S. HRG. 100-419, PT. 1

COMPARING MAJOR TRADE BILLS

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 490, S. 636, and H.R. 3

APRIL 2, 1987

(Part 1 of 2)

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

74-767 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON FINANCE

LLOYD BENTSEN, Texas, *Chairman*

SPARK M. MATSUNAGA, Hawaii	BOB PACKWOOD, Oregon
DANIEL PATRICK MOYNIHAN, New York	BOB DOLE, Kansas
MAX BAUCUS, Montana	WILLIAM V. ROTH, JR., Delaware
DAVID L. BOREN, Oklahoma	JOHN C. DANFORTH, Missouri
BILL BRADLEY, New Jersey	JOHN H. CHAFEE, Rhode Island
GEORGE J. MITCHELL, Maine	JOHN HEINZ, Pennsylvania
DAVID H. PRYOR, Arkansas	MALCOLM WALLOP, Wyoming
DONALD W. RIEGLE, JR., Michigan	DAVE DURENBERGER, Minnesota
JOHN D. ROCKEFELLER IV, West Virginia	WILLIAM L. ARMSTRONG, Colorado
TOM DASCHLE, South Dakota	

WILLIAM J. WILKINS, *Staff Director and Chief Counsel*
MARY MCAULIFFE, *Minority Chief of Staff*

CONTENTS

ADMINISTRATION WITNESS

ADDITIONAL INFORMATION

COMMUNICATIONS

COMPARING MAJOR TRADE BILLS

THURSDAY, APRIL 2, 1987

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

The committee was convened, pursuant to notice, at 10:00 a.m. in room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Matsunaga, Baucus, Bradley, Riegle, Rockefeller, Daschle, Packwood, Roth, Danforth, Chafee, Heinz, and Durenberger.

[The press release announcing the hearing and the prepared statements of Senators Bentsen, Baucus and Durenberger follow:]

[Press Release #H-34, March 20, 1987]

FINANCE COMMITTEE ANNOUNCES HEARINGS COMPARING MAJOR TRADE BILLS

WASHINGTON, D.C.—Senator Lloyd Bentsen (D., Texas), Chairman of the Senate Finance Committee, announced Friday a series of three hearings to compare pending major trade bills. The bills to be discussed would be H.R. 3, the Trade and International Economic Policy Reform Act of 1987, S. 490, the Omnibus Trade Act of 1987, and Title II of S. 636, the International Economic Environment Improvement Act of 1987.

"A consensus has developed that the country needs a trade bill in 1987," Bentsen said. "This new trade bill will necessarily be more complex than trade bills of the past, and many groups have taken positions on a wide variety of provisions. While we have had a number of hearings over the last two years on specific ideas for new trade policies and changes in U.S. trade laws, we would be remiss if we did not provide an opportunity for omnibus comments on the major pending bills."

The first hearing in this series will be held at 10:00 a.m. on Thursday, April 2, 1987, in Room SD-215 of the Dirksen Senate Office Building. The only witness will be Ambassador Clayton Yeutter, the U.S. Trade Representative. No other witnesses will be scheduled on this day.

Subsequently, further hearings will be held on this subject beginning at 10:00 a.m. on Tuesday, April 7th and Wednesday, April 8, 1987, in Room SD-215 of the Dirksen Senate Office Building. Witnesses who wish to appear at these hearings may request an opportunity to testify.

STATEMENT OF THE HONORABLE LLOYD M. BENTSEN
AT A FINANCE COMMITTEE HEARING COMPARING
MAJOR PENDING TRADE BILLS
THURSDAY, APRIL 2, 1987

TODAY WE WILL BE HEARING TESTIMONY ON THE THREE MAJOR TRADE BILLS PENDING IN THE CONGRESS: THE HOUSE TRADE BILL, H.R. 3; THE SENATE TRADE BILL, S. 490; AND S. 636, THE TRADE COMPONENT OF THE ADMINISTRATION'S COMPETITIVENESS PACKAGE.

NEITHER THE HOUSE BILL NOR THE SENATE BILL IS ACCEPTABLE TO THE ADMINISTRATION IN CURRENT FORM.

LET ME HASTEN TO ADD THAT WE HAVE MADE SUBSTANTIAL PROGRESS SINCE LAST YEAR, WHEN A LIBRARY OF CONGRESS STUDY I REQUESTED CONCLUDED THAT "THE ADMINISTRATION OPPOSES NEARLY EVERY LEGISLATIVE APPROACH OFFERED BY EITHER THE HOUSE OR THE SENATE" ON TRADE.

LAST YEAR, THE ADMINISTRATION HAD NO TRADE BILL OF ITS OWN. THIS YEAR IT DOES.

LAST YEAR, THE ADMINISTRATION EFFECTIVELY STYMIED THE EFFORTS OF THE SENATE TO PASS TRADE LEGISLATION. THIS YEAR THE ADMINISTRATION IS WORKING WITH THE SENATE TO PASS TRADE LEGISLATION.

SO WE HAVE MADE PROGRESS. A LOT OF IT.

THE MAIN REMAINING DIFFERENCE OF OPINION, BETWEEN THE HOUSE AND SENATE ON ONE HAND AND THE ADMINISTRATION ON THE OTHER, INVOLVES PRESIDENTIAL DISCRETION.

AMBASSADOR YEUTTER, SPEAKING FOR THE ADMINISTRATION, ARGUES THAT "TRADE POLICY DECISIONS ... REQUIRE CONSIDERATION OF FOREIGN RELATIONS, NATIONAL SECURITY, FOREIGN ECONOMIC, DOMESTIC ECONOMIC, AND DOMESTIC POLITICAL CONSIDERATIONS" AND, THEREFORE, THE PRESIDENT'S DISCRETION MUST NOT BE LIMITED.

I ARGUE THAT HISTORICALLY, NOT WITH THIS ADMINISTRATION ALONE, ALL THESE OTHER CONSIDERATIONS HAVE CROWDED TRADE OFF THE AGENDA.

I DOUBT, FOR EXAMPLE, THAT AMBASSADOR YEUTTER WAS CALLED TO ANY MEETINGS OF THE ECONOMIC POLICY COUNCIL TO DISCUSS THE TRADE IMPLICATIONS OF LAST YEAR'S TAX BILL.

I DOUBT THAT THE DEPARTMENT OF STATE CONSULTS WITH HIM ON ITS DIPLOMATIC ACTIONS, YET I HAVE NO DOUBT THAT THE DEPARTMENT OF STATE GETS ITS OAR IN WHEN ANY TRADE ACTIONS ARE CONTEMPLATED.

ONCE AGAIN THIS YEAR, I DOUBT AMBASSADOR YEUTTER WILL BE ON THE PRESIDENT'S AIRPLANE TO THE ECONOMIC SUMMIT IN VENICE.

THE FACT IS THAT TRADE IS THE HANDMAIDEN OF ALL OTHER POLICY CONSIDERATIONS OF THE U.S. GOVERNMENT, AND I AM CONVINCED IT WILL CONTINUE TO BE WITHOUT SOME LIMITS ON THE PRESIDENT'S DISCRETION.

LAST WEEK, THE PRESIDENT RETALIATED AGAINST JAPAN FOR VIOLATING THE SEMICONDUCTOR AGREEMENT, AN AGREEMENT REACHED UNDER THE MANDATORY -- NOT DISCRETIONARY BUT MANDATORY -- PROVISIONS OF OUR DUMPING AND COUNTERVAILING DUTY STATUTES.

THE PRESIDENT HAD NO DISCRETION WHETHER TO APPLY ANTIDUMPING DUTIES. HE HAD NO DISCRETION, IN OTHER WORDS, TO DO NOTHING. HIS CHOICES -- AND JAPAN'S CHOICES -- WERE TO NEGOTIATE OR GET HIT WITH DUMPING DUTIES. OUR CURRENT LAW DOES NOT USUALLY WORK THAT WAY, BUT IT HAPPENED TO WORK THAT WAY IN THE SEMICONDUCTOR CASE.

I WOULD ADD THAT, HAD THE JAPANESE KNOWN EIGHT MONTHS AGO THAT THE PRESIDENT WOULD INSIST THAT THEY LIVE UP TO TERMS OF THE AGREEMENT, THERE WOULD HAVE BEEN NO NEED FOR RETALIATION. INSTEAD, BASED ON YEARS OF INACTION -- BASED ON YEARS OF EXPERIENCE WITH U.S. PRESIDENTS DECLINING TO MAKE USE OF THEIR DISCRETIONARY AUTHORITY TO RETALIATE -- THE JAPANESE HAD EVERY REASON TO EXPECT WE WOULD NOT INSIST ON THEIR ABIDING BY THE AGREEMENT.

PREDICTABILITY IS A KEY WORD HERE. WE NEED A TRADE POLICY THAT OUR TRADE PARTNERS CAN PREDICT, AND I MAINTAIN THAT REQUIRES LIMITS ON THE PRESIDENT'S DISCRETION NOT TO ACT. HE NEEDS PLENTY OF DISCRETION ON WHAT ACTION TO TAKE, BUT LIMITS HAVE TO BE PLACED ON HIS DISCRETION TO TAKE NO ACTION.

AMBASSADOR YEUTTER HIMSELF HAS SAID "WE NEED THOUGHTFUL, COORDINATED TRADE POLICY, NOT A STACCATO SERIES OF PIECEMEAL, ISOLATED ACTIONS."

THE FACT IS, LAST WEEK'S RETALIATION AGAINST JAPAN -- WHILE IT WAS GREETED POSITIVELY HERE IN CONGRESS AND AMONG AMERICANS IN GENERAL -- WAS HARDLY THOUGHTFUL OR COORDINATED. IF WE HAD IN PLACE A TRADE POLICY THAT WAS THOUGHTFUL AND COORDINATED, THE JAPANESE WOULD HAVE LEARNED LONG AGO NOT TO SIGN TRADE AGREEMENTS WITH US UNLESS THEY INTENDED TO LIVE UP TO THEM.

ONE OF OUR FORMER TRADE NEGOTIATORS IN THE REAGAN ADMINISTRATION, CLYDE PRESTOWITZ, PUT IT THIS WAY BEFORE THIS COMMITTEE ON MARCH 17: "IF OUR TRADING PARTNERS KNEW AHEAD OF TIME THAT IT WAS NOT GOING TO BE POSSIBLE TO PLAY THIS INSIDER'S POLITICAL GAME IN WASHINGTON, IF THEY KNEW THAT THEY WOULD HAVE TO NEGOTIATE WITH US, THEY WOULD NEGOTIATE WITH US, AND, IN MY VIEW, WE WOULD TAKE A LOT OF THE POISON OUT THE RELATIONSHIP." INSTEAD, MR. PRESTOWITZ SAID, OUR POLICY IS "TO TALK LOUDLY AND CARRY A SMALL STICK," AND ULTIMATELY THAT LEADS TO MUTUAL RECRIMINATION, NOT PROGRESS.

SENATOR BRADLEY PUT IT EVEN BETTER AT THAT SAME HEARING. HE SAID: "WHY WOULDN'T YOU MAXIMIZE EFFICIENCY IF A COUNTRY KNEW THAT THERE WOULD BE MANDATORY RETALIATION? YOU THEN WOULDN'T HAVE LENGTHY DELAYS IN THE POLITICAL PROCESS."

THE FACT IS, IF YOU INSIST ON TOTAL DISCRETION, IT COMES OUT BEING DO-NOTHING.

THE PROTECTIONIST POLICIES OF JAPAN AND OTHER COUNTRIES WILL NOT CHANGE UNTIL AMERICAN POLICY CHANGES, NOT JUST FOR THE SEMICONDUCTOR INDUSTRY, BUT FOR THE AIRCRAFT INDUSTRY AND THE COMPUTER INDUSTRY AND ALL THE OTHER INDUSTRIES IN THIS COUNTRY THAT HAVE A LEGITIMATE COMPLAINT ABOUT FOREIGN PROTECTIONISM AND TRADE DISTORTIONS.

THAT IS OUR JOB. WE ON THIS COMMITTEE MUST FRAME THAT POLICY IN A TRADE BILL, AND WE ARE ABOUT TO BEGIN THE PROCESS.

NEWS

SENATOR MAX BAUCUS

FOR RELEASE: IMMEDIATE
Thursday, April 2, 1987

CONTACT: Scott Williams
(202) 224-2651

Senator Max Baucus (D-MT) today released the following statement at the Senate Finance Committee hearings reviewing trade legislation now pending before Congress:

The action by the Administration against the casual treatment of our semiconductor accord by the Japanese was a good, firm, measured response. The Japanese are our friends, yet they continue to take advantage of our good faith. Enough is enough.

Free trade is vital to the competitive position of the United States. Fair trade is vital to a healthy and stable world economy. Our efforts should focus on promoting fair trade practices.

I think it is also important to realize that while the Japanese have not responded to our concerns to our satisfaction, we also must not ignore the efforts of Prime Minister Nakasone to move Japan toward a more responsible trade policy.

Mr. Chairman, as I compare the provisions of the our trade bill with those of the House bill, I am struck by a single fact - the Senate and House have reached consensus on many provisions. As I compare the Administration's bill, I'm struck by how far the Administration is from the bipartisan consensus in Congress.

There are many points on which Congress agrees:

In Section 301, both the House and Senate would restrict the President's discretion not to retaliate when the foreign practice violates international agreements.

In Section 201, both the House and the Senate would require the President to provide some relief if the ITC found the domestic industry was injured.

Even though the Congress is coming to agreement, there's still a wide gulf between Congress and the Administration. Here's what you want:

OPENING STATEMENT OF SENATOR DAVE DURENBERGER
SENATE FINANCE COMMITTEE INTERNATIONAL TRADE HEARING
APRIL 2, 1987

Mr. Chairman, I want to commend you for looking into your crystal ball and scheduling this hearing on international trade with Ambassador Clayton Yeutter. It seems that I cannot pick up a newspaper or turn on the television news without seeing our able and outstanding United States Trade Representative.

In the last two months, Clayton has been circling the globe trying to resolve trade disputes with all of our major trading partners. He helped forestall a trade war with the European Community (EC), although I would have hoped that he could have forced the EC to provide more compensation for our farmers; he has conferred several times with the Canadian government over our dispute with the Canadians involving corn exports; and he has held the line against the Japanese government's refusal to abide by the semi-conductor agreement.

It is only fitting that the Wall Street Journal's lead editorial on Tuesday was entitled, "The Yeutter Market." I believe Clayton Yeutter has been this nation's strongest and most dedicated advocate of an open and fair international trading system.

Mr. Chairman, world financial markets are still feeling the repercussions from the recent retaliatory action proposed by the Administration in the semi-conductor case. I believe the Administration was absolutely correct in proposing stiff tariffs on Japanese electronics imports. The Japanese were simply not living up to the bargain they had struck with us last year, and we could not afford to sit back and do nothing.

Yet, last Friday's decision clearly has political, as well as economic, implications for our relations with Japan. It underscores the critical importance of allowing the President wide latitude in making a decision whether to retaliate against most unfair foreign trade practices Yet, I can understand the frustration that many of my colleagues have felt in the past when an Administration has allowed foreign policy concerns to prevent it from retaliating against unfair foreign trade practices.

-over-

However, in light of the economic damage that has occurred to our economy in recent years from foreign government unfair trading practices, I believe this Administration and future Administrations will be far more reluctant to put harmonious political relations with our allies ahead of economic sanctions when foreign governments keep their markets closed to American products.

One of the issues that I hope to explore with Ambassador Yeutter concerns the issue of foreign government industrial "targeting." Although I must attend an important hearing at the Senate Committee on Environment and Public Works, I hope the Ambassador can provide some insight into this important issue.

The trade bill recently adopted by the House Ways and Means Committee and the bill introduced by the distinguished Chairman of this Committee would make foreign government industrial targeting an unfair trade practice under Section 301. I believe we are walking down the wrong road if we try to outlaw foreign government policies aimed at coordinating and assisting the development of products for the future.

On Monday, I introduced, along with Senator Danforth, the Superconductivity Competition Act of 1987 (S. 880). This legislation calls on the President to appoint a National Commission on Commercial and National Defense Applications of Superconductors. This commission will determine whether we need a better coordinated effort to develop and produce enhanced superconductors.

I believe that this Commission will ultimately determine that, in order to preserve this nation's technological and military superiority, we must "target" superconductors as an industry that needs the financial and technological assistance of the U.S. government.

Three weeks ago, Japan's Ministry of Trade and Industry (MITI), which in the 1970s organized Japan's successful development of a world class microelectronics industry, announced that it would begin a government-coordinated effort to find commercial applications for superconductors. Make no mistake, focusing the combined power of Japan's government, financial and industrial resources on superconductors represents an extraordinary challenge to America's economic leadership well into the 21st Century.

Outlawing so-called "targeting" flies in the face of the economic realities of the late 20th century. I doubt that we can change the the interdependent relationship that exists in Japan between government, industry and finance. Instead, like much else about Japanese business, I think we should meet MITI's challenge head on and forge the lead for America into the 21st Century.

-30-

The CHAIRMAN. This hearing will come to order. We will have some votes possibly on the floor this morning, so we will try to get underway on time.

We are very pleased to have Ambassador Yeutter here this morning.

Today, we are going to have testimony on three of the bills before us: the House bill, the Senate bill, and then the Administration's bill. Neither the House bill nor the Senate bill is acceptable to the Administration.

Let me hasten to add that we have made a substantial amount of headway since last year, when a Library of Congress study showed that the Administration essentially opposed every legislative effort, virtually, in the Senate, whether it was Republican or Democrat, and labeled them protectionist.

Last year, we found the Administration effectively blocked consideration of trade legislation within the United States Senate. This year, it supports action on trade legislation. I think we have made some progress. I think we have made a lot of it.

The main remaining difference between the Administration and the House and the Senate is on the question of Presidential discretion. Ambassador Yeutter, speaking for the Administration, argues that trade policy decisions require consideration of foreign relations, national security, foreign economic considerations and domestic economic, and domestic political considerations. And therefore, the President's discretion must not be limited. In all candor, I think they want the freedom to do whatever they want to do.

I argue that historically, and not with this Administration alone, all of these considerations have crowded trade off the agenda. I doubt, for example, that Ambassador Yeutter was called to any of the meetings of the Economic Policy Council to discuss the trade implications of last year's tax bill.

I doubt that the Department of State consults with him on its diplomatic actions, yet I have no doubt that the Department of State sure gets its oar in when any trade actions are contemplated.

Once again, this year I doubt that Ambassador Yeutter will be on the President's airplane to the Economic Summit in Venice. Time and time again, I see economic summits of world leaders, chief executives, see the Prime Minister of Japan with his trade ministers standing beside him, and our trade ambassador is not even invited.

The fact is that trade is the handmaiden of all other considerations of the U.S. Government, and I am convinced it will continue to be so unless we have some limits on the President's discretion.

Last week, the President retaliated against Japan for violating the semiconductor agreement, an agreement reached under the mandatory—not discretionary but mandatory—provisions of our dumping and countervailing duty statutes.

The President had no discretion on whether to apply antidumping duties. He had no discretion, in other words, to do nothing. His choices, and Japan's choices, were to negotiate or get hit with antidumping duties. Our current law does not usually work that way, but it happened to work that way in the semiconductor case.

I would add that, had the Japanese known eight months ago that the President would insist that they live up to the terms of their

agreement, that there would have been no need for retaliation. Instead, based on years of inaction—based on years of experience with United States Presidents declining to make use of their discretionary authority to retaliate—the Japanese had every reason to expect we would not insist on their abiding by their agreement.

Predictability is the key word here. We need a trade policy that our trading partners can predict, and I maintain that requires limits on the President's discretion not to act. He needs plenty of discretion on what action to take, but limits have to be placed on his discretion to take no action.

Ambassador Yeutter himself has said: "We need thoughtful, coordinated trade policy, not a staccato series of piecemeal, isolated actions." Mr. Ambassador, I couldn't agree more.

The fact is that last week's retaliation against Japan—while it was greeted positively by many in the Congress and amongst Americans in general—was hardly thoughtful or coordinated. If we had in place a trade policy that was thoughtful and coordinated, the Japanese would have learned long ago not to sign trade agreements with us unless they intended to live up to them.

One of our former trade negotiators in the Reagan Administration, Clyde Prestowitz, put it this way before the Committee on Finance on March 17: "If our trading partners knew ahead of time that it was not going to be possible to play this insider's political game in Washington, if they knew that they would have to negotiate with us, they would negotiate with us, and, in my view, we would take a lot of the poison out of the relationship."

Instead, Mr. Prestowitz said: "Our Policy is to talk loudly and carry a small stick," and ultimately that leads to mutual recrimination and not progress.

Senator Bradley put it even better at that same hearing. He said, "Why wouldn't you maximize efficiency if a country knew that there would be mandatory retaliation? You then wouldn't have the lengthy delays in the political process."

The fact is, if you insist on total discretion, it comes out being nothing.

The protectionist policies of Japan and other countries will not change until American policy changes, not just for the semiconductor industry, but for the aircraft industry, the computer industry, and all the other industries in this country that have a legitimate complaint about foreign protectionism and trade distortions.

Now, that is our job. We on this committee must frame that policy in a trade bill, and we are about to begin that process.

I yield to the distinguished Minority Leader on the committee for such comments as he would like to make.

Senator PACKWOOD. The chairman indicates we are about to begin that process, and indeed we have. The hearings that he has scheduled have been excellent.

The House bill that has come out of the Ways and Means Committee, I am 90 percent delighted with. I think they have done a good job. I don't know what is going to happen on the floor. We don't know if it can be held on the floor. That is a prediction that cannot be made, but I want to once more take my hat off to the chairman of the Ways and Means Committee, Dan Rostenkowski, and to his trade subcommittee chairman, Sam Gibbons. They pro-

duced, in my judgment, a very responsible starting product, and I think we can hue relatively close to what they have done, and we would serve the nation in good stead.

The CHAIRMAN. Senator Baucus, do you have any comments?

Senator BAUCUS. Mr. Chairman, I want to congratulate you for your statement. I think that is an excellent summary of the position we are in, namely if Japan is going to open up, we have to send a very clear signal—and you have done that, Mr. Chairman—that now our country is going to act. That is, we have talked a lot about providing more access in Japan, and now we are beginning to act.

Mr. Chairman, I not only want to compliment you, but I want to compliment the Administration for taking that action in the semiconductor case because I think that we are now reaching a turning point in America where there is more resolve in America to not let other countries take advantage of us any more.

I think there has been a feeling for some time that, although other countries to some degree are taking advantage of us, we have been talking a lot about it and not doing enough about it. This is the first time, I think, that there is solid action that at least galvanizes and colesces America into thinking that now we are going to stand up for our rights.

Having said that, I want to make it clear that Japan, I think, has been trying to do what it can to open up its markets; and I think certainly Prime Minister Nakasone should be encouraged to continue to apply as much pressure as he can in Japan. He is trying; I think he is trying mightily; and I think that it is important for us to also recognize the positive actions that Japan is taking. They can go much further, but there is positive progress nevertheless in Japan; and it is important for us to recognize progress where it does in fact exist, and there has been some in Japan.

So, I think that if we send a signal of firmness but also of fairness, and recognize actions where it is taking them, that that will help us achieve the result that we want.

I congratulate you, Mr. Chairman, on the statement you just made and encourage us to go forward now.

The CHAIRMAN. Thank you very much, Senator Baucus. I have been given a list now of the arrival sequence of the members. It is Durenberger, Packwood, Baucus, Heinz, and Rockefeller. Senator Durenberger, any comments you might like to make?

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

I will commend you and your crystal ball, which has been working very well for the last two and a half months on the trade issue, and working particularly well today. Your statement was a very powerful statement and reflected a lot of the concerns of the members of this committee.

The importance of having Ambassador Yeutter here today is not lost on anybody; I think particularly you can tell by the media attention and everything else in this meeting that, every once in a while, there is a coincidence in time of a sense of developing policy and a person who seems to be right in the middle of it. And right now, it just happens that the USTR, Mr. Clayton Yeutter, according to the Wall Street Journal has developed something called the

"Yeutter market"; and the whole world seems, at least at times, to be focusing around this whirling dervish that moves around the world, battling the European Community to a compromise, battling the Canadians to an almost compromise, battling the Japanese to a yet-uncertain outcome.

However, looking to the future today, Mr. Chairman, I would hope that one of the issues that might be addressed is the issue of industrial targeting. I know that in the bill you introduced and in the House Ways and Means Committee bill, it would make foreign government industrial targetting an unfair trade practice under Section 301.

In light of some of the things we may have to do in this country, I just question whether or not industrial targetting or making industrial targetting illegal—at least as we have known it in the past—is an appropriate course for us to take. We know that Japan's Ministry of Trade and Industry, which was very successful in the 1970s in developing by targetting a world class microelectronics industry, several weeks ago made a commitment to begin a government-coordinated effort to find commercial applications for superconductors.

On Monday of this week, Senator Danforth and I introduced a bill to create a national commission on the commercial and national security uses of superconductors in this country. And that would suggest that some of us feel it is important for the United States to begin a policy of industrial targetting—in the sense we have known it in the past—that has the best interests of this country's economic and national security policies at heart.

So, during the course of this morning, I hope that we can engage the Ambassador in some discussion on the issue of targetting and what his recommendations might be by way of U.S. policy, as we look to our own trade future and the importance to this country and its security of industrial targetting as well.

The Chairman. Thank you very much, Senator. Senator Heinz, are there any comments you might have?

Senator HEINZ. Mr. Chairman, I think we have come to the beginning of the end of the first part of a very important legislative process in getting this trade bill. You are going to be moving on to three more days of hearings, and then to markup. I just want to make three observations.

The first, Mr. Chairman, is to commend you. This process has been open. It has been fair. It has been bipartisan. And I must say, and I suspect my colleagues can attest to this, too, that requests from this Senator have been taken seriously by the chairman and his staff; and whenever possible, they have been honored. And I think that most of us feel the same way.

I think we are off to a good start and I hope it will continue. I think it will. Having said that, I want to urge observers of this process—-those in the Administration, the media or the public—to resist the temptation to say that the sky is falling after each twist and turn that the Senate trade bill will inevitably take. It should be judged by the end product, not by each interim step.

And, so far, I will give the Administration credit at least on this side of the Capitol. They have restrained themselves, unlike last year. Unfortunately the tune may be new but the words may still

be the same because, on the House side—and I fear this could yet happen on the Senate side—the Administration and its reactions suggest that their attitude toward the substantive issues hasn't changed at all.

That is distressing because we had all hoped, and we still do hope, to work out a bill together in a cooperative spirit, and that means all parties have to give a little.

Now, it seems to this Senator, as I have watched the process on the House side, that the House has been giving and the Administration has been taking and then asking for more. And if that proves to be the case on the Senate side, as well, then I worry about our ability to avoid a serious confrontation.

My last and third point, Mr. Chairman, is this. You have cited and others have cited the President's recent action on semiconductors as an example of our new toughness on trade policy and that, according to some soothsayers, may obviate our need for legislation narrowing Presidential discretion. You also discussed this in your opening statement.

I just want to say, Ambassador Yeutter, and to the Administration generally that, while that action is most welcome and certainly is long overdue, the issue is not whether the Administration is on one single occasion or with one single event taking significant action, but rather whether there is consistent management of trade—and for that matter, exchange rate policy—day in and day out, month in and month out, year in and year out.

I have got to tell you that in my judgment the Japanese have been getting away with murder for years; and now, after our country is littered with the bodies of dead or dying industries, the Administration is announcing that we may impose capital punishment in the future. Well, I don't fault you for finally having said something, but I can't help but think that, had we hewed to a much tougher line earlier, we would not be having to take such a severe action now, and there would be a lot more Americans working rather than unemployed.

So, Mr. Chairman, I hope that we do develop in this bill the foundation for a strategy, not just tactics. Thank you.

The CHAIRMAN. Thank you. Senator Rockefeller, any comments you might have?

Senator ROCKEFELLER. Briefly, Mr. Chairman, I would share the view of the Senator from Pennsylvania that I know that this is action which is reverberating around the world, a single action, a 301, and the Japanese are hoping perhaps to talk us out, to say that their position is reasonable and that we should understand their situation.

It seems to me we have been understanding their situation for a long time as our trade deficits have continued to mount; and I am very worried that we only have several more months, maybe only to the fall, where an enlightened Japanese Prime Minister will probably be followed by either Mr. Takeshita, Mr. Abe, or Mr. Migozawa, all of whom will be much more traditional, much less international, and much more hard line.

A single 301 exercised by the President with international reverberations will not make a racket to the Japanese. They, I hope, will understand that the purchase of two supercomputers will not do

anything to allay this Finance Committee of the Senate. I would agree that there has to be a series of 301's. There has to be a consistency of policy in order for the Japanese and for others to understand that this nation has political will and determination with respect to trade policy.

We need profound structural changes, Mr. Chairman, in that country. The Maeakawa report recommends tax changes—incentives for consumption. I have my doubts as to whether those reports of Mr. Maeakawa or the necessary tax changes will be implemented during this session of the Diet. If they are not, and structural changes do not take place, Japan, which is always able to handle us with a certain amount of skill because of our lack of political will on a trade policy, will continue very successfully.

I hope they will not underestimate the Senate Finaoce Committee and our determination in a fair but responsible and tough manner to make sure that this country develops a consistent trade policy, working together with the Administration. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth, do you have any comments?

Senator DANFORTH. No comments, Mr. Chairman.

The CHAIRMAN. Mr. Ambassador, we are very pleased to have you. Let me say to the members of the committee that we have had subcommittee hearings on the nomination of Dr. Jean Elder to be Assistant Secretary for Human Development Services. The committee rules, of course, insist that we have a quorum present on reporting out that nomination. So, at some time during these hearings this morning, having a quorum, we would anticipate taking five minutes out hopefully to take care of the Elder nomination.

Mr. Ambassador, we are very pleased to have you. Would you please just proceed with your testimony?

STATEMENT OF THE HONORABLE CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE

Ambassador YEUTTER. Thank you very much, Mr. Chairman. It is good to be here and review issues on what is a very critical and timely subject for all of us today.

As you indicated, Mr. Chairman, this process really began last year, at least in terms of generating thoughts and creative ideas. It will hopefully culminate this year in responsible and credible legislation that will be of benefit to this country and to all of us in our relationships on the trade front, both domestically and internationally.

Just a couple of preliminary observations on the semiconductor case, which seems to be generating a lot of attention in the last few days. First of all, that is a relatively simple case, in my judgment, because it reflects a policy that has been under way in this Administration for at least 18 months.

You made some mention, Mr. Chairman, about the necessity to have a consistent and credible trade policy. In my judgment, it has been fully consistent for at least 18 months now, since the President delivered a statement on this subject in the White House on September 25—I believe it was—of 1985.

It may be that not everyone in the world has paid attention to what has transpired since then, but I believe that people who would search the record would find that the policy has been consistent, and it has also been consistently tough.

Just using Japan as an example because there was some comment here earlier that this was a single case reflecting toughness on the part of the Administration, one must recognize that we also retaliated against Japan on a leather case over a year ago, a case that didn't get a lot of attention but perhaps should have, because that was really precedent setting.

And we also had retaliatory papers on the way to the President on a tobacco products case three or four months ago, and that achieved the proper results in Japan, just as we hope the semiconductor case will. In that particular case, Japan agreed to eliminate their duties entirely on tobacco products; and that action was consummated in the Japanese Diet just last week. We think that may be worth an extra billion dollars a year or thereabouts in U.S. exports into Japan.

So, the semiconductor case is not unique, and it is by no means the first example of a much tougher policy on the part of the Administration and the Government of the United States. It is true, as some of you have suggested, that apparently our friends in the government of Japan concluded that they could procrastinate in implementation of the semiconductor agreement without a response being precipitated in the United States.

That, obviously, turned out to be an unwise strategy because it did precipitate a response, and we hope that the message that was sent or is being sent in this case will be felt in other cases and other disputes in the future.

As I said when I started this discussion, I consider this to be a rather simple case. It doesn't have anything to do with protectionism, as some in the media have suggested. There is nothing whatsoever protectionist in the action that we are about to take on semiconductors. And with all due respect to the members of Congress who have been seeking a tougher stance on the part of the Administration over the last few years, it really didn't have anything to do with Congressional pressures.

That is not why the President took action in this case. We took action because the government of Japan was failing to fulfill its obligations in this agreement, and the President feels and I feel that when a nation signs an agreement, just as when an individual signs an agreement, they ought to carry it out.

And if they do not carry it out, there ought to be some sanctions applied for not having done so. That is enough of a preliminary commentary there.

I think it would be helpful, Mr. Chairman, to turn to the legislative issues that are before us this morning.

First of all, I would commend you for your actions thus far, Mr. Chairman, and the rest of the committee, in attempting to develop what I would consider to be responsible and constructive trade legislation. That is what the final product ought to look like; and as Senator Heinz indicated earlier, we ought not judge the product on an interim basis. We should evaluate the product at the end of the day. We still have a long way to get there, both in terms of what

transpires here in the Senate and what ultimately transpires in conference between the Senate and the House.

I would also like to concur with Senator Packwood in his assessment of the actions in the House. The House has come a long, long way from 1986. There were ample reasons for the Administration and a lot of other people to oppose the work product that emerged in the House in 1986. The work product that is emerging in 1987 looks a whole lot different. It is by no means perfect as yet, and Senator Heinz referred to some of the objections that we had to that work product that has emerged from the Ways and Means Committee; but it is infinitely improved over the version of 1986 and getting much, much closer to the kind of responsible legislation that we would all like to see at the end of the day.

I would add, too, Mr. Chairman and members of the Finance Committee, that we had an excellent working relationship between the Administration and the Ways and Means Committee in that endeavor, and it was all done on a bipartisan basis. I hope we can have a similar working relationship here.

One Democratic member of the Ways and Means Committee told us that it was the best working relationship that he had seen between the Administration and that committee in well over a decade. I don't know whether that is accurate or not, but I really do believe that it is indicative of a sincere effort on everybody's part to come up with a solid work product.

Now, to get to the heart of the individual issues, Mr. Chairman, I will try to do this quickly because I know everybody has a lot of questions. We have tried to apply some standards to the legislation that is developing in the Congress, and I hope all of you will contemplate these standards as you move toward markup. We had about four on our list that I think everybody in this committee would share, but let me quickly articulate them.

One would be whether or not an individual legislative proposal will add to or subtract from our competitiveness picture. Obviously, the goal ought to be to enhance the international competitiveness of American firms.

A second criterion or standard would be whether or not the proposal would add to our negotiating leverage as a nation, particularly the negotiating leverage that I would have as the USTR.

The third criterion or standard would be whether or not the provision is likely to provoke retaliation by our foreign trading partners, and basically, that is a simple question of whether or not it is GATT-compatible. If it is not GATT compatible, it is very likely to provoke retaliation or, at a minimum, a bill for compensation.

And then finally, as an outgrowth of that, the question should be whether or not it is likely to provoke mirror legislation that would come back to haunt us in the future. In other words, are we going to put something into law here that would likely be matched by our trading partners and used against us in future years?

I happen to think those standards are defensible and sound, and I hope they will be applied by all of you.

As you indicated, Mr. Chairman, you will have three bills before you: our bill and the House bill and your own proposal. I will not take a lot of time to comment on the House bill or the Administration's bill at this point, except to say that, on the House side,

almost everything that is in the Administration's proposal has been encompassed in H.R. 3 as it has emerged from the Ways and Means Committee.

We are pleased with that, and we hope similar consideration will be given to the Administration's proposals here in the Finance Committee.

I would like to spend most of my remaining minutes on this subject commenting on some aspects of S. 490, which is the bill that is before you.

First of all, a few words on negotiating authority. The provisions on negotiating authority in S. 490 are much more conditional and constrictive than the provisions of H.R. 3 and the provisions of the Administration's bill. I happen to believe, Mr. Chairman, they are too constrictive.

Certainly, we ought to have lots of consultations between my office and the Senate Finance Committee and the Ways and Means Committee on our negotiating objectives, multilaterally and bilaterally; but I believe we ought to do most of that behind closed doors and without telegraphing those objectives to the world. I don't believe we ought to shout to the world what we hope to achieve, except in a general way; and I don't believe we ought to be exposing our negotiating strategy or tactics to the rest of the world.

It ought to be well coordinated between the legislative and executive branches of Government, but I do not believe it ought to be legislated for the whole world to know.

Secondly, we clearly need tariff proclamation authority, because that is just an issue that is very difficult to handle on Capitol Hill, and it is an authority that Administrations have had for well over 40 years; and I truly believe it ought to be continued.

I think it will be disadvantageous to us if we do not have tariff proclamation authority.

Finally, I believe we ought to have unconditional fast track authority. If we place conditions on fast track authority, I truly believe that will come back to haunt us in the negotiation process in the Uruguay Round in Geneva and perhaps even delay results of that round in a very substantial way.

Now, if I may, I would like to turn to Section 301 and make a couple of comments there. You made a very strong argument this morning, Mr. Chairman, for limits on Presidential discretion and for mandatory retaliation provisions.

I can understand the construction of those arguments, Mr. Chairman, because they reflect a degree of frustration, perhaps a high degree of frustration, on the part of Congress with some of the actions or inactions of Administrations in the past. Nevertheless, it seems to me we must be very careful that we do not change our trade laws in such a way as to be counterproductive rather than enhancing in their effect as they are implemented in the future.

This, I suspect, would be of much more concern to whomever my successors will be than it will be in my particular case. So, I would like to make the arguments on their behalf and on behalf of the President of the United States, rather than on behalf of myself as the USTR.

First of all, with respect to mandatory retaliation provisions, I would simply say, Mr. Chairman and members of the committee,

that flexible legislation always has an advantage over inflexible legislation. The question really become how flexible it must be, of course, but clearly some degree of flexibility must be there for the President of the United States or for whomever is implementing trade legislation or any other kind of legislation. If we make it rigid and terribly inflexible, we are going to have difficulties; and those difficulties could turn out to be of major embarrassment to this Government and this country in the future.

I will simply cite one example on the negotiating front, and that was our recent negotiations with the European Community over the accession of Spain and Portugal and the damage that that accession would have done to our feedgrain producers. In the absence of flexible timing, we would have had a trade war in that case, totally unrelated to the merits of the dispute. We delayed that particular negotiation for 30 days from December 30th to January 30th of this year for a particular reason that was very persuasive to me and to the President, but it had nothing whatsoever to do with the underlying dispute.

Had we had mandatory retaliation authority in the law, we probably would never have settled that case; and we would have created tremendous controversies in the arena of agricultural trade. So, that is an example of how inflexibility can come back to cause very great problems indeed.

The second point of that issue would be the transfer of presidential authority; and there I would like to make the basic point that I made in the Ways and Means Committee. It seems to me that what this committee should do on this or any other issue of Presidential authority is determine where the buck should stop; and if the buck should stop in the Office of the President of the United States, then the authority should lie there. We should not delegate that authority to me or any other Cabinet member.

If, on tbe other hand, it is appropriate to transfer that authority or delegate it elsewhere, then that is fine; but there are some decisions in the trade area in my judgment, Mr. Chairman, which clearly ought to lie only in the Oval Office and the implementation of Section 301 falls in that category, and so does the implementation of Section 201.

There are some others as well, but clearly we should not move the authority away from the official of government who ought to be carrying it out. Section 301 is the H-bomb of trade policy; and in my judgment, H-bombs ought to be dropped by the President of the United States and not by anyone else.

Just a comment or so about Section 201. S. 490 makes a distinction in Section 201 between unanimous decisions of the U.S. ITC and less than unanimous decisions of the U.S. ITC.

I really do not believe that that distinction is a persuasive one. It seems to me that that would simply motivate the President of the United States and members of Congress as well to try to influence the appointments to U.S. ITC in such a way, either as to avoid unanimous determinations or to ensure unanimous determinations. It is a little bit like packing the U.S. Supreme Court a few decades ago.

I don't really believe distinctions ought to be made on whether or not those decisions are unanimous. Decisions by the executive

branch under Section 201 by the President of the United States ought to be made on the basis of whether or not relief should be granted based upon all of the elements that ought to be considered in that particular case.

We should never forget that Section 201 has nothing whatsoever to do with unfair trade. When we are proposing to grant import relief under Section 201, we are doing it for the benefit of an industry that is just being whipped competitively. And the question becomes whether relief is appropriate for that industry and, if so, how much relief and how it should be granted; and we should never forget that that relief must come at someone's expense, that we are balancing the interests of relief for one industry against the compensation that will have to be paid by some other industry.

That is a very difficult trade-off and one that should be made with very, very great care. In many cases——

The CHAIRMAN. If I may interrupt, Mr. Ambassador.

Ambassador YEUTTER. Yes.

The CHAIRMAN. We have a rollcall vote on a motion to instruct the Sergeant at Arms to compel the attendance of Absent Secretary—if some of you would leave now and return, we can keep this hearing going.

Ambassador YEUTTER. All right. Thank you, Mr. Chairman. I have just a few more comments, and then we can go to the questioning period.

I was about to make the point, Mr. Chairman, that in a good many cases under Section 201, we will be helping an industry that is struggling and has been losing its international competitiveness and penalizing an industry that has obtained international competitiveness and is doing very well indeed. That is a trade-off of helping the losers of our economy and at a cost to the winners of our economy that ought to be made with very great care and circumspection.

I would add, too, Mr. Chairman, that I am not persuaded about the rationale for granting relief for as much as 13 years under Section 201. It seems to me that, if we are going to take this extraordinary step of granting relief for which someone must pay, it is not very persuasive to grant an industry 13 years to regain its international competitiveness. That is a lot of time to penalize other industries in order to help an industry that hasn't been doing very well.

And finally, under Section 201, I would simply say that I am not persuaded about the merits of tripartite panels involving government and business and labor, suggesting adjustment plans for the industry in question. I rather like the Harley-Davidson model that has made headlines in recent weeks. I don't think any tripartite panel told the CEO of Harley-Davidson which plans they should close or which executives he ought to change. I think Harley-Davidson was simply given a period of time in which to attempt to become internationally competitive again.

The Chief Executive Officer of Harley-Davidson obviously did a darned good job in that respect and was able to regain his company's international competitiveness in a relatively short period of time and to ask that the import relief be granted. I think we ought to do that with everybody. Let's not tell them how to run their businesses; let's give them a specific period of time in which to at-

tempt to regain their international competitiveness and hold them accountable for doing so.

Finally, just a couple of comments on the antidumping and countervailing duty front. There are a number of provisions in S. 490 that relate to these subjects, and most of those, Mr. Chairman, would involve derogations from existing GATT rules, that is, the existing GATT antidumping code.

Most of those issues, if not all of them, ought to be taken up in the Uruguay Round of negotiations rather than through legislation. We should not put ourselves in a position where we violate international agreements to which we are a signatory. The one exception in that area to which, in my judgment, we ought to give attention is the question of dumping from nonmarket economies.

Senator Heinz already has a provision in that respect. Our provision is very similar to that. I hope we can work out the differences between the two and find an acceptable solution for the issue of nonmarket economy dumping.

In conclusion, I would simply say that we share your views, Mr. Chairman, for the development of a tough trade bill. I would simply counsel that people define the word "toughness" in different ways. For some, "tough" simply means protectionist; and if that be the intent of some Members of Congress, then obviously we will debate that issue and debate it with great vigor. If "toughness" means what I construe it to be, from Webster's dictionary, then we ought to be able to reach an accommodation on a piece of legislation that would be tough and simultaneously responsible.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Ambassador.

[The prepared written statement of Ambassador Yeutter follows:]

TESTIMONY OF
AMBASSADOR CLAYTON YEUTTER
UNITED STATES TRADE REPRESENTATIVE

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

APRIL 2, 1987

Mr. Chairman and Members of the Committee, I welcome the opportunity to comment in detail this morning on S. 490, the Omnibus Trade Act of 1987. In my testimony before this Committee last February, I stressed that our record trade deficit results principally from factors other than unfair trade practices of foreign governments. Because trade policy and actions play a subordinate role regarding the trade deficit, we all should recognize at the outset that enactment of any trade bill will not solve the trade deficit problem.

I am greatly encouraged by the increasing recognition this year that trade legislation is not a panacea for the trade deficit. With this recognition comes a responsibility to draft legislation that seeks to achieve realistic objectives, not fairy tale endings that inevitably will elude us all.

The objectives that I believe we should seek are the following:

- to enhance American competitiveness;

- o to increase U.S. leverage in international trade negotiations; and

- o to avoid shooting ourselves in the foot, by provoking adverse effects on U.S. exports through retaliation or mirror legislation.

We should pursue those objectives, while also respecting our international obligations as a signatory of the GATT.

Mr. Chairman, on February 19--the same date I was last in this Committee room--the President transmitted to the Congress our competitiveness bill, the Trade, Employment and Productivity Act of 1987, introduced in the Senate as S. 539. More recently Senator Dole introduced the trade provisions of this bill as S. 636, which has been referred to this Committee. Just as we have seriously reflected on S. 490, which many of you co-sponsored, we trust that you will carefully consider our bill when marking up trade legislation.

To inform you as fully as possible about the Administration's views on S. 490, attached to my testimony is a section-by-section analysis commenting in detail on all its major provisions. I would now like to indicate some of our concerns about S. 490.

3

Trade Agreements Authority

The statutory tool we most need from any trade bill is the authority for fast track procedures for negotiating and implementing new trade agreements. To achieve fairer international trading rules and to knock down the many foreign barriers distorting international trade, we cannot depend on unilateral options. We must negotiate with foreign countries and be prepared to implement the results of those negotiations in this country.

Faced with intensified foreign competition here and abroad, our options for independent action in the trade arena have serious limitations. While we can close our own market and subsidize our exports, such steps are likely to hurt U.S. consumers, drain our treasury (thereby fueling the trade deficit) and provoke foreign retaliation--hurting rather than helping our competitiveness. We want to open foreign markets and establish and enforce rules of international competition, not foster dependence on protection and subsidies. In the longterm we cannot repeatedly bludgeon other nations into opening their markets with threats of U.S. restrictions. Rather we must be able to negotiate credibly for global liberalization.

Today the Uruguay Round offers the best prospect for achieving significantly improved market opportunities and fairer international rules. Launched last September with by far the broadest agenda

in GATT history, it includes not only traditional areas of GATT concern (such as nontariff barriers and dispute settlement), but also areas of international economic activity new to GATT (such as services, trade-related investment measures and intellectual property rights). While we must be prepared to negotiate bilaterally and through other types of initiatives, our primary focus lies in the multilateral approach of the Uruguay Round.

For more than 50 years, successive administrations and Congresses have recognized that successful trade negotiations require a partnership between the Congress, with its Constitutional power to regulate foreign commerce; and the President, who has the Constitutional responsibility for foreign affairs. S. 490 would undermine this partnership, by providing only the possibility of a fast track at some future time. In fact, the bill precludes access to the fast track process until the Congress votes to approve certain trade policy statements--a vote that could easily degenerate into a referendum on the topical issue of the moment!

As a result, enactment of S. 490 would reduce the confidence of other governments in America's commitment to multilateral trade negotiations. This would undermine our leverage in these important negotiations, prevent us from achieving early results in them, and could even torpedo the Uruguay Round.

Faced today with the most difficult multilateral trade negotiations ever conducted, we need "clean" fast track procedures for Congress to review nontariff agreements, just as Congress provided for the Tokyo Round negotiations. We also need proclamation authority for tariff agreements, which successive Congresses have given successive Presidents since 1934. Subjecting tariff cuts to a Congressional vote, as S. 490 would do, motivates Members to vote based on parochial and special interest concerns rather than the broader national interest.

Moreover, S. 490's requirement of Congressionally approved trade policy statements as a condition precedent for fast track procedures would not achieve its objective: increased Congressional influence in negotiations. Our trading partners are unlikely even to begin serious negotiations until we have adequate Congressional trade agreements authority, signaling America's commitment to trade negotiations through an effective Congressional-Administration partnership. The way to enhance Congress' role is, as we propose, significantly to expand consultation and reporting requirements. This will increase the Congress' clout in negotiations and influence in shaping the outcome. S. 490's postponement of fast track procedures counterproductively would postpone serious negotiations.

While our bill proposes many improvements to the trade laws, without adequate trade agreements authority the Administration's

interest in any trade bill radically diminishes.

Section 301

I will not comment in detail on S. 490's Section 301 proposals because my General Counsel, Alan Holmer, recently did so at a hearing in which most of you participated. I will reinforce the major point he made on March 17. Requiring retaliation under Section 301 is unlikely to improve access to foreign markets or to obtain increased protection of intellectual property rights or improved conditions for U.S. investment in other countries. It does not increase our negotiating leverage, because Section 301 already authorizes sweeping import restrictions, an effective threat with any country that exports significantly to the U.S. Moreover, requiring retaliation reduces the flexibility, and therefore the effectiveness, with which we apply this broad authority. It is more likely to provoke a nationalistic backlash that reduces a foreign government's political ability and willingness to negotiate. As a result, we are more likely to retaliate and the foreign government to counterretaliate, thereby closing rather than opening markets around the world.

I would like to respond to questions that some of you have posed about mandatory retaliation. First, one Member of this Committee asked about the basis for our judgment that foreign governments often would prefer to suffer U.S. retaliation rather than negotiate

solutions to trade problems satisfactory to the U.S. This judgment is the result of the cumulative negotiating experience of this and previous Administrations. Governments, like people, can be insensitive and sometimes even closed minded or irrational on some subjects, usually for complex domestic political reasons. In some routine cases, mandatory retaliation might facilitate a negotiated solution, as S. 490 intends. But in many more delicate cases, it would be counterproductive, fanning sensationalist press charges that the U.S. was using its economic might unfairly--for example, to interfere with Canadians' separate cultural identity, to destroy the agricultural policies that bind the European Community, to reassert colonial imperialism among our southern neighbors in this hemisphere, or to repress developing countries. Such charges obviously would be unfounded, but we must deal realistically with human emotions that can spark trade wars rather than solutions. Too often holding a loaded gun to a trading partner's temple would provoke that government to stonewall or counterretaliate rather than to satisfy American demands, however reasonable.

Another thoughtful question posed in this Committee was whether a requirement for retaliation would help discourage a trading partner from establishing new unfair trade barriers. I believe that in most cases, it would not. Foreign governments erect barriers around their markets usually for strong domestic political

reasons that would override the foreknowledge that one trading partner, the U.S., would retaliate against those barriers.

Witness the textile legislation that some members of the Senate are propounding, even though retaliation is assured if it were to pass. Consider our VRAs on steel and machine tools; quotas on sugar and sugar-containing products, dairy products, peanuts and cotton; the agreement with Japan on semiconductors; and higher taxes on imported crude oil than on domestic crude oil. Would we have been deterred from adopting any of these measures by a mandatory retaliation provision in a foreign trade law? Possibly, but in most cases I suspect that any concern about subsequent foreign reaction--however assured--would have been overwhelmed by the domestic political support for the measures.

We have other serious problems with S. 490's Section 301 provisions. For example:

- The requirement to <u>self-initiate investigations</u> will reduce the clout of what is now considered an extraordinary remedy. Routinely requiring self-initiation will provoke foreign yawns rather than gasps when we do self-initiate, and cast a deep, sleepy shadow over all trade issues on which we do <u>not</u> self-initiate an investigation.

- An unfairness determination should be made only when and if this public, formal stigma is likely to increase the probability of a trade liberalizing result, or when necessary to preserve the credibility of a retaliatory threat. It should not be required in every case on an arbitrary time schedule.

- Authority should not be transferred from the President to the U.S. Trade Representative. We need to have the President determine whether a foreign practice is unfair, so that such determination will have the greatest possible force and stature with our trading partners.

Section 201

Our bill proposes some changes to Section 201 to improve its effectiveness in facilitating adjustment to import competition. We want to clarify that it is no harder for the ITC to find injury during an economic recession or downturn than during economically prosperous times. We want to make significantly expedited provisional relief available in cases involving perishable agricultural products in a way that passes muster under GATT Article XIX. We want to provide two new options for relief in addition to import relief: multilateral negotiations, and an urgent review of applicable U.S. federal regulations to the

industry concerned. We want to ensure that relief is available--at a price to the U.S., either through reduced U.S. tariffs or foreign retaliation against U.S. exports--only when there is a reasonable likelihood that the relief provided can help the industry to become competitive by the end of the relief period. And we want to replace Trade Adjustment Assistance, which has never worked well, with a comprehensive and effective worker readjustment program providing $980 million to assist 700,000 displaced workers each year.

We think these proposals will strengthen Section 201, which overall this Administration has applied generously to U.S. industry despite many Members' disappointment in the footwear and copper cases. Of 16 Section 201 cases filed during this Administration, the ITC found no injury in 10. Of the remaining six cases, the President provided meaningful relief in four: carbon steel, specialty steel, cedar shakes and shingles, and motorcycles. As you know, the latter recently made news. We applaud Harley-Davidson's "self-initiated" motion to terminate relief a year early because of its speedy and successful adjustment efforts.

As Members of this Committee will recall, we did not provide relief in the footwear case, which would have cost consumers an estimated $3 billion; or in the copper case, where relief was opposed by copper fabricators accounting for six times as many jobs as the miners seeking relief.

S. 490 proposes to change Section 201 fundamentally. In evaluating the proposed changes, we hope the Committee will bear in mind that Section 201 does not involve allegations of unfair trade practices, and that the GATT requires us to compensate trading partners adversely affected by any import relief we provide. Providing adequate compensation through reduced U.S. tariffs or absorbing foreign retaliation against U.S. exports shifts the structural adjustment burden and the financial burden for Section 201 relief from one industry or sector to another. In addition, consumer costs are increased, sometimes dramatically. Section 201 relief obviously is not a free lunch, and should be provided only where this net balancing of interests comes out on the positive side.

Where the ITC unanimously finds injury, S. 490 would require the President to provide the relief recommended by the Commission or substantially equivalent relief, unless he obtains Congressional authority (on a fast track basis) to do otherwise. We strongly believe that such a significant reduction in the President's current authority is unwarranted. No matter how many Commissioners find injury, the President should still weigh the expected benefits of relief against its costs, and then make a decision. The decisiveness of the injury determination, as reflected in unanimity among Commissioners, is irrelevant to this cost-benefit analysis.

The relevant cost-benefit parameters are necessarily broader for the President than for the ITC. It is the former who is elected by the people to make a decision such as this. No one else should make the decision, and assuredly not an appointive body such as the ITC.

Where the ITC injury finding is not unanimous, S. 490 would allow the President (subject to Congressional override) to provide relief different from (and not substantially equivalent to) that recommended by the ITC, or no relief, if he determines that adoption of the ITC recommendation would be detrimental to the national security or would cause serious injury to a domestic industry. This limits Presidential discretion far too much. The current balancing test is infinitely preferable. The President should not be required to grant import relief if such would be inconsistent with our broad national economic interests--irrespective of whether national security or individual industry concerns are involved.

Where an industry reasonably can be expected to become internationally competitive after a period of import relief, Section 201 already works relatively well. And where a successful adjustment to import competition is unlikely, our worker readjustment program will ease the pain and constructively assist displaced workers to find other jobs so we don't waste precious human resources. Except for very persuasive reasons, our government

should not intervene to prop up an uncompetitive industry--for such action will likely be at the expense of one or more of our most competitive industries. Nevertheless, when some of our fellow Americans lose their jobs--because of import competition or for other structural reasons--we want to help them again find constructive work. We urge the Senate to consider seriously our worker readjustment program proposals.

S. 490 proposes other undesirable changes to Section 201. For example, it requires the government to participate in tripartite industry-worker-government panels to develop adjustment plans for petitioning industries. This proposal calls for industrial policymaking by government officials, who are ill suited to tell businessmen and workers how to run their businesses. Our worker readjustment proposal offers a better solution. It recognizes the benefit of labor-management cooperation, and supports processes whereby state and local areas can facilitate the establishment of voluntary labor-management committees. We believe these committees work best when the parties come to the table of their own accord, not because they are required to.

S. 490 also calls for provisional relief in cases involving "critical circumstances" and perishable products, in a manner that would violate our GATT obligations and therefore could trigger compensation requirements. By extending the maximum period of relief to 13 years, it is inconsistent with the escape

clause's toleration of temporary relief afforded to facilitate an industry to adjust to import competition. While we can hope that other industries would follow Harley-Davidson's exemplary adjustment and voluntarily relinquish import relief at an early date, long-lived relief is more likely to nurture dependence on protection rather than adjustment to competition. Protection can be addictive; it too often stultifies rather than reinvigorates. And a longer relief period magnifies the bill for compensation due to our trading partners. In the Administration's view, these changes undermine rather than enhance Section 201.

We oppose S. 490's expansion of Trade Adjustment Assistance and imposition of an import duty to help fund it. As a replacement for TAA, our proposed worker readjustment program in S. 539 emphasizes rapid delivery of quick adjustment services for all dislocated workers without any delay for investigating a TAA petition or making an ITC finding. In contrast to the TAA program, which spends most of its resources on weekly cash benefits (which actually can deter adjustment), the $980 million worker readjustment program would channel its resources to real adjustment services to meet workers' needs. Workers who apply for training during the first 10 weeks of their unemployment benefits could receive weekly cash benefits, after they exhaust their unemployment insurance benefits, while they are being retrained.

The proposed additional duty on imports to help fund trade adjustment assistance would be illegal today under GATT Articles II and VIII, and I am not optimistic about the prospects for negotiating a change in the GATT rules to authorize it. Violating our international obligations not only would undercut our position in all trade negotiations, but also would invite mirror legislation or retaliation. Moreover, the "adjustment fee" would be a new tax. The Administration opposes the earmarking of funds, which undermines the necessary discipline of deciding funding levels on programmatic merits through the appropriations process.

Antidumping and Countervailing Duty Amendments

Vigorous enforcement of the antidumping and countervailing duty laws has been a fundamental part of our trade policy. Over six hundred cases have been initiated since 1980. This number documents the confidence U.S. businesses have in these laws.

The reason these laws can work so effectively is because they are consistent with the GATT. They are aimed at practices that are internationally recognized as unfair, and they are administered in accordance with internationally-accepted procedures.

For these reasons, we have serious problems with some of the antidumping and countervailing duty proposals in S. 490. Most importantly, we strongly oppose the diversionary input dumping

proposal. It is inconsistent with the GATT Antidumping Code and the GATT charter itself, neither of which permits levying an antidumping duty on a product just because it contains a dumped input. Both agreements define dumping as the difference between "fair value" and the export price of a "like product." We cannot add in an arbitrary extra amount for alleged "input dumping" and be in compliance with our international obligations. Enactment of this proposal would provoke retaliation or mirror legislation against U.S. exporters--who have been subject to more antidumping investigations abroad than companies of any other country. Therefore, we must proceed with extreme caution in this area.

We also strongly oppose the proposal on "critical circumstances" determinations, because it is inconsistent with internationally agreed limitations on the application of provisional measures. The Antidumping and Subsidies Codes provide that such measures may be applied only after a preliminary affirmative finding of injury.

Conclusion

Mr. Chairman and Committee Members, I hope my candor in this testimony is received in the spirit in which it is offered--as constructive cooperation with the Congress, and this Committee in particular, in shaping sound, realistic trade legislation. We are prepared at any time to offer our policy and legal views on both

S. 490 and S. 539, and to provide technical drafting assistance to your staff.

Everybody wants a tough trade bill, but what we also need is intelligent, creative legislation that will strengthen our economy and propel us better prepared into the 21st century. To this end I look forward to further work with this Committee, which is always a pleasure.

The CHAIRMAN. In looking at your comments concerning the leather case and the consistency that you allege there, I note that the case was instituted in 1977. GATT consultations began in 1979. The GATT panel ruled for the United States in February of 1984. In September of 1985, the President directed the USTR to recommend retaliation unless a settlement could be made by December of 1985.

And now, we have seen some action in 1986—nine years after the case began.

Now, the other point that you made is that flexible legislation is always an advantage. I really don't agree with that. I think there may be cases where it is and cases where it isn't. Your statement that there would have been a trade war—you don't know that, and I don't know that. That is a matter of conjecture.

I think deadlines make a difference, and I think they bring decisions often and particularly when it is known that there is no give on that deadline. I heard a story about a trade ambassador who was down in South America and set a deadline and his bags were packed, and he was going to get on the plane. And all of a sudden, an agreement was reached.

Mr. Ambassador, I don't know who will be in the next Administration.

I see a dramatic change in the policy of this Administration, much more aggressive trade policy and tougher trade policy; but how do we know that the next Administration won't duplicate what this Administration did in its first four years?

The Congress cannot negotiate these agreements, but we can sure set up some parameters. We share this responsibility on trade. I think it is important that we set up standards by which we try to move trade to a higher profile in this country, Mr. Ambassador—where we move you above the salt, where what happens to trade does not take a back seat to whether we want Cruise missiles in Europe or whether Japan is with us on the next vote in the United Nations.

Let's try to move trade up to the same kind of priority that other countries have and realize this country's economy has been internationalized and that we are a part of the world trading process.

You talked about section 201. In the Administration's trade bill, you took some of the same things that we have in our bill by making it tougher to get relief for an industry in order to make the industry more competitive; but, on the other hand, you gave virtually total discretion to the President to decide whether he grants that relief. So, my concern is that industry says: Okay, we are going to have to pay this kind of a price; we are going to have to make these kinds of capital investments to prove that we can be world competitive and therefore, should be granted some temporary relief, be it Harley-Davidson or whatever. But if they see the same free hand on the part of the Administration, then whomsoever that President is, they are going to say: Why go through the process?

What we have done with our legislation is to make it a lot tougher to qualify for relief. But we have said, then, if you can prove that you will be world competitive, then we give you more assur-

ance that you are going to be granted some relief—not total, but more assurance. How would you respond to that?

Ambassador YEUTTER. All right. If I may, Mr. Chairman, I will respond to two or three of those comments.

The CHAIRMAN. And I must say I am going to have to read it in the record because I am going to have to go and vote. [Laughter.]

Ambassador YEUTTER. Thank you.

The CHAIRMAN. We have problems, Mr. Ambassador. I understand the President has a meeting with all the Republican members starting at 11:15 on some subject that is before us. [Laughter.]

Ambassador YEUTTER. I was afraid that would happen some time this morning.

The CHAIRMAN. Yes, so was I. Why don't you hang in there for about five minutes? Senator Bradley went early, so he ought to be right back.

Senator MATSUNAGA. And the Ambassador, I am sure, would like to keep us here—some key votes—[Laughter.]

Ambassador YEUTTER. That is a salient suggestion, Senator Matsunaga. [Laughter.]

The CHAIRMAN. I understand Senator Danforth would rather be here. [Laughter.]

Mr. Ambassador, if you would hold on for about five minutes, we will see if we can work it out.

Ambassador YEUTTER. That will be fine.

[Whereupon, at 10:51 a.m., the hearing was recessed.]

AFTER RECESS

Senator BRADLEY. The hearing will come to order. Mr. Ambassador, if we could, I have assumed the chair, one of the rare moments I have to do that; so I decided I had better seize the opportunity. I would like to, if I could, pursue with you some questions about the exchange rate trade relationship and then maybe come back to the question of mandatory response.

It appears to me that the action that has recently been taken on the Japanese issue—the semiconductor issue—is a very clear change of position for the Administration. It was unexpected; it was decisive. It sent a clear signal.

Now, you have said that you sat with the Japanese in each of the months of October, November, December, January, and February and said that something was going to happen. Is that correct?

Ambassador YEUTTER. I did not do so personally, Senator Bradley, but my deputy, Mike Smith, attended almost all, if not all, of those meetings and in the earlier months expressed our concern that third country dumping seemed to be taking place. And then in January, as you may recall, he indicated that we were persuaded the dumping had taken place in a consistent way and had to be corrected within 30 days.

Senator BRADLEY. Right. But this is a trade action taken within the context of trade law?

Ambassador YEUTTER. Yes, sir.

Senator BRADLEY. Now, my concern is that the interaction of this decision and the decision taken by the Administration almost at the same time in Paris on exchange rates are in conflict. And my

sense is that we had the Japanese, we had the Germans, we had many of our partners with whom we have run a bilateral trade deficit in a very good position on the issue of central concern to them, which is price—which is the price of their goods in our market; and that it was unwise for us to go to Paris and to imply, if not agree specifically, to try to intervene to set a floor under which we would not allow the dollar to drop.

I know you are part of the Administration, so you might not want to agree, but let me say that I think it was a serious error to go to Paris and say we are going to put a floor under the value of the dollar and to attempt to agree with our allies on that fact.

First, I think it was a mistake because I think the threat of intervention is always more important than a specific agreement on intervention because, as we see, the market is taking it even lower. I would much rather have Mr. Toyota or the head of Siemann's calling the Finance Minister or the Central Banks of the respective countries and saying: Get this economy going; open up this economy; don't you realize we are going to have to raise our prices in the United States? When we raise our prices in the United States we are not going to sell as many goods, and when we don't sell as many goods, you are going to have even more unemployment here than in Germany or Japan.

By going to Paris and saying we are going to agree to a floor, we relieved the most significant and important pressure we had on these countries to open up their markets.

How could anyone argue contrary? And I hope you aren't.

Ambassador YEUTTER. Senator Bradley, first of all, I would like to permit Secretary Baker to respond to that issue because that is really his area of responsibility.

Senator BRADLEY. That is said like a Statesman. Let me just reassert that I think that what the action does is, if you are going to put a floor under the dollar, you are not going to use price and the leverage of domestic markets in the countries abroad to open up their own trading systems; then you are moving inexorably toward another alternative, and that is U.S. blocking access to our markets to try to do something about the trade deficits.

You either believe in an open system or you don't. You either believe that exchange rates should be flexible and float, or you don't. You either believe that there are underlying market realities that set the value of the exchange rates, or you don't.

Ambassador YEUTTER. Let me at least try to respond partially to your questions.

Senator BRADLEY. Doesn't it make your job much more difficult if you have a finance minister or a treasury department saying, look, we are not going to allow the price advantage that should accrue to American business to accrue; we are going to continue to hobble American business by artificially propping up, or attempting to prop up the value of the dollar. So, when the market momentum starts to flow and the dollar drops below the range that it is supposed to have dropped, it shows that the Emperor has no clothes and you have protectionist pressures; and you have the worst of all possible worlds. So, that is my question. [Laughter.]

Ambassador YEUTTER. Let me respond at least partially without trying to tread on Secretary Baker's turf.

Obviously, those issues are all interrelated; you understand that very well and so do I. I came out of the financial world before I came back into Government and was heavily involved in the arena of international exchange rates.

So, there clearly are constraints on what governments can do in the exchange rate area. Finance ministers and central bankers can influence the levels and relationships of exchange rates on a temporary basis, but they obviously cannot overcome the underlying economic fundamentals in the long run.

And to go beyond that into comments about policy decisions within the economies of countries like Japan and Germany, we both agree that it would certainly have been helpful, not only to us but in my judgment to those countries themselves, for them to have generated additional domestic demand at a much earlier date. I simply find it inexplicable that the government of Japan would seriously be considering additional taxes at a time—or tax systems—when added domestic demand would seem to be the order of the day.

Senator BRADLEY. The chairmanship of the committee reverts to the more senior member, Senator Baucus.

Senator BAUCUS. The early bird rule——

Senator CHAFEE. I have a couple of questions to submit to Mr. Yeutter in writing, and I would like to get those answered if I could; and I will be submitting those. Thank you, Mr. Chairman.

Senator BRADLEY. All right.

Ambassador YEUTTER. Certainly.

Senator BAUCUS. Senator Danforth will be unable to return, and he has some questions for you also.

Ambassador YEUTTER. All right.

Senator BAUCUS. Senator Rockefeller?

Senator ROCKEFELLER. Thank you. Mr. Ambassador, in November, 1983, President Reagan and Prime Minister Nakasone signed the only bilateral agreement which they have signed together; and that had to do with an energy policy. It was a Joint Policy Statement on Energy Cooperation.

Part of that agreement was that there would be no further decline in the importation by Japan of American coal, with a particular emphasis on metallurgical coal, much of which comes from my State of West Virginia. Now, that was in November of 1983. The import of coal by the Japanese has, in spite of the agreement, continued to decline with respect to American coal.

In fact, it has declined precipitously from approximately 26 million tons in 1981 to just over 10 million tons last year.

Now, the Prime Minister is coming to this country shortly. I have written the President a letter asking him to place this Reagan/Nakasone agreement on coal at a very high level in their discussions so as to remind the Prime Minister that coal imports from the United States have been declining. They have continued to decline, in spite of the agreement in November of 1983, and that was not the understanding.

I hope that you will encourage the President to make that a top matter on his agenda. It is, as far as I know, the only bilateral agreement between those two leaders that has ever been made. In 1981, 33 percent of all Japanese coal imports came from this coun-

try. Today that figure is 12 percent. That is not in the spirit of the agreement, and I hope that it would a matter of the highest concern in their discussions.

I wonder if you have any comment, Mr. Ambassador?

Ambassador YEUTTER. Yes. I would be glad to comment briefly, Senator Rockefeller. We are disturbed that the basic objectives of that agreement seem not to have been met since it was executed. Certainly, part of the explanation is the decline in demand for steel products in Japan and elsewhere, but that is not a satisfactory explanation; and we certainly need to point that out to our Japanese friends.

It is an issue that has been discussed on a good many occasions since 1983, but I agree that there would be merit in having it raised to a higher level in the very near future.

Though USTR does not have the lead in that issue—the State Department has the lead on it; for reasons which I do not fully understand, they precede me—I do intend to raise the issue when I am in Japan in about two weeks, just before Prime Minister Nakasone comes here. It is possible that I will meet with the Prime Minister while I am in Japan; and if I do so, I will raise the issue with him. And if I do not meet with him at that time, I will certainly raise it with my counterparts at the ministerial level.

Senator ROCKEFELLER. Thank you, Mr. Ambassador, very much.

The CHAIRMAN. Senator Durenberger?

Senator DURENBERGER. Thank you, Mr. Chairman. Mr. Ambassador, as I indicated earlier, I wanted to explore——

The CHAIRMAN. Let me further state—because I know you have this meeting with the President—what I want to do, if I may. As other Republicans come back, we will give them a priority on questioning and then hopefully try to continue during that half hour and let some of the Democrats ask their questions. Go ahead.

Senator DURENBERGER. Yes. I am one of the 13, so you can keep me here all morning if you would like. [Laughter.]

The CHAIRMAN. Senator, you may have as much time as you want. [Laughter.]

Senator DURENBERGER. But you are going to give very quick answers. [Laughter.]

The CHAIRMAN. That will be the day. [Laughter.]

Senator DURENBERGER. Just come back from Canada without that 84 cent tariff on my corn, Mr. Ambassador. [Laughter.]

Senator DURENBERGER. Let me preface my question on targeting with this piece of information. In late February, the Defense Science Board Task Force on Defense Semiconductor Dependency issued a report that I think raises serious questions about this country's dependence on foreign sources for state-of-the-art electronics. The report recommended the creation of a semiconductor industry research and manufacturing consortium which would join forces at a semiconductor manufacturing technology institute. The companies would participate in it with $250 million in contributions; and the Defense Department would contribute $1 billion over five years.

As I indicated earlier, Jack Danforth and I introduced this week a piece of legislation that would establish a Presidential commission on commercial and military applications of superconductors,

which I think would probably end up with the recommendation that the United States should coordinate research, development, and production efforts in this area. Now, my concern is that, if we make targetting an unfair trade practice, aren't we leaving the door open to our trading partners to enact—as your fourth principle states—mirror legislation that challenges government-sponsored efforts? I mean they can even go back and take on NASA.

Here is a very well known United States Government effort to provide U.S. leadership—technological leadership—and then, in this publication, it shows all of the domestic spinoffs to commerce. So, what about that fourth principle, and how does that apply to industrial targetting?

Ambassador YEUTTER. All right. Thank you, Senator Durenberger. You have raised a very complicated issue, and I am afraid I can't give you quick answers; and I will have to give you answers that are somewhat nebulous because the Administration really does not have a position on some aspects of the questions you raised.

They are very fundamental and profound questions, and they are issues that merit serious contemplation in this country; and I do not want to give you cavalier answers for that reason.

First of all, with respect to the targetting aspects of it, I would simply say that the Administration does not favor encompassing targetting within the parameters of the trade law for a whole lot of reasons, including one that we find it very difficult to even define targetting in a manageable, administrable way. So, we really do not believe that it ought to be singled out as an unfair trade practice.

It may be unfair in some cases, but we want to have the flexibility to make that determination within the broad definitions that already exist in Section 301, for example.

Now, we do have to be careful that we are not hypocritical about this, and you are raising the point as to whether or not targetting would be an appropriate national strategy for the United States; and we shouldn't be putting ourselves in a position where we attack everybody else in the world for targetting programs and then embrace them here in the U.S.

So, we must be consistent in that respect; but there is so much difference in targetting kinds of activities that it seems to me, Senator Durenberger, that in some cases targetting programs could be clearly defensible and appropriate; in other cases, they could be construed in a very legitimate way as unfair trade practices, which is a terribly unsatisfactory way to respond to your question, but I just don't believe that one can categorize targetting effectively at the moment.

But getting to the merits of this particular case when we are dealing with superconductors and other high technology products in which we have major international challenges or potential challenges, then we have to sit down and say: Do we want a Presidential commission or do we want what you denominate as a targetting effort to try to respond to those challenges? I don't know whether a Presidential commission is the right way to go or not, and I am certainly not going to advocate targetting here this morning, Senator Durenberger; but I will say that this is an issue to

which I have given considerable thought already, and I really believe that it is a question that has to be faced by this country.

The way in which production and trade are being conducted in a high technology area is different from anything that we have experienced traditionally through the years; and my judgment, Senator Durenberger, is that we don't quite yet know how to handle that.

Senator DURENBERGER. Mr. Ambassador, could I ask you this? I read a report yesterday regarding the Japanese government and their phone company, that they may purchase some American supercomputers. Can you tell me what is happening right now at USTR and in Japan as it relates to supercomputers?

Ambassador YEUTTER. Yes, I can. I intend to raise our concerns about supercomputers with the Japanese when I am in Tokyo in about two weeks. That will be the next step in our expressions of distress over that particular question.

NTT has indicated that they plan to buy some additional supercomputers, but I don't see that as any major development in the resolution of the underlying dispute.

The CHAIRMAN. Mr. Ambassador, I apologize, but we have another vote.

Ambassador YEUTTER. All right.

The CHAIRMAN. If you will just hang tight, we will be back as quickly as we can.

Ambassador YEUTTER. All right.

[Whereupon, at 11:19 a.m., the hearing was recessed.]

AFTER RECESS

Senator BRADLEY. The hearing will come to order. This position gives me the unfair advantage of not having to wait to ask questions; so, I am going to take advantage of that.

Ambassador YEUTTER. My pleasure.

Senator BRADLEY. Where we left off was a general discussion about the value of the dollar and whether it wasn't extremely short-sighted to have agreed to attempt to put a floor under the value of the dollar when it was clearly exerting serious pressure on many of our trading partners' countries to stimulate their economy and to open up their economy to our exports.

So, let me ask you straight-forwardly: Don't you believe that our trade deficit would be improved if the value of the dollar dropped further?

Ambassador YEUTTER. That should be essentially a mathematical truism, although obviously the world is a bit more complicated than that. But clearly as economic principles function in our relationships with our major trading partners, and I believe they do in capitalistic societies at least, as these signals are transmitted through the marketplace, clearly there will be an impact at some point in time.

Senator BRADLEY. And how would you describe what you see as the impact of that within, say, Germany or Japan, and as much as you can, the impact of the lower dollar?

Ambassador YEUTTER. We have been watching that rather carefully, of course, Senator Bradley, in recent months because of the lag time that has prevailed. I would have expected a response prior

to this; and unfortunately, it has not shown up in the numbers yet, or at least not to any great degree.

My judgment, Senator Bradley, is that the decline of the value of the dollar is beginning now to show up in volumes. Unfortunately, there is not very good data available on physical volumes. Most of the data the United States and other governments have is based upon dollar values or currency values, rather than on physical volumes.

But the indications that we have been able to obtain are that physical volumes are beginning to be affected; and ultimately, of course, that will also be reflected in values, once we get through the J-curve effect. Now, how that will play——

In Japan, Senator Bradley, I believe we will see it on the import side—that is, imports into the United States—sooner than we will see it on the export side, for a whole host of reasons including the kinds of problems that are reflected in our semiconductor case. With Western Europe, my judgment is that we are more likely to see it both ways, that we don't see some of the rigidities in products moving into Western Europe that we do see on export products moving into Japan.

Senator BRADLEY. So, if the dollar dropped further, you believe that in Japan's case we would see less Japanese imports into the United States?

Ambassador YEUTTER. Correct.

Senator BRADLEY. And in Europe, we would see less European imports and an increase in U.S. exports?

Ambassador YEUTTER. Correct.

Senator BRADLEY. What do you say to those Europeans who argue that, gee, if the dollar dropped further, we would be faced with a possible recession?

Ambassador YEUTTER. That certainly is a possibility in Western Europe or Japan or any other country, but that is precisely why they ought to be discussing policy measures that would counter that.

Senator BRADLEY. So, you are saying that, if the thing that is preventing them from having a recession is our trade deficit, that is unacceptable and we want to reduce our trade deficit. And when we reduce our trade deficit, then each country has within its own means a monetary policy and a fiscal policy with which they could assure that they would not have a recession. Is that not correct?

Ambassador YEUTTER. That is correct, and I would add tax policy perhaps to monetary and fiscal policy. They certainly have the macroeconomic policy tools to adjust to that in their own way.

Senator BRADLEY. Why do you think they are so reluctant to accept that fact?

Ambassador YEUTTER. That is a question that I really cannot answer. We have been having a good many discussions with them in recent months, as you well know; and the arguments that I have heard from ministers in those countries simply are not very persuasive.

Senator BRADLEY. Mr. Chairman, may I ask one more question?

The CHAIRMAN. Yes. Go ahead.

Senator BRADLEY. On the question of mandatory retaliation.

Ambassador YEUTTER. Yes?

Senator BRADLEY. The real question is: Why in the last several months have you aggressively settled cases? And the answer to that, I think, is because there is clear political pressure from the Congress to do that, which means that our competitors know that if they don't settle, there is going to be some retaliation. That gives you maximum leverage.

Why wouldn't it be even more leverage to get settlements if those countries knew that there would be a mandatory response?

Ambassador YEUTTER. There would probably be more leverage in at least some cases, Senator Bradley, because of known potential retaliation, but not in all cases, and I still believe very firmly, Senator Bradley, that inflexible mandatory retaliation would be a mistake for the United States.

One reason for this is that sometimes one can exert more leverage where there is uncertainty and flexibility than when there is certainty because the nation may simply make a decision that they would prefer to have us retaliate rather than to change their policies. That has arisen in a number of disputes that we have had; and clearly, in those cases——

Senator BRADLEY. Two examples?

Ambassador YEUTTER. I will have to think about a second one, but the immediate one is Japanese leather where we ended up with a partial retaliation, a partial market-opening measure, but a clear indication was that they would prefer to retaliate rather than to open their market to U.S. leather exports.

Senator BRADLEY. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Roth?

Senator ROTH. Thank you, Mr. Chairman. Mr. Yeutter, I am very concerned about the direction of U.S./Japanese trade relationship. Let me start out by saying that, first of all, I agree very strongly with the action that the President recently took with respect to software. In fact, I was one of the sponsors of the resolution that was unanimously adopted. And I am also a strong believer that the imbalance between our two countries must be resolved; and that if we don't do it in a manner of friendliness, it will be done by whatever means are necessary.

Ambassador YEUTTER. Yes.

Senator ROTH. I think the recent action of the President is critically important for the Japanese to understand that we are deadly serious and that we are not going to back off and that corrective steps have to be taken. At the same time, I am very concerned that we could be seeing a real deterioration between the two largest economies of the free world and that that could ultimately result in a disharmony that would be as harmful as perhaps what occured back in the 1930s.

So, I think it is important that we look at procedures or means or efforts to see whether or not we can resolve this problem—and resolved it will be—by some means of cooperation, of working together, rather than a trade war as we now appear to be headed. Now, let me, if I might, make a few comments.

I think frankly it is important that Japan itself must shape up to its responsibilities that frankly come hand-in-hand with its economic success. I won't go into the macroeconomic measures that are necessary because they have already been alluded to. And I also

think it is important that Japan be held responsible for its own unfair trade practices and, frankly, their snail's pace approach to opening its markets.

Third, I think the potential for serious damage to both our economies is great, if we cannot resolve our trade and economic policy disputes. And I think in saying that, I also must admit that it is important that we bring our own house in order, one of them being doing something about the trade deficit, or rather the budget deficit.

Ambassador YEUTTER. Yes.

Senator ROTH. And I won't make any references to what is going on on the Senate floor, but I think it is very relevant to this problem of the trade imbalance that should not be overlooked. So, I am concerned that these trade and economic controversies can have some very, very serious political ramifications. So, I think it is important that we try to look and see whether there is any means, any step, any measure that can be taken to resolve them in an amicable way. I think at this time we have two leaders—here at home, President Reagan, and Nakasone—both of them coming close to the end of their service, at least Nakasone with respect to his present term.

They have developed an ability to work together that has not been seen before. The problem has been what they agree to—that nothing happens afterwards—that the Finance Ministry and others seem to obstruct what has been agreed to.

Frankly, that has been the other problem. We try to negotiate sector by sector, and then we find that they slide off afterward. My question to you, Mr. Yeutter: Might some kind of approach be devised to try to address the whole problem? Now, Mr. Strauss, whom we all greatly admire and respect, has suggested that there ought to be some top-level conference to resolve these trade disputes. Part of the problem with that approach is that it doesn't bring in the Congress, the Diet, who—at least we feel here—have a very key role. So, I wonder if it might be desirable to try to set up some kind of, possibly, a joint executive parliamentary summit to address these problems on an overall basis.

I will ask you for a comment, but let me just give you what I think this kind of a summit conference which included key members of the parliamentary congress as well as a joint executive might do. First of all, they could even hold hearings to try to establish what the facts are; two, to establish specific objectives that would lead to improvement in our trade and economic relations; and finally, establish targets for U.S. and Japanese action to achieve mutually agreed objectives.

My question to you, Mr. Yeutter: Do you see some kind of an approach, either along the lines of what Mr. Strauss has suggested or a joint executive branch parliamentary summit, to look at the overall situation and avoid the deterioration that now seems to be setting in?

Ambassador YEUTTER. First of all, Senator Roth, I do not believe we are headed to a trade war in the U.S./Japan relationship, and I don't see us being anywhere near a trade war. This is a serious dispute and a serious difference of opinion, but it is one that can be rectified very easily, simply by implementation of an agreement to

which the government of Japan is a signatory. I think we will get over this hurdle some time in the relatively near future. We hope that it will send an important message or signal to our Japanese friends, but we certainly have no desire to precipitate a trade war; and in fact, we have indicated to the government of Japan that we do not wish to terminate the semiconductor agreement. We intend to honor it; we hope they will honor it; and we would like to see it continue in force for its full tenure.

As to whether this dispute or any of the others that we are having with Japan will cause a deterioration in political or economic relationships between the two countries, obviously we would not wish that to happen. Japan is a great and respected friend, an ally, and a tremendous trading partner for the United States. We have great admiration for the government of Japan and for its leadership in Prime Minister Nakasone and for its tremendously productive and competitive business community.

So, we want to have a friendly relationship in both political and economic terms and friendly competition between the two. What is at issue here really is the point that you have alluded to, and that is that we have a major disequilibrium in the economic relationship at the moment and one that is probably unsustainable in both political and economic terms. Therefore, the question is: What can we do about that? One suggestion has been a major summit conference; that was Mr. Strauss' recommendation, as you know, and you have expanded on that a bit. I have never been terribly fond about the potential—or very convinced with respect to the potential of conferences; but sometimes it does help to air views. But we have a lot of discussions at very high levels with our friends in Japan, both on a bilateral basis at the ministerial level and between Prime Minister Nakasone and the President. One of those conferences is coming up in three weeks or thereabouts.

And as you know, we have economic summit conferences between seven chiefs of State once a year. It seems to me there are ample opportunities already for these kinds of issues to be raised, and they often do get raised.

So, there certainly is a high level knowledge and concern about the disequilibria that exists. It does seem to me that correcting the disequilibria depends on the will of the governments including both the executive branches and the legislative branches, as you point out. In our case, we do need to look in the mirror and do something about our Federal budget deficit, which gets reflected in a very large trade deficit. We don't need a conference for that; all we need to do is act. And as you say, we have some examples of that before us this morning.

So, suggesting that the budget deficit ought to be lowered is not something that we need to all an international conference to conclude.

With respect to the Japanese, it seems to me that we have a major concern there with respect to what some might call a "cultural proclivity" not to expand imports in a good many areas. And that is probably a simplistic explanation because it would be deeper than just cultural proclivities, but in any case, we are not seeing the openness that is truly necessary of a major world trading partner today.

And that is something that will have to be altered by the people of Japan and the leadership of Japan; and that, too, is nothing that can really be imposed in an international conference. So, I guess the conclusion of all that, Senator Roth, would be that there are no simple answers. Maybe a conference would produce some additional suggestions and recommendations, but I would submit that what is really necessary is commitment on the part of the governments involved to do the right kinds of things in the policy arena to move us back toward equilibrium.

The CHAIRMAN. Thank you very much, Mr. Ambassador, and thank you, Senator.

On the currency exchanges and the substantial drop in the value of the dollar to the yen, I certainly applaud the efforts of the Administration and Secretary Baker in trying to get some modification of the fluctuations in currencies and the objective of the Group of Five meeting in Paris. But I think what we have seen is that, in spite of the massive intervention and billions of dollars spent in an almost unprecedented cooperative effort, the marketplace is finally going to prevail.

That is what will happen, and the Japanese have to recognize it. Any time you have such an enormous trade imbalance, plus the budget deficit in our country, ultimately—ultimately—it is reflected in the marketplace; and that is what is taking place.

Senator Murkowski had asked that you comment on the problem that they are having with the construction of the fiberoptic cable to Alaska and the State of Washington. The Ministry of Post and Telecommunications in Japan—has put what are obviously some very serious limitations on U.S. participation. Would you care to comment on that?

Ambassador YEUTTER. I would be happy to, Senator Bentsen. Developments in that particular dispute seem to be occurring with rapidity these days; and so, I am not in a position to comment on precisely where that situation stands at the moment.

It is a rapidly changing environment. Nevertheless, I would say, Mr. Chairman, that we are concerned with the attitude enunciated by the relevant ministry in this particular case because we believe it does not reflect the spirit of the situation that Senator Roth and I have just been discussing. When we have a major trade disequilibrium with a $50 billion plus bilateral deficit between Japan and the United States, one must question the wisdom of administrative actions that would seem to constrain the potential for additional American exports and additional American investment in a venture project of this nature.

So, we are concerned about it. We are distressed with what has transpired thus far, and it will be an issue on my agenda when I get to Japan in about two weeks, if progress is not made in the interim.

The CHAIRMAN. Thank you. You have stated in the past that you couldn't live with the Gephardt proposal. I noted recently that Senator Packwood made a comment about Article XXIII of the GATT, and he shared that with me, in an address that he had made to the American Business Conference. He said he was attracted to the idea of a GATT action under Article XXIII which, in effect, would

be a multilateral not a unilateral, action. It would express some strong support for the multilateral system.

Mr. Ambassador, could you support that?

Ambassador YEUTTER. I would like to start by saying that, as between that proposal and the Gephardt proposal, it would be very easy to choose. The Gephardt proposal is unacceptable to the Administration, and I hope it will be acceptable to a vast majority of Members of Congress. In my judgment, there is just no way to make the Gephart proposal GATT-compatible; and that being the case, if it were implemented into law, we—the United States—would be in a position of having to defend ourselves in the GATT and having to face retaliation by the affected countries—Japan and others—because of its GATT incompatibility..

So, the psychology, if you will, of that kind of effort is all against us. It makes us the defendant and our trading partners the prosecutors, if you will, in that kind of exchange. The thrust of an Article XXIII submission would be just the opposite of that. If we were to do an Article XXIV complaint against the trading practices of any country—Japan or any other—we would be on the offensive in that endeavor, and the equities would lie with us rather than with our trading partners.

With Gephardt, the equities lie with our trading partners. So, the psychology would be a positive rather than a negative one; and it would place the affected country on notice that it must defend its pattern of trading practices under the aegis of the GATT and the spirit of the GATT.

Now, as to the more specific question as to whether I would favor it, I would say that we have not yet taken a position. The European Community, as you probably know, Mr. Chairman, has already filed such an action, and we clearly need to give it some more consideration within the Administration, but we do not yet have a position on that subject.

The CHAIRMAN. Mr. Ambassador, we often hear it charged against us by foreign countries that the trade deficit is our own fault, because of the budget deficit in particular in this country. I think in part that is true, but I wonder why we don't have more concern about the macroeconomic policies of Japan itself. Now, I look at other countries that have a budget deficit and have a trade surplus; and then I look at the Prime Minister in Japan not following the blue ribbon Mayakawa report, which talked about stimulating Japanese imports. Instead of that, the Prime Minister has recommended a value-added tax; and a value-added tax is a device to stimulate exports.

What is going on there?

Ambassador YEUTTER. That is the issue, of course, to which Senator Bradley and I have been giving some attention while you were out voting, Senator Bentsen. But I will comment on it just briefly.

The CHAIRMAN. All right. Make it short then. [Laughter]

Ambassador YEUTTER. For the benefit of my Republican colleagues, I would be happy to. No, even Mr. Mayakawa, Mr. Chairman, has indicated evidence of disillusionment with the unresponsiveness of the government of Japan to the recommendations of his commission. We feel that same sense of frustration here because we felt that the Mayakawa report had some excellent recommenda-

tions, particularly with respect to the one that you have mentioned, meaning the stimulation of domestic demand.

I find it inexplicable that very little has been done in that area thus far when the economic fundamentals in Japan cry out for that, or at least in my judgment they do so. And as I indicated a little earlier this morning, Mr. Chairman, I find it incomprehensible that Japan is seriously considering a value-added tax at this point in time in its economic history. It seems to me that it is just the wrong medicine.

The CHAIRMAN. I believe that practically every country in Western Europe has one. We accepted it in the early days of GATT agreements. Now, another major economy in the world is talking about applying one.

Ambassador YEUTTER. Yes.

The CHAIRMAN. And we don't have one.

Ambassador YEUTTER. No.

The CHAIRMAN. Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman. I really wanted to focus on something that may have already been discussed, Mr. Chairman. I appreciate your indulgence if it has. On page 5 of your statement, with regard to the role you believe Congress should play in all of this; and as the chairman has indicated, you can be as brief as necessary if this has already been covered.

You say that our trading partners are unlikely even to begin serious negotiations until we have adequate Congressional trade agreements authority, signalling America's commitment to trade negotiations through an effective Congressional/Administration partnership. You say as a result of that, increased Congressional influence in negotiations would be detrimental. That seems to me to be contrary to that statement.

If it can be demonstrated that there is a very cohesive and supportive effort on the part of Congress for the things that you are doing, as could be demonstrated through increased consultation and ultimately a fast track, that your efforts would be enhanced. Could you elaborate on that?

Ambassador YEUTTER. Sure, I would be glad to, Senator Daschle, because I really don't believe there are any inconsistencies there. What I was trying to emphasize was that we need clear and unobstructed negotiating authority in order to give comfort to our trading partners that the United States is really serious about this negotiation.

There would be no concern at all about increased consultations and involvement by the Congress in this whole process. I encourage that. I would like to see it. We have in our bill some provisions that would enhance consultative activity and other involvement by the Senate Finance Committee and House Ways and Means Committee into the negotiating process. So, the more the better of that kind of a very close relationship between the executive and the legislative branches in the U.S. Government.

But at the same time, we shouldn't be tying my hands in terms of negotiating authority because, if we do that, or if we make that negotiating authority conditional, in my judgment we run a major risk that our trading partners will just mark time in Geneva until they find out whether those conditions are met and whether the

negotiating authority will really be provided. I think we could easily lose a substantial period of time in Geneva because of the uncertainties that are created by that kind of legislation.

Senator DASCHLE. But isn't that the worst case scenario? We are talking about fast track legislation and your desire for increased consultation. Simply to require some kind of a Congressionally approved trade policy statement prior to the time you go in, wouldn't that in a sense armor you more capably and give you a better sense of bipartisan cohesiveness as you enter these negotiations? And for the matter of a day or so that it may take to give you that authority, wouldn't that be worth it?

Ambassador YEUTTER. I am not enamored at all, Mr. Daschle, with the idea of having a Presidential trade statement approved by the Congress in any case, irrespective of whether it were involved with negotiating authority. I do believe—and I have said this to the chairman on many occasions—that there should be a very strong understanding between these committees and the Administration as to where we are going and how we plan to get there in the Uruguay Round or other negotiations as well.

We ought to work together hand-in-glove; but I would like to see us work together very quietly and without a lot of notice to the rest of the world because I think announcing it to the world detracts from our negotiating abilities.

But back to the basic point, I guess my feeling on trade policy statements is that, if the Congress and the American public do not like the trade policy of an Administration, they have an opportunity every four years to vote out the Administration. I question the wisdom of having a Presidential trade policy statement exposed to Congressional approval processes. It seems to me that that at least violates the spirit of the separation of powers, even though the Congress clearly has some constitutional powers under the Commerce Clause.

Senator DASCHLE. There seems to be a lack of adequate structure, a lack of some mechanism by which a routine cohesive building process can be brought about. At this time, it is really done on the whim of the Administration or, perhaps in some cases, even the Congress; and I am not sure that you have presented an alternative that would give us the confidence that, after you are gone and when some subsequent Administration comes to the position that you are in today, that we have the confidence that ultimately the kind of structure that we hope to create will be realized.

Do you have any comment with regard to that?

Ambassador YEUTTER. Yes. Using the Uruguay Round as an example, Senator Daschle, we will soon be coming over to you to discuss with you our basic negotiating strategy with a whole host of those negotiating groups in the Uruguay Round. I really think that is the way we should do it.

I don't think we need a big, broad policy statement by the Administration. I think it is worth more if we come over and say: This is what we would like to achieve in intellectual property, and here is how we are going to go about doing it. This is what we hope to achieve in agriculture, which is of great interest to you; and this is how we hope to go about doing it. And go down, negotiating group by negotiating group. And the same thing can really apply to the

U.S./Japan relationship. We can sit down and talk with you about how we see that relationship unfolding in the next six or twelve or eighteen months.

But I would rather do that in a way that does not divulge our strategy and tactics to the whole world.

Senator DASCHLE. My time has expired. Mr. Chairman, thank you.

The CHAIRMAN. Senator Riegle, you haven't had a chance to ask questions, have you?

Senator RIEGLE. No, I haven't. Thank you, Mr. Chairman.

The CHAIRMAN. All right.

Senator RIEGLE. Ambassador Yeutter, you are a lovely man and a good friend, and I appreciate how hard you work; but as I have said to you privately, and I want to say to you here today publicly, I think our trade policy is really a miserable failure, and the numbers show that. And this is through no lack of effort on your part, but you can't explain away the numbers; and I am really distressed about it.

The trade deficit last year was $170 billion; so far this year, we are running a very substantial trade deficit. January was a very grim month.

And I am talking with more and more people across the national economy—I am talking about heads of major companies, all sectors of the economy—who are beginning to say to me that they really doubt, first of all, that the J-curve is working or that it can work, that we have an over-capacity problem in the world and that, despite currency value changes and particularly the dollar against the yen, we have not seen our trade situation improve there; we have seen it get worse.

We now have the one high-profile case that the President has just moved on, and I applaud that; but the fact of the matter is that the trade numbers are still running very substantially the wrong way. And it seems to me, and this is what I am hearing from others, in the crunch that is coming that others may be prepared and able to reduce their profit margins, lower their costs, eke out reductions in price levels, as much as we can do in terms of our firms; and that we are not going to find a magical solution here.

As I look at our international balance sheet—and I am very distressed about the fact that the prime rate has just jumped up—I think that is a very bad sign. I think it is beginning to show what happens when all this money that used to be our money is now in the hands of the Japanese principally and other trading partners that are running these huge and growing surpluses with us. And that we are in a situation where we seem to be less and less in control of our own financial fate internationally, and so I am very concerned about that.

You have seen the charts that I have shown you before and I have shown them to this committee. I don't have them here today because everybody is familiar with them. But it seems to me our program isn't working. We are adding new international debt at the rate of $1 billion every two and a half days; and frankly, when you come in—as you have done today—and you go down through the trade bill, there is basically nothing about it you like. You find

fault with virtually every section of the bill, and yet you have a policy yourself that isn't working;

Now, why is a policy that isn't working better than an effort here that has been crafted on a bipartisan basis to try to put a policy in place that might work and that many of us think, in fact, will work?

I think you start to lose your own credibility and your own standing when you come in and make a lot of harsh criticisms in a nice voice, but nevertheless tough criticisms, about a bill when you are defending a policy that is a failure in terms of the results that it is producing. Now, when are we going to see the results? I am sure you are going to tell me we are going to see them because you said that last year. You know, all year long, we were going to see the positive results. Well, we haven't seen the positive results; and I am frank to say that I am now beginning to have a very serious concern that we are not going to see this J-curve effect and that this problem is going to be with us until we craft an aggressive trade strategy, for a long time to come.

I don't think we can afford that. And I am going to ask you to comment on that and, in particular, a specific case with respect to trucks from Japan, because I think the data here is as compelling as it is with semiconductor computer chips. If you take a look at where we are in terms of what has happened, in September of 1985 the yen was at 240. With the yen at about 146 today, it appears to me and to others who have analyzed it that this Japanese truck manufacturer would have to raise U.S. prices by over 50 percent to maintain the same level of revenue per vehicle that they received in September of 1985. There is no sign of that.

Their prices have gone up about 13 percent, which is a long way from 50 percent; and it looks to me as if they are losing over 40 percent of their revenue. And if you do a cost comparison, which we have done, on the particular Toyota truck models—just to take those as an example—it looks to us as if the price in Japan is almost $600 more than the price for the same car here in the United States. And if you work those numbers down from the retail price to what their manufacturing price is, it looks to us as if they in effect would be saying that they can build that truck on a full-cost basis for about $3,021—at no profit, but just the direct manufacturing and overhead costs.

I can't find anybody who thinks that is plausible. They are dumping these trucks in here and I think the data is absolutely powerful. What about doing something about that? Can we get action on that?

Ambassador YEUTTER. With respect to trucks, Senator Riegle, that is exactly why we have antidumping laws in this country. And if our trucking industry is persuaded that Japanese firms are selling those vehicles in the United States at less than cost, they ought to file an antidumping case. That is why those laws are there.

Senator RIEGLE. Do you have an opinion on it?

Ambassador YEUTTER. I do not have an opinion on it because I——

Senator RIEGLE. Has the staff looked at it?

Ambassador YEUTTER. Not to my knowledge. You know, this is basically an industry responsibility. We put those laws in place—or

the Congress put those laws in place—for industries to take advantage of them if and when they feel that they have a case that is persuasive. So, I think the ball is in the court of the trucking industry to use that law if they feel that they can justify a case.

Senator RIEGLE. If they bring that data to you, if they show up this week or early next week in your office with data that bear this out, what action do you feel you can take? Or are your lips sealed?

Ambassador YEUTTER. There is a process under the law for that, Senator Riegle. It doesn't happen to involve the USTR. The Commerce Department administers the antidumping laws, and obviously they will have to go through that process.

Senator RIEGLE. But what can that mean to the Japanese negotiators and the trade people that you talk to, if in fact we can come in and put the showing on the table and it is clear to you, and you know about it; but yet, when you meet and talk with them, you can't speak about it? I mean, it would seem to me that I would love to be negotiating with somebody like that, who would come in and feel that they couldn't speak about problems that others had illustrated for them. I would expect you to speak about it.

Ambassador YEUTTER. Oh, we can speak about them obviously, but that is a question of evidence; and obviously, we are happy to have the evidence at any time, Senator Riegle, and happy to discuss the issue with our Japanese colleagues at any time. But if what is involved is dumping practices, then our domestic industries ought to take advantage of the dumping law; and perhaps they have already evaluated those possibilities. I can't tell you.

But let me go on to the broader question that you asked, Senator Riegle, and that was with respect to the very large trade deficit that we have. You are absolutely right about its being much, much too large. I do think the J-curve works, but clearly there is a substantial period of time before it takes effect because many companies—foreign companies—preserve market share as long as they possibly can.

Foreign companies seem to be much more oriented toward market share protection than U.S. firms are. I wish our firms would learn that and be a little more sensitive and cognizant of the importance of that economic phenomenon.

But at any rate, that is one reason why there is a substantial lag time on the J-curve, and there are others as well. One, for example, that I have rarely seen mentioned in this forum or any others is that there are now mechanisms available to hedge against exchange rate risk, and that hedging can take place easily 18 months or two years in the future. If foreign firms have undertaken hedging programs, they would not need to adjust prices based upon exchange rate movement for a very substantial period of time. That is futures and options markets which you understand very well, Senator Riegle.

But with respect to the trade bill itself and some of the criticisms that we have, we did have criticisms of S. 490 and we had a lot of criticisms of H.R. 3 as well; but we worked together very cooperatively and coordinatively with the House Ways and Means Committee on H.R. 3 and, although we still have criticisms of that bill, it has certainly advanced a long, long way. And I would hope the same thing would apply to S. 490. I indicated earlier this morning,

before you came in, Senator Riegle, that we are more than happy to try to work in an amicable way and in a bipartisan way with this committee in attempting to come out with a responsible trade bill. I think all of us, though, have to understand—and I am sure most people in the Congress do understand—that we are not going to solve a $170 billion trade deficit with trade legislation. That is just not in the cards. We shouldn't deceive ourselves that that is going to be the case.

We can improve the situation, but we can't resolve it. We have got to deal with the bigger issue of macroeconomic policy; and in that regard, Senator Riegle, I have to say that I hope you changed your vote on the highway bill since yesterday because every little bit would help. [Laughter.]

Senator RIEGLE. If I may be allowed to rejoin, I know that the bill is——

The CHAIRMAN. You have to be allowed to rejoin to that, but——[Laughter.]

I have assured the Ambassador that we would try to end the hearing.

Senator RIEGLE. The President at this moment is over meeting with his Republican Senate colleagues in one of the chamber rooms, and the screams coming out of the room, it sounds kind of like a national chiropractic convention or something. [Laughter.]

People are having their arms and legs and kneecaps rearranged to try to come up with somebody who will change their vote on this issue.

Ambassador YEUTTER. Senator Riegle, I suggested he come over here after he finishes there. [Laughter.]

Senator RIEGLE. I appreciate the comment that you made about wanting to work with the committee to produce something here, but I think that still doesn't relieve you of the responsibility of the fact that you have already produced something. The trade strategy of the Administration hasn't worked, and that is the bottom line. The numbers are incredible. And I think if you had to leave this office today and feel any sense of pride about the trade performance up until this point, I think you would have a very hard time justifying that or feeling that that was the kind of postscript that you would want to leave.

So, you keep saying that we are going to see improvement in the future. We certainly haven't seen it yet.

I just want to say one other thing, and that is that most of us around here don't want to have to write trade legislation and, frankly, we shouldn't have to. And if the Administration were doing the job it should be doing—not just today but over the last six years—we would not be in the fix that we are in. I am not just talking about external actions, although that is a big part of it, to stop the pattern of abuse. Why is it taking the President so long to figure out that the Japanese are cheating in their trade relationships? You fellows didn't arrive two weeks ago; you have been here for six years—or at least this Administration has.

Why has it taken this long to figure that out? I mean, why did the deficit have to get to $170 billion? I mean, that is what I would like to see. If you fellows would get aggressive enough on a broad enough scale, you would make the need for legislation unnecessary;

and we could move on to other things. The only reason the Congress is acting is because the Administration has really failed to act in an effective way. That is the reason.

Everybody is really reluctant to write the law around here in the trade area. I feel very uneasy about it. Let me be very blunt about it, because I think it is very hard to do it and do it without getting certain side effects that no thoughtful person would want. These are some of the same reservations that you have; but you have got to be honest enough to acknowledge that if your trade policy hasn't worked, and it shows no real sign of working, you can't be surprised that the Congress is trying to draft some kind of a response.

Are we supposed to just let plant after plant close? Job after job go overseas? A hemorrhage of $170 billion worth of trade deficit each year? A billion dollars in new, additional debt every two and a half days? I mean, do you want us to do nothing while you pursue the same policies? I don't think that is a reasonable position.

Ambassador YEUTTER. Senator Riegle, I would say that——

The CHAIRMAN. Mr. Ambassador, if you would summarize your answer, then we will close the hearing.

Ambassador YEUTTER. Yes, in one minute. I would say first of all that I don't see how we can be a whole lot more aggressive than we have been in recent months. There are a good many people who think that we were inordinately aggressive a few days ago. I don't happen to believe that, but I think we are following a very aggressive policy and have been doing so since I arrived.

Secondly, I would simply say that we need some help from you and others in the Congress, too. I wasn't being facetious about my comment on the highway bill because we have to look in the mirror and search our souls over $175 billion or so budget deficit; that is something for which all of us in Washington bear some responsibility. And I would simply say that, no matter what we do in this trade bill, or no matter what I do on unfair trade practices, if we persist in running gigantic Federal budget deficits, Senator Riegle, we are going to have gigantic Federal trade deficits. The two are going to go hand in hand.

So, unless we are prepared as a nation to fix the problem of Federal budget deficits, we are not going to effectively fix the problem of the Federal trade deficit.

The CHAIRMAN. Mr. Ambassador, it has been a good exchange. We appreciate having your comments and particularly appreciate your appearing before us. Thank you very much for your comments.

Ambassador YEUTTER. Thank you, Mr. Chairman.

[Whereupon, at 12:17 p.m., the hearing was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Statement of Cabot Corporation
Submitted to the
Committee on Finance
regarding
Comprehensive Trade Legislation

April 17, 1987

Mr. Chairman and Members of the Committee,

Cabot Corporation appreciates the opportunity to submit its views on comprehensive trade legislation.

Cabot is based in Waltham, Massachusetts, and has operations in several states and foreign countries. It is a Fortune 300 company with businesses in the speciality chemicals and materials and energy sectors. Through its Speciality Chemicals and Materials Group, Cabot is the world's leading producer of carbon black, an essential reinforcing agent in rubber and plastics as well as a pigment in inks, paints, coatings and plastics. We have carbon black plants in Texas and West Virginia and two in Louisiana.

Most carbon black goes into rubber tires -- typically more than five pounds per automobile tire -- and is in large part responsible for the fact that modern tires can commonly be driven more than 40,000 miles. It is well accepted that rubber is a critical, strategic material. We believe that carbon black is similarly essential to America's economy and national security.

Cabot Corporation is concerned about two issues in the trade legislation which is being proposed this year. Foremost for our company is the adverse effect which would result from a section contained in the Administration's proposal and adopted in the

House Ways and Means Committee. It is rather innocuously referred to as "Injury Test for 'New' Countries in 'Old' Cases." The second area of concern for us is the use of subsidized inputs in the form of natural resources by countries exporting into the United States. In this area, the language reported by the Ways and Means Committee is quite helpful toward achieving a more equitable relationship between American and foreign producers, at least in the petrochemical sector.

No Need for Injury Test for Countervailing Duty Orders Where There Has Been No Injury Test

Section 5008(d) of the Administration proposal (S. 539, H.R. 1155) is premised on the unsupported assertion that U.S. international obligations require us to grant retroactively an injury test when a subsidizing country joins the GATT even for previously decided countervailing duty (CVD) cases. The Department of Commerce (DOC) states, without legal support, that under present law it is obligated to revoke such outstanding countervailing duty orders since no injury test was required when they were issued. The DOC and the Administration state that under present law the International Trade Commission (ITC) lacks statutory authority to conduct injury investigations after CVD orders are issued* and, therefore, legislative authorization is

* This is for the obvious reason that such retroactive determinations are not needed except under DOC's unsupported conclusion.

needed to permit the ITC to perform injury investigations in such previously decided cases in addition to the ITC's customary injury determinations. While the concern of the Administration that countervailing duty orders not be prematurely revoked is welcome, the legal analysis by the Administration is incorrect.

Correct Legal Analysis

When the Trade Agreements Act of 1979 was enacted, an injury test was provided for countervailing duty investigations where countries became signatories to the Subsidies Code or who assumed obligations comparable to the Subsidies Code (so called "countries under the Agreement"). The Congress also agreed to provide an injury test to outstanding countervailing duty orders where the merchandise was from a country under the Agreement where a request was made by December 31, 1982. Section 104(b) of the Trade Agreements Act of 1979, 19 U.S.C. 1671 note. The underlying purpose of providing for selective and some retroactive application of the injury test was to encourage countries to become signatories promptly. E.g., S. Rep. No. 249, 96th Cong., 1st Sess. at 44-45. All orders for which an injury test was not provided were specifically to remain in force and be subject to the annual review process. Section 104(c) of the Trade Agreements Act of 1979. Thus, Congress clearly intended countervailing duty orders to remain in effect and to be used to protect domestic industries from subsidies even where there had been no injury test.

The limitations adopted by the Congress on retroactive application of the injury test are entirely consistent with U.S. rights under GATT and our various bilateral agreements with our trading partners. Indeed, article VI(6)(a) of the GATT does not require retroactive application of an injury test. In fact, the Protocol of Provisional Application of the GATT specifically made application of any article of GATT a non-retroactive obligation for the signatories.

Similarly, later accession to the GATT by a country such as Mexico does not entitle them to retroactive application of GATT provisions absent specific agreement between the new member and the other contracting parties. Article XXXIII of GATT. Nothing in the Report of the Working Party on the Accession of Mexico (L/6010/Corr.1 (8 July 1986)) or the "Questions and replies to the Memorandum on Foreign Trade Regime (L/5961 and Rev. 1)" on the Accession of Mexico to GATT (L/5976 (14 April 1986)) gives any indication that Mexico expected, or that the trading partners agreed to retroactive application of any benefits under Article VI or XVI of GATT. If anything the Working Party's Report indicates precisely the opposite. Report of the Working Party, L/6010 at 17.

In short, no country is entitled under U.S. law to an injury test where an order was entered under section 303 of the Tariff Act of 1930 (19 U.S.C, 1303) without an injury test and an injury test was not specifically provided for in the transition rule to the Trade Agreements Act of 1979. Imposition of countervailing duties without an injury test is not contrary to our rights and

obligations under GATT (where section 303 is "grandfathered") and is not contrary to U.S. law where countries become members of the GATT or signatories to the Subsidies Code after the issuance of any particular countervailing duty order.

The requirement of an injury test (1) merely rewards foreign governments who have delayed in accepting internationally recognized constraints on the use of subsidies, and (2) requires domestic industries confronted with government subsidies received by their foreign competitors to undergo significant additional expense to safeguard rights under U.S. law when they fulfilled all statutory requirements at the time of the original filing of the case and when the only effect of the order is to offset what the Congress has recognized is one of the "most pernicious practices [subsidies] which distort international trade to the disadvantage of United States commerce."

Because the Commerce Department takes the position it does, we ask you to include in the Finance Committee bill a clarification indicating that countervailing duty orders should not be revoked in the so-called "old cases/new countries" situation where no injury determination has been made. We think the law stands that way already, but the Administration disagrees and there is therefore a need for Congress to make the law clear.

We would also like to point out that new GATT members do not need a retroactive injury test essentially to eliminate outstanding CVD orders. Under current U.S. law there is a mandated annual review of all CVD orders. When the subsidy stops

(as it should from a GATT member), the duty stops. Only GATT members who plan on continuing subsidies need a retroactive injury test. And where the Administration fails to enforce GATT obligations (a tortured process under the best of circumstances), the U.S. industry is put into a worse position than it was in before its original CVD request.

Domestic Natural Resource Subsidies

Our other interest in the trade legislation relates to the definition and measurement of the subsidies themselves when in the form of natural resource inputs which enable imported products to compete unfairly with American made goods. We want to applaud those Senators who have recognized that countervailable subsidies can be not only in the form of cash grants or tax credits but also in the the form of unreasonably low-priced natural resource inputs. We believe that a subsidy is a subsidy whatever form it may take and subsidized trade is not free trade.

The domestic natural resources subsidies issue is critical to our company because of the serious threat of heavily subsidized Mexican carbon black being shipped into the U.S. market. Carbon black is a commodity and is highly price sensitive. A price difference between suppliers of one-tenth of a cent per pound can easily shift a sale. Since there are only seven major tire companies buying carbon black in the U.S. and since 93% of carbon black goes into rubber end products (mostly

tires), our domestic carbon black industry is especially vulnerable to a sudden domino effect in loss of sales triggered by predatory pricing.

We at Cabot agree with many national leaders who believe American manufacturers must increase their productivity to compete in the global economy. This is why we have invested millions of dollars over the last decade to make our plants more efficient and to advance our product development and process technology. However, no amount of research and development could overcome the size of the subsidy which Mexico provides to its carbon black exports.

Seventy percent of the input costs in the production of carbon black consists of hydrocarbon feedstocks. According to International Trade Commission figures, Mexico supplied its domestic carbon black industry with carbon black feedstock in 1984 at $5.61 per barrel while the U.S. price was between $26.50 and $29 per barrel.

The Mexican government's pricing policy for this resource input is quite explicit. The 1979-1982-1990 Mexican Industrial Development Plan states:

> This plan [the IDP] is complemented by an explicit policy of maintaining internal prices of energy sources for industrial use below that of the international market. This allows for the strengthening of industry by giving it a substantial margin of protection via inputs. In contrast to other forms of protection which tend to make such cost more expensive and access to external markets more difficult, this mechanism constitutes a direct incentive to exports. (emphasis added)

Despite our superior production efficiencies, imports of subsidized Mexican carbon black have demonstrated a significant ability to penetrate the U.S. market quickly. In 1982, carbon black imports from Mexico totalled 6.7 million pounds. In 1983, Mexican exports to the U.S. tripled, to nearly 19 million pounds. In 1984, almost 50 million pounds of carbon black were imported to the U.S. from Mexico and in 1985 they edged above the 50 million mark. For 1986, they fell back somewhat, perhaps reflecting our four and one-half years of efforts before the DOC and the Court of International Trade.

In addition, Mexico has announced plans to expand further its carbon black production capacity, which already substantially exceeds the Mexican market demand. This additional capacity would equal approximately 25 percent of current total U.S. capacity. The target for this additional Mexican carbon black is the U.S. market, where domestic producers already have substantial excess capacity. This poses a devastating threat to U.S. carbon black producers and workers.

Cabot Corporation has assiduously pursued its remedies under existing law. These efforts have been the source of considerable expense and frustration. We think our case is a good example of why action by Congress is needed.

In November of 1982, Cabot asked the U.S. Department of Commerce (DOC) to impose a "countervailing duty" on carbon black imports to the U.S. from Mexico. During the period of investigation, the DOC found that Mexico (through its government controlled oil monopoly Pemex) was selling carbon black feedstock

(CBFS) to the two Mexican producers for less than $2.00 per barrel, while U.S. producers were paying the world market price of $26.00 per barrel. The DOC further found that Pemex owned 60% of one of these two carbon black producers.

Despite these findings, the DOC concluded that Mexico's subsidy was not countervailable because CBFS was "generally available" to any Mexican company which could use it. This agency-made loophole on "general availability", (which is unsupported by statute or legislative history) essentially means that if a foreign government subsidy benefits an indefinite number of industries instead of specific ones, the U.S. Department of Commerce will look the other way. The fact that only two Mexican companies could use CBFS, that Pemex and allocated all of the CBFS to the two Mexican carbon black producers, and that Pemex refused to sell any CBFS to Cabot despite repeated requests, did not deter the DOC from concluding that the subsidy was "generally available" and not countervailable under the DOC's interpretation of present U.S. law.

Although the Court of International Trade has rejected DOC's "general availability" test, the issue still has not been resolved after four and a half years before the agency and the court. The bottom line seems to be that -- despite court decisions and statutory language and legislative history to the contrary -- the Administration is determined to deny

countervailing duties in cases involving two-tiered pricing of resource inputs which are used to subsidize exports by certain natural resource-rich developing countries.

The 1986 U.S.-Canada lumber agreement is cited by some as evidence that current law can deal with resource input subsidies. We disagree with this point of view. The lumber settlement was reached after enormous political pressure was brought to bear on the Administration. It involved consultations with Canada at the very highest level. We believe it does not exemplify the kind of flexible, realistic, timely or predictable process which should be available to address resource subsidies being provided by a number of countries with a host of bilateral concerns at issue between them and the United States.

If Congress fails to act on the natural resource subsidy problem, the American producers of carbon black and other price sensitive petrochemicals face a sufficiently serious threat of material injury that they could suffer sudden and dramatic losses of markets even though they are competitive by any fair definition of the word. We are glad that this committee is seizing the opportunity to address this critical national problem. We at Cabot Corporation thank you for your leadership in this regard and we would be glad to provide further information at any time.

ROBINS, ZELLE, LARSON & KAPLAN

FOUNDED IN 1938 AS ROBINS, DAVIS & LYONS

ATTORNEYS AT LAW

ATLANTA, GEORGIA
DALLAS, TEXAS
MINNEAPOLIS, MINNESOTA
NEWPORT BEACH, CALIFORNIA
SAINT PAUL, MINNESOTA
WASHINGTON, D.C.
WELLESLEY, MASSACHUSETTS

ARMY-NAVY CLUB BUILDING
SUITE 610
1627 EYE STREET, N.W.
WASHINGTON, D.C. 20006-4001
TELEPHONE (202) 861-6800
TELECOPIER (202) 861-6819
TELEX 4931197 RZLK UI

CHARLES RICHARD JOHNSTON, JR

April 17, 1987

The Honorable Lloyd Bentsen
Chairman, Senate Committee on Finance
SD-219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Bentsen:

Following are comments and proposals submitted on behalf of FMC Corporation with respect to pending trade legislation being considered by your committee.

The thrust of these comments and proposals is to focus the attention of the U.S. trade laws on the issue of adequate and effective protection of international intellectual property rights. Our experience in world markets has shown that further legislative emphasis on this subject is required in order to rectify the deteriorating position of U.S. exports which rely on intellectual property rights.

The thrust of our proposed language is to focus particular attention on activities in certain countries which result in serious trade-distorting infringement of intellectual property rights in other country markets. Our competitiveness in world markets would be aided immeasurably by timely prevention of such activities at the source rather than expending time, energy and human resources in each of the dozens of other markets where the financial repercussions of these activities are felt.

FMC believes that the United States must take the lead in developing norms for international intellectual property rights protection and that the adoption of the proposed language would be a major step toward closing a significant loophole in providing comprehensive protection for such rights. This action will benefit not only the United States but also other countries

that are seeking increased foreign investment but find such investment withheld because of questionable protection of intellectual property rights.

FMC is pleased to note that the Trade Subcommittee of the House Ways and Means Committee has already demonstrated awareness of the problem by acknowledging in § 173 of H.R.3, as amended, that certain foreign activities can adversely affect U.S. trade with countries other than the country whose acts, policies and practices are under scrutiny. FMC believes that this theme should be carried out in other relevant parts of our trade laws and, therefore, submits proposals accordingly.

In addition to the enclosed proposed statutory language, FMC also submits recommended report language to accompany provisions addressing the contributory infringement problem.

Statutory Provisions.-

1. Adopt statutory language as provided in section 173 of H.R.3, as amended, entitled "Action Against Countries that Deny Adequate and Effective Protection of Intellectual Property Rights."

2. Amend section 301 of the Trade Act of 1974, as amended, by inserting a new paragraph under subsection (e) "Definitions" as follow:

"INTELLECTUAL PROPERTY RIGHTS PROTECTION.-
The term "adequate and effective protection of intellectual property" means that:
i) a country provides adequate and effective means under its laws for foreign persons to secure, to exercise and to enforce exclusive rights in that country in all forms of intellectual property, including patents, trademarks, copyrights, mask works, trade secrets, and proprietary technical data; and,
ii) a country acts to prevent activities within its jurisdiction which contribute to infringement of intellectual property rights in other country markets."

3. Insert, as a "Principal [Negotiating] Objective" under subsection (b), section 105 of S.490, the following additional item numbered (4):

(4) to seek enactment and effective enforcement by foreign countries of laws which recognize and adequately protect intellectual property, including copyrights, patents, trademarks, mask works and trade secrets, not only in their own market but in other country markets.

Recommended Committee Report Language.-

To accompany the statutory improvements recommended above, FMC submits the following text as an explanation for the Committee's interest in and concern for the adequate protection of intellectual property rights, including the restraint of contributory infringements in third-country markets:

"It is the Committee's intention that the USTR seek to achieve, through negotiations or consultations, basic standards, policies or practices for intellectual property rights protection. These activities must necessarily address the growing problem of worldwide piracy of the fruits of American creativity. The most timely and effective way of combating international disregard for intellectual property rights is to stop it at its source. Consequently, negotiations or consultations must aim not only to provide adequate and effective intellectual property rights protection for U.S. goods sold within the domestic market of the subject country but also to prevent the export to other markets of goods which contribute to infringement of intellectual property rights held by U.S. persons in those other markets or otherwise adversely affect U.S. exports to those markets.

There are presently several countries, such as Korea, Mexico, Brazil, India and Hungary whose domestic manufacturing activities are often focused on export markets. These export activities, when taken in disregard of U.S. intellectual property rights, have a significant adverse impact on the worldwide export performance of U.S. products which are dependent for their international competitiveness on the existence and enforcement of adequate intellectual property rights. Because U.S. products are forced to rely on non-uniform standards of national intellectual property rights protection from market to market, and/or because they are assailed in many markets at once, it is a frustrating and expensive exercise for U.S. producers to vindicate their property rights in each and every market. Normally, the judicial processes provided for protection of intellectual property in the third country market should be pursued. However, with the burgeoning disregard of intellectual property rights in global competition, the Committee recognizes that such proceedings may not provide timely or effective protection of U.S. rights. Therefore, U.S. government action in the form of negotiation or consultation with the country exporting the product at issue should not be deterred when one or more of the following conditions exist:

1) The validity of the intellectual property has been unsuccessfully challenged in the U.S. or any other jurisdiction;

2) The validity of the intellectual property has not been challenged in the U.S. or any other jurisdiction;

3) Opposition to the issue of intellectual property in the U.S. or any other jurisdiction, on the grounds of the invalidity of the invention, were unsuccessful;

4) Legal defense of the intellectual property in affected markets would take an unreasonable amount of time;

5) The export value of the U.S. product which is or may be adversely affected is not insignificant;

6) The lack of timely injunctive relief to prohibit imports in the affected market during the pendency of judicial proceedings; or

7) The lack of adequate and effective protection of intellectual property rights in the affected market.

It would be far more effective to negotiate or consult with countries who blatantly take advantage of the lack of uniform worldwide intellectual protection and/or who count on the tremendous time and expense of vindicating intellectual property rights on a country by country basis, than to pursue a variety of different negotiations or consultations in a multitude of country markets. This approach is not meant to discourage negotiations with the many countries which still fail to provide adequate and effective intellectual property rights protection to imported U.S. goods. What is intended is to focus the resources and priorities of the USTR on countries which create international market disruption for U.S. products depending on intellectual property protection."

Mr. Chairman, if you or any professional staff members have any questions regarding these proposals, please contact the undersigned.

Sincerely,

Charles R. Johnston, Jr.
Counsel to FMC Corporation

mpb

K MART CORPORATION
COMMENTS ON OMNIBUS TRADE BILLS
(H.R.3, S.490, and S.636)

SCOFFLAW PENALTY PROVISION

Of utmost concern to K mart is the "scofflaw penalty" provision contained in section 872 of H.R.3, as reported by the House Committee on Ways and Means. This provision directs the Secretary of the Treasury to prohibit the importation of any foreign merchandise by any person (firm, corporation, or other legal entity) that was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving fraud or criminal culpability over a 7-year period. Orders prohibiting importations by three-time offenders which are corporations would apply to all officers and principals of the corporation, as well as to any employees or agents of the corporation who were directly involved in the violations concerned. In addition, any person or firm prohibited from importing would also be prohibited from engaging any other person or firm to import on its behalf.

K mart remains vigorously opposed to this unreasonably harsh penalty for several reasons. First, the provision is inherently inequitable and unjust, and would have an especially severe impact on large corporations whose many employees process thousands of separate entries every year. Larger importers would be particularly vulnerable and ultimately forced to contest many more administrative penalty proceedings in the courts in order to avoid the crushing sanction. Under the proposal, every entry which in some manner contravenes a customs law would be treated as a separate violation, no matter how many entries an importer may make over a 7-year period.

Second, the scofflaw proposal is particularly alarming in light of the recent proposal by the Customs Service to redefine "fraud" for customs penalty purposes by eliminating the requirement that an act be "deliberately done with intent to defraud." While we believe this Customs Service proposal disregards explicit indications of Congressional intent to the contrary and hundreds of years of common tort law, it is clear that scofflaw penalties issued on the basis of such "non-intentional" violations would constitute a denial of due process. Corporations, as well as their officers, principals, employees and agents, could be subject to criminal liability as a result of a series of non-criminal (i.e., non-deliberate, unintentional) acts.

Third, the proposal simply ignores the inevitability of human error in dealing with complex and often imprecise administrative procedures. Many Customs penalty proceedings stem from technical, often insignificant, violations. The possibility that innocent actions by uninformed or distracted low-level employees could result in major corporations being cut off from their overseas suppliers, at an incalculable cost to stockholders and consumers, demonstrates the unreasonable nature of the sanction. The acts of a single individual could effectively result in a company being driven out of business. Finally, the proposed penalty fails to distinguish between the technical violation and violations resulting in substantial revenue losses, serious evasion of quantitative restraints, or other injury to U.S. or private interests.

The existing criminal and civil penalty provisions are more than adequate to deal with true criminal activity and civil misfeasance and malfeasance.

QUOTA AUCTIONING

K mart vigorously opposes any U.S. government auctioning of import quotas, a proposal that has consistently and rightly been rejected on numerous occasions in the past. Quota auctions would have a substantial negative impact on the U.S. economy by severely disrupting retail businesses forced to participate in such schemes and by raising prices to consumers. In addition, quota auctioning would violate U.S. international obligations under GATT.

While schemes by which quota for imports subject to quantitative limits would be auctioned by the U.S. government may appeal to some economists as a means of generating revenue and of recapturing the quota windfall, the proposals are unsound from a practical standpoint. First, quota auctions would inevitably result in what has been described by the USTR as a "bureaucratic nightmare." Such a scheme would require a substantial increase in administrative costs and bureaucratic involvement.

Second, a system of quota auctions would be highly complex and subject to manipulation, profiteering, and predatory practices. The danger exists that non-economic, panic bidding would force quota prices higher and higher to the ultimate detriment of the U.S. consumer. The development of a secondary, commodity-type quota market driven by broker profits could also result in higher prices. In addition, auctions would result in uncertainties which would be particularly disruptive of retail businesses. Businesses cannot afford such unpredictability.

Finally, quota auctions probably would run afoul of U.S. international obligations under GATT. The measure would certainly be regarded as a revenue raising device and non-tariff barrier by our trading partners. GATT prohibits the imposition of fees above tariff rates except those minimal fees commensurate with services rendered. In addition, Article 3 of the Licensing Code prohibits the use of licensing procedures which in and of themselves have trade restrictive effects.

NON-MARKET ECONOMY IMPORTS

The Committee has before it proposed revisions to the antidumping law which concern imports from non-market economy (NME) countries. One set of proposals would use the average price at which comparable merchandise is sold in the U.S. by the market economy country with the largest volume of U.S. sales as the surrogate for foreign market value. Both H.R.3, as repórted, and S.636 would use the import price from the market economy country with the lowest average import price. While the latter version, supported by the Administration, is preferable because it would penalize an efficient NME producer the least, neither proposal makes economic sense.

Remedies for dumping (and subsidization) are based on the presumption of prices and costs established by market forces. This presumption is invalid in NME's. Any method of comparing NME export prices to an artificial benchmark for foreign market value will of necessity be arbitrary and unpredictable. (The same can be said for attempting to identify "subsidies" in a NME.) These market-based remedies should be abandoned in the case of NME imports in favor of a remedy which focuses only on the effect of those imports on U.S. producers.

Proposed amendments to Section 406 of the Trade Act of 1974, contained in H.R.3, appear to make it a reasonable alternative to both antidumping and countervailing duty procedures involving NME imports, although we do not have sufficient information as yet to evaluate the proposed change in the 406 injury test. What is needed is a level of adverse effect on U.S. producers below that which is required in escape clause investigations, but above that in the present antidumping/countervailing duty laws. Section 406 should become the exclusive remedy for NME imports, and the Department of Commerce could save the time and resources it now expends in attempts to apply a pricing and cost based remedy to a government producer system in which neither prices nor costs have any economic meaning or reliable measurement.

NEGOTIATING AUTHORITY

K mart energetically supports the provisions of the omnibus trade bills which would grant broad statutory authority to the President to negotiate and implement new trade agreements. This authority should include both tariff and non-tariff agreements, as well as "fast-track" procedures under which new agreements would be subject to Congressional approval or disapproval, without amendment. In this regard, the provisions contained in S.636 are preferable to those contained in H.R.3 and S.490.

K mart opposes the restrictive language of provisions tying the renewal of negotiating authority to a showing of "sufficient progress" made in ongoing negotiations, or of the requirement in S.490 that Congress approve trade policy statements as a condition precedent to fast-track procedures. These and similar restrictions would only serve to undermine U.S. leverage in these important trade negotiations.

PRIVATE RIGHT OF ACTION FOR DUMPING

One particularly anticompetitive proposal is the so-called "private right of action" provision contained in Section 166 of H.R. 3, as reported. This provision would amend the Antidumping Act of 1916 to provide a rebuttable presumption of "intent to injure an industry in the United States" if three or more dumping findings had been made against a foreign manufacturer within ten years.

The clear intention of this legislation is to provide antitrust style private relief to companies which believe they have been impacted by imports, without requiring the complaining parties to sustain the burden of proof required by the antitrust laws.

It is incumbent upon the United States as a major beneficiary of the multilateral trading system to tread very lightly when considering measures which are fundamental departures from internationally accepted economic and legal principles. K mart believes that Section 166 of H.R.3 is one such measure. In addition, this provision would violate the international obligations of the United States under the General Agreement on Tariffs and Trade (GATT), have a chilling effect on much international trade, and invite retaliation by our trading partners to the detriment of U.S. economic interests.

A private right of action in which the intent to injure is presumed is fundamentally inconsistent with sound and long-standing economic and legal principles. Price differentiation between

different markets is not and has never been considered under U.S. or international law to be a criminal or unlawful practice. Businesses worldwide, including those here in the United States, price in response to the specific, pragmatic conditions in the foreign markets into which they must sell. If they behave in a predatory way and intentionally seek to injure competition or trade, their actions are unlawful, and they are subject to antitrust laws here and abroad with the criminal and civil penalties attendant to conviction or judgment of anticompetitive practice. Antidumping laws, however, are not, nor are they permitted to be under international agreement, punitive in nature. They are remedial, price-adjustment statutes, since international price competition, when not predatory, is considered healthy and desireable.

In addition, it is often difficult or impossible for a foreign manufacturer, exporter, or importer to know before the fact whether importations are at less than "fair value" or not. The calculation of foreign market value and United States price by the Department of Commerce is not an exact science. The existing requirement that home market sales be at prices above fully allocated cost (not marginal cost), and the use of the highly arbitrary constructed value as a substitute for such sales when they are not above fully allocated cost, can create substantial dumping margins even where export businesses are behaving in a fully ethical and economically rational manner. As a result, those who may be liable to private damages would have no way of knowing if they are violating the law before the fact. They also would have no guidance for determining what level of damages might be assessed against them. No business can afford to face such uncertainties.

The provision is flawed from a legal standpoint as well. Administrative determinations by the Department of Commerce and the International Trade Commission (ITC) would be given prima facie effect in establishing the elements of sales at less than fair value and injury, despite the fact that procedures before these agencies do not afford parties the full range of rights available in adjudicative proceedings conducted under the Administrative Procedure Act or the Federal Rules of Civil Procedure in courts of law. Discovery and cross-examination are unavailable, as are the affirmative defenses and counterclaims otherwise available in antitrust proceedings in courts of law. By creating a rebuttable presumption of "intent" based on Commerce Department dumping findings simply to ease the burden on plaintiffs filing for damages under the Antidumping Act of 1916, the provision violates fundamental notions of due process.

Responses to dumping are limited by Article VI of the General Agreement on Tariffs and Trade (GATT) itself, and by the Antidumping

Code subsequently negotiated under its authority. Both GATT and the Code provide that dumping may be remedied by the assessment of a duty "not greater in amount than the margin of dumping." Section 166 of H.R.3, by subjecting the dumper to additional liability for private damages, would clearly violate these international obligations.

Enactment of a private right of action would surely invite retaliation by our trading partners which, especially if taken in the form of similar legislation, would work to the serious disadvantage of U.S. economic interests. According to data obtained from the USTR, in a recent four year period more antidumping investigations were initiated by the world's importing countries against exports from the United States than from any other single country. In 1985 alone, the United States ranked second, just behind Japan. The Congress must anticipate that our export products will be treated overseas in the same way as imports into the United States are treated. This is a major concern to American producers, who stand to lose when our trading partners follow suit and enact similar private rights of action for dumping.

Finally, the private damage provision is based on a presumption that competition from imports should be treated differently from other competition. The United States, as do other countries, already maintains an array of antitrust laws to protect the domestic marketplace from unfair trade practices including predatory pricing practices from all sources, domestic or foreign. If there is any question as to whether imported products are subject to the U.S. antitrust laws, then Congress could consider appropriate amendments in that field.

For these reasons, K mart respectfully urges this Committee to reject the private right of action proposal contained in Section 166 of H.R.3, as reported by the House Committee on Ways and Means.

ANTIDUMPING AND COUNTERVAILING DUTY LAW

The Senate has before it various proposals to modify the antidumping and countervailing duty provisions of U.S. trade law. Before considering the merits of these new legislative initiatives, the Committee should recall the recent history of trade legislation and determine whether further amendments are actually called for.

The antidumping and countervailing duty laws were extensively modified on three occasions in recent years, in 1974, 1979 and 1984. New, complex, and very expensive procedures have been layered one on top of the other--almost always with the objectives of making it more likely that trade restriction will be granted and providing

that administrative discretion which results in practical solutions short of the imposition of trade restriction will be further curtailed.

The number of administrative trade investigations has increased dramatically over the last five years, as has litigation before the Court of International Trade seeking to challenge administrative determinations. The cost of all this increased legal activity, in terms of attorneys fees, government resources, higher prices to consumers and inefficiencies forced on U.S. industries themselves, is beyond calculation. We note that the U.S. International Trade Commission has estimated that the President's so-called Voluntary Export Restraint Program (import quotas) on steel, which is largely based on negotiated settlements of Title VII investigations, resulted in steel prices in the U.S. which were 25 to 56 percent higher than foreign prices in early 1985, and will cost U.S. exporting industries $15.7 billion in lost export sales through 1989 (The Effects of Restraining U.S. Steel Imports on The Exports of Selected Steel-Consuming Industries Report on Inv. No. 332-214, December 1985, U.S. ITC Pub. 1788). The overall cost of import controls in 1984 for seventeen U.S. industries, was a staggering $56 billion, according to the Institute for International Economics, (Trade Protection in The United States: 31 Case Studies, Hufbauer, Berliner & Elliot, I.I.E., March 1986).

One might argue that these costs were acceptable if in fact the procedures, and the trade restrictions they result in, were successfully ridding the marketplace of "unfair traders" as defined by U.S. law, international agreement, or popular supposition -- however, the opposite appears to be the case to date. There has been no discernable effect on the U.S. merchandise trade balance, nor any diminished cry for protection from those domestic industries which have sought and already obtained the greatest amount of artificial market protection. There appears to be absolutely no empirical evidence that U.S. trade laws, after constant "tightening up" over the past dozen years, have had any significant effect on U.S. competitiveness, nor does it appear at all likely that any of the Title VII amendments now under consideration will have any such effect.

ESCAPE CLAUSE RELIEF (SECTION 201)

Section 201 of the Trade Act of 1974, as amended, provides U.S. industries with the ability to obtain temporary import relief from serious injury, or the threat thereof, which is caused by increases in fairly priced imports. This "escape clause" relief is provided upon a finding by the International Trade Commission (ITC) that imports are a substantial cause of serious injury, or threat thereof,

and by the President that import relief is not contrary to the national economic interest.

Each of the major trade bills now being considered by the Finance Committee would make fundamental changes in Section 201. Among the more controversial of the proposed amendments are those which would: (1) transfer the decision-making authority from the President to the United States Trade Representative (USTR); (2) require the President to implement any import relief recommended by unanimous vote of the ITC; (3) authorize provisional import relief (i.e., suspension of liquidation and retroactive application of any relief ultimately granted) upon a "critical circumstances" determination; (4) shorten from 6 to 4 months the time in which the ITC must make its injury determination; and (5) lengthen the maximum duration of import relief from the present 8 years to 13 years.

H.R.3 would transfer Section 201 decision-making authority from the President to the USTR, while S.490 would make the imposition of import relief mandatory on the President when such relief is recommended by unanimous vote of the ITC. K mart opposes these and similar efforts to constrain the President's authority or discretion in the administration of the escape clause mechanism. The President is uniquely situated to determine whether import relief is in the economic interest of the United States. By withdrawing the decision-making authority from the President, or by requiring the President to provide import relief in certain situations, these proposed amendments would tend to preclude fair and adequate consideration of the interests of U.S consumers, workers or other industry sectors.

Section 201 cases inevitably require a delicate balancing of widely disparate interests. For example, GATT rules require that the United States compensate (in the form of reduced tariffs) those of our trading partners adversely affected by any import relief. As a result, burdens are often shifted from one industry sector to another. The relief needed to save one industry may often impose tremendous hardships on other industries. The President must also weigh the possibility of retaliation against U.S. exports as a result of import relief. Accordingly, the economic interests of the petitioning industry, other industry sectors, and U.S. consumers and workers, will be best served if authority to weigh the expected benefits of relief against the costs is left with the President.

Both H.R.3 and S.490 would authorize a new form of "provisional import relief," before an injury determination has been made by the ITC, for cases found to involve "critical circumstances." Under both bills, critical circumstances would exist if a significant increase in imports (actual or relative to domestic production) over a short period of time had led to "circumstances in which a delay in

the imposition of relief would cause damage to the domestic industry that would be difficult to remedy at the time relief could be provided." This proposal is contrary to U.S. obligations under GATT and should therefore be opposed. GATT requires that there be an affirmative determination of "serious injury" caused by increased imports before import relief can be granted. Thus, no relief should be provided prior to an ITC investigation and injury determination, or before the President has had an opportunity to weigh the competing interests. In addition, a determination based upon this overly broad definition of critical circumstances, i.e., circumstances in which delay would cause "damage", would fall far short of the required finding of serious injury. For these reasons, the critical circumstances provisional relief proposal for Section 201 cases should be rejected.

Finally, K mart opposes the various proposals to either shorten the time in which the ITC must conduct Section 201 investigations or lengthen the maximum duration of import relief from 8 to 13 years. First, shortening the period in which the ITC must make its determination would only increase the likelihood that the ITC will be unable to compile and interpret the data necessary to conduct a thorough investigation and issue a fair finding. As a result, subjective political considerations would play a larger role. Second, Section 201 is designed to provide industries with temporary relief to regain their competitiveness. A 13-year period of relief would be excessive. Industries must be willing to make the necessary adjustments to become competitive, but in no case should this require more than the 8 years allowed under current law.

ENFORCEMENT OF U.S. RIGHTS UNDER TRADE AGREEMENTS (SECTION 301)

Section 301 of the Trade Act of 1974, as amended, provides the authority and procedures for the President to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign practices. Under Section 301, the President is authorized to impose import restrictions as retaliatory action, if necessary, to enforce U.S. rights against unjustifiable or unreasonable foreign trade practices which burden, restrict, or discriminate against U.S. commerce. The broad, inclusive nature of Section 301 authority applies to practices and policies of countries whether or not they are covered by, or are members of, GATT or other trade agreements.

Both H.R.3 and S.490 would transfer from the President to the U.S. Trade Representative the authority to make determinations as to whether foreign practices constitute unfair trade practices within the meaning of Section 301. Both proposals would also make retaliation

mandatory for cases involving foreign violations of trade agreements or other "unjustifiable" trade practices.

K mart believes these proposals to limit the President's discretion and require retaliation are unwarranted. The President is constitutionally required to direct the foreign policy of the United States and is uniquely positioned and qualified to do so. As in Section 201 cases, the President's authority to weigh conflicting interests and make determinations in the national economic interest should be maintained. Moreover, mandatory retaliation is unlikely to improve U.S. access to foreign markets or conditions for U.S. investment. Requiring retaliation would reduce the President's negotiating leverage and flexibility and, therefore, the effectiveness of his already broad authority to respond to foreign practices.

S

SIEGEL, MANDELL & DAVIDSON, P. C.
COUNSELORS AT LAW
ONE WHITEHALL STREET
NEW YORK, N. Y. 10004
(212) 425-0060

CABLE ADDRESS: "CUSTOMSLAW"
TELEX ITT: 428507
TELECOPIER (212) 269-7798

655 FIFTEENTH STREET, N.W.
SUITE 300
WASHINGTON, D. C. 20005
(202) 639-4072

April 9, 1987

BEFORE THE COMMITTEE ON FINANCE, UNITED STATES SENATE

STATEMENT IN SUPPORT OF SECTION 839 OF H.R. 3,
RELATING TO THE CUSTOMS TREATMENT OF CERTAIN KNITWEAR
FABRICATED IN GUAM (PRESS RELEASE H-34)

This statement is submitted on behalf of our clients, Sigallo Pac Ltd., of Agana, Guam and its United States affiliate, Sigallo Ltd. The provision, which applies solely to sweaters fabricated in Guam, merely preserves the existing duty-free treatment established under General Headnote 3(a), Tariff Schedules of the United States for the sweaters in question.

Pursuant to certain formal and binding rulings, issued by Customs Service Headquarters, sweaters which are assembled in Guam from otherwise completed major knit-to-shape component parts of foreign origin are now regarded as products of Guam within the meaning of General Headnote 3(a), and therefore duty-free provided the 50% value-added requirements of the Headnote are met. In 1981, in reliance upon these rulings, our clients built a garment factory in Guam "from scratch", incurring extraordinary expenditures for construction of the plant, purchase of equipment, worker training, etc., all in the

face of the special logistical difficulties caused by Guam's remote location. At present, the two corporations employ approximately 400 people engaged in the production, shipment, U.S. importation and distribution of the sweaters, which carry such well-known brand names as "McGregor", and are sold in stores throughout the country. Every one of the 300 employees engaged in the production of the garments in Guam, is a U.S. citizen or resident. In addition, every worker is paid wages substantially above U.S. minimum wages, and equal to or above those paid to workers in comparable jobs in the mainland United States.

The continuation of the duty-free treatment granted under these rulings, and the very life of the business, is threatened by Customs' textile-product "rules of origin" (19 C.F.R. §12.130), stating that trimming, and/or joining together by sewing, looping, linking, or other means of attaching, the otherwise completed knit-to-shape component parts produced in a single country do not constitute the requisite "substantial transformation" necessary under Customs' current interpretation of the law to qualify the article as a product of Guam.

The applicability of the rules of origin to these sweaters has been stayed pending completion of the formalities required to effectuate a "change of practice" pursuant to 19 U.S.C. §1315(d) and 19 C.F.R. §177.10(c) (Federal Register, August 2,

1985, at page 31392). This legislation is necessary in order to avoid any possibility of termination of the existing practice, resulting in the sweaters in question becoming fully dutiable "as if" they had been produced and imported directly from a foreign country. Should the sweaters become dutiable, Sigallo Pac would be unable to compete with manufacturers of similar sweaters from low-wage foreign countries and would be forced to shut down production in its Guam facility. Because Sigallo-Pac is the largest single private employer in Guam, termination of the factory would create severe economic distress on the island and undoubtedly require a substantial increase in Federal assistance.

It is important to note that under §839, the total amount sweaters covered by new item 905.45, TSUS, and entitled to duty-free entry would be limited to the special "quota exemptions" already in place pursuant to directives issued by the interagency Committee for the Implementation of Textile Agreements, for sweaters assembled in Guam from knit-to-shape component parts. After application of a 1% yearly "growth factor", the quantitative limitations established in §839 are exactly equal to the present "quota exemption" amounts. Thus, an effective measure of protection is continued to U.S. mainland producers of like or competetive sweaters.

Other protection to the U.S. mainland industry is afforded by the following provisions of §839:

1. The sweaters must be assembled by completely sewing, looping, etc., at least five major component parts, which calls for considerable training and skill on the part of the operators, and will discourage any attempted "pass-through" operations.

2. The labor force must consist of United States citizens, nationals, or resident aliens. This, together with the fact that all workers are subject to U.S. minimum wage laws, precludes the use of imported low-wage alien temporary labor such as is presently utilized in the assembly of comparable garments in the Commonwealth of the Northern Mariana Islands (CNMI).

3. As noted by the House Committee on Ways and Means in reporting out the predecessor provision in the prior congress, which ultimately became §839 of H.R. 4800, 99th Cong 2d Sess., incorporated into H.R. 3 without change, the law would apply solely to sweaters assembled in Guam and would not allow duty-free treatment for sweaters assembled in the CNMI, notwithstanding the equal tariff treatment provisions of §603 of the Covenant to establish a Commonwealth of the Northern

Mariana Islands in Political Union with the United States (House Report No. 99-581, Part 1, on H.R. 4750, 99th Cong., 2d Sess., at pg. 172).

4. The "value-added" requirements for textile products contained in General Headnote 3(a) mandate at least 50% of the U.S. Customs value be added in Guam, a substantially more stringent requirement than is generally applicable to non-textile products.

Section 839 results from a consensus reached by representatives of Sigallo, the U.S. mainland garment industry, Interior and Treasury Departments, and concerned House members, following the introduction in the last Congress of the original bill (H.R. 2225) by Representatives Blaz and Frenzel. The special concerns of the domestic industry have been responded to in the careful crafting of §839. We also stress that in terms of enforcement of the new provisions, testimony presented by Sigallo Pac and the Government of Guam before the Committee on Ways and Means in connection with last year's bill reassured the Committee that Guam's Customs Service, which has been trained by the U.S. Customs Service, will ensure compliance with all the requirements of the provisions of §839. In addition, the U.S. Customs Service makes regular visits to the island and is empowered to monitor the operations.

CONCLUSION

This remedial legislation is clearly required to prevent the unnecessary destruction of a model factory which embodies Guam's fledgling textile industry and the loss of a facility which is of great importance to the welfare of the island and its future growth and prosperity. We therefore urge the Committee to favorably report S839 at the earliest possible moment.

Respectfully submitted,

Siegel, Mandell & Davidson, P.C.

SIEGEL, MANDELL & DAVIDSON, P.C.
Attorneys for Sigallo Pac Ltd.
and Sigallo Ltd.

Harvey A. Isaacs, Esq.
Norman C. Schwartz, Esq.

of Counsel
kt

SIEGEL, MANDELL & DAVIDSON, P.C.
COUNSELORS AT LAW
ONE WHITEHALL STREET
NEW YORK, N. Y. 10004
(212) 425-0060

CABLE ADDRESS "CUSTOMSLAW"
TELEX ITT 425507
TELECOPIER (212) 269-7798

655 FIFTEENTH STREET, N.W.
SUITE 300
WASHINGTON, D. C. 20005
202) 639-4072

April 8, 1987

BEFORE THE COMMITTEE ON FINANCE, UNITED STATES SENATE

STATEMENT IN SUPPORT OF SEC. 831 OF H.R. 3, TO CONTINUE UNTIL DECEMBER 31, 1990 THE EXISTING SUSPENSION OF DUTIES ON COLOR COUPLERS AND COUPLER INTERMEDIATES USED IN THE MANUFACTURE OF PHOTOGRAPHIC SENSITIVE MATERIAL (ITEMS 907.10/.12, TSUS)

This is submitted on behalf of our client, Biddle Sawyer Corporation, 2 Penn Plaza, New York, New York 10121 in support of the above referenced provision. We urge passage of this legislation, which simply continues an existing (but lapsed) duty suspension for the photographic chemicals in question.

Item 907.10, TSUS, provided temporary duty-free treatment ending September 30, 1985 for "Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (however provided for in items 402.36 through 406.63, part 1B, schedule 4) to be used in the manufacture of photographic color couplers," commonly referred to as "color coupler intermediates." Item 907.12, TSUS, covered "Photographic color couplers (provided for in item 408.41, part 1C, schedule 4)."

Biddle Sawyer Corp. imports and sells color coupler intermediates to the U.S. photographic trade. Because of the unavailability of domestic sources for these chemicals, recently they have only been available from suppliers abroad.

The existing duty suspension originated in P.L. 95-206 of December 12, 1977, which was extended by P.L. 96-609 of December 28, 1980 and again extended by P.L. 97-446 of January 12, 1983. As was noted by the Congress during its consideration of the last extension, color coupler intermediates and color couplers are manufactured in the United States by one producer ("Kodak") for its own use in production of photographic color print paper; the only other domestic producer of color print paper ("3M") was not manufacturing the chemicals in question and was importing intermediates and finished couplers to satisfy its needs. (See H. Rept. 97-837 on H.R. 6867, 97th Cong., 2d Sess., at page 21, and Sen. Rept. 97-564 on H.R. 4566, 97th Cong. 2d Sess., at page 10.) Because of the unavailability of these chemicals from domestic producers, the imported color coupler intermediates, etc., do not compete in the domestic market with any U.S. - produced products. Rather, imports are the only source of supplemental

supply for domestic manufacturers of photographic material. Insofar as we are aware, the lack of domestic resources, which prompted the last extension of the duty suspension, still prevails.

Through the years Biddle Sawyer has passed along the duty savings resulting from the suspension to its domestic customers. It is believed that this has resulted in lowered finished product prices to consumers. Should the duty suspension be again extended, our client intends to continue to pass along the duty savings.

Sincerely,

SIEGEL MANDELL & DAVIDSON, P.C.
Attorneys for Biddle Sawyer Corp.

Of Counsel:
Harvey A. Isaacs, Esq.,
Norman C. Schwartz, Esq.,

○