S. HRG. 99-1001

PRESIDENTIAL AUTHORITY TO RESPOND TO UNFAIR TRADE PRACTICES

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

JULY 22, 1986

TITLE II OF S. 1860 AND S. 1862

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PRESIDENTIAL AUTHORITY TO RESPOND TO UNFAIR TRADE PRACTICES

TUESDAY, JULY 22, 1986

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Danforth, Chafee, Heinz, Wallop, Durenberger, Grassley, Long, Baucus, Mitchell, and Pryor.

[The press release announcing the hearing and prepared statements of Senators Chafee, and Heinz follow:]

[Press Release No. 86-056]

SENATE FINANCE COMMITTEE SETS ADDITIONAL HEARINGS ON TRADE ISSUES RAISED BY S. 1860

Senator Bob Packwood (R-Oregon), Chairman of the Senate Committee on Finance, announced today that the Committee will hold four additional hearings on trade issues presented by S. 1860. These hearings will be held in SD-215 of the Dirksen Senate Office Building. Senator Packwood noted that the Subcommittee on International Trade has already held five hearings (on May 13-15 and June 17, 1986) on a number of issues presented by S. 1860 and other bills which share its themes.

On July 17, 1986, at 9:30 a.m., the Committee will consider proposals to reform the escape clause, contained in section 201 of the Trade Act of 1974. Witnesses are asked to address specifically S. 2099, sponsored by Senators Roth, Wallop, and Durenberger, as well as S. 1863, principally sponsored by Senators Heinz, Baucus, and Domenici, incorporated in S. 1860 and Title III.

On July 22, 1986 at 9:30 a.m., the Committee will take up consideration of legislation relating to Section 301 of the Trade Act of 1974, which contains presidential authority to respond to unfair foreign trade practices. The hearing will focus primarily on S. 1862, principally sponsored by Senators Chafee and Bradley and incorporated in S. 1860 as Title III. The Committee is especially interested in comment on proposals to expand the scope of foreign practices actionable under Section 301 and to mandate retaliation within set time periods.

On July 23, 1986 at 9:30 a.m., the Committee will continue consideration of a possible new round of multilateral trade negotiations. Ambassador Yeutter outlined the Administration's approach to such a new round in his May 14, 1986 testimony before the Committee's Trade Subcommittee. Witnesses at the July 23, 1986 hearing are asked to address specifically the provisions of S. 1865, incorporated in S. 1860 as Title IV, and S. 1837. In particular, witnesses should include in their written statements such views as they may have on the following:

U.S. negotiating objectives;

Standstill or rollback agreements and the kinds of trade actions which should be covered in such agreements;

Multilateral mechanisms addressing persistent and excessive current account imbalances;

Transformation of existing quantitative restrictions into tariffs or auctioned quotas;

Congressional procedures for the implementation of such multilateral trade agreements as may be reached.

Finally, on July 30, 1986, at 9:30 a.m., the Committee will consider proposals to amend section 232 of the Trade Expansion Act of 1962 relating to imports which threaten to impair the national security. S. 1871, principally sponsored by Senators Grassley, Dixon, and Dole, establishes a ninety day deadline for Presidential actions under section 232, and is incorporated in S. 1860 as Title X.

STATEMENT BY
SENATOR JOHN H. CHAFEE
TO
SENATE FINANCE COMMITTEE
ON S. 1862
TO AMEND SECTION 301 OF THE TRADE ACT OF 1974
JULY 22, 1986

MR. CHAIRMAN:

BILLIONS OF DOLLARS IN MARKET OPPORTUNITIES FOR U.S. FIRMS, HERE AND ABROAD, ARE LOST EACH YEAR BECAUSE OF THE UNFAIR TRADING PRACTICES OF OUR COMPETITOR NATIONS. THESE PRACTICES THWART OUR MOST COMPETITIVE COMPANIES IN HIGH TECHNOLOGY, COMMUNICATIONS AND SERVICES.

AS A NATION WE HAVE BEEN UNWILLING TO ENFORCE AGGRESSIVELY OUR RIGHT UNDER EXISTING TRADE LAWS TO DEAL WITH UNFAIR TRADE PRACTICES. BECAUSE OF FOREIGN POLICY AND OTHER CONSIDERATIONS, WE HAVE TOO OFTEN GIVEN THE STATE AND DEFENSE DEPARTMENTS VETO RIGHTS OVER DECISIONS TO INITIATE A CASE AND TO RETALIATE IF NEGOTIATIONS FAIL.

TRADE IS TOO LARGE A PART OF OUR ECONOMY TODAY TO ALLOW OTHER INTERESTS TO ALWAYS TAKE PRIORITY WHEN IT COMES TIME TO MAKE BASIC POLICY DECISIONS ON HOW TO DEAL WITH UNFAIR TRADING PRACTICES OF

OTHERS. FURTHERMORE, THESE KINDS OF DECISIONS EASILY GET LOST AMONG THE NUMEROUS DAILY DEMANDS ON THE PRESIDENT.

THE BILL I SPONSORED, ALONG WITH SENATOR BRADLEY, IS DESIGNED TO ELIMINATE BARRIERS AND DISTORTIONS TO TRADE. THIS BILL GIVES NEW AUTHORITY TO THE U.S. TRADE REPRESENTATIVE TO INITIATE ACTION TO PROTECT AMERICAN INTERESTS, AND REQUIRES THAT HE TAKE ACTION WITHIN FIFTEEN MONTHS. WE MUST HAVE A TIME CERTAIN FOR CONCLUSION OF THESE CASES, RATHER THAN ALLOWING THEM TO DRAG OUT INDEFINITELY.

NOW I KNOW SOME CRITICS OF THIS BILL HAVE SAID THAT THIS TIME PERIOD IS IMPRACTICAL. WELL I AM OPEN TO ADVICE ON THIS QUESTION. BUT WE MUST ADDRESS THIS PROBLEM. THE PRESENT LAW HAS NO FIRM AND RELIABLE TIME LIMITS FOR FINAL CONCLUSION OF A CASE. INDUSTRIES WHICH ARE DENIED MARKET ACCESS, FOR EXAMPLE, SHOULD NOT HAVE TO WAIT INDEFINITELY FOR EITHER BILATERAL OR GATT RESOLUTION OF ITS COMPLAINT. HIGH TECHNOLOGY PRODUCTS WHICH HAVE SHORT SHELF LIVES COULD BE OUT OF BUSINESS ENTIRELY BY THE TIME WE GO THROUGH THE PRELIMINARIES OF A GATT DISPUTE SETTLEMENT CASE, ONLY TO HAVE THE PROCESS BLOCKED BY THE OFFENDING NATIONS.

THIS BILL IN NO WAY VIOLATES THE AMERICAN COMMITMENT TO FREE TRADE. INTERNATIONAL TRADE LAW RECOGNIZES THE RIGHT OF INDIVIDUAL NATIONS TO TAKE ACTION TO PROTECT THEMSELVES AGAINST THE UNFAIR PRACTICES OF OTHERS. UNLESS WE ARE WILLING TO TAKE AGGRESSIVE ACTION TO PROTECT OUR OWN RIGHTS, SUPPORT FOR FREE TRADE IN THE UNITED STATES WILL VANISH AND WE WILL SEE NEW AND MORE STRIDENT

DEMANDS FOR SHORTSIGHTED PROTECTIONISM IN WHICH THE UNITED STATES WOULD BE THE BIGGEST LOSER.

DESPITE OUR COMMITMENT TO FREE TRADE AND A LIBERAL INTERNATIONAL TRADING SYSTEM, WE RECOGNIZE THE NEED TO RESPOND TO UNFAIR PRACTICES MORE AGGRESSIVELY, EVEN WHEN MARKET RESTRICTIONS ARE THE ONLY REMEDY. THERE SIMPLY CAN BE NO FREE TRADE WHEN TRADE IS NOT FAIR.

THIS BILL BEFORE US TODAY WILL HELP TO ELIMINATE BARRIERS AND DISTORTIONS TO TRADE. THE COUNTRIES OF THE WORLD MUST BE ON NOTICE THAT POLITICAL SUPPORT IN THE UNITED STATES FOR BUILDING A MORE OPEN TRADING SYSTEM WILL BE IMPOSSIBLE TO SUSTAIN WITHOUT SIGNIFICANT PROGRESS IN ACHIEVING MORE OPEN AND FAIR TRADE ABROAD. IN THIS BILL, AMENDING SECTION 301 OF THE TRADE ACT OF 1974, WE REQUIRE THE U.S. TRADE REPRESENTATIVE TO TAKE ACTION TO ACHIEVE GREATER MARKET ACCESS, DEFEND AGAINST UNFAIR PRACTICES DIRECTED AT OUR MARKET, AND TO DO SO IN A TIMELY MANNER.

OUR BILL WOULD REQUIRE THAT THE ADMINISTRATION FIRST WORK TO NEGOTIATE AN END TO UNFAIR TRADING PRACTICES. WHEN THEY ARE FOUND AND WHEN NEGOTIATIONS FAIL, THEN IMMEDIATE STEPS MUST BE TAKEN TO ASSERT OUR RIGHTS. THE CONTINUED COMPETITIVENESS OF U.S. EXPORTERS WITH SUPERIOR PRODUCTS DEPENDS UPON THE LUCRATIVE MARKET OPPORTUNITIES IN COUNTRIES WHOSE EXPORTERS TAKE ACCESS TO OUR MARKET FOR GRANTED. MY GOAL HERE IS TO ENSURE TRUE RECIPROCITY IN WORLD TRADE.

THE OVERRIDING NEED TO ACHIEVE ACCESS TO LUCRATIVE MARKETS FOR OUR GROWTH COMPANIES COMPELS US TO ENACT STRONGER MEASURES TO ENFORCE OTHER COUNTRIES' COMMITMENTS UNDER INTERNATIONAL TRADE AGREEMENTS. THESE AGREEMENTS ARE THE GLUE THAT HOLD THE INTERNATIONAL SYSTEM TOGETHER. I HAVE NO QUALMS AT ALL ABOUT REQUIRING RETALIATION WHEN COUNTRIES DO NOT LIVE UP TO THESE COMMITMENTS.

OUR POLICY MUST ALSO ADDRESS THOSE UNREASONABLE PRACTICES WHICH ARE NOT SUBJECT TO INTERNATIONAL AGREEMENTS BUT WHICH STILL BURDEN AND RESTRICT U.S. COMMERCE. THESE INCLUDE SUCH PRACTICES AS FOREIGN INDUSTRIAL TARGETING, VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS, ANTI-COMPETITIVE PRACTICES, UNJUSTIFIABLE INFANT INDUSTRY PROTECTION, AND OTHER NON-TARIFF BARRIERS TO OUR SERVICES AND HIGH TECHNOLOGY TRADE--AREAS WHERE WE HAVE A SIGNIFICANT WORLDWIDE COMPETITIVE ADVANTAGE.

THE TARGETING PROBLEM IS ADMITTEDLY A DIFFICULT ONE TO REMEDY, YET ITS EFFECTS ON U.S. FIRMS ARE NO LESS EGREGIOUS BECAUSE OF THAT DIFFICULTY. GOVERNMENT INVOLVEMENT IN THE MARKETPLACE HAS BEEN INCREASING OVER THE LAST SEVERAL DECADES TO A POINT WHERE OUR PRIVATE FIRMS ARE NOT COMPETING ON AN EQUAL FOOTING WITH FOREIGN FIRMS, BUT RATHER WITH NATION-STATES, AND ALL THE RESOURCES AND SOVEREIGN POWERS THAT IMPLIES.

A TRIO OF STUDIES PREPARED BY USTR, AND THE DEPARTMENTS OF LABOR AND COMMERCE MADE CLEAR THAT OUR LAWS DO NOT ADEQUATELY

ADDRESS THESE INJURIOUS GOVERNMENT PRACTICES. OUR BILL MAKES A VERY GOOD EFFORT TO DEAL WITH THIS PROBLEM, AND I KNOW OUR WITNESSES TODAY WILL GIVE US FURTHER GUIDANCE IN THIS REGARD.

CLEARLY WE WANT THE ADMINISTRATION TO STEP UP ITS USE OF THE AUTHORITY GIVEN IT BY CONGRESS TO ADDRESS FOREIGN UNFAIR TRADE PRACTICES WHICH DISTORT U.S. TRADE AND INVESTMENT. I AM PLEASED WITH THE USE THE ADMINISTRATION HAS MADE OF THIS STATUTE IN RECENT MONTHS. I AM ESPECIALLY PLEASED AT THE ANNOUNCEMENT YESTERDAY OF AN AGREEMENT WITH THE GOVERNMENT OF SOUTH KOREA ON INTELLECTUAL PROPERTY AND ACCESS TO THE KOREAN INSURANCE MARKET.

THESE ARE THE KINDS OF AGREEMENTS WE SEEK UNDER 301. BUT I AM CERTAIN THIS 301 CASE WOULD NOT HAVE BEEN INITIATED IN THE FIRST PLACE WITHOUT INTENSE CONGRESSIONAL PRESSURE.

WE WANT THE 301 PROCESS TO BE MORE USEFUL AND MORE ROUTINE. THAT DOESN'T MEAN WE WANT CONSTANT RETALIATION. IDEALLY WE WOULD HAVE NO RETALIATION AT ALL, BECAUSE WE RECOGNIZE THAT EVEN MEASURED RETALIATION PRODUCES MEASURED PAIN. BUT WE MUST ACCEPT THE REALITY OF THE WORLD WE DO BUSINESS IN. MANY COUNTRIES DO NOT ACCEPT THEIR RESPONSIBILITIES IN THE TRADING SYSTEM AS WE DO, NOR DO THEY ABIDE BY THE RULES OF THE GAME AS DO WE. OUR BILL IS A RESPONSE TO THAT REALITY.

SENATOR JOHN HEINZ
HEARING ON SECTION 301 AMENDMENTS
JULY 22, 1986

OPENING STATEMENT

TODAY, THE FINANCE COMMITTEE WILL CONSIDER AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974.

SECTION 301 IS A PROVISION OF UNIQUE IMPORTANCE BECAUSE IT PROVIDES THE ONLY MAJOR STATUTORY MEANS BY WHICH WE CAN ADDRESS OTHER COUNTRIES' BARRIERS TO OUR EXPORTS.

CLEARLY, THE UNITED STATES IS NOT OPERATING IN A GLOBAL ENVIRONMENT OF FREE TRADE OR FAIR TRADE. WE ARE ALL MORE THAN FAMILIAR WITH THE MANY EXAMPLES OF FOREIGN QUOTA AND TARIFF BARRIERS, DISCRIMINATORY STANDARDS, PATENT AND TRADEMARK THEFT, GOVERNMENT SUBSIDIES AND OTHER OBSTACLES.

SECTION 301 IS A FAIR TRADE STATUTE BECAUSE IT FOCUSES ON OPENING MARKETS ABROAD. ITS PROVISIONS FOR RETALIATION SHOULD FUNCTION AS A MEANS TOWARD BREAKING DOWN FOREIGN MARKET ACCESS BARRIERS, RATHER THAN SIMPLY CLOSING OFF THE U.S. MARKET TO OUR TRADING PARTNERS.

TODAY, WE WILL CONSIDER WHETHER CURRENT LAW -- AND ITS IMPLEMENTATION BY THIS ADMINISTRATION -- IS ADEQUATE FOR AN EFFECTIVE TRADE POLICY. OUR PAST EXPERIENCE, FRANKLY, TELLS US IT IS NOT. IN THE CASE OF JAPAN, FOR EXAMPLE, THE USE OF SECTION 301 TO PURSUE NEGOTIATED SETTLEMENTS HAS

ACCOMPLISHED VERY LITTLE. I HAVE LONG DOUBTED THAT WE WILL EVER MAKE REAL PROGRESS WITH JAPAN UNTIL WE DEMONSTRATE A WILLINGNESS TO RETALIATE WHICH WE HAVE NOT THUS FAR SHOWN.

ALTHOUGH THE ADMINISTRATION HAS STARTED ACTION ON MANY CASES BY USING ITS DISCRETIONARY POWERS UNDER SECTION 301, FEW OF THESE CASES ARE FINISHED AND THOSE THAT ARE HAVE NOT ACHIEVED IMPRESSIVE RESULTS.

THIS PROBABLY REPRESENTS A FAILURE OF IMPLEMENTATION RATHER THAN OF THE LAW. BUT IT IS CONGRESS' OBLIGATION TO SEE THAT THE LAW IS FULLY ENFORCED, AND THE ONLY TOOL WE HAVE AVAILABLE IS TO REMOVE THE DISCRETION CURRENTLY AFFORDED THE U.S. TRADE REPRESENTATIVE.

CLEARLY, THE FLEXIBILITY TO NEGOTIATE THE COMPLEXITIES OF THESE DIFFERENT TRADE VIOLATION CASES SHOULD LIE WITH THE EXECUTIVE BRANCH. HOWEVER, IT IS CONGRESS' RESPONSIBILITY TO OVERSEE THE TRADE POLICY OF THIS NATION AND MAKE CERTAIN THAT THE ADMINISTRATION'S DISCRETIONARY POWERS UNDER SECTION 301 ARE BEING EFFECTIVELY USED.

THE PROPOSAL WE ARE CONSIDERING TODAY CALLS FOR MANDATORY RETALIATION IN CERTAIN SITUATIONS AGAINST UNFAIR ACCESS BARRIERS. THIS IS NOTHING MORE THAN AN ATTEMPT TO GET THE ADMINISTRATION TO USE THE TOOLS IT HAS AVAILABLE FOR CHISELING AWAY FOREIGN TRADE BARRIERS. WE CAN DEMONSTRATE OUR WILLINGNESS TO ACT ONLY BY ACTING. BY DOING SO, WE WILL SHOW OUR TRADING PARTNERS THAT WE ARE READY TO MAKE MEANINGFUL PROGRESS TOWARD REAL FREE TRADE.

The CHAIRMAN. The committee will come to order, please.

This is a continuation of a series of hearings on the omnibus trade legislation bills before us, one of which has come from the House, others which have been introduced by members of this committee.

Today we take up proposals to amend section 301 of our trade laws, the statute that authorizes the President to respond to unfair foreign trade practices; 301 is a critical statute, particularly at this time. If we are to sustain a national consensus for keeping U.S. markets the most open in the world, we must have effective means of insisting that foreign markets be opened as well.

The American people will no longer support a one-way free trade environment. And I would ask unanimous consent that the rest of my statement be inserted in the record as if given.

Without objection.

Senator Danforth.

Senator DANFORTH. Mr. Chairman, I understand Senator Grassley has another engagement that he has to meet right now, and I would be happy to let him go in my place.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have to chair my Subcommittee on Aging, but I have very much an interest in the 301 case issues. We have seen some noticeable action recently on the part of the administration in these cases. Still there exists a broad consensus in this body that modifications of the statute are needed to ensure that it will be used vigorously and that it will present a credible threat of retaliation against any unfair trade practices both in the context of this administration and in future administrations.

Mr. Chairman, I have three growing concerns dealing with section 301 proceedings. They deal with aluminum ingot tariffs, Argentina's soybean export subsidies and then semiconductors.

As a part of the settlement of the section 301 leatherware proceedings in December, the Japanese Government agreed to reduce aluminum ingot tariffs to one-half parity with United States levels by April 1, 1987 and to full parity by the end of 1987.

They also agreed to negotiate immediately on other tariffs and nontariff barriers. However, despite these commitments, the Japanese have stonewalled us on all of these issues. It seems to me that the Japanese have used one excuse after another to avoid having meaningful discussions on these matters. And, of course, I cannot understand how the administration can expect us to leave section 301 flexible and discretionary if the Japanese do not live up to the commitments that they have made.

Now with respect to section 301 cases involving Argentina's soybean export subsidy, I know that the USTR has been working very hard in this case to get Argentina to eliminate the differential export tax subsidy which has been causing havoc for our soybean farmers and processors.

However, I also understand that Argentina has very recently and very clearly signaled its intransigence on this issue. We were led to believe that as an outgrowth of negotiations with the World Bank earlier this year Argentina was going to reduce its level of export

taxes and at the same time take a partial first step toward reducing the export tax rate differentials.

Now, however, in recent announcements of tax rate changes on oilseeds, Argentina has retained the full differential and has done so in a manner which actually increases the subsidy effect. In short, they have said a very loud no on the subsidy issue to us.

Then, third, the case which stands out as one on which to base many of our judgments is the semiconductor case. This is a case in which I have a great deal of interest. It is also one in which the facts depict a clear violation of section 301. It is, therefore, a prime test of this administration's resolve to make use of the statute. Japanese practices in this industry including the creation of a closed domestic market have been clearly unfair and have clearly violated agreements with the United States.

And so that is why, Mr. Chairman, I appreciate your holding these hearings, and I look forward to participating maybe later on as I leave my other committee to come back and ask Ambassador Yeutter some questions.

The CHAIRMAN. Thank you very much, Senator Grassley. Senator Danforth and then Senator Heinz.

Senator DANFORTH. Mr. Chairman, following on your opening comments, I think that you are absolutely correct. If the American people are going to maintain support for anything resembling an open trading system, it is important for us to understand as a people that international trade is something that works both ways; that the rules of the game are going to be adhered to not only by the United States but by our trading partners as well.

In the 1984 Trade Act, we took a major step toward a more systematic way of policing unfair trade practices. We required of the administration the submission to us of national trade estimates which were annual catalogs of unfair trading practices used against the United States. The administration in its first submission to Congress did an excellent job and presented to us a phonebook-size catalog of unfair trade practices.

Now that unfair trade practices are being cataloged in a systematic basis, the next question is: What are we going to do with those unfair trade practices?

A lot of people feel that by and large section 301 of the Trade Act has been a dead-end street; that cases brought under section 301 will probably go nowhere. There have been some exceptions, a few exceptions where 301 has brought results. As a matter of fact, yesterday in connection with Korea the administration announced the successful settlement of two cases. But by and large, section 301 cases have been viewed as a dead-end street.

I think that if we are going to have rules of international trade, it is important to enforce those rules. And to enforce them, we have to do more than complain. We have to on some occasions retaliate against practices that are used against us.

And that is the point of S. 1860 and its component provision which would separately incorporate it into S. 1862. To define unfair trade practices, to require in certain cases self-initiation by the administration and to require in the absence of a successful completion of negotiations retaliation. This is a key part of any trade leg-

islation now before the Congress. We have a distinguished list of witnesses today. I look forward to hearing from them.

The CHAIRMAN. Senator Heinz.

Senator HEINZ. Mr. Chairman, first, I would like unanimous consent to have my entire statement made part of the record.

The CHAIRMAN. Without objection.

Senator HEINZ. Mr. Chairman, I think you and Senator Danforth have hit the nail on the head in your comments. The question is not whether or not there are unfair trading practices being taken by our trading partners. We know there are. The question is not whether we have a procedure for in theory dealing with this. We do have a section 301.

The issue is not whether unfair trading practices are illegal under the GATT. They are, and there is a GATT process.

The problem is that neither our existing law nor the GATT process works. And I would commend to all our colleagues the General Accounting Office study of the effectiveness or I should say the lack of effectiveness of the 301 process.

To summarize it briefly, the GAO looked at 35 cases, and what they found was that in 12 of those cases there was only a partial remediation of the unfair practice. And in 20 of those cases, there was no net effect of the entire process, of all the action taken. And, often, the offending country merely replaced the unfair trade practice that had been specified in the complaint with another restrictive process.

We have, in effect, a process. It takes a long time to work. If it does work at all, not much is gained from it. And in the event that this country goes to the GATT to pursue, under the GATT, our rights, there are absolutely no time deadlines that force any action to be taken by the GATT. And then if you do get a panel report from the GATT, the final action, the panel report, can be blocked by any party.

Well, that is like saying we are going to play a little game of Russian roulette; I am going to be the first to play; and I am going to load all six chambers to see if I can win, because it only takes one person to pull the trigger, and you know what is going to fire—a gun—every time at us without any help to our industry.

So, Mr. Chairman, I hope we can look into the effectiveness of the proposals before us, S. 1860, 1862, to strengthen our 301 process so that it really works to assure that there is some actionability and timeliness in the process so that we can, indeed, as you point out, Mr. Chairman, ensure the trade isn't just a one-way street, but it is a two-way street.

We hear the demands of Congress for protectionist legislation. I read in the New York Times and the Washington Post that Congress is protectionistic. And I suppose there is a good reason for that characterization. When we don't get unfair trading practices remedied through the processes we are supposed to have established, the industries that are being hurt, whether they are high-tech industries—and we are going to hear from some of them today—whether they are basic industries, steel or others, really have no alternative but to ask for some kind of protection because they haven't gotten a fair deal, and they have no place to turn but the Congress, because the administration by and large has another

agenda, and their trade policy is a de facto mish-mash of afterthoughts designed to try and limit the political fallout through the series of nondecisions, bad decisions.

So I am delighted that we are having this hearing, Mr. Chairman.

The CHAIRMAN. Senator Wallop.

Senator WALLOP. Thank you, Mr. Chairman.

I would echo the refrain, if you will. Strength in the 301 process is important to success in negotiated settlements in advance of getting there.

I think that we need to have our trading partners know that we, too, have a hammer in our hand. It is difficult. I left a beautiful Wyoming summer over the Fourth of July break to go to Taiwan and Japan on behalf of the Wyoming soda ash industry. Soda ash is an abundant natural resource in Wyoming. We can mine, refine and ship and deliver to Japan cheaper than they can manufacture theirs with imported materials in a chemical process. Their own Japanese Fair Trade Commission found that a cartel existed in 1982, something like that. And, immediately, we rose from about 4 percent of the market to 16 percent of the market only to get stuck again while the cartel reestablished itself.

On the other hand, when I was talking with the Foreign Minister Abbie and Trade Minister Watanobi and others, I sensed that in this instance at least there was a real desire to accommodate us. The point that I was trying to make is that if we can't solve it in something that is so obvious as that, then what can we possibly do to solve the more difficult trade issues between us?

This issue fits with Japan's own industrial policies to get rid of older industries that are high pollutants and dependent upon imported materials for their manufacture.

And there was some agreement from them. But the threat of 301 even as it exists is part of those agreements that I encountered there. And the same thing was true in Taiwan.

But in Japan, the American soda ash industry has an enormous capital investment. They have Japanese-speaking people who are involved in the trade in the business. They have put into place larger reserve storage than the Japanese domestic industry has. So there is a case where American business really makes an effort.

But lest we forget, there are other cases where American business does not make an effort. One of the interesting things that came across from Taiwan was the chocolate industry which we have hammered and hammered on the Taiwanese to remove the barriers on chocolate, which they ultimately did. And then nobody showed up to play from our side.

And the trade imbalance remained, and the Japanese and the Belgians took advantage of the new diminished tariffs that the Taiwanese had.

So some of our problem is our own. And we should never forget it while we are trying to do these other tasks, and make it real for those who really do come to compete, they ought to have that opportunity. For those who do not, they first ought to compete before they do.

The CHAIRMAN. Senator Long.

Senator LONG. No statement.

The CHAIRMAN. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Before I begin my statement, I want to say that none of the members of this committee who are on the environment committee are here because there is a rather controversial markup in environment in a few minutes. And I will have to leave, but I have a large number of questions that I would like to leave to be submitted in writing to the panelists.

The CHAIRMAN. Without objection. Out of curiosity, what are you on in environment?

[The questions follow:]

Senator MITCHELL. We have the highway reauthorization today, and there are several very controversial amendments being debated and voted on there, so I will have to go up to that.

Mr. Chairman, it was just over 1 year ago that I joined with Senators Chafee, Bingaman, and Roth in introducing the Foreign Fair Trade Practices Act. That bill and comparable legislation introduced by a number of other Senators is aimed at the growing array of practices and polices other nations have instituted to promote their industries in international trade.

These targeting policies often injure U.S. industries and their workers and are a significant contributor to our growing trade deficit.

Section 301 of the 1974 Trade Act is the mechanism intended to address the increasing foreign use of unfair trade practices. But it does not work. The history of section 301 is a history of administration after administration of both parties refusing to implement the law. Instead, this President and his predecessors have used the wide discretion provided in the law to deny or to delay taking action sometimes for close to a decade.

Let me mention just one example. In 1976, the Florida Citrus Commission filed a petition under section 301 with the U.S. Trade Representative alleging that the use of preferential tariffs by the European Commission for certain Mediterranean countries harmed U.S. citrus exports to the European Community.

Nine years later, the Trade Representative recommended that the President take retaliatory action. During those 9 years while the Trade Representative participated in negotiation and failed negotiation, the U.S. citrus industry continued to be barred from one of the largest export markets in the world. And despite this incredible record of delay and indecision, the administration points to this case as one of the successes under section 301.

The recent General Accounting Office analysis of the effectiveness of section 301 came up with some disturbing results. Of the 35 petitioners who had initiated section 301 cases between 1980 and 1985, only 3 believed that the section 301 process had completely remedied the foreign unfair trade practices.

This is an unenviable record by any standard. The GAO also discovered that the average duration of a section 301 case during this period was 34 months. Many U.S. firms had to wait even longer than this only to find that their case had been dropped because the administration negotiated an agreement which often had little effect on the actual problem and just as often was not enforced.

The administration may find this record acceptable. I do not. The unpleasant reality is that American businesses, those who section 301 is supposed to help, view the law as a joke and will continue to do so until we, in Congress, insist that the executive branch properly enforce this law.

The legislation we are considering today makes modest but important reforms in section 301, reforms which begin to fashion a law that will provide a swift, certain, and fair response to unfair and unreasonable foreign trade practices. The administration will claim that these reforms limit their discretion. But it is this very discretion which has led to the disastrous record of enforcement under section 301.

The United States has long had the reputation of being the foremost defender of the principle of free trade. However, our trading partners must not be allowed to confuse our antipathy for trade restrictions with a willingness to accept unfair trade practices.

The implementation of fair and aggressive section 301 reforms will send a signal to the world that we are no longer willing to turn the cheek—that we have, in fact, run out of cheeks to turn.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I have a statement I would like to submit for the record, but I would just briefly like to make a couple of comments, if I might, from it.

This bill—that is, the bill that we have submitted—gives new authority to the U.S. Trade Representative to initiate action to protect American interest and requires that he take action within 15 months.

Now some critics have said this time period is impractical. In other words, 15 months is too short. Well, we are open to advice on that. But we clearly have got to address this problem.

The present law, as Senator Mitchell pointed out with his examples, has no firm and reliable time limits for final conclusion of a case. And industries which are denied market access, for example, should not have to wait indefinitely either for a bilateral or for a GATT resolution of its complaint, high technology being one for example which we are very concerned about. Their products have short shelf lives, and they can be out of business entirely by the time the remedy, if it does come through, comes through.

And this bill in no way violates the American commitment to free trade. International trade law recognizes the right of individual nations to take actions to protect themselves against unfair trade practices.

Nobody can quarrel with the commitment of this committee and certainly this Senator to a liberal international trading system. But there is a truism that there can't be free trade when trade is not fair.

The bill before us will help to eliminate these barriers and the distortions to trade. So I hope we can get on with it and come to a successful conclusion.

I would submit my statement for the record.

The CHAIRMAN. Without objection.

Senator Baucus.

Senator BAUCUS. I have no statement, Mr. Chairman.

The CHAIRMAN. Our first witness today is Congressman Don Pease, and he will be followed by Congressman Dick Gephardt, two members of the conference committee with the Finance Committee on the tax bill.

STATEMENT OF HON. DON. J. PEASE, U.S. HOUSE OF REPRESENTATIVES, STATE OF OHIO

Congressman PEASE. Mr. Chairman, members of the committee, I am pleased to appear before you today to speak about section 301 of the Trade Act and U.S. policy toward unfair trade practices. I am especially pleased to learn from the opening statements made by members of the committee that you are already well aware of the deficiencies in the 301 process.

As you consider the bills introduced by various Members of the Senate and as you consider the House bill that we sent to you, I hope that you will read carefully and go by the actual language of that legislation and not be confused by the labels of protectionism thrown at that legislation by the administration and some other commentators.

Mr. Chairman, both House and Senate bills proposed reforms to institutionalize an active use of section 301, at least with respect to unfair practices that violate existing international agreements. This would be an important accomplishment. However, two key questions remain that the House bill attempts to answer. One is: How can we make it clear that the United States means business on unfair trade practices which are not yet covered by international agreements? And, two: How can we parlay the authority provided a president under section 301 and the leverage to obtain control on these practices in future multilateral trade negotiations?

Section 301 was, in fact, created in part to provide the United States with leverage in these negotiations. It can and was intended to be used to prod the GATT to lead it in the direction necessary for the faith of Americans in an open multilateral trading order to be preserved.

Accordingly, I urge the committee to join the House in providing explicit authority for the President to act under section 301 against certain unfair trade practices covered by the list of U.S. principal negotiating objectives for the new GATT round.

The House bill explicitly creates authority under section 301 to act against four such unfair practices: foreign industrial targeting, denial of internationally recognized labor rights, tolerance of cartels and excessive trade surpluses maintained in part by a pattern of unfair trade practices.

In this way, the House bill attempts to provide guidance on the difficult question of how the United States can use its clout as the world's biggest market to control unfair trade which is not yet addressed by international agreements.

One of the unfair practices on our GATT agenda, which the House bill does provide the President explicit discretionary authority to act, is the denial of internationally recognized worker rights. Inasmuch as I am the author of that provision, I would like to speak about it with you for just a minute or two.

The adoption of minimum standards of fair labor practices was a U.S. principal negotiating objection in the Tokyo rounds. Ambassador Yeutter has listed it among the administration's objectives for the upcoming MTN. I am convinced that this issue will be with us for a long time to come.

The question is: Shouldn't fair competition in world trade be structured by rule and in practice to improve the living standards of workers as well as the welfare of consumers and manufacturers?

The architects of the General Agreement on Tariffs and Trade certainly would have answered yes to this question. That is why the preamble of the GATT provides a relations among countries "in the field of trade and economic endeavor should be conducted with the view to raising standards of living and ensuring full employment."

I strongly urge the members of the committee to amend section 301 to treat as an unreasonable and unfair trade practice the competitive advantage that some countries derive from the systematic denial to their workers of internationally recognized worker rights.

Mr. Chairman and members of the committee, the workers right provision is not a new initiative. It is an extension of existing trade law. These rights are already defined in section 5 of the Trade Act of 1984 for application in the GSP and OPIC programs. And these worker rights, as spelled out in the law, are as follows:

Freedom of association, the right to organize and bargain collectively, a prohibition on the use of forced labor, a minimum age for the employment of children and acceptable conditions of work with respect to wages, hours of work and occupational safety and health.

Further, the new trade bill merely extends the definition of unfair trade practices which is already in section 301. The existing section 301 defines as unreasonable three trade practices—denial of market access, denial of the opportunity to establish a business in a foreign country and failure to protect copyright patents and other intellectual property rights—note that these three practices are not a violation of GATT. And the United States unilaterally labels them as unreasonable acts subject to the section 301 complaint procedure. I ask you to add a fourth practice, repression of worker rights, to that list.

To sum up, trade is not and should not be viewed as an end in itself. We have entered a new era in which America ought to use its far-reaching economic leverage to insist upon changes in the international trading system that will spread the benefits of open trade within nations as well as among them.

Thank you.

The CHAIRMAN. Thank you.

Let's take Congressman Gephardt, and then we can ask questions of both.

[The prepared written statement of Congressman Pease follows:]

STATEMENT OF CONGRESSMAN DON J. PEASE
SENATE COMMITTEE ON FINANCE
JULY 22, 1986

I am pleased to have the opportunity to appear before you today to speak about U.S. policy toward unfair trade practices. Reform of Section 301 of the Trade Act of 1974 is at the heart of both the Senate and House omnibus trade bills.

One reason I am here today is to extoll the virtues of the House bill, or at least to impress upon you that, contrary to what you may have read or heard, the House bill would not restrict trade or unduly tie the president's hands.

But since the topic of today's hearing is Section 301, I really do not have to press this point. HR 4800 and S 1860 propose similar reforms of the mechanics of Section 301 investigations, determinations and actions. If anything, the Senate bill is tougher, more mandatory than the House bill in this respect.

I don't know how we in the House could have let this happen!

Nonetheless, there are significant differences between the two bills. I would like to take a moment to place these differences in context.

When it created Section 301 some twelve years ago, this Committee stated quite clearly in report language the role the statute should play in U.S. trade policy. Specifically, the Committee set out four principles to guide implementation of the provision:

1) The president should use Section 301 vigorously to insure fair and equitable conditions for U.S. commerce.
2) Section 301 proceedings must carry a credible threat of retaliation whenever a foreign nation treats U.S. commerce unfairly.
3) It must be clear that the president could act to protect U.S. economic interests whether or not such action would be consistent with international agreements, which in 1974 the Committee termed "outmoded".

4) Section 301 should provide negotiating leverage in the GATT and elsewhere to be used to extend international discipline over unfair practices not yet addressed by international agreements.

Clearly, presidents past and present have failed to implement Section 301 in the manner Congress originally intended. There is a broad consensus in Congress on modifications to ensure that the statute will be used vigorously and that it will present a credible threat of retaliation. Both S 1860 and HR 4800 require the Administration to self-initiate investigations and to retaliate under Section 301 regarding practices which violate existing international agreements. Without this further direction from Congress, we have no assurance that the United States will continue to have a vigorous and credible trade policy even with respect to those unfair trade practices from which American workers, farmers and businessmen are ostensibly already protected under international law.

There is less agreement on the question of how to make it clear that the United States means business on unfair trade practices not yet covered by international agreements and how to parlay the authority provided the president under Section 301 into leverage to obtain controls on these practices in future multilateral trade negotiations. Herein lie the major differences in the approach to Section 301 taken by the House and Senate bills.

The House bill explicitly creates authority under Section 301 to act against four new unfair practices not yet covered by international law: foreign industrial targetting, denial of internationally recognized labor rights, tolerance of cartels, and excessive trade surpluses maintained in part by a pattern of unfair trade practices. Each of these practices is covered by a principal U.S. negotiating objective for the upcoming GATT round. Like any other actionable 301 practice, each may be the pretext for retaliation by the United States. Whereas the labor rights and cartel provisions are thoroughly discretionary, the targetting and excessive surplus provisions contain mandatory features which nevertheless afford the president ultimate discretion regarding the decision whether or how to unilaterally affect trade flows.

Thus, in a number of different ways, the House bill attempts to provide guidance on the difficult question of how the United States can use its clout as the world's biggest market to control unfair trade not yet addressed by international agreements. Yes, it is preferable to arrive at a negotiated settlement rather than to act unilaterally. But the patience of the American people with the the GATT grows thin. Most of us would agree that this may well be a make or break round for the GATT.

Section 301 was created in part to provide leverage for us in these negotiations. It can and was intended to be used to prod the GATT, to lead it in the direction necessary for the faith of Americans in an open, multilateral trading order to be preserved. Accordingly, I urge this committee to join the House in providing explicit authority for the president to act under Section 301 against certain unfair trade practices that are on the list of U.S. prinicipal negotiating objectives for the new GATT round.

In fact, I personally would like to see us go one step further and require investigations in response to 301 petitions filed by private parties that concern unfair practices on our GATT agenda and that demonstrate significant harm to U.S. commerce. I believe we can use the investigative function of Section 301 to arm our negotiators with extensive documentation of the nature and impact of the unfair practices we are trying to negotiate controls over in the GATT. At a minimum, I believe it would be useful to require under the Section 181 National Foreign Trade Estimates report, an analysis of the nature, extent and domestic economic impact of the unfair practices on our GATT agenda.

One of the unfair practices on our GATT agenda for which the House bill does provide the president explicit, discretionary authority to act is the denial of internationally recognized worker rights. Because of my personal interest in and sponsorship of the worker rights provision, I would like to spend a few moments discussing its background, purpose and mechanics.

The adoption of minimum standards of fair labor practices was a U.S. principal negotiating objective in the Tokyo Round. Ambassador Yeutter has listed it among the Administration's objectives for the upcoming MTN. I am convinced that this issue will be with us for a long time to come.

Allow me to pose a few questions to the distinguished members of this Committee:

Don't the governments of some trading nations systematically deny fundamental rights to their workers in order to gain competition advantage in world trade?

Since trading rules already exist against capital subsidies and dumping, shouldn't labor repression (perhaps the oldest and least talked-about unfair trade subsidy) be renounced as well in an effort to promote fair competition in world trade?

Shouldn't fair competition in world trade be structured by rule and in practice to improve the living standards of workers as well as consumers and manufacturers?

The architects of the General Agreement on Tariffs and Trade (GATT) certainly would have answered "yes" to each of these questions. That is why the preamble of the GATT provides that relations among countries "in the field of trade and economic endeavor should be conducted with a view to raising standards of living and ensuring full employment."

Secretary of Labor Bill Brock, speaking for the Reagan Administration before an international conference just last month, also seemed to answer with a resounding "yes." He said in Geneva: "Those countries which are flooding world markets with goods made by children, or by workers who can't form free trade unions or bargain collectively, or who are denied even the most minimum standards of safety and health ... are doing more harm to the principle of free and fair trade than any protectionist groups I can think of."

I concur with the judgment of these trade experts--past and present. I strongly urge the members of this Committee to amend Section 301 to treat as an "unreasonable" and unfair trade practice the competitive advantage that some countries (Taiwan and South Korea to cite examples) derive from the systematic denial to their workers of internationally recognized worker rights as already defined, for GSP and OPIC purposes, in Title V of the Trade Act of 1974 (i.e., freedom of association; the right to organize and bargain collectively; a prohibition of the use of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of

work with respect to wages, hours of work, and occupational safety and health.) Such a provision has been included in the Trade and International Ecomomic Policy Reform Act of 1986 (H.R. 4800), as passed in May by an impressive bipartisan majority of the House.

To hear some people talk, it's none of our business whether the imports flooding into our country are made by workers whose most basic rights are repressed.

But you might get a different answer from one of the thousands of 10-to 14-year-old girls in one Southeast Asia country (Thailand) who are sold into factory work by their impoverished rural parents for $20 to $100. Their typical workday is 15 hours, seven days a week. They sleep in factory storerooms. They are fed only rice and vegetables.

In the name of humanity, we Americans ought to be concerned about those young children.

American textile and garment company owners ought to be concerned too. Struggling to keep factory doors open in the Carolinas, Georgia and Alabama, how are they to compete with products made by children forced into indentured servitude?

American workers, too, should be concerned as efficient U.S. factories close down and multinational corporations take advantage of exploited child labor in foreign sweatshops where "there is no ventilation...The sound of the machines is deafening, and the air is filled with lint, which makes breathing difficult in the stifling heat."

The worker rights section of the House-passed bill tries to deal with the repression and exploitation of workers who make the products which some countries ship into the American market.

And it does so, I emphasize, in a way which is entirely consistent with current U.S. trade law.

The worker rights provision I urge you to adopt is not a new initiative. It is an extension of existing trade law.

The identical list of worker rights is already in U.S. law in relation to the Generalized System of Preferences and the Overseas Private Investment Corporation.

Further, the new trade bill merely extends the definition of unfair trade practices which is already in section 301 of the Trade Act of 1974. The existing section 301 defines as unreasonable (unfair) three trade practices (i.e., denial of market access, denial of the opportunity to establish a business in a foreign country, and failure to protect copyrights, patents and other intellectual property rights.)

Note that those three practices are not a violation of GATT. The United States unilaterally labels them as unreasonable acts subject to the section 301 complaint procedure. I ask you to add a fourth practice --- repression of worker rights --- to the list.

The opponents of a worker rights provision seem to be saying that counterfeiting U.S. -made video cassete tapes in Taiwan, for example, is a far more serious unfair trade practice than repression of workers. In Taiwan, the crime of inciting labor unrest is punishable by death. Although there is a collective bargaining law on the books, there are no collective baryaining agreements in effect, and strikes have been illegal since 1949 because all workers are subject to martial law decrees.

Defining the denial of internationally recognized worker rights as unreasonable practice does not impose U.S. labor standards on the rest of the trading world. It cannot be construed as a minimum wage for the world approach. Rather it creates an incentive for trading nations to respect worker rights, such as prohibition of forced labor, to which they are obligated under international law and to which our country has adhered for decades. We need not fear being called hypocrites. Each of the rights cited is Constitutionally or statutorily protected in America and bolstered by rich case history in the courts.

Finally, opponents of such a provision often profess great interest in the attainment of an international agreement on trade and internationally recognized worker rights rather than admit to their continued support for a trading system that currently condones competition at any cost to workers. Surely the position of America's negotiators going into a new MTN round would be strengthened by the enactment of a worker rights provision in Section 301. Why send our negotiators back to GATT with instructions on

basic worker rights, when foreign nations don't see credible evidence that the U.S. takes the issue serious enough to act on its own?

To sum up, trade is not and should not be viewed as an end in itself. We have entered a new era in which America ought to use its far-reaching economic leverage to insist upon changes in the international trading system that will spread the benefits of open trade within nations as well as among them. Furthermore, worker rights such as freedom of association are essential to the promotion of sound justice and to the safeguarding of human freedom in any society. For democratic values and institutions to take root in foreign countries, the governments of those countries must tend to the fullest development of their people. That necessarily includes respect for the basic rights of their workers. In the words of the poet James Russell Lowell:

He's true to God who's true to man;
Whenever wrong is done.
To the humblest and the weakest,
'neath the all-beholding sun.
That wrong is also done to us
and they are slaves most base
Whose love of right is for themselves
and not for all the race.

STATEMENT OF HON. RICHARD A. GEPHARDT, U.S. HOUSE OF REPRESENTATIVES, STATE OF MISSOURI

Congressman GEPHARDT. Thank you, Mr. Chairman. I appreciate this opportunity to be here. From your statements, it would be wasteful and repetitive to describe the problem. I think everyone here is well aware of the problem, and it is well to simply go to the solutions and talk for a moment about what we have done in the House and discuss with you what we might do together.

Let me say first that there has been a lot of opinion that what the House did was a political exercise and was not a serious substantive effort. And let me assure you that that is not the case. The House is very serious about trying to write legislation that will affect our trading situation. We believe that our bill is serious and responsible and that is why we are here today to talk to you about it.

We also believe this is a bipartisan effort and not one that is aimed at simply political criticism. We had a great Republican as well as Democratic vote in the House for this bill, and we look forward to working with you in trying to fashion an approach that we can both agree to.

Let me also say that H.R. 4800 is a broad-based response to the competitiveness problem. The provision that I helped write that addressed the overall trade deficit has gotten a lot of attention, but what hasn't gotten a lot of attention are the eight titles that range in scope from trade-law reform to improvement in monetary policy, to enhanced education and training.

The bill focuses on such things as the need to remove export disincentives, to stabilize exchange rates, to centralize trade policymaking in the office of the U.S. Trade Representative and to ease the Third World debt crisis, all of which I think we agree are very, very important parts of this problem.

Let me concentrate the short remainder of my remarks on the provision that I helped write and that has gotten so much attention. The central element of our bill is the requirement for specific negotiations and possible action against countries which maintain excessive bilateral surpluses with the United States and—and I underline the word "and" as often as I can—and which maintain a pattern of unfair trade practices or barriers that contribute significantly to those surpluses.

This amendment has been distorted and misrepresented by a lot of people, including administration trade officials. I, therefore, would appreciate the opportunity today to try to more fully explain exactly what this amendment does.

The amendment seeks to deal with inequities which I won't describe. I think we are all aware of some of the inequities—the fact that Taiwan, which has a $12 billion trade surplus with the United States, maintains average duties of 40 percent while many of its exports to the United States receive duty-free treatment under the Generalized System of Preferences. Taiwan practices commercial counterfeiting on a massive scale, and its import licensing procedures often prohibit access entirely for competitive products of ours. Japan, which has a $50 billion surplus, maintains GATT-ille-

gal quotas on many agricultural products and uses other Government-inspired targeting practices and so on and so forth.

But let me just describe the amendment that tries to go to some of these situations. It first requires a determination by the International Trade Commission of countries maintaining excessive bilateral surpluses. It is a mathematical formula. Major trading partners with an export-import ratio of 165 percent or above qualify. And they initially go on the list.

Second, a Presidential determination as to whether any excess surplus country maintains a pattern of unjustifiable, unreasonable, or discriminatory trade policies that have a significant adverse effect on U.S. commerce and contribute to the excessive surplus of such country.

Third, establishment of surplus reduction goals for any country that meets the first two criteria. These reductions would be modest. About 10 percent a year for 4 years and, obviously, they can be met by increasing imports rather than restricting exports.

Fourth, the President is authorized to negotiate and enter into agreements with these countries to meet their goals. If the negotiations are unsuccessful, he would be given a broad range of options for further action in order to ensure that the goals were achieved. That would include suspension of trade agreements, quotas or tariffs, orderly marketing agreements or proposed legislative action.

Finally, the President could reduce the stated surplus reduction goal for a country with balance-of-payment problems and could waive the surplus reduction requirements altogether if he determined for a particular country that there would be substantial harm to the U.S. economy from forced reduction. Congress would have 90 days to override such a waiver, but obviously the waiver could be vetoed.

In sum, this proposal is a small but important part of what I think is a very good piece of trade legislation. It is important because it indicates seriousness of purpose. It also forces accountability, accountability on the part of the administration and accountability on the part of our trading partners who have the worst surpluses which stem from a pattern of unfair trade practices.

And, finally, it forces a plan or an agenda or a strategy for beginning to get these surpluses down. And because it does those two important things, I think it is an important part of this trade bill. It is not magic. It is not a panacea. It won't solve our trade problems. But it will go a long way toward forcing accountability and forcing a plan. And if it does nothing more than that, I think it is worthwhile, and I recommend it to you.

I thank you very much for the opportunity to be here.

The CHAIRMAN. Thank you.

[The prepared written statement of Congressman Gephardt follows:]

Testimony of Congressman Richard A. Gephardt
Before the Subcommittee on International Trade
of the Committee on Finance
July 21, 1986

Mr. Chairman, let me express my appreciation to you for scheduling hearings on this timely and critical issue, and for allowing me to testify today.

I know that this Subcommittee, like your counterpart in the House, has witnessed an endless barrage of depressing statistics about America's deteriorating trade position. I won't inflict further pain on you by repeating them all, but I think most of us agree on the deeper implications behind these figures: The United States is losing the battle to remain competitive in the rapidly changing world marketplace. The long-range consequences of this trend are clear: lower income for U.S. workers; a declining living standard; and, eventually, a decline in American influence throughout the globe.

In my opinion, Mr. Chairman, no greater threat faces this country than the threat of an imbalanced trading system in which we play the role of the consumer while others continually expand their production and exports. And no greater challenge faces this Congress than the challenge to sort through the myriad of slogans and myths to find truly effective solutions to this serious problem.

Mr. Chairman, I know from your long record of support for a more effective U.S. trade policy that you are deeply troubled by our growing deficit, our newly acquired status as a debtor nation, and the increasing agitation of American industry. Members of this Committee have shown their concern by introducing bipartisan legislation. Let me assure you that many of my colleagues in the House and I are interested in the substance of the problem rather than the politics. We want to work together with you to fashion new policies. It is clear to many of us that current Administration policies are inadequate and are rooted in the past. It is time for change.

I recognize that this Subcommittee has heard much criticism of the House omnibus trade bill. I am here to rebut some of the mischaracterizations--but more importantly, to give you a better understanding of the philosophy underlying this legislation. It has been branded by the Administration as "partisan" and "anti-trade." This is heady talk coming from an Administration that quadrupled the trade deficit in just four years. The problem is not our trade legislation, the problem is the very way in which our government approaches the issue of international competitiveness.

This haphazard approach gave us a dramatic increase in imports over a 4-year period (largely caused by the overvaluation of the dollar) without any coordinated policies to offset the dislocations here at home. It gave us a dramatic deterioration in U.S. agricultural exports without any real plan for regaining those lost markets. It gave us a spiraling external debt without any real plan for future solvency. And it gave us closed foreign markets for U.S. exports without any effective leverage to open those markets.

H.R. 4800 is a broad-based response to the competitiveness problem. It contains 8 titles ranging in scope from trade law reform to improvement in monetary policy to enhanced education and training. It focuses on such things as the need to remove export disincentives, stabilize exchange rates, centralize trade policy-making in the office of the USTR, and ease the Third World debt crisis. Each of these titles responds in a specific way to inadequacies in current policy. They are all part of a seamless web. Together, they would help restore U.S. exports, level the playing field with countries that preach free trade but practice protection, and create the proper incentives here at home for a more competitive posture on the part of U.S. industry.

Let me concentrate the remainder of my comments on those provisions in the House bill relating to Section 301. These amendments were all designed with a single overriding purpose: to strengthen U.S. responses to foreign trade barriers that are illegal under international trade agreements or that lead to excessive bilateral surpluses on the part of countries maintaining such barriers. In both types of cases, the bill establishes negotiations as the first recourse to achieve elimination of such barriers. The use of retaliatory action is only mandated where all negotiations fail.

A central element of our bill is the requirement for specific negotiations and possible action against countries which maintain excessive bilateral surpluses with the U.S. and which maintain a pattern of unfair trade practices or barriers that contribute significantly to such surpluses. This amendment, which I authored, has been distorted and misrepresented by Adminstration trade officials. I therefore appreciate the opportunity to clarify both its purpose and its actual structure.

My amendment was intended to deal with some very real and troubling inequities in our trade relations. For example, Taiwan, which has a $12 billion trade surplus with the United States, maintains average duties of 40 percent while many of its exports to the U.S. receive duty-free treatment under GSP. Taiwan practices commercial counterfeiting on a massive scale, and its import licensing procedures often prohibit access entirely for competitive American products. Japan, which now has a $50 billion surplus with us, maintains GATT-illegal quotas on many U.S. agricultural products and uses other government-inspired targeting policies. Brazil now has a $6 billion surplus with us, and yet it continues to prohibit imports of many high technology products, pharmaceuticals, and U.S. films simply because it wants to develop its own domestic industries.

My amendment seeks to deal with these inequities in a straightforward manner. It requires the following steps:

(1) An ITC determination of countries maintaining excessive bilateral surpluses (major trading partners with an export/import ratio of 165 percent).

(2) A Presidential determination as to whether any excess surplus country maintains a "pattern of unjustifiable, unreasonable or discriminatory trade policies that have a significant adverse effect on U.S. commerce and contribute to the excessive surplus of such country."

(3) Establishment of "surplus reduction goals" for any country that meets the first two criteria. These reductions would be modest--about 10 percent a year for four years--and can be met by increasing their imports rather than restricting their exports.

(4) The President would be authorized to negotiate and enter into agreements with these countries to meet their goals. If such negotiations are unsuccessful, he would be given a broad range of options for further action in order to ensure that such goals are achieved. These could include suspension of trade agreements, quotas or tariffs, orderly marketing agreements, or proposed legislative action.

(5) Finally, the President could reduce the stated surplus reduction goals for countries with balance of payments problems and could waive the surplus reduction requirements altogether if he determined for a particular country that there would be substantial harm to the U.S. economy from forced reduction. Congress would have 90 days to override any such waiver.

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I believe this approach is fair and reasonable. It would put pressure on Japan and Germany to expand their domestic economies to absorb a greater share of world trade. With the changes proposed in the Miyakawa Commission report, Japan would more than meet the surplus reduction goals set forth in my amendment. It would also tell countries such as Taiwan and Brazil that we are serious about inequitable access, and that if they wish to retain such privileges as GSP they must do something about their own protectionism. I realize that this must be coupled with measures to ease the Third World debt situation, and that is why my amendment must be part of an overall package. In fact, let me mention that I highly recommend consideration of Senator Bradley's Third World debt proposal. It would help improve our overall competitiveness.

Mr. Chairman, my amendment is only one of several possible options to address a very serious problem. We need to exert more leverage on countries that have all of the benefits and few of the burdens of free trade. We need a tougher negotiating posture, because as it now stands the Administration sends almost daily signals to our trading partners that it is not serious about retaliation.

Mr Chairman, whatever mechanism we adopt should be designed to expand trade and open markets. I believe my amendment meets these goals. But, whatever we do, we cannot continue to allow other countries to increase their exports at exponential rates while the United States sits by and watches its manufacturing and agricultural base disappear. There must be greater balance in the international trading system.

Thank you again for inviting me to appear today on this important matter.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Congressman Pease, Senator Baucus, and I and others were in Korea less than 1 year ago, I guess, and we were told that there were textile workers in Korea that have hourly wages and fringe benefits totaling about $1.25 an hour. Would that fall afoul of your provision relating to internationally recognized worker rights?

Congressman PEASE. Senator, it probably would not. Certainly not on the surface. The purpose of this worker rights language is not, I emphasize not, to create a minimum wage for the world or anything comparable to our wages. What we do require in the definition is acceptable conditions of work with respect to wages and hours of work and so on.

The State Department in its country reports pursuant to the 1984 act has already defined that section of the law as reasonable for the state of development of a given country. So $0.35 an hour might not be too low of a wage in some countries. Certainly $1.15 would not in some countries also.

So we are trying to get basic rights for workers so they have the opportunity to do what comes naturally for workers—to seek higher wages and better working conditions; not to impose specific standards.

Senator DANFORTH. Thank you.

And, Congressman Gephardt, some of the criticism of your bill is that in the case of unfair trade practices and what you call excess surpluses the goal of the negotiations would be to reduce to surplus; not to eliminate the unfair trade practices. And it is said that the practical effect of that is that countries that are found to fall into this category would more likely restrict their exports to the United States than remove unfair barriers to imports from the United States. What would be your comment on that?

Congressman GEPHARDT. Well, clearly, it could be done in either way, but all a country has to do is to negotiate away their pattern of unfair trade practices, and they can have free and open imports of the United States with no restriction whatsoever. And it would seem to me that when they are facing a 40-percent reduction over 4 years it might be preferable to move in the other direction and do what we would like them to do, and that is get rid of their restrictions on their own markets and their unfair trade practices if there are those against us.

A good case in point is Hong Kong, which has one of the biggest bilateral surpluses with the United States. Everyone agrees that they would not be affected in any way by the amendment that I offered. And that is really the model we are holding up to the rest of the world, saying open your markets, stop your unfair trade practices.

Senator DANFORTH. But it would be their option, right? I mean we would say to a country, all right, you have a surplus with the United States and you have unfair restrictions on imports from other countries and we want you to do something about it. And they could say, OK, here is what we are going to do. We are going to maintain our import restrictions and we will just be exporting less.

Congressman GEPHARDT. I rather think that they might want to move in the other direction for two reasons. One, you will have a negotiation with the President, and I am sure that any president would be forceful and pushing hard for the opposite result. Second, I am not sure that any of these countries would want a 40-percent reduction in their ability to export to the United States. This is the biggest and best market in the world. Everyone wants to play in this market, and to be told that if you can't stop your unfair trade practices, you are going to be systematically foreclosed from this market, I think would have the greatest effect possible. In fact, I believe our unwillingness to say that to countries is the reason we don't get better action from them.

Senator DANFORTH. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Pease, it sounds to me like you are asking for two things. One is sort of a national labor relations act for different countries where the workers can at least bargain and say pay us a dime an hour more. Second, meeting some kind—I don't know if it is our standard or world acknowledged standard on safety, health and environmental standards that might not be normally collective bargaining standards. Do I read it correctly?

Congressman PEASE. Senator, we do not ask in this bill for any international standard to be applied in either wages or in working conditions. But we do ask that each nation come up with some minimal definition of health and safety standards for itself. And as long as they were judged to be minimally acceptable or reasonable, then that would be——

The CHAIRMAN. But to who? To the workers themselves or to us or to the United Nations?

Congressman PEASE. No, the decision would be made by the USTR under our bill, because this is all subject to the 301 petition process. As you know, an aggrieved industry would have to go in and file a 301 case; USTR decides whether to accept it or not. If he does, then there is the process of collecting information. Then the USTR decides if there is a case, and if so, what remedy to apply. So it would be a determination within our normal 301 process.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Pease, could you comment on the following question? Can you think of any examples of wages paid in some competitor countries that would be so unreasonably low as to fall under this provision? Or could you give an example of the working conditions in a particular country which are unfair and would be actionable under this proposed change to section 301?

Congressman PEASE. Yes, I can. Senator Danforth mentioned that you and he had gone to Korea, and he mentioned, I think, a $1.15 wage package. That would not fall under this bill, at least automatically. Korea would be more likely to be cited for the practice of the Government of throwing labor leaders in jail after they have successfully negotiated a labor contract. That would violate the freedom of association, the right to bargain collectively, a clause of this bill.

But in Thailand, if you want a specific example, the children 10, 11, 12 years old are routinely sold into work in the textiles mills for $20 to $50, by their impoverished parents from the rural areas.

Those children routinely work 15-hour days, 7 days a week without holidays. It seems to me that that would be a violation under—well, it would lead to the finding of a violation under our 301 process.

Senator BAUCUS. I think you put your finger on a very difficult problem that this country faces, and I commend you for working on this. Obviously, this is a very difficult area.

Basically you are saying that if the country's wages are particularly low, that is not actionable under 301. I think the case Senator Danforth may have been referring to is a company we visited in Hong Kong which makes Matchbox toys. They have a plant in New Jersey or New York or somewhere in that area. They paid $9.50 an hour excluding fringes for putting a little wheel on a Matchbox car. This same company has a plant in Hong Kong and an employee who puts a wheel on a car. But that employee earned $1.25 an hour, excluding fringes. This very same company has a plant in China, and the wages there are two bits an hour excluding fringes.

This is a case where a company went offshore just because wages offshore were so much lower. Would that be actionable under 301?

Congressman PEASE. Senator Baucus, as I envision it, that would not be automatically a finding under section 301. Certainly a case could be brought, but in the case of China, for example, if $0.25 an hour is the general wage in China, and if workers have the opportunity to better their condition, it might not be.

The same wage of $0.35 an hour, $1.15, $3 an hour might be perfectly acceptable in various countries and unacceptable in others, given the stage of development of those countries and what happens to the other workers.

If, for example, a country maintains an export zone where they did not allow their workers to organize or bargain collectively, deliberately it is a matter of Government policy to repress the rights of workers in that export zone as a matter of trying to——

Senator BAUCUS. Did you attempt to write standards in the bill?

Congressman PEASE. No, sir. No, sir. The only thing that is in the bill at all is the definition of worker rights, freedom of association, the right to organize and bargain collectively, a prohibit on forced labor, a minimum age unspecified for the employment of children and acceptable conditions of work with respect to wages, hours of work and occupational safety and health.

And I emphasize that would be acceptable conditions given the level of development of a given country.

Senator BAUCUS. Thank you.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I have received two letters this year from Southern Cast Products, Inc., in Jonesboro, AR, Mr. Chairman and my colleagues. One letter was dated January 7 from Mr. David Kroeter, the president. He talked about the fact that cast iron and casting industry was fast vanishing from the face of America.

The CHAIRMAN. What industry?

Senator PRYOR. The cast products, cast iron and the casting industry generally is fast vanishing.

And on May 14 I received a letter from my constituent again and he said—he was remarking about the May 9 ITC determination

that imports on iron, steel, and nonvarious castings are not injuring the domestic industry as required under section 201.

Then he goes on in his letter, Mr. Chairman, and then he enclosed two photographs here, and I would like for my colleagues and Congressmen Pease and Gephardt to see these—I wish everyone could see these—about who they're having to compete with and the type of industry, for example, in Taiwan in the Taiwan steel industry. One of these photographs depicts five or six men and women walking over, it looks like, burning coals or something like that with sandals on. The others are two workers in one of the Taiwan steel mills working barefooted. So I can only assume that Congressman Pease and Congressman Gephardt are attempting to reach some sort of a conclusion as to how to deal with this type of competition that our companies are forced to compete with.

If you would just take those to our colleagues, I would like for you to see those. I don't know if you saw those in any of your visits in Korea and other places, but you can see that OSHA evidently is not around nor workers compensation or any other of the stringent requirements that our own industries have to face.

It is not a mill in Missouri, Congressman Gephardt. [Laughter.]

Senator PRYOR. I don't even need a comment on that. I wanted our two colleagues to see this, Mr. Chairman. I have no other comments except I think the point that our colleagues are making from the House today is a very good point. I don't know if they have got the right solution to it, but we have to do something, I think.

The CHAIRMAN. Any other questions of these two witnesses? Senator Danforth?

Senator DANFORTH. I have no further questions, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much for coming over and joining us this morning.

Congressman PEASE. Thank you.

Congressman GEPHARDT. Thank you.

The CHAIRMAN. Now let's move on to Hon. Clayton Yeutter, the U.S. Trade Representative.

STATEMENT OF HON. CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

The CHAIRMAN. Mr. Ambassador, you go right ahead. Let me congratulate you on some of the 301 actions you have been bringing in the past year. I think it appears with some degree of success.

Ambassador YEUTTER. Thank you, Mr. Chairman. One must wonder about that from some of the testimony that has preceded me this morning. But I would like to put some of that back in context, if I may, at the moment.

We have had a number of firsts in the section 301 arena, Mr. Chairman, over the last year. I would like to make particular mention of that because of comments earlier this morning by both Senator Mitchell and Senator Heinz on the GAO report. I had a chance to read that GAO report last night. It is generally accurate in terms of its mathematical summaries, but it clearly underestimates what has transpired in the last year or so and clearly gives

undue credit to the way section 301 has been administered recently.

I am not so concerned about how section 301 was administered 5 years ago or 10 years ago. I am really concerned about how it is administered now. We are not trying to be self-serving about it, Mr. Chairman. I think a number of points do deserve mention.

One is the question of self-initiation. As you well know, the President, for the first time, did self-initiate some cases starting last September, and some of those are drawing to a conclusion now.

We also had first-time retaliation under section 301 and some cases where we have come awfully close to retaliation. In fact, on some occasions we have informed the offending country that we were prepared to retaliate. We did a retaliatory action against the European Community without even a formal investigation under section 301. That is the first time that has happened.

We used section 305 for the first time in the last 12 months, and we used section 307 for the first time in the last 12 months.

So that seems to me to be evidence of a much more aggressive stance in the use of this particular provision of the trade law.

In terms of results, Mr. Chairman, thank you for the recognition of that. I would like to summarize just three or four cases very, very briefly.

First of all, of course, the Korea cases which were announced yesterday. I would like to express my gratitude to the Government of Korea for taking the steps that are involved in those cases. As you know, we solved two section 301 cases at one time, one on insurance, one on intellectual property. Both should be very beneficial to the interest of this country. In addition to that, Korea went beyond that and began to open up some markets for us in the tobacco products area.

I would also add that we were able to successfully settle a motion pictures dispute with Korea, one that had been brought by the industry rather than by the United States Government here some months ago.

On the European Community, I made reference to the fact that for the first time we took some retaliatory action without a formal investigation. That was on the accession issue of Spain and Portugal coming into the Community where we had a situation of major damage to our United States agricultural exports; we have satisfactorily settled those cases at least in the short run, both with respect to Portugal a few weeks ago and with respect to Spain about—early this month.

In one of the cases where we set a mandatory deadline—that was canned fruit—we settled that one back last December with the European Community.

On Japan, we satisfactorily settled a long-term dispute over leather and leather footware in December. That was another one of which a mandatory deadline had been established.

And as you probably know, we were able to reach an agreement with Taiwan on opening up some markets on beer, wine, and cigarettes without the filing of a section 301 case.

Now this isn't to say that everything has worked out perfectly for us, Mr. Chairman. We have got some cases that are still pend-

ing, but not many. We are pleased that we brought that many to a satisfactory conclusion over the last several months.

Permit me to mention two or three that are still hanging fire. One is the citrus-pasta dispute. I know you have some people from the pasta industry who are going to testify later today. And that one is under negotiation in Brussels at this very moment.

We are cautiously optimistic we will settle citrus and pasta with the European Community before the end of the week, but time will tell. There has been a lot of activity on that one just in the last few days.

The other one is semiconductors, a case that was brought by the U.S. industry. You are well aware of that as is most everybody because it has been in the news a good bit in the last several weeks. We took a respite from that one for a couple of weeks here recently and are starting back up on it again this week with an absolute deadline of July 30, next week, so there will be results one way or another on semiconductors within the next few days.

Well, that is enough, it seems to me, on the basic use of section 301 recently. I would say to you, Mr. Chairman, I think it is an excellent tool, and it is a tool that really doesn't need much tinkering. There has been a considerable discussion here this morning about the necessity to change 301 to make it more effective. I think it is pretty darn effective the way it is right now, and I really believe we are administering it in a very effective fashion at the moment.

But I would like to comment on some of the specific proposals that have been made here, if I may. And then we will go to questions on it.

First of all, starting at the beginning of the process, there are proposals in this legislation, Mr. Chairman, that would call for mandatory self-initiation of section 301 cases. Those concern me and concern me a great deal because I simply do not see any feasible, rational way to write into law a sensible mandatory self-initiation provision. To me, of all the provisions that are under discussion here in this particular legislation, that one is probably the most difficult to do, if not impossible. And I have great difficulty accepting it conceptually.

And let me give some examples where mandatory self-initiation would deprive us of flexibility that is essential in a process like this. And by the way, Mr. Chairman, that is my basic reservation and concern with respect to almost all of the statutory provisions that are advocated in this particular hearing. They are too rigid. They deny me as the USTR too much flexibility.

The world just doesn't operate in such a way that mandatory kinds of legislative provisions are very helpful. I will give you a couple of specific examples on self-initiation.

One of them is the intellectual property in Indonesia that I mentioned in my prepared testimony. We have a lot of discussions going on with Indonesia right now, some at the highest level of the Government. President Reagan discussed this issue with his counterpart in Indonesia just a couple of months ago. We believe the Indonesians are beginning to move on the intellectual property issue. And having mandatory self-initiation of a section 301 at this

particular point in time just would not be at all helpful. And yet this kind of legislation could very well provide for that.

Another example on intellectual property is Singapore where that process is moving on very, very well. How does one mandatorily legislatively decide what is an appropriate time to have self-initiation of an intellectual property case with either Singapore or Indonesia?

A third one that we might mention right now is the dispute over contracts at the Kansai Airport in Japan. There has been a lot of congressional interest in this. There have been a number of members of this committee who have written me expressing concern about the lack of opportunities for U.S. firms to bid on the construction projects at the proposed Kansai Airport.

I agree with all those concerns, and I articulated them in Tokyo on a number of occasions and from here. I did it in Tokyo just a couple of months ago when I was there.

Yet the press reports a conversation or statement by Prime Minister Nakasone a few days ago indicating that U.S. firms would receive the opportunity to bid. I am not sure what that statement means. It needs some clarification, obviously. We don't know whether the Prime Minister has been misquoted or not, but it would certainly be foolish to self-initiate a case now if there really is a commitment on the part of the Prime Minister of Japan to move forward. We need to verify that. Mandatory self-initiation could easily have deprived us of that opportunity. Enough on that one.

The second one, assuming one gets by the question of whether or not there would be mandatory self-initiation, and I don't think there should be, as you can tell, then comes the question of deadlines. Now I happen to be a believer in deadlines, Mr. Chairman. I probably use deadlines in section 301 cases more than any USTR in history, and they have been very helpful. I alluded to the deadlines that we applied on December 1 on both the canned fruit case and the Japanese leather case, both of which were very helpful in bringing about resolution of those disputes.

We had a July 1 deadline on our dispute with the European Community over the accession of Spain and Portugal. That deadline, likewise, was very helpful. But those were deadlines that were established at the discretion of the President of the United States; not under the law.

And I have difficulty, once again, with mandatory deadlines because of their rigidity. Using one of those cases as an example, we would not have achieved the settlement that ultimately emerged in the Japanese leather case had we retaliated on December 1. We were prepared to retaliate on December 1 and so communicated that to the Government of Japan. But communicating it and doing it are two different things. And the fact that we did not do so on that particular day clearly led to a market opening solution whereas we otherwise would have had a market closing solution in that case. In my judgment, the United States and U.S. industries are infinitely better off as a result of the way that was handled than we would have been through the use of mandatory retaliation.

So that is just one example. One could easily provide many others in the case of deadlines.

Now going beyond just the question of—well, let me make one additional comment on deadlines. Our biggest problem on deadlines is one that Senator Heinz referred to earlier, and that relates to the GATT dispute settlement process. The delays to which the GAO referred in its report are basically delays in the GATT process. They are not delays within the administration. They are delays in the GATT process. And we fully agree, Mr. Chairman, that that situation has to be improved. That is one of our highest priority negotiating objectives in a new GATT round. And I would say to you, Mr. Chairman, the best thing we can do to improve section 301 is to get a GATT round going promptly so that we can work on dispute settlement, because that accounts for much of the inordinate delay that is involved in this process.

Ignoring the GATT and dealing with section 301 cases that do not involve GATT rules, we think the existing deadlines are appropriate. As you know, under the law at the moment, Mr. Chairman, we have a responsibility, I have a responsibility to make recommendations to the President within 1 year, and it seems to me that is a satisfactory timeframe.

Moving beyond just the specific question of deadlines and talking a minute about mandatory retaliation, I already mentioned the problems of mandatory retaliation in a situation such as Japan leather. It seems to me that a mandatory retaliation provision can easily be counterproductive if we are not careful. We want to come out with market opening solutions as much as possible rather than market closing solutions. And one of the difficulties with mandatory retaliation provisions, unless there is wriggle room there, is that we are inevitably going to force market closing solutions into the process.

One comment on transfer of authority to the USTR. I am very uncomfortable talking about that issue because anything I say is likely to be misinterpreted. Suffice it to say that it seems to me that transfer of authority from the President to the USTR is not likely to have a significant impact on this process irrespective of whether I am the USTR or anybody else is the USTR. All USTR's work for the President of the United States and it behooves all USTR's to be responsive to the will of the President of the United States. So we don't see significant merit in that kind of transfer.

Just two or three additional comments, Mr. Chairman, to wrap up. First of all, there is some administrative provisions in this proposal that would be troublesome to us. One is a 90-day unfairness determination. That is within 90 days after the filing of a 301 petition the USTR would have to make a finding as to whether or not there really is an unfair trade practice involved.

That might be useful in some cases, but it can be very harmful in others; particularly, where a case should go onto the GATT. That simply preempts the GATT dispute settlement process entirely. And it seems to me difficult for us to argue that we ought to depend on the GATT to solve the international trade problems of the world when we unilaterally come along as the bully and solve them on our own within 90 days, at least insofar as that determination is made.

The second one is publishing a proposed retaliatory list immediately thereafter. That ought to be a judgment call as to whether it

contributes—publication of such a list contributes positively or negatively to the negotiating process. If it contributes positively, we ought to publish. If it contributes negatively, then we ought not publish.

And then, finally, we ought to consider the question of compensatory authority that is mentioned in one of these bills. I happen to think that providing authority for additional compensation by the United States would be a helpful addition to this process. I would support that. I think we ought to go even further and provide some authority to reduce tariffs if necessary as a part of settlement in 301 actions. Let's provide a flexibility to really achieve package settlement. The dispute that we have with the European Community on citrus right now is an example of that, where the additional authority might well have made negotiation of an overall package more feasible than it has been thus far.

Finally, in terms of the comments made by Congressman Pease on worker rights. Mr. Chairman, we have a lot of reservations about those proposals, as you well know, because of their unilateral imposition of American standards on the rest of the world without any kind of an international consensus on what those standards ought to be.

I think that is about it, Mr. Chairman. Let's go to questions.

[The prepared written statement of Ambassador Yeutter follows:]

Testimony of

Ambassador Clayton Yeutter
United States Trade Representative

on
Section 301 of the Trade Act of 1974

before the
Committee on Finance
United States Senate

July 22, 1986

Mr. Chairman and members of the Committee, I welcome this opportunity to appear before you to review proposals to amend Section 301. Just one year ago, during my confirmation process, many of you suggested that effective use of Section 301 should be among my top priorities as U.S. Trade Representative. I am delighted to review our Section 301 record in the intervening year.

The Administration's Section 301 Record

The Section 301 story in 1985-1986 is replete with firsts:

-- For the first time, the President directed me as the Trade Representative to self-initiate investigations: on Japanese manufactured tobacco product practices, Brazilian informatics policies, Korean insurance barriers and the inadequate protection of intellectual property in Korea.

-- For the first time, the President directed me as the USTR to propose retaliatory measures unless long pending disputes -- with the EC on canned fruit subsidies and Japan on leather and leather footwear quotas -- were finally resolved.

-- For the first time, the President used his authority under Section 301 to take action without a prior formal investigation, to retaliate against unfair trade practices of the European Community--import quotas and market reserve requirements in Portugal on oilseeds, oilseed products and grains, and increased tariffs on corn and sorghum imports in Spain.

-- For the first time, we used Section 305 of the same Act on our own motion, to dramatize our concern about the EC's Third Country Meat Directive, which could reduce drastically U.S. meat and meat product exports to the EC beginning next year.

-- For the first time, we started an investigation under Section 307 of the Trade and Tariff Act of 1984, of Taiwan's export performance requirements in the automotive sector.

-- We submitted the first annual National Trade Estimates Report describing significant barriers to U.S. exports and investment, some of which are unfair. Compiling that report

keeps us informed of trade problems, and helps us establish our priorities in resolving them.

More importantly, I am pleased to report on the results we have achieved through Section 301. For example:

-- Just yesterday the White House announced that, to our mutual benefit, the U.S. and Korean governments have concluded agreements resolving our self-initiated Section 301 investigations on insurance and intellectual property. As a result of sustained, cooperative efforts by both sides, yesterday I initialed agreements that will enable U.S. firms to underwrite both life and non-life insurance in the five billion dollar Korean insurance market; and that will lead to enactment of comprehensive new Korean intellectual property laws. Under those laws, Korea will provide dramatically improved protection for U.S. intellectual property rights, including copyright protection for computer software, patent protection for chemical and pharmaceutical products and new microorganisms, and approval of trademarks without regard to export performance or joint venture on raw material supply agreements. These agreements are a substantial achievement for both our governments, and should mean millions of dollars in new trade opportunities for U.S. firms.

-- The President's prompt and decisive reaction to the damage caused by the accession of Spain and Portugal to the European Community laid the groundwork for temporary settlements that will fully protect our trade interests. Without the prompt use of Section 301, we would likely have lost several hundred million dollars worth of agricultural exports to those countries in 1986 alone.

-- In December we resolved a longstanding dispute with the EC over canned fruit subsidies. We were pleased and, more to the point, our industry was pleased.

-- Also in December, we finally obtained significant compensation from Japan for its leather and leather footwear quotas. This means increased access to the Japanese market for other U.S. industries -- including producers of aluminum, paper and photographic film -- through reduced and bound Japanese tariffs. Of course, we would have preferred to obtain elimination of the Japanese quotas. Because Japan could not agree to do so, we found it necessary to retaliate against certain leather and leather goods imported from Japan.

-- And in the important case of Japanese semiconductors, last month we reached a framework agreement that would bring an end to predatory pricing in the U.S. market and in turn improve American producers' access to the Japanese market.

These negotiations should be made final within the next few days; if not, we will go forward with the enforcement of our trade law.

In fact, our vigorous use of Section 301 has even helped solve trade problems outside the context of a Section 301 proceeding. For example, to avoid a U.S. self-initiated 301 investigation, Taiwan last October promised to open its market significantly to our beer, wine and tobacco exports. It agreed (with implementation within 6 to 12 months) to allow U.S. products to be sold at all retail outlets at which Taiwanese beer, wine and tobacco products are sold, and to cease requiring a higher retail price mark-up for foreign products.

The Taiwan authorities have not yet delivered on their promises, and face an October deadline. We are monitoring developments carefully, and consultations to review their progress are scheduled for August. If Taiwan reneges on its commitments, I will not hesitate to recommend Section 301 action.

Already the object of two self-initiated Section 301 investigations, Korea last fall eased its restrictions on motion picture distribution in response to a Section 301 filing by the Motion Picture Exporters Association of America. As in the Taiwan situation, we will monitor developments, both directly and through regular contacts with our industry.

I'd like to make a few general points about these achievements and my philosophy on the use of Section 301. I think our highest priority must be to obtain relief for the domestic industry concerned. Retaliation on other products may give us some psychic satisfaction, but it hurts consumers and seldom helps the aggrieved industry. There are issues, however, where a foreign government just isn't going to change an unfair practice; we have a few of those ourselves. In that sort of situation--Japan on leather quotas, for example--our priority is to obtain market-opening concessions on other products. Retaliation is only the last resort.

Foreign governments must understand that we will use that last resort in appropriate circumstances. The threat of retaliation must be credible. However, I don't agree that retaliation under Section 301 is the answer to all problems. That is one weapon in our arsenal, and an essential one. But retaliation should not be our only weapon, anymore than a pitcher can afford to throw nothing but fastballs.

The broad retaliatory powers of Section 301 have been vital to what we have achieved, but the flexibility of Section 301 has been no less vital. Yes, we have used deadlines for retaliation, but we have geared those deadlines to particular practices and negotiations. And we have been able to let deadlines slip just a

little where it appeared that a bit more time would buy us a better solution.

It's tempting to think we can bully everybody to do what we want in every case--but foreign governments also have their pride, their domestic problems, and the ability to hit back. Section 301 should be a tool of strength, but not of arrogance.

Let me illustrate how Section 301 is not always the best means to an end. Some of you urged me to initiate a Section 301 investigation relating to trade problems in Swedish steel. We believe that bilateral talks with Sweden on steel are more likely to reap a favorable outcome than a GATT Subsidies Code dispute settlement proceeding, which a Section 301 investigation would have required. U.S. industry representatives share that view. They voluntarily withdrew their Section 301 petition, and I believe they are satisfied to date with progress in our talks.

Nor does use of Section 301 ensure an ideal result. Sometimes our trading partners backslide from the commitments they make to resolve a Section 301 case. In settling the leather case last December, for example, Japan agreed not only to phase in reduced tariffs on aluminum in 1987 and 1988, but also seriously to consult about tariff reductions and other issues affecting aluminum trade. To date we have not obtained any agreement to improve our access to Japan's aluminum market. If we continue to fail to make progress, we may have to consider further action.

I hope that you are pleased with the Administration's record on Section 301 in the last year. I believe we have met the challenge you set out for me during my confirmation. Since then, we have self-initiated investigations, expedited the resolution of disputes, retaliated as a last recourse, credibly poised ourselves to retaliate as leverage to attain more beneficial solutions, and undertaken our first investigation of export performance requirements. As a result of all that activity, I believe we have enhanced substantially Section 301's credibility.

Some believe that amendments to Section 301 are, nevertheless, necessary to ensure that our aggressive use of its provisions continues. I strongly disagree with that view. Having raised Congressional and industry expectations for Section 301, no Administration can retreat from its use. The annual National Trade Estimates Report will continue to spotlight trade barriers, solutions to some of which may ultimately require use of Section 301. And even if the Executive Branch were to waver, the Congress can reinvigorate executive resolve without passing legislation.

Proposed Amendments to Section 301

Let me now turn to S.1860 and other proposed amendments to Section 301. The yardstick against which we should measure Section 301 amendments is whether the proposed change would help eliminate or reduce unfair trade practices by governments. Our common goal

should be to ensure that U.S. industry must compete only against foreign industries, not against foreign governments.

Mandatory Retaliation. We oppose reducing the President's discretion under Section 301 by requiring retaliation at a certain point. Mandatory retaliation is too inflexible, and that rigidity could easily do more harm than good. Section 301 is a harsh, unilateral action by the U.S. Government intruding on the policies of other nations. We believe the intrusion to be justifiable, but a rigid requirement to retaliate could provoke emotional, nationalistic reactions in other countries. It would also reduce our flexibility to respond to mitigating developments unearthed during a Section 301 investigation.

For example, suppose we had been required to retaliate against the EC on July 1 when we were close to, but had not yet finalized, an interim solution to the EC agricultural tariff and quota problems. We achieved that settlement on July 2. Retaliation on July 1 may well have prevented the next day's settlement, and sparked a trade war to boot. Our retaliation would have established a principle, but without any benefit to U.S. producers of corn, sorghum and oilseed products.

Consider the EC canned fruit and Japan leather and leather footwear cases. Neither was resolved precisely by December 1, the deadline established by President. Yet our flexibility

briefly to extend those deadlines brought us EC trade reform (through cessation of a subsidy) and Japanese compensation (through reduced and bound tariffs).

You may say that all those settlements would have been reached by the deadline if the deadline had been mandatory. Perhaps so, but I think our little bit of flexibility made it easier to get a better settlement where a totally inflexible approach might simply have gotten those countries' backs up.

Consider also the cases we self-initiated last fall. Would mandatory retaliation help U.S. insurance companies trying to write insurance in Korea? Or U.S. computer and other high technology enterprises trying to compete in Brazil? Or U.S. cigarette producers, who face no Japanese competition in our market, but sincerely want the opportunity to compete on an equitable basis in Japan?

Rigid statutory requirements would have harmed U.S. economic interests in each of these cases. They would have ensured a market closing response, <u>not</u> to the benefit of the industry seeking increased access to a foreign market. While we need a credible threat of retaliation (to bring reluctant trading partners to the negotiating table), we do not need mandatory retaliation. We have now established that we will retaliate if necessary, through

the EC enlargement, citrus, canned fruit, and leather and leather footwear cases.

Mandatory Self-Initiation. A statutory requirement to self-initiate cases would be similarly disadvantageous. First, it is unnecessary. I have no hesitancy in recommending initiation of a Section 301 case if circumstances warrant it. While my preference is to initiate cases in response to industry petitions, the Administration has and will continue to act on its own motion when appropriate.

Second, a requirement to self-initiate would be unwise. Section 301 is a gun; we should not strap it on unless we're prepared to draw, and we shouldn't draw unless we're prepared to fire, if necessary. Mandatory self-initiation would eliminate our flexibility to choose the most effective means of resolving a trade problem. And generally we shouldn't beat down a door with our fists until we have at least tried a polite knock first.

Let me illustrate my concerns. As you know, we are struggling to improve the protection of intellectual property rights by our trading partners. Indonesia is one of our concerns in this regard. We have pressed its government at the highest levels, including at the meeting between President Reagan and President Suharto in Bali in April. We are also providing technical assistance, including a seminar recently given by a team of

experts from Commerce's Patent and Trademark Office. We believe that self-initiation of a 301 action now, while these initiatives are already underway, would undermine our efforts. Moreover, other leverage may be adequate and other trade statutes provide means to address this problem if necessary.

Another example is Japan's inadequate prevention of video piracy. We have recently become concerned about its adverse effect on our video industry, and in May we urged Japan to enforce its laws more vigorously. However, self-initiation of a 301 action anytime soon would not be warranted, since it would not give Japan a fair chance to improve its enforcement.

A third example is Japan's lack of transparency regarding procurement contracts at its new Kansai Airport. We are disturbed that U.S. firms are unable to compete for service and equipment contracts because of: (1) the lack of necessary and timely information about bid requests, and (2) a closed bidding process that could lead to discriminatory awards. We believe the Japanese to be in a totally indefensible position on this issue, and we will use whatever tools are most appropriate to convince them to alter that position.

Transfer of Authority. We also oppose any amendments transferring authority under Section 301 from the President to the U.S. Trade Representative. Actions under Section 301 affect not just our

trade relationships, but the entire national economic interest. For this reason, decisions under Section 301 should be reserved for the President, who can best weigh interests within and without the government.

In addition, the U.S. Trade Representative serves at the pleasure of the President. Therefore, a transfer of authority would not lead to a different decision within our government. The sole effect of this amendment might well be to reduce Section 301's leverage with foreign governments by divesting the President's personal involvement.

Actionable Unfair Practices. We strongly oppose making certain labor rights an actionable practice under Section 301. Our unilateral adoption of such an ambiguous standard would make U.S. exports subject to retaliation, and would probably block trade rather than improve worker rights practices around the world.

Section 301 need not be amended to make targeting practices actionable. The Japan semiconductor and Brazil informatics proceedings are essentially targeting cases, in which we have investigated and negotiated vigorously. Besides being unnecessary, any amendment could inadvertently restrict Section 301. It currently can be interpreted broadly; any amendment defining targeting activity could be construed to narrow its compass.

We do not believe that an amendment is necessary to make a foreign government's toleration of a private cartel potentially actionable under Section 301. We interpret Section 301 to cover toleration of cartels provided the facts are strong enough. For example, in 1983 the Japan Fair Trade Commission (JFTC) found violations of Japan's Anti-Monopoly Law by Japanese soda ash companies and took enforcement action. If and when we nonetheless find evidence of continuing anticompetitive conduct by Japanese soda ash companies, we will pursue the matter bilaterally. Ultimately, we could act under Section 301 if necessary.

Deadlines for Determinations and Actions Under Section 301. Generally we do not think such proposals would benefit U.S. industry or our government. They would tie your trade negotiators' hands and preclude us from exercising our judgment and discretion as to how best to serve our trade policy objectives. If we believe a formal determination of unfairness will expedite decisive resolution of a case, we will make that determination. But experience has shown that in some cases we are more likely to reach a favorable agreement if we refrain from a finding of unfairness.

An amendment to Section 301 to put a 24-month deadline on dispute settlement (unless petitioner prefers continued efforts) could be helpful. As a high priority in the New Round of multilateral trade negotiations, we need to restore confidence in the GATT

dispute settlement system, undermined badly through its occasional but conspicuous failures. One useful way to show our seriousness about the dispute settlement process could be to require the USTR generally to deem dispute settlement concluded within 24 months and then make recommendations to the President. We cannot allow multilateral dispute settlement to drag on as it has too often in the past.

Conclusion

I appreciate your attention to this trade remedy. The pressure you have generated has helped provide leverage in our negotiations on many trade matters. You have an active, creative Section 301 program helping to reduce unfair foreign government trade barriers. You do not need to amend Section 301 to ensure the continuation of these aggressive efforts.

Your concern about unfair trade practices abroad is quite appropriate, and we share it. But the major amendments that have been proposed would not serve our mutual goals, the elimination of these practices. The effect of most Section 301 amendments proposed is reduced flexibility. Yet we need that flexibility to get the best results possible in international negotiations. Particularly where the problem is inadequate access to someone else's market, we must be able to decide when and how much pressure to apply. To box us in -- by requiring self-initiation or retaliation -- would be a costly mistake, to the detriment of

U.S. industry. And to deflate the importance of 301 by demoting the decisionmaker from the President to the Trade Representative would reduce the likelihood of favorable results from its use. While we applaud your concern and support, we must strongly oppose the amendments before you.

SECTION-BY-SECTION ANALYSIS

TITLE II OF S.1860

Title II -- Trade Barriers and Distortions of Trade

Section 201 -- Report on Barriers to Market Access

Requires the annual National Trade Estimates report of foreign trade barriers to quantify, for each trade barrier reported, how much its elimination would increase U.S. exports (volume and value, by product). Also requires the NTE to consider the international competitiveness of the goods or services involved.

The objectives of this section are laudable, but we have to be realistic about the limits of quantification. If a trade barrier has always blocked access to a market, how can we know what products we would sell, and how much? Trade barriers may affect many sectors differently. And exchange rates (as section 101(8) of the bill finds) and other macroeconomic factors such as GNP growth rates are important factors in determining trade flows. Since even the best available data on import elasticity are guesses with a wide margin of error, estimates based on those guesses should be treated with care. Also, it may not be advantageous to our bargaining position to tell foreign governments how much trade barriers are worth to us before we even start to negotiate.

Section 202 -- Initiation of Investigations in Response to Report on Barriers to Market Access

Requires USTR to self-initiate investigations on an annual basis under section 302(c) of the Trade Act of 1974 with respect to those acts, policies and practices identified in the NTE that:

(1) are likely to contravene trade agreements or be unjustifiable, unreasonable or discriminatory and burden or restrict U.S. commerce; and

(2) constitute a barrier to a significant portion of all the goods and services that USTR (in the NTE) estimates would have been exported if all the trade barriers identified in the report did not exist.

In considering which cases to self-initiate, the USTR must take into account the potential increase in U.S. exports that would occur if the unfair act, policy or practice were eliminated, and the extent to which the act, policy or practice nullifies or impairs U.S. trade agreement benefits.

The Administration strongly opposes mandatory self-initiation of section 301 cases, because it takes away our ability to use other, more effective methods to resolve problems. While this provision would not require self-initiation where the trade

barrier does not have a significant impact on potential U.S. exports, it could still require self-initiation in cases where the U.S. industry is opposed, where U.S. exporters would suffer significant adverse effects because of displacement in export markets, retaliation or mirror procedures, or where self-initiation is simply not in the U.S. economic interest.

We do not object to the two factors to be taken into account in making self-initiation decisions; these are consistent with our current practice. However, they might be interpreted to place a lower priority on cases that do not directly affect U.S. exports, such as investment or intellectual property cases. Plus, we risk signaling our trading partners that if a case has been initiated in response to a petition, not self-initiated, it should not be taken seriously.

Section 203 -- Transfer of Authority to the USTR

Transfers all functions of the President under sections 301-303 to the U.S. Trade Representative (in consultation with the Trade Policy Committee). Goes further than the House bill, which only transfers to USTR the authority to make a section 301 unfairness determination, and leaves retaliation decision to the President.

The Administration opposes any transfer of authority from the President to the Trade Representative. Such transfer of authority will not "depoliticize" 301 determinations; it could be counterproductive if our trading partners see it as signaling less interest at the highest levels of our government in trade issues.

Determinations that affect our overall economic interests are best made by the President on the basis of advice from all of his principal economic advisers. Transferring decisionmaking power to USTR fundamentally conflicts with USTR's role as principal adviser to the President on trade issues and coordinator of trade policy.

Section 204 -- Miscellaneous Amendments to Section 301

Under present law, unjustifiable, unreasonable or discriminatory practices are actionable if they burden or restrict U.S. commerce; section 204(a) adds threat of burden or restriction. It also defines "burden on U.S. commerce" by an illustrative list of various practices.

The Administration opposes these changes. "Burden or restriction" is already flexible enough to handle any real (or really threatened) trade problem. The list of practices constituting "burden" could result in narrowing the scope of section 301; their inclusion is unnecessary and counterproductive.

Section 204(b) authorizes the USTR to enter into binding agreements with a foreign country to fully offset or eliminate the burden caused by acts, policies or practices that have been determined to be unfair, as an alternative to other retaliatory action. It also authorizes withdrawal of GSP (for the country or for particular products) as section 301 retaliation.

The Administration opposes the provision on GSP withdrawal as unnecessary, as such action is already within the President's power. It could also interfere with efforts to achieve the goals Congress has set for the overall GSP program. We oppose the provision on agreements because it would appear to preclude agreements compensating us in other sectors (a solution whose appropriateness is recognized by the GATT) even if this were a more feasible or appropriate result. We also object to this provision because the prupose of section 301 should be to open markets and eliminate trade-distorting measures, not to offset damage to our industry.

Section 204(c) tinkers with the definition of "unreasonable" to expressly make the following practices actionable under section 301: infant industry protection; combinations of acts, policies or practices; and inadequate or ineffective protection against anti-competitive practices.

These additions to the statute are unnecessary and unwise, and we oppose them. Combined with mandatory self-initiation and mandatory retaliation, these provisions could force us to retaliate against actions abroad that mirror our own. Also, GATT explicitly permits some of these actions.

Section 204(d) expands the USTR's retaliatory authority to include restriction or denial of Federal licenses, permits or other authorizations that permit access to the U.S. market by foreign suppliers of products related to a service. For instance, this would authorize denial by USTR of FCC permits for telecommunications equipment.

Section 205 -- Actions in Response to Investigations under Title III of the Trade Act of 1974

90-day unfairness determination: requires USTR, within 90 days of initiation, (1) to make a determination of whether foreign government acts, policies or practices meet section 301 criteria, and (2) to publish a Federal Register notice of such determination (which, if the determination is affirmative, must include a list of foreign goods and services that could be subject to retaliation).

The Administration strongly opposes this drastic shortening of deadlines. It is simply not possible to get public comments (which typically takes six weeks), adequately consult with the

petitioner, conduct consultations, assemble the data and make an informed decision within 90 days. We also object to the requirement of a public finding on unfairness within 90 days and publication of our retaliation list; in cases involving GATT disputes, this requirement will make a mockery of the GATT process, and can box us in prematurely. We will, in essence, render unilateral judgment at a time when we are supposedly seeking an international judgment. The fact that we could later change our mind will not prevent panelists from feeling that they are wasting their time.

Mandatory retaliation: Section 205(b) mandates retaliation by USTR within 15 months of initiation, where there has been an affirmative unfairness determination. Action must be taken as necessary to enforce U.S. rights and to offset or eliminate all unfair acts, policies or practices. Action can be delayed up to 90 days, if the petitioner requests (or, in a self-initiated case, if the domestic industry so requests), and if the petitioner or domestic industry determines adequate progress is being made).

No section 301 retaliation would be required if:

(1) USTR determines that the affirmative determination was incorrect or is no longer valid (USTR would be required to review its unfairness determination if there were a contrary GATT decision); or
(2) an agreement is reached with the foreign country that is acceptable to the domestic industry and petitioner (if any), or to USTR and the industry or petitioner.

The Administration strongly opposes mandatory retaliation. The 301 statute already provides us with the leverage we need; mandated retaliation will make our trading partners less (not more) willing to deal. Mandatory retaliation will ensure a market closing response in at least some cases, which will not benefit U.S. petitioners and could hurt other U.S. industries. The 15-month deadline is unrealistic and will not benefit U.S. industry. Combined with mandatory retaliation, it would require retaliation well before the end of a GATT case, and make a mockery of international dispute settlement. The only proposal we could support in this area would be an amendment to section 301 to put a 24-month deadline on dispute settlement.

The lack of flexibility proposed by this section is also unwise. The Administration must have the discretion to act when the timing is right for overall U.S. economic interests. For instance, the changes in section 205 could require 301 retaliation or an unfairness determination against a country just as a large sale is pending for a major U.S. exporter.

We also oppose the provision for settlement agreements as drafted. Section 301 cases deal with unfair trade practices of foreign governments that are of concern to our government as a

matter of policy, and settlements can have far-reaching economic effects. While we can (and already do) consult closely with petitioners and affected U.S. industries in 301 investigations, it is inappropriate to give one industry or one petitioner a veto over the settlement. Also, such a provision could preclude accepting compensation in other sectors even where such compensation would be more in the overall U.S. economic interest, or where such compensation is the only feasible market-opening solution.

301 sunset: Any action taken under section 301 would terminate after 7 years unless the petitioner or the U.S. industry requests its continuation. USTR must notify the petitioner and the industry in time for them to make such a request. If continuation is requested, USTR must review the effectiveness of the action or alternative action in offsetting or eliminating the unfair trade practice, and the effects on the U.S. economy, including consumers; USTR must report the results, and any modification in the 301 actions, to Congress. This review could result in a decrease or an increase in the amount of retaliation.

We can agree with the concept of review of past retaliation actions taken under section 301; we already have adequate authority to do such a review, and do not need more. In addition, the Presdient already has full discretion to terminate, extend or adjust actions taken under section 301. This discretion must be retained. We would particularly oppose any inference that would preclude termination of section 301 action before 7 years.

Section 206 -- Compensation Authority

Amends section 123 of the Trade Act of 1974, broadening existing compensation authority to also cover actions under section 301, where the President (not the USTR) determines that compensation is necessary to meet U.S. international obligations. Unlike the House bill, does not include compensation authority for duty increases made by statute or through tariff reclassification.

The Administration supports such compensation authority. However, it must be made clear that the existence of compensation authority for section 301 actions cannot be the basis for forcing us to take action that is inconsistent with U.S. international obligations. The bill should also include compensation authority for duty increases made by statute or through tariff reclassification. Such authority can be necessary for us to comply with our obligations under GATT Article XXVIII.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Mr. Ambassador, if I were a betting man and if I didn't have doubts as to whether it might be a violation of the D.C. Code, I would offer to bet you at least a stick of chewing gum that the number of American firms that will participate in the construction of the Kansai Airport will be zero, despite any representations that may be made by Prime Minister Nakasone.

Now I want to——

Ambassador YEUTTER. Senator Danforth, I will take that back.

Senator DANFORTH [continuing]. Briefly describe to you one of my peeves. It involves one of my constituents, Monsanto, the maker of silicon, high-quality silicon, no doubt about the quality of the silicon.

Monsanto has been attempting to sell silicon to Japan for years, for years. They were told that you have to know the language and the customs. They were told that you have to have Japanese partners to do business in Japan. So they did that. They mastered the language and the customs. They went into business with Japanese partners. No sales. None. Not a single sale.

Then they were told, well, you have to build something in Japan. You have to do something for us. You have to cross our palm with silver. If you were to build a finishing plant for your silicon in Japan, that would help.

Now they didn't need a finishing plant for silicon. They can do all of their finishing for silicon in the United States. To build a finishing plant for silicon is a waste of money for Monsanto. It is useless. It is pointless. It is a gift. It is a bribe to build a finishing plant in Japan.

But they agreed to build a silicon plant in Japan. Where? I guess it is just coincidence but in the Trade Minister, Mr. Watenobie's, district.

Now in response to all of this, how much silicon business do you believe that Monsanto has been able to do in Japan? They get their partners, they build their plant, they do it in Mr. Watenobie's district. How much silicon business do you believe that they have been able to do in Japan? The answer is the same amount of business that they will be able to do at the Kansai Airport—nothing.

The people say, oh, there are problems about defining unfair trade practices. Oh, this is a terrible thing to define. It is so difficult. I am going to tell you what this is. This is not only an unfair trade practice, this is a con game. This is a fraud perpetrated by Japan by its government and by its business to fleece my constituent of money to build a plant and to give them nothing in return.

I believe that American business that makes the effort to try to do business abroad, that does everything they are told to do should have certain remedy under American law. They don't have certain remedy under American law. They don't.

It should be just as sure as if somebody is caught robbing you on the street. You are a citizen, you go to the police department, you go to the prosecuting attorney, and you are sure somebody will take your case and prosecute the laws for you. A citizen should be certain of that, because if a citizen isn't certain of that, there is no confidence for the law.

If an American trying to do business in another country isn't confident that where they are fleeced and conned and cheated as Monsanto has been by Japan, they can get relief and support from the American Government under section 301 or elsewhere or, they will have no confidence in the trade laws.

Now as far as I know, Monsanto hasn't even approached you. I don't know. Probably hasn't. But I am going to tell you why they haven't, if they haven't. Because people really don't believe in our trade laws. People believe that our trade laws are ancillary to other concerns of the government. People believe that enforcing trade laws come absolutely last as far as our administration is concerned.

I compliment you on certain achievements since last September under section 301. I think you are moving in the right direction. But the reason we need this change in the law is to provide assurance to those businesses that are trying to make sales in other countries that if they try hard enough they will be treated fairly. It is a comment; not a question. You might want to respond in some way, but I thank you for listening to me.

The CHAIRMAN. I wish you would use some analogy other than assuredness that the criminal on the street is going to be prosecuted and put in jail, or words to that effect.

Senator DANFORTH. No. I mean there is no assurance, but at least if you have got the guy red-handed——

The CHAIRMAN. He might have a trial. [Laughter.]

Senator DANFORTH. I would say that his assurance of that in most American communities is substantially higher than his assurance that the Federal Government will help him in 301 cases.

The CHAIRMAN. Mr. Ambassador, you want to answer?

Ambassador YEUTTER. Yes; I would like to just respond very briefly, Mr. Chairman.

First of all, I have a lot of empathy with Monsanto and every other American company that has gone through those kinds of frustrations. Monsanto is not alone, as you very well know. Senator Wallop referred to the soda ash people a little earlier this morning, and I am very familiar with their experience as well. Your Monsanto constituents, Senator Danforth, contain a lot of old—consists of a lot of old friends of mine, so I am well aware of their frustrations too.

I would simply say that in my judgment you do under estimate the attractiveness of section 301. I would hope that the experiences of the last 12 months will be recognized by someone to indicate a considerable change in interest and direction.

It seems to me that it is inappropriate to ignore what has transpired over the last 12 months. I think there is a heck of a lot of difference in terms of attitude and commitment and performance. We have done a tremendous amount of work under section 301 in the last 12 months. I would hope the people out in the private sector would feel a lot more comfortable now, Monsanto and others, about filing section 301 cases.

I would go on, Mr. Chairman, and say I do believe the basic use of section 301 should still be through filings by private industry and not just by self-initiation by the U.S. Government. It is easy to throw the whole burden on the American taxpayer by asking the

administration to self-initiate everything. But, basically, the private sector ought to stand up—the private sector should stand up and be counted too. If they feel aggrieved, they ought to file cases. If we don't satisfactorily prosecute those cases, then, obviously, there is a legitimate case.

But I don't think Senator Danforth or anybody has a legitimate complaint against USTR or the administration if they haven't filed a case.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, thank you very much.

For the high-priced people in the audience that report back to Japanese Government and Japanese industry, while I can't say it in the same eloquent way that Senator Danforth did, I feel very much the same way and want to associate myself with his remarks.

But to you, Ambassador, I want to say that right now it is my understanding that we are in the midst of negotiations with the intent of resolving section 301 cases like in the semiconductor industry and in a couple of antidumping cases. I would like to know what you think or the outlook for those negotiations. But more important, what is the administration planning to do if there is insufficient progress in those negotiations.

Ambassador YEUTTER. All right, Senator Grassley. The President himself commented on that a few days ago in an address he gave in the Old Executive Office Building. And the essence of that was that if they are not satisfactorily resolved by the deadline, which is July 30, just a few days from now, that we will take action under the trade laws. In other words, that there will be a section 301 retaliatory action at that point or shortly thereafter.

I am cautiously optimistic about bringing that case to a successful conclusion. It has probably been the most complicated bilateral negotiation we have ever had, Senator Grassley. An enormously difficult one, enormously important to U.S. high technology industries.

It really has three parts, and I will do this very briefly. One is pricing conduct by Japanese firms into the United States market. The second one is access by American firms into the Japanese market. And the third one is pricing conduct by Japanese firms into third country markets.

We, basically, resolved our concerns over the first two portions of that package. We still have some open questions about pricing conduct in third country markets. The lead Japanese negotiator will be here on Thursday, and we will be going from Thursday through until the end, if need be, and we will know the outcome in a few days.

Senator GRASSLEY. Now I also understand that in early August there is going to be at the sub-Cabinet level some meetings between the United States and the Japanese on the aluminum issue. Could you inform me of the outcome of this meeting immediately after your return?

Ambassador YEUTTER. I would be happy to, Senator Grassley. And I would take advantage of this opportunity, since you have posed the question, to say to you that we are about as frustrated in dealing with the aluminum question as Senator Danforth is in

dealing in and articulating the concerns of his on his Monsanto constituents.

As you undoubtedly know, Senator Grassley, the promised aluminum trade benefits were a part of our leather and leather footware settlement back in December. In other words, what the Government of Japan committed to at that time was a substantial opening up of additional market opportunities for our aluminum producers in Japan. Since then, there has been a lot of stone walling on the part of the Government of Japan on that particular topic, and we need to move that process along. We are not pleased thus far.

Senator GRASSLEY. Well, I would like to encourage you to advise the Japanese the many Members of the Senate—are looking for results in those aluminum talks as an indication of whether the United States trade laws are adequate to deal with market access problems. And I am sure you are aware being from the Midwest yourself that Alcoa is a constituent of mine in Davenport. They are going through a $700 million modernization for three flat roll products plants, and one of those is in my State so I am deeply interested in those talks.

Lastly in regard to the Argentina soybean export subsidy case, I know you have been working in good faith on that effort. And that both the Treasury and the World Bank agree with the principle that this differential export tax system creates a substantial and unfair distortion in the soybean market. Can you advise me of the status of this case at this critical juncture, and how vigorously the Argentina Government is being told that the U.S. Government will no longer tolerate recalcitrance in that area?

Ambassador Yeutter. As you know, Senator Grassley, we accepted that case under the provisions of section 301. This was a case filed by the domestic industry. I accepted it on behalf of the United States Government, so we are pursuing it with the Government of Argentina at the moment.

If I recall correctly, Senator Grassley, the first consultative session with the Argentinians is set for August 2 or thereabouts. We intend to pursue that dispute aggressively. We believe—we agree with your assessment that there is an unfairness involved in the way that differential is being handled within Argentina. And we intend to pursue that to a conclusion.

The CHAIRMAN. Mr. Ambassador, as you are well aware, there has been a festering frustration in Congress, in this committee. You saw it on the day we met on the Canadian-American fee trade pact when you were stunned at the response of the members.

I think the feeling is this: Over the years—and I have been on this committee since 1973—a feeling that all administrations sort of have to be dragged kicking and screaming into trade retaliation, if you want to call it that because of the desire to use trade to barter for other nontrade issues. Is that a fair assessment of the history?

Ambassador Yeutter. I would say so, Mr. Chairman. As you know, I served here during the Nixon and Ford administrations and was involved in some of these disputes back in the midseventies and again now. And I would say that that is a traditional reaction by all administrations, Democrat and Republicans.

The CHAIRMAN. I didn't mean it as a partisan slap. But we will let them keep the trade barrier if we instead can have a naval base.

Ambassador YEUTTER. Yes.

The Chairman. That type of trade. And any President would like to have that kind of discretion to trade off blacks versus reds.

Ambassador YEUTTER. Yes. And I would oppose removing that discretion, Mr. Chairman, because the President of the United States has to make those kinds of tradeoffs. That is why he is elected. There are considerations other than economic ones involved in our relationships with other nations. It's a question of how those are balanced. And I think one of the frustrations of this committee, which you are reflecting now perhaps, is the feeling that those decisions have been tilted toward the foreign policy side, if you will, and tilted against the trade interests of this Nation through the years.

The CHAIRMAN. I think that is the feeling of the committee. We are not the Armed Services Committee, and we are not the Foreign Relations Committee. We are basically the trade committee.

So what you are saying is even a retaliation section properly drawn you would be adverse to if the retaliation was going to be trade for trade. If they won't let our beef and soda ash and timber in, we won't let their Toyotas in. You don't want that kind of mandatory power.

Ambassador YEUTTER. No. I really do not, Mr. Chairman, because that is just too narrow. We really need to have all of these issues under consideration at a given point in time. We really ought not ignore noneconomic considerations in making economic policy decisions anymore than we should ignore economic issues in making noneconomic policy decisions.

All of them are integrated and interrelated. And I really do not believe that we ought to tie the hands of the President of the United States legislatively in making those kinds of tradeoffs. He ought to have maximum flexibility in doing so.

Now this is not to say the Congress of the United States should not hold him accountable or hold me accountable for what those decisions turn out to be.

The CHAIRMAN. Well, now you have come down to the nub of the problem, because basically the House bill and basically what many on this committee are prepared to do is an eye for an eye, which has, obviously, a good Biblical tradition. And you are saying give us the discretion of an eye for a tooth.

Ambassador YEUTTER. Yes. I am saying——

The CHAIRMAN. Or vice versa.

Ambassador YEUTTER. Yes. I am saying, Mr. Chairman, the world is just more complicated than that. We ought not try to carve out those kinds of boxes because we can't do that anymore. We have got to look at the big picture. If we begin to look at small pictures rather than big pictures, we are going to get ourselves into trouble.

The CHAIRMAN. Now with our major trading partners, including Canada, Japan, Hong Kong, you don't think that the threat of retaliation—if they want access to our market, there is no question about it that in some cases, in some countries it is imperative that

they have access to it—you don't think that the threat of retaliation would work. You think that their internal politics are not unlike other internal politics or ours. And that instead of saying, OK, you may sell your chips and you may well your beef and your oranges in our market, they would simply say, you know, go ahead and retaliate; we will cut back our cars; we will cut back our VCR's because our internal politics just won't let us do what you want to do.

Ambassador YEUTTER. Yes. In many cases, that clearly would be the result. And that, by the way, is the fallacy of the Gephardt provision, which appears in H.R. 4800, because it will turn out to be a market closing solution. That is, we will never open up the markets in other countries. They will simply close down some of their exports into the United States, and we will shrink world trade in the process. We won't improve our trade deficit at all, because what will happen is that those countries will have a right to retaliate under the GATT, and they will shut off our exports just as we shut off theirs.

The CHAIRMAN. What is wrong with the theory, if you don't follow exactly Representative Gephardt's theory, of simply saying to the countries that have an immense surplus you must cut that surplus down in any way you choose to do it. We are not going to tell you how to do it. If you want to export less or import more, that is up to you. But we are not going to force you. We are simply going to say that you have got to come to a conclusion that it has less of a trade deficit.

Ambassabor YEUTTER. Yes. What I would tell them, Senator Packwood, instead of delivering that message would be open up your markets to U.S. products; deal with the trade deficit in that manner.

The CHAIRMAN. And that might be the answer. If we give them the choice, that might be the answer they choose.

Ambassador YEUTTER. Well, if you give them the choice, Senator Packwood, and require that they do something which is the Gephardt proposal and one has been made by Mr. Iacocca and others, they will clearly choose export restraints. And if we legislate that result, Senator Packwood, they would have the prerogative under the GATT to retaliate against us.

So we are not going to gain. We will not achieve our objective of reducing the trade deficit because we can't force them to reduce the trade deficit.

The CHAIRMAN. All right. Your answer was given that choice, they will clearly take export restraints on their exports rather than opening their markets.

Ambassador YEUTTER. Absolutely. And it will probably accompany that with retaliation.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Ambassador, I understand your testimony today to be you oppose the approach taken by Congressman Pease and Congressman Gephardt.

Now I would like to know a little more clearly what you support. What affirmatively do you support and does the administration

support to rectify these problems that Congressmen Pease and Gephardt are looking at?

Ambassador YEUTTER. That is a legitimate question, Senator Pryor. And let me take a crack at answering it. First of all, with respect to the concerns articulated by Congressman Pease, I have had many colloquies with him over in the House Ways and Means Committee, and the essence of those is simply that I believe that the proper forum to deal with that question is the new GATT round; that we ought not try to deal with that issue unilaterally, but we ought to do it multilaterally in a new GATT round. Worker rights is clearly a legitimate question internationally. But there ought to be international debate on that subject, and we; ought to try to achieve a consensus as to what, if anything, ought to be done multilaterally in terms of minimum standards in that area. This is what Congressman Pease is arguing for. Some kind of minimum worker standards.

But if we try to do that unilaterally, my judgment, Senator Pryor, is that we will open up a can of worms that is just an unbelievable one, because we will place ourselves in great vulnerability to being attacked by other nations on this very same subject.

The worker rights that we would expound as the appropriate ones internationally may not be the same ones that would be expounded by someone else. If we start retaliating against other nations because of what we perceive to be their inadequate worker rights, there are going to be other nations retaliating against us, too. I think we are going to have an enormous donnybrook. The way to do that, instead of provoking a big war, economic war, on this subject, is to sit down at the negotiating table and try to do something about it.

With respect to Congressman Gephardt's concerns which primarily relate to the trade deficit, my answer to Senator Packwood pretty much covered those. That we really ought to seek market opening solutions with the countries that have gigantic trade surpluses with us. We ought to do it very, very aggressively.

I am not sure that we have the right answers yet with respect to Japan, Senator Pryor, because that is our biggest bilateral deficit problem, and we need to do some more creative thinking there. But I think the right kinds of macroeconomic policies and an aggressive trade policy on unfair trade practices are the overall answer.

Senator PRYOR. Mr. Ambassador, on another subject, August of 1985, that was about 1 year ago, the President announced that the White House and this Government, this administration, would pursue the initiation of 301 complaints and activities there. Now you have taken some action there. For example, South Korea insurance and Japan tobacco, semiconductors, Brazil computers. But I want to know if those 301 initiatives that you have chosen—I wonder if they are really going to help the workers in our present industries threatened by imports today or were those against or tentatively against those industries where potential threats might occur. I wonder if you might address that for me.

Ambassador YEUTTER. Well, they would help those workers, Senator Pryor, to the extent that they are involved in industries and firms that are potentially internationally competitive. In other words, the basic thrust of section 301 from its very beginning many

years back has been to open up opportunities for American exporters. It has had a strong export thrust. The idea is that we ought to aggressively attack unfair trade practices abroad and open up opportunities for American firms to sell in foreign markets. So that to the degree that the workers that you are talking about are involved in firms that have a capacity and the competitiveness to go out and sell more internationally, they are going to benefit.

In terms of the flip side of that coin, which is unfair practices of foreign firms selling in the U.S. market, we really have not been using section 301 for that purpose. That has been really countervailing duty laws, antidumping laws, and section 201.

Senator PRYOR. Have you initiated all of the 301 complaints that you would like to initiate?

Ambassador YEUTTER. The simple answer, Senator Pryor, would be that we would like to do more. Undoubtedly, we will do more in time. There are some limitations on how many we can do simultaneously because there is a high resource demand involved with the confrontational technique like section 301.

Senator PRYOR. Well, have you been denied by anyone the right to go forward? You said you would like to do more. Is anyone slowing you down or saying wait a minute, Mr. Ambassador, slow this down? Is anyone doing that to you?

Ambassador YEUTTER. No. Not at all, Senator Pryor. We have not proposed, we USTR, have probably not proposed as many cases as I might like to see handled under section 301 simply because of some resource limitations. We just can't do everything simultaneously, and we have been doing a lot more than has ever been done before. But it is not because anybody has said no. It is because we have chosen not to move those cases forward.

This isn't to say that we have got a big long list awaiting action. But in addition, there is a judgment call as to when to launch those and how many to do with a particular country. There are a lot of factors involved. I could spend a lot of time analyzing that for you, but if you wish, I would be glad to do some of that in writing, because that is a complicated question.

Senator PRYOR. I wish you would be more aggressive in that, Mr. Ambassador.

Ambassador YEUTTER. Well, we have been pretty aggressive already, Senator Pryor, as you know. The question is: How much more aggressive we can or should be with a given country or in a given set of cases? But we intend to be aggressive as long as I am around.

Senator PRYOR. I thank you, sir. Mr. Chairman, thank you.

The CHAIRMAN. Any other questions of the Ambassador?

[No response.]

The CHAIRMAN. If not, Mr. Ambassador, thank you for coming.

Ambassador YEUTTER. Thank you, Mr. Chairman. It was good to be here. Good luck on the tax conference.

The CHAIRMAN. Thank you very much.

Now let us go to a panel of C. Mickey Skinner, John G. Reed, Donald Ropa, and George Nield.

Gentlemen, we will follow with you our normal process for witnesses other than administration witnesses or Members of Congress and ask you to hold your testimony to 5 minutes. Your entire

statement will be in the record. We might as well go in the order that you are on the panel. We will start with Mr. Skinner.

STATEMENT OF C. MICKEY SKINNER, PRESIDENT, HERSHEY PASTA GROUP, HERSHEY, PA, ON BEHALF OF THE NATIONAL PASTA ASSOCIATION

Mr. SKINNER. Thank you, Mr. Chairman.

My name is C. Mickey Skinner. I am president of the Hershey Pasta Group, the largest manufacturer and distributor of branded pasta products in the United States. On my left is Paul C. Rosenthal, of the law firm of Collier, Shannon, Rill & Scott counsel to the National Pasta Association.

I am appearing before the committee today on behalf of the National Pasta Association, a nonprofit trade association representing most domestic producers of pasta and numerous allied industries, including the farm community.

The long and frustrating history of the domestic pasta industry with section 301 is well known to this committee. The industry filed a 301 petition in 1981 alleging that the EC conferred illegal subsidies on Italian pasta exports. What follows is a testimony to the inadequacy of the present statute that include:

Failed consultations; a 1983 GATT panel determination confirming the illegality of the subsidy; the EC's refusal to agree to a solution that would result in the withdrawal of the subsidy; the blocking by the EC of all efforts to secure adoption of the panel report; and an unwillingness by the administration—the executive branch—to use its retaliatory authority under section 301 to act unilaterally against the illegal subsidy.

The equally frustrating part has been the economic impact which resulted in a tenfold increase in the level of the illegally subsidized imports since 1975 and record high levels in the rate of the subsidy, more than 50 percent of the value of the imported product.

While President Reagan imposed duties ranging from 25 to 40 percent on imports of pasta producers from the EC on November 1, 1985, this action was taken in response to the EC's refusal to act on another GATT panel determination, involving citrus. Ironically, the issue of the pasta subsidy was never raised in the public announcements surrounding the retaliation. Pasta was simply a vehicle to help resolve the citrus dispute.

The industry is appreciative of the administration's decision to impose the pasta tariffs. While we recognize that the principal intent of the tariffs was to retaliate for the citrus stalemate, we had hoped that the willingness to use pasta as a retaliation vehicle signals an administration commitment to resolve the separate pasta issue. Nevertheless, we remain concerned that a small domestic industry like pasta might become the victim of a political tradeoff in which the pasta tariffs are removed without a simultaneous elimination of the subsidies.

Such a result threatens the future of our industry since foreign producers could then sell in our markets at prices below U.S. cost of production at current subsidy levels.

The domestic pasta industry was one of the first to avail itself of section 301, yet its GATT panel victory has been overlooked and submerged in a morass of procedural maneuvering.

If section 301 is to be the vehicle for seeking enforcement of rights under trade agreements, it must provide our negotiators with the leverage to resolve disputes arising under those agreements. That leverage can best be provided by a requirement that retaliation be mandated in the event of an affirmative GATT panel determination concerning the illegality of the foreign practice and a failure on the part of the United States and the offending country to reach a favorable solution shortly thereafter.

Without that leverage, section 301 and the entire dispute settlement process will be ineffective, and the agreements themselves unenforceable.

The domestic pasta industry has waited 5 long and frustrating years for a resolution of its dispute. Indeed, the industry has prevailed before the highest tribunal that has considered the case. If the pasta industry cannot obtain lasting relief under section 301 in the wake of its victory, something is wrong. The message in this unfortunate experience must not be lost on this committee. It certainly will not be lost on our trading partners who continue to violate the accepted norms of the international trading system with impunity.

Thank you.

The CHAIRMAN. Thank you, sir.

[The prepared written statement of Mr. Skinner follows:]

STATEMENT OF C. MICKEY SKINNER
ON BEHALF OF THE NATIONAL PASTA ASSOCIATION
SUBMITTED TO THE COMMITTEE ON FINANCE
UNITED STATES SENATE

My name is C. Mickey Skinner. I am President of the Hershey Pasta Group, the largest U.S. manufacturer of pasta. I am appearing before the Committee today on behalf of the National Pasta Association, a nonprofit trade association representing all major domestic producers of pasta. This efficient and competitive industry directly employs about 10,000 people in 24 states and indirectly, thousands more in various supplier industries. Retail sales of pasta amount to approximately $1 billion. I am pleased to present the views of the domestic pasta industry on the proposed revisions to section 301 of the Trade Act of 1974, specifically with respect to those proposals for mandatory retaliation under that statute.

The long and frustrating history of the domestic pasta industry with respect to section 301 provides a valuable context from which this Committee may explore the need to modify that statute to provide for mandatory retaliation in certain instances. As this Committee is aware, the National Pasta Association, after witnessing successive years of dramatic growth of Italian pasta imports, filed a section 301 petition on October 16, 1981, alleging that the European Community ("E.C.") violated GATT Article 16 and Article 9 of the Subsidies Code by conferring illegal subsidies on Italian pasta exports. These subsidies have propelled a ten-fold increase in the level of Italian pasta imports since they were first made available to Italian pasta producers in 1975. The petition was accepted by the Office of the U.S. Trade Representative on December 1, 1981. In an effort to settle this matter, the USTR exhausted the various consultation and conciliation avenues available under the GATT. When these efforts failed, the United States requested the establishment of a GATT Panel to rule on the validity of the U.S. allegations concerning the illegality of the pasta subsidy. On May 19, 1983, the Panel affirmed all of the U.S. allegations, concluding that the E.C. subsidies on exports of

pasta were granted in a manner inconsistent with the Subsidies Code. The Panel's written opinion was a well-reasoned document that vindicated the U.S. legal position in all respects.

Following the Panel's decision, the U.S. Government again pursued all legal avenues available in an attempt to reach an amicable settlement of the controversy. The E.C., however, refused to agree to a bilateral solution that would result in the withdrawal of the illegal subsidies. Moreover, the E.C. continuously blocked all efforts to secure adoption of the Panel report by the full Subsidies Code Committee. To this day the E.C. refuses to acknowledge the validity of the Panel report because of its unadopted status. In sum, the U.S. victory before the Panel resulted in no relief to the U.S. pasta industry. Moreover, despite repeated appeals from the domestic industry, the Executive Branch refused to use its retaliatory authority under section 301 and act unilaterally against the illegal subsidies. This unwillingness on the part of the Executive Branch to retaliate despite a favorable GATT ruling -- and the E.C.'s demonstrated unwillingness to play by the procedural and substantive rules of the GATT -- resulted in additional harm to U.S. pasta manufacturers, and undermined the overall integrity of the GATT dispute settlement process, as well as section 301 itself.

On June 20, 1985 -- over two years after the GATT Panel's ruling on pasta -- President Reagan threatened to impose duties ranging from 25 to 40 percent on imports of pasta products from the E.C. This retaliatory action, however, was proposed in response to the E.C.'s preferential tariffs on citrus products, which were found by a GATT Panel to "have nullified and impaired U.S. benefits" under the GATT with respect to U.S. citrus exports. As in the case of pasta, no action had been taken by the E.C. in response to the Panel decision. Thus, the U.S. proposed retaliation on pasta because the E.C. had refused to resolve the citrus case.

In an effort to delay the additional duties, the E.C. agreed to a small reduction in the level of its export subsidy on pasta and committed itself to settling the

long-standing citrus dispute by October 31, 1985. During that period, the E.C. did not put forth a proposal to settle the citrus dispute. Moreover, the level of the subsidy on pasta actually increased 176 percent. On November 1, 1985, further discussions ceased, and the Administration imposed the additional tariffs on pasta. The tariffs were characterized by the USTR as a retaliatory response against the E.C.'s tariff preferences on citrus. Ironically, the issue of the pasta subsidies were never raised in the public announcements. In effect, pasta was simply a vehicle to help resolve the citrus dispute.

The pasta industry was and is deeply appreciative of the Administration's decisions to impose the pasta tariffs. While we recognize that the principal intent of the pasta tariffs was to retaliate for the citrus stalemate, we have been hopeful that the willingness to use pasta as the retaliation vehicle signalled an Administration commitment to resolve the separate pasta dispute.

The E.C. has responded to the increased tariffs by increasing its export subsidies. Indeed, the subsidy level has soared to all time record levels, as the E.C. attempts to offset the retaliatory tariffs. A 12.7 cent subsidy is now in place, which provides an approximately 3 cent per pound market place advantage for E.C. pasta over and above the 40 percent (equal roughly to 10 cents per pound) tariff on most pasta products. The subsidy amounts to between 50 and 70 percent of the wholesale price of a pound of imported pasta from Italy. These continuing demonstrations of bad faith by the E.C. in connection with the level of the pasta subsidy have heightened the concerns and frustrations of the domestic industry with respect to its participation in the section 301 process.

The domestic pasta industry has great praise for Ambassador Yeutter and his staff's resolve to seek a fair solution to the issue of the E.C. pasta subsidies in the face of the E.C.'s historic recalcitrance. We are hopeful that negotiations between the U.S. and E.C. that are now taking place will lead to the elimination of the illegal E.C. subsidies. Nevertheless, we remain concerned that the interests of a relatively small,

domestic industry like pasta might be ignored or sacrificed in order to resolve other issues. The absence of a mandatory relief or retaliation provision under section 301 renders this industry especially vulnerable to an unfavorable political trade-off in which the pasta tariffs are removed without a simultaneous elimination of the subsidies. Such a result poses a major threat to the future of our efficient domestic production operations since foreign producers could sell in this market at prices below U.S. cost of production.

The experience of the domestic pasta industry clearly points out the need for a mandatory retaliation provision in section 301. The domestic pasta industry was one of the first industry groups to take advantage of the statute since it was most recently revised in 1979. Yet, its GATT panel victory, which has significant legal implications for U.S. trade policy, has been overlooked and submerged in a morass of international procedural maneuverings. Moreover, the unfair subsidy practice the industry hoped to have eliminated persists at record-high levels.

That such an overwhelming legal victory could place the domestic industry in a less favorable position than when it started reflects the inadequacy of the statute as a dispute settlement device. If section 301 is to be the vehicle for the U.S. to seek enforcement of its rights under trade agreements, the statute must provide our negotiators with the leverage necessary to resolve disputes arising under those agreements. That leverage can best be provided by a requirement that retaliation be mandated in the event of an affirmative GATT panel determination concerning the illegality of a foreign practice, and a failure on the part of the U.S. and the offending country to reach a favorable solution shortly thereafter concerning the elimination of that practice. Without that leverage, section 301 and the entire dispute settlement process embodied in the GATT and the various Codes of Conduct will be ineffective, and the agreements themselves will be unenforceable.

We do not believe that a requirement for mandatory retaliation unduly hamstrings the Executive Branch. The Executive Branch will still have flexibility to

craft the appropriate form of retaliation, in the event negotiations fail. In fact, some might argue that the legislation proposed still leaves the Executive Branch with too much discretion. We believe that the Executive Branch needs some flexibility, but it also needs a stronger law to enhance its credibility in the negotiating process.

The domestic pasta industry recommends that the Committee adopt language mandating retaliation in the event a GATT Panel determines a violation has taken place. Furthermore, that language should apply to existing disputes arising out of section 301 where favorable GATT panel determinations such as pasta and citrus have been ignored. Without such language, section 301 cannot be viewed as an effective remedy for domestic industries seeking the enforcement of our rights under international agreements.

The domestic pasta industry has waited five years for a resolution of its dispute. Indeed, the industry has prevailed before the highest tribunal that has considered the case. If the pasta industry cannot obtain lasting relief under section 301 in the wake of such a clear cut victory, something is wrong.

The message in this unfortunate experience must not be lost on this Committee. It certainly will not be lost on our trading partners, who continue to violate the accepted norms of the international trading system with impunity.

I appreciate this opportunity to provide you with our views.

STATEMENT OF JOHN G. REED, JR., VICE PRESIDENT, INTERNATIONAL, ARCHER DANIELS MIDLAND CO., DECATUR, IL, AND CHAIRMAN, NATIONAL SOYBEAN PROCESSORS ASSOCIATION

The CHAIRMAN. Mr. Reed.

Mr. REED. Thank you for the opportunity to be here this morning, Mr. Chairman.

During the last 3 years, our industry has filed two separate 301 petitions directed against unfair trading practices in world markets for soybean oil and soybean meal, one in the spring of 1983 which addressed several practices employed by several countries, and one in the spring of 1986 directed specifically at the differential export taxes employed by Argentina.

I think that we have pursued both those petitions as vigorously as a petitioner could reasonably be expected to do. Based on that, we have some comments for your consideration.

The first one is that as the 301 statute is now written, it can be effective only to the extent that USTR negotiates vigorously and is willing to threaten, and if necessary, is willing to take effective measures to counteract the unfair foreign practice.

Second, it is important to realize that USTR cannot be forceful without the full backing of other important agencies; principally, the State Department, the Treasury Department and the White House.

We have observed that over the past year, both generally and in connection with our most recent filing, the administration has been more vigorous and more willing to use section 301 in an aggressive fashion. We have seen that willingness in our own recent petition against Argentina's differential tax subsidy on soybean oil and soybean meal.

On that particular trade practice, after three very frustrating years for us, the administration has finally achieved a unanimity of support for this case, has initiated a 301 investigation, and is pressing Argentina for negotiations. This support has been very gratifying to us.

We are well aware that vigorous action against Argentina has raised concerns in some other parts of the administration arising out of that country's political stability and its international indebtedness. We have reached the conclusion—and I might say that the World Bank has independently reached the same conclusion—which is that this subsidy scheme hurts Argentina's national economic interest as well as those of soybean processors and producers in the United States, Brazil, and the European Community.

The practice actually lessens both Argentina's foreign exchange earnings and its Federal tax revenue. Argentina's soybean farmers are also injured. All these parties are injured, mind you, to benefit only a small group of politically influential Argentine processors.

The important point for your committee's purposes is that this case is now at an especially critical juncture. Argentina, by their behavior, has just provided evidence that, contrary to the expectations of the Treasury Department, of USTR, and the independent expectations of the World Bank, it intends to maintain the subsidy system in full effect even as it reduces overall export tax levels pursuant to its recent loan agreement with the World Bank. If this

defiance by Argentina is not met with a vigorous United States response, making it clear to Argentina that recalcitrance will not be tolerated, then this committee would be justified in concluding that section 301 needs substantial toughening.

With regard to the types of amendments you should consider, if you conclude that such a toughening is necessary, our written testimony discusses several of them in detail. Let me briefly mention the two which we consider to be most important.

First, we would not favor mandatory retaliation through the use of import restrictions. In most 301 cases, import restrictions would not help the aggrieved U.S. industry which brought the case.

Second, and perhaps from our point of view most important, we would urge you to authorize and perhaps even to mandate countersubsidization when consultations and negotiations fail to provide relief. In our case, and in other agricultural cases, that remedy is clearly the best response. Surplus commodities under the Export Enhancement Program are available, and such a response would be trade-expanding instead of trade restricting.

I would like to close by reemphasizing our hope that this case will provide convincing evidence that amendments to section 301 are not needed. Prompt and vigorous action against Argentina's latest defiance—and we believe defiance is not too strong a word—would certainly convince us that the statute can be effective in its present form. The handling of our case during the next several weeks and the resulting progress or lack of progress will be a true litmus test as to whether section 301 needs to be strengthened.

Thank you.

The CHAIRMAN. Thank you, sir.

[The prepared written statement of Mr. Reed follows:]

U.S. Senate

Committee on Finance

Testimony of John G. Reed, Jr.

Chairman

National Soybean Processors Association

July 22, 1986

NSPA
NATIONAL
SOYBEAN
PROCESSORS
ASSOCIATION

Mr. Chairman, members of the Committee, Ladies and Gentlemen, good morning. I am pleased to be here today on behalf of the National Soybean Processors Association (NSPA) and very much appreciate the opportunity to appear before this Committee to testify. NSPA is aware of the complexities that the Committee faces in its consideration of possible changes to Section 301 of the Trade Act of 1974. We hope that our experiences in the 301 process will assist the Committee's deliberations.

Our Association has been deeply involved in proceedings under Section 301 for more than three years now. Based on that experience, I would offer the following conclusions as to the effectiveness of this statute as a tool for the elimination of foreign unfair practices:

- First and foremost, you must understand that as the statute is now written its effectiveness depends entirely on the willingness of the Administration to be aggressive in bilateral negotiations with the offending foreign government.
- Second, you should be aware that the U.S. Trade Representative is today making a vigorous effort to be aggressive in the ways necessary to make Section 301 effective. That was not always the case, but the present USTR regime is, in our view, attempting to make progress.

- Finally, you must understand that USTR, even when it wants to be vigorous under Section 301, cannot act effectively without the support of the Departments of State, Treasury and Commerce and the White House. Our case against Argentina is now at a critical juncture where you will be able to see in the next several months whether this Administration is willing to act decisively to deal with a clearly unfair practice perpetrated by a foreign government which shows no intention of abandoning the practice.

In short, I urge you to follow our case closely over the next few months, and to use it as a barometer for determining whether major changes should be made to toughen this legislation. At the outset of our case, there were encouraging signs that the other agencies, especially the Department of Treasury, would give USTR the support necessary to achieve the elimination of Argentina's unfair differential export tax subsidy scheme. During the last two weeks, however, we have received evidence that Argentina has elected to maintain this subsidy in full effect, with no compromise whatsoever, in apparent total rejection of efforts by USTR, the Treasury Department and (in an independent context) the World Bank. The question now is: will we see a united and effective response by this Administration? You should have the answer to that question soon.

If amendments to Section 301 are needed - and frankly, I hope they are not - our Association has some suggestions which I will discuss later in my testimony. In general, I urge you to focus your efforts on enhancing the tools which USTR can use to achieve a satisfactory negotiated resolution of the issues raised in 301 cases. We have some specific thoughts in that regard, but I should emphasize that mandatory retaliation through import restrictions is decidedly not the right way to go. In the great majority of Section 301 cases, ours included, import restrictions would be of no benefit whatsoever to the aggrieved U.S. industry.

Before I discuss areas of possible statutory reform, however, let me give you a brief history of our efforts under Section 301. In so doing, I want to emphasize that the Administration is now at a juncture -- in our case specifically, but in other cases as well -- where it can take vigorous action in ways which will demonstrate that it is willing to make the present law effective. If it does that, and I hope and believe that it will, our Association's position would be that no Section 301 amendments are necessary.

NSPA filed its initial petition for relief under Section 301 on April 6, 1983. Our concerns at that time -- and, indeed our concerns today -- centered on the serious and increasing number of unfair trading practices in the world's export markets for soybean oil and soybean meal. In our initial petition we sought relief from a wide variety of practices -- blatant export subsidies, preferential export

financing, processing subsidies, domestic consumption quotas and differential export tax subsidies -- which were being used by foreign countries to capture larger shares of world markets for soybean oil and meal. That initital petition was directed at six countries -- Argentina, Brazil, Spain, Portugal, Malaysia and Canada.

Following extensive briefings and hearings, USTR determined to initiate investigations as to only three of those countries -- Spain, Portugal and Brazil -- on issues of export and processing subsidies, domestic consumption quotas and market restriction. With regard to one particularly troublesome practice -- the use by Brazil, Argentina and Malaysia of a differential export tax subsidy system -- USTR declined to investigate under Section 301 but pledged to seek elimination of the differential export tax practices by those countries through consultation in the context of more general trade discussions.

Today -- more than three years after the filing our original petitions -- I have to give you a quite mixed assessment of the effectiveness of those 1983 petitions. On the positive side, there has been significant progress with respect to some of the subsidies about which we had complained:

- Portugal has phased out its State trading monopoly;
- Brazil has eliminated several (but not all) of its large scale subsidy programs; and

- Spain has given up one substantial export subsidy.

In candor, however, I am hard-pressed to attribute these gains in any major degree to the Section 301 investigations. Certainly, the 301 process did not obtain specific agreements by the foreign governments to eliminate this unfair practices. Rather, the proceedings were characterized by seemingly endless consultations which resolved nothing and endless delays, best described as stonewalling, by Brazil and Spain. While the pendency of these cases and the entreaties of U.S. negotiators may have put some pressure on the foreign governments, it seems clear that other forces -- the budgetary pressure of Brazil's rising debt and the decisions by Spain and Portugal to the European Community -- were the principal causes of these changes.

Moreover, the improvements which have occurred are far from secure. None of these governments has entered into any firm agreement as to its furture practices. We hear frequent reports that Brazil is considering new subsidies for exports of soybean oil and meal. Moreover, as I am sure you are aware, the accession of Spain and Portugal to the EC has already created new subsidies and trade barriers to replace those we originally complained of.

With respect to our original cases, therefore, I am afraid I cannot give a very positive report on the effectiveness of this statute. In the past year, however, we have embarked upon a new effort under Section 301, aimed at what has

clearly become the single most serious distortion of trade in soybean oil and meal: the differential export tax subsidy scheme. This system utilizes a high export tax rate on soybeans combined with a much lower export tax rate on soybean oil and meal, to subsidize soybean oil and meal exports through an artificially reduced raw material (soybean) cost and a guaranteed profit margin regardless of the price at which the finished products are exported. This subsidy scheme is so potent that it consistently results in the export of soybean oil and meal at prices below world market prices for unprocessed soybeans.

In preparing a new Section 301 petition to challenge this potent subsidy, we focused our attention on Argentina, which in recent years has used the differential export tax scheme to achieve rapid penetration of world markets for soybean oil and meal. In addition to the cost to U.S. processors in lost export volume, Argentina's subsidy practice has severely depressed market prices for our products.

Beginning in 1979, Argentina decided to enter world markets for soybean oil and meal and to develop subsidy programs to encourage investment in that sector. Argentina has minimal domestic requirements for soybean products and exported few soybean products prior to 1977. It expanded into the world markets in the 1980's using its direct export subsidy, the Reembolso, and then instituting a differential export tax scheme after the Reembolso was found illegal in U.S. countervailing duty cases.

Argentina's crushing capacity for soybeans and sunflowerseed was 2.4 million metric tons in 1980. (Argentina sunflower crushers are also subsidized by a differential export tax structure.) In a world already plagued by excess crushing capacity, Argentina's subsidies spurred an explosive increase in its soybean and sunflowerseed crushing capacity, which has now reached 10.5 million metric tons, a 340% increase in only six years. In 1980, ARgentina had 2% of the world export market for soybean meal, and 4% of the world export market for soybean oil. The corresponding figures for 1985 were 18% and 17%, and 1986 will show another significant increase. During the same period, the United States' share of the world soybean meal market declined from 54% to 28%, and our share of the world soybean oil market declined from 44% to 27%.

In 1985, NSPA decided to prepare a Section 301 petition focusing specifically on the Argentine differential export tax subsidy. Cognizant that USTR's decision two years earlier not to initiate an investigation on that issue was due primarily to lack of available data regarding Argentina's internal markets, NSPA commissioned an extensive and comprehensive independent economic study of the Argentine practice. That study documented authoritatively how Argentina uses its differential export tax system to effect a substantial artificial cost reduction for its soybean processing industry; how soybean processing in Argentina has become a "risk-free" business as a result of Argentine government intervention; and how Argentine processors use this benefit to capture market share and to

undercut and depress world market prices for soybean meal and oil.

The study also revealed that the differential export tax subsidy is not even in Argentina's economic interest. In addition to the adverse impact on soybean processors and growers in the U.S. and in other countries, Argentina's subsidy scheme has the following negative effects:

- It injures Argentine farmers by severly depressing the price they receive for their soybeans.
- It significantly reduces Argentina's foreign exchange earnings from the soybean sector.
- It significantly reduces Argentina's federal tax revenues.
- Because of the scheme's adverse impact on foreign exchange earnings and federal tax revenues, it significantly impedes Argentina's ability to service its huge foreign debt and reduce its chronic budget deficit.

In short, only a few politically influential Argentine processors are benefitted by this scheme. Everyone else -- U.S. farmers, U.S. processors, farmers and processors in Brazil, the EC, and other exporting nations, U.S. banks, international lending agencies, Argentine growers, and even the Argentine Treasury -- suffers.

In light of these economic findings, we felt that our case was not only on solid legal ground, but also was fully

consistent with U.S. policy toward Argentina and other Third World debtor nations. After all, it is just this type of governmental market-distorting measure that the Baker Plan, the Treasury Department, the IMF and the World Bank are pressing the debtor nations to abandon.

When we filed our new petition in December of last year, we had extensive discussions not only with the Office of the U.S. Trade Representative, but also with Departments of Treasury, State, Agriculture and other interested agenices. Frankly, we were more than a bit concerned that some agencies - Treasury and State in particular -- might not support a case against Argentina, for considerations quite apart from the merits. We were pleasantly surprised to find full agreement on the part of those agencies that the Argentine differential export tax subsidy was a pernicious practice which should be eliminated.

Another import fact emerged in our governmental meetings. The Treasury Department had received information that the World Bank -- acting independently of the United States and certainly independent of our Section 301 filing -- was engaged in discussions with Argentina that focused in significant part on the Bank's desire that Argentina change its export tax system in order to eliminate the same types of market distortions and adverse effects on revenues and taxes which were confirmed in our economic study. After discussions with Treasury and USTR, we decided to withdraw temporarily our Section 301 petition, in order to remove any appearance of the

United States trying to influence the course of Argentina's negotiations with the World Bank. We did so in part because our government was optimistic that the World Bank might succeed in negotiating an agreement which would eliminate or greatly reduce the subsidy effect of Argentina's differential export tax program.

Unfortunately, the World Bank talks did not lead to such a result. Accordingly, we refiled our petition, and in so doing received the full support of the Treasury Department for an initiation of the proceeding. The proceeding was initiated by USTR on May 6, 1986.

Since the initiation of the proceeding, there has as yet been no progress toward a resolution of the case. To the contrary, we have received recent evidence that Argentina has no intention to reduce the subsidy it conveys to its oilseed processors.

In the wake of the World Bank discussions, Argentina agreed to reduce the overall level of its export taxes by 30%. It was assumed (and to some extent corrobated by Argentina in documentation accompanying the World Bank agreement) that this would also mean a 30% reduction in the amount of the tax differential (it is the amount of differential which generates the subsidy effect). Clearly, this would not have been enough to solve our problem or eliminate the trade-distorting subsidy effect, but it would have been a potentially significant indication that Argentina was willing to move in the right direction.

A few days ago, however, Argentina announced several new export tax rates which it will be implementing in compliance with its undertakings to the World Bank. While the overall level of export taxes was reduced, we were shocked to find that the amount of the differential in the linseed complex had not been reduced at all! In other words, Argentina has announced clearly and defiantly that it has no intention whatsoever of reducing the subsidy provided to its oilseed processors.

It is this announcement by Argentina which has brought us to such a critical point in this case. If ever there was a time in a Section 301 case when the United States Government should take a strong and agressive stand, it is this juncture in this case:

- There is no dispute whatsoever that the Argentine differential export tax scheme distorts trade, depresses world market prices and injures U.S. producers.
- Throughout the U.S. Government, there is agreement that this system hurts Argentina itself, as well as U.S. soybean farmers and processors.
- Elimination of this type of governmental market distortion is a major goal of overall U.S. policy concerning the debtor nations, as specifically articulated in the Baker Plan.

- The World Bank shares the view that this practice is undesirable and should be eliminated.
- Yet the Argentine Government has now clearly and explicitly refused to take even the first step in eliminating the market-distorting subsidy.

Over the next few weeks we will be meeting with USTR and other government agencies, urging them to make it very clear to Argentina that such total recalcitrance cannot be tolerated. We have every hope that the unanimity of support for this case throughout the government which emerged in our last round of discussions will be translated now into strong and vigorous negotiating initiatives.

This really is a critical test of Section 301. I urge this Committee to watch carefully what the United States negotiators do now. They certainly have the tools under this statute if they choose to use them, to move agressively and to bring about an effective resolution. If they do so, our Association would urge you not to make major changes in this statute.

But if no action is taken at this critical juncture, if Argentina is permitted to thumb its nose at the U.S. Trade Representative, the U.S. Government as a whole, and the World Bank -- then we would have to conclude that something has to be done to make Section 301 of the Trade Act of 1974 a more effective instrument for dealing with the unfair practices of foreign governments.

While I hope that no such amendments will be necessary, we do have a few thoughts arising from our experience in these cases which may be helpful to you in the event that some legislative action is needed:

First, I want to discourage you from adopting any provision making import restrictions mandatory as a retaliation against an intransigent foreign government. Most Section 301 proceedings are designed to benefit U.S. exports -- eliminating subsidization of foreign exporters (as in our case) or removing barriers to participation by U.S. exporters in foreign markets. In most such cases -- and again ours is a good example -- the petitioning U.S. industry does not experience competition in the United States from imports originating in the foreign country against which the case is being prosecuted. Under such circumstances, retaliatory import restrictions (which would have to be imposed on some product other than that produced by the petitioning industry) would be of no benefit at all to the industry on whose behalf the case is being prosecuted. It may well be that USTR needs to be able to threaten some form of import restriction as a means of persuading the foreign government to cease its unfair practice, but mandating this type of retaliation does the petitioning industry no good at all.

Second. On the other hand, it may be useful for you to consider authorizing -- and perhaps even directing -- another type of USTR response to foreign government intransigence in cases involving subsidization of exports to third country markets. In such situations, the most logical form of

retaliation is to counter-subsidize U.S. exports which compete with the subsidized foreign exports. In this era of Gramm-Rudman and other budgetary constraints, mandating such counter-subsidization would seem appropriate only in those instances in which the requisite funds or other means of subsidization are available.

Fortunately, in the case of agricultural subsidy problems, there already exists a resource upon which counter-subsidization can readily be based. Moreover, the Congress has already expressed its desire that this resource be used to counter the agricultural subsidies of foreign governments, including specifically subsidies provided by differential export tax schemes. I refer, of course, to the use of government-owned stocks of agricultural commodities under the plan originally known as BICEP (Bonus Incentive Commodity Export Program) and now denominated Export Enhancement Program (EEP). Last year, when the legislation creating this program was under consideration, NSPA provided to the Congress copies of our economic study of the Argentine differential export tax subsidy. Based principally on that study, amendments were offered in both Houses of Congress which identified the differential export tax system as an unfair trading practice and authorized the Secretary of Agriculture to take action pursuant to his CCC authority to counteract the effects of such a practice through counter-subsidization using agricultural commodities owned by the U.S. Government. That amendment passed both Houses of Congress without objection and is now

part of the Food Security Act of 1985. A logical and effective extension of this legislation would be a provision authorizing the Secretary of Agriculture to make available to the U.S. Trade Representative such quantities of commodities as may be necessary to counteract foreign government agricultural subsides which are the subject of Section 301 proceedings, and authorizing or requiring the use of such commodities for full and complete counter-subsidization in the event that the foreign government proves recalcitrant in negotiations.

A third possible improvement in this statute might require that USTR issue a determination at the end of a Section 301 investigation -- unless a prior negotiated resolution of the issues has been reached -- which would set forth the existence, extent and effect of all unfair foreign governmental practices determined by USTR to exist as a result of its investigations. Such a requirement would, in some cases, put significant negotiating pressure on a foreign government which wanted to avoid being branded an unfair trader by the United States. Moreover, it seems only fair that a domestic industry which has put in all of the effort and expense to bring and help prosecute a Section 301 proceeding should, at the end of that proceeding, have at the very least a determination on the merits as to the issues raised in its petition.

Finally, there remains the difficult question of whether this statute brings about the proper balancing of U.S. industries' trade interests against other potentially offsetting policy considerations. S. 1862 approaches this question

through provisions which would transfer all decision-making authority from the President to the U.S. Trade Representative. We do not see that as the best way to deal with that issue. Where conflicting policy considerations are to be balanced, it seems to us appropriate that the President be the one to do that balancing. Moreover, where the issues are truly important, it is difficult for us to see that a transfer of authority to the U.S. Trade Representative would make any significant difference.

It occurs to us that a better way to approach this issue would be to require that USTR submit to the Congress, on an annual basis, a detailed report on the conduct and resolution of all Section 301 proceedings. This report would be required to discuss specifically the negotiating positions taken by the United States in each case, the negotiating options which were considered and rejected, the reasons for the rejection of such options and the views of any other agencies which were considered by USTR in regard to each negotiating strategy option. That report, which need not be a public document, would enable the Congress to form its own conclusions as to whether the effectiveness of this statute is being undermined by excessive deference to diplomatic, political, or economic considerations which run counter to the need for a strong and aggressive negotiating posture.

Let me close, however, by emphasizing to this Committee NSPA's strong hope that our case will demonstrate to you that there is no need for amendment of this statute. One way or the other, what transpires in our Section 301 proceeding against Argentina's differential export tax subsidy scheme will be immensely revealing as to whether the law does or does not need strengthening.

STATEMENT OF DONALD ROPA, VICE PRESIDENT, RCA CORP., WASHINGTON, DC; ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL, INC.

The CHAIRMAN. Mr. Ropa.

Mr. ROPA. Thank you, Mr. Chairman.

The National Foreign Trade Council, an association of more than 500 American firms that account for the major share of U.S. exports, welcomes this opportunity to present its views on S. 1860 and proposed amendments to section 301 of the Trade Act of 1974.

My name is Donald Ropa. I am a vice president of RCA Corp. I am chairman of the National Foreign Trade Council, International Trade Committee. I am appearing this morning on behalf of the NFTC.

With me is Louis Leiborwitz, a partner at Arent, Fox, Kitner, Plotkin & Kahn, and chairman of the council's working group on trade remedy legislation.

The committee has asked us to comment specifically on the automatic retaliation provisions of S. 1860, and we are happy to do so, because this issue goes to the heart of the council's trade policy objectives.

The council supports legislation that would expand not contract U.S. exports. There are several provisions of S. 1860 which would further that objective, and we urge the committee to adopt that focus, one which holds out the promise for additional growth in jobs.

Section 301, in our view, in particular should be part of a strategy to expand trading jobs by encouraging disciple in trading behavior and clearly legitimate disputes when they arise should be fairly, expeditiously resolved.

The NFTC believes that proposals to amend section 301 should be judged by this standard. Thus, we support vigorous use of this authority where it can achieve these objectives. We also believe some improvements can be made in the 301 process, notably in the areas of time limits and additional authorized remedies.

But we have serious concerns about proposed changes which would transform section 301 from a useful bargaining tool into an automatic track leading to trade conflicts.

Section 301 currently requires a balancing of many interests affected by trade policy. We would oppose changes which remove this balance by providing automatic retaliation under an inflexible schedule.

Such a provision, in our view, would make it difficult to prevent counter retaliation against U.S. exporters. Our members seek to avoid situations where retaliation and counter retaliation result in reduced trade flows and trade opportunities. Legislation modifying section 301 could and should be responsive to domestic concerns about unfair trade practices abroad; but, we submit, not at the cost of unleashing potentially negative consequences of mandatory retaliation.

Our members' interest would suffer from those consequences, Mr. Chairman, and I might add speaking also as a representative of RCA Corp. that the interest of our employees would suffer as well.

The requirement to balance different national interests in a broad statute such as 301 leads us to oppose also the proposal that the petitioner be granted a veto power over negotiated settlements of 301 cases. Further, we believe that specifying practices that violate section 301 to include those that are not necessarily considered unfair by other countries that hurt U.S. trading interests, unless pursued through bilateral and multilateral negotiations.

The Council does support authority to deny GSP benefits to countries which have violated section 301, as well as reasonable time limits for resolution of section 301 cases. In that regard, we suggest 6 months for a recommendation by the USTR to the President, and 18 months for resolution by the President.

The Council does see the need for timely action to enforce important rights of the United States under the international trading system. In our judgment, this has already occurred to some extent in the initiation by the USTR of several new section 301 investigations since the President's trade policy announcement last September. These self-initiated cases were precipitated by pressure from diverse groups of affected domestic industries, exporters and Members of Congress. Section 301's effectiveness as a negotiating tool depends on this kind of pressure, and we believe, Mr. Chairman, that American industry will initiate 301 action if they can anticipate fair and prompt resolution. But to substitute an automatic procedure would undermine its effectiveness.

Thank you.

The CHAIRMAN. Thank you.

[The prepared written statement of Mr. Ropa follows:]

TESTIMONY OF
DONALD ROPA
VICE PRESIDENT, RCA CORP.
ON BEHALF OF THE
NATIONAL FOREIGN TRADE COUNCIL
BEFORE THE
SENATE COMMITTEE ON FINANCE

July 22, 1986

The National Foreign Trade Council is an association of over 550 U.S. companies which account for the major share of U.S. exports. The Council welcomes the opportunity to present its views on Title II of S. 1860, and S. 1862 containing proposed amendments to Section 301, et seq. of the Trade Act of 1974. My name is Donald Ropa, and I am a Vice President of RCA and Chairman of the NFTC Trade Committee. I am appearing this morning on behalf of the NFTC. With me is Lewis Leibowitz, a partner at Arent, Fox, Kintner, Plotkin & Kahn and Chairman of the Council's Working Group on Trade Remedy Legislation.

The Council supports legislation that would expand, not contract, U.S. exports. There are several provisions of S. 1860 which seek that objective, and we urge the Committee to adopt that focus -- one which holds out the promise for additional growth and jobs.

Section 301 should be viewed as part of a strategy to expand trade and jobs by encouraging discipline in trading behavior.

We support the vigorous use of this authority where it can achieve these objectives, and we believe some improvements can be made in the 301 process, notably in the area of time limits and additional authorized remedies. But we have serious concerns about provisions which would transform Section 301 from a useful bargaining tool into an automatic track leading to trade conflicts.

Section 301 provides authority and procedures for the enforcement of United States rights under international trade agreements, and for response to unreasonable, unjustifiable or discriminatory burdens on U.S. commerce as a result of a foreign government's trade practices. The President has broad discretion to take action under Section 301. Proposed amendments in S. 1860 and S. 1862 generally would:

(1) Provide for automatic relief in many § 301 cases;

(2) Require initiation of § 301 investigations by the U.S. Trade Representative (USTR) under certain circumstances;

(3) Transfer authority to act for the United States Government from the President to the USTR;

(4) Add examples of unfair or burdensome foreign governmental trade practices;

(5) Increase the number of specifically authorized remedies to redress these practices; and

(6) Considerably shorten certain time limits for action in § 301 investigations.

Specifically, the Council would like to comment on the following provisions in the bill:

(1) Automatic Relief.

S. 1860 would transform actions to respond to unfair practices of foreign governments under Section 301 from tools of diplomacy to ministerial acts. Unlike the current law where there is a balancing of the complex interests affected by trade policy, if the USTR determined under the proposed change that an unfair trade practice existed, relief would be mandatory under a rigid time schedule. The U.S. would find it difficult to prevent retaliation against U.S. sectors not involved directly in a Section 301 investigation, in case our trading partners did not agree that their acts or practices violated agreements or were otherwise unfair. Amendment of Section 301 in the manner suggested by S. 1860 could turn trade disputes into mandatory confrontations, which would not be in the best interests of the United States. The Council doubts the wisdom and effectiveness of this approach.

Automatic relief under S. 1860 could be avoided by agreement between the United States and our trading partners to eliminate or offset the offending practice. However, any such settlement would require the concurrence of the § 301 petitioner or the affected domestic industry. An agreement of this type necessarily requires consideration of broader interests than the producers of a particular product. Therefore, the Council

opposes the concept of a veto power by a single class of affected persons (such as the petitioner).

(2) Automatic Initiation of Investigations.

S. 1860 would require initiation of a Section 301 investigation into any acts or practices identified by the USTR in an annual report as "likely" to be unfair, and which constitute significant barriers to U.S. exports. The Council supports the notion of self-initiated investigations which are now authorized (but not required) under Section 301. However, we believe that the resources of the USTR would not be best utilized by mandatory initiation of Section 301 proceedings concerning all practices identified in annual reports. To do so would result in an excess of caution in identifying these practices. The Council is opposed to this proposal especially because it is coupled with requirements for automatic relief in the bill.

(3) Transfer of Authority to USTR.

The Council opposes the transfer of decision-making authority to the USTR in Section 301 cases, but favors discretionary delegation of such authority by the President, as he may deem appropriate. The factors which must be considered in developing any appropriate remedy include economic effects on consumers, suppliers and customers of the affected industry, and the possible indirect effects of any remedy on other sectors of the U.S. economy. Especially in more complex and difficult

cases, the President alone is able to weigh these factors adequately.

(4) Specification of Practices that Violate Section 301.

Section 301 as currently written does not generally identify specific examples of unreasonable, unjustifiable or discriminatory practices which burden or restrict U.S. commerce. S. 1860 would add specific examples, such as foreign subsidization of exports that leads to displacement of U.S. trade in other foreign markets, diversion of trade to the United States due to import restrictions in foreign markets, export performance requirements or trade restraining agreements.

These practices are not necessarily considered unfair by our trading partners. Unilateral declaration of rules of behavior may result in retaliation against our own exports, some of which are subsidized. The Council is well aware of the need to evolve better standards for international behavior in these instances, but believes that the only way to accomplish these objectives is through bilateral and multilateral negotiation. Forcing rigid views on the trading community unilaterally will not foster the development of rational solutions to these problems, and could be counterproductive.

(5) Expansion of the List of Section 301 Remedies.

The Council supports provisions of the bill which would explicitly add to the President's list of available remedies

for Section 301 violations. Newly-added items would include the withdrawal of beneficiary country or "eligible article" status under the Generalized System of Preferences, and the negotiation of international agreements to offset or eliminate an offending act or practice. We caution, however, that use of these remedies should remain discretionary with the President. We also believe that the international trading system will benefit from maximum use of agreements to expand trading opportunities for all, and that this authority should not be used excessively to enter into international agreements closing the U.S. market in exchange for other markets remaining closed.

(6) Time Limits.

Time deadlines for the various phases of a Section 301 investigation could be shortened, especially in cases where the USTR has already identified practices which may be unfair or contrary to trade agreements. Most cases could have a recommendation of relief within 6 months after initiation.

Under current law, the President is required to take action within 21 days after receiving a recommendation from the USTR. However, such action could take the form of negotiations with the affected trading partner. These negotiations could drag on for many years. The Council would support a requirement that the President take some final action to close a Section 301 case within a specified time period and to explain publicly, if

applicable, why agreements have not been reached regarding unfair or burdensome acts or practices.

In conclusion, the Council supports the basic framework of Section 301 as it currently exists. We do not perceive proposals to remove discretion or reassign decision-making power as improvements in the statutory framework.

The Council does see a need for more aggressive and timely action to enforce the rights of the United States under the international trading system. This has already occurred to some extent, as evidenced by the initiation by USTR of several new Section 301 investigations since the President's trade policy announcement last September. These events were precipitated by pressure from diverse groups of affected domestic industries, exporters and Members of Congress. There appears to us to be no appropriate alternative means of influencing Administration trade policy.

The Council and I very much appreciate your attention, and affording us the opportunity to present our views. We would be pleased to answer any questions.

Thank you.

STATEMENT OF GEORGE C. NIELD, PRESIDENT, AUTOMOBILE IMPORTERS OF AMERICA, INC., ARLINGTON, VA

The CHAIRMAN. Mr. Nield.

Mr. NIELD. Thank you, Mr. Chairman. My name is George Nield. I am the president of the Automobile Importers of America. With me is Mr. Bruce Aiken, our trade counsel.

AIA includes as members 20 companies which market imported motor vehicles in the United States. Eleven are European, eight are Japanese and one is Korean. I should also note that nine of these members are also producing vehicles in this country or have made significant investments leading to U.S. production. Clearly, these members and, in fact, all of us, feel that present trade laws provide the opportunity for U.S.-made products to compete internationally.

AIA opposes those provisions of S. 1860 and other legislative proposals before this committee which would automatically impose mandated restraints on trade without regard to the resulting impact on U.S. consumers and exporting industries.

Trade restraints do carry a significant price tag, as we learned again from the shakes and shingles quota. At least in that case the President had the necessary flexibility to make a judgment as to whether the protection of a domestic industry was of greater value than the retaliation loss to U.S. publishers and the higher prices paid by U.S. consumers of roofing material.

While our primary focus relates to S. 1860, our concerns extend to other mandatory retaliation proposals such as contained in H.R. 4800 that would set up mandatory trade levels with West Germany, Japan, Taiwan, and perhaps others of our trading partners.

In its required automatic triggering, S. 1404 is similar and suffers from the same deficiency. While presented as U.S. export-enhancing legislation, the realistic result of automatic retaliation proposals would be decreased U.S. imports in autos and other products followed by even greater decreases in U.S. exports.

Some correction in the trade deficit will result from the change in the value of the dollar. However, the committee should recognize that this correction would be more significant in terms of units rather than in terms of dollars, the yardstick typically used in trade legislation.

For instance, if the price of imported products were to increase by 30 percent to match the reduced dollar value and 10 percent fewer units were sold as a result of the higher price, the dollar trade deficit would be worse even though the domestic producers would experience less competition.

In conclusion, Mr. Chairman, while there may be disagreement over particular trade decisions, it would be extremely unwise to eliminate from the trade laws the ability of the President to exercise judgment and prudence in determining what best meets the national interest.

Thank you for allowing me the opportunity to testify before you today. We are preparing a more comprehensive statement of our views and ask that it be included in the record of the hearing.

[The prepared written statement of Mr. Nield and additional information follow:]

STATEMENT TO SUPPLEMENT
THE
TESTIMONY
of
GEORGE C. NIELD, PRESIDENT
AUTOMOBILE IMPORTERS OF AMERICA, Inc.
1725 Jefferson Davis Highway, Suite 1002
Arlington, Virginia
before the
U.S. SENATE COMMITTEE ON FINANCE
July 22, 1986

INTRODUCTION.

The Automobile Importers of America (AIA), is an association of U.S. automobile importing companies marketing 11 European, eight Japanese and one Korean motor vehicles. A list of members is attached.

The automobile import industry is a major American industry. Nine AIA companies are producing vehicles in the United States or have made significant investments leading to U.S. production. They also have plants in many states and more on the drawing boards -- a testament to the viability of producing automobiles in the U.S. and the optimism with which automobile manufacturers regard the future of the U.S. market. In addition to the thousands of Americans employed by its members, AIA indirectly represents the interests of some 8,000 American imported automobile dealers and their more than 200,000 U.S. employees.

AIA opposes those amendments to section 301 of the Trade Act of 1974 as presented by S. 1860 and other bills before this Committee which would strip away the President's discretion to negotiate the elimination of other countries' unfair trade practices and replace that discretion with automatic, legalistic mechanisms to mandate retaliation or trade levels. In particular, we oppose (a) mandatory retaliation under S. 1860 and (b) mandatory trade levels under H.R. 4800, S. 1449 and S. 1404.

FUNDAMENTAL PRINCIPLES.

The purpose of section 301 is to expand world trade. It gives the President an effective negotiating tool to persuade foreign countries to eliminate unfair practices and to bring them into line with international agreements and obligations. Resort to retaliation under section 301 represents a failure of negotiation and, therefore, should be the exception rather than the rule. Indeed, the threat of section 301 action can be its most successful use.

Section 301 has been a successful mechanism for settling trade disputes since it became law on January 1, 1975. Of the 52

section 301 cases filed as of March 1986, 11 have been settled through bilateral negotiations; seven have been settled by recourse to the General Agreement on Tariffs and Trade (GATT); 10 were terminated; and 13 are pending or have been suspended. Actual retaliation by the U.S. has been required in only 10 cases, of which six involved one product, specialty steel.

To require mandatory retaliation by the United States will neither enhance U.S. exports nor improve the American economy. It will negatively affect the economies of our trading partners and the world trading system. It will invite mirror legislation by our trading partners, especially the European Communities (EC), to the detriment of U.S. exporters. A clear example of this is the present C.R. 2641 which was enacted in 1984, and was explicitly patterned after our section 301 statute.1/ It is this law which is being used against DuPont's exports into the EC of certain aramid fibers.2/ Mandatory retaliation will constrict the President's ability to promote the United States' larger economic and foreign policy interests.

No allegation is made that imported automobiles are "unfairly" traded. The United States International Trade Commission (ITC) found in 1981 that automobile imports were not a substantial cause of Detroit's problems.3/ Nonetheless, AIA is particularly concerned with proposed legislation mandating retaliation because, unfortunately, automobiles may become a lightening rod for retaliation, even though fairly traded and beneficial to the U.S. economy.

I. MANDATORY RETALIATION UNDER S. 1860.

Presently, section 301 authorizes -- but does not require -- the President to retaliate against illegal or unreasonable trade practices. The key to the present law is that the office of the United States Trade Representative (USTR) investigates the alleged unfair trade practice while at the same time it seeks a negotiated settlement with the foreign country.

A. S. 1860 would change section 301 from a negotiating provision to a retaliatory provision.

Under present law, the USTR recommends to the President possible actions; the President then has to determine whether or not to retaliate. This leaves room for quiet, effective negotiations, e.g., recent successful resoluton of trade problems with Korea. S. 1860 would create a two-tiered framework under which the USTR must make a determination -- within 90 days after initiation -- as to whether an unfair trade practice exists. If affirmative, the USTR must announce which foreign goods and services, including their aggregate value, would be subject to retaliation. In other words, the USTR would be required to place all its cards face up on the table before negotiations begin.

The foreign country is then given one year to agree to a settlement. Failing agreement, the USTR must retaliate, whether or not it is in the broader political and economic interests of the United States.

This provision of S. 1860 will hamper negotiations and needlessly heighten bilateral tensions. By making automatic the retaliation against publicly-announced products, the negotiating process is a thinly-veiled disguise for an ultimatum. While section 301 currently is sensitive to the necessities of diplomacy, the proposed amendment ignores these realities and will result in less agreement with, and less cooperation from, foreign countries.

B. Transferring retaliatory authority from the President to the USTR is bad foreign and international economic policy.

S. 1860 transfers retaliatory authority from the President to one of his cabinet officers, the United States Trade Representative. Proponents of this measure argue that it is a non-substantive change. In fact, this measure will interfere with the President's traditional role in balancing competing interests, including those of foreign political and trade policy, as well those of domestic industry.

It has been argued that any United States Trade Representative who wanted to keep his job undoubtedly would consult with the President before making a formal determination. Rather than supporting the transfer of authority, however, this argument illustrates precisely why the President should be required to retain this responsibility. Only Presidential action will focus public attention on actions taken under section 301; USTR action may go largely unnoticed.

The USTR can and should remain the principal resource that the President uses in making his determination, but should not have the power to make the determinations. The USTR's decisions may conflict with larger policy goals being implemented by the Secretaries of State, Defense and Commerce -- officials subordinate to the President. It would be unwise for Congress by statute to require that one Cabinet officer be given a little fiefdom -- apart from the Chief Executive's formal authority -- to conduct policy in an area of increasing concern to the entire Government of the United States.

C. S. 1860 dilutes the effectiveness of the GATT.

S. 1860 is less sensitive to GATT settlement procedures than the House trade bill, H.R. 4800. H.R. 4800 exempts from its mandatory retaliation provision cases in which there is a GATT determination that U.S. rights are not being injured or the foreign action is permissible under GATT rules. S. 1860, however, provides that a GATT determination that the foreign country's

practices are perfectly lawful merely authorizes the USTR to rethink the correctness of its affirmative determination. S. 1860 invites a situation where the USTR will be forced to flaunt GATT determinations because it does not provide an exemption, as does H.R. 4800; rather, it sets forth criteria which, once met, require retaliation. This would directly contradict 40 years of U.S. support for the GATT system under which the United States has been the prime beneficiary.

II. MANDATORY TRADE DEFICIT LEVELS.

A. H.R. 4800 and S. 1449.

H.R. 4800 and S. 1449 contain amendments to section 301 that would force the President to impose quotas or an import surcharge on products exported to the United States from a host of our trading partners -- especially Japan, Taiwan and West Germany -- based on bilateral merchandise trade deficits. These may be the single most dangerous proposals before this Committee.

The Gephardt amendment to H.R. 4800 would "stack the deck" against a number of our trading partners and allies, virtually guaranteeing import restrictions. The major differences between it and the import surcharge proposal in S. 1449 are that (1) quotas (rather than an import surcharge) would be imposed and (2) a very limited Presidential waiver would be possible, i.e., the President could not use the waiver unless substantial bilateral trade swings occur in very short order; even if he were to use the waiver, there is a Congressional override.

The Gephardt amendment is a radical attempt to replace the economic law of comparative advantage with a "managed trade" concept which will not work. It replaces market judgment with political judgment. It would establish an annual administrative procedure for identifying countries with "excessive and unwarranted trade surpluses" with the U.S. Each year for four years, the ITC would determine by April 1 which major trading partners maintain "excessive trade surpluses" -- defined as a 175% ratio of exports to imports, a trade surplus with the U.S. in excess of $3 billion, and a global surplus in the previous year. The USTR would determine by April 15 whether countries with "excessive" surpluses also engage in unfair trade practices -- and all countries, including the United States, do to some degree -- and that such practices hurt U.S. commerce and contribute to the trade imbalance.

These would be problematic calculations. It injects enormous uncertainty into the trading partner's efforts to manage its trade surplus, since this is done in local currency and it would be impossible to predict exchange rates to permit compliance.

Once such countries are identified, USTR would have until June 15 (or August 15, if necessary) to negotiate bilateral agreements with each country to achieve a 10% trade deficit reduction goal.

Absent agreement, the President must take specific actions -- including assessing duties, imposing non-tariff import restrictions or negotiating orderly marketing agreements -- necessary to achieve the 10% deficit reduction. If these actions do not succeed in meeting that reduction for the year, the President must impose import quotas to meet the mandatory level in the following year. The President could reduce the deficit reduction goals for countries with balance of payments difficulties or waive any action that he feels would harm the U.S. economy, but both waivers are subject to a 90-day fast-track Congressional veto. Even where the President waives retaliatory action, he must pursue an alternate plan to meet the deficit reduction goals.

Based on 1985 figures, the proposal would target West Germany, Japan and Taiwan, and could apply to Brazil, Korea, Italy and Hong Kong. If applied only to West Germany, Japan and Taiwan, it would require trade deficit reductions of $7.5 billion in 1987 and $25.8 billion between 1987 and 1990. While this would have a modest effect on the overall U.S. trade imbalance, these reductions would have a profound impact on each trading partner.

The mandatory trade levels concept overlooks completely the fact that the U.S. runs a trade surplus with over 50 countries. We had a bilateral trade surplus in 1984 of more than 175% with 33 countries.[4/] As the strengthening dollar affects import and export prices, our trade deficit will shrink and the number of countries with large trade deficits with the U.S. should swell. Mirror legislation by countries with which the United States has a trade surplus would curb severely U.S. exports and offset a certain proportion of the positive effects of the strengthened dollar.

Fundamentally, this mandatory trade level proposal attempts to repeal the economic laws of comparative advantage under which all nations have trade surpluses and deficits which ultimately balance out on a multilateral basis.

AIA believes that the mandatory trade level proposal should be rejected for the following reasons:

1. Mandatory trade levels are likely to cause foreign export restraints instead of increases in U.S. exports.

Countries attempting to meet mandatory trade levels most likely will limit exports to the United States rather than significantly increase imports of U.S. goods -- particularly because of the short time limits.

When faced with a choice between imposing mandatory import purchasing requirements or controlling exports, governments will generally limit exports rather than trying to force their consumers to purchase U.S. goods. Countries would not have sufficient time to take market-opening measures that have immediately visible effects on current trade figures. Trading

partners would have at most one year to meet the Gephardt levels -- and some countries would not know until late in the year whether they were subject to trade deficit levels for that year. To expect entire societies and economies to change overnight because of this law is unrealistic. Governments thus would be driven toward export restraints rather than relaxation of import barriers. Furthermore, they would, of coure, restrict products of their choice -- such as essential raw materials -- not ours.

2. Mandatory trade levels are substantially and disproportionately larger than the sum of all alleged tangible and intangible trade barriers.

Mandatory trade levels would require our trading partners to reduce their bilateral trade deficits by an amount greater than the sum of their trade barriers. Two leading international economists, Fred Bergsten and William Cline, of the Institute of International Economics, note that, for example, "a complete elimination of Japanese trade barriers, intangible as well as overt, would be likely to expand U.S. exports in the near future by 'only' $5 billion to $8 billion . . . with only a modest impact on the overall imbalances."5/ Since Japan represents the outer bounds of our trade deficit for any trading partner, even if all alleged trade barriers of West Germany, Taiwan and other possible candidates for the application of the mandatory trade levels provision were abolished, their trade surpluses with the United States would decrease only modestly at best. It is fundamentally unfair to mandate sanctions greatly exceeding the effect of the trade barriers on which such sanctions are purportedly based.

3. Mandatory trade levels would create enormous uncertainty of supply for U.S. importers and would hurt U.S. manufacturers, distributors, and consumers.

In meeting mandatory trade levels, the U.S. and its trading partners could restrict sales in the U.S. of any product from any targeted country. The resulting uncertainty of reliable supply would be extremely disruptive to U.S. manufacturers and retailers who depend upon imported products or components. These actions would obviously disrupt both the U.S. and foreign economies. To the extent U.S. imports are in fact limited, U.S. manufacturers and consumers will face higher costs and the reliability and efficiency of U.S. companies will suffer. Inflation will result.

4. Compliance with mandatory trade levels would require pervasive government interference in international trade and the private sector.

The U.S. and its major trading partners would be faced with the administrative burden of controlling bilateral trade flows,

requiring continuing significant government intervention in free market economies and the formation of government-required cartels.

Despite the fact that trade deficits result principally from hard-to-predict macroeconomic factors, our most important allies will be required to reduce quickly their trade deficits to a prescribed level. They would take a number of steps (including voluntary restraints, mandatory import purchasing, revisions in import law, and economic policy changes). At the same time the U.S. would impose a wide range of its own import restrictions (including duties, non-tariff barriers and quotas). Because of the uncertain effect of any specific action on the trade deficit, these actions will have to be constantly monitored and adjusted.

These trade controls would jolt world trade. Proponents admit that seven countries, accountimg for over 40% of total free-world exports in 1985 -- Germany, Japan, Taiwan, Korea, Italy, Hong Kong and Brazil -- will be ensnarled in the amendment's trade level formula. Proponents hope that Hong Kong would be eliminated during USTR's annual trade policy determination and that Korea, Italy and Brazil likely would be excluded under the Presidential "waiver" provisions. However, each country's vulnerability would change from time to time, and Congress is authorized to override a Presidential waiver. In any event, the amendment would continue to disrupt the trade of countries which are waived, since target countries would be identified by April 15, the waiver would not be proposed until June 15, and a country could not rely on a waiver until September 15, when the Congressional disapproval period expires.

5. <u>The U.S. should not pass mandatory trade level legislation before exchange rate changes are reflected in trade balance figures.</u>

Circumstances have changed dramatically since import surcharge and other trade bills were introduced over a year ago. At that time, the U.S. dollar was at a record high, encouraging increased imports and handicapping U.S. exporters. Since September 1985, the value of the dollar against the yen has fallen by 41% to a record low -- a decline which likely will reverse the trend of the U.S. trade deficit. The exchange rate of the Japanese yen to the dollar has declined from 265:1 in early 1985 to 155:1.[6/] Predictions are that the yen will fall to 150:1 or below.[7/] This remarkable and voluntary realignment is significantly below the 190-200:1 level which many advocates of tougher sanctions against Japan were arguing a year ago would constitute a "level playing field." Moreover, it is clear that changes in our trade balance since 1981 -- when the U.S. had a nearly balanced current account -- cannot be attributed to changes in unfair trading practices. In fact, only macroeconomic and exchange rate policies and conditions could have caused the U.S. trade deficit.

With the stronger foreign currencies, prices of imports have risen.[8] This has had the short-term effect of increasing the cost of imports to the U.S. on existing contracts, thereby temporarily increasing the trade deficit. This is known as the "J-curve," under which during a time of a depreciating currency -- especially during a period of continuing depreciation as the U.S. is currently experiencing with Japan -- prices increase immediately but volumes of imports decrease over time. Thus, there is a sudden growth of the trade deficit before the effect of the depreciation is felt. However, the realigned currencies will significantly decrease the U.S. trade deficit in coming months -- unless, in response to legislation such as this proposal, U.S. trading partners take strong action to lower the value of their currencies. In an environment of foreign export restrictions to meet trade deficit levels, such a response would be logical to preserve U.S. market share.

Enactment of this provision would undermine the governments of those of our major trading partners who have cooperated in increasing the value of their currencies, despite significant short-term harm to their domestic economies and industries. This period of uncertainty and transition to a weaker dollar requires cooperation with our trading partners, and is the worst possible time to impose disruptive mandatory trade levels.

6. Implementation of mandatory trade levels would violate the GATT, provoke retaliation by the countries affected and seriously retard efforts to eliminate other countries' unfair trade practices.

In the absence of agreement by the other country to reduce the trade deficit by the required amount for a given year, the President would be required to take unilateral measures to achieve that goal. These measures would include the increase in duties and the imposition of quotas. If that goal were not achieved for the given year, the President would be required to use only import quotas to achieve the necessary reduction in the trade deficit for the following year.

At each stage in this system, the President's actions would violate the GATT. The increase in duties would be contrary to article II, by which the United States undertakes not to increase duties that are the subject of tariff concessions. Virtually all products imported into the United States benefit from tariff concessions granted by the United States in former trade negotiations. The imposition of quotas would violate article XI of the GATT, which lays down a formal prohibition on the use of import quotas.

Several provisions of the GATT, like article XIX, which is the international counterpart of the U.S. escape clause, permit the increase in duties or imposition of quotas in specifically-prescribed circumstances. Nothing in the GATT, however, remotely

contemplates such import restrictions to achieve an arbitrary reduction in a bilateral trade deficit.

The GATT violations entailed in achieving the mandatory trade levels would fully justify retaliation by the countries affected. The United States would have no defense under the GATT, and the other countries would have a clear-cut case for imposing retaliatory restrictions on imports from the United States. As a result, the effort to reduce a bilateral trade deficit would have been frustrated. In the process, a trade war would have been encouraged.

In particular, the illegal actions of the United States and the retaliation of the other countries would seriously retard U.S. efforts to eliminate unfair practices that hurt U.S. trade. In the face of such blatant disregard of our international obligations, other countries would be far less sympathetic to proposals that they eliminate -- or even modify -- their unfair trade practices. Beyond that, the climate for a new round of multilateral trade negotiations would have been distinctly chilled. Indeed, there is a decided risk that other countries might lose interest altogether in the new negotiations.

From the GATT perspective, the mandatory trade levels and the manner of their implementation would seriously impair the very concept of a collaborative approach to solving trade problems. Yet it is this very approach to which the United States historically has been committed and which has produced such an enormous expansion in world trade since the Second World War.

In short, there are no free lunches and no quick fixes. The Gephardt Amendment would abandon GATT, and exacerbate the U.S. trade imbalance, not solve it. It will constrict world trade, not reduce trade barriers.

B. S. 1404.

S. 1404 would require the President, within 90 days of enactment, either to persuade Japan to remove all of its alleged unfair trade practices or, failing that, to retaliate against Japanese imports. Since removal within 90 days is virtually impossible, the bill would force the President to retaliate. The bill, therefore, is appropriately characterized as a mandatory retaliation bill.

1. S. 1404 Would Require Retaliation Against Japanese Exports, Including Automobiles, If Impossible Time Deadlines Are Not Met.

S. 1404 consists of two sections. The first section sets forth 13 Congressional findings concerning various aspects of trade between the United States and Japan. In particular, it asserts that Japanese exports have extensive access to the U.S. market, but that U.S. exports lack access to the Japanese market.

The bill also suggests that Japan maintains extensive unfair trade practices that lead to the U.S.-Japanese trade deficit and could undermine the entire range of bilateral relations between the United States and Japan. The first section concludes that action by the United States is appropriate to enforce U.S. rights under trade agreements to which Japan is a party and to respond to Japanese unfair trade practices.

The second section would require the President, within 90 days of enactment, to take all actions within his power (including, but not limited to, section 301) that are necessary to achieve one of two alternative goals. The first goal would be to enforce U.S. rights under trade agreements to which Japan is a party and to obtain the elimination of Japanese unfair trade practices. The second goal would be to offset the cumulative impact that the non-enforcement of U.S. rights and the maintenance of such unfair trade practices have on the U.S.-Japanese balance of trade.

In particular, the President would be required to offset the cumulative impact that the elimination or relaxation of the voluntary restraint arrangement concerning Japanese automobiles will have on the bilateral trade balance. He would also be required to retaliate against competitive Japanese exports, including, but not limited to, automobiles, telecommunication products and electronic products.

S. 1404 does not itself require retaliation against Japanese imports. Instead, it requires the President to take all appropriate action within 90 days of enactment either to obtain removal of alleged unfair trade practices or, failing that, to retaliate. The report of the Senate Finance Committee on S. 1404 acknowledges on page 10 that "such removal may not occur within the time permitted by the bill." In fact, it would be virtually impossible for Japan -- or any other country -- to move with such rapidity with respect to practices that it may consider to be fair or may be deeply rooted in its history and culture. In short, S. 1404 will not achieve its stated goal of expanding exports to Japan; it will, however, restrict U.S. imports of Japanese products.

2. AIA opposes S. 1404 because:

a. contrary to the GATT, there has been no objective determination of unfair trade practices.

S. 1404 would require retaliation against Japanese imports without any objective and documented finding of unfair trade practices on the part of Japan. It would violate a fundamental precept of U.S. foreign trade policy as reflected both in domestic legislation and the GATT. Section 301 requires the USTR to determine the existence of a foreign country's unfair trade practice before retaliatory action can be taken. Likewise, article XXIII of the GATT requires a finding that a country has

nullified or impaired a GATT benefit before the aggrieved country may retaliate.

On its face, S. 1404 is not based upon a careful analysis and documentation of any specific Japanese unfair trade practice. No hearings were held on S. 1404 before it was reported out of this Committee. In particular, the first section of the bill makes only the most general reference to Japanese unfair trade practices. Moreover, the report on S. 1404 of the Senate Finance Committee is based only upon the Committee's belief and allegation of the existence of a variety of Japanese unfair trade practices. The Committee briefly discusses eight categories of alleged unfair trade practices but does so in only a general and anecdotal manner. The bill adopts an emotional, as opposed to a rational, approach to the conduct of trade policy with other countries.

b. retaliation would not strike at the real cause of the problem -- past undervaluation of the yen.

S. 1404 is based upon the mistaken premise that a large part of the bilateral trade deficit with Japan is attributable to Japanese unfair trade practices. In fact, however, that deficit has been brought about in large part by macroeconomic factors, one large feature of which is the overvaluation of the U.S. dollar.[9/] That overvaluation, coupled with the relative strength of the U.S. economy, has severely penalized U.S. exports and significantly stimulated U.S. imports. In fact, 17 countries of the U.S.' 24 leading trading partners have had larger relative increases in their bilateral trade surpluses with the United States than has Japan over the past five years.[10/] Ambassador Yeutter, the U.S. Trade Representative, has stated that over half of the global trade deficit is due to the over-valued dollar. S. 1404 therefore neither addresses the root causes of the bilateral deficit, nor would it significantly relieve that deficit. Instead, it would jeopardize U.S.-Japanese economic relations and undermine the GATT system -- for the wrong reasons and with little effect.

The strengthening of the yen against the dollar -- more than a 41 percent increase between the dollar's peak in February 1985 and this summer -- will make American goods substantially more competitive both in the U.S. and in other markets. As macroeconomic forces take effect, the already improved yen-dollar relationship will improve the U.S.-Japan trade relationship without the dangerous precedent of destablizing arbitrary retaliation.

c. the President now has adequate authority to retaliate.

S. 1404 disregards the fact that the President already has adequate authority to retaliate if, after a full investigation of

the issues, he considers retaliation appropriate. Section 301 allows the President to impose new import restrictions of any degree of severity to counter an unfair trade practice of another country. That is, section 301 imposes no limits whatsoever on how high the President can increase tariffs or how low he may set new quotas.

Precisely because of the breadth of the import-restriction authority in section 301, the President must have the discretion to decide whether retaliation is appropriate in a given case. The domestic and international consequences of retaliation can be so far-reaching that any mechanistic procedure requiring retaliation would be contrary to the national interest. Indeed, such a mechanistic approach would have the effect of discouraging another country from modifying its unfair trade practices because of domestic political considerations, since it would be negotiating with the United States with a gun to its head.

Contrary to popular belief, the President has exercised his retaliatory authority 10 times under section 301 when negotiations have failed. He did so last year, for example, when he increased the duty on imports of pasta from the EC in retaliation for its discriminatory treatment of imports of lemons and oranges from the United States. Moreover, Ambassador Yeutter has said that he would have "no hesitancy" in asking the President to self-initiate a section 301 case if such action were warranted.

d. mandatory retaliation would harm U.S. manufacturers, distributors and consumers.

By forcing retaliation against Japan, S. 1404 would hurt domestic manufacturers distributors and consumers. By increasing tariffs and/or imposing quotas, retaliation would drive up the cost of goods imported from Japan. Such higher costs would inevitably be passed on to the consumer. The consumer would therefore pay the equivalent of an additional tax on his purchases of these Japanese goods. This tax would have the effect of stimulating inflation and reducing actual wealth.

The obvious harm inflicted upon the consumer would be accompanied by a less obvious -- but significant -- harm to domestic manufacturers. The increased tariffs or new quotas would reduce the competitiveness of the imported articles. The domestic manufacturers making products similar to such imported articles would receive a degree of additional protection. Such unnecessary protection would induce the manufacturers to be less aggressive in maintaining their competitiveness and would, therefore, weaken their ability to meet foreign competition. In this age of rapid industrial change, it is essential that our industries remain competitive with foreign rivals; providing U.S. industries with an artificial buffer against competition is not in our industry's or our country's long-term interest.

In short, retaliatory measures mandated by S. 1404 would not assist the U.S. industry affected by the alleged unfair trade practices. It would, however, hurt both U.S. consumers and manufacturers. Whatever benefits might be derived from such measures would be heavily offset by these enormous costs. In other words, S. 1404 would ensure that the United States would be a net loser.

e. S. 1404 would unjustly require retaliation against Japanese automobiles, which are fairly traded.

S. 1404 would unjustly require retaliation against imports of Japanese automobiles, which are fairly traded. Retaliation is presumably designed to punish another country for its unfair trade practices. Retaliation should therefore hurt imports of those products that benefit from such unfair practices. To strike back at fairly-traded products would render retaliation nothing more than an irrational, knee-jerk reaction.

Yet S. 1404 identifies three mandatory targets of retaliation, including Japanese automobiles. There is no evidence that Japanese automobiles are benefitting from any kind of unfair trade practice. Moreover, in 1980, the ITC determined, in an escape clause investigation under section 201 of the Trade Act of 1974, that imported automobiles were not a substantial cause of Detroit's difficulties.

In short, Japanese automobiles are manufactured and sold in this country on a fair basis and in a non-injurious manner in competition with a domestic industry which is enjoying record profits. U.S. foreign trade policy has always supported the principle of fair and healthy competition. By mandating retaliation against Japanese automobiles, S. 1404 repudiates this principle. It would penalize fairly-traded imports from Japan and thereby reveal its essential character -- that of harmful protectionism.

f. S. 1404 would violate the GATT.

S. 1404 would have the U.S. violate its GATT obligations. It directs the President to take all actions necessary either to persuade Japan to eliminate its alleged unfair trade practices or to retaliate against Japan for its refusal to do so. But, for the reasons already given, the President would have no choice under the bill but to retaliate against Japan.

Such retaliation would flout the requirements of article XXIII of the GATT. Under this provision, a country can retaliate against another country only if, first, a formal determination has been made that the latter is engaging in an unfair trade practice and, second, a majority of the GATT countries authorize retaliation. S. 1404 would satisfy neither requirement.

The President would retaliate against Japan under circumstances that would entitle Japan to bring a formal complaint against the United States under article XXIII. Alternatively, retaliation could provoke Japan to act with similar disregard of the GATT and to engage in either direct or indirect counter-retaliation against the United States.

In any event, the United States would have strained its trade relations with Japan and undermined the viability of the GATT. Without the discipline imposed by the GATT, international trade would be subject to frequent and severe disruptions as countries took unilateral action to deal with real or imagined trade problems.

g. S. 1404 would shrink world trade.

S. 1404 would shrink, rather than expand, world trade. Whatever emotional satisfaction retaliation may provide, it contradicts the policy of expanding trade. Retaliation merely entrenches the alleged unfair trade practices of the other country. Moreover, such practices are countered by new import restrictions on the part of the retaliating country. In turn, the affected country may resort to counter-retaliation of either a direct or indirect nature. As a result, trade between the two countries is diminished, and both countries thereby forego the benefits of expanded trade. Moreover, retaliation by its nature stimulates protectionist feelings and weakens efforts to expand trade. In particular, it would jeopardize chances for a new round of multilateral trade negotiations that could rationally address inequities and inefficiencies that exist in the present international trading system.

The United States thus pays a double price by resorting to retaliation. On the one hand, the alleged unfair trade practices of the other country are not removed and, indeed, are probably reinforced. On the other hand, any new effort to expand trade must now deal with a higher level of import restrictions.

3. Summary.

S. 1404 is a model of harmful protectionism. The bill would violate our international obligations, fail utterly in its stated goal to expand U.S. exports, and would harm U.S. consumers and manufacturers. S. 1404 unjustly would require retaliation against imports of fairly traded Japanese automobiles. In short, S. 1404 is an ill-considered proposal which will do more harm than good.

III. CONCLUSION.

AIA represents a major American industry which fears that it will become the target for retaliation as a result of several

pieces of legislation before this Committee -- even though imported automobiles are fairly traded and there is no allegation to the contrary. The livelihoods of more than 200,000 U.S. workers are jeopardized by legislation which would amend section 301.

AIA opposes automatic retaliatory authority under S. 1860 because it would likely lead to confrontation and not to cooperation with our major trading partners. By transferring retaliatory authority from the President to the USTR, S. 1860 would muddle policy decisions to the detriment of American interests. Finally, S. 1860 dilutes, if not eviscerates, the effectiveness of the GATT.

AIA opposes mandatory trade deficit levels. Under H.R. 4800 and S. 1449, mandatory trade levels would likely fail to increase U.S. exports but would choke off imports to this country. AIA's members are greatly concerned about the regressive aspects of this measure. AIA urges Congress to permit the realignment in currencies to correct the trade imbalance.

For these reasons, AIA is opposed to those provisions of S. 1860, S. 1449, H.R. 4800 and especially S. 1404 -- which targets automobile imports -- which would impose automatic mandatory retaliation or trade levels.

FOOTNOTES

1/ International Monetary Fund, Direction of Trade Statistics 399-401 (1985)(reflecting 1984 trade statistics).

2/ C.F. Bergsten & Wm. Cline, The United States-Japan Economic Problem 5 (1985).

3/ "Dollar Is Mostly Higher In Reaction to U.S. Data," N.Y. Times, July 24, 1986, at D16, col. 5.

4/ See, e.g., Opinion of the Legal Affairs Committee, European Parliament, Eur. Parl. Doc. No. 1-376 at 14 (June 1, 1983); Memorandum of Government of France to Council of Ministers 4-5 (Apr. 27, 1982).

5/ Certain Motor Vehicles and Certain Chassis and Bodies Therefor, Report to the President on Investigation TA-201-44 Under Section 201 of the Trade Act of 1974, ITC Pub. No. 1110 (Dec. 1980).

6/ Chira, "In Japan, Concerns Grow Over Yen," N.Y. Times, July 21, 1986, at D1, col. 3.

7/ For instance, in this model year, that is, since October 1985, Japanese auto makers have raised their auto prices in the U.S. an average 13.9%, or about $1,331 per car. Moreover, sticker prices are expected to increase possibly an additional 8% in the 1987 model year. Brown, "Japanese Car Prices Still Rising," Wash. Post, July 10, 1986, at E1, col. 3. This results from the voluntary realignment of the dollar agreed to by the Group of Five (France, Japan, West Germany, the United Kingdom and the United States) on September 22, 1985.

8/ Matter of Certain Aramid Fibers (Notice of Initiation of an Examination Procedure), 25 O.J. Eur. Commn. No. C-25 (1986).

9/ See generally C.F. Bergsten & Wm. Cline, supra note 2.

10/ Id. at 24.

LIST OF AIA MEMBERS

ALFA ROMEO

BMW

FIAT

HONDA

HYUNDAI

ISUZU

JAGUAR

LOTUS

MAZDA

MITSUBISHI

NISSAN

PEUGEOT

PORSCHE

RENAULT

ROLLS-ROYCE

SAAB-SCANIA

SUBARU

SUZUKI

TOYOTA

VOLVO

The CHAIRMAN. Mr. Nield, do you agree that the President should be able to trade off economic benefits for noneconomic benefits and, therefore, should not have his hands tied by some kind of tit for tat or trade for trade retaliatory legislation?

Mr. NIELD. I think it is the best interest of the country as a whole for him to have that authority. Yes, sir.

The CHAIRMAN. Mr. Ropa, what do you think?

Mr. ROPA. I would agree, sir.

The CHAIRMAN. Mr. Reed?

Mr. REED. I would agree with your statement, but it has been our observation that all too frequently agencies other than USTR seem to have the most influence with the President. And that frequently works against exporting industries.

Mr. CUNNINGHAM. Mr. Chairman, I wonder if I might add one thing to that. I think one of the things——

The CHAIRMAN. Can you identify yourself?

Mr. CUNNINGHAM. Yes. My name is Dick Cunningham. I am Steptoe and Johnson counsel to the National Soybean Processors Association.

I think one of the things that bothers some observers of the trade process about these tradeoffs is that they seem to take place in a star chamber, not viewed by the public; not even visible in many cases to the Congress atmosphere. People have the impression that their rights are being covertly traded away for other things.

One of the proposals that the National Soybean Processors Association makes in this testimony is that you require from the Administration a detailed report of how each section 301 case was handled, including a report to the Congress—not necessarily a public report, but certainly a report to the trade subcommittees—of what agencies took what positions, what options were considered for negotiations and what tradeoffs were, in fact, made, so the Congress can at least get a grip on this sort of thing.

I think that would do a great deal to reestablish the public's faith that things weren't being done behind closed doors and interest traded away in ways they couldn't have any control over.

The CHAIRMAN. Now would it make the affected industry any happier if you knew that you were traded off for an Air Force base?

Mr. CUNNINGHAM. No. But I think those in the administration who are inclined to push for that sort of tradeoff would be much more circumspect and careful about doing it if they knew that Congress had an oversight and an access to the decisionmaking process.

The CHAIRMAN. Mr. Skinner, explain to me again what happened on the citrus tradeoff. I followed your testimony, I thought, but I am not quite sure. In essence, I think you are saying we had a right to retaliate in both cases. If not a right, we should have and said we are trading one off against the other.

Mr. SKINNER. That is absolutely correct, Senator Packwood. We won a favorable GATT ruling. We could get nothing done or accomplished with the ruling, so the administration decided to use pasta, which won a case of its own, as a retaliatory vehicle to settle the citrus issue. And our concern is that citrus, in fact, will be settled.

Unfortunately, pasta may come out on the short end of that settlement.

The CHAIRMAN. You will be the tradeoff in this case?

Mr. SKINNER. That is correct. And we don't like that position.

The CHAIRMAN. Even if the President is doing it for the good of the Nation?

Mr. SKINNER. I think the President has to have flexibility. Obviously, there are probably larger issues than pasta. But I don't know of one. [Laughter.]

THE CHAIRMAN. That may be the lead in the stories tomorrow. [Laughter.]

Mr. SKINNER. But pasta is presently paying my mortgage, my children's education——

[Laughter.]

Mr. SKINNER [continuing]. And it is also employing 10,000 people in the United States.

The CHAIRMAN. Mr. Reed, let me ask you this: As I look at your testimony, you are sort of saying this: 301 is OK as it is unless it turns out that it doesn't work in your case. Have I got it roughly right?

Mr. REED. We said more than that, I believe, Mr. Chairman. Yes, we were trying to draw attention to our case because we think it is at a very critical juncture. And we certainly need all the support we can get from Congress, from USTR and from anybody else. But we aren't here just to plead our immediate case.

The CHAIRMAN. So you are not saying if it doesn't work in your case, change it?

Mr. REED. We are saying that if it doesn't work in our case, that would strengthen the argument that some changes need to be made.

The CHAIRMAN. I have it. Gentlemen, I have no further questions. Thank you very much. I appreciate it.

Now if we can conclude with Owen Bieber, Robert Galvin, and Marshall Cogan.

STATEMENT OF OWEN BIEBER, PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, DETROIT, MI

The CHAIRMAN. Mr. Bieber.

Mr. BIEBER. Thank you, Mr. Chairman. I am president of the United Automobile, Aerospace and Agricultural Implement Workers of America. We appreciate your providing us this opportunity to express our views on S. 1860 to you and to the other members of this committee.

There is now broad recognition that the U.S. Government cannot afford to ignore the impact of trade on our industries and on agriculture. Displaced workers and farmers are no longer satisfied with the administration's assurances of the long-term gains from greater international trade or the general economic benefits of increased international specialization.

The explosion in the size of the trade deficit experienced by our Nation in the past 5 years and its continuing expansion this year have convinced millions upon millions of Americans that the trade

policies of the past offer no solutions to the trade problems of today.

We were gratified that the House of Representatives, by overwhelmingly passing H.R. 4800, joined with those of us who believe in the need for a rethinking of the way America conducts its trade policy.

The House moved the trade debate beyond the simplistic labels of "free trader" and "protectionist." We hope that the Senate in its deliberations on trade will further this progress.

The House-passed bill shows that chamber's objective of having the United States actively confront foreign trade practices which are producing unacceptable consequences for U.S. workers and industry and for agriculture.

In two provisions of H.R. 4800, which amend section 301 of our trade law, this is especially true—the trade deficit reduction measure, and the inclusion of the denial of internationally recognized workers rights as unfair trade practices.

H.R. 4800 provides a workable mechanism for reversing the direction of our trade deficit by establishing a strong incentive for the removal of barriers to United States exports. This provision of the House-passed bill does not mandate perfectly balanced trade between the United States and other countries. It does not dictate to others how they are to reduce their surpluses with us, and it does not have restrictive trade as its primary objective.

What it does do is inform our trading partners that their restrictions on trade cannot be tolerated while their open access to the United States market is undermining the strength of our economy. Past and present negotiations to remove the trade barriers of others one by one have achieved at best only minimal success. Under the House-passed provision, only countries which despite negotiations maintain their trade barriers, continue to run excessive trade surpluses with the United States and import from us far less than they export to us would be subject to the restriction of access to our market, which is the measure's last resort.

We believe the House took appropriate action by including the denial of internationally recognized workers rights as an unfair trade practice under section 301. A provision in H.R. 4800 clearly informs other nations that our standards for fair trade include fair treatment for workers. When the U.S. imports goods which are cheapened in cost by the oppression of the workers who made them, the jobs of American workers and their workplace protections are threatened.

American support for the protection of the rights of workers abroad is hardly new. The House-passed provision builds on the labor rights language in legislation passed in 1984 and 1985, as well as on the section of the Trade Act of 1974, which advised our GATT negotiators of Congress' priorities for the Tokyo round.

Mr. Chairman, we believe that including in S. 1860 the two changes in section 301, which I have discussed, would make that legislation more effective in meeting the Nation's need for a sound, active and reasonable trade policy.

I would add, Mr. Chairman, that while there are other provisions in the bill that we would like to see changed, if the deficit reduction and worker rights sections were included in the bill, we be-

lieve it would begin to give us the incentive needed to bring about much-needed change in trade relations with our trading partners.

I want to thank you for providing the UAW this opportunity to discuss these issues with your committee.

The CHAIRMAN. Thank you, sir.

[The prepared written statement of Mr. Bieber follows:]

STATEMENT OF

OWEN BIEBER, PRESIDENT

INTERNATIONAL UNION OF AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

before the

COMMITTEE ON FINANCE
UNITED STATES SENATE

on the subject of

CHANGES IN SECTION 301 OF THE TRADE ACT OF 1974

JULY 22, 1986

Mr. Chairman, my name is Owen Bieber. I am President of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). I am here today representing more than one million members of the UAW. We are counting on Congress to address successfully the international trade problems which are crippling our industries and undermining the economic health of millions of workers, their families and thousands of communities across the country. We appreciate your providing this opportunity to express our concerns and to ask for the assistance of the members of this Committee in developing a sound trade policy for our nation.

In November of last year, I appeared before this Committee to discuss the need for an active U.S. trade policy. It was on that day that S. 1860, the legislation under consideration today, was introduced. We endorse many of the provisions of the bill, but there are some major areas of trade policy in which I believe it is too modest and others which it entirely ignores. I would like to focus my remarks today on two critically-important issues which are left untouched by S. 1860 but which were central to my testimony before this Committee last year. These two issues are: the need for specific measures to reduce our trade deficit and the inclusion of the denial of internationally-recognized worker rights in the definition of unfair trade practices.

Provisions addressing both of these issues are included in changes in Section 301 of U.S. trade law which are proposed in the House-passed comprehensive trade bill (H.R. 4800). That bill overwhelmingly passed the House of Representatives by a bipartisan vote of 295-115 in May. I would like to explain briefly the importance of each of those provisions and, further, why we believe provisions to achieve the same objectives should be included in the Senate's efforts to revise the laws governing U.S. trade policy.

The frightening growth in the U.S. trade deficit has been the driving force behind current efforts to change U.S. trade laws. The deficit exploded between 1980 and 1985, skyrocketing from $36 billion to $149 billion. The trade balance in manufactured goods suffered even more, shifting from a surplus of $12.5 billion in 1980 to a deficit of $113 billion in 1985. The serious imbalance in auto industry trade has been an important contributor to the trade problems — a deficit of about $12 billion in 1980 grew to $45 billion in 1985.

For some people, these trade figures are nothing more than numbers. To them, international trade is an accounting category. But to UAW members and their families and to millions of other workers and communities across the country, the dangerously high and escalating trade deficit means lost jobs, lost income, lost savings, lost health insurance, lost job security and lost hope for a better future. New research has pointed to the trade deficit as the source of lower real wage rates and reduced living standards. This experience extends to those involved in high technology industries as well as basic industries. And the longer the deficit remains high, the deeper is the damage to our once-proud industries.

If our nation is to preserve a strong enough industrial base to build upon in the future, the U.S. must act quickly to reverse the direction and impact of the trade deficit. The extended duration of government inaction in the face of the influx of imports and stagnation of exports has already induced many profit-hungry U.S. firms to supply their domestic and foreign markets with foreign production. This can take the

form of new investment in plants abroad, establishing joint ventures with foreign firms, licensing foreign producers to make their products, or simply establishing agreements with foreign firms to supply them with products that replace their own, eliminating American jobs in the process. These arrangements worsen U.S. trade problems by both replacing U.S. exports and adding to U.S. imports. They also weaken America's industrial strength by creating what Business Week has described as "hollow corporations" — companies which lose their domestic manufacturing capability and their capacity for contributing to the economic vitality of U.S. production.

Recent developments in the auto industry indicate how these arrangements can affect U.S. production and employment. G.M., Ford and Chrysler all plan to step up their already significant imports of fully-assembled cars and trucks into the U.S. in the next few years. The sources of these vehicles are or will be Japan, West Germany, Mexico, Brazil, Taiwan, Australia and South Korea. In addition, the companies have either established joint ventures with Japanese producers to assemble cars in the U.S. or arranged to purchase cars from the U.S. assembly plants of Japanese auto companies. These "transplant" cars rely extensively on imported parts rather than those produced in this country, so that the value of the U.S. content in such vehicles is considerably less than in the U.S. firms' domestically-assembled cars. Through the additional imports and replacement of existing models with low-U.S. content transplants, the U.S. companies will be adding billions of dollars to the trade deficit and reducing U.S. employment in their own operations and those of their outside suppliers by thousands of workers. By 1990, we expect the growth in fully assembled imports and parts to reduce U.S. auto industry employment by over 500,000 unless our government recognizes the danger to the nation posed by job losses such as this, and similar losses in other industries, and adopts an active trade policy to defend employment and production in this country.

We have also seen major U.S. exporting companies shift production to subsidiaries abroad or buy parts and completed products from producers in other countries. These

actions have been taken for a variety of reasons, such as to reduce costs to meet targeted foreign competition and to meet foreign government co-production or domestic content requirements related to restrictions on U.S. exports. Jobs in the U.S. have just as certainly been lost in those industries, including construction equipment, aerospace and agricultural equipment, that suffer from restrictions abroad on U.S. exports as in those subject to competition from imports. Our members are in both types of industries and they are equally in need of new trade policies which value the health of U.S. manufacturing industries.

As we stated to this Committee last year, these problems will not be solved by the Administration's current trade policies. Neither will the changes in trade law proposed in S. 1860 sufficiently alter the present trade imbalance which is eroding our industrial base. The House-passed bill amends Section 301 of our trade law to provide a workable mechanism for reversing the direction of our trade deficit. Since the measure applies only to countries which maintain a pattern of unfair trade practices, it is a strong impetus for the removal of barriers to U.S. exports and other restrictions imposed by our trading partners.

For countries with large trade surpluses with the U.S. and exports far in excess of imports from here, that provision requires that the trade surpluses of such countries decline by a modest 10 percent each year as long as their trade barriers remain in place. The President is given a period for negotiations to accomplish this objective. If negotiations fail, the President must impose any of a number of discretionary sanctions for a year.

If these efforts do not succeed in meeting the deficit reduction goal, and the country both keeps its trade barriers and continues to export to the U.S. much more than it imports, the President would be required to set quantitative restrictions on U.S. imports from that country. These restrictions are a "last resort", to be used only after the lengthy, earlier efforts have failed. As a result, only countries which maintain

trade barriers, continue to run an excessive trade surplus with the U.S., and continue to import from us far less than they export to us, despite negotiations and modest sanctions, would be subject to quantitative restrictions on their exports to the U.S.

In addition, the House provision only applies to countries with a worldwide surplus in their current account measure of trade. The President may also waive the formal application of these measures to countries with debt problems or if application of the sanctions would not be in the national economic interest.

This provision does not mandate perfectly balanced trade between the U.S. and other countries; it doesn't dictate to others how they are to reduce their surpluses with us, but leaves those decisions up to them; it does not have restricted trade as its primary objective. If it were enacted, I doubt seriously that any sanction would ever be invoked. We would see affected countries reduce their surpluses with the U.S. Considering the trade policies routinely followed by our trading partners, which depart from internationally agreed upon principles, this measure seems hardly controversial to us, let alone the basis for starting a trade war (which we believe is well underway in any case). Retaliation for failure to live up to international agreements and for unfairly restricting U.S. commerce is the essence of Section 301 of our trade law. It is also the essence of the House provision.

The direct approach to the U.S. trade deficit which is the heart of the House provision has been criticized by some because they claim that other measures are sufficient to reduce the deficit. Many focus on the fiscal and monetary policy pursued by the Administration in recent years as the cause for the dollar's climb in value and argue that this explains nearly all of the growth in the U.S. trade deficit. We disagree with the Administration's misguided spending and tax policies and the excessively tight monetary policy of the Federal Reserve Board. We have openly discussed these policies before Congress for several years and assessed their impact on the domestic economy in addition to their impact on trade. With respect to the dollar, we pressed for U.S.

action to reduce its value long before the Administration finally acted last September. In fact, it was not until Congress appeared ready to act on trade legislation that the Administration changed its attitude toward the "strong dollar" from taking pride in it to acknowledging the damage it was causing U.S. industries.

We disagree with those who think the dollar's weakening will eliminate the U.S. trade deficit. While the return of the dollar to a lower value may, in trade with some countries, produce improvement in our trade balance, evidence is accumulating that a very large or larger deficit will remain. The decisions of U.S. firms to build or buy their products abroad cannot be easily rescinded. The foreign producers who have gained a foothold or strengthened their presence in the large and profitable U.S. market in the past several years will not be eager to relinquish their positions. Our market, because of government inaction, has, indeed become more internationalized. Only strong and direct action will convince U.S. firms to make the needed investment in domestic facilities which will preserve our industrial base and increase our international competitiveness. This is the message of the trade deficit reduction provision of the House-passed bill; it is one we must heed as soon as possible.

Another issue I believe the Senate's trade legislation should address is worker rights. The denial of internationally recognized worker rights abroad should be treated under U.S. law as an unfair trade practice subject to retaliation when goods made under such conditions are imported into the U.S. This would give the abuse of worker rights status under Section 301 which is similar to the rights of U.S. capital abroad, which are already protected by the statute. A government which condones or encourages the mistreatment of its citizens at work is providing a subsidy to its producers as surely as if it were providing a direct financial subsidy. This alone should be enough to add the denial of labor rights to the definition of "unreasonable" policies, acts or practices in Section 301 against which the President could retaliate. But the abuse of worker rights also undermines one of the basic principles on which support for the international trading

system rests — that trade benefits all parties involved. We fail to see how workers, some of them mere children, with no legal means to defend their interests, who are forced to accept inhuman conditions, minimal pay and uncontrolled hours of work, can be called beneficiaries of international trade when the goods they produce are exported. In addition, American workers displaced from their jobs by cheaper imports are incensed to learn that they have sacrificed their jobs because of the exploitation of their counterparts abroad. They correctly see that the oppressive labor conditions embodied in such exports threaten to undermine the labor protections which have been won here. A provision like this would clearly inform other nations that our standards for fair trade include fair treatment of workers.

This change in Section 301 was included in the House-passed bill. The provision would allow petitions to be submitted to USTR requesting retaliation against imports from countries in which workers are: denied the right to freedom of association and to organize and bargain collectively; where forced labor is not prohibited; where there is no minimum age of work; and where minimum acceptable standards for wages, hours and safety and health conditions do not exist. Countries need only meet these standards, as recognized in conventions of the International Labor Organization (ILO) of the United Nations, to meet the test of fairness in labor practices. While the U.S. has not ratified all of the ILO Conventions, there can be no question that American workers are afforded these rights through U.S. labor laws and standards which are much stronger than those the ILO has agreed upon. There is no requirement that other countries meet U.S. wage standards or Scandinavian health and safety standards as some Administration officials have claimed. The standards to be met are modest, reflecting some concern for the economic and physical well-being of workers.

The effort of opponents of the House worker rights provision to misrepresent its meaning is scandalous. The amendment builds on labor rights provisions which were added to the Generalized System of Preferences in 1984 and the Overseas Private

Investment Corporation in 1985. Protecting the rights of workers in trade is a principle which the U.S. has supported for many years and has finally begun to act upon.

Mr. Chairman, we believe improvements to our trade laws are desperately needed. The two provisions I have discussed would be useful additions to the changes in Section 301 which are included in S. 1860. Together with changes in other provisions of trade law, this bill would give us some hope that we can begin to reverse the pain and suffering which American workers and industries have experienced because of our current trade policies. We hope this Committee and the full Senate will act as quickly as possible on S. 1860 so that trade legislation in 1986 can become a reality. We hope that you will include the two provisions we have discussed to make the legislation more effective in meeting its objective of providing a basis for a sound, active and reasonable trade policy for our country. Mr. Chairman, thank you for providing this opportunity to discuss these issues with your Committee.

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STATEMENT OF ROBERT W. GALVIN, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, MOTOROLA, INC., SCHAUMBURG,IL; ON BEHALF OF THE COALITION FOR INTERNATIONAL TRADE EQUITY

THE CHAIRMAN. Mr. Galvin.

Mr. GALVIN. I am Bob Galvin, and I am chairman of Motorola. I am also chairman of the Coalition for International Trade Equity, for whom I particularly speak today.

We advocate that targeting should be identified and defined as an unfair trade practice under 301. Our written statement carries considerable evidence that targeting is defineable and has been defined, that targeting exists, that it has been injurious, and that the U.S. trade laws have been inadequate to deal with the issue.

In the industry that I happen to work in, the semiconductor industry, the USTR itself has studied and determined that absent targeting, United States semiconductor industry business in Japan would be twice its present size; that a significant share of Japanese business success here is attributable to targeting, and that an immense amount of sales and jobs have been lost in the United States as a consequence of the absence of this manner of policing.

We recommend that targeting be explicitly actionable; that a finding of material injury become a part of that actionable process; that the responsibility for determining what is to be done be transferred from the President to the USTR; that an injured U.S. industry be assured of a response and that a range of remedies be provided. Such is the summary of our testimony.

I would like to try to deal with the very extensive testimony of the able USTR, and within the limit of this time, reference four points that he made.

One, he pointed out that he does not wish to look back on the history of the performance of the USTR, but look just at what is being done today. We think that this is not a proper standard of operation. This is a government of laws, not of the personalities of able people like Clayton Yeutter, and we are grateful for what he has brought to the effectiveness of this program today. But it is an undependable process if we must depend exclusively on an individual of that quality.

We think there has to be a predictability as to what will occur in order for industry to be able to take risks and make investments. In the economics of this society, it is obviously the only basis of affording our freedoms.

He questions mandatoriness. May I suggest that there are an immense number of values to having some mandatory provisions, some teeth. One, it causes our Government to take some action which otherwise it may not have the backbone to do. But I respectfully suggest that it is not an act of unfriendliness to our foreign partners. In Japan, where I happen to be immensely acquainted and just incidentally returned, I am quite aware of the fact that things do not occur in Japan as a function of individual selection, but rather by the guidance of the Government. That is the thing that takes the excuse away from the individual who does not wish to take an individual action to support free or active trade. But if

given direction by the Government, forced by some mandatoriness, then an action can take place.

The Japanese and others need to know that there is not much option in this society; that they must deal with predictable mandatory actions, and then they are quite willing to make the changes. The enlightened people in Japan do want to move toward free trade. They cannot individually act on this unless they are pushed into this by our Government and by their Government.

Deadlines are essential. Business is a timing issue. We can't wait 9 years, 5 years or 1½ for solutions. Even the USTR recognizes that; he puts deadlines onto things himself. Other speakers here will oppose them; but some deadlines are appropriate. We must have a predictable length of time within which we can get some decisions.

It is suggested that the actions that are going to be taken here are going to force the closing of this market versus the opening of foreign markets. I am aware in particular of the things going on in semiconductors and telecommunications, and let me assure you that the only way that the markets are being opened in Japan is by forcing them open. If we put more pressure on, we will only open their markets much more. There is no serious danger of there being a closing action as a consequence of the kind of modest, mandatory and deadline-type of prescriptions which we are offering, which, within the descriptions that we have provided in our formal testimony provide many options to our officials.

Thank you.

The CHAIRMAN. Thank you.

[The prepared written statement of Mr. Galvin follows:]

Statement of

COALITION FOR INTERNATIONAL TRADE EQUITY

Submitted to the

Senate Finance Committee

July 22, 1986

by

Robert W. Galvin

Chairman of the Board

Motorola Inc.

Mr. Chairman, thank you for the opportunity to appear before this Committee on behalf of the Coalition for International Trade Equity (CITE). CITE was formed in 1983 by a group of high technology companies[1] concerned with the deterioration of the international trading system. In particular, CITE is concerned with international market distortions caused by the intervention of foreign governments.

Each nation-state has a sovereign right to establish whatever social and economic policies and programs it believes are necessary for the internal workings of its nation. However, when a nation deals in international commerce, it takes on an additional responsibility; one, that to a certain extent, diminishes its sovereign right to act only in its own national interest. It is this latter responsibility which is currently being ignored or evaded in international trade today.

Government involvement in the marketplace has been evolving and increasing over the last several decades and has now become an integral part of the economic policies of many nations. This trend

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[1] CITE's member companies include: Control Data Corporation, Corning Glass Works, DuPont/Conoco, Harris Corporation, Monsanto, Motorola Inc., Olin International, Timex, United Technologies, and Westinghouse.

poses the greatest threat to reestablishing an open trading system; it will persist beyond currency alignment and budget deficit problems. This trend can be reversed, but it is imperative that the Congress take a leadership role. CITE appears before you today to urge passage of a change to our trade laws to deal with injurious industrial targeting.

There has been much debate over the definition of targeting, which admittedly, is not a simple task. However, both USTR and the International Trade Commission in studies requested by this Committee have, in our view, developed satisfactory and workable definitions. In addition, the definitions set forth in Senate proposals are similarly well thought out:

> "The term 'injurious industrial targeting' means any combination of coordinated government actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist it to become more competitive in the export of any class or kind of merchandise and are injurious (or that cause or threaten to cause, material injury)."

According to the Administration's report to this Committee:

> "Targeting practices may, among other things, subsidize R&D, roduce risk, decrease domestic competition, increase available capital or increase the market size in order to create for the targeted industry a greater comparative advantage than the industry would have absent government intervention. Targeting does not include macroeconomic policies that affect the

> competitiveness of all industries in the national economy."

When a nation targets an industry to bring about a government-created comparative advantage, a significant shift in risk-taking occurs. That is, an American corporation now finds itself competing with not only the resources of a nation-state but with its sovereign powers as well. The home market is closed by the government, and resources are transferred to the targeted industry through direct subsidies, R&D funding, discriminatory government procurement, and toleration of cartel-type behavior which enables companies to share R&D costs or rationalize production. The foreign industry selected ends up operating in a sheltered environment in which risk-taking is significantly reduced if not eliminated.

Let's look at the impact on the American manufacturers. In our planning process, we consider the normal risks involved in an investment decision. When competing with a targeted industry, we must now put into the equation the added risk or shift in risk that is present when we are competing with a foreign government's policies and practices.

The uncertainty in this shift in risk becomes virtually impossible to overcome if the American manufacturer has no assurance that his government will respond to such unfair trade practices. Regrettably, that is the situation today.

In the high technology business, we are in a period of very rapid change, both in products and manufacturing processes. We are planning and making investment decisions based on the anticipated operating environment of the future.

Absent some assurance that the U.S. government will respond decisively against market distorting practices of other governments such as targeting, the trend toward offshore investment will increase and accelerate. It can be expected that as manufacturing investment in the high technology area moves out of the United States, so too, will R&D. The short lead times in the highly competitive high technology market will simply require that R&D and manufacturing be together in order to implement changes as rapidly as possible. The long term adverse effect that such an erosion in the American high technology manufacturing base has on our overall economy and our national security is obvious.

The knowledge explosion and the rapid changes taking place in our global business environment also put pressure on our legislative process to respond more quickly to the international trading realities we face.

We believe a key role of the businessman in our legislative process is to identify major changes in trends and developments in the international marketplace and bring them to the attention of the Congress and the Administration. The identification and

evaluation of the problems caused by foreign industrial targeting have now been going on for over three years through efforts in both the government and private sector. The role of the Congress is, of course, to evaluate the validity of these observations by business and to then determine if legislative revisions or new legislation is in order.

In the case of foreign industrial targeting, we believe that two of these three steps have been accomplished. Business has both identified and experienced the market distortions caused by foreign governments' direct and indirect intervention into the workings of the international marketplace.

The Congress has had these trends evaluated. In 1983, the International Trade Commission was directed to evaluate foreign industrial targeting practices of other nations. These excellent ITC studies analyzed such practices in 10 nations. Table I summarizes the extensive number of industries targeted by these 10 nations selected for study by the ITC.[2]

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[2] CITE has also extracted from these studies an ITC 27-page summary of the specific government created programs and practices used by these nations to increase the international competitiveness of their domestic industries. A copy has been provided to the Committee.

Table I

International Trade Commission (ITC) Reports:
Industries Targeted by Foreign Governments

JAPAN REPORT - October 1983
- Aircraft
- Aluminum
- Autos
- Computers
- Iron & Steel
- Machine Tools/Robotics
- Semiconductors
- Telecommunications

EUROPEAN COMMUNITY-Apr. '84
- Coal
- Computers/Peripherals
- Machine Tools
- Steel
- Textiles

French Policies
- Aircraft/Aerospace
- Autos/Trucks
- Electronics
- Heavy Electrical Equipment
- Machine Tools/Robotics
- Semiconductors
- Telecommunications
- Textiles/Apparel

British Policies
- Aircraft/Aerospace
- Autos
- Computers/Peripherals
- Telecommunications
- Heavy Electrical Equipment
- Machine Tools/Robotics
- Semiconductors

German Policies
- Aircraft/Aerospace
- Autos
- Computers/Peripherals
- Machine Tools/Robotics
- Semiconductors

Italian Policies
- Autos
- Machine Tools
- Textiles/Apparel

Brazilian Policies - Jan. 1985
- Aerospace/Aircraft
- Autos
- Computers
- Heavy Electrical Equipment
- Footwear
- Pharmaceuticals
- Semiconductors
- Shipbuilding
- Steel
- Telecommunications
- Textiles/Apparel

Canadian Policies
- Aerospace/Aircraft
- Autos
- Petroleum/Gas
- Telecommunications

Korean Policies
- Autos
- Computers/Semiconductors/
- Telecommunications
- Heavy Electrical Equipment
- Machine Tools
- Pharmaceuticals
- Shipbuilding
- Steel
- Textiles

Mexican Policies
- Autos
- Computers/Electronics
- Petroleum/Gas
- Pharmaceuticals
- Steel

Taiwanese Policies
- Autos
- Computers
- Electronics/Telecommunications
- Machine Tools/Robotics
- Petrochemicals
- Pharmaceuticals
- Shipbuilding
- Steel
- Textiles/Apparel

In addition, in 1985, this Committee directed the U.S. Trade Representative, as well as other Executive Branch agencies, to further evaluate targeting practices of other nations. A USTR study on the impact of targeting on the semiconductor industry was prepared by Quick, Finan & Associates, a well respected economic consulting firm. The study concluded that:

(1) absent targeting, U.S. semiconductor firms would hold a share of the Japanese market that was twice as large as it currently holds;

(2) between 18 and 49 percent of Japanese firms' current share of the U.S. market was attributable to targeting; and

(3) Japanese targeting between 1977 and 1984 resulted in a cumulative loss of sales for U.S. companies of $300-750 million and a reduction in employment of 6-14 percent.

Over these last three years, therefore, we have had excellent, in-depth analyses of foreign industrial targeting practices completed by various agencies of the U.S. government. What can be concluded from these studies?

- First of all, as previously indicated, targeting has been defined.

- Second, it has been demonstrated that targeting practices definitely exist and are used by many nations in the world--developed and developing alike (see Table I).

• The injurious impact of targeting on U.S. business has been measured (the USTR semiconductor analysis).

• Finally, both the ITC and the USTR studies found current U.S. trade laws to be inadequate or inappropriate in responding to foreign industrial targeting practices. The USTR study submitted to Congress on July 15, 1985, found that existing trade law does not:

> -- address GATT-consistent home market protection;
>
> -- offset the economic effects of targeting when they are separated from the government practices by time;
>
> -- counter alleged "multiplier effects" that arise because commercial banks might give a targeted industry preferential lending terms;
>
> -- offset fully the effect of targeting in their country export markets;
>
> -- counter the entire benefit associated with subsidized R&D programs; and
>
> -- address cooperation among private firms which allegedly enhances competitiveness."

The ITC study included a comprehensive analysis of the ability of our antitrust laws, our various import relief laws and other trade statistics to respond to targeting. Of particular note is the ITC's analysis on how Section 301 might be used to address

targeting if certain changes were made.[3] CITE's recommendations in this regard are reviewed favorably. The ITC also analyzed the appropriateness of Section 201 for addressing targeting. It concluded that this presents "a major problem" since Section 201 is premised on MFN treatment, which requires action against imports from all sources. Further, the ITC pointed out that Section 201 investigations traditionally involve depressed industries, not high technology industries. The ITC went on to enumerate other difficulties with utilizing Section 201 to counteract targeting and concluded that it would not be used effectively unless it were "drastically" redrafted.

This brings us to the third and remaining step, namely, what legislative changes are in order.

CITE believes that an improved Section 301 would provide the most appropriate, yet flexible means to respond to foreign industrial targeting practices. CITE recommends that the following key elements should be included:

- Injurious industrial targeting should be made explicitly actionable under Section 301. This would counter the argument which has been raised in some quarters that foreign targeting programs, or some aspects of such programs, are not actionable under Section 301. Section 301 is the only U.S. trade remedy sufficiently broad to address the panoply of practices encompassed by targeting and the only trade remedy that can address the problem of foreign home market protection.

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[3] See Attachment A of this statement.

- The U.S. International Trade Commission, which determines injury in antidumping and countervailing duty cases, should be required to make a finding of material injury (or threat thereof) as a prerequisite to action by the U.S. government. This would avoid U.S. government action against foreign targeting programs that had no adverse effects on U.S. companies.

- Primary authority to make determinations and impose remedies under Section 301 should be transferred from the President to USTR. This would de-politicize, in an international context, the decision-making process.

- Injured U.S. industries should be assured of a response by USTR in cases involving affirmative findings of injurious targeting. However, USTR should be given a range of remedies from which to choose.

Mr. Chairman, before I conclude, let me touch on one other matter. We continually hear that the U.S engages in targeting practices and therefore we could be subject to mirror legislation and retaliation.

The U.S. government does not have programs primarily designed to increase the international competitiveness of American manufacturers. Most of the examples that we hear about turn out to be more anecdotal than substantive. Government studies support our conclusions. A high percentage of U.S. government supported efforts are done for national security reasons, not international competitiveness. Table II, taken from a January 1984 CBO study, depicts the virtually de minimus support of U.S. businesses by the Federal government.

The Industrial Context: Sector-Specific Benefit

Sector	Direct Expenditures (percent of sector value added) a/	Credit Expenditures (percent of sector value added) b/
Manufacturing	0.2	0.1
Agriculture	8.3	3.2
Trades and Services	c/	c/
Mining	0.6	c/
Finance, Insurance and Real Estate	c/	c/
Utilities and Sanitary Services	1.5	4.2
Communications	0.1	c/
Transportation	0.9	c/
Construction and Other	0.0	0.1

Source: Congressional Budget Office, "Federal Support of U.S. Business", January 1984.

a/ 1984 direct expenditure program outlays as a percent of projected 1984 sector value added

b/ 1984 credit program new outlays as a percent of 1981 sector value added

c/ Less than 0.05 percent

Looking at the U.S. economy overall, there is one major exception to the above observation, namely our agricultural industry. Down through the centuries virtually every nation of the world, for socio-political reasons, has accorded special treatment to its agricultural sector; the U.S. is no exception. Because of this universality of the treatment of agriculture, we would recommend that primary agricultural products be exempted from any targeting legislation.

Let me conclude, Mr. Chairman, by urging you and your colleagues to include in a Senate trade bill language to deal effectively with foreign industrial targeting. The targeting provisions of S. 1356 introduced by Senator Heinz closely parallel the proposed modifications to Section 301 which CITE supports. So, too, does S. 1476 introduced by Senator Chaffee and Mitchell.

CITE's concern with foreign industrial targeting and the need to develop an effective U.S. response to this problem is shared by other business organizations such as the General Aviation Manufacturers Association, the Labor and Industry Coalition for International Trade, the National Association of Manufacturers, and the National Machine Tool Builders Association.

We would welcome the opportunity to work with the members of this Committee and their staffs to develop legislative language to deal with the ever increasing problem of foreign industrial targeting.

CITE appreciates the opportunity to appear before your Committee today.

STATEMENT OF MARSHALL COGAN, CHAIRMAN, EXECUTIVE COMMITTEE, SHELLER-GLOBE CORP.; NEW YORK, NY, AND CHIEF EXECUTIVE OFFICER, GENERAL FELT INDUSTRIES, INC.

Mr. COGAN. Mr. Chairman, my name is Marshall Cogan. I am chairman of the executive committee of the Sheller-Globe Corp. which is one of this Nation's largest automobile parts manufacturers with approximately $1 billion in annual sales.

In addition, I am involved in the investment and management of other substantial American industrial corporations doing another $1.5 billion in volume worldwide.

One of the most insidious problems confronted by American business is the inability of our best and most efficient industries to penetrate foreign markets because of existing trade and investment barriers. I believe that section 301 of the Trade Act of 1974 needs material revision.

Legislation now before this committee, Senate 1860, is an important step in the right direction. However, section 301 requires amendments above and beyond the provisions of the existing Senate bill.

With this in mind, I would like to tell you a little bit about the problem faced by Sheller-Globe in the Japanese market, and how Sheller-Globe's problem is illustrative of a much broader dilemma which the Congress now must address.

Sheller-Globe with its own 12,000 employees and 75 plants produces a broad variety of extremely high quality automotive parts and assemblies, including dashboards, steering wheels, electrical components and interior parts. Our leadership is based on excellence in design and technological innovation, with the latest cost effective techniques in manufacturing.

Unfortunately, with all of the above, the vital Japanese market is virtually closed to Sheller-Globe and to many other American auto manufacturers. The Japanese auto part manufacturers are, to be quite frank about it, the key to the future for Sheller-Globe and the rest of the United States auto parts industry.

The big three U.S. automobile manufacturers have traditionally been our principal customers. These domestic customers, while they will always be significant to us, have seen their share of the world market precipitously decline in the face of existing Japanese competition. At the same time, they themselves have begun to outsource parts overseas, frequently in Japan.

How is Sheller-Globe kept out of the Japanese market? The trade barriers that we face in Japan are no longer formal import barriers directed by the Japanese Government. We face a much more troublesome and elusive hurdle. The answer is that the Japanese auto manufacturers have closed procurement practices that are anticompetitive, buying almost entirely from certain designated Japanese suppliers. In fact, many of these use our existing licenses today in Japan. Worse still, Sheller-Globe is generally unable to supply the growing number of Japanese auto assembly plants being built in the United States, using technology we licensed to them several years ago.

Let me explain what I mean by "closed procurement practices."

Each of the Japanese auto manufacturers has a group of suppliers attached to it as a family, dedicating all or nearly all of their production to that specific automobile company. It is almost impossible for an outsider, not part of that family, to sell to these companies.

By 1991, Japanese auto manufacturers will be producing approximately 2 million cars per year in the United States. If they continue to export the current 2.3 million cars to the United States, their total U.S. sales in 1991 will account for approximately 35 percent of the expected U.S. auto consumption of 12 million vehicles. As long as the Japanese companies have closed procurement arrangements, and simply refuse to buy from American companies for noneconomic but solely cultural reasons, America's trade deficit with Japan will continue to worsen.

We want to do business on a fair playing field. We will compete on price, we will compete on quality, and we will compete on innovation. Regrettably, section 301 does not even address foreign trade barriers that do not involve governmental action. Section 301 can and should be amended to deal with the closed procurement practices of foreign industries.

Such expansion of the law would have several significant advantages. First, it would send an important signal to foreign industries that the U.S. Government finds such closed procurement practices to be unacceptable;

Second, it would provide the necessary framework which does not now exist for investigating, negotiating and taking action where foreign markets are closed to U.S. exporters by practices such as those I have previously described.

The administration has recently taken an important leadership role on this matter by launching the market oriented sector specific talks—called MOSS—aimed at the Japanese transportation equipment market. These negotiations will focus primarily upon the Japanese market for United States auto parts. The MOSS talks are a big step in the right direction.

It is important that the U.S. Congress act to formally place closed procurement practices in the category of unfair trade practices.

Section 301 is a tool to be used by our best companies in their efforts to compete on fair terms in foreign markets. I ask that you seriously consider expanding the scope of section 301 to include foreign closed procurement practices, in which foreign industries buy only from selected domestic suppliers, thereby locking out American competitors. Unless we can compete fairly the American auto parts industry will lose up to 25 percent of the current existing jobs by 1990.

Thank you very much.

[The prepared written statement of Mr. Cogan follows:]

TESTIMONY OF MARSHALL S. COGAN
Chairman of Executive Committee of Sheller-Globe Corporation
Chief Executive Officer of General Felt Industries, Inc.

Before The

SENATE FINANCE COMMITTEE

July 22, 1986

Mr. Chairman and members of the Committee, my name is Marshall Cogan. I am the Chairman of the Executive Committee of the Sheller-Globe Corporation, one of this country's largest auto parts manufacturers, with approximately $1 billion in annual sales. In addition, over the years I have been involved in investment banking and in the management of other substantial American industrial corporations. I believe that my work on Wall Street and in management have given me a reasonable perspective on the problems faced by American companies in the international market place.

One of the most insidious problems confronted by American business is the inability of our best and most efficient industries to penetrate foreign markets because of trade and investment barriers. Section 301 of the Trade Act of 1974 is the provision of U.S. trade law intended to address this problem; however, I believe that this important provision needs substantial revision. Legislation now before this Committee, S. 1860, is an important step in the right direction. This legislation would do a great deal to put teeth into section 301 so that our companies and our trade negotiators can get about the business of opening up foreign markets. But I believe that section 301 requires amendments even beyond the provisions of S. 1860. With this in mind, I would like to tell you a little bit about the problem faced by the Sheller-Globe Corporation in the Japanese market, and how Sheller-Globe's problem is illustrative of a much broader dilemma which the Congress must address.

Sheller-Globe Corporation produces a broad variety of automotive parts and assemblies including dashboards, consoles, steering wheels, rubber weather seals, electrical components and plastic and foam interior padding. Sheller-Globe has thirty-five plants in twelve states and 12,000 employees, and has plants in Canada, Mexico and Europe. Sheller-Globe has long been a significant, competitive force in the auto parts industry -- the company has been a leader in developing new technologies and in quality control. Furthermore, the company is totally committed to maintaining its leadership position in the increasingly internationalized automobile industry.

The Japanese auto makers are, to be frank about it, the key to the future for Sheller-Globe and the rest of the U.S. auto parts industry. The growing market share of Japanese auto makers means that Sheller-Globe must sell to these Japanese companies in Japan, in the U.S. and in Europe.

The "big three" U.S auto manufacturers have traditionally been our principal customers. These domestic customers, while they will always be extremely important to us, have seen their share of the world market decline in the face of Japanese competition. At the same time, they themselves have begun to source parts overseas, frequently in Japan. We have no objection to facing Japanese competition for sales of parts to the "big three." But if we cannot sell to the Japanese auto makers, we will be locked into a shrinking share of a shrinking market.

Unfortunately, the vital Japanese market is virtually closed to American auto parts manufacturers. In spite of the fact that

Sheller-Globe produces state-of-the-art products at competitive prices, we have only managed a few insignificant sales to date. Indeed, the quality of Sheller-Globe's technology is reflected in the fact that many of our principal Japanese competitors produce their parts with technology licensed from Sheller-Globe.

How is Sheller-Globe kept out of the Japanese market? The trade barriers that we face in Japan are no longer formal import barriers erected by the Japanese government. We face a much more troublesome and elusive hurdle. The answer is that Japanese auto makers have **closed procurement practices** that are anticompetitive -- buying almost entirely from certain designated Japanese suppliers. As a result of these anticompetitive relationships, Sheller-Globe is shut out of the Japanese market. Worse still, the company is generally unable to supply the growing number of Japanese auto assembly plants being built in the United States.

Let me explain what I mean by closed procurement practices. Each of the major Japanese auto makers has a group of suppliers attached to it as a "family," dedicating all or nearly all of their production to that auto company. The quid-pro-quo in developing these relationships decades ago gave both sides an economic benefit. For the Japanese parts suppliers there was a guaranteed customer, protection from the ups and downs of the business cycle, a source of capital and, for as long as the auto companies grew and prospered, the promise of rising profits. For the auto makers, there were the many advantages of a close working relationship with suppliers, and the ability to dictate the terms of the business relationship, including setting of target prices, to their captive suppliers.

In the case of the largest auto makers in Japan, the system delivered associations of suppliers, tied so closely to the auto makers as to constitute virtual subsidiaries. One result of this supplier-auto maker relationship was another strong link in building a successful Japanese automobile industry. Another result is a closed market -- American auto parts suppliers being effectively excluded from the Japanese market. Perhaps these close, and closed, relationships were justified when the Japanese automobile industry could be characterized as an "infant industry." But that day is long over. Today these practices are anticompetitive and unfair.

As long as Japanese companies have closed procurement arrangements, and simply refuse to buy from American companies for non-economic but solely cultural reasons, America's trade deficit with Japan will continue to worsen and our most competitive companies will be undermined as surely as if the Japanese government erected the highest of tariffs, and the lowest of quotas. This will result in thousands of lost jobs and the further erosion of our industrial base. By 1991, Japanese auto makers will be producing approximately two million cars each year in the United States. If they continue to export 2.3 million cars, their total U.S. sales in 1991 will account for approximately 35% of expected U.S. auto consumption of 12 million vehicles. If American auto parts companies are limited in their access to this growing segment of the market, the effects of the Japanese closed procurement practices will be even more damaging. We must find ways to address this problem.

Regrettably, section 301 does not even address foreign trade barriers that do not involve government action. Section 301 can and should be amended to deal with the closed procurement practices of foreign industries. Such expansion of the law would have several important advantages. First, it would send an important signal to foreign industries that the U.S. government finds such closed procurement practices to be unacceptable. Second, it would provide the necessary framework, which does not now exist, for investigating, negotiating and taking action where foreign markets are closed to U.S. exporters by practices of this sort. Without such a framework, it is unlikely that an adequate mechanism will be found to address this problem.

Because of the nature of closed procurement arrangements -- they do not necessarily involve overt government action -- they will be difficult to adequately address through trade negotiations alone. The Administration has taken an important leadership role on this matter by launching Market Oriented Sector Specific (MOSS) talks aimed at the Japanese transportation equipment market. These negotiations will focus principally upon the Japanese market for U.S. auto parts.

Although the MOSS talks are a big step in the right direction, it is important that the U.S. Congress act to formally place closed procurement practices in the category of unfair trade practices. Further, it is important that the legal framework be created to prosecute trade cases in order to provide our trade negotiators with adequate leverage against foreign industries that engage in such practices. Past experience tells us that

Japanese manufacturers will not be jawboned into throwing open their markets as an act of good will.

Expanding the scope of section 301 is not just a technical question of trade law reform. It is vital to the welfare of America's most competitive industries. Section 301, unlike most other provisions in U.S. trade law, is not intended to protect declining industries, or other U.S. industries that are on the retreat here in the U.S. market. Section 301 is a tool to be used by our best companies in their efforts to compete on fair terms in foreign markets. I ask that you seriously consider expanding the scope of section 301 to include foreign closed procurement practices -- in which foreign industries buy only from selected domestic suppliers, thereby locking out American competitors.

Senator DANFORTH. Gentlemen, thank you very much.

Do you think that if we had a level playing field the United States could compete in automobile sales or automobile part sales in Japan?

Mr. COGAN. Senator Danforth, I do primarily because most of the licenses and many of the technological innovations that we at Sheller-Globe have adapted are now being used by our licensees in Japan, and they are bringing in their auto part suppliers here in the United States using that technology.

We have the innovation, we have the price, we have the quality, we have addressed ourselves to those issues. I believe we would be able to effectively compete and make a difference for this country.

Senator DANFORTH. Do you agree with that, Mr. Bieber?

Mr. BIEBER. Yes, sir, I do.

Senator DANFORTH. Mr. Galvin, do you think that in your business, Motorola, do you think we could compete effectively with Japan if there were a level playing field?

Mr. GALVIN. The answer is yes. And we are even successful in doing so when we must force our way into the cracks.

Today, Motorola produces twice as many pagers for Nippon Telephone & Telegraph than any other supplier—all Japanese—because our product is better, and a lower cost and better price. That is just an example of many ways that the competence of America can meet the quality, delivery and price requirements of the Japanese if given a chance.

Senator DANFORTH. To what extent is the difficulty of doing business in Japan a matter of policy versus a matter of just the consumer lack of acceptance of American products?

Some people say, well, even if their Government tries to open their markets, still we cannot make a lot of sales because their people just do not want to buy American products.

Mr. COGAN. I do not accept that statement, Senator Danforth. I believe that people throughout the world are committed to quality at a cost-effective price. And we are dealing with, on the part of Sheller-Globe, parts that they do not even see.

We do not have even the right to get into the door on the quality we have, and the consumer does not know what is behind the sheet metal itself.

Senator DANFORTH. Mr. Bieber.

Mr. BIEBER. Yes.

Senator, I would just like to underscore the point that the gentleman from Sheller-Globe makes. We are getting it from both sides.

No. 1, they do not have the opportunity to get into the Japanese market to sell parts there. The transplant plants that are being brought into the United States are closed to United States parts suppliers because the Japanese bring their own support companies with them or they ship the parts in from Japan.

The other point that I would make is I think the gentleman's figures, when he relates to what will happen to us by 1990 and 1991, are perhaps understated because, in addition to the fact that they are left out of competing for parts with the Japanese companies, we have to look at the projections of "captive imports" that are going to be brought in by General Motors, Ford, and Chrysler, all of them well announced by this time in advance. And Sheller-Globe

and the other American parts manufacturers will not get a shot at any of that either because they will be produced in Japan.

The other thing that I want to point out again—I think I did before this committee a year ago when I appeared here—the other thing that bothers me is that unless we make some drastic changes now to change this situation, before long we are going to be left with a country where we do not have the technology any more to compete. Certainly, Sheller-Globe is not going to continue to invest money and technology in a market in which they cannot compete. They are just plain dealt out of it.

And when you look at the importation of the drivetrains and so on, it becomes more serious because when you do not build engines for automobiles here you do not train engineers to engineer engines, and pretty soon you have lost that capability.

Mr. GALVIN. Senator Danforth, if you could suffer one additional facet of that issue, I would like to just reverse your statement, or reverse your question.

It is going to take policy to reverse the situation. And what do I mean?

The Japanese have become a success for two essential reasons. One, they are a people of high quality and perform in an excellent way. But they arrived at their present competence as a function of a targeting policy that included infant industry protection, which enabled them to enhance greatly the present level of resources available to the marketplace.

Now, each of those independent competitors in Japan are not able individually to give up any use of those resources. They have their private responsibilities. Yet, the leaders of Japan, as evidenced by the Maekawa Report, certain leaders in the Keidanren, certain of the senior statesmen in that country, are enlightened enough to know that the policy must be changed. But it cannot be done by the individual selection of individual companies over there. So they have imbued themselves with an inherent private protection policy.

They all know that the only way they can get over this from a political standpoint is to be directed by their government to change. And that is what some of us are forcing them to do in the semiconductor situation. As a function of pressure, we are forcing them to open access. As a function of pressure, we forced them to open up the telecommunications market. And I personally led both of those situations for our respective industries.

Now, what we must have is a policy from here that puts the pressure on the Japanese so that the public policy people know they must impose policy on their private operators who will then be obliged to buy, for example, Sheller-Globe products.

Senator DANFORTH. Do you think we can have that kind of policy if the President has discretion to enforce section 301, or to apply section 301 or not to apply section 301?

Mr. GALVIN. We cannot have it effectively if we do not have the support of the U.S. Government backing American interest in a balanced options way. And I think that this Government, and some other Governments of recent times—other administrations—have required a good deal of undue persuasion on the part of the private sector as to what their responsibilities are. And I think that there

is a need for some congressional mandate in law that requires that people stand up for their responsibilities.

Senator DANFORTH. Mr. Bieber?

Mr. BIEBER. Senator, I would underscore that. And I would also point out and pay credit to you again. I recall when you advocated the enforcement of the voluntary restraints. Certainly it got cleared.

I think that the reason that I feel so strongly about the trade deficit reduction section, as well as the workers' rights, is because this says to the Japanese, to the rest of our trading partners, that indeed we are fed up with a one-way street. And it is not dictating to them what they have to do. There is an option. And I think that we can all agree if we look at history, what has happened is that when we have said enough is enough, that makes them move.

And, quite frankly, in all due respect to this administration, and for that matter, the previous administration, there has not been that much initiative until the Congress and the people of this country have also said enough. Then we have gotten some movement.

I think that the trade deficit reduction section of H.R. 4800 puts teeth into the bill. I, quite frankly, Senator, would urge that the Senate take a look at the same direction because I am concerned that a bill coming out of the Senate with weaker provisions than that will, once again, send the wrong signal to our trading partners overseas.

Senator DANFORTH. Well you heard Ambassador Yeutter testify that he was certain that if the House bill were enacted the results of that would be not for our trading partners to remove barriers to their market but rather to shut off exports to the United States, and that they would retaliate to boot.

Mr. BIEBER. Well, Senator, if I might preface my remark by first of all saying I have a great deal of respect for Ambassador Yeutter. I serve on the advisory committee that he heads up, and I think he has taken some steps in the right direction.

But I, from time to time, disagree with him, and I disagree with him today. I do not for one moment believe that the Japanese or any of the rest of our trading partners are going to give up their piece of the most lucrative market in the world simply by saying we are not willing to do something about opening our market.

On the other hand, if we were faced with that situation—if we were, and I do not believe we are—then what is the alternative to that? Is it to say because we, the American public, the American Government, demand some fairness in trade, we cannot do that because that means someone else might retaliate and close the market.

At what point is the interest and the equity of the American public, the American worker, and the future of America to be measured?

Senator DANFORTH. Yes.

I mean I think that the Senate bill is a good tough bill. But what the Senate bill does is to emphasize trying to remove barriers to exports from the United States rather than to say to a country, well you can satisfy our requirements simply by restricting your exports to the United States.

Mr. BIEBER. Senator, I don't know if you were here when I started out. My opening remarks said that I think that there are many good aspects to this bill. I feel strongly that there needs to be strengthening in the two areas that I have mentioned, the trade deficit reduction, because I do not think that is going to result in what Ambassador Yeutter said. I do not think it is going to mean that they are just going to restrict exports to our country. I think it will be an incentive to open up their markets.

Certainly, we have not been able to accomplish a great deal in that respect previously.

And the other piece of it that we have not said much about is workers' rights. I said a year ago when I appeared before this committee—and I underscore what the gentleman from Sheller-Globe said—I am not worried about fair competition. But I say to you in all due respect, and to everyone else, that it is impossible for the American worker, it is impossible for American industry to compete in situations where the workers' rights are denied and where, quite frankly, in some instances we compete against countries who have, in all due respect, have almost slave labor conditions. We cannot compete against those kinds of unfavorable conditions.

Mr. GALVIN. Senator, Clayton is wrong for two reasons. One, these nations are not inclined to risk this market; and two, they need the guidance from this country in order to come to a more enlightened position.

Senator DANFORTH. Just one more question, Mr. Galvin. You have been watching the international trade scene for some time, and a lot of us have hopes that the reduction of the value of the dollar will lead to a major improvement in the U.S. trade picture. As yet it has not.

Now, economists tell us about the so-called J-curve, and that reduction in the value of the dollar works the wrong way for at least a few months, and then it leads to dramatic results.

I notice that today the exchange rate of the dollar and the yen was 155.

Do you think that we have oversold the effect of reducing the value of the dollar? Or is this going to turn out to be a good thing after all?

Mr. GALVIN. In my opinion and my observation, the revaluation of the currency in the direction it has gone is already beginning to have a favorable effect, not in the gross numbers but in the trends. The orders are beginning to come to American sources, where the market is at least elastic enough to have orders, and we will see an ever improving situation as a consequence of the change of value, for example, of the yen to the dollar.

The Japanese, incidentally, are really beginning to hurt in terms of volume of business. It is not only the yen/dollar revaluation but also the decline in the unit volume of sales that is beginning to impact their ability to export.

So the effect is beginning. The J-curve will take place. It means that the straight part of the curve has finally got to become effective.

But it would be wrong to think—and it would have always been wrong to think—that any single piece of a solution to this problem will solve the whole problem. We have an orchestration issue. The

currencies have to be in proper value and not take an excursion over too wide an extreme of cyclicalities, but so do all the other things such as have been discussed by this panel here today.

So that is a favorable trend. It will be beneficial to the American interest at exporting. But we do need this other fundamental base of policy, regulation, predictability that has been described from this table.

Mr. COGAN. Senator Danforth, let me have a go at it in another way.

I am very concerned that the continuation of the current buying practices in Japan which exclude the American auto parts supplier concomitant with the reduction in the value of the yen, as announced yesterday in Automotive News, will help bring about plans for 300 new facilities by the end of this decade to be placed onstream by Japanese sister companies associated in a family linkage with the OEM manufacturers.

Those 300 new plants, which will be onstream by 1988 through 1990, continuing their anticompetitive practices will mean 2 things. Not only will we at Sheller-Globe lose jobs, we will not have the opportunity to sell to the OEM's because they are going to have more need to outsource. We are going to be in the uncomfortable position when we are not going to be able to even supply sister companies in the United States because of these same anticompetitive practices. We cannot supply in Japan. We will not be able to supply here in the United States. The market for U.S. parts suppliers will have shrunk by more than one-half.

You have got 300,000 to 400,000 jobs today in the U.S. auto parts industry. That number could shrink, if these practices continue, by more than one-half going into 1990, 1991.

It is a very serious and substantial problem, and it is the other side of the yen reduction. It forces the Japanese to come over here and continue practices that are anticompetitive and unfair in this country.

Senator DANFORTH. We have focused on Japan, but I take it that Korea is a growing problem as well.

Mr. COGAN. Agreed.

Senator DANFORTH. I mean, they also protect their industries and target——

Mr. COGAN. In the same manner though. There are different relationships. In Korea, their sister suppliers are not owned. In Japan, in the main, they are owned and controlled.

Senator DANFORTH. How are Korean cars doing in the United States, Mr. Bieber? Do you know?

Mr. BIEBER. Well, first of all, Senator, we have only the one car here at the moment. That is the Hyundai. That car did very well in the Canadian market, as you know, and it has done well in the American market.

It, in my opinion, does not have the quality of the Japanese car at this point. But you have to also bear in mind that we are only a few short months away from General Motors' announced target of importing roughly 100,000 cars under their nameplate, but will be imported from the Daewoo Co. in Korea. It will be totally assembled at Daewoo and sold under a Pontiac nameplate.

General Motors owns half, or 50 percent, of Daewoo. And I can assure you that they will not market a car in the United States under their nameplate which will not be top quality. They have made the investment. They have the latest technology—some of it exported from our country—and the latest equipment to produce a top quality car. So we can look for that intrusion which will have a decided effect again on our market.

And I can say, in addition to what the gentleman from Sheller-Globe said, I have had discussions with many, many other part supplier companies. As a matter of fact, that is the section of the union I came out of. They all tell me that they are terribly concerned about the pressures that are coming from Korea. I don't think you can limit it only to Korea. I would suggest that we will hear a great deal more about places such as Malaysia and so on in the very near future because it is coming from that direction as well.

Senator DANFORTH. To what extent is the problem differential in labor rates?

Mr. BIEBER. Well, Senator, in Korea an auto assembler, which is the top wage rate, is going to run from $1.80 to about $2 an hour.

Senator DANFORTH. What would it be in Japan?

Mr. BIEBER. In Japan, you are talking—it is very difficult to measure apples to apples because of the fringes that come into being.

Senator DANFORTH. Sure.

Mr. BIEBER. If you are talking about take-home wages—and let's make sure that everybody understands then take-home wages in the United States—if you are talking about auto assemblers, you are talking about $13.20, $13.40 an hour.

If you look at Japan, you are talking somewhere in the $10 bracket.

Again, I cannot be that precise because you have housing allowances, you have a lot of other things that come into the overall wage package. The Japanese have obviously some concern as well.

If I might just say, Senator, on behalf of the workers' rights—this morning I listened to the entire testimony—I think a good example of why we really need to look at that aspect is Daewoo in Korea. I am not sure that that was the case that Congressman Pease was alluding to. It may well have been. I know something about it because I was scheduled to make a visit to Korea. I had just gone to China, and upon my return I was going there. When I was leaving for China I found out about a strike that took place at Daewoo. Workers there struck, my memory is, either 9 or 11 days.

At the end of that strike, agreement was reached, and it was voted upon by the people, accepted by management. And after the people returned to work, several of the strike leaders were arrested. These were primarily young trade unionists who led the strike.

A fair number of these people were originally tried, but a large number of that 11 received as much as 2 years in prison for participating in that strike. The strike was aimed at raising the wages and trying to work out some of the problems in working conditions at that plant.

I think this has to be noted, because I emphasize again I am not worried about nor do we shy away from fair competition. I think

that in the auto industry, especially, we take great pride in saying that our union has led the way toward a lot of innovative, new ideas and new practices that are going into effect every day.

We just cannot compete against that kind of a differential. It is impossible.

Senator DANFORTH. Gentlemen, thank you very much for your testimony. That concludes the hearing.

[Whereupon, at 12:15 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT OF

U.S. REPRESENTATIVE BARBARA B. KENNELLY

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

JULY 22, 1986

Mr. Chairman, I appreciate this opportunity to comment on section 301 of the Trade Act of 1974. In particular, I'm delighted that many of the members of this committee have expressed concern about the problem of foreign export targeting. I hope that this committee will address this serious threat to U.S. competitiveness.

Having recently completed consideration of omnibus trade legislation, I would like to share a few thoughts with this committee as you develop ways to address the export targeting problem.

First, I believe it is important to provide a statutory definition of export targeting. The House-passed trade legislation, H.R. 4800, defines export targeting as "any government plan or scheme consisting of a combination of coordinated actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the

enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise."

A statutory definition, framed in this or similar language, would serve two important purposes. It would be a badly needed guideline for U.S. industries who may have been adversely affected by targeting. It would also put foreign governments on notice that we simply will not tolerate these practices.

Second, I would also ask the committee to recognize that, in some cases, export targeting injury (actual or potential) may not be apparent until much of the targeting activity has ceased. Both the machine tool and semiconductor industries, for example, were victims of concerted, aggressive export targeting by foreign countries. Many of these practices have now ceased. Yet the targeting countries continue to reap the unjust benefits of their past targeting practices, while our domestic industries still suffer the adverse competitive impact.

It is my view that remedies for industrial targeting cannot be truly effective unless they take into account that damage to domestic industries may continue long after targeting has ended. The House recognized this with language in the Ways and Means Committee Report on the Omnibus Trade Bill stating that:

"The Committee intends that export targeting be actionable under section 301 if USTR determines that targeting is still in existence and meet (sic) the statutory definition, even though certain individual targeting practices may have ceased by the time the case is under investigation. Depending on the circumstances of the particular case, the assessment of the full benefit of the targeting could include the effect of targeting actions which were bestowed prior to the period of importation but which are still having the effect on the imports of the particular merchandise. Such an assessment would ensure that foreign countries cannot freely reap the current benefits of past unfair practices."

Both the House and the Senate have recognized that the current open-ended nature of the national security clause (section 232 of the Trade Expansion Act of 1962) permits cases filed under the clause to drag on interminably -- a delay which can itself constitute a threat to the national security. Now these bodies should adopt language to ensure our manufacturing industries an adequate remedy in response to targeting by foreign governments. It is clear that both situations pose threats to national security, and it is clear in both cases that we must close the legislative loopholes. We cannot stand by idly while industries essential to our national security are targeted out of existence,

and we cannot afford to ignore how long-lived the effects of past targeting practices may be.

Mr. Chairman, I respectfully suggest that the committee provide a comprehensive statutory definition of export targeting and make clear that the effect of past targeting practices may be taken into account when current targeting is found. I believe that both provisions are necessary if U.S. trade laws are to be truly responsive to the targeting problem.

LABOR RIGHTS AND UNFAIR TRADE PRACTICES

PREPARED STATEMENT OF THE INTERNATIONAL HUMAN RIGHTS LAW GROUP

SENATE FINANCE COMMITTEE JULY 22, 1986

INTRODUCTION

The International Human Rights Law Group is a public interest law center based in Washington, D.C. Throughout its eight year existence, the Law Group has sought to promote awareness and to encourage implementation of the numerous statutes enacted during the last decade that relate human rights concerns to United States foreign policy.1/ These statutes represent the mandate of Congress that the conduct of foreign policy reflect certain fundamental United States values, including respect for the dignity of the individual. Furthermore, these laws recognize and uphold the international community's consensus on the rights to be accorded to every human being.

Adding a labor rights provision to Section 301 of the Trade Act of 1974 would establish that the failure of foreign governments to respect internationally protected labor rights constitutes an unfair trade practice. The proposed legislation, therefore, represents a significant contribution to the developing body of United States and international human rights law. Moreover, it provides effective forums and mechanisms to enforce these rights, thus avoiding policies of non-implementation characteristic of many other human rights statutes.2/

The Law Group previously testified before the House Ways and Means Trade Subcommittee concerning inclusion of labor rights

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1 These statutes include: Foreign Assistance Act of 1961, Section 116, 22 U.S.C. Section 215 (Prohibition against foreign assistance to gross violators of human rights); Foreign Assistance Act of 1961, Section 502B, 22 U.S.C. Section 230 (Prohibition against security assistance to gross violators of human rights); International Financial Institutions Action of 1977, Section 1977, Section 701, 22 U.S.C. Section 262 (United States must oppose loans to gross violators of human rights in international financial institutions); Tariff Act of 1930, Section 307, (Prohibition of the importation of slave-made goods); and Trade Act of 1974, Section 4092, 19 U.S.C. Section 243 (Denies Most-Favored-Nation status to countries that deprive their citizens of the right to emigrate).

2 See generally, Cohen, Conditioning U.S. Security Assistance on Human Rights Practices 76 A.J.I.L. 246 (1982).

standards in the Trade Act of 1974.3/ Also, during the past several years, the Law Group has testified on matters relating U.S. trade policy to international law, including forced labor in the Soviet Union4/ and Most-Favored-Nation (MFN) status for Romania.5/

INTERNATIONAL LAW, LABOR RIGHTS AND UNFAIR TRADE PRACTICES

International law has played and must continue to play an important role in shaping United States public policy. As a party to the Charter of the United Nations, the United States accepts an obligation to promote and encourage respect for human rights.6/ The U.S. has accepted a similar obligation as a party to the Charter of the Organization of American States.7/

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3 Trade Reform Legislation: Hearings before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives, 99th Cong., 2nd Sess., (1986) (Statement of Steven M. Schneebaum, Board of Directors, International Human Rights Law Group).

4 Forced Labor in the Soviet Union: Hearings before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs of the House of Representatives and the Commission on Security and Cooperation in Europe, 98th Cong., 1st Sess., 6-17 (1983) (Statement of Amy Young, Executive Director, The International Human Rights Law Group).

5 MFN Status for Romania: Hearings before the Subcommittee on International Trade of the Committee on Finance of the Senate, 99th Cong., 2nd Sess. (1986) (Statement of Frank Koszorus, Jr., Attorney, International Human Rights Law Group).

Presidential Recommendation to Continue Waivers Applicable to Romania, Hungary, and the People's Republic of China, and to Extend the Trade Act Waiver Authority: Hearings before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives, 98th Cong., 1st Sess., 275-281 (1983) (Statement of Frank Koszorus, Jr., Attorney, International Human Rights Law Group).

Extension of MFN Status to Romania, Hungary, and The People's Republic of China: Hearings before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives, 97th Cong., 2nd Sess., 164-173 (1982) (Statement of Frank Koszorus, Jr., Attorney, International Human Rights Law Group).

6 U.N. Charter, art. 1(3).

7 O.A.S. Charter, art. 3(j).

The Law Group believes that the United States should give consistent recognition to international human rights norms in order to strengthen respect for these norms by other countries, including in particular our trading partners.

Labor rights, as defined by the Omnibus Trade Bill (H.R. 4800) already passed by the House of Representatives, draws upon internationally recognized norms.8/ The recognition of these rights and the volumes of interpretation giving their precise legal content conclusively establish the status of each of these rights in international law. They represent the values of the international community, not just American values.

Further, violation of these internationally recognized labor rights enables U.S. trading partners to obtain unfair advantages. The logical nexus between labor abuse and artificially low prices for foreign goods is clear. Denial of such rights as freedom of association and freedom to organize and bargain collectively creates unequal employment relationships; employers gain superior positions when negotiating wages, thus lowering the total cost of production. The use of forced labor, likewise, cuts the cost of production. Unfair price advantages result directly from these repressive practices.

This is precisely the sort of subtle cheating that Section 301 of the Trade Act of 1974 is intended to redress. In fact, Section 301, as most recently amended, provides access to enforcement mechanisms for domestic industries or persons affected by "unjustifiable trade practices." The definition provided for the term "unjustifiable" includes "any act, policy or practice which is in violation of, or is inconsistent with the international rights of the United States."9/ Adding labor rights criteria to Section 301 would make it absolutely clear that the violation of labor rights is included as an unjustifiable trade practice.

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8 H.R. 4800 defines "internationally recognized labor rights" as:

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children;

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

9 Trade Act of 1974, Section 301, as amended, 19 U.S.C. Section 2411.

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CONCLUSION

By focusing on internationally recognized labor rights, the proposed legislation neither creates unfair protection for United States products nor nullifies legitimate price advantages that foreign countries can provide. Rather, this legislation seeks only to eliminate competitive advantages gained through the failure of foreign governments to respect basic internationally recognized labor rights. These advantages are unfair, and this mechanism encouraging their elimination makes sense both as trade policy and as fundamental foreign policy.

Statement of the Chamber of Commerce of the United States

ON: SECTION 301 OF THE TRADE ACT OF 1974

TO: SENATE COMMITTEE ON FINANCE.

BY: WILLIAM T. ARCHEY

DATE: JULY 22, 1986

The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents approximately 180,000 businesses plus several thousand organizations, such as local/state chambers of commerce and trade/professional associations.

More than 91 percent of the Chamber's members are small business firms with fewer than 100 employees, 57 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 12,000 members. Yet no one group constitutes as much as 29 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 56 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

STATEMENT
on
SECTION 301 OF THE
TRADE ACT OF 1974
for submission to the
SENATE COMMITTEE ON FINANCE
for the U.S. Chamber of Commerce
by
William T. Archey*
July 22, 1986

Summary

Transfer of Section 301 Authority from the President to the United States Trade Representative (USTR). The Chamber opposes transfer of such authority. Effective, prudent application of Section 301 will require sound political judgment and a concern for foreign policy consequences extending well beyond trade interests.

Reduced Executive Branch Discretion Under Section 301. The Chamber supports mandatory retaliation under Section 301 when rights guaranteed under international trade agreements have been denied ("unjustifiable" practices). The Chamber does not support mandatory response to "unreasonable" or "discriminatory" practices.

Export Targeting. The Chamber supports inclusion of export targeting as an actionable practice under Section 301. Domestic industry should demonstrate "material injury or threat thereof" along the lines of antidumping and countervailing duty standards. Injury should be "by reason of" the targeting. Actionable targeting should include a combination of foreign government practices.

Introduction

Congress has before it several proposals to amend Section 301; many are included in H.R. 4800, the House-passed omnibus trade bill, and S. 1860, the pending Senate omnibus bill. These proposals include transfer of Section 301 authority from the President to the USTR, reduced discretion with respect to initiation of investigations and retaliation against foreign unfair trade practices and expansion of criteria for identifying unfair trade practices.

Section 301 provides the authority and procedures for the President to enforce U.S. rights under international trade agreements and respond to certain unfair trade practices. More specifically, Section 301 authorizes the President to impose restrictions against nations, if necessary, to enforce U.S. rights under trade agreements or international law or if such nations are engaged in trade practices that are unjustifiable, unreasonable or discriminatory and that burden or restrict U.S. commerce.

Unlike other trade remedy statutes, which are primarily intended to provide for relief from injurious and unfairly traded imports, Section 301 has been used primarily to provide leverage for the elimination of foreign practices that restrict U.S. exports and overseas investments.

* Vice President, International, U.S. Chamber of Commerce

To its credit, the administration has "self-initiated" a number of Section 301 investigations against a variety of foreign unfair trade practices since last fall, although with varying degrees of success in achieving results. The Chamber welcomes these initiatives and believes that they will help restore confidence in U.S. resolve to eliminate unfair trade practices. Hopefully, these and other actions will result in increased foreign trade liberalization and market access for U.S. companies.

Section 301 is the most powerful legal weapon in the President's trade remedy arsenal. Both the basis for cause of action and the available remedies are broader than under any other trade remedy statute. Section 301 authorizes potential actions with broad trade and foreign policy implications. Some of those actions could exceed limits posed by our obligations under the General Agreement on Tariffs and Trade (GATT) and other international agreements. Effective, prudent application of Section 301, therefore, will require sound political judgment on a case-by-case basis and a concern for foreign policy consequences extending well beyond trade interests.

Transfer of Authority from President to the USTR

S. 1860 would transfer Section 301 authority (including final decision-making authority) from the President to the USTR. H.R. 4800 would transfer authority to initiate Section 301 cases but leave final decision-making authority with the President.

Proponents of these approaches maintain that transfer of this authority would remove the various domestic and international political pressures on the President that have tended to undermine effective use of Section 301 authority. They also suggest that the USTR, armed with such authority, could become more effective in dealing with the GATT.

The Chamber agrees with the need to use Section 301 authority effectively. The Section 301 cases brought against unfair trading practices concerning informatics in Brazil, insurance and intellectual property in Korea, tobacco in Japan and certain foodstuffs in Europe have signaled our trading partners that we are ready, willing and able to take tough action under Section 301 and other provisions of law to safeguard American trading interests.

However, the Chamber does not believe that the proposed transfer of Section 301 authority to the USTR best serves American economic and foreign policy interests. Under current law, the President already has delegated substantial authority to the USTR to initiate and accelerate Section 301 actions, as indicated in the President's Trade Policy Action Plan, which was announced on September 23. Moreover, to suggest that "depoliticization" of the Section 301 process is a desirable goal indicates a serious misunderstanding of the implications of the Section 301 process. Effective application of Section 301 frequently will require political judgment as to what constitutes an "unfair practice" and how best to apply a remedy.

Reduced Executive Branch Discretion

H.R. 4800 would require action against nations maintaining "excessive and unwarranted" trade surpluses with the U.S. unless such nations are experiencing balance of payments problems or such U.S. action would cause

substantial harm to the U.S. economy. In addition, H.R. 4800 would require action in cases involving violation of international trade agreements or other "unjustifiable" practices. Retaliation would not be required if (a) the GATT determines that the foreign practice does not violate U.S. rights, (b) the foreign government has agreed to terminate the practice or provide full compensatory benefits or (c) the President determines that retaliation is not in the U.S. economic interest. H.R. 4800 also would mandate retaliation against foreign "export targeting" practices. S. 1860 would require the USTR to take Section 301 retaliatory action within 15 to 18 months unless (a) the GATT rules against the U.S., (b) a settlement to offset or eliminate the foreign practice is reached or (c) the USTR later concludes that the practice is not actionable under Section 301.

In general, the Chamber objects to proposals to reduce the President's discretion with regard to trade policy. The economic, political and diplomatic environment varies greatly from time to time and from country to country. What may be an appropriate response at one time and place may not be an appropriate one in another context.

However, the Chamber does support mandatory retaliation against foreign unfair trade practices that violate U.S. rights under bilateral or multilateral trade agreements provided that such retaliation does not affect adversely other U.S. interests. The Chamber does not support narrowing or reducing current Presidential discretion under Section 301 in cases in which there is an "unreasonable" or "discriminatory" practice that is not in violation of an international obligation.

Expanded Criteria for Identifying "Unfair" Trade Practices -- Export Targeting

H.R. 4800 would authorize the USTR to determine whether export targeting exists and (a) causes or threatens material injury to the U.S. industry or (b) materially retards the growth of the U.S. industry. Retaliation against "export targeting" is mandatory. In addition, S. 1860 would define as "burden on U.S. Commerce" practices that commonly are associated with targeting, such as the subsidization of exports by a foreign country that results in the displacement of U.S. exports to another foreign country, and certain foreign measures, such as import restrictions, export performance requirements and trade restraining agreements that result in the diversion of another country's exports to the U.S.

Foreign targeting practices that have the effect of subsidizing or promoting the exports of a specific foreign firm or industry to the detriment of a U.S. firm or industry justify a decisive trade policy response under Section 301. In cases where targeting practices violate bilateral or multilateral trade agreements, the response should be mandatory. Otherwise, Presidential discretion should be retained. In order to justify retaliation against "export targeting," the domestic firm or industry should demonstrate "material injury or threat thereof" along the lines of the antidumping and countervailing duty standards. The domestic firm or industry should demonstrate further that material injury is "by reason of" the targeting. Targeting itself should be defined to include a combination of foreign government practices collectively aimed toward a particular firm or sector.

July 22

National Retail Merchants Association

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STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

ON PROPOSALS TO AMEND U.S. TRADE LAWS

SUBMITTED TO THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

COMMITTEE ON FINANCE

UNITED STATES SENATE

August, 1986

I. INTRODUCTION

This statement is submitted to the Subcommittee on International Trade by the National Retail Merchants Association ("NRMA") as part of the Subcommittee's hearings on various proposals to amend U.S. trade laws. A separate statement has been submitted in opposition to S. 1655, S. 2408, and Section 138 of H.R. 4800.

NRMA is a national, non-profit trade association composed of over 4,000 members who operate 45,000 leading department, chain, independent, and specialty stores in all 50 states. Our members employ over 3 million people and have annual aggregate sales in excess of $150 billion.

Fundamentally, NRMA is greatly concerned that many of the proposed changes in our trade laws simply will not produce the results desired by the advocates of the proposals but will greatly restrict the functioning of the American economic marketplace. There is widespread agreement that our trade deficit is caused in very large part by a combination of macroeconomic forces, including the U.S. budget deficit, the high value of the dollar vis a vis other currencies, and the relatively slower economic growth rates for a number of our trading partners. Corrections in those areas will do far more to lower our trade deficit than any conceivable set of changes in our trade laws.

This is not to say that the U.S. can or should ignore unfair actions by our trading partners in the denial of access to their markets or in sales in the U.S. market. Rather, we believe that the current set of laws and the clear Congressional desire for their enforcement are essentially sufficient for the task of pursuing legitimate U.S. concerns. What is needed to combat unfair acts is determined, consistent and vigorous use of the existing laws to enforce and pursue U.S. rights and policies. We believe the Administration has demonstrated its understanding of this need and its ability to move decisively to carry out this approach. It is, however, neither necessary nor desirable to legislate rigid requirements that can only make multilateral and bilateral negotiations more difficult and result in disruptive interference in American markets.

II. SPECIFIC PROVISIONS

A. Section 201

1. Restrictions on executive discretion

Several proposals, including Section 305 of S. 1860 and Section 505 of S. 2033, would restrict the President's current discretion in deciding whether granting import relief to a particular domestic industry is consistent with America's national interest as a whole.

NRMA believes these changes are unnecessary and would lead to actions which are not in the national interest. First, Section 201 is and has been an effective remedy for domestic industries seeking to adjust to fair import competition. Since 1974, import relief has been granted as part of the Section 201 process in 13 of the 32 cases in which the ITC found injury due to increased imports, and other types of relief were provided in a number of other cases. Second, Section 201 -- as a statute dealing with fairly traded imports -- correctly limits the circumstances under which import relief is granted and establishes time limits on any restrictions that are imposed.

Third, the decision of whether to grant relief to a particular industry must be viewed in the context of our basic market-oriented economic system, with its emphasis on keeping the flow of commerce as free and open as possible. Thus, the President's discretionary authority to balance national economic interests against (if necessary) more particularized, narrow interests should remain intact.

2. Reduction of the causation standard

While no pending Senate bill addresses reduction of the causation standard of Section 201, this issue was part of a recent House proposal and may arise during the course of the Committee's discussions. The proposal would amend Section 201 to provide that imports need not be "a substantial cause," but only "a cause" of injury to make import relief available.

The Article XIX "Escape Clause" of GATT permits import relief only if the injurious import competition is due to increased imports which result from concessions granted as part of the GATT negotiating process. Thus, a petitioning industry must, under this provision, show that a negotiated

reduction in tariffs or nontariff barriers caused the increase in imports. Any other cause for increased imports is not sufficient to justify imposition of import restrictions. This was the standard in U.S. law from 1962 until 1974, when this linkage was removed. The result is that current U.S. law is far easier to meet than the GATT Article XIX requires, and further reduction in the U.S. standards will only put the U.S. further out of compliance with our GATT obligations.

Further, the current causation standards have not been too difficult to meet. A number of industries in fact have obtained affirmative determinations from the ITC. Finally, because Section 201 provides relief against fairly-traded imports, there should be a relatively high threshold for granting escape clause relief.

3. Expand purposes of Section 201

Proposals in Section 301 of S. 1860 and Section 501 of S. 2033 would expand Section 201's scope to include "enhancing competitiveness" as a permissible purpose for seeking import relief are truly baffling. One of the primary reasons for the soundness of the U.S. economy is that its openness forces companies to adjust to remain competitive with domestic and foreign competitors. Closing our markets to competitive imports actually removes an important incentive for a domestic industry to improve its competitiveness. To close our markets in the absence of a showing of real, serious injury or threat of injury is, thus, counterproductive to our economic goals.

4. Additional factors for determining threat of injury

Currently, the ITC is directed to consider all economic factors which it considers relevant in determining whether a domestic industry is being seriously injured or threatened with injury by fairly-traded imports. Section 301 of S. 1860, Section 501 of S. 2033, and Section 121 of H.R. 4800 would require the ITC to include certain specific factors in determining whether there is a threat of serious injury, such as the existence of preliminary or final affirmative antidumping or countervailing duty determinations, the existence of export diversion to the U.S. of the merchandise that is the subject of the investigation, the existence of "any combination" of government actions the effect of which is to make the foreign industry more

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competitive, and the extent to which firms in the domestic industry are unable to maintain current research and development levels.

These changes are unwise and unnecessary. First, to the extent that final affirmative antidumping and countervailing duty determinations exist, the imposition of additional duties will negate the unfair pricing or subsidization which is causing injury. Second, export diversion can already be considered by the ITC, to the extent that any party in the case has evidence that diversion is a concern. Third, and more fundamentally, requiring the ITC to include these criteria contributes to the blurring of two distinct trade remedy regimens - one for fairly-traded imports, and another for unfair imports. The objectives of these two regimens are very different and should remain distinct.

5. Auctioning of quotas

The auctioning of quotas is of significant concern, especially since it was discussed extensively in the context of the Ways and Means Committee's deliberations and may be considered again later this year.

Although the objective of most proponents of quota auctioning is laudable and the premise that the costs of protection should be captured for useful purposes is basically sound, we are nevertheless concerned that the quota auction approach is fraught with difficulties. The administration of an auction system would inevitably require the creation of a new bureaucracy within our government and of a whole set of rules and exceptions. The vision that is brought to mind is of the entitlements program and the oil bureaucracy of the 1970's, which was widely viewed as a nightmare for all concerned.

If auctions were imposed in the textile and apparel context, the nightmare would surely be repeated. There are 72 categories of apparel products, 44 categories of textile products, separate quotas for imports from over 30 different countries, and over 3 million separate Customs entries of these products each year. An auction system would be hopelessly complex and could not take account of all of the fairness considerations that would be raised. Bad as the current textile and apparel trade system is, auctions would make it worse.

Many NRMA members are small stores, which either import directly on a limited basis or purchase from small importing firms, and we are particularly concerned about their treatment in an auction context. Insuring their access to a new U.S. auction system would be far from easy, but excluding them would surely be inequitable.

Finally, worse even than the vision of a new U.S. bureaucracy is the likelihood that a U.S. auction system would not replace foreign countries' quota distribution system. The transaction costs of a quota system would then not be transferred, but rather simply double.

Because we do agree with the objectives sought by those advocating auctions, we urge the Congress to encourage, or even require, the use of tariffs rather than quotas or other quantitative restraints, where import restrictions are to be imposed. Money raised by tariffs would be easily collected and used for adjustment purposes. NRMA is also on record in support of a small (1% or less) fee on all imports as a mechanism for funding adjustment programs.

B. Section 301

Section 301 of the Trade Act of 1974 gives the President broad discretion to negotiate with our trading partners to obtain their removal of unfair acts or practices which adversely affect U.S. commerce and to retaliate against foreign countries and their exporters if such negotiations are unsuccessful. From both an overall trade policy standpoint and from NRMA's own particular situation, it is vital that everyone understand that the purpose of Section 301 is not retaliation in and of itself, but the strong encouragement of our trading partners' efforts to remove barriers and to open their markets to trade. It is not an "import relief" statute and should not be misused to force imposition of import barriers that are not justifiable under the statutes and policies intended to deal with imports.

When resorting to retaliation is deemed necessary, the Administration's methodology in these cases has been to select a range of articles exported by the foreign country or countries in question and impose tariffs or quotas on those products sufficient to offset the total economic injury incurred by the United States as a result of the unfair trade practice in question. Because retailers and American consumers are effectively innocent bystanders in these cases, and because a wide range of products on retailers' shelves

can be affected, we urge both Congress and the Administration to exercise great care in taking or requiring retaliatory actions. In that vein, we offer the following comments on specific legislative proposals.

1. Mandatory action against countries with large trade surpluses

Section 119 of H.R. 4800 (distilled from a more far reaching House bill, H.R. 3035) would mandate negotiations with and actions against countries with large non-oil trade surpluses with the United States, global trade surpluses, or patterns of unreasonable trade restrictions against United States exporters that contributed to the country's surplus.

While NRMA agrees that the U.S. trade deficit is a serious problem, it disagrees with the approach taken by H.R. 4800 to cure it. In essence, this is a very simplistic approach to the very complicated problem of resolving trade deficits. Trade deficits are caused by a number of factors, only one of which is unfair market access. The key to resolving trade deficits is not unilateral punitive action but constructive negotiations and increased U.S. competitiveness abroad.

Furthermore, this provision, which would operate like a surcharge on the products of some of our most valued trading partners, would have serious deleterious effects. First, it would be illegal under the GATT. Second, it could cut into our credibility as a nation which seeks fair and rational trade laws. More important, many U.S. exporters, particularly those in agriculture, would be vulnerable to retaliation from our unhappy trading partners.

2. Mandatory retaliation

Because the primary purpose of Section 301 is to encourage other countries to dismantle trade barriers, not to close our markets to goods and services, especially those unrelated to the goods or services involved in the dispute, proposals to transform the function of Section 301 by making retaliation mandatory unless the dispute is resolved to the satisfaction of the petitioning industry are highly suspect. Mandatory retaliation would threaten to turn Section 301 into an import relief law, far from its real, useful purpose. Further, it is often very important to consider the broader context of U.S. trade and foreign relations, as the President may currently do. More importanc, shifting the function of

Section 301 from a dispute resolution mechanism to a unilateral punitive mechanism undermines the likelihood of achieving settlements that serve the national interest. Similarly, granting domestic industries the authority effectively to veto a negotiated settlement undermines the concept of compensation, a concept which serves the broad national economic interest and conforms to our GATT obligations.

NRMA, therefore, opposes the following proposals: Section 205 of S. 1860, Section 106 of S. 2033, Section 304 of S. 2127, and Section 112 of H.R. 4800.

3. Restrict or transfer executive functions

There are several proposals, such as Section 203 of S. 1860 and Section 103 of S. 2033, which either restrict the President's authority or transfer it to another part of the Executive Branch, such as USTR or the Commerce Department. While one proposal, Section 304 of S. 2127, makes USTR decisions subject to Presidential review, any proposal to shift executive functions away from the President are troubling. This approach fails to recognize that the effects of retaliatory actions taken under Section 301 are felt in broad areas of our economy and that the interests of all of those affected must be weighed along with the interests of a petitioning industry. Again, the President is properly positioned to take all of those interests into account, whereas individual agencies necessarily have more parochial interests. Moreover, maintaining the Section 301 mechanism in the President's office gives that mechanism the full weight necessary to convince a foreign sovereign that the trade dispute requires serious attention. Transferring the authority could, thus, actually make Section 301 less effective as a tool for opening foreign markets through negotiation.

4. Time limits

The fundamental flaw in proposals to impose time limits in Seciton 301 proceedings (including Section 205 of S.1860 and Section 106 of S.2033) is that they destroy a key characteristic of Section 301 - its flexibility as a negotiating tool. The Administration has already recently demonstrated that it will not tolerate foot-dragging or delaying tactics in Section 301-related negotiations; thus, mandatory time limits are unnecessary. Good-faith negotiations may legitimately require some flexibility in

their timing, and mandatory time limits would disrupt this necessary flexibility. The problems caused by this inflexibility are only exacerbated by proposals to impose mandatory retaliation and shift executive authority.

5. Identification of actionable practices

Currently, Section 301 permits the President to take action against virtually any unfair or unreasonable trade practices. Nevertheless, several proposals, such as Section 204 of S. 1860 and Section 104 of S. 2033, would specify certain practices as actionable, including export performance requirements and export diversion. These provisions are likely to generate a drive to include many practices, with the effect of cluttering an already very expansive general law. In addition, these proposals are part of a series of proposals to make Section 301 an "auto-retaliatory" mechanism, rather than an effective tool for negotiations. In any event, these proposals are unnecessary, since Section 301 is an extremely broad statute.

C. Exclusion Of Textile And Apparel Issues From GATT Negotiations

Because over sixty percent of our members' sales are attributable to textile and apparel products, NRMA is vitally interested in trade policies and legislative proposals which affect the future of textile and apparel trade. We are, understandably, greatly concerned about any proposals such as Section 153 of H.R. 4800 or other arrangements that would limit the President's authority to negotiate in certain product areas, including textile and apparel products.

First, negotiating authority, in principle, should be as broad as possible so that this Administration (as well as future Administrations which will take over these negotiations) will not be hindered in advancing America's economic interests.

Second, the issue of what we and our trading partners should do about mature industries demands serious attention. This issue will certainly be discussed in the new GATT round. Any agreements concerning mature industries should include and be related to the textile and apparel industry. This may be the best hope for finally escaping from the highly protectionist regime of quotas and related restraints sanctioned by the Multifiber Arrangement.

Congress in should encourage consideration of textile and apparel issues as part of a new round, with the hope that trade in those products can be brought back within the generally acceptable rules for trade.

D. Accelerated Graduation Of Hong Kong, Korea, And Taiwan From The Generalized System Of Preference

Section 602 of S. 1860 proposes to amend the Generalized System of Preferences (GSP) by mandating that the President submit to the Congress the draft of a bill withdrawing GSP benefits from certain countries. The withdrawal of GSP benefits must be based on per capita income, overall economic development, and the country's ability to compete in the absence of GSP benefits. The draft bill must apply to Hong Kong, Korea, and Taiwan.

These proposals ignore the fact that the overall economies of even these relatively more advanced countries are not all that fully developed. To the extent that certain industries in those countries are fully competitive and are not in need of further assistance under the GSP, a more appropriate course would be to continue to exercise current authority to graduate those particular industries from the GSP.

Second, graduating GSP beneficiaries will increase the price in the U.S. of any goods which are manufactured in GSP beneficiaries and not produced in the U.S. with no corresponding benefits. Moreover, graduating countries from GSP beneficiary status in effect penalizes them for successfully industrializing segments of their economy.

E. Customs "Scofflaw"

NRMA strongly opposes enactment of the so-called "Customs scofflaw" provisions of H.R. 4800 (Section 175). This provision would prohibit any business firm (or individual) from importing any products at all for a seven-year period following the third instance in which penalties had been assessed against it for gross negligence, fraud or other criminal wrongdoing involving Customs laws and regulations. While NRMA joins the sponsors of this proposal in condemning fraud and other criminal wrongdoing, we find the penalty to be imposed to be extraordinarily out of proportion with the offenses involved. This is especially true with respect to "gross negligence" findings, since the

Customs Service begins the many, if not most, of its investigations with an allegation of gross negligence.

The real inequity in this proposal is that an entire business could be severely punished, perhaps ruined entirely, for the "bad acts" of a single employee. Three instances of wrongdoing could occur in a single day or in connection with a single order, if an employee violated company policy and Customs laws. While NRMA's members strive to avoid situations where employees make such choices, the punishment here is simply beyond comprehension to anyone who has run even a small business.

III. CONCLUSION

NRMA believes that very significant progress has been made, especially over the last year, to establish and pursue trade policies which will benefit the U.S. economy. The progress on reducing the value of the dollar should begin to show a real effect on the trade deficit later this year. The Administration is making strong headway in its bilateral negotiations to open foreign markets and otherwise halt unfair foreign practices. And we are on the threshold of a major new round of multilateral trade negotiations, offering genuine hope for progress on a range of difficult issues.

Much of this progress is due to the work done by Congress to propose actions and push the Administration into its own actions. As noted at the outset, we believe that the Administration has now demonstrated its willingness and ability to take strong and effective action on trade. NRMA urges Congress not to derail this momentum by making unnecessary and unwise changes in our trade laws. The Finance Committee has demonstrated its ability to make difficult choices on trade in the past, and we look forward to your successful effort again this year.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C.

STATEMENT FOR THE RECORD

BY

ALLAN I. MENDELOWITZ
SENIOR ASSOCIATE DIRECTOR, NATIONAL SECURITY
AND INTERNATIONAL AFFAIRS DIVISION

FOR THE

SENATE COMMITTEE ON FINANCE
JULY 22, 1986, HEARINGS

ON

SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED

We are pleased to submit a summary of our on-going work on the use of section 301 of the Trade Act of 1974, as amended, in combating unfair foreign trade practices. This provision gives the President broad powers to enforce U.S. rights granted by trade agreements and to attempt to eliminate policies of a foreign government that are unjustifiable, discriminatory, or unreasonable and that restrict U.S. trade. It is the only section of U.S. trade law that authorizes the U.S. government to act against unfair trade practices which restrict U.S. access to foreign markets. As such, it has been called a "key weapon" in the administration's "trade arsenal".

Concerns have grown that perhaps this trade "weapon" is not strong enough and that the process is too lengthy, too uncertain, and too seldom used. To address these concerns, GAO reviewed section 301 cases to determine how and why this provision has been used and whether the cases were successful. To do this, we analyzed all section 301 cases which were pending or initiated between January 1, 1980, and December 31, 1985. A total of 35 petitioner-initiated cases was analyzed--23 of which may be characterized as "GATT" cases because they were brought before the General Agreement on Tariffs and Trade (GATT) for dispute settlement and 12 as "non-GATT" since they involve countries that are not members of the GATT or issues not covered by the GATT. We also analyzed the four cases self-initiated by the administration. These cases, initiated last fall, emphasized the administration's intention to use section 301 more actively.

We obtained views on the 301 process from representatives of all petitioners in the cases analyzed. We also examined all pertinent agency files and held discussions with Office of the U.S. Trade Representative (OUSTR) staff administering section 301 and with staff from other agencies participating in the inter-agency 301 Committee process.

SECTION 301'S USEFULNESS

Experience with section 301 shows that it has been used relatively infrequently and is of limited usefulness in helping petitioners to combat unfair foreign practices. The process is often lengthy and, at best, minimally effective in eliminating the specific unfair trading practices and the concomitant injury experienced by petitioners.

Section 301 infrequently used

Although section 301 gives the President sweeping powers to use at his discretion, the provision has been used infrequently compared with other sections of U.S. trade law dealing with unfair foreign trade practices. During 1984, for example, 3 petitions for action under section 301 were filed with OUSTR

compared with 126 petitions filed with the Department of Commerce and the International Trade Commission under the antidumping and countervailing duty laws. Some of the reasons why section 301 has not been used more frequently include the perceptions among the business and legal communities that (1) the 301 process has been very lengthy and has had a poor record of success in remedying trade complaints, (2) the administration has been reluctant to actively pursue trade complaints or to exercise its discretionary retaliation authority, and (3) the petitioning firm or industry may incur the foreign government's hostility by filing 301 actions.

Process is lengthy

The 301 process necessitates detailed negotiations with another sovereign nation which cannot be forced to mitigate, or even acknowledge, a trade practice deemed unfair by the United States. Hence, in even the most clear-cut cases, the 301 process is never simple and often lengthy--primarily due to the complexity of balancing competing international and domestic, legal, and political issues in each case. Indeed, few cases have been settled quickly; most have taken roughly 3 years to conclude, while some have lingered for nearly a decade.

The actual length of the 301 cases we analyzed varied dramatically, with GATT cases averaging much longer than non-GATT cases. Overall, cases averaged 34 months in duration, with GATT cases averaging 45 months and non-GATT cases 13 months. These averages will ultimately be longer because they include cases which were pending as of June 1, 1986, which was our cutoff date. One key determinant of the length of a specific case is whether it must be directed to the GATT for dispute settlement.

Relationship between the Section 301 and the GATT dispute settlement processes

Section 301 creates a unique relationship between U.S. law and the GATT dispute settlement process, allowing private parties to access this international mechanism for settling disputes by enlisting the aid of the U.S. government to address an unfair trading practice used by a foreign government. Once a 301 investigation is initiated, if initial bilateral consultations fail to resolve the trade dispute, OUSTR must invoke the dispute settlement provisions of the applicable international trade agreement, if any.

The dispute settlement process has no binding deadlines. However, there are certain guidelines for that part of the process up to the final consideration of a panel's report by the GATT Council or Code Committee. The maximum guideline time for dispute settlement is 13 months, if we add together the longest specified time for each possible step of the process. This does

not include the time taken for final consideration by the Council or Committee which is unspecified and can be very lengthy.

U.S. practice has been to allow the GATT dispute settlement process to formally conclude before any Presidential action is taken. The one exception to this U.S. practice occurred in November 1985 when the President, having unilaterally decided that the dispute settlement process in the citrus case (OUSTR docket #301-11) had run its full course, chose to act rather than wait for a GATT settlement.

Delays in dispute settlement

Numerous factors have prolonged the dispute settlement process. One of the most frequently cited complaints is that virtually anything can serve as a reason to delay resolution of a case without penalty to the party causing the delay. The 301 cases we analyzed were delayed for the following reasons,

--Delays in consultations/conciliation: The United States cannot force another sovereign nation to agree to specific timeframes for consultations. Delays and postponements of cases have ensued for various reasons--national holiday schedules, time conflicts between negotiators, and sheer reluctance to proceed. For instance, the citrus case was initiated in November 1976, and consultations have gone on for nearly a decade but, to date, no agreement has been reached.

The National Broiler Council case (OUSTR Docket #301-23) is another example of lengthy delays in the consultation phase. The original U.S. petition, alleging GATT-illegal export subsidies, was filed in September 1981 against the European Community. However, it soon became evident that resolution of the complaint would be impossible without including Brazil in the deliberations, since the European Community claimed its subsidies were necessary to compete with Brazilian subsidies. Two sets of bilateral negotiations ensued, yielding no progress. The necessity for trilateral meetings was finally acknowledged, and these began in May of 1984, nearly 3 years after the 301 petition was initiated.

--Delays in panel formation: GATT dispute settlement requires the establishment of a panel if consultations fail to produce an agreement. The panel, which serves as an advisory body to the GATT Council or appropriate Code Committee, reviews the complaint and makes recommendations to the Council/Committee, which then decides what action to take, if any. Since these decisions are based on consensus, not majority rule, delays, or even outright blockages, of a formal decision often occur--contributing to a settlement

process that generally takes years to conclude and is considered inefficient by virtually all parties.

In some instances, the technical complexity of a case leads to prolonged negotiations regarding the establishment of specific facts. This problem developed in the wheat flour case (OUSTR docket #301-6). Technical discussions about the European Community's subsidy mechanisms took nearly nine months prior to the panel's establishment. The panel, which met from January 1982 through March 1983, had difficulties determining such issues as the meaning of "more than an equitable share" of world market--in fact, no final determination was ever achieved on this issue and the case has never been formally settled.

--Delays in panel report adoption: Even after a panel is established to the satisfaction of participants and is able to agree on recommendations to be presented in the formal panel report, delays can still result in the full Council or Code Committee review of that report. In the National Pasta Association case (OUSTR Docket #301-25), the panel report was finally concluded in May 1983, after almost a full year of deliberations. The Subsidies Code Committee considered the report throughout the remainder of 1983 but, to date, has deferred a decision on adopting the report, which was opposed by the European Community.

Outcome of 301 cases

Section 301 provides a means for private industry to gain the support of the U.S. government in eliminating unfair foreign trade practices; but, during the 12 years since its enactment, it has been only minimally effective in accomplishing this objective.

The threat of filing a 301 petition and the threat of retaliation have been useful in several cases, but the overall results of the 35 petitioner-initiated cases we reviewed are disappointing. Many cases, especially those requiring use of the GATT dispute settlement process, experienced delays. The unfair trading practices and related trade injury continued during these delays.

Differing criteria of success

The U.S. government generally views success as the removal of the unfair trading practice. Using this measure of success, OUSTR has had only limited success in eliminating the unfair trade practices cited in the 35 cases we analyzed. In our interviews, three petitioners said that the section 301 process remedied the unfair foreign trade practice completely. Twenty

petitioners reported that the section 301 process had no net effect on the practice or that the foreign country had replaced the practice with another restrictive practice. Twelve petitioners stated that it remedied the practice partially.

Petitioners are also concerned about the elimination of the injury which resulted from the unfair trading practice. For example, of the 12 petitioners who reported that the unfair practice had been partially remedied, half also indicated that the injury remained unchanged or became more severe. Using this measure of success, i.e., removal of trade injury, section 301 has not produced substantial results. Eleven out of the thirty-five petitioners reported that the trade injury cited in their complaints was remedied either completely or partially by the disposition of the cases, but the majority (23 petitioners) felt that there was no net effect on the injury cited.

Factors influencing success

In general, petitioners believe that the success of the 301 process is limited severely when the GATT dispute settlement process is used. Petitioners were dissatisfied with the time required for pursuing a case through GATT dispute settlement, the significant burden in developing evidence imposed by the requirements of dispute settlement, and the general lack of results. These factors, in fact, have led some attorneys to advise their clients to avoid section 301 cases altogether or to avoid the GATT dispute settlement process if at all possible.

Some petitioners also contended that an expression of "political will" is important to the resolution of section 301 cases. They noted that prior to the fall of 1985, the administration emphasized foreign policy considerations over trade-related concerns. However, the administration indicated a stronger commitment to combating unfair foreign trade practices by self-initiating four section 301 cases in the fall of 1985. In addition, the President directed OUSTR to accelerate its efforts in resolving the canned fruit, leather, and leather footwear section 301 cases. These cases were favorably resolved in late 1985.

Follow-up on resolved cases

Section 301 does not require OUSTR to review resolved cases. Accordingly, OUSTR does not systematically follow up on resolved cases to evaluate the impact of the resolutions on the original trade problem or to monitor compliance.

Trading partners have not always fully complied with agreements resulting from 301 negotiations. Although the Korean government agreed in a formal exchange of letters with OUSTR to alter its insurance practices, it did not comply fully with the

agreement. OUSTR took no action on Korean noncompliance for several years, but self-initiated a renewal of the complaint in September 1985, just as the U.S. industry was preparing its own 301 filing. Japan also breached a bilateral agreement which liberalized restrictions on U.S. leather imported into Japan. It was not until pressure mounted in Congress that the United States acted by taking retaliatory measures.

U.S. experience with retaliation

Retaliation has been used in section 301 cases only four times since 1974, and the actions taken only slightly benefited the petitioners in the original complaint. In no case of retaliation has the unfair foreign trade practice been eliminated. However, retaliation may provide some leverage in future efforts to remove unfair foreign trade practices. For example, citrus industry representatives told us that the industry is making slow, steady progress with Japan on its citrus quotas that restrict imports.

Retaliation risks escalating trade disputes with U.S. trading partners. For example, the European Community responded to U.S. retaliation in the citrus case by counter-retaliating against lemons and walnuts. The United States is considering further action.

The threat of a section 301 filing and the threat of possible retaliation have produced some results. Taiwan opened its beer, wine, and tobacco markets to the United States in response to a threatened self-initiated petition by OUSTR. It also changed its rice export subsidy practices which hurt U.S. rice producers in third countries as a result of the possibility that the United States might withdraw special lower tariffs available to Taiwanese goods under the Generalized System of Preferences. In addition, the European Community and Japan were responsive to threats of impending retaliation, enabling the United States to reach satisfactory results in the canned fruit case and in the leather and leather footwear cases.

PETITIONERS' VIEWS AND EXPERIENCES

A majority of the petitioners expressed dissatisfaction with the 301 process, citing specifically the length of time involved in most cases. Several stated that they would never attempt to use this provision again, especially if it entailed going through the GATT dispute settlement process. Petitioners involved in GATT cases generally voiced more dissatisfaction with the process than did petitioners in non-GATT cases. Dissatisfaction with the process could be expected, since both the alleged unfair foreign practice and the estimated injury are rarely eliminated in a 301 case. The petitioners also generally advocated stricter domestic and international timeframes for the settlement of cases. Many

were convinced that more could have been done to support their cases and that the United States must have "the political will" to push for U.S. industry's trade rights. Petitioners stated that often the only way to move a case through the stalled process is to achieve adequate political pressure--cases do not necessarily get the support needed for resolution based on merit alone.

GAO OBSERVATIONS

1) Is section 301's scope adequate?

We believe that the scope of section 301 is sufficiently broad to cover a multitude of unfair practices and does not need to be revised. To date, section 301 has been used to seek a remedy for the effects of production and export subsidies, import preferences, quota restrictions, customs duties rebates, Standards Code issues, restrictions on trade in such services as insurance, advertising, air couriers and satellite launching, and such other trade issues as intellectual property, industrial targeting, and investment. With regard specifically to foreign industrial targeting practices, we concluded in our May 23, 1985, report, (Foreign Industrial Targeting--U.S. Trade Law Remedies (GAO-NSIAD-85-77), that section 301 has the capability to address instances when foreign industrial targeting is judged to unfairly affect trade even though the effects of such targeting cannot be adequately measured in all cases.

Current efforts to insert into the law language specifying coverage of particular trade practices seem unnecessary. In addition, such specific language may result in the elevation (if only symbolic) of those practices relative to other unfair trading practices covered by section 301. Only one of the 35 petitioners in our study had concerns about the scope of the law.

2) Can the 301 process be improved?

One of the primary complaints about the 301 process was the lack of expeditious resolution of cases. The cases we analyzed were often subject to lengthy delays, specifically those cases which involved GATT dispute settlement. Whether or not a specific case must be directed to GATT dispute settlement to a large extent determines how long the 301 process will take. Therefore, the 301 process could be made more efficient by strengthening the GATT dispute settlement process.

The dispute settlement process is considered inefficient by virtually all parties--administration and GATT officials, as well as 301 petitioners, agree that improvements are both warranted and necessary. The GATT settlement process can be delayed, and indeed blocked, by any disputing party for virtually any reason.

Participants in the 301 process generally believe that a reasonable limit on the maximum length of the dispute settlement process could make the process more efficient while allowing 301 petitioners a more certain timeframe for the determination of cases. The administration considers improvement in the dispute settlement process as a primary objective of the forthcoming round of multilateral trade negotiations. We agree that only in this forum can the dispute settlement process be improved and its potential value realized.

However, because the anticipated negotiations will be protracted, we believe a uniform mechanism should be established now to limit the length of U.S. participation in dispute settlement for section 301 cases. In order not to undermine the GATT process, any such limits should not be shorter than the GATT guidelines. A reasonable time limit appears to be about 20-24 months. We propose OUSTR be required by statute to set a date for each applicable section 301 case at which time the United States would be expected to withdraw from the GATT dispute settlement process if it is not completed. The statute should give OUSTR some flexibility in setting the required limit on participation based on the complexity and sensitivity of each case. A limit on U.S. participation would alter the climate of pervasive, unlimited delays which often impede the resolution of legitimate U.S. trade complaints.

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United States Council for International Business

Serving American Business as U.S Affiliate of:

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

June 18, 1986

The Honorable Bob Packwood
Chairman, Committee on Finance
SR-219 Senate Dirksen Office Bldg.
Washington, D.C. 20510

Dear Senator:

The United States Council for International Business is deeply concerned that the trade bill adopted by the House of Representatives on May 22 contains too many provisions that would be too restrictive or too damaging to American interests to be enacted into law. The Council urges that the Senate take a fundamentally different approach in considering trade legislation.

The United States Council is a membership organization representing American business views in the major international economic institutions. We have long been active in promoting the interest of American business in fair and open international trade, finance, and investment both within the U.S. Government and with the business communities and governments of other countries through institutions such as the International Chamber of Commerce, the Business and Industry Advisory Committee to the OECD, and the International Organisation of Employers.

With the U.S. Government, we have been a firm advocate for an effective trade policy with emphasis on:

-- Enforcing more vigorously existing U.S. trade laws, as announced by the President last September and as implemented since by the USTR and Commerce Department;

-- Speeding up procedures in existing laws compatible with our international obligations that, without limiting the President's prerogative, offer the business community prompt, vigorous, and effective decisions;

-- Negotiating the strengthening of rules and procedures to assure effective disciplines over practices that inhibit or distort open, fair trade as a matter of priority, with concurrent work on measures to liberalize trade in goods and to extend GATT rules and greater openness to international trade in services, international investment, and enhanced rules and procedures for the protection of intellectual property rights.

As the Senate begins its work on new trade legislation, we wish to underline our particular concern about proposals that would damage U.S. trade and compromise, or even destroy, the integrity of the open multilateral trading system. We therefore urge that the Senate reject proposals that would unilaterally change internationally-agreed trade rules in advance of a new negotiating round, or especially those proposals that seek to deal with our trade problems by mandating action to correct bilateral imbalances or base trade relations on strict sectoral reciprocity. Such measures can only lead to a breakdown in the multilateral system, which has served our country so well in the last half century.

Other proposals of special concern are those that:

-- Would prejudice the ability of the President to assert the national over sectoral interests;

-- Would make access to import relief virtually automatic and thus make protection the preferred response to fair competition;

-- Could severely limit the flexibility U.S. negotiators need to bargain effectively for the elimination of unfair or excessive foreign barriers.

The United States does, however, need legislation that will enhance American prosperity and competitiveness by expanding international trade, not by contracting it. A summary of the Council's views on the various provisions in the principal Senate vehicle (S.1860) and other proposals is attached.

In brief, we favor a bill that:

-- Provides broad trade negotiating authority, including directives to the Administration to seek changes in international rules to strengthen GATT discipline over a variety of trade-distorting practices as well as to extend GATT rules to new areas;

-- Requires the Administration to continue with efforts to improve the functioning of the international monetary system;

-- Amends U.S. trade and other laws to achieve enhanced protection of intellectual property rights (including U.S. adherence to the Berne Convention);

-- Adds certain authorities to the President's choice of policies to deal with unfair trade practices and fair import competition, as well as changes in the antidumping law regarding dumping by nonmarket economies.

We urge that Senators of both parties work together with the Administration to fashion a bill that gives American negotiators and American business the tools each needs to create a trading system as open and fair as possible in which American enterprise can be fully and freely competitive.

Sincerely,

Abraham Katz
President

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United States Council Recommendations on S.1860*

Title II (Trade Barriers and Distortions of Trade)

Section 301 should remain a broad, discretionary statute to permit the President adequate flexibility to pursue international negotiations to remove foreign barriers or trade-distorting practices so as to expand U.S. export opportunities. Congress should encourage such negotiations, but should refrain from requiring by law (a) that investigations must be initiated for a particular kind or class of practice, or (b) that action must be taken against another country, whether because an arbitrary time limit has expired without positive result or because some other requirement defined in the law has not been met. (The new section 311 in the House bill is an example of both.) We also oppose transferring decision-making authority from the President, who must retain the responsibility for taking such decisions in the light of his view of the national interest. That responsibility should remain a discretionary decision of the President elected by the people, not a ministerial function delegated by Congress to an appointee.

The Council is also opposed to a requirement that the President must retaliate against actions found to be unjustifiable, though we would favor a sense-of-Congress statement that retaliation is an appropriate component of action to be taken if a GATT panel has found a country in violation of its GATT obligations and such country has failed to take effective remedial action. The Council also favors adding to the remedy options available to the President the withdrawal of beneficiary country or "eligible article" status under GSP. Finally the Council opposes provisions that would require the concurrence of the petitioner or affected industry in any settlement of a case by negotiated agreement. An agreement reached reflecting the national interest should not be subject to veto by one class of persons.

Title III (Relief from Injury Caused by Import Competition)

The Council believes that current law conforms with U.S. international obligations concerning action taken to provide temporary relief from fair

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* The Council has not adopted positions on Titles I,VI,IX, or X.

import competition. The law also has worked well to provide the necessary balance among the interests of those seeking relief and others in the U.S. economy (both producers and consumers) who would have to bear the costs of the relief granted. We believe that it is important to retain this balance. Thus the Council opposes amendments that would reduce the causation standard (from "substantial" to "a" cause), or that would restrict the President's discretion about providing relief (e.g., as proposed in Section 305 of Title III of S.1860 entitled "Industry Assessment and Competitiveness Strategy"), as well as amendments that would remove the discretion of the ITC to recommend adjustment assistance as an alternative to import relief. We would, however, support adding to the President's relief options proposals for accelerated action under the antidumping and countervailing duty acts, if there is reason to believe that violations of these laws have occurred; antitrust exemptions, and multilateral negotiations to address problems not susceptible to unilateral solutions (e.g., as in proposed Section 306, Title III, S.1860).

The Council also believes that the U.S. should refrain from changing U.S. law in ways that could create a conflict with our GATT obligations until completion of expected negotiations on a new safeguards Code in GATT. Thus, we oppose the proposal that the President be required to impose temporary import relief, if he finds that critical circumstances exist and before the ITC has found the extent of injury (if any).

Title IV (Negotiating Authority)

A Council statement of February 25, 1986, sent to members of Senate Finance and House Ways and Means Committees on March 18, 1986, urges Congress to grant Presidential negotiating authority for ten years with fast track procedures, including application of fast track procedures to agreements as concluded, without waiting for the final package of agreements. The Council supports inclusion of authority for bilateral negotiations with fast track procedures, and while it endorses Congressional identification of negotiating objectives, it opposes preconditions that would limit the flexibility of negotiators or the use of fast track procedures.

Title V (Exchange Rates and Debt)

(See separate Council paper of May 28, 1986.) Any exchange rate legislation should endorse as the principal U.S. international economic policy objective the creation of conditions for greater stability of exchange rates at sustainable levels within an open system of international trade and capital movements.

The Council believes that the agreement to enhance the surveillance process reached at the Tokyo Summit effectively meets the objective of negotiations among the G-5. The Council recommends that legislation require the President and the Chairman of the Federal Reserve to report after each surveillance consultation agreed upon at the Tokyo Summit on recent exchange market developments and lay out U.S. policy intentions. The Council opposes a strategic exchange reserve as being unneeded and destabilizing. Authority already exists for the Secretary of the Treasury to intervene in currency markets. The Council supports coordinated intervention only in cases when to do so would be helpful in complementing fundamental economic policies and in countering disorderly market conditions.

Title VII (NonMarket Economies)

The Council favors a change in U.S. law that would eliminate the requirement that Commerce use "constructed value" to determine foreign market value in cases involving dumping by state-controlled economies. The law should place the burden of proof on the nonmarket economy country (or its enterprises) to show that they are the lowest-cost producer or that they should be judged as market-oriented and sufficiently independent of state controls as to justify treatment under the normal procedures. If such cannot be demonstrated, a finding of injury (perhaps at a level between "material" and "serious") should be sufficient to require action (i.e., increased duties).

Title VIII (Intellectual Property Rights)

The United States Council supports the elimination of the requirement to prove "injury" in intellectual property cases. By eliminating the requirement to prove other injury besides patent, trademark, or copyright infringement, the bill would make Section 337 a more effective remedy for U.S. manufacturers. We support eliminating the requirement that the ITC must find the U.S. industry to be "effeciently and economically operated." Newly-established, technologically-based industries may have trouble proving efficiency. "Industry" should be defined to include investments in exploitation of intellectual property and a 90-day deadline should be established as the rule in most cases for the ITC to decide on temporary exclusion orders. We also support provisions of the bill on process patent amendments that would render it unlawful to import into, or sell within, the United States a product that is "directly made" by a patented process.

The Council has previously registered its support for adherence to the Berne Convention on copyrights and for legislation to implement it. We are also opposed to extension of the manufacturing clause.

Other Proposals

-- Telecommunications Trade (S 947).

A Council letter to members of Senate of October 17, 1985, supported objective of reducing barriers and favors bilateral talks to prepare a basis for a multilateral solution. However, we opposed mandatory retaliation provision and strict sectoral reciprocity.

-- Natural Resources Subsidies.

A Council letter to members of Senate of October 17, 1985, opposed unilateral change in rules and favored stricter application of current U.S. laws and international negotiations to establish new multilateral definitions of countervailable subsidies.

-- Import Surcharge Proposals.

(New Section 311 of the House bill and S.1404 are examples.) Council statement of November 4, 1985, opposed proposals that would impose either a targeted or general surcharge if greater access or a more favorable trade balance is not achieved.

-- Amendments to AntiDumping and Countervailing Duty Laws.

The Council opposes changes in U.S. laws which would unilaterally alter U.S. obligations under the GATT and relevant Codes. In particular, we oppose enactment of measures such as in S.1655 which would create a right of private action in dumping cases that would add remedies not authorized by current GATT rules. However, we favor a mandate to U.S. negotiators to seek changes in the Antidumping Code to deal with "diversionary dumping," and in the Subsidies Code to deal with "targeting" practices.

U.S. Council for an Open World Economy
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Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Senate Committee on Finance in a hearing on U.S. response to trade barriers impairing U.S. exports (Section 301 of the Trade Act of 1974). July 22, 1986

(The U.S. Council for an Open World Economy is a private, nonprofit, public-interest organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

The United States should respond quickly, equitably and forthrightly against trade barriers abroad that pose improper and harmful barriers against U.S. exports. Section 301 of the Trade Act of 1974 provides the President with authority to take appropriate action in this regard. A Senator supporting the 301-reform proposals of S.1862 contends that "the implementation of fair and aggressive Section 301 reforms will send a signal to the rest of the world that we are no longer willing to turn the other cheek." Section 301 should be used resolutely, indeed aggressively, but what is proposed in this bill is poorly conceived.

S. 1862 would transfer executive authority in this sector of our trade-policy apparatus from the President to the U.S. Trade Representative -- a maneuver designed to increase the prospects for accelerated U.S. retaliation against unfair, unreasonable foreign barriers by neutralizing the President's authority to take account of all pertinent dimensions of the total national interest. The readiness of as many as 17 Senators to put their names on a bill that so distorts the relationship between the nation's chief trade-policy official and the nation's chief executive -- the chief executive who appointed him, who has full authority over the official's tenure in that post, and to whom the official is fully accountable -- is (to put it charitably) rather surprising.

If Congress wants the President to be more active in resorting to 301, it has ways (and has already shown ability to use these ways) to persuade the President to be more aggressive in this regard. Vigorous use of appropriations hearings and other Congressional instrumentalities to induce the desired utilization of Presidential power in this policy area is the right course. S.1862 is the wrong course.

Neither course, however, can achieve anything close to optimum results consistent with the nation's total enlightened self-interest

in the absence of a strategy to program the complete removal of all artificial trade barriers and distortions, as well as all unfair trade practices, in accordance with a realistic timetable. Note the succinct, declared purpose of S.1862: "to eliminate barriers to, and distortions of, trade." We need a foreign-economic strategy, and a domestic economic strategy to backstop it, to achieve this goal. S.1862 would divert our energies in the opposite direction.

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