on distilled spirits. My company, along with the overwhelming majority of purely domestic distillers and unions whose members' jobs are threatened by the change, is opposed to changing this system.

A change from the present method of assessing excise taxes to one of assessing on the basis of proof, rather than on wine or liquid gallons, would do substantial damage to the competitive position of the U.S. spirits producers threatening the

exodus of production facilities from this country, with the consequent loss of jobs not only in this industry but in those of its suppliers, glass bottles, packaging, trucking, warehousing, to name but a few.

The present method of taxation, which has been in force now for more than 100 years, calls for an excise tax of $10.50 for a liquid gallon (or wine gallon as we call it) of 100 proof or less, whether it's brought into the U.S. in bottles or in bulk.

CHART 1 ($10.50 EXCISE TAX)

Foreign producers exporting into the U.S. claim this method of taxation discriminates against them, but we say it doesn't. In fact, the business of foreign producers in this country, principally Scotch and Canadian whisky producers has grown multifold. In fact, it's never been better.

The same opportunity to bring distiled spirits into the United States, in bottles or bulk, exists for all. But to establish and further a premium, higher-priced image for their products, foreign producers elect to bring their major brands into the U.S. in bottles.

They have profited enormously from that decision.

CHART 2 (DISTILLED SPIRITS MARKET SHARE DOMESTIC vs. FOREIGN, 1958-77)

While the market share of U.S. distilled spirits producers has declined, that of foreign producers has increased.

CHART 3 (WHISKY MARKET SHARE DOMESTIC vs. FOREIGN, 1958-77)

U.S. whisky producers, particularly Bourbon, have suffered a declining market share here in the U.S. while foreign producers' market share has increased.

CHART 4 (SCOTCH WHISKY IMPORTS, 1969-78)

Here, for example, is the growth of imported Scotch in just the past nine years.

CHART 5 (CANADIAN WHISKY IMPORTS, 1969-78)

Here is the growth of Canadian whisky imports in the same period.

CHART 6 (WHISKY'S SHARE OF IMPORTED SPIRITS MARKET)

In total, imported whisky accounts for 90 per cent of all imported spirits.

CHART 7 (U.S. SHARE OF LEADING FOREIGN SPIRITS MARKETS)

In sharp contrast, here's the U.S. spirits producers' share of leading foreign markets—

Canada, 3 percent; United Kingdom, 1 percent; France, ¼ percent; Italy ⅛ percent; and Japan, 1 percent.

CHART 8 (INCREASING IMBALANCE OF TRADE IN DISTILLED SPIRITS)

The imbalance of trade in distilled spirits has been increasing steadily from $387 million unfavorable in 1967 to $635 million in 1977.

CHART 9 (LOWERING OF U.S. TARIFFS)

The steady lowering of U.S. tariffs on both Scotch and Canadian whiskies has also benefitted foreign producers. The tariff on a gallon of Scotch has dropped from $5 to 51 cents since Repeal while the tariff on a gallon of Canadian whisky has declined from $5 to 62 cents.

CHART 10 (COMPARISON OF U.S. AND FOREIGN TARIFFS ON WHISKY)

But in most other major world markets tariffs on U.S. products remain five to six times greater.

There will be just a few very big winners among foreign producers but many U.S. losers, big and small, and the ensuing competition will inevitably bring about the concentration of the U.S. distilled spirits business with a few major companies.

The imbalance of trade can be expected to increase much faster than it has in the past 10 years.

U.S. workers stand to lose jobs as foreign producers withdraw production facilities from the U.S., concentrating them to economic advantage in their own countries.

CHART 11 (GLASGOW HERALD, 6,000 JOBS)

Here's a news story from a Glasgow, Scotland paper which sees the change in the U.S. tax law favoring Scottish labor with 6,000 jobs.

CHART 12 (HIRAM WALKER CLIPPING, WASHINGTON POST, APRIL 14, 1979)

Just two days after this Trade Subcommittee expressed sentiment in favor of the change, Hiram Walker, a Canadian company, announced the closing of its Peoria plant with the loss of 1,200 full and part-time jobs, not to mention cutbacks that this will cause in jobs among supplier companies. This is Walker's only U.S. distillery and it was once the largest in the world. It is ironic that less than three weeks before announcing this plant closing, Hiram Walker submitted a formal statement to the Special Trade Negotiator and to Congress that only 80 to 100 jobs would be lost in the entire United States if the wine-gallon method of taxation were eliminated.

We believe this is but the tip of the iceberg for there are other U.S. plants likely to close or to join the ranks of those operating part-time.

CHART 13 (FRANK FITZSIMMONS SAYS— 25,000 JOBS LOST)

Frank Fitzsimmons, head of the Teamsters Union, has estimated job losses in the U.S. from this proposed change would amount to 25,000.

Consumers will lose, too, because the principal gainers from the reduced taxes, namely foreign producers of Scotch and Canadian whisky, have indicated by their actions and their statements to the Special Trade Negotiator that there will be no benefit to consumers in the form of reduced prices.

At a hearing on this subject conducted by the Special Trade Representative on March 20 of this year, the representative of the U.S. Department of Labor, after hearing the testimony of both sides, observed "* * * the economic effects (of eliminating the wine gallon system) would be a transfer of revenue from the Treasury Department to certain companies that ship bottled goods from foreign countries into the United States."

CHART 14 (SINCE 1967—COMPARATIVE PRICE INCREASES)

	Percent
Prices of Bottled in Scotland—Scotch	+21
Prices of Bottled in Canada—Canadian	+14

We firmly believe that the present method of assessing excise taxes is not discriminatory. And so do the U.S. courts, which, in their wisdom, have upheld it on several occasions.

We believe that the U.S. Congress in passing the 1974 Trade Act was of this same mind when it directed the U.S. Trade Negotiators to exchange competitive opportunities for like or same products in foreign markets.

But here's the unfair competition that remains:

The proposed change creates the opportunity for a flood of low-proof alcoholic beverages into the U.S market.

Tariffs in other countries are five to six times greater than ours.

Non-tariff barriers in other countries such as tied-in houses of the U.K., exist to exclude U.S. products.

Canada requires that all whisky imports be blended with Canadian whisky.

And there are other barriers to trade such as border licenses and inequitable ingredient standards.

Who will be the winners from this proposed change.

Principally three foreign producers: Hiram Walker, Seagrams, and the Scotch whisky cartel.

They will share $160 million or more yearly in reduced taxes which they can apply to increased competition with U.S. producers.

Foreign producers do not pay the rectification or blending tax or 30 cents per gallon required of U.S. producers.

Although the Special Trade Representative has not made public the specifics or tariff concessions negotiated in the MTN, we understand that European countries will continue to tax bottled imports at a higher rate than bulk—their version of the U.S. wine-gallon/proof-gallon method of taxation. This is done by setting a lower tariff on imports in containers of more than two liters than is imposed on containers of less than 2 liters. The largest bottled size is 1.75 liters. Thus the EEC will continue a practice which they complain is a discriminatory barrier to trade—when it is used by the United States.

The U.S. producers are asking this committee and the Congress to take the necessary measures to keep the present method of assessing the excise tax in force thereby avoiding the unfair competition that would follow such a change.

If this is not accomplished then we ask for some measure of relief, although there is none that can equal or offset the granting of $160 million yearly in tax reductions and the competitive advantages granted to foreign producers.

I have copies of the illustrated charts for your further review if you wish them.

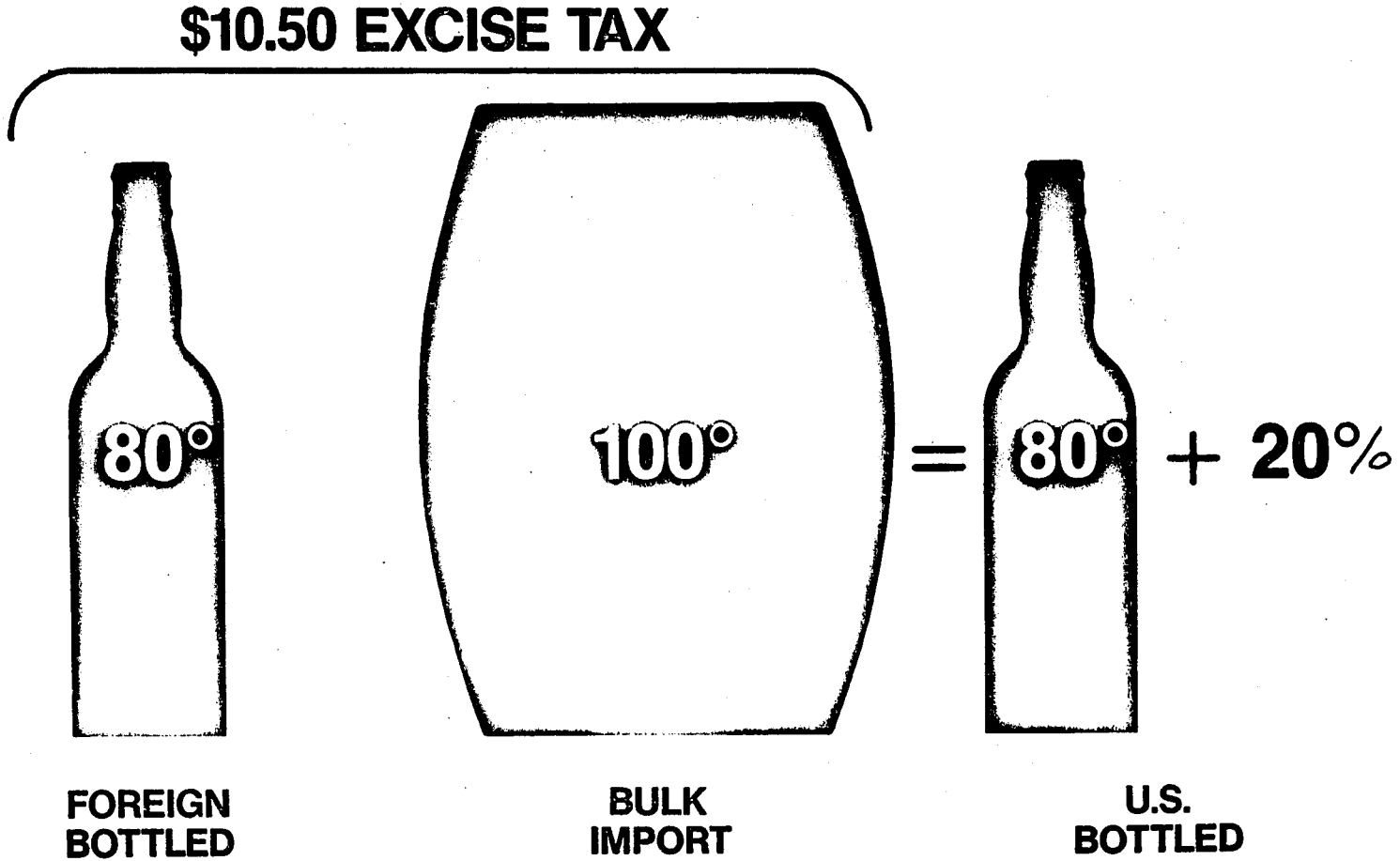
Thank you.

Presentation to
House Ways & Means Trade Committee

April 25, 1979
by

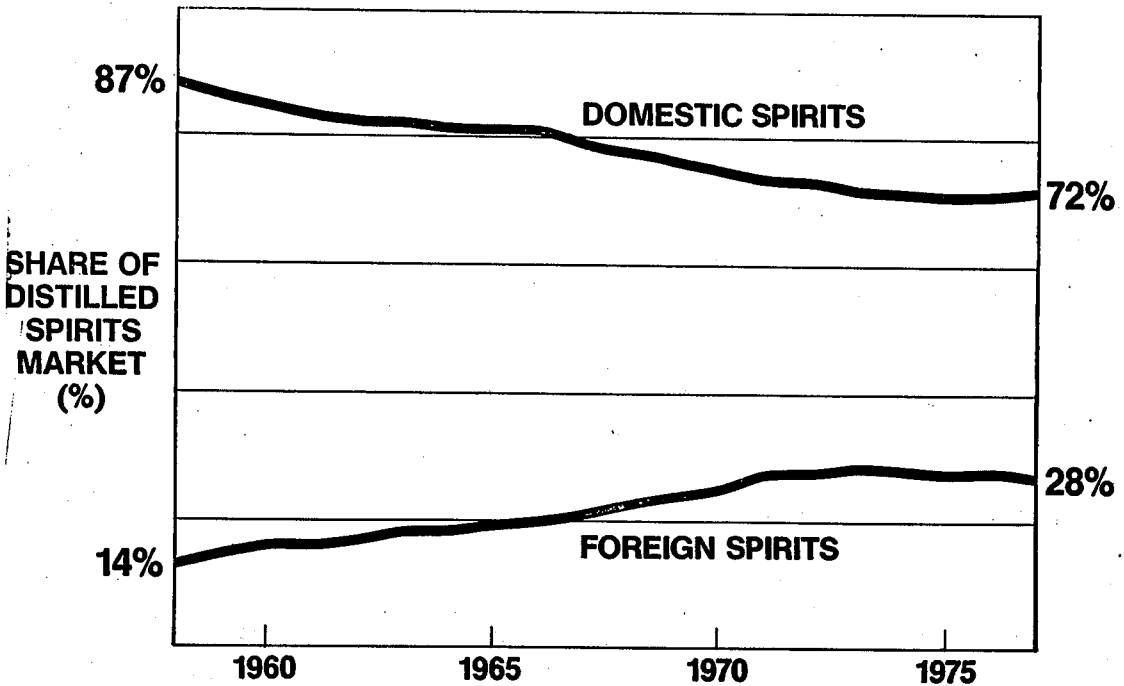
Christopher W. Carriuolo

Chairman, Distilled Spirits Council of the United States.
Executive Vice President, Heublein Inc.


$10.50 EXCISE TAX
80°
100°
=
80°
+ 20%
FOREIGN BOTTLED
BULK IMPORT
U.S. BOTTLED

DISTILLED SPIRITS MARKET SHARE

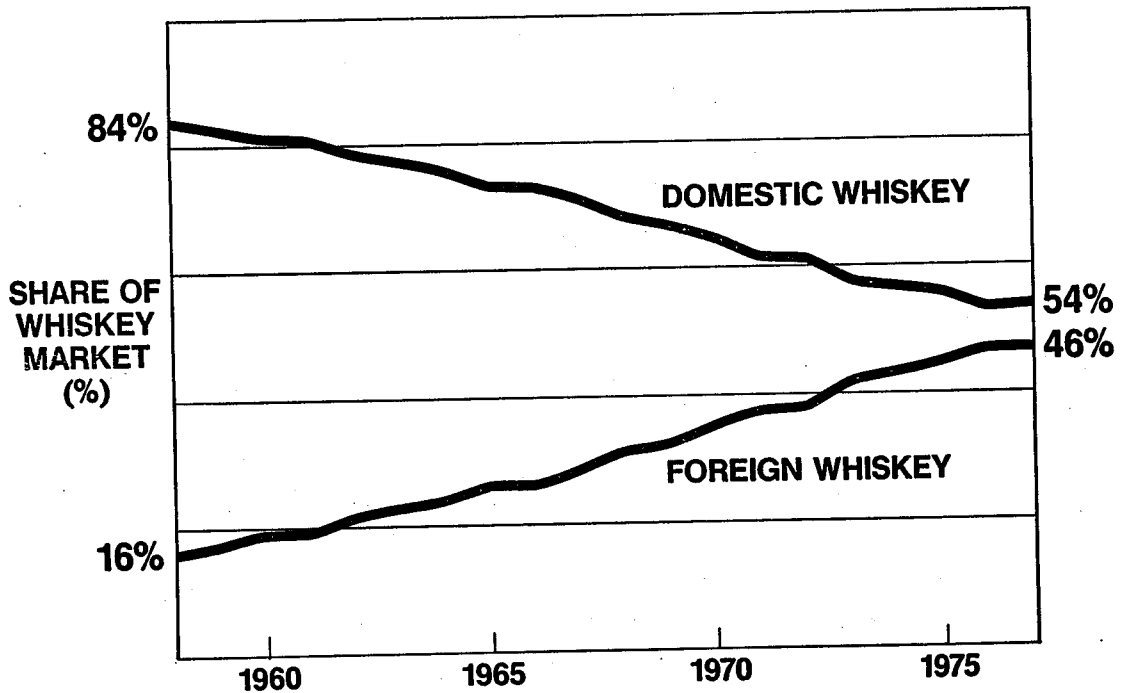
DOMESTIC VS. FOREIGN, 1958-1977



SOURCE: DISCUS, ANNUAL STATISTICAL REVIEW.

WHISKEY MARKET SHARE

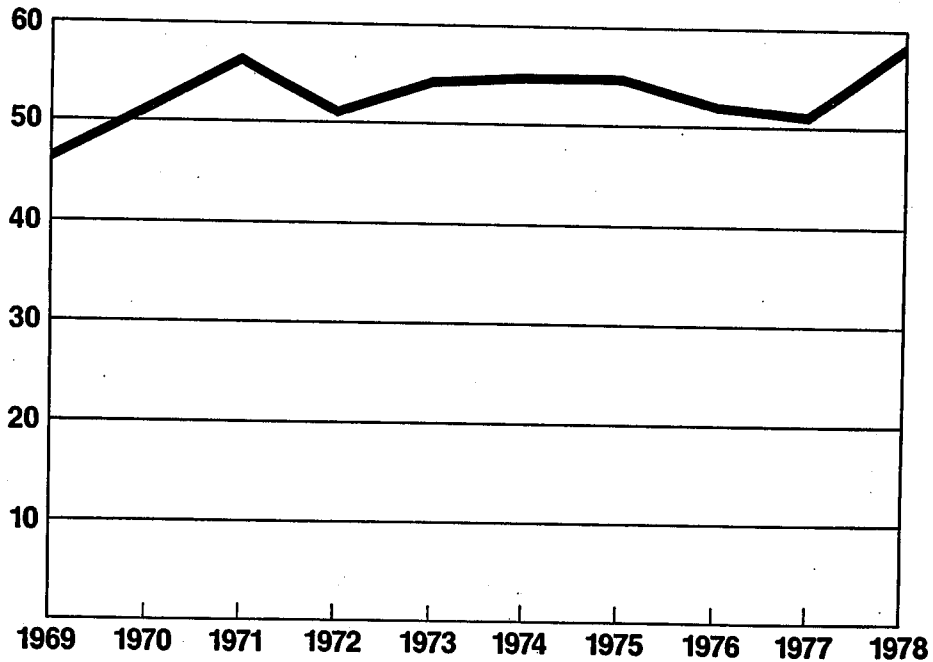
DOMESTIC VS. FOREIGN, 1958-1977



SOURCE: DISCUS, ANNUAL STATISTICAL REVIEW.

SCOTCH WHISKY IMPORTS

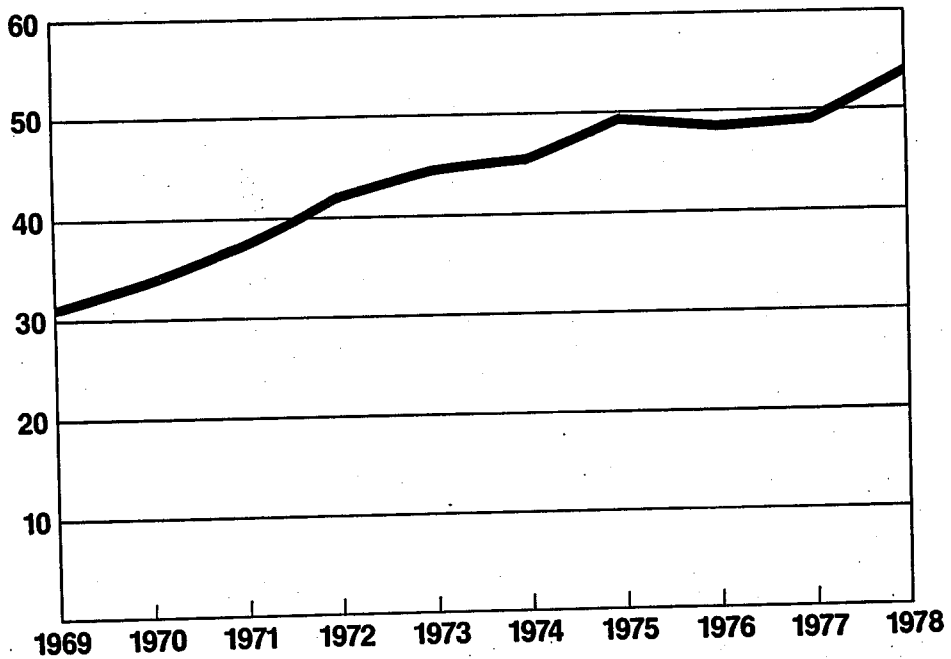
MILLIONS GALLONS — 1969-1978



BULK-BOTTLED OUTPUT CONVERTED AT 82 PROOF AND TOTAL REFLECTS CONVERSION

CANADIAN WHISKY IMPORTS

MILLIONS GALLONS — 1969-1978



BULK-BOTTLED OUTPUT CONVERTED AT 80 PROOF AND TOTAL REFLECTS CONVERSION

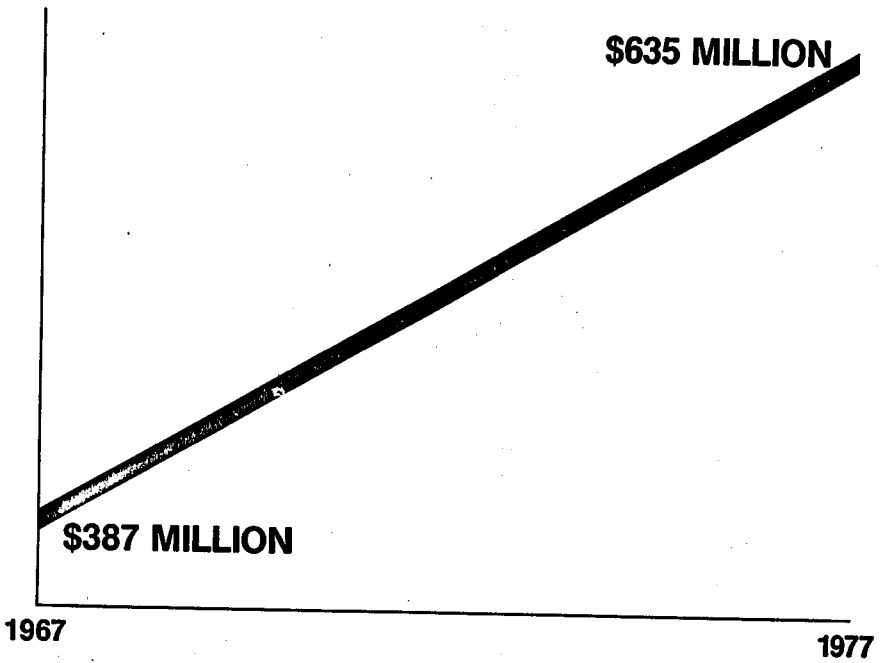
WHISKY
SHARE OF
IMPORTED
SPIRITS
MARKET

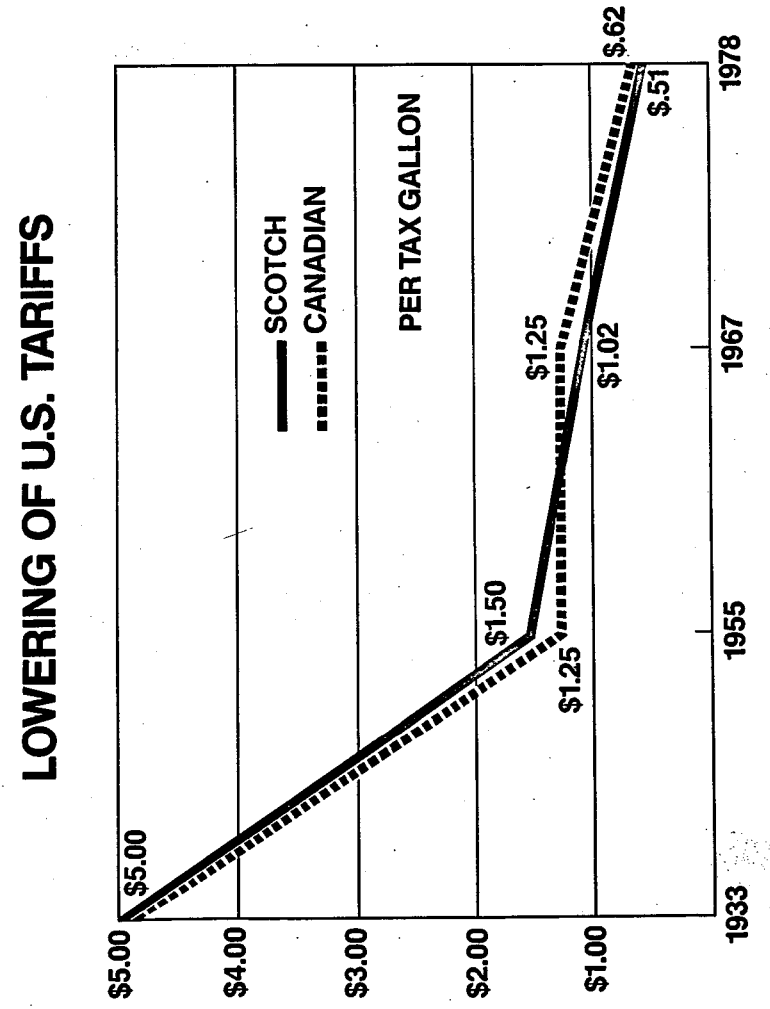
U.S. SHARE OF LEADING FOREIGN SPIRITS MARKETS

CANADA	UNITED KINGDOM	FRANCE	ITALY	JAPAN
3%	1%	$\frac{1}{4}$%	$\frac{1}{6}$%	1%

INCREASING IMBALANCE OF TRADE IN DISTILLED SPIRITS

(LOSS IN MILLIONS)




LOWERING OF U.S. TARIFFS
PER TAX GALLON
SCOTCH
CANADIAN
$5.00
$4.00
$3.00
$2.00
$1.00
1933
1955
1967
1978
$5.00
$1.50
$1.25
$1.25
$1.02
$.51
$.62

FOREIGN TARIFFS ON U.S.WHISKEY

EEC EXTERNAL TARIFF ON U.S. BOURBON WHISKEY
(DOLLARS PER U.S. PROOF GALLON)*

COUNTRY	CONTAINERS OF 2 LITERS OR LESS (i.e. BOTTLED GOODS)
BELGIUM	$3.01
FRANCE	$2.58
GERMANY	$3.24
HOLLAND	$3.31
ITALY	$2.04
UNITED KINGDOM	$1.66

* BASED ON RATES OF CURRENCY EXCHANGE ON FEBRUARY 13, 1979

GLASGOW HERALD, Wednesday, April 11, 1979

"Campaign to create 6000 more Scotch whisky jobs"

"... that action must be taken to change an American law which means that whisky imported in a bottle has a 15% bigger tax than the same Scotch product imported to the United States in bulk and bottled there."

"DISTILLERY CLOSING: Hiram Walker & Sons will close its Peoria distilling plant,"

DISTILLERY CLOSING: Hiram Walker & Sons will close its Peoria distilling plant, its only distillery in the United States and once the largest one in the world.

Carter Hunt, the distillery's production manager, told approximately 850 employes at a meeting Thursday that out-dated facilities in Peoria and increasing costs will force the firm to terminate its U.S. operation by January 1982.

FRANK FITZSIMMONS SAYS

"25,000 JOBS LOST"

SINCE 1967

PRICES OF SCOTCH BOTTLED IN SCOTLAND	+21%
PRICES OF CANADIAN BOTTLED IN CANADA	+14%

EXTENSION OF TAX DEFERRAL PERIOD

BENEFITS FROM TAX DEFERRAL

1980	$ 7.2 million
1981	14.4 million
1982	21.6 million
1983	28.8 million
1984 and beyond	36.0 million

ALL-IN-BOND

REPEAL OF RECTIFICATION TAX

EXTENSION OF ALL-IN-BOND CONCEPT TO WHOLESALE LEVEL

DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT

Mr. VANIK. Mr. Rostenkowski.

Mr. ROSTENKOWSKI. Mr. Carriuolo, will you give me an idea of the type of whisky you are discussing on the curve downward with respect to the amount of American whisky that is consumed? You had a chart there that showed import whiskies going up from 46 to 60 percent and the American domestic whiskies going down. What types of American whiskies are you referring to?

Mr. CARRIUOLO. The biggest loss, sir, has been the bourbon and blended whiskies. They have had a continual decline that was very much accelerated in the last 10 years.

Mr. ROSTENKOWSKI. Is that because of its proof?

Mr. CARRIUOLO. No; I think the proof is the same as the Scotch whisky. I think that most of the bourbon whiskies and blended whiskies are very similar in proof to Scotch whiskies.

Mr. ROSTENKOWSKI. Would you say around 86-percent proof?

Mr. CARRIUOLO. I think a lot of them are 80 to 86. The tendency in the last several years has been to reduce the proof to 80.

Mr. ROSTENKOWSKI. I just recognize that the American habit is going toward a lower proof whisky and that the foreign or the imported whiskies have always been down a little bit below 90 or 80.

Mr. CARRIUOLO. 86.8, 86.

Mr. ROSTENKOWSKI. What about the so-called lighter transparent whiskies?

Mr. CARRIUOLO. They are all 80 percent primarily. Vodka is almost all 80. There is some 100 proof sold and a little 90 proof but it is primarily 80 proof. They have been reduced.

Mr. ROSTENKOWSKI. Has there been an increase in the appetite of the Americans for those light whiskies as opposed to bourbons?

Mr. CARRIUOLO. We have a feeling that Americans drink more moderately and do prefer a lighter proof. If you took all distilled spirits sold in the United States 10 years ago times the proof and did it today, you would find it is, I think, about a 4-proof reduction in spirits and the consumption of spirits. It has been declining. A lot of the mixed drinks, cocktails, that our company sells today are from 60 proof all the way down to the 25 proof.

Mr. ROSTENKOWSKI. I have no further questions, Mr. Chairman. Thank you, Mr. Carriuolo.

Mr. VANIK. Mr. Cotter.

Mr. COTTER. Thank you, Mr. Chairman.

Mr. Carriuolo, in your chart you made reference to Hiram Walker closing down a plant in Peoria. Has that occurred just within the past few weeks?

Mr. CARRIUOLO. Yes. I believe the release was the one in the Washington Post dated April 14. If I understand it, they are going to wind down the plant over the next 2 years.

Mr. COTTER. Is it a result of the change from the wine gallon or anticipation of the change from the wine gallon to proof gallon method of taxation, would you say?

Mr. CARRIUOLO. Well, I think there are probably other causes but I think the wine gallon gives them more options. If they get the wine gallon, they get the benefit. They are one of the companies that will benefit by the wine gallon and I think it gives them the option now they can do a lot more bottling in the Canadian plant. I

think they said in their article they will contract to pack some of their goods with other plants. By closing the plant, I think they will be able to sell the property and probably save $8 to $10 million by diverting production to other plants and to Canada.

Mr. COTTER. It has been suggested by people in the industry that some of the American distillers will possibly have to shut down their American operations as far as bottling Canadian whisky and Scotch in order to survive if we go to a proof-gallon method of taxation. Can you elaborate on that at all?

Mr. CARRIUOLO. I think the proof gallon is part of it because if you don't reduce the retail price of the goods, what do you do with that extra money? They have already indicated that they are going to spend it in advertising and marketing to increase their share of the market. What that means is that as you increase the import market, the domestic business goes. As Americans we are not drinking more. There is a market out there, it is growing. Just this past year it is growing at 2 percent. It was flat for 3 years and so they just get a bigger share of the market which is going to cause the domestic producers to wind down their plants. They just won't need that capacity.

Mr. COTTER. Does your organization have any figures on the number of jobs which would be affected if you changed to proof-gallon method?

Mr. CARRIUOLO. We have many alternatives. We figure that we will probably wind down our plants and we have to make the tradeoff decision—do we bottle our Canadian? We bring in Canadian in bulk and bottle it here in the United States in our four plants. Now we may bottle it in Canada. There is no advantage today in really bottling it in the United States. That means we would reduce the——

Mr. ROSTENKOWSKI. Excuse me. There is more advantage now?

Mr. CARRIUOLO. I am assuming you gave away the wine gallon.

Mr. ROSTENKOWSKI. All right.

Mr. CARRIUOLO. Maybe that is the wrong assumption.

Mr. ROSTENKOWSKI. I just wanted to understand that.

Mr. CARRIUOLO. That means we would wind down our four plants. As a matter of fact, I think we would want to sell one of our plants.

Mr. COTTER. I hope it is not Hartford.

Mr. CARRIUOLO. I hope so, too; it is my home. It can't be Hartford.

Mr. COTTER. Well, in other words, in order to compete, assuming we are on proof-gallon method, it would be to your advantage to bottle in Canada and bring it in rather than to bottle here after you brought it in in bulk?

Mr. CARRIUOLO. I say it is less of an advantage to bottle here.

Mr. COTTER. I see. Thank you.

I have no further questions, Mr. Chairman.

Mr. VANIK. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Mr. Carriuolo, I would like to thank you for a very excellent presentation well summarized.

Mr. CARRIUOLO. Thank you.

Mr. VANDER JAGT. Have there been any factors in plant closings other than the anticipated change in the tax treatment?

Mr. CARRIUOLO. You mean other factors in that——

Mr. VANDER JAGT. Yes. You referred to the plant in Peoria that was going to close and mentioned, I think, that there have already been some plant closings. Are there factors other than the anticipated change in tax treatment which account for this?

Mr. CARRIUOLO. Yes; I think the decline in bourbon whisky. With the decline in bourbon whisky you don't need those aging warehouses it used to have. I think there are a lot of factors that motivate this sort of thing but I think the biggest one is the increasing share of imported products causing a decline in domestic products. Marketing is the name of the game.

Mr. VANDER JAGT. Thank you.

Mr. JENKINS [presiding]. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Carriuolo, during our consideration of the wine gallon matter our subcommittee was provided with a study of the Harvard Business School on the job impact of elimination. Do you want to comment on that study? Do you have an appraisal of that study?

Mr. CARRIUOLO. We had our people look at it because when Senator Ribicoff arranged for us to go down and talk to the STR people and the Treasury they were quoting the study like it was the Gospel. I am not a salesman, I am not a market researcher. I took the study back to our market research people and they said it was just a flawed study, it was not a professional job at all.

If you look in the footnotes you find in order to make the case that it would cost more to produce a case of whisky in Scotland than it does in the United States, they eliminate a very important factor. They put in the cost of the carton in Scotland and they just eliminated the cost of the carton in America. They said there was something like $2.91 a case increase in cost if you did the whole thing in Scotland. Our people figured out when they did the true freight cost and everything that the amount was 63 cents, so I think it was not a professionally done study. I hope it was not endorsed by the Harvard Business School because I am an alumnus of that school and I don't think they would put their name on such an unprofessional study.

Mr. SCHULZE. Thank you.

Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. JENKINS. You mentioned a few moments ago some of the nontariff trade barriers that other countries have. What barriers does Japan have? Do they have any nontariff or tariff trade barriers?

Mr. CARRIUOLO. Well, I think the distribution system there is pretty much controlled as I understand it. I have never been to Japan but Suntory, I believe, controls the distribution system, so even if you were able to get your products in there it would be difficult to get your products distributed. As you know, in Canada the provincial monopoly and the 10 Provinces control the liquor business and they just won't list your product. No matter what the

tariff barrier, if they don't sign it up on their list it is not going to be sold.

When you go to the United Kingdom and some other places in the common market, they have the tied house laws there where they allow brewers and distillers to own massive retail licenses—it is against the law in this country. It is not unreasonable for one brewer to own 10,000 retail licenses and he puts whatever he wants in those pubs or liquor stores. These are tremendous hurdles for us to overcome and that is why if you eliminated all the tariff barriers it would not mean too much to the domestic distillers because the nontariff barriers are insurmountable.

Mr. JENKINS. Thank you very much for your testimony. We appreciate each of you appearing before the committee.

Mr. MCCARREN. Thank you.

[The following was subsequently received:]

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES, INC.,
Washington, D.C., April 30, 1979.

Hon. CHARLES A. VANIK,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing conducted by your Subcommittee on the Multilateral Trade Negotiations on April 25, this Association was invited to submit additional information about its requests for modification of existing law and regulations that would eliminate inequities and unnecessary burdens affecting domestic producers.

The attached memorandum is submitted in response to this request. It indicates certain charges that we believe should be made by revision of statutes as part of the package of implementing legislation. It also points out two reforms that probably would be more appropriately undertaken by means other than statutory change in the implementing legislation.

We deeply appreciate the attention your Subcommittee is giving to concerns of our industry and its workers. We stand ready to assist you in any way possible in accomplishment of the important task in which you are engaged.

Sincerely,

SAM D. CHILCOTE, Jr.,
President.

Attachment.

MEMORANDUM TO MEMBERS OF THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS

I. Items which the subcommittee can recommend as legislative changes to partially offset the impact on the domestic industry of a change in the wine gallon method of taxation of distilled spirits.

A. Provide for additional deferment of payment of tax of 30 days. (See attached draft of necessary amendment to section 5061(a) Internal Revenue Code of 1954.)

B. Provide for all-in-bond system at distilled spirits plants, including repeal of the rectification taxes. (We understand that the Treasury Department is drafting and will submit appropriate amendments.)

C. Provide for future extension of the all-in-bond method of operation to the wholesalers level including agencies of States and political Subcommittees thereof. (The above proposals have the full support of the distilling industries including those who were on either side of the wine gallon-proof gallon issue, the National Association of the Control States and the National Association of Wine and Spirits Wholesalers.)

II. Items involving or requiring changes in law or Treasury regulations which could be recommended in the subcommittee report.

A. Reform and modernization of the Federal Alcohol Administration Act as it relates to trade practices in order to put alcohol beverage industry on the same footing as other legal industries.

B. Designation of bourbon whiskey as a distinctive product of the United States in order to gain the same type of recognition which is now given in this country to

Scotch, Canadian, and Irish whiskies and Cognac. (See attached letter dated April 23 to Chief Counsel, Committee on Ways and Means for further discussion of these points. See also attachment analyzing costs of above proposals.)

Section 5061. Method of collecting tax

(a) Collection by Return.—The taxes on distilled spirits, wines, rectified distilled spirits and wines, and beer shall be collected on the basis of a return. The Secretary shall, by regulation, prescribed the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax, *Provided: that the time for filing the return and payment of the tax on distilled spirits shall not be less than 45 days from the end of the semi-monthly period during which such spirits are withdrawn from the distilled spirits plant.* [*Emphasis supplied.*]

APRIL 23, 1979.

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am appearing today in response to the invitation of Charles A. Vanik, Chairman of the Subcommittee on Trade, Committee on Ways and Means, in the subcommittee's press release of April 6, 1979. I represent the Distilled Spirits Council of the United States, Inc., the national trade association of the distilling industry, whose members produce approximately 85 percent of all distilled spirits in the United States. Many DISCUS member companies also have substantial interests in the importation of distilled spirits.

I am authorized to state that the Kentucky Distillers Association joins in the views expressed herein.

As you are aware, DISCUS has opposed a change in the wine gallon method of assessing tax and duty on below-proof distilled spirits. However, a substantial minority of the DISCUS membership has been in favor of a change in the method so that the tax on all distilled spirits would be assessed on a proof gallon basis. It now appears that the special trade representative has made promises to various foreign countries which, if approved by the Congress, would require a change in the method of taxation and implementing legislation to accomplish the change.

Other witnesses scheduled to appear before you will discuss the proposal of the Special Trade Representative to eliminate the wine gallon method, and you will hear the pro's and con's of this issue on which the members of our Association are divided. I wish to focus on other related matters on which the entire industry is in agreement. On these matters, we hope the Congress will take appropriate action in connection with its consideration of the multilateral trade agreements.

There are several areas within the jurisdiction of this Subcommittee where concessions could be made within the framework of the implementing legislation, which would lessen to some extent the adverse impact of the trade negotiations on the domestic industry, although we can offer no proposals for concessions to entirely offset the impact of a change in the method of taxation. I would like to stress again that while the DISCUS membership is divided on the issue of changing the method of assessing tax, it is unanimous in support of our proposals for concessions. These proposals have also received the endorsement of ISAC No. 1, the industry advisory body established by the Special Trade Negotiator.

Our proposals for concessions may be summarized as follows:

I. Extension of tax deferral period

Extend the deferral period for payment of tax on distilled spirits withdrawn from domestic distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands for an additional period of 30 days.

II. All in bond

All operations at distilled spirits plants (production, storage, bottling) would be conducted under bond, including the right to transfer spirits to other bonded premises.

II.A. Repeal of rectification tax

Repeal is recommended only if all-in-bond system (Item II above) is adopted.

III. Extension of all-in-bond concept to wholesale level

Within 1 year of extension of the tax deferral period at distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands, extend

the point of tax payment of distilled spirits shipped in bond to wholesalers (including Control States) who have chosen to bond their facilities and have otherwise complied with relevant government requirements. This proposal is supported by the national association of the Control States; that is, those states which have a monopoly of the sale of distilled spirits.

IV. Reform of Federal Alcohol Administration Act

A violation of provisions of section 5 of the Act relating to trade practices may be prosecuted as a criminal offense under section 7 of the Act. Most of these "violations" would at the most be subject to civil sanctions if any product other than beverage alcohol were involved. The Act should be amended to make such violations civil only, while retaining criminal penalties for such activities as engaging in business without the required permit.

V. Designation of bourbon as a distinctive American product

A commitment should be made by the government to support industry efforts with the EEC and other foreign government representatives to obtain recognitions of Bourbon whiskey as a distinctive American product.

Under the U.S. regulations, products such as Scotch whisky, Irish whisky, Canadian whisky, and Cognac are recognized as distinctive products of Scotland, Ireland, Canada and the Cognac region of France respectively.

"No alcoholic beverage sold in the U.S. can be called Scotch or Irish or Canadian whisky or Cognac unless it has been produced in the appropriate country in compliance with the laws of that country. Similar recognition should be given by foreign nations to Bourbon whiskey, which was originated in this country and is not produced in accordance with the standards of identity for Bourbon in any other country in the world. This distinctive product of the U.S. should be accorded in other countries the same treatment which we give to these products which can claim a unique quality.

"The Congress has recognized Bourbon as a distinctive product of the United States. See S. Con. Res. 19, 88th Congress, 2d Session."

Of these concessions, the most important by far is the proposal for extending the time allowed domestic producers for payment of the heavy excise tax on their products. The request which the industry is making is a matter of simple justice.

In the distilled spirits industry, the Federal Excise Tax (FET) comprises about 64 percent of the value of shipments from the distiller to the wholesaler. Since current provisions require payment of the FET 15 days following the end of each half-monthly tax period, distillers are paying a burdensome FET well before the product reaches the retail level.

Based on a comprehensive survey of wholesalers, about 60 days elapse between the time a shipment of distilled spirits leaves a supplier's warehouse and the time it leaves the wholesaler's warehouse. These 60 days—the period between initial shipment by the supplier and shipment by the wholesaler—may be regarded as "nonproductive."

Consequently, the distillers request that payment of the FET be deferred a period of time long enough so that payment of the FET by the supplier approximates the date of shipment from the wholesaler to the retailer. Since the current FET payment provisions require remittance 15 days following the close of the tax period, distillers request that payment be deferred an additional 30 days.

This additional 30-day deferral is nothing more than a lag, not a reduction, in revenue to Treasury. Based on current levels of FET receipts and short-term treasury bill rates, the cost to Treasury of financing the lag in FET receipts would be about $1 million per day. Since the distilled spirits industry will be saving about $1.2 million per day (this cost is higher because private industry must pay higher interest rates), revenues from corporate income taxes will rise. These additional corporate taxes will reduce the net cost to Treasury to about $.5 million per day. Thus, total cost to Treasury of the additional 30-day deferral will be about $15 million.

Sincerely,

JOHN F. MCCARREN,
General Counsel.

EXHIBIT 1.—*Cost/benefit analysis*

Extension of deferral period:	*Millions*
Cost to government	$13.0
Savings to industry	18.0

All in bond:	
Cost to government	.....
Savings to industry	.....
Repeal of Rectification tax:	
Cost to government	4.0
Savings to industry	4.0
Extension of all-in-bond concept to wholesale level: [1]	
Cost to government	6.5
Savings to industry	9.0
Total costs/savings if all items enacted:	
Cost to government	23.5
Savings to industry	31.0

[1] Assumes grace period for all products matches current grace period extended to bottled imports shipped to wholesalers (15 days).

NOTE.—The cost/savings differential stems from the Treasury's ability to borrow at lower interest rates than industry.

Mr. JENKINS. Mr. Leo Vernon of the Independent American Whiskey Association, Publicker Industries, the Ad Hoc Committee and Medley Distilling Co.; Mr. William J. Schieffelin III, Distilled Spirits Committee for International Trade; and Mr. James H. Lundquist, counsel.

If we can have the entire panel to come forward.

Mr. VERNON. I think we are a separate panel.

Mr. JENKINS. Very well. If you will, please identify yourselves for the record.

STATEMENT OF LEO VERNON, ON BEHALF OF INDEPENDENT AMERICAN WHISKEY ASSOCIATION; AD HOC COMMITTEE OF U.S. DISTILLING COMPANIES; PUBLICKER INDUSTRIES; AND MEDLEY DISTILLING CO.

Mr. VERNON. Thank you.

Mr. Chairman, my name is Leo Vernon and I thank you and the members of your committee for the opportunity to appear at this special hearing. I am speaking on behalf of the Independent American Whiskey Association which represents 42 small- and medium-sized distillers and bottlers who import and bottle foreign spirits and for an Ad Hoc Committee of seven large U.S. distilling companies. I am also appearing for Publicker Industries, a Connecticut company with plants in Pennsylvania and Louisiana, and Medley Distilling Co., a Kentucky distiller.

I am going to talk about the wine gallon you have heard so much about and the wine gallon that quite justifiably you may be tired of, so I hasten to assure you that my primary purpose in appearing here today is to support the program which you heard laid out this morning to help the domestic distilling industry which will certainly be deeply hurt by the elimination of the wine gallon.

I believe the entire industry is supporting the plan and I hope it will be adopted but before getting to it I would like to address myself to the far-reaching effects of changing the wine gallon method. It will certainly hurt the small bottling industry; indeed some of them are going to be forced out of business. Much of our business depends on our ability to import bulk liquors, bottle them here, and sell them at modest prices. If you eliminate the wine gallon, we estimate that more then half the bottling now done in the United States will be done in Canada, Scotland, Mexico, and other countries.

The loss of American jobs has been estimated by the International Brotherhood of Teamsters at 25,000. A few years ago two Scottish labor unions stated that the elimination of the wine gallon would create 6,000 new jobs in Scotland. If we add approximately 5,000 new jobs in Canada, and several thousand in Mexico, we are more than halfway to the 25,000 figure.

American bottlers use 410 million bottles to bottle the liquors we import in bulk. If that bottling is moved abroad, we will lose not only the jobs in American bottling plants but also jobs in the bottling machinery industry, the glass manufacturing industry, the carton manufacturing industry, and so on. Now on top of the loss of jobs, the United States will also lose $120 million a year in distilled spirits taxes and duties, the greater part of which will benefit two Canadian companies and a handful of Scottish companies.

Why, then, should we be changing the wine gallon? Foreign distillers claim that it constitutes a trade barrier but this alleged barrier hasn't prevented the Scotch whisky industry from increasing sales in the United States tenfold in the past 40 years and Canadian distillers from increasing sales sixfold. Let's look at what happened in 1978 alone. Imports from the United Kingdom gained 13 percent but scotch bottled abroad amounted alone to $331 million, an increase of 28 percent over 1977.

Canadian whisky imports increased by 11 percent, Irish whisky by 38 percent, brandy by 32 percent, and rum by 23 percent. Yet last year the sale of American whiskys declined. How can it be said then that the wine gallon is a trade barrier? In the face of these enormous increases in imports, it is pretty obvious that the wine gallon is not a trade barrier at all.

Don't think for a moment that the American consumer will benefit from a change in the wine gallon. One of the Canadian distillers seeking the change assured the Office of the Special Trade Representative that it will not reduce prices because any such reduction would erode the status position of its premium-priced products which sell for $3 or $4 a bottle more than Canadian whisky imported in bulk and bottled here. Over the past 40 years the United States has reduced the duty on Canadian and Scotch whiskys by about $10 a case and never has 1 cent of the saving been passed on to the American consumer.

So we ask again, why should we be making the change? We were told that the elimination of the wine gallon was the linchpin of the negotiations with the Common market and would lead to increased sales of U.S. agricultural products in Europe. We found it somewhat surprising that by the simple expedient of offering the better part of $120 million a year to two Canadian distillers who also own whisky plants in Scotland and to a handful of Scottish distillers we were able to persuade the rest of Europe to increase its purchases of U.S. beef, poultry, rice, fruits, and tobacco. Another surprising aspect of these negotiations is that the Canadian Government has not offered the United States any real concessions notwithstanding our generosity to their distillers.

Nevertheless, I must acknowledge the possibility that this committee will accept the linchpin theory and will decide to eliminate the wine gallon. In that event, however, I think it necessary that

this committee provide some assistance to American distillers to reduce the severe impact that will result. On behalf of the 50 companies which I represent, I ask only that we be given the same right now enjoyed by all foreign distillers with respect to the time of payment of distilled spirits taxes.

Many of you may be unaware that foreign distillers do not actually pay the distilled spirits tax; it is, in fact, paid by their American distributors or wholesalers when they remove the goods from customs bond. We ask the same privilege—that American distillers be able to ship their bottled liquors in Internal Revenue bond to their wholesalers and have them pay the tax when they withdraw the goods from bond. This would give us equality with foreign distillers. Since we realize that putting such system into effect will take perhaps 1 year, we ask that we be given immediately an additional 30 to 45 days to pay the tax.

We are told that the Treasury Department is opposed to this because a deferral for 30 days will cause a one-time lag of approximately $260 million in tax collections. Let us see how that will effect the budget. To replace this deferred tax, Treasury might have to sell $260 million in new bonds at a cost of about $24 million a year in interest but if American distillers don't have to finance this tax for the U.S. Government as they now do, they will be able to save as much as 15-percent interest on the $260 million or about $40 million.

Since the U.S. Treasury collects 46 percent on any additional income earned by American distillers, the Treasury would gain in income taxes about $18 million from the industry. Moreover, the Treasury will gain other revenue in addition to the $18 million. Ambassador Strauss has indicated that agricultural products in the magnitude of $3.8 billion will be benefited by the Trade Agreements. If this does in fact occur, the additional revenue will far exceed the relatively insignficant one-time loss to Treasury that I have mentioned. In any event, it will be insignificant to what we are giving to foreign distillers.

In closing, I would like to emphasize that our industry proposal will in no way diminish the benefits to be gained by American farmers through the Trade Agreements or in anyway impair the value of the concession made by Ambassador Strauss. Indeed, a healthy American distilling industry will be able to continue its purchases of corn, rye, and barley grains from U.S. farms. However, without your help in softening the effect of the U.S. agreement to eliminate the wine gallon method, U.S. distillers will be deeply hurt and so will American farmers.

I thank you for the opportunity of appearing here and if I can answer any questions, I would be very happy to do so.

[A newspaper article follows:]

GLASGOW HERALD Wednesday April 11 1973

Campaign to create 6000 more Scotch whisky jobs

By IAN IMRIE,
Our Industrial Editor

A new campaign, which if successful could bring 6000 more jobs to Scotland, is being mounted by the Scotch whisky industry and the General and Municipal Workers' Union.

While they appear to be working independently of each other, both groups are exerting strong pressure to try to persuade the Government that action must be taken to change an American law which means that whisky imported in a bottle has a 17½ higher tax than the same bottled whisky imported to the United States in bulk and bottled there.

The GMWU are raising the question with Scottish MPs and at next week's annual conference of the Scottish Trades Union Congress. The Scotch Whisky Association have been trying to have the position changed for years and are now having talks with the Department of Trade and Industry.

DISCRIMINATION

An official of the association said last night: "The Department are currently looking into this matter to see if they can assist us. The discrimination is not against Scotch but against whisky imported in a bottle."

Mr George Robertson, to the United Kingdom Government.

While it was Britain's biggest dollar earner and annual production was nearly 170 million proof gallons, only 23,000 out of two million Scottish workers were engaged in producing, distilling, and packaging whisky, which made it only fifth in the Scottish industry employment league.

About 11 million proof gallons are exported to the United States each year in bulk, compared to about 21 million proof gallons in bottles.

Mr Robertson said: "Although output of whisky is continuing to grow at a considerable rate, only one new major bottling hall complex has been built in the past five years meaning, at best, that employment in the industry has stayed static.

"More and more of our most famous national product is being sent to the US and elsewhere in anonymous tankers of bulk blended whisky to boost foreign bottling interests. It should be remembered that employment in the whisky industry is not concentrated in the distilling side but in the bottling process.

"This union calculates that by exporting bulk blends of whisky to the US in present quantities it costs Scotland between 5000 and 6000 jobs."

Mr. JENKINS. Thank you very much, Mr. Vernon, for your very fine statement.

Do you have any questions at this time, Mr. Rostenkowski?

Mr. ROSTENKOWSKI. No questions.

Mr. JENKINS. Mr. Cotter.

Mr. COTTER. Thank you, Mr. Chairman.

I want to congratulate you on a fine presentation, Mr. Vernon.

A change from wine gallon to proof gallon will mean approximately a $120 million windfall to a certain group or foreign based importers, is that correct?

Mr. VERNON. Yes.

Mr. COTTER. So what you are attempting to do is to enact this program, so to speak, to give American distillers somewhat of a—well, put them in a better position competitively than they would be if we didn't enact it because of this windfall which would go to the foreign distillers; is that correct?

Mr. VERNON. That is exactly so, Mr. Cotter.

Mr. COTTER. It will not be totally equitable but it will give us some help in this country.

Mr. VERNON. Yes; very much needed help.

Mr. COTTER. Thank you.

That is all I have, Mr Chairman.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I, too, would like to congratulate you for a very fine presentation.

I have a great concern with our domestic industry but particularly the small bottlers that you represent, and you state that this change in tax treatment will put some of them out of business. But the picture that you paint is so bleak even without this change in tax treatment that with the increasing share of the market for imported spirits and the declining share of the market for domestic spirits, wouldn't a lot of them close anyway with or without this change in tax treatment?

Mr. VERNON. Well, there is no doubt of that. In a competitive market there are some that survive and some that don't. Inevitably the marginal producer in any industry may go under. But we are in this situation: Many of them have a viable business, they live off it and it represents a certain amount of income to them and their small stockholders. Since we are making a rather substantial change, some of these marginal people will go under where if no other change were made they would be able to survive. The wine gallon has been in effect for over 100 years and regardless of the merits or the demerits of the system, businesses have been built up in the shadow of that protection and would continue perhaps for another 30 or 40 years if a big blow like this did not come along.

Mr. VANDER JAGT. With respect to the program that you have endorsed and that others have testified for this morning to soften the blow, if we make the change will it soften the blow enough to save some of those concerns and make the difference between their remaining in business rather than going out of business?

Mr. VERNON. Yes. As a matter of fact, this relief is vital to the small man as compared with the larger producer. The larger producers can borrow money, their profit margins are larger than the small chaps, and if there is a little more interest burden perhaps

they can get by. To the little man who has to borrow money at 15 percent, you know, it is prime plus, and 20-percent balances, so that his effective rate can be 15 or 16 percent. To carry the tax is a very substantial thing to him and if he can be relieved of the need to borrow at 15 percent, the amount of distilled spirits tax necessary to carry his low price goods it will make quite a difference to him. This is a burden that the foreign distiller who makes a much larger product does not carry at all.

Mr. VANDER JAGT. Thank you very much. I think you make a very good case.

Thank you, Mr. Chairman.

Mr. VERNON. Thank you so much for the opportunity.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. No questions.

Mr. JENKINS. Mr Guarini.

Mr. GUARINI. Can you spell out for us why our liquor industry seems to be constantly losing ground against foreign competition? What are the selling factors in that? Is it the exotic, that our people like to drink foreign made products? Is it that the cost of our industry is not competitive with some other parts of the world like Scotland, or is it the superiority of their product? Could you give me an insight into that, sir?

Mr. VERNON. Yes. Well, I hope so. I have had certain views on this for the last 32 years as to what is wrong with the American industry. In the first place there are changing tastes and inevitably no matter how good your product is the public is going to change and it will not want next year what it may have wanted 5 years ago so that the one trend which is very clear is the trend toward life.

Now the American bourbon is required by law to be made heavy which is another thing I had quite a scrap about with the governing agency. It is required to be put in new wood. A new barrel at the present time is $70 apiece, which when used cannot be used again, and it is sold to the foreign distillers for practically nothing. The new barrel gives bourbon a heavy flavor which perhaps could be lightened if the regulations were changed. My own feeling is that the trend toward lightness, toward vodka and gin which have very little favor compared with whiskey, is something we cannot blame on anybody.

The public is going in that direction and it has the right to have that so I cannot say that the foreign producers have taken advantage of anything in particular in order to gain the dominance that they have now. That is a trend but their cost of production is much lower because of our regulations and since they don't have to carry the tax their cost of doing business is so much lower and then of course there is always the prestige of import because there is no question that now in our affluent society the label "imported" has a prestigous connotation and it is going to give them an advantage.

So regardless of all the factors that come to it, the bottom line is this. We are in trouble whatever the reasons and a severe blow like this is just going to hurt us much more and accelerate the demise of the remaining American distillers. Now I don't see bourbon totally disappearing or blends totally disappearing. They will reach their level and presumably stay with a little help from the regula-

tions but at this time an added blow is something that will hurt us very much and what we are asking for is something that we should have had a long time ago anyway.

We are only asking to pay the tax the way the foreigners have been doing for 40 years. So we say, all right, give us now what we should have had 40 years ago because you are going to give them so much more that they don't need but again if we are going to be sacrificed on the linchpin theory, very well, let's try to keep us from being hurt too much.

Mr. GUARINI. Then there are things administratively we could do to dress up our act to be in a better position?

Mr. VERNON. Yes, indeed; and one thing is to give us an immediate 30-day extension which could be done administratively to pay the tax.

Mr. GUARINI. Is the bottle industry a growing industry in our country? Does it affect other than just distilled spirits? Is it a growing, sound industry in our country today?

Mr. VERNON. The bottling industry?

Mr. GUARINI. Yes.

Mr. VERNON. Indeed it is a very important industry in that many industries related to it are very important. I was just thinking if we eliminated 410 million bottles in this industry that travel from American glassmaking plants to American bottling plants and all those 410 million bottles are no longer produced in the United States but are produced abroad—of course not 100 percent are going to be gone but let's assume that—I was trying to figure out how many trucks we would not produce to carry those bottles from the glass factory to the distilling plant and how many teamsters would be unemployed who presently carry those 410 million bottles.

It is so easy to get up a study to say what this study says but I have found in the past there have been many academicians who have made studies of industry and I have had only two things about academician studies of industry where they have not been in the industry. They are very much like the fellow trying to describe a room by looking into the keyhole, they are generally wrong. The other thing is they generally come up with the conclusion that the people who pay them their fee for the report want them to come up with, they show that flexibility. So when we talk about the loss of jobs that we heard here, I can discuss it because we have had other hearings and other professors with other reports and they showed the same lack of insight as this one.

Mr. GUARINI. Thank you for your thoughtful and splendid presentation, sir.

Mr. JENKINS. Mr Lederer.

Mr. LEDERER. Mr. Vernon, I thank you for your testimony. I am proud of our Philadelphia lawyers, although I am not one myself and I am also proud of that.

A point that I am interested in is the effect on our State and local taxes, and the possible loss of revenues to our State and local governments. Particularly, say, with your industry right in our home city; our tax base is going to erode. I am not satisfied with the report that Treasury gave to us, and I would be interested to know what the industry can tell us about the effect the elimination

will have, on local revenues. I know it is going to be terrible in Puerto Rico. Anything your industry could give us, I would like to champion that cause.

Mr. VERNON. Thank you. I think we can get something together and we would be delighted to submit additional supplemental information.

Mr. LEDERER. Thank you.

[The material follows:]

Philadelphia, Pa., April 27, 1979.

Hon. RAYMOND F. LEDERER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN LEDERER: I was delighted to meet you last Wednesday at the hearing on the wine gallon issue and was greatly impressed by your interest in the problems of Pennsylvania distillers.

You asked that I advise you as to the effect on state local revenues in the event that the elimination of the wine gallon adversely affects the industry. In the past two days I have been able to obtain information in this regard from three Philadelphia companies—Publicker Industries Inc., Kasser Distillers Products Corp. and Charles Jacquin et Cie. These companies pay the following taxes to the City of Philadelphia: real estate, use and occupancy, general business, sales and use and wage tax. In addition they pay to the Commonwealth of Pennsylvania the following taxes: capital stock, unemployment, production, corporate net income and withholding on personal income. The taxes paid by these three companies to the City of Philadelphia amounted last year to approximately $1,200,000 and taxes paid to the Commonwealth aggregated more than $1,500,000. All three companies devote a considerable part of their business to bottling imported liquors and selling them at modest prices and would be affected most deeply by the elimination of the wine gallon. Any adverse effect on them would of course diminish the City's and Commonwealth's revenues.

In addition to these three companies, there are the Michter Distillery in Schaefferstown, Pennsylvania and Schenley Distillers in Aladdin, Pennsylvania. These two companies also have a substantial number of employees and could be hurt by the trade treaty unless tax deferral relief is provided.

I earnestly hope that you and the other members of the Committee will support the industry proposal so as to achieve equality with foreign distillers relative to the time of payment of distilled spirits taxes on domestic liquors.

Sincerely yours,

LEO VERNON.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. Just one brief question.

Many of the jobs that you are referring to, Mr. Vernon, are jobs in a very capital intensive area, aren't they?

Mr. VERNON. Yes; they are.

Mr. SCHULZE. And they are not jobs that are easy to come by, you are eliminating a pretty substantial investment at the same time.

Mr. VERNON. That is right, and producing the heavy machinery which is needed. If you go down the line, it becomes geometric almost and each one relating to the other and I don't think that the report went back to see the domino relationship with all of that.

Mr. SCHULZE. Therefore, the impact of the elimination of one job is far greater than it might be in some other industry.

Mr. JENKINS. Quite so. I quite agree with you.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. Vernon, it interested me a moment ago when you talked about the whisky barrel problem. None of us want to see any domestic business go out of business, quite the contrary. We want to put you in as competitive a position as we can. If the Government can do something to relax its regulation or taxes, we owe you that.

I am not familiar with the distilling industry. Is this an FDA regulation that you cannot use this barrel again or who?

Mr. VERNON. It is the regulation of the Bureau of Alcohol, Tobacco, and Firearms Division. I want to point out, however, that there are some technical aspects to the problem. Many years ago the industry itself was divided on the subject of the new barrel. The preprohibition practice was to have some new barrels and some old barrels and nobody cared whether you used an old barrel or a new barrel, and the only reason they used the new barrel was they used to ship in barrels at that time, rather than in bottles. Bottles was a late development but nobody paid any attention to the barrels. After repeal, as you can see, the industry is a very competitive industry. Some people make bourbon, and some people are blenders, and some people make gin.

When you talk about the industry, you are talking about the industry with a lot of factions in it which are competing with one another. Back in 1935, one faction of the industry was trying to put the other out of business and insisted that they adopt a regulation that all bourbon be made entirely in new barrels. That is how that came to be. Since that time, we have been trying to have hearings held which will modify that but there have been some members of the industry who have insisted that we adhere to that despite the fact that it produces a high cost and a heavier whisky because obviously some people who are successful in their bourbon business would not like to encourage the influx of other people who might be able to produce bourbon more cheaply.

Whatever it is, now that barrels have gone to $70 a barrel, which means that the advantage to foreign distillers is about $1 a gallon, I hope we have reached the point now where the Bureau will once more look into the problem of bourbon and its definitions and will modify its requirement so that a combination of new-barrel and old-barrel whisky—there is no question that bourbon requires a certain amount of new wood and, therefore, some new-barrel whisky is required to make bourbon but to make it in 100-percent new barrels I think is self-destructive and I hope the industry can get together in supporting a modification of that position.

Mr. MOORE. Let me ask you this. Should we be able to help you with the modification of that rule to let you do whatever you want to do concerning these barrels and you would reduce the competitive edge that a foreign distiller has by $1 a gallon, how would that compare with what we are about to do here in changing the wine gallon? Would that put you back about even?

Mr. VERNON. No; because not everybody is in bourbon. The ones that are going to be hurt the worst by this wine gallon thing actually are the small importers of foreign whisky who bottle it here so that the relief in the bourbon situation will help only the bourbon producers.

Many of the people I represent are small. They are not distillers, they are what are called rectifiers or blenders. They buy bulk whisky from others and they import Canadian whisky and Scotch whisky and thus they have a low, low overhead and don't have the extra expenses that the big distiller has. They are able to work on, say, $2 a case or $1.50 a case and get by. They would not be affected. They would be affected in this sense.

Let me go back. To the extent that bourdon is cheaper or could be more cheaper, we would be able to hold our own much more successfully both as to quality and as to cost so that it would be a very important thing but it would not take the place of what I am now saying with respect to the tax. The two are totally parallel, they are unrelated to one another. We need relief in many ways and the bourbon is one that the tax is the most pressing at this time.

Mr. MOORE. Mr. Vernon, you made the comment that you need relief in many ways. I would very much appreciate it if you would submit to us additional ideas or ways that we could make you competitive to what I am seeing from the MTN which is in fact that your industry is one of many that may be adversely affected. The whole idea is many of the adverse effects you are suffering from may well be governmental action regulations or tax laws or whatever that we can remedy to make you competitive. So maybe, perhaps, instead of trying to protect some industries we ought to be looking the other way in terms of trying to make them competitive and I think we have the power in the Government to do that in some cases. I would appreciate you letting us know what other forms of relief you will need because certainly we want to see you stay in business if the MTN passes and if we cannot come about with this tax change that you are asking for.

Mr. Chairman, I ask that the record be held open for this.

Mr. VERNON. That is the most welcome statement I could hear. I would be delighted to submit the information. I could submit it almost off the top of my head but I would rather spend a couple of days on it, and I think you very much for the opportunity.

Mr. MOORE. I would appreciate your sending me a copy as well as sending it to the chairman of the committee.

Thank you, Mr. Chairman.

[The material follows:]

Philadelphia, Pa., April 27, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VANIK: At the hearing before the Subcommittee on Trade held on April 24, Congressman Moore suggested that I list for the Subcommittee any regulations or statutes which unnecessarily restrict operations by American distillers.

There are, in fact, a number of areas where the regulation of the distilling industry could be liberalized without any jeopardy to the revenue or to the American consumer. However, the Treasury Department, at the instance of OMB, has proposed, and the distilling industry is supporting, a plan to permit all distilling, blending and bottling operations to be conducted in bond. If such a plan is adopted and a reasonable code of regulations is adopted by the Treasury Department it would eliminate most of the unnecessary restrictions which affect our industry's operations. An all-in-bond system would give us the same flexibility which Canadian and Scottish distillers now enjoy in their own countries.

Therefore, I would like to defer the examination of the problem until such time as the all-in-bond system is adopted and definitive regulations are written. If, at that time, it appears that the regulations are unduly restrictive, I would like the opportunity of calling the matter to the subcommittee's attention for whatever assistance it may provide.

There is one area which will continue to trouble the American distilling industry, and that is a regulation, administered by the Bureau of Alcohol, Tobacco and Firearms under the Federal Alcohol Administration Act, which requires that bourbon whisky be aged exclusively in new white oak barrels. In the early years after the repeal of prohibition (1934) certain powerful distillers sought restrictions on the labeling of whisky which they felt would hurt their competitors more than themselves. Thus in 1936, certain distillers persuaded the predecessor to the Bureau of Alcohol, Tobacco and Firearms to adopt the new barrel requirement for bourbon. Prior to the adoption a competing distiller had developed a good market for bourbon aged partly in old barrels. The regulation effectively stopped the sale of this brand since it could no longer be labelled "bourbon".

For many years, a number of distillers opposed any change in this regulation, feeling somehow that the restriction would prevent competitors from marketing a less costly product. We have now reached the point where the supply of white oak has diminished substantially and the demand for white oak for flooring, furniture and other uses is so great that the cost of a new barrel is $70 and some distillers cannot satisfy their immediate barrel needs.

It is ironic that the new barrel requirement not only imposes a cost burden of about $1.25 a gallon which foreign distillers do not bear, but it also serves to impart to bourbon whisky a heavy flavor at a time when the lightness of foreign whiskies makes them more attractive to consumers then the heavier whiskies.

Once the Congress has resolved all of the issues relating to the trade treaty it is my intention to ask the Bureau of Alcohol, Tobacco and Firearms to hold a hearing to review the new barrel regulation. At this moment, the needs of the industry with regard to the deferral of the distilled spirits tax are of vital importance and should take precedence over any other issue affecting the industry.

I would like to express my appreciation once more for the patience and interest which you and the other members of the Committee showed with relation to the problems which will flow from the elimination of the wine gallon. If the domestic industry is allowed to ship its case goods in bond to wholesalers as foreign distillers now do, some of the adverse effects of the wine gallon elimination will be offset and greater equality with foreign distillers in the American market will be established.

Sincerely yours,

LEO VERNON.

Mr. JENKINS. Thank you very much for a very excellent presentation Mr. Vernon.

Mr. VERNON. Thank you, Mr. Chairman.

Mr. JENKINS. I see that Congressman Udall has entered the hearing room. We would be delighted to hear our colleague from Arizona.

Welcome to the committee, Mr. Udall.

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. UDALL. Thank you, Mr. Chairman.

I hope it won't be too much of a shock to turn the committee's attention from bourbon to tomatoes. I am sure Mr. Vander Jagt will survive the transition.

Mr. LEDERER. Mr. Chairman, I would go along with that if they are Jersey tomatoes.

Mr. UDALL. Mr. Chairman, I will be very brief. I have a narrow subject but one of critical importance, I think, not only to Arizona and New Mexico but to the people of the United States. This committee and the country's affairs are going to be dominated for the next few years by how we make the transition from cheap energy sources to very expensive and diverse energy sources. One

of the aces in the hole, one of the most critical things before us, is to develop our relationship with Mexico and it deals with all the sensitive questions, not only the newly found oil and gas suppliers that they have which may rival Saudi Arabia in volume but from the Mexican standpoint, there is trade and commerce and immigration and all of these sensitive questions. Our Government is about to kick the Mexicans in the teeth at about the time when these negotiations are going on and it is unnecessary, it is damaging, therefore, I propose a brief amendment or a short amendment to correct this situation.

I am here today to urge the subcommittee to take whatever steps are necessary to prevent the Antidumping Act from being used as an unnecessarily protectionist device to eliminate all existing imports of perishable produce. Although I am quite certain that the act was never intended to be used in this way, the Treasury Department is apparently interpreting the act in a current case so as to require each individual sale of imported perishables to be made at above its full cost of production. That interpretation of the act is nothing less than preposterous.

It ignores legislative history and economic reality. It threatens the jobs of hundreds of thousands of Mexicans, many of whom will be forced to seek employment in this country. It threatens the sole industry and economic heart of an Arizona city that is dear to my heart. And it promises to eliminate nutritious foods for many Americans in many months of the year while raising vegetable prices generally by eliminating a healthy competitive force from the marketplace.

An interpretation of the act which would require each single sale of produce to exceed cost of production does not square with the reality of agricultural economics. Indeed, the Robinson-Patman Act, the domestic antiprice discrimination statute, specifically provides that there shall be no liability for price changes resulting from the actual or imminent deterioration of perishable produce or other factors affecting market prices. it is simply insane to suggest that a farmer who has a deteriorating crop on his hands is not going to sell it for what ever he can get and yet the Treasury is about to rule that every single sale, regardless of the time of year and the state of the market, has got be made above the cost of production.

I think the Treasury Department fails to understand that growing tomatoes, and that is the major product we are talking about, is not like manufacturing television sets. you cannot stop production by throwing a switch nor can you put your product in a warehouse when prices are low. No produce grower—in Mexico or in Ohio—would expect to recover his full costs, even if he knew what they were, on every sale. Below cost sales from time to time are a necessary and perfectly normal part of the agriculture business.

The investigation in which Treasury is considering this approach involves five winter vegetables—tomatoes, eggplant, squash, cucumbers, and peppers—imported from Mexico. However, the precedent set in this case could and no doubt would be applied to all other imported vegetables, as well as fruit and other perishables. Imports of perishables would dry up since no importer could live

with a requirement that he sell everything above full cost when he cannot even find out what the cost is until the end of the season after he has made his sales. Predictions based on past performance would be no protection for costs in this business vary considerably from year to year and from one grower to the next and yet each and every sale would have to be above the cost of production.

The impact on the American consumer will be very harsh. Half of the winter vegetables that we eat are imported. Since domestic supplies cannot possibly fill our entire needs, the result of blocking imports will simply be to drive up prices and create scarcities of this important source of nutrition.

The current dumping case is the latest in a series of attempts by Florida growers to cut off winter vegetables supplied from their only competitors in Mexico. They have in the past persuaded the Agriculture Department to impose discriminatory size restrictions which were thrown out by the courts and they have tried, so far unsuccessfully, to obtain legislation that for no good reason would require the Mexicans to pack their tomatoes in the same kinds of crates and boxes and manner that Florida has chosen.

These efforts are not defensive. It is not as though the Mexicans have been cutting sharp inroads into the U.S. market at the expense of Florida. Rather, Mexico has helped develop the U.S. market and now their competitors want to force them out so they will have a monopolistic control. The fact is that Mexico's and Florida's share of the U.S. vegetable market have remained quite stable over the past 10 years. Florida's production of the five vegetables in question has been trending steadily upward. Tomato production, for example, was 36 percent higher last year than a decade earlier. The acreage planted is virtually the same as it was 10 years ago despite greatly increased productivity. There is plenty of room for both suppliers.

The Florida growers have found a quirk in the law which coupled with a compliant Treasury Department will enable them to wall off import competition entirely. We should find that unacceptable. Unless we remedy that quirk in the law, however, the Florida growers will be free to increase prices to the consumer unchecked by any competition from any other source.

Florida does have reason to run scared over the long run but this has nothing to do with imports. We have here, and I think it has been submitted to the committee, a report from the University of Florida, the head of their food and agricultural science, who has pointed out that tomato cost per acre rose from $390 a year to $702 a year and he predicts they will rise to $1,300 by 1985 because it takes seven times as much fertilizer in the poor Florida soil to produce these kinds of crops. His conclusion was that the farmers eventually are going to have to switch to other less energy dependent crops and when this happens Mexico will be our only source of winter vegetables.

How can we be so absurd as to allow an act which obviously was not meant to be applied to perishables to be used to discourage imports from Mexico and to drive the farmers there into other lines of business and sour and poison our relationship with our great neighbors to the south? I cannot believe that Treasury is obliged to apply the law in this unthinking fashion without regard

to every day realities but since it seems bent on this approach we in Congress must rewrite the law to avoid a ridiculous and costly result.

In closing I would call the committee's attention to three things. There was excellent article in the New York Times on Sunday by our colleague Chairman Henry Reuss of the Banking Committee entitled "A Word On Behalf of the Mexican Tomato" which reviews some of the advisory and comes down hard in favor of the position I have just argued.

Also, I would advise the committee that our colleagues Mr. Frenzel and Mr. Mikva have both written to the State Department and to the administration on this question in strong support of the modest amendment that I am suggesting to the Antidumping Act.

Thank you, Mr. Chairman. I appreciate very much being heard this morning on this important issue.

[Attachments to the prepared statement follow:]

[From Lake City Reporter, Mar. 6, 1979]

FLA. FARM PRICES TOO HIGH BY 1985, RESEARCHERS PREDICT

TALLAHASSEE.—Florida's agricultural industry already one of the most energy dependent produce industries' in the world, will cease to be competitive with the rest of the nation by 1985, agricultural researchers warned state senators Tuesday.

The head of the University of Florida's Institute for Food and Agricultural Sciences (IFAS) told a Senate Ways and Means Subcommittee that Florida's agricultural production methods are already obsolete, and have been since the Arab oil embargo of 1972 brought up an end to the era of cheap, plentiful energy.

IFAS Vice President Ken Teefertiller asked the subcommittee for an additional $10 million in research funds over the next two years in an effort to "redirect," the state's agricultural research to find a low-energy, non-fossil fuel based means of production.

"Without such adjustments, by the mid-1980's Florida's national agricultural ranking will tumble from the top dozen to the lower third, greatly hampering our overall economy," Teefertiller told the senators.

That warning about the health of the state's second largest industry comes on the heels of recent predictions that Florida's largest industry, tourism, may be crippled if rising energy prices forces the nation into stricter conservation methods.

"By the most conservative estimates, world oil and natural gas prices will at least double by 1985," and IFAS report to the senate predicted. "Florida, which uses more oil and natural gas per acre for agricultural production than do other states, is hit much harder by each new price increase, eroding any competitive edge the state once enjoyed."

Teefertiller said that Florida farmers have become so dependent on energy consumption because of two basic factors.

First, the state's infertile, porous soil requires seven times more fertilizer per acre than the national average. And second, the state's subtropical climate which allows for the production of a greater variety of crops than most states, also provides a year-round haven for pests and diseases.

"Almost all of the state lies below the frost line," Teefertiller said. "And without an annual hard freeze to wipe out the pests, we are left pretty much dependent on petroleum-based fertilizers."

Teefertiller said that in 1972, the state's citrus growers were spending $87 an acre on energy costs, while its tomatoe growers were spending some $393 per acre.

By 1977, citrus growers were spending some $133 an acre, and energy costs for tomatoes had soared to $704 per acre.

He predicted that by 1985, under the state's present technology, citrus will cost $708 per acre to produce, while the energy costs for tomatoes will have risen to $1,307 an acre.

Teefertiller's research program, which calls for a 16 percent budget increase over the next two years, calls for a stepping-up of several on-going IFAS research efforts. Including:

The genetic improvement of plants, or "plant cloning" in an effort to develop strains of disease-free crops less dependent on pesticides.

A "biological nitrogen fixation," program, in which scientists are treating plants with bacteria, enabling the plants to produce some of their own fertilizer from the nitrogen in the air around them.

An "integrated pest management," program, which depends on the biological control of pests rather than on their chemical eradication.

Along these lines, IFAS faculty have recently introduced parasite wasps in the South Florida area to control the citrus blackfly problem there.

The use of alternate energy sources, including solar crop drying techniques, and "biomass" conversion on the use of plant and animal waste-to fuel production.

Teefertiller said that one problem the state will face in the future will be in convincing farmers that some crops they have been growing for years should be sacrificed in favor of different, less energy-dependent produce.

"How are you going to tell the farmer in Homestead that he's got to stop growing tomatoes and start growing eggplants?" subcommittee chairman Curtis Peterson, (D-Baton Park) asked.

Teefertiller replied that it may be necessary to set up "development commodity" committees to work with state agricultural extension agents in convincing the industry to change.

"I am convinced that South Florida is going to become increasingly more important to the nation as a main source of winter crops, unless we are to depend more and more on Mexico and Central America," Peterson said. "And if that means growing less sugar cane in favor of different vegetables, then we have to start making those decisions now."

[From the New York Times, Apr. 22, 1979]

A Word On Behalf of the Mexican Tomato

(By Henry S. Reuss)

Washington.—The tomatoes Americans find in their supermarkets every winter frequently taste like pasteboard.

This is because Florida tomatoes are picked when green and gassed to make them look ripe.

That's a shame, considering that Mexico produces beautiful vine-ripened tomatoes all winter long and would love to ship them north in far greater quantities than we permit. Unfortunately, we treat the Mexican tomato like an illegal alien, with regulations and restrictions intended to make it as tough as possible for the tomato to cross the border and find its way to United States tables.

Cuba used to supply the bulk of our winter tomatoes. But when Fidel Castro declared himself a Marxist-Leninist, we responded with an embargo on trade, including tomatoes.

Florida then decided to get into the business in a big way.

The United States Corps of Engineers had drained the huge wetlands between Lake Okeechobee and the Everglades. The Florida tomato is grown in this reclaimed limestone and coral soil.

(The Corps of Engineers project has had an unfortunate side-effect, as Corps of Engineers projects sometimes will. Water now drains costly into the ocean before reaching the Everglades, thus imperiling a unique national treasure. John Good, superintendent of Everglades National Park, says: "We're worred, The vital aquifer is no longer being replenished as it used to be. Eventually the 'Glades' could be destroyed.")

Back to the tomatoes. Instead of being picked frequently, as they ripen, they are mass-harvested only three times a year, to save labor. Because many of the tomatoes are green and unripe, they are placed in methylenegas chambers for 24 to 36 hours until they turn red, or at least pink. Such premature picking robs the tomato of its taste and much of its nutritional value. In a study of tomato maturity, Professors C. B. Hall and E. D. Gull, both of the University of Florida, found that as much as 78 percent of Florida gassed-green tomatoes were inmature.

Mexican tomatoes, by contract, are harvested every day during the season, as they ripen.

The Florida growers' organization—the Florida Tomato Committee—naturally tries to keep Mexican tomatoes out of the United States.

In the late 1960's, the committee persuaded the Agriculture Department to decree larger minimum sizes for vine-ripened tomatoes than for gassed-green ones. The impact fell where it was intended, on the Mexican growers and their United States importers. In 1969, the importers went to the United States District Court presided

over by Judge John J. Sirica to have the Agriculture Department's order set aside. At the trial, the plaintiffs played a taped record of a Florida Tomato Committee strategy session, in which one of the largest Florida growers, Paul DiMare, was heard to say: "It will eliminate our competition and that's what we're trying to do. Let's face it, we're trying to eliminate our competition . . . We are mainly eliminating it out of Mexico." Judge Sirica, noting that this was the first use of a taped recording in his courtroom, invalidated the department's discriminatory regulation.

Since then, United States Government agencies have assailed the Mexican tomatoes with charges, never proved, that they are tainted with pesticides and deceptively packaged. Even the bureau of Narcotics has gotten into the act, periodically emptying whole truckloads of tomatoes at the border in vain searches for illicit drugs hidden among them.

The last Congress saw an unsuccessful effort to limit the number of tomatoes per packing crate. Currently, the Treasury Department is weighing the request of the Florida growers that the anti-dumping law be applied against Mexican tomatoes.

Tomatoes account for more than 5 percent of Mexico's exports, with some quarter of a million agricultural workers now growing them. As we exclude Mexican tomato imports, we invite uprooted Mexican tomato farmers and their families to try to make it across the border to add to the problem we already have with illegal immigrants. As Roel Garcia, Mexico's Foreign Minister, said recently, "If you put pressure on the tomatoes, then we will have more undocumented aliens going to the United States."

The great Mexican-American tomato war should cease. A peace treaty would mean not only that Americans could buy real tomatoes but also that one block to better United States-Mexico relations would be removed.

Mr. JENKINS. Thank you very much, Mr. Udall.

Mr. Guarini.

Mr. GUARINI. Mr. Udall, you are also making a case for all other kinds of products produced besides tomatoes?

Mr. UDALL. The amendment we are proposing relates to perishables. We want to treat perishables here the same way that Robinson-Patman treats them in domestic sales. It is simply dumb and and stupid and unjustified to have a rigid kind of rule about the cost of production for a perishable that might be totally applicable to shoes or television sets or something that is not perishable.

Mr. GUARINI. You made a good case for tomatoes and you say that should be extended to other perishables?

Mr. UDALL. Perishable imports.

Mr. GUARINI. Thank you.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to thank our colleague for shifting our hearings from bourbon to tomatoes. He has done it in his usual lucid and entertaining style.

Taking on the combined strength of the Florida growers does signal to me that our colleague has no intention of running in any Florida primaries in the near future. [Laughter.]

Mr. UDALL. Well, anybody who lost 14 primaries to Jimmy Carter has got to be humble. [Laughter.]

Mr. VANDER JAGT. As I recall it was 14 losses by a total of 3,400 votes in all 14.

Mr. UDALL. The people of Florida will not see me up and down that State, and I am not sure in the light of my position here today it would do much good if I did go down there.

Mr. VANDER JAGT. I do want to commend the gentleman. I think he makes a very good case and calls it forcefully to our attention. I think you make a good case for how absurd it is to try to treat

perishables as you would a television set and obviously on some individual sales they are going to sell it both ways.

The one concern that I have in correcting the obvious problem that you called so well to our attention, can it be done in such a way that it could not then be seized upon by the foreign government as a device to, on a regular basis, sell their products at below cost?

Mr. UDALL. My experts don't think so and I certainly would not want that to be the result and we will work with you very carefully in drawing the language tightly to see that we don't do that.

Mr. VANDER JAGT. I thank you for a fine statement.

Mr. UDALL. This committee always produces truth and justice and fights for the American way and I know I can count on you.

Mr. JENKINS. Thank you.

Mr. UDALL. Thank you, Mr. Chairman.

[The following was subsequently received:]

MAY 2, 1979.

Hon. CHARLES A. VANIK,
Subcommittee on Trade, House Committee on Ways and Means,
Washington, D.C.

DEAR CHARLIE: On Wednesday, April 25, I testified before the Trade Subcommittee on the urgent need to amend the Antidumping Act—which you will have an opportunity to do in connection with the Multilateral Trade Negotiation package—in such a way as to afford distinct treatment to imports of perishable agricultural goods.

An amendment of this sort is very important to me. I believe if you read my testimony, it will be important to you as well. Without such an amendment, virtually all imports of fresh produce will be eliminated due to an erroneous interpretation of the Antidumping Act which the Department of Treasury is about to make and which will treat agricultural and industrial goods alike, contrary to Congress' intent in passing the Act. Instead of ensuring fair competition for domestic producers, which was the real purpose of the Antidumping Act, an interpretation of this sort will guarantee a small group of winter vegetable growers no competition at all—to the clear detriment of the American consumer.

I understand that an amendment of the sort advocated in my testimony will be included on the agenda when you consider the MTN package. I urge you to support it. If it does not pass, American consumers will be denied high quality imported fruits and vegetables in the winter months of the year, and food prices inevitable will rise as a result of severe shortages. Moreover, our increasingly important relations with Mexico will suffer greatly but needlessly.

I have attached my statement to the Subcommittee, along with a copy of a recent New York Times article by our colleague Henry Reuss, both of which address the urgent situation presently facing winter vegetable imports.

If you have any questions on this matter, please do not hesitate to call me or Bob Reveles of my staff.

Sincerely,

MORRIS K. UDALL.

Enclosures.

A TALE OF TOMATOES * * * AND ECONOMICS

(By K. S. Kinney)

RACINE, Wis.—"You could call it a tale of two tomatoes," Henry Reuss told the receptive group from the league of Women Voters.

The tale was about a "Florida tomato industry which shouldn't be there at all," but exists only because trade barriers made economically and gastronomically superior Mexican tomatoes unavailable in the United States.

The tale also put the congressman from Wisconsin clearly on the side of the free trading angels and clearly with most of the league members attending the three day educational conference on foreign trade at the Wingspread Conference Center. He spoke Saturday.

Democrat Reuss used the tomato tale as a prime illustration of the folly of protectionism and its tendency to saddle American consumers with both higher prices—in this case, prices giving Florida growers higher incomes—and lower quality—in this case, leaving consumers with tomatoes tasting like pasteboard.

THE MORAL

The losses for both pocketbook and tastebud were forced on consumers by a U.S. industry that could supply the need for tomatoes in winter only because the growers were able to prevent the superior Mexican products from competing north of the border. Reuss said that besides harming the consumer, such protectionism encouraged illegal immigration by those Mexicans who could have found employment in a healthier Mexican tomato industry.

The moral of the story (at least the economic moral) was that " * * * the less developed world ought to be allowed to make more of the low cost goods we use." Reuss reminded his listeners that goods needed by lower income groups were those that faced high import barriers, forcing poor people to pay more for food, clothing and shoes.

It was a moral dear to the hearts of those—like most of Reuss' audience—who support the trade agreements. The league will probably be one of the few interest groups actively lobbying for passage of the agreements resulting from the "Tokyo Round" of trade negotiations now being concluded in Geneva.

CONGRESSIONAL VOTE

Congress will vote on the nontariff provisions, which generally call for a notable lowering of trade barriers, later this spring. Opposition is expected to be strong, especially from groups likely to be hurt from increased import competition—such as Wisconsin cheese producers who would face a higher quota for cheese imported from New Zealand.

The administration's problem is that while harm from the trade agreements will be concentrated in a few industries, benefits should flow to all consumers who would face lower prices and greater choice, but who undoubtedly would not organize themselves to lobby Congress.

The league undoubtedly would, as Reuss suggested when he ended his address by commending the agreements reached at Geneva and expressing his hopes for congressional passage—"with the help of the League of Women Voters."

And groups such as the league will concentrate on the wider public benefits of the agreements—those outlined by Ruess.

Mr. JENKINS. Next we have the Distilled Spirits Committee for International Trade, William J. Schieffelin III, and James H. Lundquist, counsel.

Mr. Schieffelin, your entire written statement will be made part of the record and you may proceed as you wish. You may give the entire statement or you may outline it for the committee.

STATEMENT OF WILLIAM JAY SCHIEFFELIN III, CHAIRMAN OF SCHIEFFELIN & CO., ON BEHALF OF DISTILLED SPIRITS COMMITTEE FOR INTERNATIONAL TRADE, ACCOMPANIED BY JAMES H. LUNDQUIST, COUNSEL

Mr. SCHIEFFELIN. Than you very much.

Mr. Chairman and members of the Subcommittee on Trade, I am William J. Schieffelin III, chairman of Schieffelin & Co., 30 Cooper Square, New York City, and appear before you today as a member of the Distilled Spirits Committee for International Trade. My firm imports wine and distilled spirits and I am the seventh generation of my family in a direct line from father to son to head our firm which was founded in New York City in 1781.

For the record I want you to know that the wine gallon method of assessing imported distilled bottled spirits has troubled my company for 111 years. Therefore, I appear before you today to register my support and that of all DISCIT members for the elimination of the wine gallon method of taxing imported distilled spirits. Each of

our member firms imports bottled distilled spirits, including Scotch whiskey, Canadian whiskey, gin, cognac, liquers and other products. It shoud be noted that DISCIT members account for over 40 percent of U.S. domestic production of distilled spirits. A list of our members is attached to this statement.

[The list folllows:]

Members: The Buckingham Corp., Kobrand Corp., The Paddington Corp., Renfield Importers, Schenley Industries, Schieffelin & Co., Joseph E. Seagram and Sons, Inc., Somerset Importers, Ltd., and Hiram Walker and Sons, Inc.

Mr SCHIEFFELIN. Mr Chairman, I have actively opposed the wine gallon assessment anomaly for more than 20 years. My firm has litigated the issue in the courts and strongly supported the administration in its efforts to negotiate settlement of this issue during the Kennedy Round of trade negotiations. Now, if reports I see are correct, Ambassador Strauss has succeeded in negotiating ample concessions for removal of this highly discriminatory tax. In view of the fact that your announcement No. 19 of April 10, 1979, outlines the precise discriminatory practices resulting from this statute, I will not burden the record with a detailed description of the law. I must say, however, that elimination of this form of taxation applicable to certain imported bottled spirits will have a salutary effect of importers and domestic producers alike. We believe that elimination of this major U.S. nontariff barrier to trade will help American products gain fair and equal treatment in major export markets.

Our economic studies of the industry relating to this issue have been submitted to members of the subcommittee and staff. Based on this information and on reports from DISCIT members we conclude that no major change in historic trade patterns relating to distilled spirits will result from the removal of the obsolete wine gallon basis of taxation. Additionally, we have found that there is little or no surplus foreign bottling capacity available at this time or in the foreseeable future. Accordingly, we do not see any negative impact on either the domestic distilling or the U.S. bottling industry. Without a doubt, American products already bottled in the United States will continue to be bottled in the United States. Also, abolition of taxation on additional water content in imported bottled spirits will, we believe, tend to moderate inflationary trends in the industry.

I do not have detailed information on the negotiations carried forward by the STR. However, we know that exports of American products will benefit from abolition of the wine gallon tax. Until conclusion of the Tokyo Round, U.S. distillers may have found it difficult to sell distinctly American quality products abroad, particularly in the European Community, because of certain limitations on advertising. Now, as a result of our negotiations, it is understood that advertising discrimination is very much a thing of the past. This is a beneficial concession within the distilled spirits sector. It is also understood that additional benefits to the United States economy are to be found in improved access for a number of American products, including tobacco, rice, citrus and preserved fruits and poultry products. We applaud the overall results of these negotiations.

In the subcommittee announcement of April 10 reference was made to repeal of the existing ratification taxes on domestic distilled spirits: the so-called all-in-bond approach. These two items apply to domestic production rather than imports and, therefore, are somewhat out of the scope of my expertise. Nevertheless, after checking with members of DISCIT, I can state that we support any changes submitted by your subcommittee which would help the domestic distilled spirits industry.

In summary, Mr. Chairman, I and my associates in the Distilled Spirits Committee for International Trade fully support elimination of the historic inequity of wine gallon taxation. We stand ready to assist you and your staff in every way. I will, of course, be happy to answer any questions you may have.

I would like to thank you very much for the opportunity of appearing before you and would like to submit for the record a statement to the Committee on Ways and Means of the United States House of Representatives on behalf of Hiram Walker & Sons, Inc., dated April 25, 1979.

Mr. JENKINS. Thank you. That will be made a part of the record.

[The statement follows:]

STATEMENT ON BEHALF OF HIRAM WALKER & SONS, INC.

Following recent press statements, Hiram Walker & Sons, Inc. has asked that the following statement be submitted on its behalf to the Committee on Ways and Means of the U.S. House of Representatives:

The closing of the Hiram Walker facility in Peoria, Ill. has nothing at all to do with the wine gallon/proof gallon issue currently being discussed as part of the overall trade package.

It is important to note that more than 80 percent of the distilled spirits produced and bottled in Peoria are made in the United States, and all products will continue to be produced and bottled only by American companies. The only reason for the closing of the plant was that it is an obsolete facility that would cost approximately $66 million to modernize. The plant is not closing immediately, it will be phased out over three years and during that time Hiram Walker will build a thoroughly modern $37 million facility in Fort Smith, Ark. Approximately 200 people will be employed initially at this facility. All products that are not produced and bottled in Fort Smith will be produced and bottled only by American firms. Hiram Walker is currently seeking to enter into business agreements with such companies.

In light of the large capacity and the substantial needs of Hiram Walker, it is unlikely that any one firm will be able to handle the bottling volume; and those firms that will handle the volume, will have to substantially increase their work force. It should be noted that Hiram Walker currently bottles some of its products under such arrangements. It might also be added that the bottling plants that could handle this capacity are located in numerous sections of the United States including the state of Kentucky.

Hiram Walker's current employees in Peoria will be assisted by the company in finding new employment in the area. Peoria is one of the few cities in the United States that has little or no unemployment problems, and major industries are planning substantial increases in their work force over the next five years.

Hiram management states unequivocably that it does not have any intention of bottling any distilled spirits currently produced and bottled in Peoria, outside of the United States. Many people continue to think of Hiram Walker only as an importer whereas in fact they do have and will continue to have a substantial production capability in the United States.

Mr. JENKINS. While I support the change in the bill, obviously I would have no objection to the tax changes that have been suggested by Mr. Purdon, an earlier witness before us, in the domestic industry.

Mr. SCHIEFFELIN. We would be very much in favor of anything which will assist the domestic industry, yes, sir.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I thank you for your testimony and for being here today.

You suggested that the domestic industry would not be threatened by this change away from the wine gallon method because there is no additional bottling capacity in foreign lands. I can assure you when earlier witnesses testified and showed headlines of 6,000 additional jobs that will be created in Glasgow, don't you think that if there is not the capacity that they will soon be able to develop the capacity?

Mr. SCHIEFFELIN. I was sorry to miss the earlier testimony due to a late flight. I am familiar with the headline to which you refer, sir. I think it unlikely in the present climate of investment opportunity in the United Kingdom that such eagerness that is expressed by the headline would become fact.

Mr. VANDER JAGT. You also said that this shift would help gain fair and equal treatment for our porducers in terms of exporting to other lands. We also had testimony earlier this morning that there are a whole variety of nontariff barriers that other lands have and that we have 1 percent of the market in Great Britain, one-tenth of 1 percent in France and less than 1 percent in Japan. Very little changes have been made in terms of arguing as to penetrate the foreign market. That would lead me to the conclusion, without pretending to know a great deal about it, that our producers do not have very fair and equal access to foreign markets.

Mr. SCHIEFFELIN. In response to that comment, sir, it seems to me that certain brands of American produced spirits have had some notable success amongst our trading partners abroad. This has been limited somewhat by the inability to advertise American whiskies in those markets, certain of them, as compared to either domestically produced spirits or spirits produced from other basic ingredients.

I believe some significant progress has been made in overcoming that barrier in addition to which I believe also some significant progress has been made in connection with the appellation of bourbon as being a distinctly American product. This happens to be a matter which I believe personally land my firm has believed for 198 years and we very much believe that cognac and sherry should be produced only in Spain and that bourbon should be produced only in the United States, and I think some significant progress has been made in this direction.

Mr. VANDER JAGT. You also testified that you would have no objection to any relief that we could plrovide for our domestic industry and explained that that is a little bit out of our field of expertise which is very understandable, of course, but could you not move beyond no objection to active support for the proposal that we defer for 30 days the collection of the tax on domestic spirits so that the domestic spirits tax policy would be the same as the tax policy tht we afford to imported spirits? Does that not make excellent sense, that we least keep our domestics on an equal footing with the foreign?

Mr. SCHIEFFELIN. I completely agree with that. It seems to me that it would be very wrong for us to ask for correction of an

anomaly and at the same time take the position of a dog in the manger and blocking the domestic industry definitively, yes.

Mr. VANDER JAGT. I thank you very much.

Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Guarini.

Mr. GUARINI. No questions.

Mr. JENKINS. Mr. Lederer.

Mr. LEDERER. No questions.

Mr. JENKINS. Thank you very much for your testimony.

I have one further question with regard to the nontariff barrier. One of the witnesses indicated that wholesalers in the United Kingdom control to some extent all the pubs and the retail outlets, and therefore, domestic bottlers cannot get their products into those establishments anyway. This is the point of the tariff barrier, is it not? Are you familiar with that?

Mr. SCHIEFFELIN. I am not familiar in detail, sir, with markets outside of the United States.

Mr. JENKINS. What about the Canadian practice that would require that Canadian imports from this country be blended with Canadian whiskey?

Mr. SCHIEFFELIN. Unfortunately, sir I am not at all familiar with the Canadian law nor the provisions thereof. However, I am certain that members of DISCIT can supply an answer to that question if you would so desire.

Mr. JENKINS. Thank you very much.

Thank you for your testimony.

Mr. SCHIEFFELIN. Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Lederer.

Mr. LEDERER. Mr. Chairman, for the record, this morning we have received testimony from several groups on the wine gallon issue. It has been requested that the subcommittee consider additional taxes beyond what STR has recommended and also change to the bond system. I note that my colleague from Louisiana has stated that it is very desirous of making our domestic distilled spirits competitive and he has asked Mr. Vernon to place the view of the distilled industry in the record. Accordingly, I request that further discussion on this issue be taken up by this subcommittee in the near future and would so recommend to Chairman Vanik.

Mr. JENKINS. Is there discussion?

Mr. GUARINI. I agree with the recommendation.

Mr. JENKINS. Without objection, that request will be granted.

Our next panel, from the National Outerwear & Sportswear Association, consists of Morton Cooper, Morton Bauman, Stanley Nehmer, and Ralph Edwards.

Welcome to the committee. We appreciate each of you appearing.

Do each of you have a prepared statement? Both of those statements will be made a part of the record in their entirety and you may proceed as you desire. Mr. Cooper will begin.

STATEMENT OF MORTON COOPER, PAST PRESIDENT, NATIONAL OUTERWEAR & SPORTSWEAR ASSOCIATION, ACCOMPANIED BY MORTON BAUMAN, EXECUTIVE DIRECTOR, AND STANLEY NEHMER, CONSULTANT

Mr. COOPER. My name is Morton Cooper. I am president of Cooper Sportswear Manufacturing Co., Inc., Newark, N.J. I am also past president of the National Outerwear & Sportswear Association, Inc., which is the national trade association whose members account for the great bulk of domestic production of leather wearing apparel.

On the panel also is Ralph Edwards of Cape Girardeau, Mo., who will present a short statement.

Appearing with me are Morton Bauman, executive director of our association, and Stanley Nehmer, a consultant to our association.

INTRODUCTION

The National Outerwear & Sportswear Association welcomes this opportunity to appear today because the leather apparel industry and its workers have suffered for many years from burgeoning imports and we are concerned that the implementing legislation now under consideration in connection with the MTN package may hurt, not help, the manufacturers and workers in this traditional industry which is also among America's oldest industries.

I want to sketch briefly for the subcommittee the impact of imports on this industry, the efforts we have made to solve the problems we face from imports, our experience in dealing with the executive branch, particularly the Treasury Department, and our concerns regarding the implementing legislation for the multilateral trade negotiations.

We think our trade negotiators have a heroic job in negotiating the various international codes of conduct. But, with all respect to our negotiators, the codes are nowhere as important as the legislation to implement U.S. participation in these codes. What the new U.S. countervailing duty statute will say, for example, is much more important than the provisions of the code on subsidies and countervailing duties.

IMPACT OF IMPORTS ON THE LEATHER APPAREL INDUSTRY

At the beginning of this decade, the outlook for the domestic leather garment industry looked very promising due to fashion changes which had created rapidly increasing demand for leather garments. The optimism of workers and firms soon turned to gloom for while retail sales did climb as a result of strong demand, much of the increased domestic market was accounted for by low wage foreign supply, not by increased domestic output.

Past actions by the U.S. Government have contributed to the rising trend in imports. In the tariff area there was the Kennedy round negotiations which cut the U.S. duty on leather wearing apparel in half, the stimulating effect of which was almost immediately reflected in import data for 1968 and succeeding years. A second tariff action, some years later, was equally devastating and it provided a major boost to the penetration of the U.S. leather wearing apparel market by low cost foreign producers. This was

the inclusion of leather apparel in the list of products accorded duty free entry under the generalized system of preferences, effective January 1, 1976.

For a relatively high unit value item like leather apparel GSP exemption from the normal 6 percent ad valorem duty gave an unwarranted competitive advantage to developing countries which already had successfully penetrated the U.S. market by virtue of their low labor costs. However, further compounding the import problem of the domestic industry was the fact that many of the same countries which benefited from GSP zero-duty treatment for leather apparel also provided subsidies to their producers and exporters under various foreign governmental incentive programs. In these circumstances, domestic manufacturers found themselves simply unable to compete with foreign imports and, as a result, there has been a structural deterioration in the domestic industry, with half of the firms of a decade ago no longer in business. Those that remain are unable to maintain efficient levels of capacity utilization which would increase their productivity and lower unit costs by spreading overhead over a larger volume of production.

EROSION OF FIRMS AND JOBS HAS TAKEN PLACE DUE TO IMPORTS

Of 185 firms that produced leather wearing apparel in 1972, the International Trade Commission confirmed in its landmark unanimous injury finding on subsidized imports from Uruguay in April 1978 that almost half had since "discontinued such production." The same ITC report showed profits of the domestic producers to be way down, with many establishments reporting losses on all operations. As for jobs, the leather wearing apparel industry in 1974 had a work force of 10,100 persons. This was reduced to 8,500 in only 2 years. Since then, declines in production as a consequence of imports has led to the loss of at least 3,000 additional jobs with the result that current total employment in this industry is now estimated at not more than 5,500 production workers. What is even more galling is that this sharp reduction has been occurring even though there has been a significant expansion in total demand for leather apparel.

The leather apparel work force in this labor intensive industry has been especially hard hit by import competition because the workers, being largely unskilled, comprised of women and minority groups and falling into older age groups, have limited mobility and retraining potential for other employment. A job once lost in the domestic leather apparel industry in effect means indefinite unemployment. The consequences of such chronic unemployment also means indefinite social and economic costs which must be shouldered not only by the individual and his family but by his community and the Nation at large. The industry is heavily concentrated in urban areas, such as the New York metropolitan area.

SPIRALING IMPORTS HAVE CAPTURED GROWING MARKET SHARE

The leather wearing apparel industry consists primarily of small- to medium-sized firms which have seen their output shrinking. Sprialing imports have captured a growing share of the domestic market at the expense of domestic output. Between 1974 and 1978,

domestic leather apparel consumption in the country, on a value basis, increased by 54 percent, while domestic shipments declined by 14 percent. During the same period, imports increased a staggering 208 percent, or four times the growth in the domestic market.

Since 1968, imports as a percent of apparent consumption showed an almost continuously uninterrupted growth with the exception of only 1 year, 1974. By 1977, total imports accounted for over 50 percent of the U.S. market in terms of value. In 1978, this share exceeded 60 percent as imports totaled $318 million. Such increased imports occurred in the last 4 years even while domestic shipments showed actual declines.

Moreover, since official trade data are compiled only on a value basis, the import penetration is substantially underestimated. When measured based on quantity, imports as a percent of domestic consumption is estimated for 1978 to have been 72 percent. To our knowledge, no other domestic industry of this size confronts so high an import penetration rate.

RELATIONSHIP OF SUBSIDIES TO IMPORT GROWTH AND INDUSTRY DETERIORATION

Developing countries are notorious for their use of export subsidies as a device to promote their internal economic development. They see government fiscal incentives as justified by their need to protect local infant manufacturing industries and to promote their expansion through exporting. Many of these products are labor intensive in which the exporting countries already have a decided advantage in terms of much lower labor and material costs. To the extent that subsidies are granted by foreign governments to their producers and exporters, these convey additional unfair competitive advantages to the foreign suppliers in the U.S. market, thereby enabling them to considerably undersell the counterpart U.S. product. The leather apparel industry in the United States has been a classic example of the inexorable debilitating effect of such subsidized unfair import competition.

It has been documented that some of the developing countries have carefully nutured their leather apparel industry over the years, first by prohibiting exports of raw materials and later by restricting the export of finished leather. In some countries, Uruguay and Colombia, for example, the leather product industry has outgrown purely local raw material sources of supply and these countries are now significant purchasers in the U.S. market—which is uniquely one of the last open markets where rawhides can be purchased without restriction. One consequence of such increased foreign demand has been upward pressure on domestic raw material prices.

In the light of the primarily small scale companies which operate in this industry with a very slim profit margin and with production costs which have a heavy labor cost element, there is little management flexibility for effecting price declines as a means of offsetting lower foreign selling prices. In these circumstances, low-wage, low-cost developing country suppliers have a clear competitive cost advantage in the U.S. market. When the additional benefits of foreign export subsidies are factored into developing country ex-

ports price quotations, the disparity with the domestic price quotation is unbeatable and overwhelming to U.S. manufacturers.

As a result whereas 10 years ago the developed countries were by far the more important foreign suppliers of leather apparel in the U.S. market, their position has been dramatically replaced by the developing countries. For example, Spain and Italy together accounted for approximately one-fourth of the imports into the U.S. market in 1968 but their collective share is now down to less than 4 percent and overall the developing countries account for some three-fourths of all leather apparel imports into the United States.

GOVERNMENT RELIEF ACTIONS HAVE BEEN REPEATEDLY SOLICITED BY THE INDUSTRY—WITH POOR RESULTS

As the foregoing makes clear, the gains made by imports at the expense of domestic production and employment are not due to style or quality but primarily due to price advantages which not only can be attributed to lower foreign labor costs but also to the grant of zero-duty performance under GSP and the maintenance of foreign export incentive programs which convey competitive advantages to exporters in the U.S. market.

The leather apparel industry and its workers have sought to redress these unfair trade aspects by turning to the executive branch for the relief actions which Congress provided for in the Trade Act with regard to countervailing duties and the generalized system of preferences.

Unfortunately, it has been an uphill battle. The industry failed in its effort to eliminate preferences on leather apparel until this year when the President, at long last, withdrew leather wearing apparel from the preference list. Such action had been turned down twice previously, presumably because foreign policy considerations had been considered overriding by the executive branch. However, after a third petition and a fourth public hearing, the administration could no longer ignore the economic plight of the industry. It recognized that the industry's very survival was at stake in a continuation of preferences, and accordingly these were removed effective March 1, 1979. The executive branch erred in having placed leather apparel on the preference list in the first place and rectification of the injustice was long overdue. We appreciate the fact that the import senstivity of this industry has been recognized and corrective action taken.

With respect to foreign subsidies, leather wearing apparel has figured in a number of petitions to the Treasury seeking the imposition of countervailing duties to offset subsidized exports to our market. These petitions, which were initiated either by the National Outerwear & Sportswear Association, Inc., or the Amalgamated Clothing & Textile Workers Unions, have related to leather apparel imports from a number of countries, including Taiwan, Korea, Argentina, Uruguay, Columbia, and Brazil.

In its handling of these petitions, Treasury has given evidence of considerable administrative foot dragging and delays. It has made decisions which appear based more on U.S. foreign policy considerations than on the ecomonic facts in each case. In short, Treasury has not administered the countervailing duty statute in our opin-

ion as forcefully or as vigorously as the Congress or the business and labor communities have had a right to expect. More than that. Treasury has misused its statutory authority.

INDUSTRY EXPERIENCE REFLECTS POOR PERFORMANCE BY TREASURY IN ADMINISTERING COUNTERVAILING DUTY STATUTE

We join with so many others in criticizing the Treasury Department for its poor performance in administering the countervailing duty statute. We are critical of Treasury for—

Missing statutory deadlines;

Stretching the authority of the Trade Act of 1974 with regard to the granting of waivers;

Accepting unverified information from foreign representatives as a basis for its determination; and

Reducing the calculated amount of a subsidy and hence the countervailing duty in questionable ways.

TREASURY HAS MISSED STATUTORY DEADLINES

One of the important changes intended to strengthen the countervailing duty statute as incorporated in the Trade Act of 1974 was the 12 month time limit established for the Treasury Department's consideration of countervailing duty petitions. Notwithstanding the statutory time limits, Treasury missed its deadline in the case involving Argentine leather apparel where the 12 month statutory deadline for final determination was January 21, 1978, but where the decision was actually made on January 17, 1979, 1 year later.

The effect of failing to make its determination within the statutory deadline was to deny the National Outerwear & Sportswear Association, as the petitioner, due process.

I may note that in correspondence relating to our protest at this missed statutory deadline, the Treasury Department has admitted its "staff could—and should—have followed this case more punctually so that the statutory deadlines imposed by the Congress would have been met." A statement prepared by Treasury's Office of Tariff Affairs in this regard then went on to suggest by way of an apology that:

> With the knowledge that there would probably be a determination that no bounties or grants were being paid, the matter was not accorded priority attention * * *. It happened that a considerable workload engulfed the Office of Tariff Affairs at the time the final determination was due and the months thereafter in which this matter was given inadequate attention.

Obviously the vast Treasury Department did not see fit to allocate the necessary resources to permit it to meet its statutory obligations.

TREASURY HAS MISUSED ITS WAIVER AUTHORITY

Treasury has stretched the authority of the Trade Act of 1974 with regard to the granting of waivers. The Trade Act permits waiver of countervailing duties by the Secretary of the Treasury if three criteria are met. These are that: one adequate steps have been taken to reduce substantially or eliminate the adverse effect of a bounty or grant; two, there is a reasonable prospect that

successful trade agreements will be entered into with foreign countries providing for reduction or elimination of barriers to trade; and three, the imposition of the additional duty would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Treasury has consistently interpreted these three criteria—all of which must exist before a waiver can be issued—so loosely as to permit it to justify any action administratively decided upon. A glaring example of a horror story with respect to the stretching of Treasury's waiver authority is that related to Treasury's handling of its determination that Uruguayan subsidies on leather wearing apparel were equivalent to 12 percent of the export price. Could anyone reasonably conclude that the imposition of a countervailing duty on Uruguayan leather apparel would seriously jeopardize the conclusion of the multilateral trade negotiations?

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

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

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

The Uruguayan waiver case is by no means unique as an example of an unacceptable stretching of Treasury waiver authority for in another petition affecting Brazilian textiles and apparel, including leather wearing apparel, Treasury went ahead and waived the countervailing duty of almost 38 percent on Brazilian textiles and apparel on assurances that subsidies would be reduced by half by January 1, 1979, and by the remaining half by January 1, 1980. In the interim of 1 year, Brazil is being allowed to continue subsidies without having countervailing duties applied to the detriment of American firms and workers.

With respect to leather wearing apparel, since this item then received zero-duty entry under GSP when imported from Brazil, the Treasury Department requested the ITC to undertake an investigation to determine import-related injury, as provided under the Trade Act for the imposition of countervailing duties, but at the same time the Treasury Department announced in advance of the ITC's determination an intention to waive countervailing duties with respect to men's and boy's leather wearing apparel from Brazil. It seems inconceivable in the face of Treasury's unfortunate experience with respect to the Uruguayan countervailing duty waiver on leather wearing apparel that it would repeat the pattern.

TREASURY HAS ACCEPTED UNVERIFIED INFORMATION FROM FOREIGN REPRESENTATIVES AS A BASIS FOR ITS DETERMINATION

Treasury makes most of its determinations with regard to the size of the countervailing duty or waiver of countervailing duty on the basis of data submitted to foreign governments or firms. In neither case are the data verified by Treasury. Admittedly, it is difficult for Treasury to verify data as submitted by foreign interests but as least an effort should be made to assure the American petitioner that, indeed, the data on which a determination was made by Treasury are reliable. Treasury says it must take the word of a foreign government, yet in the case of Uruguay just cited, the word of the foreign government was anything but good.

Moreover, sometimes there has been simply no word at all. For example, as the result of a request through the Freedom of Information Act, it has been learned that although Treasury waived countervailing duties on Uruguayan leather products at the end of January 1978 based on certain assurances from the Uruguayan Government, the factual information on which to base the waiver was not available to Treasury at the time of the waiver action. On May 15, 1978, 5 months after the waiver by Treasury, the Minister of the Uruguayan Embassy in Washington was told by Treasury that in October 1977 Treasury had requested of the Uruguayan Government:

> a detailed description * * * of the laws providing for the various offsets accepted by Treasury * * * as well as a detailed itemization of how the offsets were calculated for each of the product sectors.

That information had not been made available by Uruguay.

Apparently a copy of the December 28, 1977, decree of the Uruguayan Government reducing the reintegro was also not submitted in January 1978 before Treasury waived the countervailing duties.

At least Treasury was still inquiring about it from the Uruguayan Government in mid-May 1978.

TREASURY HAS FOUND WAYS TO MINIMIZE SUBSIDIES

The decision by Treasury with respect to petitions involving leather apparel imported from such countries as Colombia, Korea, and Taiwan shows clearly that Treasury has sought ways to minimize the amount of a subsidy which foreign governments have bestowed on leather apparel, thus minimizing the resultant countervailing duty as was the case for Colombian leather apparel, or leading to a conclusion that the amount of the subsidy is of a de minimis nature, therefore not requiring a countervailing duty, as was the determination for leather apparel from Taiwan and Korea.

While the countervailing duty statute provides that the duty imposed should be one to offset the net amount of the foreign government subsidy, Treasury in point of fact has stretched the concept of "net" to reduce the amount of subsidy found to exist by such items as taxes paid by the foreign industry involved even though those taxes would be paid in the absence of any subsidy, devaluations of foreign currency over the period between the time contracts are entered into and the subsidy is paid, the effect of inflation in the foreign country, customs duties paid by industries supplying the subsidized industry, the discount on export certificates when they are sold on the local stock exchange, and similar esoteric factors.

Nonetheless in the case of Colombian leather wearing apparel even when such exotic offsets were taken into account in Treasury's calculation, Treasury still identified two specific programs which were determined to be clear bounties and under which producers of men's and boys' leather apparel for export received subsidies equivalent to almost 6 percent of the value of shipments to the United States—an amount in fact equivalent to the normal 6-percent duty leviable on such goods in the United States.

LEGISLATION TO IMPLEMENT THE MTN IS OF CRITICAL CONCERN TO THE LEATHER APPAREL INDUSTRY—COUNTERVAILING DUTIES

From the foregoing it is clear that we are very seriously concerned with the way in which the future countervailing duty statute will be shaped in the implementing legislation which this committee and the Senate Finance Committee are now considering with the administration. We believe very strongly that the new countervailing duty statute should provide an effective and expeditious means for an industry such as ours to bring a case and to receive relief. This means that the vast discretionary authority which exists under the present countervailing duty statute must be substantially reduced so that the administering agency will act in accordance with the intent of Congress in this area.

Unfortunately what we see in the preliminary decisions taken by this committee and the Senate Finance Committee is a countervailing duty statute which will make it even more difficult than in the past for an industry such as ours to secure relief from foreign government subsidy practices. I am referring here to such provisions as the following:

1. A FILING FEE OF $1,000 OR $5,000

We believe it is unconscionable for any petitioner to be required to pay a fee to the Federal Government to secure the relief that may be prescribed under a statute. To do so would create a precedent of far-reaching proportions. In the case of a small industry such as ours, the requirement that we post $1,000 or $5,000 will effectively inhibit our future efforts to secure redress from the grievances which I have noted above. Certainly ample authority will exist on the part of the administering agency not to accept a frivolous petition. No filing fee should be required to accomplish that purpose.

2. INJURY TEST

The injury test requirement which the United States has agreed to is certainly going to be an inhibiting factor with regard to future petitions. This is not because an industry such as ours cannot show injury from subsidized imports. Indeed we did so in the case of subsidized Uruguayan leather apparel as I noted above. It is rather the fact that an injury test will require time and expense to go before the International Trade Commission. No one should be under any illusion that you merely go before the ITC without full and adequate preparation of one's case, including engaging counsel or consultant to represent you.

Furthermore, for a small industry such as ours where management at the top is not in depth, the time it takes to spend a day in Washington, such as I am doing today, means time away from my plant and supervision of its operations. Companies in our industry are not among Fortune's 500 firms.

We are very much concerned that the definition of injury that will be included in the countrvailing duty statute will require a higher threshold of injury than has been the case under the present antidumping law. Our international obligations under the new subsidies code do not require this. And if the new countervailing duty statute is to provide an effective means of dealing with unfair trade practices, the definition of injury should not be made more stringent than under the present antidumping statute.

3. CONTINUED ROLE OF TREASURY DEPARTMENT

No action has been taken to date to remove the implementing authority under the countervailing duty statute from the Treasury Department. In its various press releases this subcommittee has indicated that the Treasury Department will continue to administer this statute. For the reasons which I have cited in my testimony and on the basis of other information which has been transmitted to this subcommittee over the last several months, we think it is wrong for the Treasury Department to be permitted to continue to have authority over this program. Despite its ample resources, the Treasury Departmernt has not seen fit in the past to allocate the necessary manpower to do an effective job under the statute.

We believe that philosophically the Treasury Department is not in tune with the aims of the statute in that it incorrectly views a countervailing duty as a protectionist restriction to trade rather

than a device to insure fair trade. Thus, we believe that Treasury is incapable of administering the statute as the Congress intends it to be administered. There is no reason to believe that the poor performance by the Treasury Department since the Trade Act of 1974 was passed will be corrected under the new legislation. Assurances in legislative history are meaningless, particularly when the leadership of any cabinet department changes. Indeed we heard from a high-ranking Treasury Department official with responsibility in this area that commitments made during the passage of the Trade Act of 1974 by the previous administration were not binding on the present administration.

We would urge, therefore, that the authority for administering the countervailing duty statute be removed from the Treasury Department. We hope that this function could be transferred to a new Department of Trade but in the absence of legislation to create such a department we would recommend that this function be transferred to the Office of the Special Trade Representative or to the Department of Commerce.

4. FOREIGN ASSURANCES TO TERMINATE INVESTIGATION

Vast discretionary authority is still contemplated under this statute. We are particularly concerned that this subcommittee and the Senate Finance Committee seem to be heading in the direction of permitting certain assurances from foreign entities to be accepted as a basis for terminating countervailing duty proceedings. I am referring here to provisions under consideration which would permit assurances with regard to price or with regard to quantitative limitations on exports to be used as a basis for terminating countervailing duty proceedings.

Whatever the merits of price assurances might be in connection with antidumping proceedings, we do not believe that there is a place for such assurances in the countervailing duty statute, particularly since the price assurances under consideration are those which would be sufficient to offset the injury, not those to offset the amount of the subsidy. There is a vast difference between these two concepts. This would be inconsistent even with the present practice under the antidumping statute where the price assurances that are accepted in some cases are those which offset the dumping margin, not those which offset the injury which may be found.

Even if provision is made for the petitioner to go before the International Trade Commission to challenge such a determination, we are not only once again getting into the realm of extra time and expense but putting a highly subjective matter before the International Trade Commission. It would be extremely difficult to use any objective criteria to determine whether the price assurances are adequate to offset the injury. On the other hand, price assurances that would offset the amount of subsidization is a more easily determinable concept.

Assurances with regard to quantitative limitations are equally objectionable insofar as the countervailing duty statute is concerned. What kind of quantitative limitations? Voluntary restraint arrangements or orderly marketing agreements? Does U.S. Customs administer such quantitative limitations or are they allowed

to be unilaterally administered by the exporting country? No voluntary restraint arrangement has worked as originally intended. There is no reason to assume that any foreign entity will administer such voluntary limitations in the same way that U.S. Customs would. At what levels are the quantitative limitations set? Who makes that determination? Here, too, you are getting into a negotiating situation where foreign political policy relationships will loom large.

Assurances with regard to price and quantitative limitations represent in our thinking nothing more than an extension of the waiver authority which Congress has recently extended to the end of September 1979. It is the same kind of discretionary authority that has been abused under the waiver authority and we see no reason to expect that if such assurances are permitted that the abuses of the waiver authority will not be continued in the future. We would urge, therefore, that no assurances with regard to price or quantitative limitations be permitted in the new statute as a means of terminating a countervailing duty investigation.

NEW NEGOTIATING AUTHORITY

We have one other matter of concern to bring to the attention of this subcommittee. Apparently the Senate Finance Committee has tentatively agreed to give the executive branch new 5-year authority to cut tariffs and to extend indefinitely authority to negotiate on nontariff barriers, the latter on the basis of the so-called fast track procedure. We find such provisions, particularly those relating to further tariff cuts, to be completely inconsistent with the concept of implementing legislation. We see no reason why such a proposal for further tariff cutting should not be considered by the Congress in the normal legislative fashion. We think it is wrong at this time for such tariff cutting authority to be extended until the results of the Tokyo round have been made known and the effects thoroughly digested. But the worst part of this proposal is that it is part of implementing legislation when it bears no relationsip whatsoever to implementing the results of the multilateral trade negotiations.

We find the request to extend negotiating authority on nontariff barriers to be less objectionable but we question very seriously whether that should be handled on a fast track basis in the future. There is no reason why new nontariff barrier agreements cannot be submitted to Congress for its approval in the normal legislative matter, instead of subjecting such consideration to the up or down approach of the present Trade Act of 1974.

Mr. JENKINS. Thank you very much, Mr. Cooper.

Mr. Edwards, we will be very happy to hear from you at this time.

STATEMENT OF RALPH L. EDWARDS, CHAIRMAN OF THE BOARD, RALPH EDWARDS SPORTSWEAR, INC.

Mr. EDWARDS. My name is Ralph L. Edwards. I am chairman of the board of Ralph Edwards Sportswear, Inc. We have our headquarters and main production facilities at 334 North Broadview Street, Cape Girardeau, Mo. I appreciate the opportunity to appear today before this committee to comment on certain aspects of the

implementing legislation with regard to the multilateral trade negotiations going on. I am appearing before this subcommittee as an individual on behalf of the firm that I founded over 33 years ago and the 320 employees who work with me.

Our firm is a member of the National Outerwear & Sportswear Association and I subscribe completely to the statement of Morton Cooper which has been submitted to the subcommittee. Mr. Cooper's statement provides ample evidence on the unfortunate experience of the leather apparel industry over the past several years in dealing with the Treasury Department and our lack of success in getting that Department to enforce the countervailing duty statute effectively and vigorously. He has also drawn attention to our concerns that the implementing legislation for a new countervailing duty statute should provide an effective and expeditious means for an industry such as ours to bring a case and have it receive the attention of the administrative body.

There are certain specific aspects of the implementing legislation which I feel also should be called to this committee's attention.

There are two provisions of the countervailing duty statute to implement the new code negotiated in Geneva which are essential not only to the leather apparel industry but to other American industries which have shared our experience over the past several years. In this connection, I should like to detail several suggestions as follows:

One, if a foreign government forbids or prohibits the export of an internationally traded raw material or commodity while at the same time the U.S. Government does not do the same, the effect of this action is to depress the price of such raw materials in the foreign county, giving foreign manufacturers a competitive advantage with regard to their raw material that is in effect a subsidy—an indirect subsidy resulting from an indirect action of a foreign nation.

Specifically here I am referring to the action of such governments as Brazil, Uruguay, India, Argentina, and Colombia which prohibit the export of their salted hides and skins. Such action depresses the local price of hides in these countries and grants to the local leather product manufacturer a price for this basic raw material, leather, far below that which leather product manufacturers in this country and other free trading countries pay. The net effect is that the foreign leather product manufacturer is able to effectively under-price U.S. manufacturers in shipments to this market and to Canada.

Unfortunately, Treasury does not accept this distorting tactic as a subsidy, although I am advised that the Special Trade Representative's Office agrees with my position that in a case where an export restriction artificially depresses the domestic market price in the foreign country, the difference between the domestic and world market price is a subsidy. John Grenwald said that they have found that this is a subsidy and that they have discussed this matter with a Treasury official involved in the administration of the countervailing duty law and on a personal and formal basis the man from Treasury concurred. I have a record of that.

I recommend to this subcommittee that this matter be spelled out in the implementing legislation to close a serious loophole in the present countervailing duty statute.

Two, another serious loophole exists in cases where the foreign government eliminates its subsidies on exports to the United States, but increases its subsidies on exports to other nations. We have a very serious case in point. You have heard from Mr. Cooper about the difficulties which the U.S. leather apparel industry has faced in its effort to secure a redress against the unfair trade practices of the Uruguayan Government with regard to that country's exports of leather apparel to the United States. A key to the recent action by the Treasury Department in eliminating the countervailing duty on all Uruguayan leather products exported to the United States was the action of Uruguay in doubling its subsidy on the export of leather products to all countries other than the United States at the same time that it eliminated its subsidies on the export of such products to this country.

Treasury acknowledged this in the Federal Register of March 22, 1979, but it stated:

> It is the position of the Treasury Department that while the doubling of the tanners subsidy on exports to third countries clearly creates a distortion in international trade, no remedy is available to this action within the limits of the countervailing duty law. It is possible that a more appropriate remedy to this sort of distortion is available through other sections of the U.S. tariff and trade laws.

I seriously disagree with their findings in this matter.

Since just about half of all Uruguayan leather wearing apparel is shipped to the United States and almost the same amount to all other countries, the net effect is that Uruguayan leather apparel manufacturers exporting to this country and elsewhere can maintain their present price structure on shipments to this country and to all other countries and yet, as interpreted by the Treasury Department, not be engaged in a practice that is countervailable under U.S. law. This action by Uruguay and the interpretation by the Treasury Department can indeed open a Pandora's box. I recommend strongly that in the implementing legislation this matter be dealt with to prevent a serious loophole in the future with regard to the countervailing duty statute.

My experience in dealing with the Treasury Department has led me to the clear conclusion, as Mr. Cooper has stated in his testimony as well, that the function for administering the countervailing duty statute must be removed from the Treasury Department if there is to be any chance of effective implementation of the countervailing duty statute in the future. I am convinced that whether it is administrative malaise, high-level directives, or an inherent philosophy in that Department, Treasury has not earned the right to continue to administer this statute. The management of the countervailing duty statute by the Treasury Department has been inept. No change in the countervailing duty laws will correct this if the Treasury Department is permitted to continue to administer this statue.

Gentlemen, I do not support the MTN package and the implementation of it if Treasury is to remain as the administering agency.

Thank you.

Mr. JENKINS. Thank you very much, Mr. Edwards, for your testimony.

The track record of the Treasury Department as it relates to your industry has probably been the single most important factor in my doubts about Treasury administration of the countervailing statue.

Mr. Cooper, if you will, the committee would like to have from you any specific suggestions in the areas that you discussed in your statement as to how this implementing legislation can be strengthened.

Mr. COOPER. Yes.

[The material follows:]

SPECIFIC SUGGESTIONS TO STRENGTHEN IMPLEMENTING LEGISLATION FOR THE INTERNATIONAL SUBSIDIES CODE

The National Outerwear and Sportswear Association makes the following suggestions on how the implementing legislation on subsidies and countervailing duties can be strengthened. This is being presented pursuant to the request of Representative Jenkins at the hearings before the Trade Subcommittee of the House Ways and Means Committee on April 25.

(*1*) *No filing fee.*—A very serious precedent of far-reaching proportions would be created by requiring a filing fee to accompany a countervailing duty petition. No American citizen should be required to post any amount of money to secure a redress under the unfair trade practices statutes. Instead it is recommended that the administering agency be permitted to reject any petition which does not contain all of the elements called for in such petitions, as stated in the statute or in regulations which may be promulgated by the administering agency.

(*2*) *Injury test.*—If an injury test is to be included in the new countervailing duty statute, it should not require a higher threshhold of injury than has been the case under the present antidumping law. Inserting the word "material" as a description of injury does not in itself create a higher threshhold of injury so long as the definition of what is "injury" is clear. We recommend that the statute make clear that the level of injury that must be shown before a countervailing duty is imposed not be inconsequential or frivolous. In our judgment this would be quite consistent with the new countervailing duty and subsidies code as well as with the threshhold of injury under the present antidumping statute.

(*3*) *Administering agency.*—We strongly recommend that until such time as a new Department of Trade may be created, or for the indefinite future if such a new department is not created, the functions now exercised by the Treasury Department in the countervailing duty statute be transferred to the Office of the Special Representative for Trade Negotiations. That office currently has similar authority in connection with cases under Section 301 of the Trade Act of 1974.

We do not believe it would be fatal to the transfer of this function if the present personnel in the Office of Tariffs and Trade of the Treasury Department were transferred with the function to STR. Obviously if the new countervailing duty statute is to be effectively administered, certainly more effectively administered than Treasury has been able to do since the Trade Act of 1974 was enacted, additional personnel beyond those presently in the Office of Tariffs and Trade will need to be brought into this program. We are not concerned that the present personnel of the Office of Tariffs and Trade of the Treasury Department, if transferred to STR, would continue the half-hearted administration of the countervailing duty statute that has been the case under the Treasury Department's aegis. The responsibility for Treasury's mismanagement of this program rests with the Secretary of the Treasury, the Undersecretary of the Treasury, the General Counsel of Treasury, and a Deputy Assistant Secretary of the Treasury.

(*4*) *Assurances to terminate investigation.*—We recommend strongly that neither price assurances or assurances related to quantitiative limitations be contained in the countervailing duty statute. As explained in our testimony, price assurances are relevant to antidumping proceedings but have no place in the countervailing duty statute.

If it is felt that price assurances and assurances with regard to quantitative limitations should be included in the statute, such assurances should be limited to cases involving domestic or internal subsidies, not to cases involving export subsidies. If they are utilized in domestic subsidy cases, the assurances should be those

which offset the subsidy, not a lesser assurance merely to offset the injury. We have said repeatedly that it is difficult to establish any objective criteria which would permit a determination of what a permissible level of subsidy might be that would not cause injury to a domestic industry and its workers.

(5) Export restrictions as countervailable measures.—We believe that the definition of subsidy contained in the statute, or at the very least in the legislative reports of Congress, make it clear that restrictions on exports by foreign governments which have the effect of lowering the price of the raw materials which foreign manufacturers purchase, provide a competitive advantage with regard to raw materials that is in effect a subsidy. We referred in our testimony to the situation with regard to hides and skins where the United States is probably the only open world market, in that we permit unrestricted exports of hides and skins while some of our major leather product competitors prohibit the export of this basic raw material. Such export restrictions should be included as countervailable under the statute.

(6) Closing another loophole.—Another countervailable measure should be made clear in the legislation where a foreign government eliminates its subsidies on exports to the U.S., but increases its subsidies on exports to other countries. Where the effect is that unit prices on exports to the United States and to other countries are not changed, thus giving the foreign producers the advantage of the increased subsidy on exports to other countries, this should be a countervailable action under U.S. law. We refer to this in detail in Mr. Edwards' statement.

Mr. JENKINS. I want to talk about two or three other matters and ask you a couple of questions. With regard to the filing fee, it is my understanding that that fee under the present proposal could be waived. Is that correct?

Mr. NEHMER. If I may comment on this, yes, it is, I think in the House in your subcommittee's version of it, but let's assume the Treasury Department continues as the administering agency. As you heard this morning, there was no great love for administering the statute which they are responsible for administering. We see no reason to expect that the fee will be waived, aside from the very serious principle, Mr. Jenkins, of any American citizen or group or company having to file a fee in order to get a redress under a particular statute. The precedent is fantastic and for an industry such as this one it definitely is an inhibiting factor.

Mr. JENKINS. What is your position as far as the Treasury Department being the agency to administer the law? I notice that you suggest STR, Commerce, anybody——

Mr. EDWARDS. Not Foggy Bottom.

Mr. JENKINS. Do you support the creation of a separate department to administer this?

Mr. COOPER. Yes.

Mr. JENKINS. Would you object to a provision in the implementing legislation that would permit price assurances to remove the subsidy practice, or alternatively to cease exporting the product in question to this country?

Mr. Nehmer, you may wish to respond.

Mr. COOPER. I just didn't hear.

Mr. JENKINS. Would you object to a provision in the implementing legislation which would permit assurances to remove the subsidy practice or cease exporting the product in question to this country?

Mr. COOPER. No, we would not be against it. If we had that assurance, we certainly would not be against it.

Mr. NEHMER. I should say, obviously, if the foreign government eliminates the subsidy practice, there is no basis for a countervailing duty. The problem that we have had, and it happens to be in this particular area of leather and shoes, Argentina gave assur-

ances to the Treasury Department that it would eliminate—and it did eliminate—its subsidy on leather footwear exports to the United States. Then they changed regimes down there and the new regime didn't tell the Treasury Department that it was reinstituting this. It took some months before Treasury found out about it and then it actually took them 11 months beyond the 12 months in the statute to come out with the final countervailing duty determination on Argentina footwear.

Mr. JENKINS. Would you say that the countervailing duty statute has not really benefited the industry very much because of the poor administration of it?

Mr. NEHMER. We have not even mentioned to you the way in which Treasury has held down the fixing of the countervailing duty by the use of various offsets. The legislation you have before you has a very important provisions on offsets, and that has been one where the Treasury has in very wide context been able to reduce the actual countervailing duty by deducting various items which we detail in the statement which has previously been told to this committee.

Mr. JENKINS. Is the industry as a whole opposed to the Senate version of the extension of the 5 years to reduce tariffs?

Mr. NEHMER. Absolutely.

Mr. COOPER. Absolutely.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Gentlemen, I appreciate your testimony and I think your testimony helps all of us realize that the whole secret to any situation after the MTN passes and becomes law is going to be a far better enforcement of whatever laws we have left on the books to protect industry than we have had in the past. I agree with you completely on the comments you have made, and I assure you that there will be many of us in Congress who are intending to support the MTN who will likewise see we get much better enforcement than we have in the past.

We have had a very dismal record and I have been trying to get the attention of the Treasury Department on business and farmers in my part of the country, so I understand what you are saying. All we can say is that the whole secret to the MTN is going to have to be a far better enforcement of the law as we have that we have on the books now because it has been very poor indeed.

Mr. Chairman, earlier I asked that the record be held open so one witness, Mr. Vernon, would be able to submit suggestions for his industry. I would like to have the record held open for all the witnesses who testified from the distillers industry group in that regard.

Mr. VANIK. For how many days should we hold the record open? Is until the middle of next week enough time? I want to get the record intact, so we can move on.

We will hold the record open until the middle of next week for that purpose.

If my good friend Mr. Jenkins would yield—he has been very courteously handling this matter in the interval that I have been gone—you know my own personal views on this department idea. You are going to end up with the same people no matter where you

are. There is no way we can get around the people that are in line for these positions. You put them on the Moon and they would be there or any other place. There is no way under our system that we can avoid that.

I have got the same concerns as you have about how improperly this function has been administered, and I have just not concluded myself that the department procedure—after we created the Department of Energy, I don't think there will be another department created, at least my people who have the memories of our past experience. So I think the House and the Senate would be very reluctant about that approach, but we can move functions. I would like to have you more thoroughly, if you can, outline procedures and some areas and methods by which these functions can be moved, because under a new direction they may perform more responsibly.

Mr. NEHMER. Could we submit something because we do have some real thoughts on this.

Mr. VANIK. I know you have a good contribution to make, and we certainly would like to have it.

Mr. JENKINS. As I understand this position, anything would be better than what the past experience has been.

Mr. VANIK. I just don't believe that—it can be worse.

Mr. JENKINS. Well, I don't know.

Mr. EDWARDS. It cannot be any worse than the yo-yo treatment.

Mr. JENKINS. That has almost been destroyed.

Mr. VANIK. Don't put it beyond the capacity of the Government at any time to make things worse. [Laughter.]

The hearing will be recessed until 1:30 p.m., at which time we are going to hear from the members of the steel caucus and proceed on with the rest of the witnesses.

Mr. EDWARDS. Thank you.

Mr. COOPER. Thank you very much.

[Whereupon, at 12:25 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Mr. VANIK. The subcommittee will be in order.

We have with us this afternoon our colleagues, the distinguished members of the Congressional Steel Caucus. I have called to see if I could get the full membership of this subcommittee here so that they can hear your testimony.

I want to point out that earlier this morning we heard the testimony of the Steel Institute, and, of course, there are some groups, the specialty steel people and some others, who were not heard.

I want to point out that I attribute to the Steel Caucus the tremendous accomplishments that were made on the trigger price mechanism. I will say to you gentlemen that if anyone should ever question you about what you have done in the U.S. Congress, among other things you can with pleasure respond that it was through your efforts and through the strong protestations that you made at the time our imbalance on steel was so severe that TPM was instituted. It was only your solidarity and your unanimity and your prestige as a very important element of the U.S. Congress

that resulted in the trigger price mechanism, which does seem to be working.

There are some problems with it, but our testimony this morning indicates that the machinery seems to be working and is producing salutary results. We are going to try to improve it, but I wanted first of all to tell you as members of the Steel Caucus that you have made in my judgment one of the noteworthy achievements by changing the basic law of commerce in this country relating to this specific industry, and that procedure will probably develop as a permanent part of our structure.

We will be pleased to hear our first witness, Mr. Joseph Gaydos, chairman of the Steel Caucus.

STATEMENT OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. GAYDOS. Mr. Chairman, in all fairness on behalf of the Steel Caucus I wish to publicly state together with my fellow officers who are in attendance here today that we will forever be grateful to the chairman of this committee, for his support in appearing with the caucus in the several conferences held at the White House during the steel crisis in late 1977.

Also he lent his prestige and knowledge in this field to the caucus when we need him most. I thank the chairman for his very kind remarks.

Mr. Chairman, we welcome the opportunity to present testimony before this subcommittee on the Multilateral Trade Pact and its implementing legislation. I wish to point out that John Buchanan, vice chairman, will appear later. Adam Benjamin, executive committee chairman, is detained but will submit a statement. Mr. Ralph Regula, executive committee vice chairman, will be here as scheduled. Of course, we have Mr. Murtha, on my right, a member of the executive committee, and Barbara Mikulski, secretary-treasurer.

Mr. VANIK. Do you all join in this statement?

Ms. MIKULSKI. You know me; I have my own.

Mr. VANIK. I want to point out that the entire statement will be entered into the record as submitted. You may excerpt or read from it.

Mr. GAYDOS. With your permission, Mr. Murtha will present half of the statement.

The current membership of the Steel Caucus is approximately 170 members. The other officers of the caucus appearing with us today are those whom I have mentioned.

The Steel Caucus was created in 1977 in response to growing concern over excessive steel imports and their impact on the domestic steel industry.

The purpose of the caucus is to identify the nature and causes of the problems affecting the American steel industry and promote the well-being of the industry and preserve the jobs of its workers.

During the last 25 years there has been a significant shift in the relative share of production among the world's leading industrial nations. By 1976 both Japan and the European Economic Community—EEC—were equal to or larger than the United States in total

output. International steel trade has played an important role in this shift. Both Japan and Europe have used steel exports to increase their rate of growth. The steel exports which have stimulated growth in Japan and Europe are, by and large, the same imports which have constrained growth here. Japan and the EEC have accounted for three-fourths of all steel imports into the United States. The U.S. economy has become increasingly dependent on foreign steel suppliers and has become the only large industrial nation which lacks the capacity to produce 100 percent of its domestic requirements.

The need for closer attention to these developments is borne out by the events of the 1973–74 period, when, for the first time in history other than during the war, the domestic industry was unable to supply the Nation's total steel requirements. As a result, U.S. customers were forced to pay premiums of $60 per ton or more for imported steel. But even at these high prices, foreign steel producers gave the U.S. market a lesser priority than their other markets throughout the world. In the final quarter of 1976 foreign producers increased their share of the U.S. market to levels approaching 20 percent. The United States continues to experience import penetration, which implies increased reliance on other sources which proved unreliable in 1973–74.

Japan's Government planners, banks and steel companies have developed a three-part strategy for building a large and internationally competitive steel industry. First, the industry has been encouraged to rapidly increase its production volume. Second, the steel industry has been provided with enormous capital inputs. Third, Government and business leaders have cooperated closely to protect the industry's financial position.

With regard to the European nations, although each nation is different, roughly the same elements, of the Japanese strategy can be found in the EEC. Excess capacity in Europe, as in Japan, creates great pressure to expand exports.

In the United States the opportunities and incentives for Japanese and European steel producers have not been available to American steel companies. Therefore, U.S. producers have not embarked on export programs comparable to those of Japan and the EEC. But lower production costs by themselves have never been sufficient to account for the success of foreign producers in the U.S. market. Instead, artifical exchange rates, tax rebates and below-cost prices have provided foreign producers with a margin of advantage they would not be able to derive from production cost advantages alone.

The Congressional Steel Caucus fully recognizes that the recently initialed Multilateral Trade Pact is the result of 5 years of difficult negotiations. Considering the divergent economic interests and systems represented by the 99 participating nations, the fact that a comprehensive agreement was reached at all is, in itself, an achievement. Furthermore, the caucus understands that all international negotiations contain an inherent bargaining process of reciprocal give-and-take. No single participating nation could honestly be expected to achieve all of its negotiating objectives. Against this perception of the realities of the negotiating process, the Steel Caucus shall examine the multilateral trade pact.

Although the U.S. Congress will not directly ratify the multilateral trade pact, it will be required to pass judgment on the implementing legislation which is necessary to bring our trade laws into conformity with the trade pact. However, this legislative task is impossible to undertake without a careful, close and patient study of the text of the agreement.

Two general questions must be answered. First, is this agreement the best possible agreement? Second, is compliance with this agreement in the best economic interests of the United States? In answering these questions, two aspects of the trade pact particularly interest the Steel Caucus: tariff cuts already negotiated and nontariff codes.

The countries which have been successful in dumping steel products in the United States without triggering an antidumping investigation under the TPM and while effectively insulating their home markets, have demonstrated in the trade negotiations their unwillingness to reduce their steel tariffs to the same level that the United States has offered. It is difficult to understand why the United States has reduced its steel tariffs to a lower level than those of its trading partners, particularly in light of the extreme difficulty the U.S. steel industry has had with dumping in its domestic market and the difficulty in gaining relief under the TPM. U.S. reduction in steel tariffs should not have been greater than that of its trading partners, and average steel tariffs of the United States should not be lower than those of the EEC, Japan and Canada.

Therefore, in implementing the nontariff codes, the Steel Caucus does not wish to weaken current U.S. Statutes aimed at remedying unfair trade practices. While wholesale dumping, various forms of Government subsidization and other unfair trade practices will never be completely eliminated, we should not in any way impede the ability of our present domestic laws in offsetting the effects of unfair trade practices. We shall examine very closely the text of the nontariff codes to determine how they state standards of conduct to govern international trading practices and remove the nontariff barriers to fair trade.

United States compliance with the multilateral trade pact will require certain changes in our domestic laws. The areas of concern to the Steel Caucus are the statutes governing unfair trade practices and Government procurement.

First, the Antidumping Act must not be weakened either in its substantive requirements or its enforcement mechanism. The following suggestions should be incorporated into any proposed changes amending the Antidumping Act:

One, the statute should retain the requirement that the dumped imports be a cause of injury to a domestic industry. There is no justification—and I repeat: no justification—for applying a more rigorous burden of proof upon domestic complainants, such as a substantial cause test.

Two, if the term "injury" has to be statutorily defined or qualified, it should be qualified as meaning anything more than immaterial or inconsequential. This meaning of the term is presently used by the international Trade Commission in administering the Antidumping Act.

Three, the amount of the antidumping duty imposed should fully offset the dumping margin. Furthermore, the availability of this remedy should not be removed by any settlement devices which assess a duty in an amount that is less than the amount of the dumping margin. The caucus strongly opposes the use of any subjective determination of a lesser amount as a remedy since such a settlement technique would not effectively offset the unfair advantage from dumping or discourage future dumping.

Four, a preliminary determination on an antidumping complaint should be made no later than 120 days from the filing of the complaint.

Five, since most other countries require cash deposits after a preliminary determination of dumping, the United States also should, as a deterrent, require provisional duties in the form of cash deposits equal to the margin of dumping.

Six, some provision should be made to expedite the assessment and collection of duties under this statute. It is ridiculous that after a finding of dumping has been concluded by the Treasury Department, it takes a total of roughly 3½ years to assess and collect duties.

Mr. VANIK. On that point I want to point out that it was the subcommittee's decision to require final liquidation no later than 18 months after entry. We tried to address ourselves to that problem.

Mr. GAYDOS. That is moving in the right direction, Mr. Chairman. The chairman and the committee should be complimented.

Mr. VANIK. Under the countervailing duties statute, we provide 95 days, which is an improvement in that section.

Mr. GAYDOS. Yes, decidedly, Mr. Chairman. I am very glad the committee has those positions and elements under consideration.

At this time, Mr. Chairman, with the Chair's permission, my colleague John Murtha, from Pennsylvania, a very active member of the caucus, will now discuss the countervailing duty statute, the safeguard code and the procurement code.

STATEMENT OF HON. JOHN P. MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND MEMBER, EXECUTIVE COMMITTEE, CONGRESSIONAL STEEL CAUCUS

Mr. MURTHA. Mr. Chairman, let me say again what Chairman Gaydos says about how much we appreciate your input, and certainly much of the success of the Steel Caucus goes to your very strong support in a very difficult situation. We very much understand and appreciate the tremendous input you had to our success.

We feel that it has been a phenomenal success in dealing with the Government. The last 3 months were perfect examples of how, under proper attitudes, the imports have been restricted substantially.

Mr. VANIK. You can speak on that subject without limitation of time.

Mr. LEDERER. Mr. Chairman, I hope his comments will be spread on the record.

Mr. MURTHA. The gentleman from Ohio, Mr. Regula, also asked to join us in this statement.

The second area of interest to the caucus is the countervailing duty statute. The implementing legislation should be designed to strengthen this law. The following recommendations should be included in the proposed legislation.

One, the amount of the countervailing duty should be imposed in the full amount of the subsidy to completely offset the unfair advantage of the net subsidy. Current law does not provide for a remedy to be imposed in an amount less than the full subsidy.

Two, procedures for settling a case in an amount less than the full amount should be prohibited. The caucus strongly opposes the use of any subjective determination of a lesser amount as a remedy since such a settlement technique would not effectively offset the unfair advantage of the subsidy or discourage future subsidization for trade advantage reasons.

Three, the statute should provide a definition of "bounty or grant" that incorporates the illustrative list of subsidies contained in the trade pact's subsidy code and that also, provides an analytical device for identifying new forms of subsidization.

Four, the legislation should not provide for a stricter burden of proof for complainants, as for example, by a substantial cause of injury test. The standard should simply be that the subsidized imports are a cause of injury.

Five, if the trade pact requires the United States to provide for an injury test in its Countervailing Duty Statute, then this term should be defined as meaning anything more than immaterial or inconsequential. The legislation should expressly state that even a minor impact from imports will be considered enough to require the levying of a countervailing duty if the affected industry is in economic difficulty at that time.

Six, the injury test in the proposed legislation should be applied to imported goods from signatory countries. If the imported goods come from a country that did not sign the subsidy code, then no injury test should be applicable. To levy a countervailing duty on imported goods from such a country, one need only establish the existence of a "bounty or grant" as under current law.

Seven, the time limit for reaching a preliminary determination in a countervailing duty proceeding should be 75 days from the date of filing the complaint.

Eight, the legislation should require provisional duties in the form of cash deposits equal to the amount of the subsidy to be made after an affirmative preliminary determination.

Nine, the legislation should expressly and clearly require the U.S. Government to seek and disseminate information on subsidization practices by foreign governments.

Ten, if the Government obtains information that foreign subsidies exist, it should be required by legislation to initiate an investigation.

Eleven, the legislation should provide that unions will have the right to file complaints and that a notice to initiate an investigation will be sent to any union having an interest in the investigation.

Twelve, various determinations under the countervailing duty and antidumping statutes should be subject to judicial review. The caucus recommends that the implementing legislation expand the

determinations subject to judicial review beyond the provisions of existing law by using the judicial review section of H.R. 3442, the Fair Trade Enforcement Act of 1979.

Mr. VANIK. On that point you will be pleased to know that we have expanded judicial review to include the requirements that you have suggested. We did that as a result of your earlier position. So we have really to that extent acceded to your recommendations.

Mr. MURTHA. We appreciate that, Mr. Chairman.

Mr. VANIK. They may not be in exactly the same format in which you recommended them but substantially, I think, you will find that we are on the same wavelength.

Mr. MURTHA. We appreciate it. We know that the caucus is always on the same wave length—almost always—as the chairman and the members of this very distinguished subcommittee.

The caucus third area of concern is any required changes in domestic legislation due to the safeguard code. At this point in time the safeguard code remains incomplete. The caucus is concerned that the code may necessitate a change in the causality test contained in section 201 of the Trade Act of 1974, the United States safeguard statute. The United States should retain the current statutory causality test rather than adopting the much stricter "principal cause of injury" test.

Our fourth concern is any proposed changes in Federal procurement laws. The U.S. signing of the procurement code will require the elimination of certain buy American laws. These changes in our laws and Federal procurement practices should be undertaken with utmost care to assure that other signatories to this code are abiding by that code's provisions in operating fair, open and rational bidding systems. Furthermore, the caucus recommends that some additional negotiations should be undertaken to gain greater access to Japan's procurement market.

In conclusion, it is the sincere hope of the Steel Caucus that all concerned parties can work together to enact legislation to better protect American industry from the unfair trade practices that have seriously affected our domestic industries over the past several years.

We appreciate very much this committee's tremendous cooperation in the past and we owe the majority of our success to the work done by this subcommittee. We appreciate it very much.

Mr. VANIK. On Nos. 1 and 2 of the items you raised, I want to point out that we did ask Ambassador Strauss to provide some relief on the price assurance item, which was the substance of your request.

I am very glad to have your testimony, Mr. Murtha. We appreciate the testimony submitted by you and Mr. Gaydos. Ms. Mikulski.

Mr. GAYDOS. May I claim that pleasure. As the chairman of the Steel Caucus it is my distinct pleasure to introduce to the committee formally for presentation our well-thought-of, hardworking secretary-treasurer.

Mr. VANIK. Unpaid.

Mr. GAYDOS. Pardon?

Mr. VANIK. Unpaid.

Mr. GAYDOS. That is right.

Mr. VANIK. Maybe she will get a free parking space when all the rest of us are paying for ours.

Mr. GAYDOS. Barbara, it is a pleasure to have you with us. You may proceed.

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND, AND SECRETARY-TREASURER, CONGRESSIONAL STEEL CAUCUS

Ms. MIKULSKI. Mr. Chairman, I am very pleased to appear before this subcommittee and add a few additional remarks, not so much additional but to reinforce what Chairman Gaydos and Mr. Murtha and Mr. Regula indicated.

I want to really very strongly and clearly associate my remarks with the Steel Caucus because the issues that they outline are mine as well. I did want to add a few personal comments.

One, this legislation is of absolute critical importance to this country. Yet at the same time I think we find ourselves in a paradox where many of us understand what the United States was after World War II as we helped build a free world where we were both the bank and the cop for the free world and yet as we have seen the 30 years of time passing we now see almost a steady decline of U.S. power, both internationally and certainly domestically, because of certain economic considerations.

It is therefore very critical that we have in place legislation that defines for the entire world the rules of the game under which we can operate freely and fairly. I think it has been splendid that Bob Strauss has played such an important role in bringing this Trade Agreement to fruition.

I understand for a long time that they were busy learning how to speak French rather than learning global economics. I must emphasize the fact that we do need certain key things in this legislation to guarantee fair trade for the American people and the world. We must have a definition of injury that will allow American companies that are being hurt by unfair import to receive prompt and appropriate relief as you have indicated.

We must have antidumping legislation that is truly effective. We must be able to safeguard ourselves against the kind of action we saw yesterday where fines in absolutely undeniable cases of dumping of Japanese TV sets have been reduced by 75 percent.

As long as the Treasury Department is willing to send a signal that we are willing to let people get off, then in effect our legislative initiatives will turn into folly.

Quite frankly once the Congress has spoken, I resent very deeply when an administration through techniques makes a mockery of what we consider the legislative policy intent to be. I am not suggesting that the country should erect high walls to keep out foreign products. No one who represents a port, no one with a name that represents an ethnic community could responsively take such a position.

Mr. VANIK. With respect to the duties that you talked about, they have not been reduced as yet by Treasury. They are under administrative review. I have been very, very tough on them on this issue. They may very well do that, but they are going to do that over my objection.

Ms. MIKULSKI. You see, Mr. Chairman, that is my point. You are a man of experience, stature, and ability. You represent not only a geographic constituency but by your colleagues having you on the Ways and Means we have also delegated certain responsibilities to you.

You speak for the American people. I am not sure who the Treasury Department speaks for. It pains me to think that some GS-16, whose name we don't even know, is making trade decisions through a back door policy technique when people such as yourself and other Members of the Congress speak. That perhaps is one of the biggest problems I find in the enforcement of this legislation. I thank you for the vigor with which you have pursued it. If you need a small voice from Baltimore to help you amplify your position I will be happy to join you.

Just to conclude my remarks I want to emphasize again——

Mr. VANIK. Could you please get your cops off my back? When I drive down the road I have never seen so many highway patrolmen in my life as I see in the State of Maryland. I drive about 35 miles an hour because I am afraid they may not have their equipment calibrated properly. I have not paid any recent dues. I think it is good though.

Ms. MIKULSKI. Mr. Chairman, even though we have had a former vice president who associates himself with Kuwait and other OPEC countries, our current government elected to enforce the 55-mile-an-hour limit and make sure we don't buy all that oil. I wish I could tell you we fix speeding tickets in Maryland but we have cleaned up our act and I can no longer help you. [Laughter.]

I hope the chairman will be kind when he edits the record.

Mr. Chairman, as much as I enjoy this exchange with you I would like to conclude my remarks, knowing the scholar that you are, by giving you a quote from Thomas Jefferson which I think would be kind of a set of guiding principles on what trade law should be.

In 1793 Jefferson said he wished every country to be employed in producing that which nature had best fitted it to produce and each to be free to exchange with others. The greatest mass possible would then be produced of those things which contribute to human life and human happiness. He went on to say:

> Should any nation, contrary to our wishes, supposedly better find it to their advantage to continue a system of prohibition, duties, regulations, it would behoove us to protect our citizens by counterprohibitions, duties, and regulations. Free commerce and navigation are not for the giving in exchange for restrictions and vexations.

I wish we would tell that to the Treasury that if a nation imposes high duties or prohibits our products altogether, it may be proper for us to do the same by theirs.

Mr. Chairman, I think that words of Thomas Jefferson would serve us and our administration well.

Thank you for listening to me.

[The prepared statement follows:]

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I am pleased to appear before this subcommittee today along with my fellow officers of the congressional Steel Caucus. Mr. Gaydos' testimony clearly defines our specific concerns. I should like to add a few personal remarks.

I'm sure the committee realizes the very deep interest which we and our constituents have in this legislation. It is not too much to say that your decisions could literally mean life and death for many of our communities. The jobs of hundreds of thousands of American workers, and the viability of an essential American industry, will be determined by the specific provisions of the MTN and its implementing legislation.

The completion of these agreements in Geneva represents a truly monumental accomplishment. I want to take this opportunity to place in the record my personal appreciation for Ambassador Bob Strauss and his staff who have worked so hard to bring these discussions to a successful close.

Now that the negotiations abroad have been completed, the work begins at home. It is up to the Congress of the United States to make sure that the legislation implementing these agreements, and all the other aspects of legislation pertaining to international trade, will be fair to the American people. We must have a definition of injury that will allow American companies which are being hurt by unfair imports to receive prompt and appropriate relief. We must have antidumping legislation that is truly effective; and we must be able to safeguard against the kind of action we saw yesterday, where fines in an absolutely undeniable case of dumping Japanese color television sets has suddenly been reduced by 75 percent; from $46 million to $12 million dollars.

My constituents include Bethlehem Steel executives, a lot of steelworkers not only at Bethlehem but at smaller stainless steel plants, and the businesspeople who supply them and their families. They know the economics of foreign steel production, and they are genuinely, rightfully concerned about the future of their jobs. After all, imports of foreign steel to this country have increased 10 times in the past 20 years. Foreign steel producers actually sell more steel to American industries than do domestic manufacturers: and now the so-called lesser developing nations are joining in the race by directly building and indirectly subsidizing their own steel producing facilities.

We are not suggesting that this country should erect high walls to keep out all foreign products. No one who represents the port of Baltimore—no one with a name like "Mikulski" who represents a proudly multiethnic community—could responsibly take such a position. We agree that trade with other nations should be encouraged and that it is ultimately in the best interests of this country. But free trade must be fair trade. We can't allow other countries to export their unemployment to the United States, and we can't continue to ignore the enforcement of antidumping laws.

These concerns are not new ones—either to the President or to the Congress. In 1973, Thomas Jefferson reported to the Congress on "commerce with foreign nations." He said:

* * * could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others * * * the greatest mass possible would then be produced of those things which contribute to human life and human happiness * * *.

"But should any nation, contrary to our wishes, suppose it may better find its advantage by continuing its system of prohibitions, duties and regulations, it behooves us to protect our citizens * * * by counterprohibitions, duties and regulations also. Free commerce and navigation are not to be given in exchange for restrictions and vexations; nor are they likely to produce a relaxation of them * * *.

"Where a nation imposes high duties on our productions, or prohibits them altogether, it may be proper for us to do the same by theirs * * *"

Mr. Chairman, I do not think we can do much better today, than to measure our international trade policies according to these words.

Mr. VANIK. Thank you very much for your very fine statement. The quote that you have is something that I think is a good instruction for all of us in our work.

Mr. Gaydos.

Mr. GAYDOS. Mr. Chairman, again on behalf of the Steel Caucus it is my personal pleasure to introduce to the committee our col-

league the vice chairman of the Steel Caucus, the very active John H. Buchanan, Jr.

STATEMENT OF HON. JOHN H. BUCHANAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA, AND VICE CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. BUCHANAN. Thank you Mr. Chairman, it is a pleasure to appear before your subcommittee and to thank you for your leadership in this vitally important area of international trade.

Mr. Chairman, your personal leadership is a very reassuring thing as we are faced with a difficult decision pertaining to the MTN and the legislation necessary to implement this agreement.

I must say that this is the first time that it has been my privilege to testify before your committee since the loss of our colleague, Bill Steiger. It is with a certain sense of sadness that I note we lack his presence and his wisdom as we face these decisions.

Mr. Chairman, I want to thank you for what I know your committee will do toward reaching good decisions on these difficult matters. It is my earnest hope that it is possible to come up with implementing legislation that will make the Tokyo round of trade negotiations work for the benefit of American business and American workers.

Mr. Chairman, from World War II forward we have simply not enjoyed fair and honest reciprocity in our trade arrangements with our trading partners. I need not recount the whole history of how after World War II we engaged in policies of aiding those countries that had been our enemies as well as our friends to get back on their feet, to rebuild, better located, more modern plants while our own industries, especially the steel industry so vital to our economy, had to operate at full capacity without opportunity for modernization.

We entered, in the same period, into trade arrangements that were on purpose less than reciprocal. We had all the chips and we decided we wanted to pass the chips around so all could play the game.

The problem has been that our trading partners have come into the bad habit of assuming that less than full reciprocity is the right arrangement, that less than even-steven fair trade between the United States and our trading partners is the way it has to remain.

Whatever happens with the winding up of the trade negotiations and however well we can succeed with implementing legislation, even if we have made significant successes in negotiations, even if we do well with your leadership with implementing legislation, we cannot improve the situation for American business and American workers unless our Government is willing to enforce the law, unless the Government is willing to get out of its adversary posture and into a position in which it actually takes the action the law requires or permits in defense of an industry when threatened by unfair foreign imports.

Mr. Chairman, the administration has signed and submitted to the Congress a series of agreements which are heralded as a "trade liberalization package." As a longtime member of the House Foreign Affairs Committee, I am fully cognizant of the multitude of

political and economic benefits which the conclusion of these agreements holds for the United States. Our own economy, and the economies of our major trading partners are increasingly interdependent. Today, imports and exports accout for roughly 16 percent of the GNP of the United States, 43 percent of the GNP of Germany, and 22 percent of the Japanese GNP. The mutual benefits of increased cooperation in world trade are obvious and compelling.

And yet, I approach these agreements with grave reservations and deep apprehensions. The past few years have seen the United States become the target of below-cost foreign imports of a myriad of products including steel, electronics, leather goods, and many others. The United States has literally become the dumping ground for the unemployment of our trading partners. The impact of these foreign imports has been devastating to many vital American industries, their workers and their workers families.

This situation has reached critical proportions through the unfortunate reticence of our Government to enforce the trade laws which the Congress has passed to protect this country from the deleterious effects of price discrimination in foreign commerce.

The Fair Trade Enforcement Act of 1979, which I have cosponsored and fully support, requires the Secretary of the Treasury to initiate an antidumping investigation whenever he receives information from any source, including personnel from other agencies of the U.S. Government, that imports are being sold at less than fair value. I urge the committee to incorporate this provision into U.S. law.

Once an industry has succeeded in forcing the Treasury Department to initiate such a case, it may take 12 to 15 months for a final determination to be made. Current law provides that the U.S. Treasury may take up to 6 months—9 months in complex cases—to reach a tentative decision and up to an additional 3 months to make a final determination of sales at less than fair value.

If Treasury's final determination is in the affirmative, the case is sent to the International Trade Commission which has another 3 months to decide whether less than fair value sales are causing injury to the domestic industry.

The Department of Treasury and the International Trade Commission have indicated that a reduction of these time limits is not feasible. Yet, there are compelling reasons for expediting a final resolution of an antidumping proceeding. A great deal of uncertainty is generated in the marketplace by a pending antidumping case.

The Fair Trade Enforcement Act of 1979 includes a provision to require the International Trade Commission to issue its injury determination within 4 months of a tentative finding of sales at less than fair value by Treasury. This provision would permit a reduction of 2 months from the total allowable time for a final injury determination without shortening the time given each agency for its investigation. This provision will help minimize uncertainty in the marketplace for U.S. producers, purchasers, and importers of a product under investigation.

Once the tentative determination of sales at less than fair value has been made, the Secretary orders the withholding of appraisement on imports of merchandise in question. That is, the actual calculation of duties on imports is suspended and all shipments on

which appraisement is withheld are subject to special dumping duties. Although the Antidumping Act authorizes the Secretary to retroactively withhold appraisement up to a period not exceeding 120 days prior to formal investigation, the Department has refused to exercise this authority. This practice on the part of Treasury should be discouraged.

Even after an American industry has charted the tortuous course through a lengthy, expensive antidumping proceeding successfully, there is no guarantee that the required duties will be systematically applied to the foreign product in question. The chairman and other members of the subcommittee are aware of the incredible situation with regard to the failure of the U.S. Customs Service to collect literally millions of dollars on imported Japanese television sets. Perhaps you are unaware, however, of similar cases involving other industries which illustrate the same problem.

In 1973, the specialty steel industry brought antidumping cases against France and Sweden alleging in the case of the former that certain French companies were dumping stainless steel wire rod in the United States. In the case of Sweden, the same allegations were made with respect to stainless steel plate. Both of these cases proceeded under the Antidumping Act and final dumping duties were issued with respect to these products. Through a freedom of information request filed by the specialty steel industry, it has been learned that not a single cent in antidumping duties has even been assessed against imported stainless steel rod from France since 1973—even though Treasury found dumping margins in excess of 6 percent.

In the case of stainless steel plate from Sweden, the Department is able to show that only $219,677 has been assessed during this 5-year period. Treasury is unable, however, to provide any information as to how much of that sum, if any, has ever been collected.

Mr. Chairman, my point is this. Our trade laws have simply been ignored by the very agencies charged by the Congress with their enforcement. Now, the administration is asking us to approve new trade agreements which further open our borders to foreign competition. As a Republican, I have no problem with the concept of increased competition for American industry. I have every confidence that the American worker can compete successfully in the foreign marketplace—as long as the competition is fair.

In order to gain my support for these agreements, I must have firm assurances from the administration that the past negligence of the Federal bureaucracy in enforcing the trade laws will cease. I am asking you, Mr. Chairman, and the other members of the subcommittee to send a message to this administration which cannot be misunderstood or misinterpreted—our trade laws must be vigorously and systematically enforced.

After World War II, the United States set out to rebuild the industrial base of Japan and much of western Europe. Given the international political and economic conditions of the time, this was good public policy. Part of this policy was the signing of trade and economic agreements with these nations which were less than fully reciprocal. In my estimation, we fell into a habit of less than fully reciprocal agreements which continues today in the MTN pact.

Our trading partners have made every use of this very beneficial relationship, and have taken it a few steps further. The Japanese and Europeans have erected tariff and nontariff barriers and have facilitated the growth of their own exports to the point of outright subsidy.

In contrast to our competitors, the U.S. Government has placed itself hostile in a posture toward business in general. In addition, the American marketplace has been so large that American Government and business saw little need to expand exports. As I noted earlier, this is no longer the case. We live in an interdependent world economy and we must export if we are to survive economically.

I believe we must have a coordinated effort on the part of all levels and branches of the Federal Government to assist business generally and to encourage exports specifically so that we can take advantage of the opportunities within the multilateral trade pact.

Without a policy of increased exports and rigorous enforcement of our trade laws, this trade agreement will provide further disruption and possible disintegration of many vital American industries. I am very hopeful that this subcommittee will do everything in its power to see to it that such policies are instituted.

For example, the Department of the Treasury has shown a consistent, deep-seated, reluctance to enforce the Antidumping Act of 1921. This is most clearly illustrated by examining Treasury's record of instituting antidumping cases. Present law confers on the Secretary of the Treasury the authority to institute an antidumping investigation upon receipt of information indicating sales at less than fair value, without waiting for a formal filing by a domestic industry.

Despite this provision in the law, Treasury has seen fit never to use this authority—save in the most recent, limited instances of fast-track antidumping cases under the trigger price mechanism.

Mr. VANIK. Thank you very much for your fine statement.

Before we proceed to questions I want to send over to your Steel Caucus secretary for your file a copy of a letter which Mr. Vander Jagt and I addressed to Ambassador Strauss on April 11 relating to the loophole that we thought existed in the assurances that would be required. In other words, specifically it is our view that the foreign price assurance should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

We are addressing this need with respect to countervailing duties and antidumping procedures. I will send that over for your files.

Mr. LEDERER. Mr. Chairman, I would like to thank the panel of our colleagues for their testimony this afternoon. I would like to say to Ms. Mikulski that we, from steel producing States, know that you need good fire for good steel. You certainly bring good fire to the Steel Caucus.

Ms. MIKULSKI. Thank you.

Mr. LEDERER. To my colleague from Pennsylvania I would like to say that I have been known to be of the reservation but on this issue I am on the reservation.

Mr. GAYDOS. We are most appreciative.

Mr. LEDERER. It is good to see you, Congressman Buchanan. Thank you for your testimony.

Mr. VANIK. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I too would like to welcome our colleagues. I apologize for being late. I would assume that you share my concern over the definition of injury and the injury test. Would you address that for a moment.

Mr. BUCHANAN. I am sure we would concur, yes, we share your concern. By definition injury should be as ITC has considered it, anything beyond that which is immaterial or——

Mr. SCHULZE. Anything more than negligible.

Mr. BUCHANAN. Anything more than immaterial or inconsequential. The word was so small and indicates such a tiny exclusion I could not even think of the word.

Mr. SCHULZE. I understand that other signatories or proposed signatories to the agreement do not like the term de minimus, which was one of the original proposals. I am happy with your language. I think frankly this is the heart of this whole agreement. I would hope that the Steel Caucus will really get their back up and we are really going to do a job on this thing.

Now I missed a portion of the testimony this morning also when the Iron and Steel Institute testified but I was shocked when it was reported to me that they said, "There might be some minor revisions, otherwise we are fully supportive." Does that agree with your position?

Mr. MURTHA. Let me say to the gentleman from Pennsylvania we have been in close contact with American Iron and Steel Institute and the unions on this issue. I don't think they have come to the point where they can make a judgment. They have been working with the administration. They hope that they can work things out which are the last words we have received.

As you know we introduced legislation which we felt would put the administration on notice that we just won't accept less than fair trade for the United States.

Mr. GAYDOS. If I may respond to my colleague on the injury interpretation, we have had no difficulty with it. We have found almost complete acceptance and support for a definition as set forth by Mr. Buchanan. We support the term that is presently used by the International Trade Commission in administering the Antidumping Act. That is the term we wish to use because we think it has been time tested, we think it is proper and we think it is effective. Anything more than that would be counterproductive and actually tear the heart, as you properly suggest, out of the agreement approved by this Congress.

Mr. SCHULZE. I note at the end of Congressman Buchanan's statement his comment on rigorous enforcement. That will be another element. Rather than depend on the good will of someone doing this it has to be spelled out specifically and we are going to look over their shoulder and make sure it is enforced or quite frankly I am going to oppose MTN all the way unless we get some good antidumping statutes as well as that definition of "injury" is going to have to be spelled out and be meaningful.

I would again like to thank my colleagues and tell them that I stand ready to work with them on this issue until we can have a satisfactory resolution.

Mr. VANIK. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. I would like to ask the members of the caucus if they can address themselves to the situation of the Steel Committee that MTN sets up, this International Steel Committee, how that is going to work.

Do you see it as something that will be beneficial to seel producing interests or something that will wind up, as some people have indicated, as maybe a forum to fix international steel prices?

Mr. GAYDOS. If I may respond to that and my colleagues may add to it, I believe it is probably our only salvation. I think it is a very practical approach to the problem. I believe that the OECD Steel Committee will be the proper forum to provide long term solutions to steel trade problems. Our Nation can no longer afford to approach steel policy on a legislation-by-crisis basis. The Steel Committee will have more time to monitor developments and anticipate potential problems in world steel trade.

We have always found that internationally if everybody participates in the process, the end result is one that has some staying power. That is what we need. We have to take a closer look at domestic production of steel, excess capacity, world demand, changes in trade patterns, and government intervention in the world steel market.

I have great faith, myself, personally and I think the Executive Committee in general agrees that the Steel Committee is where the future disposition of problems is going to take place—right in that organization. That is my conception of the role of the OECD Steel Committee.

Mr. MOORE. I think your testimony is helpful in answering criticism that has been leveled at that committee.

Mr. Gaydos, I notice on page 2 of your testimony, the last sentence, the second paragraph, you make the statement that the third point of Japanese strategy is that government and business leaders have cooperated closely to protect the industries' financial position. I could relate that to a comment made by Mr. Buchanan who said he was confident American steel could compete with any foreign interest on a fair basis. I wonder if you think that we in government are cooperating closely enough in seeing to it that regulations and taxes and that sort of thing are as good as they could be to assist our steel industry to compete with foreign interests.

Mr. MURTHA. Let me address one point of that. The steel industry I think has a real problem in faster writeoff of pollution control equipment in particular. It has been a tremendous burden on the steel industry in the last few years. I have lost 3,000 jobs in my district since the flood last year. It is because they don't have the ability to reinvest and increase their productive capacity. Fortunately because of the trigger price mechanism the domestic production of steel has increased and that is all we want. But in western Pennsylvania for a while over a year ago we had tremendous unemployment and it was coming from the fact that we were closing down coke batteries and the environmental restictions were

so stringent they weren't able to keep up and meet the environmental requirements and consequently we had to lay people off and import foreign steel.

One of the things we could certainly use is an immediate writeoff for pollution control equipment. It would be extremely beneficial even though it certainly will take some money out of the Treasury.

Mr. MOORE. I could not agree with you more.

Mr. GAYDOS. I would like to add to that, Mr. Moore, that we have an altogether different concept of doing business than Japan and even the EEC nations.

In Japan they allow their debt ratio to go up to 80 percent. In this country it is unheard of. If any of our people allow their debt ratio to go up that high they go bankrupt. I think the point that Mr. Buchanan was trying to illustrate and emphasize is that American competitiveness in steel will give this counry the edge in our domestic market. When we get in the outside world we compete against a horse of a different breed. Our trading partners have a different way of doing business. It is contrary to our basic principles and the concept of laissez-faire, free enterprise.

We do feel that if we had fair trade laws we wouldn't have to worry about foreign competition.

I feel so vehement about the fact that many people do not give our businessman due credit today. The American businessman is operating under many, many inhibitions and difficulties.

For instance, the antitrust laws. More money is spent in the legal department of U.S. businesses to protect him against antitrust laws than is spent for productive machinery. The Japanese don't have to be faced with this problem.

In the light of all of that I still emphasize the fact that the American steel industry doesn't have to change its principles to still be competitive worldwide and domestically.

Mr. SCHULZE. Will the gentleman yield.

Mr. MOORE. I yield to the gentleman.

Mr. SCHULZE. What would the position be today if we had rigid enforcement of the existing antidumping laws?

Mr. GAYDOS. I can tell you as far as the steel industry is concerned, No. 1, you would not have all this stock floating around. Foreign competitors are now starting to warehouse stock through subsidiaries which will be released on the U.S. market at times that could cause considerable economic disruption. We see definite penetration in that area. If we had reasonable fair trade laws I think it would help the expansion of U.S. steel production.

I think that foreign unemployment would cease to be exported from their factories into this country.

Mr. MURTHA. I think it would stop imports, to answer the question directly, if they enforced the present 1974 Trade Act without subsidizing overseas stock.

Ms. MIKULSKI. Not only speaking for the steel industry but I think if we had a vigorous enforcement, genuine enforcement of antidumping, we would have an electronic industry in this country we would be making TV sets, CB radios, a whole host of other electronic equipment that supply very good jobs.

No. 2, I think we would have a much more vigorous steel industry because what would the antidumping laws do? They would

create the climate for every one to play the fair enterprise game under the same rules.

The gentleman knows that in Japan, for example, they have all types of interlocking indirect subsidies so that when our guys go to borrow money, for example, at the prime rate it is very different than what you find in Southeast Asia. In fact, it would create the climate for true free trade.

Mr. GAYDOS. If I may add to that. The national defense demands nothing less. It demands a viable steel producing industry, there is no question about it.

These other things that Barbara mentioned I think are most important. You can add that this country no longer makes any Christmas tree ornaments or costume jewelry. At one time the costume jewelry business employed thousands of people in this country. Today there is no domestic costume jewelry business because unfair foreign competition destroyed our market. The same situation is occuring in textiles, leather, shoes, and electronic equipment.

With reasonable enforcement of our trade laws I believe we would not be accused of protectionism. We would be doing just what every other nation has been doing for years.

Mr. SCHULZE. Let's compare apples and apples. Don't tie one arm and one leg behind our backs when we are dealing with them.

Mr. BUCHANAN. Absolutely. The gentleman is precisely correct when he says this is really where the ball game is on enforcement. We must have enforcement. Had we had it we certainly would not be in the condition in the steel and other industries that we are now.

This is of crucial importance in this present procedure that, in the words of Thomas Jefferson, we bind men by the chains of law. It is symptomatic of the other thing that the gentleman from Louisiana referred to, and that is our Government lays burdens that are heavy to bear upon our industry in vivid contrast to the governments of our trading partners. We are going to have to face questions like pollution control, which may be socially necessary but does comprise a very substantial part of the economic burden and the overall problem of steel and other industries. There are other aspects of government policy that are going to need to change if we are going to create a climate that is truly fair domestically, including fast writeoff procedures, for example.

Mr. SCHULZE. I thank the panel and I thank the gentleman from Louisiana for yielding to me.

Mr. MOORE. I have listened to the answers. I take it from the comment just made by the gentleman from Alabama that most people in the caucus and my colleague from Pennsylvania on the committee seem to think that antidumping would solve all your problems. I am not sure of that. I am not convinced of that. What I would like to see you do, if we have time, I would ask the chairman to hold the record open, it would be greatly beneficial to us if the Steel Caucus could provide us with a list of things we ought to do at some point in the future should the MTN go through to put you in a better position than you are in now.

One item was mentioned by Mr. Murtha about the idea of rapid depreciation for pollution abatement of equipment. This is some-

thing we ought to do. It would help us in the deliberations of this committee in the future to point to our colleagues in discussing MTN. This is something we ought to look forward to in the future.

I would ask the chairman of the subcommittee to hold the record open to give you time to consider those points. I think when MTN is adopted, if it is we are going to be faced with two things to see that American industry survives. One is vigorous enforcement of the laws on the books; second, to take a look at the burden that Government puts on free enterprise to see if we cannot do something to ameliorate that burden to give an immediate shot at those countries where there is very close cooperation between business and government.

I don't think that cooperation exists close enough in this country in terms of our listening to what has to be done to make you competitive. We have piled it on and piled it on and let you compete if you can and go out of business if you don't. I don't think that is a position we ought to take. After MTN passes, you will be in a much rougher position than you are now. I urge you to provide us with a list of such solutions, if you could, that we could consider.

Mr. SCHULZE. I have businessman after businessman come into my office with the statement that they feel deep down that they are in an adversary relationship with the Department of the Treasury. This is almost unbelievable to me. I wonder if you have had a similar experience.

Mr. GAYDOS. We have had that view voiced before the caucus on numerous occasions because we do as a matter of policy open up our executive committee to hear complaints that are pertinent to the steel problem.

I do want to thank Mr. Moore for the suggestion to which we will respond immediately.

[The following was subsequently received:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 3, 1979.

Hon. CHARLES VANIK,
Chairman, House Subcommittee on Trade, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In further regard to the Steel Caucus' testimony before your Subcommittee on April 25th, 1979 and Congressman Moore's request for a list of areas where actions might be taken to assist the steel industry in its recovery, the following is a brief synopsis for your review.

(1) CAPITAL FORMATION

The domestic steel industry needs to expand its production. In 1978, the steel industry fell $1 billion short of its capital requirements. According to the industry, improvement in the capital formation picture requires government action which will:

Permit good earnings when markets are strong—no more informal price controls,
Weigh the economic impact of environmental and other regulations against benefits sought, and
Adopt tax policy which will encourage investment in productive facilities.

(2) REDUCING THE GUIDELINE LIFE FOR DEPRECIATION OF NEW STEEL MACHINERY

In its report to the President, the Solomon Task Force acknowledged that the steel industry's profitability over the last decade has been substantially below the average for all manufacturing industries. This has resulted in a decline in earnings and has contributed to the industry's inability to finance modernization and to obtain funds from external financing.

According to the report a combination of the trigger price mechanism and general tax reform would go a long way toward remedying the industry's cash flow problem. However, to close the gap completely, the Task Force recommended that the Treasury Department consider reducing the guideline life for depreciation of new steel machinery and equipment from 18 years to 15 years.

This reduction would produce additional tax benefits averaging nearly $60 million and would contribute to the steel industry's ability to increase its cash flow. The Treasury Department has been considering the reduction of the guideline life for some time, but, unfortunately, has yet to take positive action.

Your comments on, and consideration of, these points would be greatly appreciated.

Sincerely,

JOSEPH M. GAYDOS,
Chairman, Congressional Steel Caucus.

Mr. VANIK. We will leave the record open until the middle of next week. I just want to say two things. One is that I have been deeply concerned about the failure of the American automobile industry to produce a decent choice for gasoline efficient automobiles. Throughout America the industry is really doing very little.

On January 1 there were almost 5 million cars from one country that were here unsold. The Iranian crisis came along and those cars have picked up like hotcakes, they are gone. They are buying them off the racks, they are even advertising. You have two or three choices as far as American companies are concerned, and a good part of the time they are selling their own imported product, their captive industry abroad.

Frankly, you are losing more steel than you can ever imagine because of the ineptitude, this folly of our American industry. I would hope your organization will consider a resolution to alert them so that you can make some of this fight for steel use in autos. But the automobile industry ought to be admonished that the age of conservation is on us. They don't have until 1985 or 1990. They are going to be completely out of busines, if they don't provide a decent selection of choices for the American people in gasoline efficient automobiles.

On that standpoint, the imports have helped. If it weren't for the imports they would not even have moved at all. Frankly, I just feel it is bad leadership of our own automobile industry to let this happen.

The other point that I wanted to make dealt with what I thought could be the action of your caucus with respect to MTN. Do I take it to be your position that you are supportive of the MTN, if we make these corrections and make these adjustments? Because I am hopeful that we have your support when we go to the floor with this legislation.

Mr. GAYDOS. Mr. Chairman, if I may respond to that. As you well know, when you had the obligation on the floor of the House to seek an extension of the countervailing duty waiver as requested by the President, we stood behind you. We thought it was proper. We thought your arguments were convincing.

With all due respect to the integrity and history of this committee, if after we have had a chance to review the legislation in its final form and we find it to be acceptable, I think the chairman can rely upon this caucus.

Basically, if our position is incorporated into the implementing legislation you will find us beside you arguing and fighting for this law. You know that. I cannot become committed to a position prior to our finding out what the legislative language will contain.

Mr. VANIK. I have one other point. One of the reasons I was supportive of the trigger price mechanism and especially the specialty steel problem and others, is that I felt we ought to give our American industry a chance to catch up on its technology. I would like to see, and I hope your caucus will take some affirmative action of insuring that the industry will use the resources and the capital that is created by the preservation of their volume of business to make an investment in America with some new plants, so that they don't have to lean on the Government.

Future Congresses may be less concerned about their problem. So this is really the time to bring the industry up to date, to get them to expand, to develop new facilities that are going to meet all the requirements of the law and which will be more efficient as they start replacing some of the very old and obsolete facilities we have in America.

I don't think there is any law in the world that can ever protect the continued life of an obsolete facility. We have to reckon with that. We know their capital costs are great. Maybe in some special way we can address ourselves to that. Maybe it is time for them to put some commitment on the record about how and where they expect to strengthen and maintain their viability in America.

Mr. MURTHA. We will pass that recommendation on to them. They feel that their profit compared with the capital investment has not been large.

Mr. VANIK. It is not large compared with oil, certainly.

Mr. SCHULZE. Oil is not large compared to the Washington Post.

Mr. MURTHA. If we could get a faster write-off for pollution control equipment and maybe insist it go into productive investment that certainly would go a long way.

Mr. VANIK. We have to think of some special means. I think they have to put on the table pretty soon what their plans are, and how much they expect to rebuild and maintain their viability. This is a strong American industry, it is as American as the hotdog. We should insist that they modernize their facilities and remain competitive and keep viable their forces of production.

Mr. GAYDOS. I think your suggestion is well taken. We will follow your suggestion and have further meetings with industry and labor to discuss the matter in greater detail.

Mr. SCHULZE. I have the utmost respect and admiration for my chairman but I could not let pass his condemnation of the automobile industry without a comment.

I think our domestic automobile industry has lost millions and millions, perhaps billions of dollars by prematurely trying to sell small cars which were not purchased on the open marketplace by the people of this country. I do not think that they have abdicated their responsibility but have been very responsible citizens and are meeting the needs of our current problem with fuel consumption.

Mr. VANIK. I think the record will talk for itself on that. I don't think this is the time to really get into a debate on that point. I think the record is self-evident that they were caught by surprise

twice, first in 1973 and they seemed to have no awareness that there is an oil crisis going on. When they met it they met it by providing a diesel engine or front-wheel drive that is beyond our pocketbooks. It is the incredible upfront cost for this gasoline-efficient car that knocks all the efficiency out of it. It has to be efficiency at a level that people can buy.

I think they ought to be more resourceful. We have not really changed our technology much from the time I was a boy. They might still come back with that old Stanley Steamer.

I want you to know I have old automobiles, and they are much more gasoline efficient than the new ones. I am having my 1965 Ford right now repainted. It has a new motor. It has six cylinders. It has a stick shift. It is a pretty automobile. I get 24 miles to a gallon. I don't know why they can't do that.

Mr. SCHULZE. You might start the Vanik Steamer Co.

Mr. VANIK. Thank you, Mr. Gaydos.

I will express our gratitude to the Steel Caucus. You have been generous with your time. I want you to know we appreciate it, because we have had an interchange which will be invaluable to this committee in its deliberations.

Mr. GAYDOS. On behalf of the Steel Caucus I would like to mention that Mr. Philip Ola, the director of Steel Caucus, is with us today, accompanied by Mr. Bill Echols, Mr. Michael Lynch, and Mr. Bernie Manoella, who have assisted him in Steel Caucus matters.

I wish to thank my colleagues for appearing here with me. I definitely and unqualifiedly extend the caucus' sincerest respect and gratitude to the committee for arranging this time for us. I want the committee to understand fully that the caucus hopes that when the MTN implementing legislation reaches the floor of the House that we can stand as an ally to help support and pass this vital legislation.

We wish to conclude by congratulating the committee for a task well done under very difficult circumstances.

Mr. VANIK. Thank you very much.

Mr. GAYDOS. Thank you.

Mr. VANIK. The next witness is the joint appearance of the Passaic Color & Chemical Co., represented by Fred H. Hummel, president, and the Oil, Chemical & Atomic Workers International Union (AFL–CIO), represented by Eugene Wyatt, president.

STATEMENT OF FRED H. HUMMEL, PRESIDENT, PASSAIC COLOR & CHEMICAL CO.

Mr. HUMMEL. I am Fred Hummel, president of Passaic Color & Chemical Co., Paterson, N.J., which is one of the Royce Chemical group of factories in New Jersey.

With me is Mr. Wyatt, president of the Oil, Chemical & Atomic Workers, Local Union 8–406, which represents many of the workers in the Royce group of factories that do business with Royce and also speaking as a local president and for the OCAW International.

I will be brief so that I may relinquish, if satisfactory to you, Mr. Chairman, part of my time to Mr. Wyatt.

As stated in my written submission to the committee, we will feel we make a substantial contribution to the economy and em-

ployment of New Jersey with factories in Newark, Paterson, and East Rutherford.

Our particular concern is that the customs valuations method in the new trade agreement will result in unfair trade and trade favoritism to the detriment of independent dye manufacturers in the United States; 85 percent of the imports of competitive dyes are now between related companies overseas and here.

The overseas parent companies operate in a cartelized rationalized business environment encouraged by their governments to do so. I believe that with the present customs valuations method they will be able to escape the duties intended in the new agreement, if not fully, at least in part. When loopholes are left in an agreement they will be used. This is already the case with dyestuffs passing through Virgin Islands whereby millions of dollars, apparently, escape either the economic well-being of the Virgin Islands, as was intended, or U.S. duties.

Our reference to this is only to illustrate that without proper safeguards unintended problems will come up. The trade agreement is generalized trade. Eighty-five percent of the transactions between related companies is not generalized. The Virgin Islands situation takes up less than 5 inches of copy on one side of a sheet of the U.S. Tariff Schedule, and yet millions of dollars pour through this little loophole every year.

The new trade agreement needs a safeguard which it now lacks to protect against abuse and misuse of the fair trade intended. We feel that this can be corrected by adding a trigger mechanism if it does not work as a remedy. One way would be that any time a duty recovery drops below reasonable variables on competitive dye this would trigger the reversion to the rate of duties set at the time referred to by the new schedule of converted rates. Until such time as the U.S. Customs authorities have had an opportunity to investigate and to decide whether the principles of fair trade and fair value as called for in the trade agreement have been met.

We are working with trading partners who have a completely different set of rules. We must make sure that the trade between us works fairly. It is my opinion, based on more than 20 years in the American dyestuff industry, it will not work fairly without this or some similar safeguard that is now lacking in the agreement. Safeguards will not cause harm to the United States or to its trading partners if they are simply to insure that intentions get carried out.

I might add also that I am well aware we have many laws covering such matters as dumping, predatory pricing, unfair trade practices, and so on. My experience has been that discovery is difficult and damage has to be almost terminal and massive before our bureaucracy starts looking into it, presumably, Mr. Chairman, the same bureaucracy referred to on Monday.

It seems to me if we see a loophole we should simply close it. If we need a safeguard we should simply add it. I have been told that the Treasury Department does not feel that additional safeguards are required and yet having read in depth Customs valuations and been in business a long time, I don't believe it. I feel that without this safeguard, and I wish I could find perhaps a less dramatic

expression, I feel we are now writing a death warrant to the independent American dye manufacturer.

Mr. Chairman and gentlemen of the committee, I would like to thank you.

At this time I turn the balance of my time over to Mr. Wyatt.

[Mr. Hummel's prepared statement follows:]

STATEMENT OF FRED H. HUMMEL, PRESIDENT, PASSAIC COLOR & CHEMICAL CO., PATERSON, N.J.

Mr. Chairman, I am Fred Hummel, president of Passaic Color & Chemical Co., located at 28-36 Paterson Street, Paterson, N.J.

At the Office of the Special Trade Representative for Trade Negotiations, I was told we have not earned the right to live. I am here to prove to you and the trade negotiators that the independent dye maker has earned the right to life. After having been told this, it is quite evident to me I am fighting for the right to live.

Passaic Color is one of the Royce Chemical group of factories in Northern New Jersey. Royce has its principal office and factories in East Rutherford, New Jersey, with another plant in Newark, New Jersey and, of course, Passaic Color in Paterson. Royce has a total employment of slightly over 200 people and conducts business with almost 1,000 other firms, many of whom are in New Jersey.

Although Passaic Color has only approximately 15 employees in Paterson, its products and sales are integrated with those of Royce Chemical, thus contributing to total viability. We also have dyestuffs operations in East Rutherford. Approximately half of our total personnel are engaged, to some extent, in the manufacture, sales, distribution, research, quality control and administration of our dyestuff business.

Should the American dyestuff industry be killed, we would be right back where we were at the end of World War I, with America virtually totally dependent and at the mercy of foreign sources of colors and dyes.

In addition to the employment and economic impact, this would be the consequence of trade favoritism.

The reason I have asked to appear is to express my view on the multilateral trade negotiations that have been going on in Geneva for the last 5 years, specifically my view on customs valuations and the suggested changes by the special trade representative for trade negotiations.

Passaic Color is a manufacturer of synthetic organic dyestuffs. There are a number of other independent American dyestuff manufacturers in the northern New Jersey area.

There are literally hundreds of satellite businesses in New Jersey, who depend upon us for part of their income.

Thus, I feel the independent dyestuff manufacturers are an important part of the employment and economic viability in New Jersey. It is our feeling there is a very serious omission in the agreement concerning customs valuations.

Our general position is that we are for both free trade and fair trade, which we understand is precisely the position taken in the agreement which calls for fair trade, uniform trade and a neutral system for the valuation of goods. We recognize that times change. If the American selling price (ASP) basis of tariff evaluation is to give way to a new system of converted rates, with new rules for valuation, we are willing to accept this without argument—if it works along the lines our negotiators intended. This is our concern. We have no real idea if the converted rates result in the design of duty equivalency. We have to accept our negotiators word for it because we can't check it. Foreign companies in a cartelized, rationalized business environment do not provide price lists for their products. We have no way of being privy to the United States Customs records to find out the duty per unit value paid under our present system for competitive dyes on actual transactions; and more importantly, will not be able to find out the duty actually paid on transactions in the future.

Approximately 85 percent of the transactions for competitive dyestuffs are between foreign companies and their American company, a somewhat less than arms-length transaction. The rules and regulations coming from a multilateral trade negotiation are to regulate generalized trade. No way can 85 percent of the transactions between related companies be called generalized.

Our concern is, despite the rules on customs valuation, means to subvert the valuations can be devised by multinational companies, who can make decisions as to how much to charge themselves—which country to take their profit in—and when; particularly when the preponderance of transactions are between related firms.

To illustrate the reality of these concerns, it should be noted millions of dollars worth of foreign dyestuffs already pass through the Virgin Islands every year virtually duty free. This fact is well known to the U.S. Customs authorities and is technically legal because of the customs structure.

Unless the Agreement works with equality, it can result in unconscionable favoritism with a shattering impact on the American Dyestuff Industry. The effect on New Jersey would be extremely adverse—New Jersey being heavily industrialized, the leading benzenoid chemical producing State, (the category of chemicals affected by the elimination of ASP), and with small and medium sized business the backbone of the State.

We need a safeguard in the New Agreement, which it now lacks; to provide assurance to protect against abuse and misuse. There is no assurance to the American Dyestuff manufacturer that this agreement will provide equality.

We feel the omission in the Trade Agreement is a safeguard to make sure the Agreement works for competitive dyestuffs the way the Trade Negotiators have indicated it should. We feel this can be corrected by adding a trigger mechanism if it doesn't, and a remedy.

One way might be, if any time duty recovery drops per unit, taking into account reasonable variables, on a competitive dye; this would trigger a reversion to the ASP duty equivalent level set at the time the converted rates were set, in dollars, taking inflation into account. This would remain until the U.S. Customs authorities had an opportunity to investigate, to consult with American Dye Makers of the product and to develop an opinion as to whether the principle of fair trade and fair market value as called for in the trade agreement had been met—or subverted.

A discussion with personnel at the Office of Special Trade Representative was attempted on this subject, but I was told there is no hope of convincing them safeguards are needed; that the Agreement itself is sufficient. This is obviously not my opinion based on more than 30 years of experience in the American Dyestuff Industry.

We must recognize we are making a trade agreement with trading partners, who are working with a completely different set of rules.

Dyemakers in Europe and the Far East can get together to decide which one will make a particular product or color. They operate under a cartel system encouraged by their governments—they can rationalize their industry and do. That is not the way in America. And yet, the practicalities of multilateral trade necessities require we come up with one set of rules and regulations for these two totally different business systems. With this problem, and the problem of the majority of transactions between related companies, extraordinary precautions and safeguards are needed.

The addition of a safeguard will cause no harm to the United States or its trading partners.

My opinion is that if a safeguard and remedy are not included, the United States will have made a disastrous mistake, and mistakes do happen; with terminal consequences to American dyestuff manufacturers, American workers with New Jersey hard hit.

Thank you for the time extended to me to appear before the committee and to express my views.

Whatever questions the committee may have, I will be happy to answer to the best of my ability.

Mr. VANIK. We will hear from Mr. Wyatt and then we will go to questions.

STATEMENT OF EUGENE WYATT, PRESIDENT, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL 8-406, NEW JERSEY

Mr. WYATT. Mr. Chairman, my name is Eugene Wyatt, Jr. I am president of Local 8-406 of the Oil, Chemical & Atomic Workers International Union, AFL-CIO. I represent approximately 2,000 workers in the State of New Jersey, some workers who are employed in the dyestuff industry.

I am here to express my concern for the lack of safeguards within the multilateral trade negotiations agreement. The American employee has been traded away for a system of perverted

rates. I am not here to ask that we reject the trade agreement; however, I appear before this committee to ask that some safeguards be put into this agreement to protect the jobs of American workers.

If one American job is lost because of the lack of safeguards it is one too many. We can ill afford the luxury of more unemployment in the State of New Jersey, which at this time has a percentage of 12 unemployment. We do not need retraining assistance. Retraining assistance and unemployment are no substitute for real jobs. If putting additional safeguards in a trade agreement means protecting American workers, this must be done without delay. It hurts no one. Failure to do this would mean trading away American jobs to foreign workers.

I am not opposed to free trade. I am not opposed to fair trade. But I am opposed to subsidizing the foreign workers.

Mr. Chairman, I would like to ask your help and your support and that of the committee in attempting to insist on enforcement, some type of protective custody in this agreement. I am sure the workers that I represent and their families will be eternally grateful to you and this committee if you insist on some protective measures in that agreement.

I thank you.

Mr. VANIK. Thank you very much.

Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to thank our witnesses for their testimony. I have no questions.

Mr. VANIK. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I just want to say to our witnesses that I do share their concerns and especially agree that job training is no substitute for a permanent place of employment. That is one of the bonuses that is supposed to be held out for the loss of jobs under this agreement. I don't think that is satisfactory.

I have a great deal of concern over the final form of this agreement and understand and share your concerns.

Mr. VANIK. I want to point out to you that Congressman Guarini from New Jersey was detained today. He wanted to express his regrets. He has been very sensitive to the problem that you have outlined. He will report back to you after we analyze your testimony.

I want to thank you very much for appearing.

Mr. HUMMEL. May I add one more thing and I will be very brief.

I think that this committee over the years has had to deal with the problem of the American dyestuff industry many times, particularly the matter of ASP, which has been a burning issue on many of the rounds, particularly Kennedy. I think that what we are attempting to say today is a very fair position. We are not asking for the retention of ASP because we know that times change. We are not objecting to the converted rates even though we don't really understand what the net result of them is going to be.

I think what we are saying is in the modern world of trading that we simply want to be absolutely sure that the new agreement results in fair trade.

Mr. VANIK. I think you are making a very reasonable presentation.

Do you have any questions, Mr. Lederer?

Mr. LEDERER. No, Mr. Chairman, thank you.

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

Mr. HUMMEL. Thank you, Mr. Chairman.

Mr. VANIK. The next witness is our former colleague, David S. King, counsel for the American Dinnerware Emergency Committee.

I presume that your organization is one that promotes the importation of dinnerware?

STATEMENT OF DAVID S. KING, COUNSEL, AMERICAN DINNERWARE EMERGENCY COMMITTEE, ACCOMPANIED BY WILLIAM K. INCE

Mr. KING. Actually, Mr. Chairman, I represent the domestic manufacturers.

Mr. VANIK. I want you to know, Mr. King, that some of my favorite dinnerware is the heavier boilerplate stuff we sell in America. I have a preference for a coffee cup that keeps my coffee warm. I like plates to be that heavy. My wife always introduces the kind of product that you advocate. She prefers the ornamental things, the tea cups that burn your hand as you hold them, and the coffee cups that don't hold anything.

Since we are going to a more frugal way of life I think more people will probably be turning to that dinnerware. This does not have any relevance to what you want to say except I want to tell you that I have my own coffee set and I think that I can convince you that it is superior to anything else in the world.

While the fine imported product might be nice for the fancy dinner parties, I think there is a place all over the world for the kind of pottery we make in West Virginia and southern Ohio—not in my district—which gives me so much joy and pleasure.

Mr. KING. Ohio is really the center of our industry.

Mr. VANIK. I know it is. We are very happy to hear from you, David.

Mr. KING. I appreciate your kindness, Mr. Chairman, and members of the subcommittee.

I have sitting with me my partner, Mr. William K. Ince. He represents Williams & King. Our firm represents the American dinnerware emergency committee, which we know as ADEC, whose members account for about 90 percent of the earthenware and stoneware table and kitchen articles that are manufactured in this country.

Our testimony today, Mr. Chairman, deals with a rather narrow but to us very important aspect of the recently concluded multilateral trade negotiations and the implementing legislation. This is the restructuring of the tariff nomenclature applicable to earthenware, stoneware and chinaware, table and kitchenware articles. It has been quite apparent over the years that a revision or restruc-

turing of the nomenclature was necessary. We understand that this has been accomplished as a result of the negotiations in Geneva.

This is part of the package. We favor this. What is before this subcommittee now is implementing legislation necessary to conform the U.S. Tariff Schedules to the new nomenclature which has been worked out as a result of the negotiations in Geneva.

To give you just a little bit of historical background, in 1972 our industry was one of the very few, I might add in this country, that did succeed in getting some special relief under the escape clause provision of the Tariff Act. This was done in recognition of the very special problems that this industry has. This special relief was extended partially in 1976. However, the important thing to remember is that this relief began to dwindle in importance and finally disappeared completely. That is, its benefits disappeared completely.

The reason for this is that the relief was predicated upon a value bracket that when inflationary forces would be generated and come into effect, they would force the particular article coming in that was protected, from our point of view protected in that bracket, they would force it up into a higher bracket.

For example, in 1971 the item that gave us the most competition was a dinner set of 45 pieces that sold then for up to $25. By 1977, which would be 6 years later, that same piece sold for up to $50. In other words, a 100-percent increase over a 6-year period.

Now, the point is that in the course of going from $25 to $50, this particular item moved from one bracket to another bracket, the lower bracket being a heavily protected bracket, and the upper bracket being a much lighter protected bracket, the result being that our industry suffered very greatly because of that.

So it was evident that some of the nomenclature was becoming very outmoded and needed to be brought up to date.

Now, there were some other problems, too, involving tariff loopholes. This gets very technical and I won't go into a long explanation, but it was generally agreed that there were loopholes arising out of the norm standards that they had worked out. For example, they had created a norm based on a hypothetical 77-piece set and the idea was that if a particular item came in and if the pattern was such as was represented in this 77-piece set, then it would receive one rate of duty, whereas, if one of the pieces was missing from the 77-piece set, then another rate would be applicable. So that meant that it was within the power of the importer to manipulate the duty according to whether the full 77 pieces were represented or not. This was one example of a loophole and there were several others.

So it became increasingly evident that a restructuring of the nomenclature was necessary. On April 30, 1976, by Presidential decree, as a result of hearings we had to extend the escape clause benefits, it was specifically provided that the Special Trade Representative should review the classification and rates of duty on dinnerware to determine if changes were necessary to close tariff loopholes, and change obsolete descriptions brought about by currency changes and inflation, and to enter into any negotiations to make any changes necessary.

Shortly thereafter, the Trade Policy Staff Committee decided that there was a need to revise the ceramic tableware tariff schedules to eliminate obsolete value categories and close tariff loopholes so that the schedules would reflect modern commercial practice.

As a result, hearings were held by the International Trade Commission and the Trade Policy Staff Committee in 1978. A new nomenclature proposal was developed in conjunction with those hearings and with subsequent modifications this proposal was agreed to in Geneva by our major trading partners.

The industry and its Representatives and Senators in Congress have gone on record with the Office of the Special Trade Representative as being in favor of the new nomenclature.

Now, this I know sounds very technical but what we are saying simply is that the nomenclature had been shown again and again to have been obsolete for the reasons that I have indicated and the feeling was in general that it needed to be revised. A revision was proposed. It has been accepted in Geneva. It is now before this committee and our hope is that it will be favorably acted on.

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

Mr. Vander Jagt?

Mr. VANDER JAGT. No questions. I thank the witness for his testimony.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. I have no questions. Thank you very much for your testimony.

Mr. JENKINS. Your entire statement will be made a part of the record.

[The prepared statement follows:]

STATEMENT OF DAVID S. KING, ON BEHALF OF THE AMERICAN DINNERWARE EMERGENCY COMMITTEE

Mr. Chairman and members of the committee, my name is David S. King, and I am a partner in the law firm of Williams & King, Washington, D.C. I am here on behalf of the American Dinnerware Emergency Committee (ADEC) whose members account for about 90 percent of the earthenware and stoneware table and kitchen articles produced in the United States (list attached).

My testimony has to do with a very narrow, but very important (at least to this industry), aspect of the recently concluded multilateral trade negotiations and the implementing legislation. This is the restructuring of the tariff nomenclature applicable to imports of earthenware, stoneware and chinaware table and kitchen articles. I understand that the revision has been agreed to by our major trading partners, Japan and the EEC. All that is necessary is for implementing legislation to make some changes in the tariff schedules of the United States to conform them to the agreement.

A little history is in order to illustrate the importance of the nomenclature revision to the U.S. earthenware industry. In 1972 ADEC was successful in securing import relief under the "escape clause" provision of the Trade Expansion Act of 1962—the first, and one of only a few industries, to receive assistance under the provision. Import relief took the form of increased tariffs for four years, and it was extended, in part, for up to an additional three years in 1976.

However, because of the way in which the tariff schedules covering ceramic dinnerware are organized, that is, in the form of value brackets with differeing raters of duty, inflation over the last 7 years has had the effect of nullifying any protection afforded by tariffs. For example, whereas in 1971 the bulk of competing imported dinnerware was selling at wholesale prices of up to $25 for a 45 piece set, in 1977 the bulk of competing imports were selling at up to $50 for a 45 piece set. Since tariffs on the higher value brackets are lower than those on the lower value brackets, the effects of inflation have thus "moved" these competing imports from the brackets with some tariff protection to the brackets with relatively little tariff protection.

This phenomenon would have occurred in the absence of any escape clause relief, but the relief had the effect of dramatizing the phenomenon because the increased tariffs granted in 1972 followed the same pattern: they were imposed on the lower value brackets, and so became ineffective when the bulk of competing ware began to be imported in the higher value brackets. In addition to the value bracket problem, there were some tariff loopholes in the schedules resulting from inadequate descriptions of dinnerware not in sets.

On April 30, 1976, when the President extended, in part, the excape clause relief afforded the earthenware industry he directed his Special Trade Representative to review the classification and rates of duty on dinnerware to determine if changes were necessary to close tariff loopholes and change obsolete descriptions brought about by currency changes and inflation and to enter into any negotiations to make any changes necessary. Shortly thereafter, the trade policy staff committee decided there was a need to revise the ceramic tableware tariff schedules to eliminate obsolete value categories and close tariff hoopholes so that the schedules would reflect modern commercial practice. As a result, hearings were held by the International Trade Commission and the trade policy staff committee in 1978. A new nomenclature proposal was developed in conjunction with those hearings and, with subsequent modifications, this proposal was agreed to in Geneva by our major trading partners. The industry, and its Representatives and Senators in Congress, have gone on record with the Office of the Special Trade Representative as being in favor of the new nomenclature.

While we do not presume to clairvoyance, we believe that the new nomenclature will go a long way toward solving the problems I have described. It does reflect modern commercial practice. It eliminates most of the value brackets for both earthenware and chinaware, and therefore moderates the effects of inflation. It also cures the defects in product description that created hoopholes.

We understand that implementing legislation is necessary to make some changes to the existing tariff schedules, in order to adopt a part of the new nomenclature.

On behalf of ADEC I urge this committee to approve the adoption of this necessary legislation in order that the new nomenclature covering imported ceramic table and kitchen articles may be put into effect.

Thank you for affording me this opportunity to appear before you.

THE AMERICAN DINNERWARE EMERGENCY COMMITTEE MEMBERSHIP LIST

Anchor Hocking Corp., Chester, W. Va.; Hall China Co., East Liverpool, Ohio; the Homer Laughlin Co., Newell, W. Va.; the Pfaltzgraff Co., York, Pa.; Royal China Inc., Sebring, Ohio; and the Scio Pottery Co., Scio, Ohio.

Mr. JENKINS. Our next witnesses are from the American Restaurant China Council, Inc.: Mr. John C. Heebner, president; Samuel D. Magavern, counsel, and Irving J. Mills, the executive director.

Do each of you have a prepared statement, or is there one?

STATEMENT OF JOHN C. HEEBNER, PRESIDENT, AMERICAN RESTAURANT CHINA COUNCIL, INC., ACCOMPANIED BY SAMUEL D. MAGAVERN, COUNSEL, AND IRVING J. MILLS, EXECUTIVE DIRECTOR

Mr. HEEBNER. There is one statement, Mr. Chairman. The two gentlemen with me have participated in the development of this statement.

Mr. JENKINS. Fine, the entire statement will be made a part of the record. You may proceed as you wish.

Mr. HEEBNER. My name is John C. Heebner and I am presidnet of Buffalo China, Inc. I am appearing here today as president of the American Restaurant China Council, Inc. With me are Samuel D. Magavern, counsel for the American Restaurant China Council, and Irving J. Mills, the executive director. The China Council is a trade association representing the majority of American manufacturers of hotel and restaurant china. Our product is identified TSUS Item No. 533.51.

The hotel and restaurant china industry throughout the world is labor intensive and factory employment costs range as high as 65 percent of manufacturing cost here in the United States. Our industry is a modern industry that is professionally managed and where capital investments are increasingly being made in plant and equipment to increase productivity. Although our plants are as efficient as any in the world today, the labor intensity makes it difficult to compete with foreign low-wage countries where standards of living are simply lower than ours. This problem is magnified when those exports are subsidized by foreign governments.

The tariff negotiations now being concluded have been a matter of grave concern to those of us employed in the commercial china industry and the communities in which we live. We know what price levels are required to sustain a viable operation that can pay negotiated union wages. We know that capital investments cannot be made if profits cannot be generated to pay for those projects.

We can do a lot to offset some of the foreign wage differential through capital investment, research and marketing programs. However, we are virtually defenseless against subsidized exports from a foreign nation.

Faced with the realities of the trade negotiations and an inevitable tariff reduction, we have done our best to present the facts and our point of view to the International Trade Commission and the Special Trade Representative. We participated in all of their public hearings and contributed further in many less formal sessions. We believe we have been given a fair hearing and that a true effort has been made to understand the problems of our industry and the limited transferability of clay working skills.

Although our information is necessarily limited, it does appear that the general framework of the ceramic tableware package negotiated by Ambassador Strauss is an effective compromise in reducing tariffs while still providing a reasonable opportunity for our industry to survive. We believe that a realistic tariff reduction will not produce industry disaster if the proposed nomenclature changes are kept as part of the package so that the tariff loopholes are closed.

The present tariff schedules clearly intended a distinction between hotel and restaurant chinaware and household chinaware. Unfortunately, the nomenclature contains definitions which are both vague and contradictory when defining stoneware, bone china, porcelain and subporcelain. This had made it impossible for the U.S. Customs officials to determine which product was really hotel and restaurant china. The loophole created is not only contrary to the intent of Congress but it deprives the U.S. Treasury of revenue and impacts adversely on our market.

To our knowledge, the ceramic tableware package negotiated in Geneva corrects the existing confusion by applying a simple in-use test to differentiate between the household market and the hotel and restaurant market. If the ceramic tableware is for the household market, it is so classified, and if it is for the hotel and restaurant market, it is so classified. These changes will restore the original intent of the existing tariff schedules and make the job of the Customs people more manageable while saving our industry from being injured in a way never intended. The loopholes will be

closed by harmonizing the rate of duty on all ceramicware imported for hotel and restaurant use and the intention of the law will be clarified and reaffirmed.

The fact that the nomenclature of TSUS 533.51 is now obsolete should be no surprise because all things change with the passage of time and so have our market conditions. The present nomenclature served its intended purpose well for over 40 years. Now is the time, we suggest, to implement the President's request to "generally bring the nomenclature into conformance with commercial conditions prevailing at the present time." By taking this action we will restore the historic distinction between commercial ware and bousehold ware and bring that definition in line with the President's request.

We see another benefit in the multilateral trade agreement in addition to the closing of the loopholes. We understand that a tighter control of subsidies granted by foreign governments to their exporting industries is planned as part of the total agreement. As already stated, we consider the foreign subsidies a serious problem and are pleased to see it included in the negotiations.

We realize that this has been a difficult and complex negotiation and we wish to commend Ambassador Strauss and his associates for negotiating a ceramic tableware package that reduces an existing tariff, closes significant loopholes in the law and yet allows a small, labor intensive industry the chance to compete.

Thank you.

[Attachment to the prepared statement follows:]

MEMBERS OF AMERICAN RESTAURANT CHINA COUNCIL, INC.

Buffalo China, Inc., Buffalo, N.Y.; Jackson China, Inc., Falls Creek, Pa; Mayer China Co., Beaver Falls, Pa.; Shenango China Co., New Castle, Pa.; Sterling China Co., East Liverpool, Ohio; Syracuse China Corp., Syracuse, N.Y.; and Walker China Co., Beford, Ohio.

Mr. JENKINS. Thank you very much, Mr. Heebner, for your statement.

Mr. Schulze?

Mr. SCHULZE. I have no questions.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. I have no questions.

Mr. JENKINS. Thank you very much for your testimony and for appearing before the committee.

Mr. HEEBNER. Thank you, Mr. Chairman.

Mr. JENKINS. Our last witness, representing the Syracuse China Corp., Mr. Charles S. Goodman with Susan G. Esserman, counsel, is now recognized.

We are pleased to have you before the committee. Your entire statement will be made part of the record. You may summarize your statement as you desire.

STATEMENT OF CHARLES S. GOODMAN, EXECUTIVE VICE PRESIDENT, SYRACUSE CHINA CORP., ACCOMPANIED BY SUSAN ESSERMAN, COUNSEL

Mr. GOODMAN. I am Charles Goodman, excecutive vice president of the Syracuse China Corp. My statement will be brief, and I do request that my full statement be incorporated in the record.

Mr. JENKINS. Without objection, so ordered.

Mr. GOODMAN. I am here today to support the efforts of the administration to comply with the overall negotiating objectives established by Congress in section 103 of the Trade Act of 1974. In the act, Congress directed U.S. negotiators to reduce, eliminate, and harmonize industrial trade distortions to the maximum extent feasible. Pursuant to this direction, the Office of the Special Trade Representative (STR) has negotiated to close a loophole in the tariff classification for ceramic products that seriously threatens the very existence of the American commercial chinaware industry. We at Syracuse China emphatically support this position.

Low priced commercial chinaware products are being imported from countries such as Brazil and Korea where the cost of wages is a fraction of those by American companies. The wage difference is the key. The commercial chinaware industry, whether American or foreign, is extremely labor intensive. No matter how much the producer automates, and American producers have made tremendous investments in automation in recent years, labor represents up to 70 percent of the total value of commercial chinaware.

The standard of living in the United States is high and workers receive wages commensurate with that standard of living. However, our competitors in Brazil and Korea operate in a fundamentally different environment and pay their workers a small fraction of American wages. In order to place American and foreign competitors on an equal footing, Congress established in the tariff schedule a 45-percent ad valorem rate of duty for commercial chinaware.

Yet commercial chinaware is being imported today without payment of the substantial duty mandated by Congress as it is being erroneously imported as stoneware at a low rate of duty.

These low-priced products, however, are precisely the chinaware products to which Congress intended to apply substantial duties. The evidence on this point is overwhelming. The imports have been vigorously marketed in the United States as hotel chinaware. You have attached exhibit B to my statement an advertisement for fine hotel chinaware which fully demonstrates this point. These imports are being sold to the same hotels, restaurants, and other commercial purchasers as our commercial products. In many cases, the designs of the imports are mere copies of the designs developed by the U.S. producers. As you can see from the photograph which is attached to my statement and samples I brought along today, one of Syracuse China and one of the imported product, these china products are the same and the only difference detectable by the purchaser is the much lower price of the foreign product. According to all commercial standards, such as vitrification and degree of absorbency, the imports are clearly chinaware.

This importation of nearly identical chinaware under the stoneware classification is possible because the definitions of chinaware and stoneware in the tariff schedules are imprecise. Even worse, these definitions lend themselves to evasion by the foreign manufacturer either by selective choice of the samples given to the Customs or very slight variations in the manufacturing process. Clearly, either misapplication of the tariff schedule criteria or evasion must be now occurrring because articles that

are obviously chinaware are now entering as stoneware in large quantities.

Even though these imports escape the substantial duty mandated by Congress and are relatively cheap to manufacture because of their low labor cost, they are being sold in the United States at a price that does not truly reflect low production cost. The importers by setting their prices just low enough to increase their share of the American market are the only ones to profit from the loophole in the tariff classifications. Neither the foreign manufacturers nor the U.S. purchasers benefit from the low production cost. Moreover, the U.S. Treasury suffers because the prescribed duties are not being collected.

The U.S. Government, recognizing this classification problem has apparently negotiated to close this loophole at the multilateral trade negotiations. The new classification would require ceramic product marketed in the United States as commercial, hotel or restaurant ware to be classified on the basis of use. The same rate of duty would apply to ceramic hotel, restaurant, and other non-household ware, whether chinaware or stoneware. This classification avoids the complexities and potential for abuse inherent in the existing tariff schedules. The STR should be commended for its efforts and its recommendation should be ratified by Congress.

Recently, however, representatives of the foreign exporters have begun an intensive lobbying campaign against this new and realistic classification. These foreign interests seek nothing more than perpetuation of the loophole in the tariff schedules, a loophole which earns them fat profits but which threatens the profitability of U.S. companies and jobs of thousands of American workers. We in Syracuse China urge Congress to ignore this 11th hour campaign and adopt the much needed new classification reform which the U.S. Government has negotiated at Geneva.

Thank you.

Mr. JENKINS. Thank you for a very fine statement, Mr. Goodman.

[The prepared statement follows:]

STATEMENT OF CHARLES S. GOODMAN, EXECUTIVE VICE PRESIDENT, SYRACUSE CHINA CORP.

Good morning, I am Charles Goodman, executive vice president of the Syracuse China Corp. I am here today to support the efforts of the administration to comply with the overall negotiating objectives established by Congress in section 103 of the Trade Act of 1974. In that act, Congress directed U.S. negotiators to reduce, eliminate, and harmonize industrial trade "distortions" to the maximum extent feasible. Pursuant to this direction, the Office of the Special Trade Representative (STR) has negotiated to close a loophole in the tariff classification for ceramic products that seriously threatens the very existence of the American commercial chinaware industry. We at Syracuse China emphatically support this position.

I. Summary: The threat posed by low-priced imports

The American commercial chinaware industry is in a precarious state. Low-priced commercial chinaware products are being imported from countries, such as Brazil or Korea, where the cost of wages are a fraction of those incurred by American companies. These products are imported without payment of the substantial duty mandated by Congress in the tariff schedules of the United States. Congress, in order to place the American commercial chinaware industry on a competitive footing with its foreign rivals, established in the tariff schedules a 45 percent ad valorem rate of duty for commercial chinaware. (See exhibit A.)

However, these imports are being brought in as stoneware at a low rate of duty, even though they are advertised as chinaware, sold to the same hotels, restaurants, and other commercial customers as are domestic china products, and are considered chinaware under all of the long-established commercial standards in the industry. Moreover, the designs of these imports are often copies of the designs of American producers. The importation of this nearly identical chinaware under a stoneware classification is possible because the definitions of "chinaware" and "stoneware" in the tariff schedules are imprecise and confusing, difficult to apply, and defy well-established commercial standards for chinaware and stoneware.

The U.S. Government, recognizing this classification problem has apparently succeeded at the multi-lateral trade negotiations (MTN) in negotiating a new classification that would require ceramic products marketed in the United States as commercial hotel or restaurant ware to be classified on the basis of use. That approach is simple to apply and reflects commercial reality.

Recently, however, representatives of the foreign exporters, in an attempt to prevent adoption of this new and realistic classification, have begun an intensive lobbying campaign to maintain their ability to evade the duty prescribed by Congress. In the interet of preserving the jobs of thousands of American workers and the existence of the eight remaining United States companies, we at Syracuse China urge Congress to reject this belated and unjustified campaign. We therefore urge Congress to approve the classification revision negotiated at Geneva.

II. The import problem

The classification revision is needed to protect domestic producers and workers in a labor-intensive industry from low-priced imports from countries where labor is relatively cheap. This is not a case of protecting an inefficient United States industry. American producers of commercial chinaware have made tremendous investments in automation in recent years and are as modernized, automated, and efficient as any in the world.

The difference in wages between the United States and the countries from which these low-priced products are imported is the key. The commercial chinaware industry is extremely labor-intensive. No matter how much a producer automates, and regardless of whether the chinaware is produced in this country or abroad, labor will represent approximately 70 percent of the total value of commercial chinaware.

The standard of living in the United States is high and workers expect to receive and do receive wages commensurate with that standard of living. However, our competitors in less-developed countries, such as Brazil and Korea, operate in an environment fundamentally different from the United States, and they pay their workers a small fraction of American wages. In recognition of this problem and in order to place American and foreign competitors on an equal footing, Congress established a substantial duty on imported chinaware.

III. The need for a tariff classification revision

There is no doubt that the low-priced products now entering this country are precisely the chinaware products to which Congress intended to apply substantial duties. The evidence on this point is overwhelming:

"The imports are being vigorously marketed in the United States as 'hotel chinaware.' Exhibit B to this statement, an advertisement for 'fine hotelware china', fully demonstrates this.

"These imports are being sold to the same hotels, restaurants and other commercial purchasers as are commercial chinaware products.

"In many cases, the designs of the imports are mere copies of the designs developed by United States producers. As exhibit C illustrates, the only difference detectable by the purchaser is the much lower price of the foreign product.

"According to all of the commercial standards recognized in the United States, such as vitrification and the degree of absorption, the imports are clearly chinaware."

Yet these imports have been entering the United States as stoneware at a rate of duty less than one-fourth the duty levied on chinaware. This inequitable situation exists because the present provisions on ceramic ware in the tariff schedules are complex and ambiguous, which is readily apparent from a brief glance at exhibit D to this statement.

The current interpretation of these provisions is that the crucial distinction between chinaware and stoneware is the degree of translucence of the imported product—a factor that has no commercial significance whatsoever. That test is difficult to apply in practice. Even worse, it lends itself to evasion by the foreign manufacturer, either by selective choice of the samples given to Customs for testing or by slight variations in the manufacturing process. Clearly, either misapplication

of the test or evasion by the exporter must now be occurring, because articles that are obviously chinaware are now entering as stoneware in large quantities.

Even though these commercial chinaware imports escape the substantial duty mandated by Congress and are relatively cheap to manufacture because of low labor costs, the imports are sold to commercial customers in the United States at a price that does not reflect the low production costs. Thus, the importers, by setting the price below the price of American commercial chinaware just enough to increase their share of the market, are the only ones to profit from the loophole in the tariff classifications. Neither the foreign manufacturers nor the commercial purchasers in the United States benefit from the low production costs. Moreover, the U.S. Treasury suffers, because the prescribed duties are not being collected.

IV. The successful result of the multilateral trade negotiations

Early in the MTN process, our industry appeared before the Office of the Special Representative for Trade Negotiations in public hearings to apprise it of the classification problem. Those were open hearings, where all interested parties had an apportunity to state their views. No one opposed our position.

We urged the STR to seek in the MTN a more rational classification system for ceramic products. Specifically, we urged that commercial china be classified on the basis of its use, thus avoiding the complexities, uncertainties, and potential for abuse inherent in the present Tariff Schedule criteria. We proposed that the same rate of duty apply to ceramic hotel, restaurant, and other nonhousehold ware, whether chinaware or stoneware. This classification scheme would ensure that commercial china is classified in a way that reflects competitive reality and thus would accomplish the purpose intended by the Congress..

This use concept was adopted by the STR as a negotiating goal of the United States. We understand that the Tokyo Round agreements will include this new and more realistic classification. The STR should be commended for its efforts, and the result they have achieved should be ratified by Congress.

V. The threat: A last-minute political campaign by foreign interests

Throughout the MTN advisory process, foreign producers of commercial china and their United States importers and distributors remained silent. That silence is easily explained. When your present competitive advantage derives from a mere technical loophole and impacts so severely on American industry and labor, you cannot very well expose your position to the scrutiny of public debate.

Now, however, those same foreign producers and their United States importers have begun a last-minute political campaign to undo the constructive result of four years of public hearings, careful administrative considerations, and intensive international negotiation. That campaign is being directed at the STR, the Congress, and even the White House.

This belated effort does not deserve serious consideration. These foreign interests seek nothing more than the perpetuation of a loophole in the tariff schedules—a loophole which earns them fat profits, but which threatens the profitability of United States companies and the jobs of thousands of American workers. On behalf of the U.S. commercial china industry—its companies, its investors, and its employees—we urge Congress to ignore this eleventh hour campaign and to adopt the much-needed new classification reform which the U.S. Government has negotiated at Geneva.

PART 2—CERAMIC PRODUCTS—Continued
[28 F.R. 8849]

GSP	Item	Articles	Rates of Duty 1	Rates of Duty 2
		Subpart C—Table, Kitchen, Household, Art and Ornamental Pottery—Continued		
		Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients—Continued		
		Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
		Available in specified sets:		
A	533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30.	5¢ per doz. pcs. +14% ad val.	10¢ per doz. pcs. +50% ad val.
A	533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
A*	533.26	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
	533.28	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12.	5¢ per doz. pcs. +10.5% ad val.	10¢ per doz. pcs. +50% ad val.
		Not available in specified sets:		
	533.31	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.	5¢ per doz. pcs. +12.5% ad val.	10¢ per doz. pcs. +50% ad val.
		Other articles:		
	533.33	Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.	5¢ per doz. pcs. +12.5% ad val.	10¢ per doz. pcs. +50% ad val.
	533.35	Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
	533.36	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
	533.38	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen.	5¢ per doz. pcs. +11% ad val.	10¢ per doz. pcs. +50% ad val.
A	533.41	Of bone chinaware	17.5% ad val	10¢ per doz. pcs. +70% ad val.
		Of nonbone chinaware or of subporcelain:		
	533.51	Hotel or restaurant ware and other ware not household ware.	10¢ per doz. pcs. +45% ad val.	10¢ per doz. pcs. +70% ad val.
		Household ware available in specified sets:		
	533.63	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10.	10¢ per doz. pcs. +48% ad val.	10¢ per doz. pcs. +70% ad val.
	533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24.	10¢ per doz. pcs. +55% ad val.	10¢ per doz. pcs. +70% ad val.
	533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56.	10¢ per doz. pcs. +36% ad val.	10¢ per doz. pcs. +70% ad val.
	533.68	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56.	5¢ per doz. pcs. +18% ad val.	10¢ per doz. pcs. +70% ad val.
	533.69	Not covered by item 533.63, 533.65, 533.66 or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $8.	5¢ per doz. pcs. +18% ad val.	10¢ per doz. pcs. +70% ad val.

See footnotes at end of table, p. 440.

EXHIBIT A

If the underside of your tableware bears the Mark of REGO, you can be confident that long-lasting quality has been fired into it.

REGO is the new fine hotelware china with a difference. It is the culmination of more than a thousand-year-old Oriental potters' art refined to meet American standards and immediately available in all patterns at surprisingly reasonable cost. It is the mark of fine china.

Hotelware bearing the Mark of REGO is conveniently coded on the underside of each piece so you will always know what is in your inventory . . . just as your customers will always know that you only serve the best.

The Mark of REGO— a new standard for memorable and lasting service at affordable prices — is available exclusively through THC.

EXHIBIT B

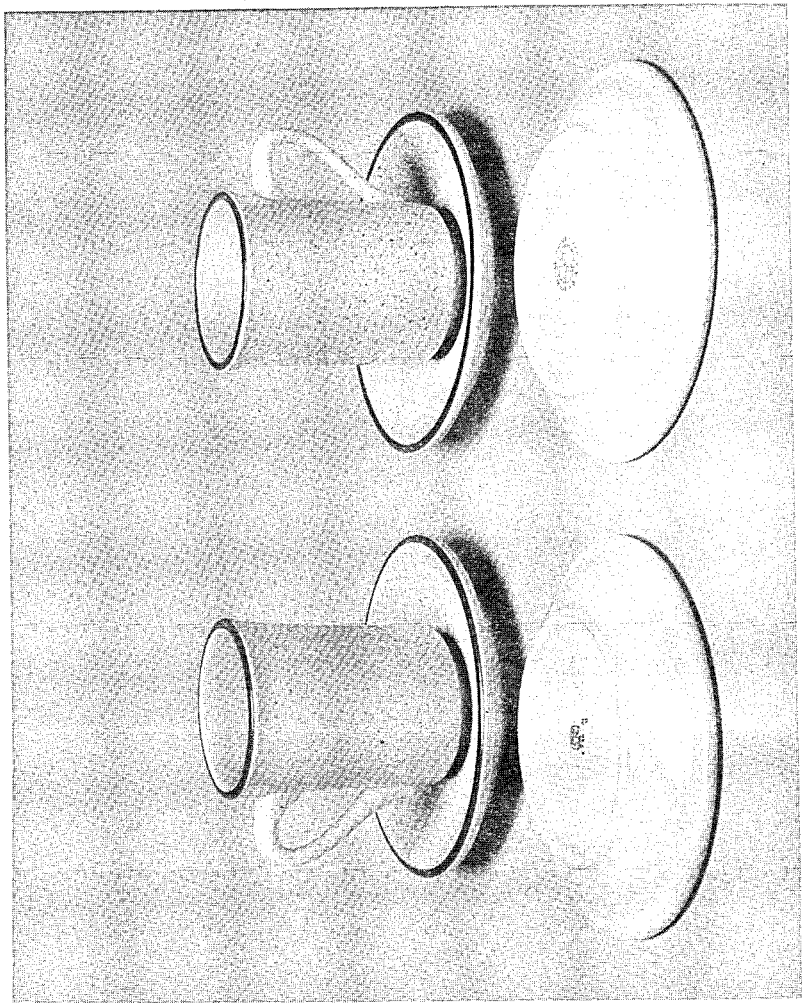


EXHIBIT C

PART 2—CERAMIC PRODUCTS
(28 F.R. 8849)

GSP Item	Articles	Rates of Duty 1	Rates of Duty 2
	Part 2 headnotes: 1. This part covers ceramic wares, and articles of such wares and, in addition, certain unshaped refractory material (subpart A) closely related thereto. 2. For the purposes of the tariff schedules— (a) a "ceramic article" is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure, which body is composed essentially of inorganic nonmetallic substances and either is formed from a molten mass which solidifies on cooling, or is formed and subsequently hardened by such heat treatment that the body, if reheated to pyrometric cone 020, would not become more dense, harder, or less porous, but does not include any glass article; (b) the term "earthenware" embraces ceramic ware, whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient and will absorb more than 3.0 percent of its weight of water; (c) the term "stoneware" embraces ceramic ware whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient, is not commonly white, will absorb not more than 3.0 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when fully vitrified; (d) the term "subporcelain" embraces fine-grained ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired body which is white (unless artificially colored) and will absorb more than 0.5 percent but not more than 3.0 percent of its weight of water; (e) the terms "chinaware" and "porcelain" embrace fine-grained ceramic ware (other than stoneware), whether or not glazed or decorated, having a body which is white (unless artificially colored) and will not absorb more than 0.5 percent of its weight of water; (f) the term "bone chinaware" embraces chinaware or porcelain the body of which contains by weight 25 percent or more of calcined bone; (g) the term "nonbone chinaware" embraces chinaware or porcelain other than bone chinaware; (h) the term "coarse-grained", as applied to ceramic ware, embraces such wares having a body made of materials none of which had been washed, ground, or otherwise beneficiated; (i) the term "fine-grained", as applied to ceramic wares, embraces such wares having a body made of materials any of which had been washed, ground, or otherwise beneficiated; and (j) the term "body" includes any engobe or body slip, except engobe or body slip applied to the body as a decoration; and (k) the water absorption of a ceramic body shall be determined by *ASTM* test method designated C373-56 (except that test specimens may have a minimum weight of 10 grams, and may have one large surface glazed).		
	Subpart A—Refractory and Heat-Insulating Articles		
	Subpart A headnotes: 1. This subpart does not cover ceramic electrical ware (see subpart D of this part). 2. For the purposes of this subpart, "a heat-insulating article", whether shaped or not shaped, is one having a bulk density not over 75 pounds per cubic foot and designed to impede or resist the flow of heat at temperatures above 1600° F. 3. For the purposes of this subpart, "a refractory article", whether shaped or not shaped, is one having a bulk density over 75 pounds per cubic foot and designed to be used to resist temperatures above 2600° F. A shaped refractory article has special properties of strength and resistance ot thermal shock and may also have, depending upon the particular uses for which designed, other special properties such as resistance to abrasion and corrosion. 4. For the purposes of items 531.21 and 531.24, a brick which contains both chrome and magnesite is classifiable according to which of those components is the greater by weight.		

Mr. JENKINS. Mr. Schulze?
Mr. SCHULZE. No questions, Mr. Chairman.
Mr. JENKINS. Mr. Moore?
Mr. MOORE. No questions.
Mr. JENKINS. Thank you very much for your testimony.
Ms. ESSERMAN. Could we give you the samples for your examination?
Mr. JENKINS. Certainly. The retail price is under $25, I assume.
Thank you very much, Mr. Goodman and Ms. Esserman.
These being the final witnesses for today, the committee will stand in recess until 10 o'clock tomorrow morning.
[Whereupon, at 3:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, April 26, 1979.]

44-998 - 79 - 24

MULTILATERAL TRADE NEGOTIATIONS

THURSDAY, APRIL 26, 1979

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

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Ed Jenkins presiding.

Mr. JENKINS. The committee will come to order. Because of the long list of witnesses for this morning the subcommittee will commence hearings as other members come into the hearing room.

At this time we have our first witnesses representing the American Paper Institute and National Forest Products Association, Mr. J. Stanford Smith, chairman and chief executive officer of International Paper Co., and Dr. Irene W. Meister, vice president of international affairs for American Paper Institute. If you will come forward and have a seat at the witness table.

We are delighted to have you appear before the subcommittee today. The written statement that you have prepared will be made a part of the record in its entirety and you may summarize or proceed as you desire.

STATEMENT OF J. STANFORD SMITH, ON BEHALF OF THE AMERICAN PAPER INSTITUTE AND THE NATIONAL FOREST PRODUCTS ASSOCIATION, ACCOMPANIED BY IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL AFFAIRS, AMERICAN PAPER INSTITUTE, AND JOHN WARD, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. SMITH. Thank you. I am J. Stanford Smith, chairman and chief executive officer of International Paper Co.

I am testifying today on behalf of the American Paper Institute and the National Forest Products Association. These organizations represent manufacturers producing about 90 percent of the nation's pulp, paper, and paperboard, and over 3,000 companies who produce the vast bulk of the nation's solid wood products. Testifying with me will be Dr. Irene W. Meister, vice president of the American Paper Institute and chairman of the industry sector advisory committee on paper. Also appearing with me is John Ward, representing the National Forest Products Association.

I appreciate this opportunity to discuss with you the crucial importance of the multilateral trade agreements to the nation as a whole and to the forest products industry—an industry which employs about 8 percent of the U.S. manufacturing labor force, sells roughly $100 billion worth of products, invests around $5 billion a

year in new facilities, accounts for $5 billion of direct exports, and whose products make possible many more billions of dollars of exports by other industries.

I have had the opportunity to serve on the President's Advisory Committee for Trade Negotiations as well as the industry policy advisory committee. And I am deeply impressed by the Herculean job that Ambassador Strauss, and his associates have done in the most ambitious round of trade negotiations ever held.

Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. By greatly increasing export opportunities for U.S. industries, the trade agreements will: One, contribute to economic growth; two, create more jobs; three, improve productivity; four, help reduce inflation; and five, provide better values for consumers.

For the U.S. forest products industry, these new trade agreements open up opportunities. The industry's raw material—trees—is a renewable resource. The productivity of U.S. forests has increased dramatically as a result of the large investments made by the industry. Consequently, the forest products industry can compete successfully anywhere in the world provided it's not hampered by unfair trade barriers.

Specifically, new export opportunities will open up for the U.S. forest products industry through lowering of world tariffs on such products as plywood, linerboard, and printing/writing papers.

The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on nontariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards, and customs valuation.

Reductions in tariff and nontariff barriers, will create opportunities for additional investment to meet growing demand for forest products worldwide. Investments by the forest products industry to serve domestic and world markets have grown at 11 percent a year during the past 10 years. The potential for expanded trade resulting from the MTN agreements, as well as growing domestic requirements, could boost the rate of investment of the forest products industry to at least 15 percent a year in the decade ahead.

Increased exports and investment will mean more U.S. jobs. Today approximately 140,000 jobs, or close to 10 percent of the total employment in the forest products industry, are either directly or indirectly dependent on exports. A significant portion of this employment is in the South where minorities are a very important segment of the work force.

And in addition to increased employment in the forest products industry, will come added job opportunities in the capital goods and raw materials industries which supply our needs.

No trade package could succeed in gaining all the advantages to which any single industry or any country is looking. But these agreements go a long way toward setting down some workable solutions to the complex trading problems we face today.

I am pleased to see that publications like the New York Times, Wall Street Journal, and Washington Post have all come out

strongly in favor of the new trade package. An editorial in the latest issue of Business Week emphasizes that:

> The U.S. must look out for its exporters and push their interests in every way it can. If this country does not claim its fair share of expanding world markets, it can be sure that aggressive exporters from Europe and Japan will.

For the United States to reap the full benefits of the trade agreements, it is vitally important that these agreements become part of an aggressive export policy. We hope the Congress will take leadership in this.

Specifically, consideration should be given to the following:

Secure a strong legislative commitment to a national export policy to regain and strengthen a balance in our trade position.

Create investment incentives that would improve the competitiveness of American industry in world markets. This is especially important, given the decline in the U.S. manufacturing trade balance from surplus of $3.6 billion in 1977 to a deficit of $5.8 billion in 1978.

Authorize the Trade Policy Staff Committee to hold hearings annually in several parts of the country in order to take testimony regarding the U.S. international trade position and policies. This committee would then submit reports to the STR and the International Trade Advisory Council.

These recommendations for expanding U.S. Exports are in line with those being put forth by the Advisory Committee for Trade Negotiations.

In addition, there is a strong need to establish a focal point within the executive branch for the management of U.S. trade policy. In the past, lack of effective coordination and sustained attention to the formulation and execution of trade policy contributed to decline in our trade balance.

Mr. Chairman, this concludes my prepared testimony. After Irene Meister's testimony, I will be pleased to try to answer any questions you or the members of the committee may have.

Before proceeding with Irene Meister's testimony, may I also introduce John Ward, who is sitting with me, as the representative of the National Forest Products Association.

Ms. MEISTER. The industry sector advisory committee on paper, ISAC No. 4 which I have the privilege of chairing, met last week to evaluate the results of the MTN and to prepare our report for Congress.

Let me summarize briefly, Mr. Chairman, the ISAC's position within the framework of our industry's particular needs.

In 1978, paper industry's exports were about $2.6 billion, but our dependence on trade is much greater, close to $8 billion, when indirect exports are taken into account. Tariffs which are high in all of our major markets are the industry's biggest problem.

The key objective of the ISAC therefore has been to obtain significant reductions of tariffs in the European community, Japan and Canada.

We are grateful to Ambassador Strauss and his associate for the major efforts they have made on behalf of our industry and the results they have achieved.

Our negotiators had a difficult task, especially because protectionist pressures from the paper industry in several of our markets were exceptionally strong.

In the economic community we face a very special additional problem—lack of tariff parity with our major competitors, the Nordic countries. This disparity is growing and by 1984 tariffs on paper and paperboard coming from Scandinavia will be zero.

Currently EC tariffs on our products range mostly from 8 to 14 percent. The Community tariff offer will not eliminate this lack of tariff parity, but without the agreed upon tariff reductions, the disparity would be much greater.

We still have one serious problem in the EC negotiations concerning the definition of kraft products which we have detailed in the ISAC preliminary report to Congress.

We hope the issue will be resolved soon for otherwise the value of the EC tariff offer will be greatly impaired. Furthermore the United States has proposed to the EC a solution of this issue that would be fair and equitable for both the producing and consuming countries.

In Canada and Japan where tariff on paper and paperboard are still very high we have received meaningful concessions which will improve the U.S. paper industry's competitive position in these markets.

The ISAC report to Congress and our written testimony to your committee comment in detail on the reasons for the paper industry's strong support of the non tariff agreements. We are especially supportive of the agreement on subsidies and countervailing duties because capital intensive industries such as paper are receiving government subsidies in more and more countries.

We believe that the recently negotiated GATT code on subsidies—assuming it is effectively enforced—could provide a significant safeguard for our industry in the domestic market as well as in third country markets. Codes on standards and customs valuation are also important to us.

Let me turn briefly to yet another reason why the paper industry strongly supports the trade agreements which we believe will help the cause of export expansion. I am now speaking of the multiplier effect of indirect exports on domestic production and employment.

We define the paper industry's indirect exports as our domestic sales that take place only because of the export demand for the products of other industries. Packaging for exports and paper for exported printed matter are the best examples, but there are many others.

For 1977, the latest data we have, our industry's indirect exports were estimated at close to $5 billion. Attached to our written testimony is tabulation compiled by the American Paper Institute which estimates that foreign trade related employment in our industry—that is, employment related to direct and indirect exports—accounts for about 15 percent of total industry employment or over 103,000 workers. As overall U.S. exports grow so will the indirect exports of our industry.

In the course of its meeting last week, the ISAC 4 made the following recommendations for the implementing legislation:

One, implementing legislation should reflect the provisions of negotiated codes and agreements as closely as possible.

Two, enforcement of countervailing duties and antidumping laws must be strong, fair and effective, at the same time in fashioning relief for an injured industry the government must have the necessary flexibility to affect relief without creating widespread retaliatory trade problems. Such relief would include a negotiated solution when appropriate.

Three, implementing legislation must contain provisions for the continuation of the private sector advisory process for each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well as giving each sectoral committee an opportunity to participate when appropriate.

Four, the President should be given an extension of his tariff negotiating authority.

Five, there should be an expression of legislative intent that foreign trade is a national priority and that an effective U.S. governmental organization for dealing with foreign trade policy and programs is imperative. Better coordination of trade policy and programs is necessary but specific legislation, dealing with governmental reorganization should be left to the immediate post MTN period.

In summary export expansion should be clearly identified by Congress and the Executive Branch as a national priority. To reach this goal will require a concerted effort on the part of the U.S. government and industry.

The paper industry is convinced that congressional approval of the MTN package is essential if the country is to succeed in this undertaking.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF J. STANFORD SMITH, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL PAPER CO., ON BEHALF OF THE AMERICAN PAPER INSTITUTE AND NATIONAL FOREST PRODUCTS ASSOCIATION; AND DR. IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL AMERICAN PAPER INSTITUTE, ON BEHALF OF THE AMERICAN PAPER INSTITUTE

SUMMARY

The multilateral trade agreements are in the best interest of the nation, and of the forest products industry. Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. The testimony makes a number of specific recommendations on export expansion and implementing legislation.

For the U.S. forest products industry, these new trade agreements open up opportunities. Specifically:

1. New export opportunities will open up through lowering of tariffs by the European Community, Japan, and Canada—three of the largest markets for products such as plywood, linerboard, and printing/writing papers.

2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stand to gain the most from three of these—the codes covering government subsidies, standards, and customs valuation.

3. The potential for expanded trade for the forest products industry resulting from the MTN agreements, as well as growing domestic requirements could boost our rate of investment at least 15% a year in the decade ahead.

4. Increased exports and investment will create new job oportunties—not only within the forest products industry, but in the capital goods and raw materials industries which supply our needs.

5. An overall increase in U.S. exports will have a multiplier effect on the domestic sale of forest products such as packaging for exported products, and paper for exported printed matter.

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements are made part of an aggessive export policy. We hope Congress will take leadership in this.

STATEMENT

Mr. Chairman, Members of the Committee, I am J. Stanford Smith, Chairman and Chief Executive Officer of International Paper Institute and the National Forest Products Association. These organizations represent manufacturers producing about 90 percent of the nation's pulp, paper, and paperboard, and over 3,000 companies who produce the vast bulk of the nation's solid wood products. Testifying with me will be Dr. Irene W. Meister, Vice President of the A.P.I. and Chairman of the Industry Sector Advisory Committee on Paper.

I appreciate this opportunity to discuss with you the crucial importance of the multilateral trade agreements to the nation as a whole and to the forest products industry—an industry which employs about 8 percent of the U.S. manufacturing labor force, sells roughly $100 billion worth of products, invests around $5 billion a year in new facilities, accounts for $5 billion dollars of direct exports, and whose products make possible many more billions of dollars of exports by other industries.

In addition, the U.S. is also an importer of forest products—mostly softwood lumber, newsprint, and pulp from Canada. The industry's heavy involvement in both imports and exports gives it a broad perspective from which to judge the merits of this trade package.

I have had the opportunity to serve on the President's Advisory Committee for Trade Negotiations as well as the Industry Policy Advisory committee. And I am deeply impressed by the Herculean Job that Ambassador Strauss, and his associates have done in the most ambitious round of trade negotiations ever held.

Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. By greatly increasing export opportunities for U.S. industries, the trade agreements will: Contribute to economic growth; create more jobs; improve productivity; help to reduce inflation; and provide better values for consumers.

For the U.S. forest products industry, these new trade agreements open up opportunities. The industry's raw material—trees—is a renewable resource. The productivity of U.S. forests has increased dramatically as a result of the large investments made by the industry. As a result, the forest products industry can compete successfully anywhere in the world provided it's not hampered by unfair trade barriers.

Specifically:

1. New export opportunities will open up for the U.S. forest products industry through lowering of world tariffs on such products as plywood, linerboard, and printing/writing papers.

2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards and customs valuation.

3. Reductions in tariff and non-tariff barriers, combined with proper domestic incentives, will create opportunities for additional investment to meet growing demand for forest products worldwide. Investments by the forest products industry to serve domestic and world markets have grown at 11 percent a year during the past ten years. The potential for expanded trade resulting from the MTN agreements, as well as growing domestic requirements, could boost the rate of investment of the forest products industry to at least 15 percent a year in the decade ahead.

4. Increased exports and investment will mean more U.S. jobs. Today approximately 140,000 jobs, or close to 10 percent of the total employment in the forest products industry, are either directly or indirectly dependent on exports. A significant portion of this employment is in the South where minorities are an important segment of the work force.

And in addition to increased employment in the forest products industry, will come added job opportunities in the capital goods and raw materials industries which supply our needs.

No trade package could succeed in gaining all the advantages that any single industry or any country is looking for. But these agreements go a long way toward setting down some workable solutions to the complex trading problems we face today.

I am pleased to see that publications like the New York Times, Wall Street Journal, and Washington Post have all come out strongly in favor of the new trade package. An editorial in the latest issue of Business Week emphasizes that, "The U.S. must look out for its exporters and push their interests in every way it can. If this country does not claim its fair share of expanding world markets, it can be sure that aggressive exporters from Europe and Japan will."

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements become part of an agressive export policy. We hope the Congress will take leadership in this.

Specifically, consideration should be given to the following:

1. Secure a strong legislative commitment to a national export policy to regain and strengthen a balance in our trade position.

2. Create investment incentives that would improve the competitiveness of American industry in world markets. This is especially important, given the decline in the U.S. manufactures trade balance from a surplus of $3.6 billion in 1977 to a deficit of $5.8 billion in 1978.

3. Maintain a strong system of advisory committees, which has proven effective in this round of negotiations. Change ACTN into International Trade Advisory Council, reporting to both the President and the Congress.

4. Assure fairer tax treatment for U.S. business nationals who work aboard. This would help to maintain effective personnel for the sale of U.S. products abroad.

5. Authorize the Trade Policy Staff Committee to hold hearings annually in several parts of the country in order to take testimony regarding the U.S. international trade position and policies. This committee would then submit reports to the STR and the International Trade Advisory Council.

6. Legislatively establish a National Commission on Productivity consisting of 20 members representing labor, industry, the academic community, the Congress, and the Executive Branch. Their mission would be to analyze the causes of declining productivity in America including their impact on foreign trade, and to recommend to the President ways of correcting the problem. The President should then submit a report to the Congress within four months on the same subject.

These recommendations for expanding U.S. exports are in line with those being put forth by the Advisosry Committee for Trade Negotiations.

In addition, there is a strong need to establish a focal point within the Executive Branch for the management of U.S. trade policy. In the past, lack of effective coordination and sustained attention to the formulation and execution of trade policy contributed to a decline in our trade balance.

Mr. Chairman, this concludes my prepared testimony. After Irene Meister's testimony, I will be pleased to try to answer any question you or the members of the committee may have.

STATEMENT OF IRENE W. MEISTER

Mr. Chairman, Members of the Committee, Mr. Smith has just outlined the broad reasons for our industry's strong support of the Trade Package that you have before you. Your committee will be receiving a detailed report completed last week from the Industry Sector Advisory Committee on Paper (ISAC No. 4 position within the framework of our industry's particular needs.

The export performance of the U.S. paper industry has shown steady growth. Comparing 1967 with 1977—and taking into account that 1977 was not paper's best year due to lagging recovery in other industrial countries—the industry's export tonnage, including exports of waste paper, increased by almost 83 percent and the value of exports rose by 237 percent to $2.6 billion. This means that the industry's average annual growth in volume was over 6 percent and in value almost 13 percent. In view of this good performance why then do we need trade liberalization? Let me outline some of the reasons.

The European Community (EC)

The paper industry's major market is the European Community, where the value of dutiable exports in 1977 accounted for $322.7 million. In the E.C., our industry has been experiencing and will continue to experience a growing tariff disadvantage vis-a-vis our major competitors, the Nordic countries. By January 1984, under the treaty between the E.C. and the European Free Trade Association (EFTA), imports of paper and paperboard from the EFTA countries will enter all nine E.C. nations completely duty-free. Without meaningful tariff reductions in the E.C. for North America, the tariff disparity would adversely affect our competitive position and could lead to a loss of this important market. This, of course, is unacceptable to the industry, and would also have an adverse effect on the U.S. balance of payments. Although the lack of tariff parity in the E.C. will not be eliminated by the results of

the Tokyo Round, without the agreed-upon tariff reductions the disparity would be much greater. Decreased tariffs are needed to keep and attract steady, long-term U.S. exporters to the market—a plus for the U.S. paper industry but also for our foreign customers.

As of today, our industry still has one important unresolved negotiating issue in the E.C.; namely, the definition of kraft products, a $522 million export category, 31 percent of which went to the E.C. The present E.C. definition creates a significant and unfair nontariff barrier. Last year, the Harmonized Systems Committee of the Customs Cooperation Council, on which both the U.S. and the E.C. are represented, adopted unanimously a definition of kraft paper and paperboard, which is fair and equitable for both producing and consuming nations. Yet we are still encountering major problems in relating this definition to the E.C. offer. We hope that the U.S. negotiators will be able to convince the E.C. to accept this modern, up-to-date definition. Without it, the value of the E.C. tariff offer will be greatly impaired.

Japan

The Japanese Pulp and Paper Industry is the second largest in the world. Yet the high tariffs on paper and paperboard, most of them in the 12 to 15 percent range, have been effectively dampening our industry's efforts to expand in this market. The reduction of the Japanese tariffs coupled, we hope, with an effective reduction of powerful nontariff barriers, will permit our companies to develop the export potential for this large consuming market.

Canada

Ninety percent of paper industry imports into the U.S. are from Canada, and the bulk of this Canadian tonnage enters duty-free. These imports consist mainly of newsprint and pulp. The U.S. tariffs on the rest of the imports from Canada are low in comparison to current Canadian duties on paper and board products, which mostly range from 12 to 15 percent. While under the present offer the U.S. will make extensive reductions in its tariffs on paper industry's items, the substantial Canadian concessions will have narrowed the tariff gap between our two countries, thereby expanding the U.S. potential in that market. It has been the consensus of ISAC No. 4 that the U.S. industry will benefit from these concessions.

Nontariff barriers

Among the nontariff barrier agreements negotiated in Geneva, three codes are of particular interest to the paper industry although other agreements are also significant since they will improve, we believe, the overall aspects of the international trading system.

The U.S. paper industry is international in its character, and with proper incentives—an improved international trading system being a key one—will continue to expand. Yet in a world where subsidies for exports and domestic subsidies on production, especially for capital intensive industries such as paper, are an ever growing practice, we will be at a great disadvantage. We believe that the recently negotiated GATT code on subsidies, when coupled with effective domestic legislation on countervailing duties, will provide a very significant safeguard for our industry in the domestic as well as in third country markets.

In the past, we have experienced trade problems caused by the establishment by foreign countries of standards—such as, for example, specific product definitions—of which we were not even aware. The key word of the new GATT standards code, as we understand it, is "transparency." In other words, standards in all their many forms can no longer be trade barriers. When standards are formulated by individual countries, the signatories to the code will have a chance to object, if their effect will be detrimental to trade. We believe that it is indeed a great step forward in diminishing trade distortions.

We are also encouraged by the adoption of the code on customs valuation. All too often, arbitrary actions by customs authorities distort the true value of exported products by so-called "uplifts" or other arbitrary methods of valuation, thus effectively raising tariff duties without appearing to do so. The new code on customs valuation promises to decrease any uncertainty in export valuation and thus encourage more companies to enter the export field.

In reviewing the impact of the negotiated agreements on trade in general and on the paper industry specifically, the ISAC No. 4 felt strongly that the success of these agreements will depend greatly on their fair and effective enforcement. This in turn will require continued vigilance on the part of the U.S. government as well as U.S. industry.

Indirect exports

Let me now turn to another reason why the paper industry strongly supports trade liberalization. This reason, I believe, is usually not given enough consideration in the evaluation of the impact of trade on the domestic economy. I am now speaking of the multiplier effect of indirect exports on domestic production and employment. We define the paper industry's indirect exports as domestic sales that take place only because of export demand for the products of other industries. Packaging for exported products, paper for exported printed matter, and paper used in export documentation are examples of indirect exports for our industry. Practically every basic industry in this country has indirect exports with its own particular multiplier. As overall U.S. exports increase—and we assume that they will through a better trading system and liberalization of tariffs—so too will the paper industry's indirect exports, which in 1977 totaled an estimated $5 billion and resulted in the employment of 67,000 people.

From the national standpoint, exports must be a job-creating activity and an antidote to the loss of jobs occurring in industries that have lost their domestic or international competitiveness. Therefore, the export-creating potential of indirect exports with its multiplier effect is worthy of serious consideration by the U.S. government. Earlier this year, we urged the U.S. Department of Commerce to carry out a study based on the current Census data that would show in understandable terms the impact of indirect exports on domestic production and employment in the basic industries. We still think it is a very worthwhile effort, judging from the results we have obtained from a study that was listed to our own industry.

We are attaching a tabulation recently completed by the American Paper Institute, which estimates the foreign trade related employment in our industry. We have estimated that about 15 percent of the total industry employment, or over 103,000 workers, is related to paper industry's direct or indirect exports. As total U.S. exports increase, so will the indirect exports of the U.S. paper industry—another reason why we support successful conclusion of the MTNs.

Our industry did not get everything we wanted out of these negotiations. No one ever does. And, we also had to give up a major portion of our domestic tariffs on paper and paperboard. Nevertheless, it is the unanimous consensus of the Industry Sector Advisory Committee on paper that on balance our negotiators have done a good job and that our industry will be better off in the years to come, once the package has received Congressional approval. We also believe that the adoption of this package will signal to industry the commitment of the U.S. Congress and the Executive Branch that export expansion is a key national priority.

In the course of its meeting last week, the ISAC No. 4 made four recommendations pertaining to enabling legislation. They are as follows:

1. Implementing legislation should reflect provisions of negotiated codes and agreements as closely as possible.
2. Enforcement of the countervailing duties and antidumping laws must be strong, fair and effective. At the same time, in fashioning relief for the injured industry, the government must have the necessary flexibility to effect relief without creating widespread retailiatory trade problems. Such relief would include negotiated solution where appropriate.
3. Implementing legislation must contain provisions for the continuation of the private sector advisory process with each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well, and each sectoral committee should be given an opportunity to participate when appropriate.
4. The President should be given an extension of his tariff negotiating authority.
5. There should be an expression of legislative intent that foreign trade is a national priority and thus effective U.S. governmental organization for dealing with foreign trade policy and programs is imperative. Better coordination of trade policy and programs is necessary, but specific legislation dealing with governmental reorganization should be left to the immediate post-MTN period.

In summary, export expansion should be clearly identified by the Congress and the Executive Branch as a national priority. To reach this goal will require a concerned effort on the part of the U.S. goverment and industry. The paper industry is convinced that Congressional approval of the MTN package is essential if the country is to succeed in this undertaking.

The American Paper Institute

The American Paper Institute is comprised of manufacturers who produce approximately 90 percent of the nation's pulp, paper and paperboard. Their products include wood pulp, newsprint, printing and writing papers, tissue, wrapping or

packaging materials, and other paper or paperboard produced from virgin and recycled cellulose fibers.

In 1978, this industry produced nearly 62 million tons of paper and paperboard, and the net sales of the paper and allied products companies amounted to over $50 billion. The U.S. paper and allied products industry operates in every state in the Union, employing over 700,000 people and paying about $13.5 billion in wages, salaries and benefits. It is a basic industry, worldwide in scope, and among the ten largest in the country.

National Forest Products Association

The National Forest Products Association, with headquarters in Washington, D.C., represents more than 3,000 companies and 29 associations involved in the growing of timber and the manufacturing and distribution of lumber, plywood and other wood products. NFPA members account for the major portion of the basic wood products produced in the United States.

In 1978 the wood products industry produced over 30 billion board feet of softwood lumber, 7 billion board feet of hardwood lumber, 19 billion square feet of softwood plywood and many other wood products.

Industry sales in 1978 were close to $50 billion. The wood products industry employed over 750,000 employees and paid well over $10 billion in wages and benefits.

J. Stanford Smith

Mr. J. Stanford Smith is Chairman and Chief Executive Officer of International Paper Company, an integrated, multinational forest products company which employs over 50,000 people. He serves as a member of the Executive Committee of the American Paper Institute, and is Co-Chairman of the President's Advisory Committee for Trade Negotiations. He is also a member of the Industry Policy Advisory Committee for the trade negotiations, the Business Roundtable, and the Business Council.

Irene W. Meister

Dr. Irene W. Meister is Vice President, International of the American Paper Institute and Chairman of the Industry Sector Advisory Committee on Paper (ISAC No. 4). She also serves on several committees of national and international organizations, such as the U.S. Chamber of Commerce, OECD, FAO and UNEP.

U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976

State	Value of shipments (in millions)				Thousands of employees				Direct and indirect export-related employment as percent of total Industry 26 employment	Rank of Industry 26 in terms of export value within State
	Total Industry 26 shipments [1]	Direct exports [2]	Indirect exports [3]	Total of direct and indirect exports	Total Industry 26 employment [4]	Employment related to direct exports [5]	Employment related to indirect exports [6]	Employment related to total of direct and indirect exports		
Alabama	$1,815.7	$83.1	$182.4	$265.5	19.9	1.2	2.5	3.7	18.6	4
Arizona	92.4	3.4	9.6	13.0	1.2	0.1	0.1	0.2	16.7	9
Arkansas	984.0	91.0	93.6	184.6	11.1	1.3	1.3	2.6	23.4	2
California	3,066.5	128.2	308.6	436.8	40.7	1.8	4.3	6.1	15.0	10
Connecticut	563.4	28.5	56.2	84.7	8.9	0.4	0.8	1.2	13.5	6
Florida	1,446.8	212.0	129.6	341.6	16.6	3.0	1.8	4.8	28.9	2
Georgia	2,344.2	124.7	233.1	357.8	26.9	1.8	3.3	5.1	19.0	3
Illinois	2,152.1	34.0	222.2	256.2	38.3	0.5	3.1	3.6	9.4	13
Indiana	861.3	12.2	88.8	101.0	14.4	0.2	1.3	1.5	10.4	14
Iowa	354.0	10.1	36.0	46.1	4.9	0.1	0.5	0.6	12.2	12
Kentucky	515.2	53.8	48.5	102.3	8.0	0.8	0.7	1.5	18.8	6
Louisiana	1,450.2	126.2	139.2	265.4	16.0	1.8	1.9	3.7	23.1	4
Maine	1,406.0	107.9	136.3	244.2	17.8	1.6	1.9	3.5	19.7	1
Maryland	548.3	12.3	56.2	68.5	9.6	0.2	0.8	1.0	10.4	8
Massachusetts	1,603.1	71.3	160.8	232.1	31.2	1.0	2.2	3.2	10.3	7
Michigan	1,764.3	44.2	182.4	226.6	24.8	0.6	2.5	3.1	12.5	10
Minnesota	1,321.0	44.9	133.9	178.8	18.1	0.6	1.9	2.5	13.8	8
Mississippi	577.3	189.4	40.3	229.7	6.3	2.7	0.6	3.3	52.4	1
Missouri	787.1	12.8	81.6	94.4	14.8	0.2	1.1	1.3	8.8	13
New Hampshire	434.5	72.8	38.4	111.2	7.3	1.0	0.5	1.5	20.5	2
New Jersey	1,807.0	51.5	184.3	235.8	31.3	0.7	2.6	3.3	10.5	10
New York	2,620.2	77.2	266.9	344.1	48.6	1.1	3.7	4.8	9.9	5
North Carolina	1,319.1	80.6	130.1	210.7	17.5	1.2	1.8	3.0	17.1	6

U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976—Continued

State	Value of shipments (in millions)				Thousands of employees				Direct and indirect export-related employment as percent of total Industry 26 employment	Rank of Industry 26 in terms of export value within State
	Total Industry 26 shipments [1]	Direct exports [2]	Indirect exports [3]	Total of direct and indirect exports	Total Industry 26 employment [4]	Employment related to direct exports [5]	Employment related to indirect exports [6]	Employment related to total of direct and indirect exports		
Ohio	2,190.3	44.9	225.6	270.5	37.6	0.6	3.2	3.8	10.1	12
Oregon	1,046.1	39.1	105.6	144.7	9.9	0.6	1.5	2.1	21.2	4
Pennsylvania	3,075.2	62.1	316.3	378.4	42.4	0.9	4.4	5.3	12.5	14
Rhode Island	103.1	4.3	10.1	14.4	2.4	0.1	0.1	0.2	8.3	14
South Carolina	1,112.6	135.4	102.2	237.6	13.8	1.9	1.4	3.3	23.9	4
Tennessee	1,267.6	47.6	129.6	177.2	17.1	0.7	1.8	2.5	14.6	10
Texas	1,402.9	43.3	142.6	185.9	20.7	0.6	2.0	2.6	12.6	11
Vermont	184.7	8.6	18.2	26.8	2.3	0.1	0.3	0.4	17.4	2
Virginia	1,100.4	47.9	110.4	158.3	16.2	0.7	1.6	2.3	14.2	9
Washington	1,733.5	203.0	160.8	363.8	17.6	2.9	2.3	5.2	29.5	3
West Virginia	90.3	3.3	9.1	12.4	1.9	0.1	0.1	0.2	10.5	10
Wisconsin	3,704.6	78.9	380.6	459.5	44.1	1.1	5.3	6.4	14.5	6
Balance of States (15)	1,373.1	146.1	129.6	275.7	15.3	2.1	1.8	3.9	26.5	
Total	48,218.1	2,536.6	4,799.7	7,336.3	675.5	36.3	67.0	103.3	15.3	

[1] Paper and allied products industry is designated Industry 26 by the Bureau of the Census.

[2] Value of export shipments is based on individual State data reported by the Bureau of the Census and adjusted to the revised census figure for the value of total Industry 26 export shipments.

[3] Indirect exports are domestic sales which take place because of export demand for the products of all other industries. Total indirect exports, estimated to be $4.8 billion in 1976, allocated among States on the basis of each State's share of total nonexport shipments.

[4] Total industry employment based on census State employment data, adjusted to Bureau of Labor Statistics total Industry 26 employment figure for 1976.

[5] API estimates.

[6] API estimates.

Source: "Annual Survey of Manufactures, 1976, Origin of Exports of Manufacturing Establishments," issued by the Bureau of the Census, Department of Commerce, June 1978.

Mr. JENKINS. Thank you, Dr. Meister. Mr. Smith in your written testimony you made several recommendations including one on the need to maintain a system of advisory committees. What is the basis of your recommendation on that? How do you justify that particular need?

Mr. SMITH. I think we justify it on the basis of the fine work that has been done by Ambassador Strauss and his associates in setting up and working with such advisory committees in connection with the trade negotiations.

The net result is that the negotiators have been very well informed about the effect on jobs, the new chances for exports, the opportunities, and the problems ranging from nontariff barriers to tariff barriers, to definitions, to codes and so on.

In some of the earlier rounds of trade negotiations, people from industry felt there was not this good two-way exchange of information. But, it has been very beneficial this time. We think that the effective exchange of information is extremely important for the future.

Mr. JENKINS. You indicated that the MTN will help the forest products industry expand its exports. Presently information indicates that the industry is running near full capacity. How do you anticipate meeting the world demand and the expansion of exports in this field?

Mr. SMITH. If there is the kind of opportunity abroad that we think, these negotiations should help open it up, I am sure that the various companies within our industry will be expanding their capacity in order to meet that market as well as the market in the United States. Because we have an industry that is competitive on a worldwide basis, if there are no barriers we can successfully count on that as a permanent market.

As a member of the advisory committee, I have been struck by the fact that the industries which are afraid of losing some market in the United States because of inroads of foreign competition and which therefore are seeking protection, are very loud and noisy in pressing their point of view. On the other hand, the industries that are seeking to open up new opportunities sometimes have a harder time getting attention for their approach.

Yet in terms of the strength of the dollar and the strength of the balance of trade in the United States, it is very important that we emphasize helping those industries that are competitive on a world basis to expand.

Mr. JENKINS. You did not comment in your statement on the effect of your industry as far as the tariff reductions on paper and paperboards. In the years to come what do you consider to be the major threat to the industry's domestic market?

Mr. SMITH. The negotiations have given up most of the tariffs that remain in the United States on most paper and paperboard products. Many of them, such as news print and pulp, already flow into the United States tariff free. We are convinced that our future lies, not in tariff protection, but in maintaining world low cost leadership and in maintaining and enhancing the productivity of the whole forest products industry.

Because we think that productivity, not only in our industry, but in every industry, is so crucial to the maintenance of the strength

of the United States and to the reduction of inflation. I have in my written remarks called for the establishment of a national commission on productivity.

Mr. JENKINS. Doctor Meister, I was very much impressed with the documentation that is attached to your statement. I notice tht in my own State forestry products rank number three in export value. On pages 2 and 3 of your testimony, referring to the problem with the European community and the definition of kraft products, very briefly how do you think this committee could be of help in that regard? Do you have any suggestions?

Ms. MEISTER. We hope, Mr. Chairman, that this problem will be resolved by our negotiators. Negotiations on kraft have been difficult because it is a product that Europeans themselves do not produce except in just one country of the Common Market—only France produces kraft linerboards but they have competitive products, and this has been an area of great emotionalism rather than rational opposition.

Now the concessions we will receive are far from eliminating the tariff disparity with our major competitors, but at least we feel that we will be able to live with it, provided that we don't have a major nontariff barrier which now exists because of the EC definition of kraft. This definition would prevent us from using the most modern cost-effective technology in producing kraft products which will continue to be excellent in quality, will meet all standards and will be no threat to the European producers.

We are quite firm in our position that the tariff concessions which we have received are not going to be meaningful unless this problem is resolved.

Mr. JENKINS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman. I would like to thank both the witnesses for their excellent testimony.

Referring to the recommendations of Mr. Smith on pages 5 and 6, particularly recommendations one and two, my colleague from Oklahoma, Mr. Jones, and our colleagues from Illinois and Florida, Mr. Mikva and Mr. Gibbons and I have made some similar recommendations and we certainly appreciate that kind of back up.

With respect to the recommendations of Dr. Meister you say that they are the recommendations of ISAC No. 4. Were those recommendations made unanimously or by some consensus, or how were they developed?

Ms. MEISTER. Mr. Chairman and Mr. Frenzel, all the recommendations which are submitted were agreed upon unanimously by ISAC No. 4 which is a diversified group of executives representing, not only the manufacturing sector, but other sectors of the industry as well.

Mr. FRENZEL. Do you have the paper houses, the converters, the manufacturers and the whole range?

Ms. MEISTER. We have a range of industry.

Mr. FRENZEL. How many people are represented on ISAC No. 4?

Ms. MEISTER. We have now 16.

Mr. FRENZEL. Thank you. I yield the balance of my time.

Mr. JENKINS. Mr. Fisher.

Mr. FISHER. No questions.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. I have no questions but I would like to welcome the panel and thank them for their testimony.

Mr. JENKINS. Thank you very much for your testimony.

Our next witness is Mr. Gordon C. Hurlbert, president of Westinghouse Power Systems Co. Welcome to the committee. Your entire statement will be made a part of the record. You may proceed as you desire.

STATEMENT OF GORDON C. HURLBERT, PRESIDENT, WESTINGHOUSE POWER SYSTEMS CO., ACCOMPANIED BY CLAUDE HOBBS, VICE PRESIDENT, GOVERNMENT RELATIONS, WESTINGHOUSE ELECTRIC CORP.

Mr. HURLBERT. I would appreciate it if you would put the entire statement in the record and I will give some summary remarks. I have here with me Claude Hobbs, vice president of government relations for Westinghouse Electric Corp.

I am Gordon C. Hurlbert, president, Westinghouse Power Systems Co., one of the three major operating companies of Westinghouse Electric Corp., headquartered in Pittsburgh, Pa. Westinghouse is broadly diversified with 1978 worldwide sales of $6.7 billion and exports from the United States of approximately $800 million.

Our part of the corporation manufactures power equipment of the type most generally purchased by electric utilities and large industrial customers to generate, transmit, and distribute electric power. Our product line varies from small fuses and electrical hardware items costing only a few dollars to nuclear powerplants costing more than $1 billion.

Not only do we sell worldwide from our manufacturing facilities in the United States, but we have manufacturing facilities in most of the developed countries of the world. From our experience, detailed cost experience in manufacturing in those countries, we are convinced we can manufacture our products cost competitively in the United States.

I appreciate this opportunity to appear before you to present our view of the effects of the multilateral trade negotiations.

I would like to confine my testimony primarily to the impact that the MTN agreement is likely to have on several of the principal products of the Westinghouse Power Systems Co.

In the remarks that follow, I want to emphasize three points.

The results of the MTN for heavy electrical equipment do not bring reciprocity at all. Instead, foreign producers will gain a disproportionately larger entry into the U.S. market than they already enjoy, while American producers will continue to be denied access to major markets overseas.

Two, until European nations subscribe to the new Government Procurement Code and thus agree to open their markets for larger electrical equipment to American and other foreign bidders, and until Japan simply agrees to open its market for this equipment to us and others, the United States should first increase the "Buy American" differential rather than merely retaining present modest differential rates, and second, make no tariff reductions on these products.

Third, the U.S. Antidumping Act should not be weakened by allowing the Treasury Department to waive import penalties when a foreign company is found guilty of dumping in this country, merely by letting that company promise not to sell in the United States at prices not so low as to injure U.S. industry. Nor should that act be weakened otherwise.

Since the Tokyo Round of Multilateral Trade Negotiations was initiated in 1974, we have eagerly anticipated the prospect of opening a number of foreign markets which, for many years, have been closed to our principal products manufactured in the United States. I refer particularly to large electrical equipment, namely, large steam-turbine generators, large power transformers, and large power circuit breakers.

Unfortunately these hopes now appear to have been dashed.

In the Trade Act of 1974 Congress provided that:

> A principal U.S. negotiating objective * * * shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive oportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets for the importation of like or similar products * * *.

The Senate Finance Committee cited large electrical equipment as being particularly suited for trade negotiations on such a product sector basis.

In the Kennedy Round tariffs were reduced by the United States and by other countries around the world for imports of large electrical equipment. In the European countries and Japan, these duty reductions meant nothing because their nationalistic practices prevented them from buying American equipment. A tariff reduction on products which a country will not import is meaningless. American equipment manufacturers were the losers.

We believe that more equitable tariff and nontariff treatment for these products could be negotiated by the recommended sectoral approach. We hoped thus to eliminate this nontariff barrier to our exports.

We have been disappointed.

In the last 5 years, for example, U.S. private utilities and Government agencies have purchased almost 10,000 megawatts of steam-turbine generators from European manufacturers—enough to supply 45 percent of the entire Tennessee Valley Authority's 1978 peakload.

These machines have a current market value of approximately $500 million. To put the quantity in further perspective, the total orders placed by all purchasers in the United States in 1978 for steam-turbine generators were 14,600 megawatts, and only 8,900 megawatts in 1977.

During the same 5-year period, we were permitted to quote steam-turbine generators to European utilities on only one occasion. Last year the Austrian utility—Austria has no domestic manufacturer of turbine generators—permitted us to bid on a small coal-fired turbine-generator rated 330 megawatts. We recently have been advised that we are no longer in contention for this machine that it will be purchased from a European manufacturer.

Gentlemen, the U.S. large electrical equipment industry has fallen on hard times. We have had to reduce employment in our turbine generator facilities by several thousand people. How many more jobs shall we be forced to eliminate by one-sided trade agreements?

During the same general period U.S. agencies and private utilities purchased 570 megawatts of large hydrogenerator equipment from Japanese manufacturers. These lost orders were for four large machines of the type generally used in major hydroelectro dams. Although the proportion of U.S. business taken by the Japanese generally has been limited to between 15 to 25 percent of the annual commitments to purchase, these orders have been taken while the U.S. market was severely depressed in volume. As you might expect, during the same period we have had no opportunity to bid reciprocally for this type of equipment in Japan. In the past 2 years, foreign sales of extra-high voltage circuit breakers have exceeded 25 percent of the available U.S. order market.

I want to commend Ambassador Strauss and his colleaques for their sincere efforts to win for American manufacturers the right to bid and sell this equipment on the basis of value and price to utility organizations in Europe and Japan. But despite his well-know energy and persuasiveness, not even Mr. Strauss was able to succeed in that attempt. The Government Procurement Code which was negotiated in an effort to lead the governments of Eurpoe toward open, nondiscriminatory purchasing practices now turns out to be a failure so far as large electrical machinery is concerned.

The European countries refuse to have their electric utility entities purchase equipment under the new Government Procurement Code. And Japanese electric utilities continue their buy-only-Japanese policy. This means that those countries intend to continue their nationalistic purchasing practices. Our Ameican negotiators just can't get us into those markets.

But they have agreed to reduce American import duties on two very significant products—large power transformers and large power circuit breakers. They have also agreed to reduce the U.S. duty on another very significant product—large steam turbine-generators—although the latter reduction will be held in abeyance for 2 years in the vain hope that the European countries accede to the Government Procurement Code. The "Buy American" differential which has been effect since 1954 would be continued but not increased.

Maintaining the status quo on a number of our major large products and reducing our tariff rate on two of the products will not provide an incentive during the next 2 years for foreign industrialized countires to sign the Government Procurement Code.

In my judgment it is totally unrealistic to believe that this somehow benefits American manufacturers of this equipment. This naive policy had no beneficial impact in the past, and we cannot see how it will help now, The congressional recommendation in 1974 that there be equibtable product sector treatment of large electrical equipment has come to naught.

At a minimum, the Buy American Act differential on large electrical equipment should be increased and U.S. tariff rates on the equipment should not be reduced until the Japanese and Euro-

pean countries open their markets to American competition in these products. I urge Congress to help us get this much equity. How else can we make them open up their markets?

Large electrical equipment is quite different from most other products, and it is particularly sensitive to dumping. Today's typical steam-turbine generator unit costs from $30 to $50 million; 4 to 6 years are required to manufacture and deliver it. A large power transformer costs up to $1 million per unit, and 12 to 18 months are needed to manufacture and deliver it. Our large power transformer plant at Muncie, Ind., would cost from $100,000 to several hundred thousand dollars each, and large expensive plants are needed to manufacture them. Very large expensive plants are needed to manufacture steam turbines and heavy electrical equipment.

This extremely large, complicated machinery is essential to the functioning of modern electric utility systems.

As our country moves to reduce our reliance on oil and gas, we must convert more of our energy usage to coal, nuclear, and other advanced technologies. Virtually all of these resources will require a strong, technologically advanced heavy manufacturing industry to provide the machines for utilizing these scientific developments. Our national security will depend on such industry.

To remain healthy and maintain steady levels of employment, these large manufacturing plants must have orders.

Utilities purchase large equipment in a highly cyclical pattern. When a few utilities begin buying, many want to buy equipment. When the market for large equipment in Europe is depressed, it is often attractive for manufacturers there to seek export orders even at below normal prices in order to maintian employment and partially recover the overhead expense of large industrial plants. If such cut-price competition occurs in the United States when the American market for similar equipment is also depressed, the result can be very injurious to U.S. workers and manufacturers. This was the actual situation in 1978 in Europe and in the United States

The implementing legislation now being prepared for submission to Congress may contain provisions which will weaken the effectiveness of the U.S. antidumping law. Although they do not say it this way, there is little doubt that our foreign competitors want to maintain the right to dump their products into the United States, whether subsidized by direct home government assistance or by high prices in home country markets which are insulated from international competition.

They want to strip the United States of any effective legal remedy for protecting American industry and labor from such dumping.

Our Treasury Department wants legal authority to terminate dumping investigations by having the foreign exporter agree not to sell at prices so low as to injure American manufacturers. They also want to have Congress provide a new, untested definition of "injury" to U.S. industry. The proposed new concept of "material injury" could mean whatever foreign countries who are GATT members can successfully urge upon our Treasury Department and the International Trade Commission.

Why should Congress let foreign governments impose legal criteria for protecting American industry and labor from the foreigners' own unfair trading practices which are detrimental to U.S. industry and labor?

My plea to you, Members of Congress, is—don't give Treasury Department or any other Government agency this authority. It would let them decide what margin of unfair dumping injures American companies, and then by letting the foreign company sell at such prices Treasury could determine the price levels of imports we must compete against.

Neither U.S. industry nor Congress could effectively know whether such authority was being abused. If there is to be any abatement of a dumping action by obtaining a price undertaking, that price level should completely eliminate the dumping and the Treasury Department should actively police compliance with the undertaking.

Another proposal is for Congress to write into U.S. law the GATT concept of material injury, thus changing both the U.S. Antidumping Act and Countervailing Duty Act. I urge this committee and the Congress to insist that the implementing legislation, or that the legislative history, make it clear that this language is intended to work no change in our present law—and particularly that it will create no higher standard of what causes injury than the present law and practice under the Antidumping Act.

I will not repeat testimony you have already heard from others on the Antidumping Act proposals. I want to strongly endorse the testimony of Mr. Richard Cunningham on April 23. He is very familiar with the problems of our industry in this area.

The United States seems to be on the verge of extending most-favored-nation treatment to China, and perhaps to Russia. Western European countries and Japan are extremely protective of their own interests. The utilities and some heavy manufacturing industries in those countries are either owned by the governments or are mandated to carry certain social responsibilities and to maintain employment. These governments support their industries in the need to export—even at marginal prices; and they do it in subtle ways available to them through the structural differences in their tax and accounting laws.

We should not let those governments influence the writing of our laws which prescribed how we are to determine unfair import pricing, or which provide how much injury American industry must experience before our Government will protect Americans.

I urge you not to deny U.S. industry a strong, effective antidumping law.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF G. C. HURLBERT, PRESIDENT, POWER SYSTEMS CO., WESTINGHOUSE ELECTRIC CORP.

I am Gordon C. Hurlbert, President, Westinghouse Power Systems Company, one of the three major operating companies of Westinghouse Electric Corporation, headquartered in Pittsburgh, Pennsylvania. Westinghouse is broadly diversified with 1978 worldwide sales of 6.7 billion dollars and exports from the U.S. of approximately 800 million dollars. Our part of the corporation manufactures power equipment of the type most generally purchased by electric utilities and large industrial custom-

ers to generate, transmit and distribute electric power. Our product line varies from small fuses and electrical hardware items costing only a few dollars to nuclear power plants costing more than one billion dollars.

I appreciate this opportunity to appear before you to present our view of the effects of the Multilateral Trade Negotiations and the impact we believe they will have on our U.S. business.

Westinghouse operates worldwide. It is our policy to sell our products and services to any customer in the world, wherever located. Approximately 24 percent of our 1978 sales were made to overseas customers. While most of our manufacturing facilities are located within the United States, we have a number of overseas manufacturing divisions, and we own minority interest in a number of companies located in other countries. Because of our great involvement with international trade, I believe we are fully cognizant of the cost competitiveness of U.S. manufacturing vis-a-vis manufacturing in other parts of the world; and, I believe we understand the general business practices and export incentives of most of the industrialized countries of the world.

I would like to confine my testimony primarily to the impact that the MTN agreement is likely to have on several of the principal products of the Westinghouse Power Systems Company.

In the remarks that follow, I want to emphasize three points:

(1) The results of the MTN for heavy electrical equipment do not bring reciprocity at all. Instead, foreign producers will gain a disproportionately larger entry into the U.S. market than they already enjoy, while American producers will continue to be denied access to major markets overseas.

(2) Until European nations subscribe to the new Government Procurement Code and thus agree to open their markets for large electrical equipment to American and other foreign bidders, and until Japan simply agrees to open its market for this equipment to us and others, the U.S. should *(a)* increase the Buy American differential rather than merely retaining present modest differential rates, and *(b)* make no tariff reductions on these products.

(3) The U.S. Antidumping Act should not be weakened by allowing the Treasury Department to waive import penalties when a foreign company is found guilty of dumping in this country, merely by letting that company promise not to sell in the U.S. at prices not so low as to injure U.S. industry. Nor should that Act be weakened otherwise.

Since the Tokyo Round of Multilateral Trade Negotiations was initiated in 1974, we have eagerly anticipated the prospect of opening a number of foreign markets which, for many years, have been closed to our principal products manufactured in the U.S. I refer particularly to large electrical equipment, namely, large steam-turbine generators, large power transformers, and large power circuit breakers.

Unfortunately, these hopes now appear to have been dashed.

When the Trade Act of 1974 was being considered by this committee, by the Senate Finance Committee and the Congress, representatives of our industry urged a departure from the pattern of prior trade negotiations. Instead of merely authorizing our negotiators to grant import concessions on one group of products such as large electrical equipment in order to gain export concessions on other industrial products or agricultural products, the Congress provided that:

"A principal U.S. negotiating objective * * * shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets for the importation of like or similar products * * *."

The Senate Finance Committee cited large electrical equipment as being particularly suited for trade negotiations on such a product sector basis.

Our interest in this approach grew out of the Kennedy Round. Then, we urged that the industrialized countries of Europe and Japan not be granted any easier access to the United States market for large electrical equipment than American manufacturers of this equipment were accorded by the utility organizations in those countries. For many years Japan and European countries had followed the practice of buying large electrical equipment only from their own domestic manufacturers. Yet, simultaneously, these same manufacturers had been selling this equipment to government and private utility purchasers in the United States, with no deterrent other than a modest import duty and a small percentage differential for purchases by U.S. Government agencies.

In the Kennedy Round tariffs were reduced by the United States and by other countries around the world for imports of large electrical equipment. In the Europe-

an countries and Japan, these duty reductions meant nothing because their nationalistic practices prevented them from buying American equipment. A tariff reduction on products which a country will not import is meaningless. On the other hand, utilities in the United States, both those owned by the U.S. Government and by private investors, have purchased several hundred million dollars worth of large electrical equipment from European and Japanese manufacturers. In other words, American equipment manufacturers were the losers.

It was our hope and expectation that the United States negotiators would follow the Congressional directive with respect to the large electrical equipment product sector. We believed that more equitable tariff and non-tariff treatment for these products could be negotiated by this approach. We hoped thus to eliminate this non-tariff barrier to our exports.

We have been disappointed.

In the last five years, for example, U.S. private utilities and government agencies have purchased almost 10,000 megawatts of steam-turbine generators from European manufacturers—enough to supply 45 percent of the entire Tennessee Valley Authority's 1978 power generation requirements. These machines have a current market value of approximately $500 million. To put the quantity in further perspective, the total orders placed by all purchasers in the United States in 1978 for steam-turbine generators were 14,600 megawatts, and only 8,900 megawatts in 1977.

During the same five-year period, we were permitted to quote steam-turbine generators to European utilities on only one occasion. Last year the Austrian utility—Austria has no domestic manufacturer of turbine generators—permitted us to bid on a small coal fired turbine-generator rated 330 megawatts. We recently have been advised that we are no longer in contention for this machine, that it will be purchased from a European manufacturer.

Gentlemen, the U.S. large electrical equipment industry has fallen on hard times. We have had to reduce employment in our turbine generator facilities by several thousand people. How many more jobs shall we be forced to eliminate by one-sided trade agreements?

During the same general period U.S. agencies and private utilities purchased 570 megawatts of large hydro-generator equipment from Japanese manufacturers. These lost orders were for four large machines of the type generally used in major hydro-electro dams. Although the proportion of U.S. business taken by the Japanese generally has been limited to between 15 to 25 percent of the annual commitments to purchase, these orders have been taken while the U.S. market was severely depressed in volume. As you might expect, during the same period we have had no opportunity to bid reciprocally for this type of equipment in Japan.

In the past two years, foreign sales of extra-high voltage circuit breakers have exceeded 25 percent of the available U.S. order market. Because of patent infringements and other indications of unfair competition in large power circuit breakers, we have initiated an unfair trade complaint to the International Trade Commission. As noted by the General Accounting Office in its March 1979 Report, this kind of procedure is very slow, and several years may elapse before the matter is resolved.

I want to commend Ambassador Strauss and his colleagues for their sincere efforts to win for American manufacturers the right to bid and sell this equipment on the basis of value and price to utility organizations in Europe and Japan. But despite his well-known energy and persuasiveness, not even Mr. Strauss was able to succeed in that attempt. The Government Procurement Code which was negotiated in an effort to lead the governments of Europe toward open, non-discriminatory purchasing practices now turns out to be a failure so far as large electrical machinery is concerned. The European countries refuse to have their electric utility entites purchase equipment under the new Government Procurement Code. And Japanese electric utilities continue their buy-only-Japanese policy. This means that those countries intend to continue their nationalistic purchasing practices of buying nothing from American electrical equipment suppliers or from other foreign electrical suppliers that their own industries can make at home.

My personal expertise is in the area of utility equipment markets; however, I understand that these same restrictive practices also apply to surface transportation equipment purchased by government-owned transportation companies throughout Europe. For this reason, the parts of our corporation which manufacture electrical equipment and control systems for use in public transportation also are denied access to many foreign markets, while European and Japanese manufacturers have free access to American transportation markets.

Our American negotiators can't get us into those markets, yet they now propose to make it easier for the Europeans and that Japanese to continue to sell to U.S. utility organizations, both government-owned and investor-owned. Thus, the one-

way trade in large electrical equipment among the industrialized countries of the world will continue.

Our negotiators have agreed to reduce American import duties on two very significant products—large power transformers and large power circuit breakers. They have also agreed to reduce the U.S. duty on another very significant product—large steam-turbine generators—although the latter reduction will be held in abeyance for two years until the European countries accede to the Government Procurement Code. The Buy American differential which had been in effect since 1954, would be continued for all of these products, but not increased. It would remain 6 percent plus an additional 6 percent where the low American bidder would manufacture in an area of high unemployment.

Our U.S. Negotiators seem to think that maintaining the status quo on a number of our major large products and reducing our tariff rate on two of the products will provide an incentive during the next two years for foreign industrialized countries to sign the Government Procurement Code.

I applaud their good intentions on our behalf; but in fact, it is totally unrealistic to believe that this somehow benefits American manufacturers of this equipment. As we have stated, this benign policy had no beneficial impact in the past, and we cannot see how it will help now. The Congressional recommendation in 1974 that there be equitable product sector treatment of large electrical equipment has come to naught.

At a minimum, the Buy American Act differential on large electrical equipment should be increased and U.S. tariff rates on the equipment should not be reduced until the Japanese and European countries open their markets to American competiton in these products. I urge Congress to help us get this much equity. How else can we make them open up their markets?

But, that is not all.

There are other very disturbing proposals for Congressional action that would weaken the U.S. Antidumping Act. This Act provides the major protection manufacturers in the United States have against some of the proven unfair trade practices of our European and Japanese competitors.

Large electrical equipment is quite different from most other products, and it is particularly sensitive to dumping. Today's typical steam-turbine generator unit costs from $30 to $50 million. Four to six years are required to manufacture and deliver it. Our large steam-turbine manufacturing plant in Charlotte, North Carolina, would cost at least $200 million to build and equip today. A large power transformer costs up to $1 million per unit, and 12 to 18 months are needed to manufacture and deliver it. Our large power transformer plant at Muncie, Indiana, would cost more than $100 million today. Large power circuit breakers cost from $100,000 to several hundred thousand dollars each, and large expensive plants are needed to manufacture them.

This extremely large, complicated machinery is essential to the functioning of modern electric utility systems.

While they contain many standardized components, each of these large electrical machines is custom-engineered and manufactured to function compatibly with the electrical characteristics of a particular utility system.

As our country moves to reduce our reliance on oil and gas, we must convert more of our energy usage to coal, nuclear and other advanced technologies. Virtually all of these resources will require a strong, technologically advanced heavy manufacturing industry to provide the machines for utilizing these scientific developments. Our national security will depend on such industry.

To remain healthy and maintain steady levels of employment, these large manufacturing plants must have orders.

Utilities purchase large equipment in a highly cyclical pattern. When a few utilities begin buying, many want to buy equipment. When the market for large equipment in Europe is depressed, it is often attractive for manufacturers there to seek export orders even at below normal prices in order to maintain employment and partially recover the overhead expense of large industrial plants. If such cut-price competition occurs in the U.S. when the American market for similar equipment is also depressed, the result can be very injurious to U.S. workers and manufacturers. This was the actual situation in 1978 in Europe and in the U.S.

The implementing legislation now being prepared for submission to Congress may contain provisions which will weaken the effectiveness of the U.S. Antidumping law. Although they do not say it this way, there is little doubt that our foreign competitors want to maintain the right to dump their products into the United States, whether subsidized by direct home government assistance or by high prices in home country markets which are insulated from international competition. They want to

strip the United States of any effective legal remedy for protecting American industry and labor from such dumping.

Our Treasury Department wants legal authority to terminate dumping investigations by having the foreign exporter agree not to sell at prices so low as to injure American manufacturers. They also want to have Congress provide a new, untested definition of "injury" to U.S. industry. The proposed new concept of "material injury" could mean whatever foreign countries who are GATT members can successfully urge upon our Treasury Department and the International Trade Commission.

Why should Congress let foreign governments impose legal criteria for protecting American industry and labor from the foreigners' own unfair trading practices which are detrimental to U.S. industry and labor?

My plea to you, Members of Congress, is—don't give Treasury Department or any other government agency this authority. It would let them decide what margin of unfair dumping injures American companies, and then by letting the foreign company sell at such prices Treasury could determine the price levels of imports we must compete against. Neither U.S. industry nor Congress could effectively know whether such authority was being abused. If there is to be any abatement of a dumping action by obtaining a "price undertaking", that price level should completely eliminate the dumping, and the Treasury Department should actively police compliance with the undertaking.

Another proposal is for Congress to write into U.S. law the GATT concept of "material injury", thus changing both the U.S. Antidumping Act and Countervailing Duty Act. I urge this committee and the Congress to insist that the implementing legislation, or that the legislative history, make it clear that this language is intended to work no change in our present law—and particularly that it will create no higher standard of what causes injury than the present law and practice under the Antidumping Act.

I will not repeat testimony you have already heard from others on the Antidumping Act proposals. I want to strongly endorse the testimony of Mr. Richard Cunningham on April 23rd. He is very familiar with the problems of our industry in this area.

The United States seems to be on the verge of extending Most Favored Nation treatment to China, and perhaps to Russia. Western European countries and Japan are extremely protective of their own interests. The utilities and some heavy manufacturing industries in those countries are either owned by the governments or are mandated to carry certain social responsibilities and to maintain employment. These governments support their industries in the need to export—even at marginal prices; and they do it in subtle ways available to them through the structural differences in their tax and accounting laws.

We should not let those governments influence the writing of our laws which prescribe how we are to determine unfair import pricing, or which provide how much injury American industry must experience before our government will protect Americans.

I urge you not to deny U.S. industry a strong, effective antidumping law.

Gentlemen, I appreciate that your interest today is in the Multilateral Trade Negotiations and that major tax reform is not before you at this time; but our growing national concern for improving our export position soon must be addressed through the tax laws as well as trade treaties. The Congress must come to grips with the significant differences in tax treatment afforded to most of our competitors in other countries. If this is not done—the basic competitiveness of U.S. industry in world markets will continue to undergo slow and steady erosion.

Other countries' use of value-added taxes and their practice of taxing on the principle of "territoriality" leads to significantly different economics of competition. Some of our internal studies indicate that these practices can produce selling price differentials up to 20 or 30 percent relative to the prices of U.S. manufacturers. We must face up to these differences and recognize that so long as our basic rules of the game are so different, extraordinary account of these differences must be taken in our trade agreements and in the U.S. Government posture toward export and import commerce. These are some of the reasons it is so difficult to negotiate an equitable multilateral trade agreement. Many of the provisions—particularly those prohibiting government subsidies on exports—can provide for fair competition only where the system of taxation is identical among competing countries.

At an appropriate time, I would be happy to have representatives from our company review these issues in more depth with your staff or perhaps provide additional testimony for your future hearings.

Mr. JENKINS. Thank you Mr. Hurlbert. I think you pointed out vividly some of the very serious problems we have with parts of the proposal. I understand as of yesterday Ambassador Strauss ceased some of the negotiations with Japan on the Procurement Code itself based upon some of the points that you have made in your testimony today. They are serious and without question it disturbs me.

Mr. FRENZEL. Thank you, Mr. Chairman.

I must say that I was very impressed with the testimony, particularly in light of the fact that the Japanese Government has suspended its negotiations with Ambassador Strauss on procurement, feeling it has gone as far as it can go, but it has not gone anywhere in your field.

Congressman Jones, Congressman Mikva, Congressman Gibbons, and I have been directing a good deal of attention to opening up the market of Japan specifically, but by reference of course the EC as well.

We have been extremely disappointed, we have not been able to get the Japanese to move at all. I must say that I think your points are very well taken and it may be that there is some sort of specific legislative relief necessary in their case because obviously our negotiators, based on yesterday's decision, are now stonewalled, but I thank you for your excellent testimony.

Mr. HURLBERT. Thank you.

Mr. JENKINS. Mr. Fisher.

Mr. FISHER. I don't have anything.

Mr. JENKINS. Mr. Mikva.

Mr. MIKVA. I agree with what Mr. Frenzel said. I hope in our frustration with some of our trading partners that we don't emulate their bad practices.

I was impressed with your description of the way they have closed up the market to American businessmen and that this is not the way that good trading partners ought to behave with each other. But the answer, it seems to me, is not for us to follow that same perilous road, and whatever the future of our relations with Japan I hope we don't decide that what is good for A.T. & T. is good for Westinghouse and so on.

I think the practices, the exclusionary practices of Japan are as reprehensible, whether they are being performed by Japanese companies, as if they were being performed by the American Government.

Mr. HURLBERT. In my judgment, Mr. Congressman, if we would take the position, as our negotiators attempted to do, that we would not import this particular equipment, particularly from EEC or Japan, by our Government agencies, until their government agencies open it up, there would be a high probability that we could obtain orders in those countries.

We have no problem competing costwise. We manufacture turbines and generators in Belgium and Spain and we manufacture nuclear fuel in Japan. I am not concerned about competing with American labor and American technology. If we could just get a shot at the market.

Mr. MIKVA. I think we are saying the same thing. I think the end result is for us to try to get a shot, to help you get a shot at the market, not try to emulate their practices.

Mr. HURLBERT. We would much prefer that, Mr. Congressman.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. The one way we could do that is by being extremely tougher. I don't think we can do it by saying we are going to open up our markets. We would hope some day down the line you would do the same. I would hope Westinghouse is prepared to play hardball on this and urge its Members of Congress that unless we get somewhere with this issue, to not support the implementing legislation and the MTN agreement. I think you are right on target that opening the markets is extremely important. I think the sound injury test and a stong effective antidumping test, antidumping statutes which are followed through by the administration, are the keys to their whole passage of MTN.

Now, Mr. Hurlbert, you mentioned that the U.S. Government agencies and private utilities have purchased almost 10,000 megawatts of steam turbine generators in the last 5 years and you compared that to TVA's electric generation but that does not really give me a clear idea of what this means. How many turbines or generators were bought and how many would be needed to furnish Washington or Detroit with electricity or how many American jobs does this represent?

Mr. HURLBERT. There would be about 20 or 25 machines. That would be about three times as much as would be required to supply all of the electricity for Washington, D.C., and the Potomac electric service territory around Washington, D.C. I would estimate that we lost about 10,000 man-years of labor on those jobs.

Mr. SCHULZE. You also mentioned reducing employment in your turbine generating facilities by many thousand people. Was this a result of foreign imports?

Mr. HURLBERT. To be frank, it is a combination of the lower electric load growth that came after the OPEC price increase on oil, and the effect of foreign competition. In my judgment, perhaps of the 7,000 people that we have laid off, I would guess that perhaps a thousand of them would have been directly related to the foreign imports and the balance of them, the majority of them, would result from the reduced requirements, temporary reduced requirements for turbine generators by domestic utilities.

Mr. SCHULZE. Do you think liberalization of the law which will compensate those people who are laid off because of foreign competition is the answer to this? "You are going to lose your job but we will retrain you and give you some money." Is that a satisfactory answer?

Mr. HURLBERT. I think being laid off is harsh and hurts the people and also takes away their pride, so it is very harmful to the people in terms of the morale and what it does to the city, what it does to those manufacturing communities.

In addition to that, though, we must maintain a manufacturing design and engineering capability, in my judgment, for our domestic market, not only for turbine generators but for all of our advanced technology products. This is a major loss to this country, I think. We will be pushed out of the marketplace if we are not

allowed to fight back in their home markets and if we don't have a suitable antidumping law in my judgment.

Mr. SCHULZE. I think your point on page 10 that our national security is somewhat dependent on your industry is very well taken.

Mr. HURLBERT. That, by the way, is the argument of the other countries. The other countries argue that the same plants that build high pressure castings for steam turbines also build turrets for tanks and they build cannon barrels and they cannot let us ship into their markets for their own security purposes.

I think there is some validity to that argument. If it is valid there it is valid here, too, and from our point of view.

Mr. SCHULZE. One further question, Mr. Hurlbert. I would like to have your opinion on the effectiveness of the implementation of our existing antidumping laws. Do you think they have been vigorously pursued, and, if not, if they had been, wouldn't we be in better shape than we are?

Mr. HURLBERT. We have successfully prosecuted an antidumping case on a large power transformer in 1972, and frankly, I think that saved the domestic large transformer business.

Unfortunately we were appalled at a relatively recent finding of Treasury that a dumped product can be put with another product and then sell the combination at a lump sum price which they could not separately determine. This provided a loophole, with respect to a transformer and rectifier, and foreign suppliers now have 50 percent of our market. I think that can be relatively easily corrected by legislation.

Mr. HOBBS. May I comment on that, Mr. Schulze? I think we have seen in the past 5 or 6 years developments in the way the Antidumping Act is enforced that make it much more difficult to bring a successful case.

Mr. Cunningham related some of these matters in his testimony before this committee on Monday, I believe, of this week, so there is no need to repeat the detail. But the price adjustments that Treasury is making make it so that neither the complainant in the United States nor an exporter abroad can tell in advance how he is going to come out. He may not even know he is dumping when they get through adding and subtracting from his prices.

The injury test is not being administered by the International Trade Commission the way Congress instructed it to do in 1974, and in short it is a clear judgment on my part that the Antidumping Act is not being as effectively administered in recent years as it should be administered.

Mr. SCHULZE. I have had businessmen come to me and say they felt in dealing with Treasury in this area they were almost in an adversary relationship. Have you had that feeling?

Mr. HOBBS. I think Congress should not revise the Antidumping Act in this implementing legislation, but should take it up separately with full hearings to air every aspect of it. As we get to, at least theoretically, a more open trading world, Congress needs to know whether or not there in fact is an effective law on the books to protect against unfair competition, and it should not be amended in the manner now being proposed, in my judgment.

Mr. SCHULZE. I don't think we are going to accept their proposal.

Thank you gentlemen.

Mr. JENKINS. Mr. Hurlbert.

Mr. HURLBERT. May I say one thing, Mr. Chairman. Since I am over in foreign countries a great deal of my time, since we have sales and manufacturing over there, an effective administration of the Antidumping Act is the most effective way to get pressure on their governments to open up their markets. This really puts pressure on them to open up their markets, and if we could have effective implementation of the present Antidumping Act, I think with the next round of tariff negotiatons we will get concessions opening up their market. I really believe that. I talk to those foreign customers all the time.

Mr. JENKINS. Mr. Guarini?

Mr. GUARINI. No questions.

[The following was subsequently received:]

WESTINGHOUSE ELECTRIC CORPORATION,
Washington D.C., April 30, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of Westinghouse's testimony before your Subcommittee on April 26, we referred to a very significant loophole in the Antidumping act which was created last year by a Treasury Department ruling. That loophole allows a foreign exporter, after being found guilty of dumping, to evade that finding simply by selling the dumped product together with some other product for a single, lump-sum price. This ruling prevails notwithstanding the ability of those engaged in manufacture and sale of the product in question to segregate the products sold together and determine the price of each.

As was stated on the 26th, that same loophole was discussed in my testimony to your Subcommittee last fall. At that time, I proposed a brief corrective amendment. I am enclosing with this letter a copy of that amendment, together with a brief explanation of the proposed language. I also enclose the relevant position of my previous testimony, which elaborates upon the problems which will flow from this loophole.

On behalf of Westinghouse, I strongly urge that the Committee use this legislative opportunity to close this potentially serious loophole.

Sincerely,

CLAUDE E. HOBBS.

AMENDMENT PROPOSED BY WESTINGHOUSE IN SEPTEMBER, 1978

PROPOSED AMENDMENTS TO THE ANTIDUMPING ACT

The following amendments are proposed to deal with the two problems discussed in my testimony:

I. Amendment to section 202(a)

In order to make it clear that dumping findings cannot be evaded simply by selling the dumped product in conjunction with another product for a single price, Westinghouse proposes that the following sentence be added at the end of Section 202(a):

"Where merchandise of a class or kind as to which the Secretary has made public a finding as provided for in Section 160 is imported in conjunction with, in assembly with or accompanied by other merchandise, and where no separate price is charged for the merchandise covered by the finding, the Secretary shall determine the portion of the import price properly allocable to the merchandise covered by the finding, unless the Secretary determines that it is not possible to make such an allocation."

The phrase "not possible" has been selected deliberately, in preference to such alternatives as "not practical"or "not feasible", in order to make it clear that ingenious or complex combinations of merchandise will not be effective as a means of evading the Act.

EXCERPT FROM SEPTEMBER 1978, TESTIMONY OF CLAUDE E. HOBBS

I. Dumped products sold in combination with other products

As a result of one of the decisions made by Treasury after the large power transformer dumping finding, it will now be possible for almost any foreign exporter to escape the impact of a dumping finding simply by selling the dumped product in the United States in combination with another product for a single price. That ruling has already seriouly harmed Westinghouse and other U.S. transformer makers, and it is only a matter of time before other dumping findings will be undermined as foreign companies become aware of this loophole.

The issue arose in our case because power transformers are never used in isolation. Rather, they are used in conjunction with generators, substations, rectifiers, and other pieces of heavy electrical equipment. In many instances, a utility or industrial purchaser will buy the transformer separately, but in many other instances the transformer will be purchased along with other equipment with which it is to be used.

During the original investigation in the early 1970's the Japanese exporters tried to exclude from the inquiry those power transformers which were sold in conjunction with rectifiers. They argued that a transformer hooked up to a rectifier ceased to be a transformer and became a new and different article—a so-called rectiformer. We were able to demonstrate, however, that a transformer hooked up with a rectifier still remains a transformer, no different from any other large power transformer. We also were able to show that, even where the rectifier and transformer were sold together for a single, lump-sum price, any competent electrical engineer could accurately allocate that price between the rectifier and the transformer. The Treasury Department therefore ruled against the Japanese, holding that transformers sold with rectifiers were properly included in the dumping investigation and would be subject to any finding of dumping.

Last year, however, we were informed by the Customs Service that the Japanese has raised this issue again. Because a new regime had taken over at the Treasury Department, we again submitted proof that a transformer sold with a rectifier is no different than any other transformer, and that the price of the transformer can be accurately ascertained even when the transformer and rectifier are sold together for a single, lump-sum price.

This time, however, Treasury reversed itself and ruled in favor of the Japanese. Not because our evidence was inadequate. Indeed, Treasury acknowledged that these transformers were no different than other large power transformers and that the price for the transformer could be ascertained by an electrical engineer. This time, Treasury took the position that the Anti-dumping Act forbids them to impose dumping duties on a product which is sold in conjunction with a non-dumping product for a single, lump-sum price. In other words, no matter how readily the price of the dumped product may be separated from the price of the other product, Treasury maintains that it is forbidden as a matter of law from making any such separation of the lump-sum price into its components.

The impact of this ruling has been just what you would expect. It has been easy for the Japanese and other exporters to persuade U.S. purchasers to allow them to quote a single price covering the rectifier and the transformer. After all, it is in the purchaser's interest to obtain a lower price, even if it is a dumped price. Accordingly, low-priced imports have now taken just about half of the United States market for transformers used in conjunction with the rectifiers. Under Treasury's new rule, there is nothing we can do about this.

I think you will agree with me that this interpretation of the Act creates a huge loophole. All that any foreign exporter need do to escape the impact of the dumping finding as to product X is to sell product X and product Y together for a single price. In a procurement situation, the United States purchaser will naturally be eager to cooperate by buying two products as the same time, because it may mean a substantial savings to him by taking advantage of the dumped price. But this loophole would also be readily applicable to many consumer items. Suppose, for example, that the Department has found that fishing reels have been dumped. The foreign manufacturer could easily avoid that finding by selling reels and rods together for a single price.

Westinghouse therefore urges this Committee to amend the Act to reverse Treasury on this issue. This could be accomplished simply by adding a new sentence at the end of Section 202(a), requiring the Secretary to determine the portion of the import price properly allocable to the dumped merchandise wherever that merchandise is sold in conjuction with other merchandise for a single price. A proposal for such an amendment is appended to my written testimony.

Mr. JENKINS. Thank you very much for your testimony. Our next panel of witnesses consist of Jane P. Davis, Chairman, International Business Council assistant vice president, GTE Corp.; Peter F. McCloskey, president; and Jonathan H. Lasley, international marketing consultant.

We welcome you, and your entire written statement will be made a part of the record. You may summarize and proceed in the order you desire.

STATEMENT OF JANE P. DAVIS, CHAIRMAN, INTERNATIONAL BUSINESS COUNCIL, ELECTRONIC INDUSTRIES ASSOCIATION, ACCOMPANIED BY PETER F. McCLOSKEY, PRESIDENT; AND JONATHAN H. LASLEY, INTERNATIONAL MARKETING CONSULTANT

Ms. DAVIS. Thank you, Mr. Chairman.

I am Jane Davis, assistant vice president of the General Telephone & Electronics Corp. and chairman of the International Bussiness Council of the Electronic Industries Association—EIA. Accompanying me today are Peter F. McCloskey, EIA's president and Jack Lasley, chairman of ISAC-22, of which I am also a member.

My oral testimony will summarize our written statement which has been submitted for the record.

The 1978 merchandise sales of all U.S. electronic producers were over $55 billion. Of this, nearly 25 percent, $13.3 billion was exported. Electronic manufacturing directly employs 1.35 million Americans. Of those jobs, at least 260,000 are tied to exports.

Thus, not just EIA members, but the electronic industries as a whole, have a major interest in the results of the multilateral trade negotiations. We have been represented on 5 of the 27 ISAC's and have actively participated in the 5 years of negotiations. We feel that the results of the negotiations represent a substantial achievement most particularly in the area of nontariff barriers. We view the codes of conduct as a major step toward opening new markets, not just for electronics but for exporting industries in general.

Two, at least, of the codes have been successful; several more have achieved substantial percentages of their aims; one is, at this writing, an almost complete casualty. Each code contains what may prove to be the major contribution of the Geneva talks: the establishment of a set of procedures to resolve disputes.

The two successes are International Standards and Aircraft. The negotiators and their industry advisers have reason for great pride in these achievements.

Of the remaining codes, I would like to cover briefly those points about which we have some concerns.

First, the EC-EFTA Rules of Origin have discriminated against all non-European products—especially semiconductors.

Now, the alternate rules will bring substantial relief to U.S. exporters of component parts as the European equipment manufacturer may have up to 30 percent of the value of his product in nonorigin parts.

However, the 30 percent alternate rule which will be applicable to semiconductors remains highly discriminatory and is unsatisfactory. The protectionist measures of high duty rates and discrimina-

tory rules of origin are tantamount to subsidization of the semiconductor industry within EEC.

Further discussions toward the objective of a 50 percent rather than a 30 percent rule of origin are urgently recommended.

Second, in the Government Procurement Code there is one major lack. EIA is concerned that European Community and Japanese telecommunications entities have been excluded from coverage. The United States has responded by withholding several major Government agencies in addition to the national security purchases of the Department of Defense and has maintained the "Buy American" protection, so important for small business, for contracts with a value of less than $185,000.

Because of the nature of the U.S. marketplace, this is only a partial quid pro quo. As you have already heard, the most recent negotiations with the Japanese have apparently failed again, because their offered concessions proved to be illusory. We still hope this can be changed. We further hope that discussions with our European trading partners will continue toward the goal of making their communications entities also part of the free market process.

The codes are interactive and interrelated. Furthermore, there are many areas of commonality that characterize all the codes: In dispute settlement mechanisms, in reporting requirements, in variable preferential treatment of the developing countries, in options for granting conditional most-favored-nation treatment, and so forth. But the U.S. Government is almost totally unprepared in its present structure to respond to these new demands.

A growing number of voices have pointed out that the United States, by fragmenting its approach to trade, has helped create its current international economic difficulties. Some 57 departments, agencies, commissions, and so forth, have their fingers in this pie. The need to consolidate and centralize this organization is abundantly clear. Now the MTN has focused attention, we strongly hope that steps will be taken, either to place virtually all trade administration functions in a new Cabinet department endowed by statute with focal responsibility for U.S. trade, or, to give the functions to an existing Cabinet-level department, which would be so restructured that its primary responsibility would become the administration of U.S. trade.

We wish to make a further recommendation. In the experience of EIA's members, the advisory process established under section 135 of the Trade Act of 1974 has worked well. In order to provide for its continuation, EIA strongly recommends that provisions of the implementing legislation establish permanent ISAC's and LSAC's along the present structural lines—that is, by industry groupings rather than in accordance with code coverage. For advice on technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation, as and when necessary, of special panels.

To conclude, the Geneva agreement is a fine achievement provided that it be implemented with proper amending legislation, trade administration, and export policy. We hope that it will not be allowed to wither because of lack of understanding, inattention or parochialism.