S. HRG. 101-1218

TRADE AGREEMENTS COMPLIANCE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2742

JULY 13, 1990

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COMMUNICATIONS

TRADE AGREEMENTS COMPLIANCE ACT

FRIDAY, JULY 13, 1990

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:06 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senator Heinz.

[The press release announcing the hearing follows:]

[Press Release No. H-40, July 9, 1990]

FINANCE SUBCOMMITTEE ON TRADE TO HOLD HEARING ON TRADE AGREEMENTS COMPLIANCE ACT

WASHINGTON, DC.—Senator Max Baucus (D., Montana), Chairman, announced Monday the Subcommittee on International Trade will hold a hearing on S. 2742, the Trade Agreements Compliance Act.

The hearing is scheduled for *Friday, July 13, 1990 at 10 a.m.* in Room SD-215 of the Dirksen Senate Office Building.

Baucus said, "In drafting the 1988 Trade Act, the Congress recognized that there was one type of trade barrier that was completely unjustifiable and deserved special attention—violations of trade agreements."

"Yet the U.S. has too often been unwilling to forcefully assert its rights under trade agreements. This has encouraged some of our trading partners to play fast and loose with their commitments to the U.S. We have already had agreement compliance problems involving Japan, Korea, the EC, and India," Baucus said.

"We must put our foot down. We must tell the world we will not stand for trade agreement violations. And we must leave no doubt in the minds of our trading partners that we will respond to trade agreement violations. This is exactly what S. 2742 does," Baucus said.

"I hope that the Congress can quickly pass this important legislation," Baucus said.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN OF THE SUBCOMMITTEE

Senator BAUCUS. The subcommittee will come to order. The 1990 National Trade Estimate devotes 208 pages to listing foreign trade barriers and actually listing 1,000 separate barriers. But not all foreign trade barriers are equally troubling. In drafting the 1988 Trade Act the Congress recognized that there was one type of unfair trade practice that warranted special attention—violations of trade agreements.

The United States has conducted many trade agreements with its trading partners, most are familiar with the major ones—such as the general agreement on tariffs and trade and the U.S.-Canada Free Trade Agreement. In addition to these agreements, however,

the United States has entered into dozens of other trade agreements to address various trade problems.

For example, the United States has concluded trade agreements with Japan, addressing issues ranging from construction, to pharmaceuticals, to structural impediments to trade.

The United States has also reach agreements with the European Community on compensation with Korea on investments and numerous other nations on protection of intellectual property, to name a few.

Unfortunately, our trading partners have not always lived up to their commitments under these agreements. The United States had concerns regarding the European Community's compliance with a trade agreement reached to compensate the United States for the accession of Spain and Portugal into the European Community.

Recently there has been concern over Japanese private sector conclusion aimed at frustrating the 1988 beef and citrus agreement between the United States and Japan. Some have questioned Korean compliance with a variety of bilateral agreements reached by the United States and Korea in 1989. This subcommittee has previously heard allegations of serious enforcement problems involving Softwood Lumber Memorandum of understanding between the United States and Canada.

Several disputes have arisen over Japanese compliance with its commitments to the United States under the market oriented sector specific talks. And recently there have been reports that the People's Republic of China is not complying with terms of a 1988 agreement with the United States to end predatory pricing of satellite launching services. There is a longstanding dispute over Japanese compliance with the 1986 Semiconductor Trade Agreement between the United States and Japan. Unfortunately, this is only a partial list.

Often these trade agreements do not contain an adequate dispute settlement mechanism to address non-compliance. As noted in the 1988 Trade Act we paid special attention to trade agreement violations. These violations were classified as unjustifiable trade practices subject to mandatory trade retaliation under Section 301 of the U.S. trade law.

Unfortunately, there were oversights in that act. No comprehensive procedure was established for viewing compliance with the many agreements reached between the United States and its trading partners. Section 306 of U.S. Unfair Trade Law does allow the administration to review foreign compliance with certain trade agreements. But there is no authority under which private parties with an interest in trade agreement can trigger a U.S. Government review of foreign compliance.

The Trade Agreements Compliance Act, which I recently introduced with Senators Heinz, Rockefeller, Riegle, Bingaman, Glenn, DeConcini, and Levin, seeks to address this shortcoming in the 1988 Trade Act. A companion measure has been introduced by Congressman Matsui in the House. The Trade Agreement Compliance Act establishes a regular procedure under which an interested U.S. party can petition to review our trading partner's compliance with these trade agreements.

The U.S. Trade Representative would still retain her authority to review any agreement. If violations are found and the trading partner involved refuses to come into compliance, the U.S. Trade Representative is required under the 1988 Trade Act to retaliate against exports from that nation to the United States.

This legislation is not an attempt to define questionable foreign trade practices as unfair Rather, it does nothing more than ensure that other nations do not take advantage of the United States. Demanding compliance with trade agreements should be the cornerstone of U.S. trade policy. If we do not demand compliance, all the resources the United States has invested in trade negotiations are effectively wasted. We must tell the world we will not stand for trade agreement violations and must leave no doubt in the minds of our trading partners that we will respond to trade agreement violations.

I believe this legislation is critical. For any other major trade agreements that are entered into by the United States, this legislation should become law.

Today we have assembled a panel of private sector witnesses that represent U.S. industries that have a direct stake in various trade agreements. We welcome their views on all this and generally on how to best assure better compliance.

[The prepared statement of Senator Baucus appears in the appendix.]

Senator BAUCUS. I note a vote is ensuing and I note Senator Heinz is here. Senator, do you have a statement you wish to make at this time?

OPENING STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. Yes, Mr. Chairman. I certainly agree with you that the Trade Agreements Compliance Act is an important piece of legislation which will provide an essential and timely improvement in U.S. trade policy. It is essential because the act creates a regular procedure through which an interested U.S. party, including the office of the Special Trade Representative, can review our trading partners' compliance with any of numerous trade agreements instead of the haphazard process that currently exists.

I say it is timely because, as you and others have previously documented, Mr. Chairman, a considerable number of our bilateral trading partners have not over the years always fulfilled their commitments under certain agreements. Examples include cases with the European Community on pasta and canned fruit; with Japan over supercomputers and, of course, semi-conductors. These are just a few of the instances where the implementation of an agreement has been far less than we had hoped.

In this time of rapid change, as our national security and ability to project our interests globally are increasingly being measured in economic terms, America's efforts to promote an international trading system based on market discipline are of supreme importance.

In that regard an established procedure to review and, if necessary, to enforce our bilateral trade accords is as important as our

efforts in the military sector to construct a detailed verification process in nuclear arms and conventional force treaties.

In my judgment this legislation fits precisely into the growing emphasis in the Uruguay Round on enforcement on rules and on implementation of GATT fund decisions. Agreements have no meaning and those who make them no credibility if there is no stipulated procedure available to monitor and, if necessary, enforce what has been agreed. The Trade Agreements Compliance Act will keep future abuses from occurring and will ensure that rights or opportunities which are promised to U.S. businesses are also delivered.

So I would like to join in thanking the Chair for the contributions that we are about to receive from today's panelists. With that, noting as Senator Baucus did, that a vote is in progress I will temporarily recess this hearing until the Chair returns. So this hearing is temporarily recessed.

[Whereupon, the hearing recessed at 2:15 p.m. and resumed at 2:25 p.m.]

Senator BAUCUS. The committee will come back to order. The Chair apologizes to the witnesses for the inconvenience that the Senate may have caused with that vote. I do not know if there will be any more votes, but if there are any more we will try to handle them as expeditiously as possible.

Our first panel consists of Mr. Howard Samuel, president of the Industrial Union Department for the AFL-CIO; and Mr. John Howard, executive director for the subcommittee on Market Access for the U.S. Chamber of Commerce.

I under that Tim Regan from Corning is going to be sitting with Mr. Samuels. Is that correct, too? Okay, Howard, why don't you begin.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, AND CO-CHAIR, LABOR INDUSTRY COALITION FOR INTERNATIONAL TRADE, WASHINGTON, DC, ACCOMPANIED BY TIM REGAN, DIRECTOR OF PUBLIC POLICY, CORNING, INC.

Mr. SAMUEL. Thank you, Mr. Chairman. I am accompanied by Mr. Tim Regan, the director of public policy for Corning, Inc. This reflects a long-standing policy of the Labor Industry Coalition of International Trade to always appear in tandem—labor and business together. As the title indicates, the Labor Industry Coalition for International Trade, is a coalition of American firms and American workers who have common interests in increased balance and equitable international trade. Our membership includes 20 major U.S. manufacturing firms and labor organizations.

My own role is co-chair of LICIT and also president of the Industrial Union Department of the AFL-CIO.

Let me start if I could, Mr. Chairman, by quoting you a recent telex to all U.S. Ambassadors from Deputy Secretary of State Lawrence Eigelberger, and I quote, "It is no exaggeration to say that our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century."

If this is the case, and I am convinced it is, then determining whether foreign governments are in compliance with trade agreements may be as important as counting troops and missiles and phased-array radar systems for purposes of arms control treaty verification.

LICIT believes that the Trade Agreements Compliance Act is a necessary improvement in the U.S. trade laws. Before I explain why we support the Trade Agreements Compliance Act, I want to make one observation. The effect of this legislation will be reduced if U.S. trade laws are weakened during the course of the Uruguay Round of GATT negotiations. If we agree to make major changes on our existing trade laws then the U.S. Government may not have the tools with which to enter into trade agreements in the first place.

LICIT is concerned about this issue because of the negotiating objectives of many of our trading partners in the Uruguay Round. All of our most important trade laws are under attack—Section 301, Section 337, and our anti-dumping and countervailing duty laws. LICIT hopes that the Senate Finance Committee will pay particularly close attention to any Uruguay Round negotiations that have the potential to weaken existing U.S. trade laws.

We believe that the Trade Agreements Compliance Act is necessary because there have been plenty of instances in which foreign governments have, if I may put it charitably, not fully complied with trade agreements entered into with the United States

Let me give you a few examples. In 1989 South Korea was not named a "priority country" under Super 301 because it had agreed to several market opening packages. Now that the spotlight was no longer of Korea's trade performance U.S. businesses are reporting substantial backsliding. In fact, the Korean Government has launched an all out campaign against the consumption of foreign goods.

Japan also has a less than stellar record with respect to honoring its commitments. Consider the following passage which appeared in the Japanese press, and I quote, "The U.S. side's assertion is [that] because the distribution structure in Japan is complicated, retail prices of goods imported from the U.S. do not go down. As a result of this, the sales are stagnant, and imports from the United States do not increase." That is a quote from the Japanese press.

Now the story was not, as one might imagine, based on coverage of the recently concluded Structural Impediments Initiative. It is a story which appeared on July 5, 1972 on U.S.-Japanese negotiations to liberalize the Japanese distribution system. Unfortunately, 2 years after then President Nixon and Prime Minister Tanaka reached an understanding on the Japanese distribution system at that time, Japan passed the Large-Scale Retail Store Law—which gave small shopkeepers in Japan veto power over any new retail outlets over 500 square meters.

The Trade Agreements Compliance Act will strengthen the ability of U.S. negotiators to ensure that trade agreements are fully implemented. As a rule, our trading partners do only what is necessary to deflect U.S. pressure regarding their trade performance. The Trade Agreements Compliance Act will increase their incentive to comply with such agreements. If they do not live up to their

commitments the U.S. Government will be required by law to achieve compliance or impose sanctions.

In addition, private sector involvement will ensure the development of an institutional memory on trade policy issues. All too often a change in personnel or administration forces us to start from square one by allowing the private sector to become more engaged in the implementation of trade agreements. The Trade Agreements Compliance Act may increase the continuity and credibility of U.S. trade policy. Passage of the act will help improve the odds that U.S. trade agreements result in increased U.S. exports, or the elimination of certain foreign unfair trade practices.

But the committee should also consider why so many trade issues are such hardy perennial. If agreements negotiated do not resolve the problems comprehensively as neither the 1986 agreement with Japan on supercomputers nor the 1988 agreement on construction services did, then the Trade Agreements Compliance Act will be much less effective. In some instances, therefore, it may be necessary to determine in advance what level of increased exports would constitute success. This modest form of results-oriented trade policy, far from bringing about the collapse of the international trading system would ultimately lead to more harmonious relations between the United States and its trading partners.

This represents a summary of my statement, Mr. Chairman. If I may, I would like to have the full statement included in the record.

Senator BAUCUS. Thank you very much, Mr. Samuels.

[The prepared statement of Mr. Samuels appears in the appendix.]

Senator BAUCUS. Our next witness is Mr. John Howard. Mr. Howard?

STATEMENT OF JOHN E. HOWARD, EXECUTIVE DIRECTOR, SUBCOMMITTEE ON MARKET ACCESS, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. HOWARD. Thank you very much. The Chamber welcomes this opportunity to comment also in support of the Trade Agreements Compliance Act, S. 2742. The Chamber believes that this act represents an eminently logical approach to improving trade policy consultation between the U.S. business community and government and strengthening the credibility of U.S. trade policy.

As far back as August, 1987 the U.S. Chamber had recommended that the omnibus trade bill conferees adopt Senate language mandating U.S. Government initiation of Section 301 investigations, provided they were limited to likely violations of trade agreements.

The Chamber also recommended mandatory consultation of all domestic industries that would be directly affected by such investigations prior to their initiation, and mandatory retaliation against trade agreement violations.

While as you noted earlier Section 306 of the current law does provide for some trade agreement monitoring consultation there is currently no systematic process by which the private sector, having itself determined that a review is warranted, can be assured that such a review will actually happen.

S. 2742 in our view constructively addresses this omission by providing interested persons with a significant economic interest an opportunity to obtain a review upon written request. S. 2742 is also properly intended to apply primarily to bilateral trade agreements and not to multi-lateral agreements such as the GATT. We think this approach is well advised in view of the need to maintain maximum focus at this time on ongoing efforts to strengthen the GATT dispute settlement process itself.

So in sum, the Chamber also believes that U.S. trade relations with other nations will be best served by sending clear signals to our trading partners that we take very seriously our mutual obligations under trade agreements; and that S. 2742 constitutes an important step toward that goal.

[The prepared statement of Mr. Howard appears in the appendix.]

Senator BAUCUS. Thank you both very much. Gentlemen, let me ask some general questions. In your experience, to what degree are well-defined enforcement procedures necessary to assure compliance with trade agreements that we have reached with other countries?

Mr. REGAN. Senator, our experience as a company and our experience as a Coalition, including both labor unions and companies—about 10 of each—is strongly indicative of the need to make sure that we have strong compliance provisions. I think the best evidence of that is the fact that our own administration currently now is seeking to put and strengthen the compliance provisions currently in the GATT.

In fact, the GATT has had dispute settlement procedures in place since its inception. Those dispute settlement procedures have been absolutely essential to ensure compliance of other countries. And as you know, they are actively used; they are actively used against the United States and they are actively used by the United States.

So I think it is only fair and fully consistent with our existing policy to have a similar kind of compliance arrangements where other bilateral trade agreements that the United States negotiates to resolve specific problems that we have with other countries. So our experience is that it is necessary and I think it has been proven in the GATT already, and I think we are just trying to extend the time tested solution that already exists multi-laterally.

Mr. HOWARD. I would agree with most of what was just said. The Chamber does continue to view the GATT as central to the international economic interests of the United States. But as you noted, there are literally dozens of bilateral agreements, many of which do not have effective dispute-settlement mechanisms. These bilateral agreements, if properly implemented, can in fact supplement the interests that are important to us in the multi-lateral context.

Senator BAUCUS. What is your response to the administration when they argue well, we have full discretionary authority and if the agreements are not being adhered to we can take appropriate action?

Mr. HOWARD. Well our view is that the best way to ensure that this compliance is achieved properly is to consult on a continuous systematic basis with those who are in this country most affected

by it, namely the private sector that has to deal day-to-day with the issues at hand.

Senator BAUCUS. So you feel a consultation alone is sufficient? I mean the point of this bill is to give a private party the right to petition for review of compliance with a trade agreement. Do you agree that this right should be legislate?

Mr. HOWARD. I believe it should. Section 306 is not clearly written with respect to the extent that the consultation process involving the private sector is relevant here. The legislation before us today makes it very clear that if the interested party makes a written request; and, if they meet certain other conditions, such as having a significant economic interest, they do have that right. And we think that is very important.

Mr. REGAN. I think, Senator, the problem with that point of view is that while it is absolutely correct, the administration has the discretion, the procedures the administration has to go through to use that discretion are very, very infrequently used. Basically, what would have to happen is the President would have to make a determination that a country has violated Section 301. That is, has essentially committed an unfair trade practice in order to force some sort of compliance. This avoids that prospect. It puts the administration rather in the position of initiating a 301 investigation against another country which it very infrequently does, as you well know.

Senator BAUCUS. Yes.

Mr. REGAN. In a position where the private sector would come forward, provide evidence that there has been non-compliance. It would not be a 301 case. It would be simply a request that the administration examine whether or not there has been non-compliance and make a decision in that regard.

So I think that while it is true they have the discretion. I think the fact remains that they haven't used the discretion very often.

Senator BAUCUS. I like your view, Mr. Regan, with respect to mutually advantageous market opportunities provision. The question is: Should actions outside the agreement that frustrate the agreement be treated in the same vein as specific breaches of the agreement? That is, should the same private right to petition USTR exist not only for breaches of an agreement, but also for those matters that are undertaken by a government or private entity for that matter in another country outside of the agreement.

Mr. REGAN. I think that it is not necessarily essential to ensure compliance with existing agreements, but it would be helpful. I will give you an example. In 1988 we passed—you passed—the Telecommunications Trade Agreement. The Telecommunications Trade Agreement essentially includes the same criteria that is in this particular provision. What happened in making the decisions under the Telecommunications Trade Agreement is that there was a requirement in fact that an annual review be done, whether or not a country is in compliance with a trade agreement and whether or not it is granting mutually advantageous market opportunities.

Before that review was completed there were a series of negotiations that occurred in which the United States was able to negotiate market opening measures with other countries for those coun-

tries to avoid being marked as a country which is not in compliance with an agreement or otherwise denying market opening opportunities to the United States.

So I think what that does is it increases the leverage. It goes beyond compliance but increases the leverage that our trade negotiators can use with other countries. I think anything that increases leverage is good.

Senator BAUCUS. Should the STR's action be discretionary or mandatory if there is found to be a material breach?

Mr. REGAN. Well I think the way the bill is written what essentially happens is the Section 301 provisions are kicked in. Ultimately, the decision as to whether or not there is an unfair trade practice under Section 301 is a discretionary decision by the President.

Senator BAUCUS. That is correct. I am just asking you, in your view, which is the preferable approach.

Mr. REGAN. I think that if they find there is indeed a violation of a trade agreement there ought to be mandatory action. I think if they find that U.S. companies and U.S. entities are denied mutually advantageous market opportunities some discretion ought to be granted.

Senator BAUCUS. Mr. Howard, your view on that?

Mr. HOWARD. Well the Chamber does not currently distinguish between material and non-compliance and mutually advantageous market opportunities in the context of trade agreement violations. So we would not object, in fact, as long as a trade agreement was violated that retaliation is mandatory in either instance.

Senator BAUCUS. What about the inclusion of structural impediments initiative violations, should they be afforded the same as other trade agreements?

Mr. Samuel?

Mr. SAMUEL. I wish they could, Mr. Chairman. I must say I just read the last agreement that was recently concluded and I hope it is not put in the hands of our younger generation because it would be the greatest generator of cynicism I think we have ever seen. It would be extremely difficult to apply this act to the structural impediments initiative, I think, without causing a great deal of trouble. But I think it should be, yes.

Senator BAUCUS. Mr. Howard?

Mr. HOWARD. Well it is our understanding that the administration has chosen not to designate the SII final report as a trade agreement at this time.

Senator BAUCUS. That is correct.

Mr. HOWARD. We think it is too early at this point to take action to reverse that approach. We think that at least some time should be given to see how it plays out. The Chamber did recommend, as you know, many of the practices subject to the SII as Super 301 candidates back in 1989. Super 301 called for achievement of a trade agreement to resolve those. But still, the SII is still the operative approach. It is in our view too early to say at this time that in fact the SII reports should be treated as a trade agreement for purposes of 301 or this bill.

Senator BAUCUS. So your view on that, should the GATT be included or excluded?

Mr. HOWARD. Right.

Senator BAUCUS. The question is whether they should.

Mr. HOWARD. Yes, the GATT——

Senator BAUCUS. Let me ask the question affirmatively. Why not include GATT violations? A violation is a violation.

Mr. HOWARD. Our view is again that we think the provision is well drafted in that it does currently exclude the GATT. The reason is that right now there are efforts underway to strengthen the GATT in a number of ways, including the dispute settlement process. We do not feel it would be wise at this time to distract attention from that.

Senator BAUCUS. I want to make the counter argument, that is all the more reason to include it at this time—to encourage the GATT negotiators to get with it a little more. You know, bargain a position of strength, not weakness.

Your view on that, Mr. Samuel or Mr. Regan?

Mr. REGAN. I think that—and again LICIT has not specifically addressed this issue. We have endorsed your bill as it was introduced, but I guess I will express my personal views. I guess my view of it is, first of all, that a trade agreement violation whether it is a GATT violation or a bilateral trade agreement violation should be treated the same. That basically means that if there is a violation of a trade agreement there ought to be some mechanism in which other countries can be encouraged to go into compliance or face some form of sanction. I do not think that there is any reason to treat them differently.

Senator BAUCUS. Well I thank all of you for your helpful testimony here. More and more individuals I think should have private rights of action to enforce trade agreements as the world changes. It is not black and white; it is shades of gray. It is an evolving area.

We all know in America that a right is only as good as a remedy. Rights mean nothing if there are no remedies. We are trading much more in goods and services and we will see more in the future. It is my hope that this bill will help move us more toward effective enforcement of rights that individuals have insofar as trade agreements reached with other countries.

Mr. SAMUEL. I endorse your statement, Mr. Chairman. Particularly in view of the fact that for many years international economic arrangements within our government were very often playing second to national security arrangements or basic political and diplomatic relationships. Unfortunately, there are still too many in our government who are still inclined to do that, despite the fact that now the international economic arrangements are perhaps more important, even in respect to national security than anything we do.

I think your legislation, by bringing in the private sector, which in many respects if far ahead of at least certain people in the government, is extremely valuable.

Senator BAUCUS. Thank you both very much.

The next panel consists of Mr. Andrew Procassini, president of the Semiconductor Industry of San Jose, California; Mr. Stephen Lovett, vice president for the International Trade section of the National Forest Products Association; Mr. Max Turnipseed with

the International Trade Affairs of Ethyl Corp.; and Ms. Lori Garver, executive director of the National Space Society.

Before we begin, I have a series of letters from various organizations that support legislation which I will include in the record.

[The letters appear in the appendix.]

Senator BAUCUS. Mr. Procassini, why don't you begin?

STATEMENT OF ANDREW A. PROCASSINI, PRESIDENT, SEMICONDUCTOR INDUSTRY ASSOCIATION, SAN JOSE, CA

Mr. PROCASSINI. Thank you. I am president of the Semiconductor Industry Association, Senator; and my full statement has been submitted for the record. So with your permission I would like to simply summarize.

Senator BAUCUS. All statements will be included in the record. I just want to advise all witnesses there will be a 5-minute rule. That is, when the red light flashes, time is up.

Mr. PROCASSINI. We believe the premise of the Trade Agreements Compliance Act can be summarized in five words—"A deal is a deal." The United States has had a broad range of agreements with partners. These agreements have involved commitments to lower tariffs, open markets, stop export subsidies and so on. But we think these trade accords will be meaningless unless we are sure they are lived up to.

The current U.S. trade law does not provide for a systematic review of whether foreign governments are complying with their trade agreements. The Trade Agreements Compliance Act is intended to correct this situation. After a year has elapsed or prior to the end of the agreement an interested party can ask USTR to determine whether a foreign government is complying with a bilateral trade agreement. If it is not, it is treated as an unfair trade practice under Section 301; and at this point USTR can attempt to bring the country into compliance with the agreement or failing that, impose sanctions.

You know, at one time the U.S. industry could do well simply by selling at home; but those days are gone forever. Not only are foreign markets growing rapidly, but U.S. companies are increasingly being challenged at home. And to compete effectively in this day and age, companies must sell their products worldwide. I might point out in my industry 40 to 50 percent of the products are sold outside the United States.

In no industry is this more true than in semiconductors. And for us, access to foreign markets, especially the Japanese market, can help determine whether we are world class or second rate.

Let me give you a few facts. Japan is now the world's largest semiconductor market. In 1989 their market was $23 billion compared to $18 billion in the United States. And this industry must amortize large investments in R&D, plant and equipment over a short product life cycle; and without access to foreign markets we cannot generate the funds we require.

A closed home market gives firms a sanctuary which reduces the uncertainty associated with investment and new capacity; and this in turn often triggers over capacity and below cost sales. I can think of no better way to document the need for enforcement of the

existing trade agreements than to briefly describe the efforts by the U.S. semiconductor industry and government to open a Japanese semiconductor market.

For 20 years the United States negotiated a seemingly endless series of agreements to accomplish this purpose. Nevertheless, Japan has disregarded the agreements and the United States has essentially remained a residual supplier to the Japanese market.

Prior to the 1970's, the Japanese semiconductor market was protected by a wide range of formal and informal barriers, including import quotas, restrictions on foreign ownership, and rules requiring foreign companies to license their technology to Japanese competitors.

In 1971 Japan agreed to eliminate these barriers after the United States threatened to lodge a complaint under GATT. At the same time Japan developed a series of "liberalization counter measures" including subsidies, government sponsored joint R&D projects and a host of other measures.

In 1982 they again agreed to eliminate barriers. And in 1983 MITI encouraged Japanese companies to buy semiconductors. By late 1984, semiconductor demand had declined, and MITI relaxed its efforts. U.S. market share in Japan resumed its decline.

Japan's failure to implement its 1983 commitments drove SIA to file a Section 301 case in 1985; and in 1986 the U.S.-Japan Semiconductor Trade Arrangement was signed. Under the agreement the Japanese Government recognized the expectation of the United States industry that foreign share of Japan's semiconductor market would "grow to at least slightly above 20 percent" by 1991 and further agreed to stop dumping semiconductors. However, Japan did not fully comply and President Reagan imposed sanctions.

Today with only 1 year left to the agreement, we have not attained our objective. Instead of an expected 17 percent by this point the U.S. share is at 12½ percent, which represents a loss of $700 million in sales and $80 million in R&D. The painfully slow improvement in U.S. access to the Japanese market cannot be contributed to a lack of industry effort. Our expenditures and personnel sales and capital have been significantly higher each year and in 1989 were significantly higher than 1988.

In 1989 U.S. firms had 41 percent of the European market, while Japanese firms had only 20 percent of the market. So I assume from this data that it will be pertinent to us that this act be passed, so that we can bring Japan in compliance with the agreement we signed in 1986.

Thank you.

Senator BAUCUS. Thank you very much, Mr. Procassini.

[The prepared statement of Mr. Procassini appears in the appendix.]

Senator BAUCUS. Mr. Lovett?

STATEMENT OF STEPHEN M. LOVETT, VICE PRESIDENT, INTERNATIONAL TRADE, NATIONAL FOREST PRODUCTS ASSOCIATION, WASHINGTON, DC

Mr. LOVETT. Thank you very much, Mr. Chairman, for this opportunity to testify today on the Trade Agreements Compliance

Act—a very effective measure to ensure the full implementation of trade agreements, which is critical if internationally competitive U.S. industries are to fulfill their export potential in foreign markets.

I will skip important background material on the international competitiveness of the wood products industry and our enormous efforts in foreign markets which is all in my written testimony and get right to the point.

Even though the Wood Products Super 301 agreement signed on June 15, 1990 is not yet a month old, it is already apparent that the government of Japan will not live up to its commitments without vigorous enforcement.

Our industry has a long history of trade negotiations with Japan. After several years of skirmishes, the market-oriented sector specific MOSS talks in 1985 made some progress. But the market remained protected and the government of Japan refused to honor its agreement to continue the MOSS process.

Frustrated by Japanese intransigence and lacking a Trade Agreements Compliance Act, the wood products industry appealed to the administration and the Congress, which resulted in wood products being named as one of three Super 301 cases last year.

The wood products Super 301 agreement avoids many deficiencies of the MOSS. Although the Japanese wood products market remains protected in many areas, Ambassador Linn Williams, Don Phillips and all of the others on the U.S. negotiating team did an excellent job in achieving a comprehensive package of measures that will eliminate many barriers. More importantly, our negotiators took great pains to build a process to ensure implementation and continued negotiations.

On July 27 and 28, 1990, a U.S. Government-industry team met with the Ministry of Agriculture, Forestry and Fisheries (MAFF) for the first round of Super 301 implementation talks on Japan agricultural standards issues. MAFF's cooperation was lacking in several areas.

MAFF was unwilling to discuss the Super 301 agreement on parallel testing, even though the American Plywood Association submitted such data several months ago.

MAFF refused to respond to requests for acceptance of design values for machine stress rated lumber (MSR) and MSR quality control standards as they had agreed in the Super 301 negotiations.

MAFF continues to delay a specific mill certification application in spite of the agreement to certify mills within 2 weeks.

MAFF refused to consider meetings more frequently than once yearly in spite of an agreement to meet as often as necessary to address the large volume of issues waiting to be resolved; and MAFF is attempting to deal directly with the U.S. industry, cutting U.S. Government out as they have in the past, in spite of their agreement to a government-industry process.

Even at this early date it is clear that the wood products Super 301 agreement will need to be enforced. After the agreement was signed our industry acted immediately to take advantage of new markets with a full promotion program. While we remain optimistic, it will have been a great waste of time, money and effort to find that the combined efforts of our industry and government con-

tinue to be unfairly thwarted. Here we need to think of the many industries who have problems in this regard, which arise because of lack of will within the U.S. Government to enforce trade agreements, resulting from pressure from foreign governments or because of competing interests within the interagency process.

The Trade Agreements Compliance Act, by allowing the private sector to trigger monitoring and enforcement action, brings certainty to a process that is sometimes stalled by U.S. Government agencies which do not wish to push foreign governments to live up to their agreements. And in the case of Japan, it is clear that foreign pressure works. The Japanese Government needs this leverage as much as our own government does.

Larry Blum of USDA's Foreign Agricultural Service and Mike Hicks of the Departments of Commerce represented the United States in the recent technical talks. I mention them because they deserve to be commended for their strong efforts to attain speedy implementation. These talks also demonstrated the strong commitment by USTR, USDA and Commerce to follow through and turn the agreement into exports.

Nevertheless, the Japanese have also signaled their intention to delay and obstruct the implementation process. They must realize that their stubbornness, if it blocks access to a market that they have agreed to open, will result in another 301 action. The Trade Agreements Compliance Act sends this message with force and with clarity.

Senator Baucus, the members of the National Forest Products Association wish to express their sincere thanks for the tireless efforts of you and your staff to open markets for U.S. wood products in Japan. Because of your commitment and skillful support of the wood products Super 301 negotiations, the government of Japan has agreed to eliminate barriers which the U.S. Trade Representative has valued at $1 billion. We are grateful for your continued perseverance to ensure that the trade agreement in wood products results in an actual increase in exports and has a significant, positive impact on the trade deficit.

To this end, the National Forest Products Association fully supports the goals and objectives of the Trade Agreements Compliance Act.

Thank you, sir.

Senator BAUCUS. Thank you, Mr. Lovett.

[The prepared statement of Mr. Lovett appears in the appendix.]

Senator BAUCUS. Next, Mr. Turnipseed.

STATEMENT OF MAX L. TURNIPSEED, MANAGER, INTERNATIONAL TRADE AFFAIRS, ETHYL CORP., WASHINGTON, DC, ACCOMPANIED BY THOMAS BOMBELLES, GOVERNMENT RELATIONS COUNSELLOR, INTERNATIONAL BUSINESS-GOVERNMENT COUNSELLORS, INC., WASHINGTON, DC

Mr. TURNIPSEED. Thank you, Mr. Chairman. Accompanying me this afternoon is Mr. Tom Bombelles, from International Business Counsellors. Ethyl appreciates this opportunity to testify this afternoon on a very important matter to us as a company. Mr. Chair-

man, I come to speak in support of your bill, S. 2742, and Ethyl Corp. applauds your initiative with this proposed legislation.

Unlike previous witnesses that have come representing industry perspectives, I come this afternoon representing a specific company's perspective on a very serious subsidy problem that we have experienced in dealing with the country of India. A product that they make and that Ethyl also manufacturers called Ibuprofen, which you may know in the over-the-counter market as Advil or Nuprin or Motrin or some other names that are given to it.

In the past 2 to 3 years Indian exports of this Ibuprofen to the United States, and in fact really to the global market, have increased dramatically. And this successful export drive on the part of the Indian producer is directly attributable to the massive government export subsidy programs available to that producer made by the government of India.

In the case of this product we estimate that those advantages are well over 20 percent. Ethyl is quite frustrated over these trade distorting subsidies. In light of the 1981 U.S.-India bilateral subsidy agreement in which the government of India specifically stated that it was, and I quote, "our policy to reduce or eliminate subsidies." This is in fact what your bill addresses and we are delighted that this has come forward in the way that it has.

In our opinion the objectives of your bill will alleviate much of the frustration that we have had in dealing with this subsidy and with the administration in trying to find a resolution.

In the 1981 agreement in return for India's promise to reduce or eliminate its subsidies, the United States granted India exports the substantial benefit of the U.S. International Trade Commission's injury test in countervailing duty investigations. In a CVD complaint, as you well know, the party must prove both subsidies and material injury or threat thereof in order to win any relief, effectively raising the cost and risk of the CVD process. Yet, we have strong evidence that the government of India continue to provide a wealth of subsidies to its exporters on a wide range of products, and in particular the very subsidy that was named in the 1981 subsidy agreement with them, namely a cash compensatory support program.

Ethyl has ample evidence that the Indian Ibuprofen producers are receiving these benefits, not only from the cash compensatory support but about 10 other countervailable subsidies. According to our U.S. Embassy in New Dehli, and I quote, "The government of Indian expenditures on export promotion measures in recent years have increased dramatically." Indeed, the Embassy reported in March of 1990 that the government has announced "substantive export subsidies . . . for the entire pharmaceutical industry."

In addition to subsidizing its products, the government of India maintains high market access barriers. After extensive market research we have determined that is just impossible to export Ibuprofen to India due to their custom import duties exceeding 100 percent and a very restrictive import licensing system that causes the product that we would want to sell into India to be noncompetitive. In effect, they have an embargo against Ibuprofen imports.

The effects of this trade distorting policy which we believe violate the 1981 subsidy agreement are clear—India's massive subsidi-

zation program have caused not only depressed prices in the United States, but in the global market as well. It has forced several developed country producers out of the Ibuprofen market, such as Italy, Finland and Japan, and threatens the viability of Ethyl's operations here in the United States.

Importantly, the damage to this market is done by one major bulk Ibuprofen producer in India who has received FDA approval to sell their product in the United States. It is clear to us that not only has India not complied with its commitments in the 1981 subsidy agreement, but that the United States has not even begun to request such compliance in return for the quid pro quo CVD injury test we gave India. The Executive Branch seems to have no policy to enforce the provisions of the 1981 subsidy agreement——a policy for which companies such as Ethyl pay dearly.

Mr. Chairman, I believe your bill addresses this matter in a much more effective way. We also note that Senators Roth, Danforth and Heinz have written letters in the past to USTR about this very same enforcement problem on bilateral subsidy commitments. In fact, Senator Roth's letter specifically addressed the 1981 U.S.-India bilateral subsidy agreement.

In closing, I urge that this committee and the Congress act swiftly to enact your bill, S. 2742. I would be delighted to answer any questions you may have.

Senator BAUCUS. Thank you very much, sir. That was an individual company's perspective. That was very interesting.

[The prepared statement of Mr. Turnipseed appears in the appendix.]

Senator BAUCUS. Ms. Garver?

STATEMENT OF LORI B. GARVER, EXECUTIVE DIRECTOR, NATIONAL SPACE SOCIETY, WASHINGTON, DC

Ms. GARVER. Yes, thank you, Mr. Chairman, for the opportunity to testify concerning the Trade Agreements Compliance Act. As I am not an expert on international trade, nor is the National Space Society primarily interested in such matters, I will confine my testimony to the discussion of the U.S.-China Launch Services Trade Agreement and the difficulties in enforcing it under the current law.

First, however, I will provide a bit of information of background on the National Space Society, the agreement, and why we believe this question is important.

The National Space Society is a grass roots organization of nearly 30,000 members. We are devoted to the creation of a space-faring civilization, a goal we share with President Bush. While NSS does include among its members aerospace industry and, in fact, a number of launch companies, I would like to stress we are actually really representing our general membership as a public issue. We support free-market competition and launch services because we believe that free-market forces will promote new technologies and lower actual costs for launching people and material into space over the long term.

We oppose anti-competitive behavior, such as subsidies and dumping, because such practices undermine the free market and

distort the incentives to lower actual costs. When a launch is subsidized, the cost—that is, the total expenditure of resources—does not change. Part of that cost is shifted to someone else, in this case the Chinese citizens, so that the price can be lower, but that is all.

Since we believe that expanding human activity into outer space depends on lowering the actual costs of that activity we oppose anything that undermines efforts to lower that cost. We believe the best way to do that is through continued development of a competitive commercial industry.

The 1989 Trade Agreement between the United States and the Chinese Government was intended to deal with these kinds of problems by setting up competitive market economies as a benchmark. This is necessary because the Chinese are a non-market economy and do not operate according to competitive principles. The problem is that the Chinese have not abided by the agreement. They have charged significantly lower costs than were set up in the agreement. The agreement stated that they would price on par with western prices. They have also already, it looks like, gone over the number of launches that they were said to agree to.

Under the U.S. law there appears to be no suitable mechanism for the enforcement of this agreement other than the Section 301 proceeding. Now, such a proceeding could be self-initiated by the U.S. Trade Representative. But as we have spoken of here today, that is a rare occurrence. Or, it could be triggered by a petition filed by one of the U.S. companies involved. However, that would expose them to a threat of retaliation by the Chinese Government. Or, it could be filed by a group like the National Space Society, which might happen. We're actually considering filing a 301.

But obviously a system that relies on private organizations like NSS for its enforcement is poorly designed. Effective U.S. enforcement of important trade agreements would ideally occur without intervention such as this by private organizations through the filing of expensive and often time-consuming legal proceedings.

The fact is that the current system of trade law and its administration seems to discourage the enforcement of trade agreements. That is a bad thing in general; and I agree with you that we must demand compliance.

We are particularly unhappy at the prospect that the launch services agreement with the Chinese is not being effectively enforced. So, therefore, to the extent that the Trade Agreements Compliance Act can encourage enforcement of trade agreements without the necessity of private parties filing legal proceedings, NSS believes that it should be enacted.

That concludes my statement. Thank you.

Senator BAUCUS. Thank you, Ms. Garver.

[The prepared statement of Ms. Garver appears in the appendix.]

Senator BAUCUS. First I want to make it clear, that this legislation applies to any country that violates a trade agreement. You know, sometimes we spend a bit too much of our time focusing on Japan. Japan is not always in compliance, as we well know, but there are other countries too that are sometimes not in compliance with agreements. I want everyone to realize that this legislation applies to all countries.

I would like you to, Mr. Turnipseed, just in a little more detail tell me the degree to which your company has consulted with, petitioned, begged, besieged the USTR to something about all this.

Mr. TURNIPSEED. All right.

Senator BAUCUS. What has happened? Just give me a little sense of that.

Mr. TURNIPSEED. Yes, I will be happy to, Senator.

First, this problem started arising about 3 years ago when the Indian producer of Ibuprofen received FDA approval to sell their product here in the United States. At that time there were little or no imports of that product here in the United States from India, obviously.

Immediately the first thing we did was to try to get GSP removed from those imports because they do get duty-free entry. Our petition was rejected. So we began looking at CVD and dumping possibilities as well as any other options available to us under the trade law. We have filed reports under Section 304, the National Trade Estimates Report outlining all of these subsidies. We have filed comments under the Super 301, also outlining the various unfair trade practices that we felt existed in India.

We have met with the Trade Counsel at USTR and we have met with the people at the Department of Commerce to talk about us as a company filing a 301 petition and they sort of brushed us off as, well, let's wait until the Uruguay Round is over. We have asked them, and they did reluctantly raise this matter in the one U.S.-India bilateral trade meeting that was held in April and now has been postponed until the Uruguay Round is over. And ultimately we have come to Capitol Hill recently seeking some proposed legislation be introduced that would in fact remove the injury test due India until they eliminate subsidies on Ibuprofen.

Those are the various things that we have done. The results have been very slim, other than getting the matter raised on the agenda at least with the U.S.-India bilateral trade agreement meeting on one occasion. And a suggestion that we wait until the Uruguay Round is over before we pursue any 301 petition.

Senator BAUCUS. So essentially you have not been sleeping on your rights. That is, you have been working as hard as you can to try to find some solution.

Mr. TURNIPSEED. Every option that we knew existed.

Senator BAUCUS. And essentially, the response you are getting is, well wait until the Uruguay Round is concluded.

Mr. TURNIPSEED. That is the response.

Senator BAUCUS. That is the response you are getting.

Regardless of what may or may not come out of the Uruguay Round, isn't it fair to say that time is of the essence. But the current 301 mechanism it could take 12 months, 18 months in some cases.

Mr. TURNIPSEED. Yes.

Senator BAUCUS. Let alone what the decision might be. USTR has a long time within which to make a determination. Some products just cannot wait that long. Some industries cannot wait that long. Some companies cannot wait that long.

I wondered if you, perhaps, Mr. Procassini, could focus on that point because certainly in the semiconductor industry products have short life spans.

Mr. PROCASSINI. Yes, Senator. For example, I think it is almost a well-known fact to laymen as well as to technologists that it is not unlikely to have a 4-year life for a product, and have a successive number of products built on the previous product, such that if one cannot find access to foreign markets within a specified period of time you will have lost the opportunity to participate in that product market.

One particular market, Dynamic RAM's, for example, constitute almost 20 to 25 percent of the world market. And with 4-year life cycles, and considering the lengths of time that it takes to negotiate some of these issues, and the amount of time it takes to have foreign governments respond to our actions every single month and every year merely puts us in a position of less strength.

With respect to our industry we are 1 year away from the end of a 5-year agreement with the Japanese. They have not as yet complied. And as I have already indicated, the funds from those revenues will not go into the R&D that is required to maintain position.

Senator BAUCUS. Ms. Garver, do you have a view on that point, too?

Ms. GARVER. Yes, if I could comment. I think our situation is unique in that just one satellite means $50-70 million for a company. Right now there are three existing launch companies of this scale in the United States and many people feel that within the next year we will be down to two. They will all not be able to compete because of the problems with China.

Right now we have an excessive launch vehicle capability per satellite and the Chinese are going out now to get as many contracts as they can even though our agreement said they could only do a few a year—a total of 9 over 6 years. And so a loss of each satellite could really mean the end of a competitive launch industry in this country. Furthermore, each launch is important to the U.S. trade balance. As Norm Augustine of Martin Marietta likes to point out, each commercial Titan rocket launch offsets the import of 10,000 Toyotas.

Senator BAUCUS. So essentially you're saying that we need a more timely and effective determination. That is, one that is more decisive and forceful. Is that basically what you are saying?

Ms. GARVER. That is right. When you consider our mechanism for doing this as a 301, and that can take up to a year, it is not clear that our launch industry has a year. We have also been asked to wait on a 301 until after meetings with the Chinese. Those took place this week and now we'll have to see where to take it from here.

Senator BAUCUS. Mr. Lovett, you have worked very, very hard and diligently. I commend you for all your efforts in negotiating—helping to negotiate an agreement with Japan to open up forest products markets, processed forest products, most recently.

Could you outline in a little more detail some of your concerns about Japan?

Mr. LOVETT. Just picking up, Mr. Chairman, on your last question, Congress has legislated or is in the process of legislating a change in the product mix going to Japan. We will have less logs going over there. This does not necessarily mean they are going to start buying our value-added products.

There is a sense of timing for the wood products industry as well. If there are not going to be economic difficulties, further economic difficulties, for west coast operations, it is going to be necessary that the slack be picked up in value-added products. The market for value-added products in Japan must be opened.

One of the real problems that we encountered most recently with the Japanese was the refusal to really focus on a very key part of the Super 301 wood products agreement, which affects other industries as well. It is the Japanese approach to standards and their sense of their own sovereignty with their right to control standards within the country.

One of the things that we have been asking for is not necessarily that they allow the U.S. grade stamps in Japan, but they set up the acceptance of equivalency in test methodology and test data, that they accept the test data. And if out of that black box comes a product which performs equally as well as the Japanese product performance, then they should accept that product regardless of what our testing methodology or quality control methodology is.

This would be a significant change in their approach to standards in the acceptance of foreign products in Japan. I think they are aware of the precedent setting aspects of this and they do not want to discuss it. This means that in the areas of more technologically advanced wood products, such as machine stress-rated lumber, which can be used in engineered systems and laminated beams and so forth, and for plywood, we are going to continue to have a very difficult time getting these value-added products into Japan. They are the very products that we must get into that market if we are going to maintain the same export drive that we have had, the same level of exports, and continue to be an industry with an export surplus.

Senator BAUCUS. I am wondering if any of you can respond to the next question. There may be some who suggest that if this legislation is enacted with its annual review that there are going to be a flood of petitions. That there are so many trade agreements out there that every industry or company that may have a tangential interest might file a petition and overwhelm the USTR. I would like any one of you who has a thought on that to respond.

Mr. TURNIPSEED. Well I must say, Senator, I am not aware of all the trade agreements that others may have used that could have been breached. But I think that is something that the administration and possibly members of your staff could check. I have been involved in the trade area for 25 years and I have not heard of that many trade agreement complaints about countries other than those that we are hearing about today and possibly several others.

Senator BAUCUS. That is a good point. I haven't either.

Mr. Lovett?

Mr. LOVETT. Mr. Chairman, if there were a flood of complaints, then that flood of complaints should be dealt with. If there are trade agreements which are being unenforced or are being violated,

then USTR should have an increased appropriation, should have a bigger staff and should deal with it.

Senator BAUCUS. All right.

Mr. LOVETT. This is an area of critical national interest. And a flood of trade agreements needs to be addressed.

Senator BAUCUS. I agree with that.

Mr. PROCASSINI. If there is a flood of agreements of this type it obviously indicates an even stronger need for this type of legislation, so that in the future agreements are of the type that have a better self-reinforcing set of provisions in them than they currently have.

Ms. GARVER. Yes. My understanding is that the act would actually potentially reduce the claims because it would make it easier for the administration to rectify the situation. And in our case at least, in aerospace industry, they have been extremely reluctant to file because of the question of possible retaliation from the other government.

So we think it is more important to actually have the administration take that action on their own.

Senator BAUCUS. Well each of you have been very, very helpful here. I want to thank you very much. You have helped to establish a sound record. I am very hopeful this legislation will be enacted sometime this year.

Thank you very much.

This hearing is adjourned.

[Whereupon, the hearing was adjourned at 3:23 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR MAX BAUCUS

The 1990 National Trade Estimate devotes 208 pages to listing foreign trade barriers—over 1000 are cited.

But not all foreign trade barriers are equally troubling.

In drafting the 1988 Trade Act, the Congress recognized that there was one type of unfair trade practice that warranted special attention: violations of trade agreements.

TRADE AGREEMENT VIOLATIONS

The U.S. has concluded many trade agreements with its trading partners.

Most are familiar with the major agreements, such as the General Agreement on Tariffs and Trade and the U.S.-Canada Free Trade Agreement.

In addition to these agreements, however, the U.S. has entered into dozens of other trade agreements to address various trade problems.

For example, the U.S. has concluded trade agreements with Japan addressing issues ranging from construction to pharmaceuticals to structural impediments to trade.

The U.S. has also reached agreements with the EC on compensation, with Korea on investment, and with numerous other nations on protection of intellectual property—to name only a few.

Unfortunately, our trading partners have not always lived up to their commitments under these agreements.

The U.S. had concerns regarding the EC's compliance with a trade agreement reached to compensate the U.S. for the ascension of Spain and Portugal into the EC.

Recently, there has been concern over Japanese private sector collusion aimed at frustrating the 1988 Beef and Citrus Agreement between the U.S. and Japan.

Some have questioned Korean compliance with a variety of bilateral agreements reached by the U.S. and Korea in 1989.

This Subcommittee has previously heard allegations of serious enforcement problems involving the Softwood Lumber Memorandum of Understanding between the U.S. and Canada.

Several disputes have arisen over Japanese compliance with its commitments to the U.S. under the MOSS (Market Oriented Sector Specific) talks.

Recently, there have been reports that the People's Republic of China is not complying with terms of a 1988 agreement with the U.S. to end predatory pricing of satellite launch services.

There is a long-standing dispute over Japanese compliance with the 1986 semiconductor trade agreement between the U.S. and Japan.

Unfortunately, this is only a partial list.

THE TRADE AGREEMENTS COMPLIANCE ACT

Often these trade agreements do not contain an adequate dispute settlement mechanism to address non-compliance.

As noted, in the 1988 Trade Act we paid special attention to trade agreement violations. These violations were classified as 'unjustifiable' trade practices subject to mandatory trade retaliation under Section 301 of U.S. trade law.

Unfortunately, there were oversights in the 1988 Trade Act. No comprehensive procedure was established for reviewing compliance with the many agreements reached between the U.S. and its trading partners.

Section 306 of U.S. unfair trade law does allow the Administration to review foreign compliance with certain trade agreements.

But there is no authority under which private parties with an interest in a trade agreement can trigger a U.S. government review of foreign compliance.

The "Trade Agreements Compliance Act" which I recently introduced with Senators Heinz, Rockefeller, Riegle, Bingaman, Glenn, DeConcini, and Levin seeks to address this shortcoming in the 1988 Trade Act.

A companion measure has been introduced by Congressman Matsui in the House.

The Trade Agreements Compliance Act establishes a regular procedure under which an interested U.S. party can review our trading partners' compliance with these trade agreements as often as annually.

Under this act, the U.S. Trade Representative retains her authority to review any agreement.

If violations are found and the trading partner involved refuses to come into compliance, the U.S. Trade Representative is required under the 1988 Trade Act to retaliate against exports from that nation to the U.S.

This legislation does nothing more than ensure that other nations do not take advantage of the U.S. It is not an attempt to define questionable foreign trade practices as unfair.

No reasonable party can argue that violations of trade agreements are not unfair.

Yet, the U.S. has too often been unwilling to forcefully assert its rights under trade agreements.

This has encouraged our trading partners to play fast and loose with their commitments to the U.S.

We must put our foot down.

Demanding compliance with trade agreements should be the cornerstone of U.S. trade policy.

If we do not demand compliance with agreements, all the resources the U.S. has invested in trade negotiations are effectively wasted.

We must tell the world we will not stand for trade agreement violations. And we must leave no doubt in the minds of our trading partners that we will respond to trade agreement violations.

I believe this legislation is a critical element of U.S. trade policy. Before any other major trade agreements are entered into by the U.S., this legislation should be made law.

Today, I have assembled a panel of private sector witnesses that represent U.S. industries that have a direct stake in various trade agreements. We welcome their views on these agreements and on the Trade Agreements Compliance Act.

Attachments.

CONGRESS OF THE UNITED STATES,
Washington, DC, August 2, 1990.

Senator MAX BAUCUS, *Chairman,*
Subcommittee on International Trade,
205 Dirksen Senate Office Building,
Washington, DC.

Dear Mr. Chairman: If agreeable and appropriate as far as Committee rules are concerned, I would appreciate your including this letter in the Committee's hearing record on S. 2742, the Trade Agreements Compliance Act of 1990. I am especially interested in this legislation in that it would impact upon a company, the Ethyl Corporation, located in my Congressional district.

The Ethyl Corporation testified before your Committee on July 13, 1990. Ethyl manufactures ibuprofen in Orangeburg, South Carolina. Over five hundred workers are employed in this facility in my area. I am informed that Ethyl has made many investments there in order to build an efficient plant. Yet, they have indicated to me that their operations are threatened by Indian imports which, Ethyl maintains, receive export subsidies from the Indian Government. Such subsidies would seem to be in violation of the 1981 U.S.-India Bilateral Subsidies Agreement.

On behalf of my constituents, I would appreciate if the situation of companies such as Ethyl could be considered in relation to this legislation.

With kindest regards, I am

Sincerely,

FLOYD D. SPENCE, *Member of Congress.*

CONGRESS OF THE UNITED STATES,
Washington, DC, August 3, 1990.

Senator MAX BAUCUS,
U.S. Senate,
Washington, DC.

Dear Senator Baucus: If appropriate and consistent with Committee rules, I would appreciate your including this letter in the Committee hearing record on S. 2742, the "Trade Agreements Compliance Act of 1990." I am especially interested in this legislation in that it would impact upon a company who has business interests in my congressional district.

The Ethyl Corporation testified before your Committee on July 13, 1990. During their testimony they discussed the 1981 U.S.-India Bilateral Subsides Agreement. In that Agreement, the U.S. granted India the major benefit of the U.S. International Trade Commission's injury test in countervailing duty investigations, without any concessions from Indian trade representatives. Ethyl Corporation testified that their operations are unfairly threatened by Indian imports, which receive massive export subsidies from the Indian Government. I am concerned that this subsidy could possible violate the 1981 U.S.-India Bilateral Subsides Agreement, and that corrective action should be taken to insure domestic competition.

Thank you for your normal consideration in this matter. If you have any questions, please feel free to call on me.

Sincerely,

RICHARD H. BAKER, *Member of Congress.*

PREPARED STATEMENT OF LORI GARVER

Mr. Chairman: members of the Subcommittee: I would like to thank you for the opportunity to testify concerning the Trade Agreements Compliance Act. As I am not an expert on international trade issues generally, I will confine my testimony to a discussion of the U.S./China Launch Services Trade Agreement, and the difficulties in enforcing it under current law. First, however, I will provide a bit of background on NSS, the Agreement, and why this question is important.

NSS, LAUNCH SERVICES TRADE, AND THE AGREEMENT

I represent the National Space Society, a nationwide space activist organization with almost 30,000 members. Although a number of launch companies are corporate members of NSS, by far the greatest part of our membership and support come from individuals. NSS is committed to the creation of a truly spacefaring civilization—a goal that we share with President Bush.

For such a civilization to exist, the cost of transporting people and material to Earth orbit must be lowered dramatically. I stress that I refer to cost, not simply price—cost being the total amount of societal resources required to do the job. Subsidies can shift costs from one group to another—say, from U.S. satellite manufacturers to Chinese taxpayers—but merely shifting payment around cannot lower the actual cost of space activity. It is the position of NSS that free market competition is the best means of seeing those costs go down. The experience of this century teaches that when competition takes hold, technological capabilities go up and costs come down. That is why NSS opposes anti-free market practices such as dumping and operational subsidies.

When the Chinese entered the market in 1985, there was serious concern that they would sell their launch services at below cost, driving free-world launch providers out of business. After considerable discussion the United States and China arrived at an agreement on launch services. In exchange for being allowed to launch Western satellites, the Chinese agreed to price at levels on a par with Western launchers, and to limit the quantity of launches that they made available.

ENFORCING THE AGREEMENT

There is now substantial evidence that the Chinese are not abiding by this agreement. Yet enforcing the agreement is no easy matter. Under existing law, one mechanism for enforcing the Agreement is a petition under Section 301 of the Trade Act of 1974, as amended, either filed by a private party such as a launch company or a group like NSS, or self-initiated by the U.S. Trade Representative. Absent prompt, firm action by the Administration, this may be the only option.

Since self-initiation by USTR is a rare event, this means that the burden of enforcement, as a practical matter, falls on private parties. In the launch services industry, and no doubt in many others, this poses a difficult problem for members of the industry. For any one company to file a petition exposes it to retaliation by the foreign government, while its competitors receive a "free ride" from its actions. Even where a consortium of companies files: it runs the risk that the foreign government will retaliate against it by purchasing from third nations. And in the case of the U.S. industry, many of its most technologically-innovative and dynamic companies are simply too small, and too preoccupied with getting their businesses established, to take the lead in what they see (rightly or wrongly) as peripheral matters. Of course, there is the issue of the expense in terms of time and money of a Section 301 case.

In the context of the China launch agreement, NSS has attempted to remedy these problems by taking the lead in publicly asking the Administration to enforce the agreement as written. We are willing to do this, since we feel very strongly about the importance of lowering launch costs, and believe very strongly in the role of free market competition in doing that. But our involvement is very much a "second best" solution, for in a better world the Administration would oversee trade agreement enforcement without prodding from private groups.

At present, however, there appears to be a structural bias in the system against the enforcement of international trade 'agreements. That certainly has been the case in the context of the Chinese launch services agreement, and I suspect that it is true for many other industries as well. To the extent that the Trade Agreements Compliance Act would remedy this bias, NSS believes that it should be enacted. Those supporting enforcement of the trade agreements should not be forced to file Section 301 cases in every instance where a breach occurs.

PREPARED STATEMENT OF JOHN E. HOWARD

I am John Howard, executive director of the U.S. Chamber of Commerce's Market Access Subcommittee. The Chamber welcomes this opportunity to appear before the subcommittee to comment on S. 2742, the proposed "Trade Agreement Compliance Act." This Act represents an eminently logical approach to improving trade policy consultation between the U.S. business community and government and strengthening the credibility of U.S. trade policy. Simply put, it states that nations should keep their word, and be held accountable if they do not. At the same time, S. 2742 leaves intact the current section 301 definition of unfair foreign trade practices. It does not raise the standard of fairness under U.S. trade law by defining additional trade practices as subject to possible retaliation, but rather would ensure greater adherence to that standard by compelling greater scrutiny.

On August 18, 1987, in its comparison of major provisions subject to the House-Senate conference on omnibus trade legislation, the Chamber recommended that the conferees adopt Senate language mandating U.S. government initiation of section 301 investigations, provided they were limited to likely violations of trade agreements.

Also, the Chamber recommended in its comparison mandatory consultation with all domestic industries which would be directly affected by such investigations, prior to initiation of the investigations.

Such requirements were deemed important because the credibility of U.S. trade policy depends as much on respect for obligations established under trade agreements as on anything else. Moreover, consideration of the likely impact on U.S. business should be critical to U.S. government decisions and actions taken in relation to alleged violations of trade agreements.

Section 306 of the Trade Act of 1974 establishes a requirement that the United States Trade Representative (USTR) monitor foreign compliance with trade agreements, and determine what action to take in cases where foreign countries are not in compliance. Section 306 also requires that the USTR consult with petitioners and/or other interested persons before such a determination is made.

However, there is currently no systematic process by which the private sector, having itself determined that a review of trade agreement compliance is warranted, can be assured that its determination will result in such a review. The Chamber believes that continuous, systematic consultation with the private sector is necessary in order to determine whether trade agreements have been violated, as well as to develop a sound assessment of proposed remedies and the costs and benefits of action or inaction.

S. 2742 constructively addresses this omission by providing the private sector with a clear avenue for obtaining the reviews that are essential to maintaining compliance with trade agreements. It provides that, upon the written request of an interested person, USTR shall begin a review to determine whether a foreign country is in compliance with any trade agreement that country has with the United States. If it is found that the agreement is not being complied with, section 301 action must be considered.

S. 2742 is properly intended to apply primarily to bilateral trade agreements, which often do not include effective dispute settlement mechanisms, and not to multilateral agreements such as the General Agreement on Tariffs and Trade (GATT). This approach is well-advised in view of the need to maintain maximum focus on ongoing efforts to strengthen the GATT dispute settlement process itself.

The Chamber continues to view maintenance and strengthening of the GATT as essential to U.S. international economic interests. However, there are literally dozens of bilateral trade agreements between the United States and various other countries which, properly implemented, should supplement our multilateral interests. These agreements require continuous monitoring if U.S. trade policy and administration is to retain credibility and the legitimate trade rights of the private sector are to be safeguarded.

At the same time, S. 2742 avoids mandating any action against trade practices that are not already subject to such action under the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act). In that Act, with Chamber support, Congress recognized the special sanctity of trade agreements when it mandated section 301 action against violations of such agreements, as opposed to other foreign trade practices that were not found to violate trade agreements.

Congress also provided for the waiver of such action under certain circumstances, including when a remedy satisfactory to the USTR has been reached or when the costs to the U.S. of such action would substantially exceed the benefits. However, S. 2742 would still make such action more likely when trade agreements are violated.

S. 2742 also leaves current USA retaliatory flexibility intact by mandating resultant section 301 action (subject to attendant waivers) only if a foreign country was found to be in "material noncompliance" with the trade agreement. If as a result of reviews conducted under this Act, a country was found not to be in "material noncompliance" with a trade agreement, section 301 action would be discretionary, even in cases where a trade agreement had otherwise been violated.

The Chamber believes that U.S. trade relations with other nations will be best served by sending clear signals to our trading partners that we take seriously our mutual obligations under trade agreements. It looks forward to continued cooperation with both Congress and the executive branch in this regard. This concludes my testimony, and I will be glad to attempt to answer any questions you may have.

PREPARED STATEMENT OF STEPHEN M. LOVETT

Thank you very much, Senator, for the opportunity to testify today on the Trade Agreement Compliance Act, an effective measure to insure the full implementation of trade agreements, which is critical if internationally competitive U.S. industries are to fulfill their export potential in foreign markets.

My name is Stephen Lovett; I am International Vice President for the National Forest Products Association. NFPA is the national trade association representing the vast majority of the nation's production and sale of lumber and other solid wood products.

Our industry has worked hard to promote our products overseas; export sales of wood products have doubled to over $6 billion in the short period of five years. Yet they would be far greater, at least double the current level, if it were not for the fact that too often, in too many markets, we are obstructed by impenetrable trade barriers.

Governments usually engage in trade distorting practices because it is economically advantageous to their industries to do so. Trade concessions must be won against strong resistance resulting often from pressure on a foreign government from its own domestic industry. After trade agreements are signed, and the crises atmosphere has subsided, foreign governments tend to revert to the former trade distorting practices, or avoid implementation in acts of forgetfulness as governments move on to other important business, or stubbornly refuse to implement if they think they can get away with it.

My own industry's case in point involves frustration over Japan's stubborn refusal to even discuss the effects of trade distorting practices. This forced the wood prod-

ucts industry to appeal to our own government, which successfully negotiated the elimination of some trade barriers under the recently completed [301] Agreement. With obstructions to trade removed, our industry has jumped in to take advantage of the new Trade Agreement with full promotional programs. While we remain optimistic, it would be a senseless waste of time, money and effort to find that this Trade Agreement is not being sincerely implemented, and that the combined efforts of industry and government to lower the trade deficit continue to be unfairly thwarted.

This is why your legislation, the Trade Agreement Compliance Act is so important. It sends a strong signal to our trading partners that a mere agreement is not enough. Agreements must be implemented, and must result in significant new export sales.

As you know, our industry has been deeply involved in developing the Japanese market for value added wood products for over a decade, spending millions of dollars and hours to promote U.S. products. Industry association activities, in cooperation with USDA's Foreign Agricultural Service, have included several trade shows a year, Japanese language publications, demonstration projects, of which the Summit House is the most famous example, representative offices in Japan, frequent seminars, trade missions, and so forth. Combined with company marketing programs, the U.S. wood products promotion effort in Japan has been enormous. As a result, U.S. wood products sales to Japan have more than doubled in the last five years.

Nevertheless, the Japanese market has been largely a market for raw materials, with tariff and non-tariff barriers thwarting U.S. industry promotion efforts. Including wood products as one of four sectors in the Market-Oriented, Sector-Specific (MOSS) talks in 1985 was designed to help overcome this problem. Even though the MOSS talks did make some progress, the Government of Japan refused to live up to an agreement to continue the MOSS process after the first results were in, and in spite of two years of government requests, Japan refused to agree to even technical talks on building codes and Japan Agricultural Standards issues.

Thoroughly frustrated by Japanese intransigence, the wood products industry appealed to the U.S. Government, and to Congress, for help, which resulted in wood products being named as one of three sectors to be addressed under Super 301.

The Wood Products Super 301 Agreement goes a long way towards making up the deficiencies of the MOSS agreement. Even though the Japanese wood products market remains protected in many areas, U.S. Government negotiators did an excellent job in achieving a comprehensive package of measures that will eliminate many barriers. More importantly, our negotiators insisted on a process whereby both governments would stay involved beyond the signing of the Agreement to insure implementation and continued negotiations for further opening of the Japanese market. The process sets up two government industry committees, one on technical standards (MAFF related), and one on building codes (MOC related) which will meet as frequently as necessary to get the job done. These technical committees will report to the newly formalized government to government body, the Wood Products Subcommittee of the U.S.-Japan Trade Committee Talks.

Three weeks ago a government-industry team travelled to Japan for a wood products Technical Standards Meeting with the Ministry of Agriculture, Forestry, and Fisheries (MAFF), the first round of implementation talks for the Wood Products Super 301 Agreement. Our expectations were that we would receive a clear indication of the Government of Japan's intent to undertake expeditiously and fully the "measures to be taken by the Government of Japan (Measures)" announced on June 15, 1990. MAFF's cooperation was lacking in several areas:

- under the parallel testing provision, MAFF indicated no willingness to evaluate or accept American Plywood Association (APA) test data and methodology as equivalent to that required under JAS standards, as they had agreed, even though APA submitted such data several months ago;
- MAFF refused to respond to the Western Wood Product Association's (WWPA) and the U.S. Government's request for acceptance of design values for Machine Stress Rated (MSR) lumber, or the design values stamped on MSR lumber, or WWPA's duality control standards, as they had previously agreed;
- MAFF continues to delay mill certification, in spite of the agreement to certify mills within two weeks of application; MAFF has delayed a specific mill certification made on June 18th by APA through the U.S. Embassy in Japan;
- MAFF refused to consider meetings more frequently than once yearly, in spite of an agreement to meet as often as necessary to address the large volume of issues waiting to be resolved;

• MAFF is attempting to channel their responses directly to the U.S. industry, and cut out U.S. Government involvement, as they have in the past. U.S. industry believes very strongly that this should not happen.

Even at this early date, I think that it is clear that we have a Trade Agreement that is going to need enforcing. It is also clear that USTR, Commerce, and USDA are committed to successful implementation, but it will be a great waste of time, money, and effort, both for our industry and for the U.S. Government, if, because of competing interests in the interagency process, there is a lack of will to enforce the Wood Products Super 301 Agreement. The Trade Agreement Compliance Act, by allowing the private sector to trigger monitoring and enforcement action, brings certainty to a process that is sometimes stalled by U.S. government agencies which do not want to push foreign governments to live up to their agreements. And, in the case of Japan, it is clear that foreign pressure works; the Japanese government needs this leverage too.

Larry Blum of USDA's Foreign Agricultural Service, and Michael Hicks of the Department of Commerce, represented the U.S. in these recent technical talks. I mention them because they deserve to be commended for their strong efforts to obtain confirmation from Japan of their intent regarding speedy implementation. These talks also demonstrated the strong commitment by USTR, USDA, and Commerce to turn the Agreement into exports.

Nevertheless, the Japanese have also signaled their intention to delay and obstruct the implementation process. They must realize that their stubbornness, if it blocks access to a market they have agreed to open, will result in another 301 action. The Trade Agreement Compliance Act sends this message with force and clarity.

Senator Baucus, the members of the National Forest Products Association wish to express their sincere thanks for the tireless efforts of you and your staff to open markets for U.S. wood products in Japan. Because of your commitment and skillful support of the wood products Super 301 negotiations, the Government of Japan has agreed to eliminate barriers which the U.S. Trade Representative has valued at $1 billion. We are grateful for your continued perseverance to insure that the Trade Agreement in Wood Products results in an actual increase in exports, and has a significant positive impact on the trade deficit. To this end, NFPA fully supports the goals and objectives of the Trade Agreement Compliance Act.

PREPARED STATEMENT OF ANDREW A. PROCASSINI

The Semiconductor Industry Association is pleased to have the opportunity to testify at this hearing on the Trade Agreements Compliance Act of 1990. My name is Andrew Procassini. I am the President of the Semiconductor Industry Association, and I am representing SIA today.

The Semiconductor Industry Association, which represents U.S.-based semiconductor manufacturers, was created in 1977 to address the public policy issues confronting the industry. SIA member firms represent over 90 percent of the American semiconductor industry. A list of member companies is attached.

SIA concentrates its energies on those issues which affect the ability of the industry to remain internationally competitive, such as access to foreign markets, enforcement of our trade laws against unfair trade practices, and technology policy. A summary of SIA's public policy agenda for 1990 is attached.

Today, I would like to explain why SIA strongly supports the Trade Agreements Compliance Act. For a number of reasons, we believe that passage of TACA will improve U.S. trade policy, and help the semiconductor industry.

THE TRADE AGREEMENTS COMPLIANCE ACT

The premise of TACA can be summarized in five words—"A deal is a deal." The United States has a broad range of agreements with its trading partners, both bilateral and multilateral. These agreements involve commitments to lower tariffs, open markets, award government contracts on a non-discriminatory basis, stop export subsidies, and so on. These trade accords are meaningless unless they are lived up to, however. Currently, there is no provision in U.S. trade law which calls for a review of whether foreign governments are complying with the trade agreements they enter into.

What is needed, in short, is oversight. Because Congress and the Administration must tackle so many problems, there is a natural and understandable inclination to pass legislation or sign an agreement, breath a sigh of relief, and then move on to

the next problem. Unfortunately, signing a trade agreement is only the first step. In order to ensure that foreign governments are not tempted to stray from what they agreed to do, we must look over our shoulder every once and a while. Unless this is done, all the marathon negotiating sessions that went into signing the agreement in question may not have been well-spent.

The Trade Agreements Compliance Act provides a straight-forward oversight mechanism. After a year has elapsed, or just prior to the end of an agreement, an interested party can ask USTR to determine whether a foreign government is complying with a bilateral trade agreement. If it is not, it is treated as an "unjustifiable" unfair trade practice under Section 301. At this point, USTR could attempt to bring the country into compliance with the agreement in question, or, failing that, impose sanctions.

WHY IS ACCESS TO FOREIGN MARKETS SO IMPORTANT?

In my opinion, our trade negotiators are far too modest about the importance of their jobs. I have heard many top Administration trade officials state that opening foreign markets won't solve our trade deficit. It is said that the United States has a current account deficit of 2 percent of GNP because its savings rate of 13 percent is insufficient to finance its investment rate of 15 percent. This analysis misses one very important point, which is that lack of access to foreign markets can put some industries out of business. If you happen to believe, as I do, that the *composition* of the U.S. economy matters, and that there is a difference between potato chips and computer chips—then trade policy is extremely important to our economic future and international competitiveness. For the semiconductor industry—access to foreign markets, especially the Japanese market, can help determine whether we are world-class or second-rate. Let me cite just a few facts for you:

- Japan is now the world's largest semiconductor market. In 1989, Japanese semiconductor consumption was $23 billion, as compared to $17.9 billion in the United States and $9.8 billion in Europe.
- High technology industries must amortize large investments in R&D and plant and equipment over a short product life cycle. If U.S. firms do not have access to foreign markets, they will not generate the funds they need to invest in the next generation of semiconductors.
- Semiconductor costs traditionally follow a "learning curve"—where cost reductions of approximately 30 percent are achieved for every doubling of cumulative output. For that reason, the continued cost competitiveness of the U.S. industry depends on access to the Japanese market. A 1985 study commissioned by USTR, the Department of Commerce and the Department of Labor quantified this effect. The study's model demonstrated that a five percent gain in the Japanese DRAM market would lower the costs of U.S. semiconductor manufacturers by 4 percent and increase their share of their own market by 2.5 market share points.
- A closed home market gives foreign firms a sanctuary, which reduces the uncertainty associated with investment in new capacity. This, in turn, has often triggered over-capacity and below-cost sales.

HISTORY OF ACCESS TO THE JAPANESE MARKET

I can think of no better way to document the need for the enforcement of existing trade agreements that to briefly describe efforts by the U.S. industry and government to open the Japanese semiconductor market. For the past twenty years, the United States has engaged in a seemingly endless series of negotiations to accomplish this objective. Yet despite increased U.S. industry effort, countless liberalization packages, tariff reductions, and appreciations of the yen—the United States has essentially remained a residual supplier to the Japanese market. Only recently has the U.S. share of the Japanese market crept above 10 percent. We are finally making real progress, but much remains to be accomplished.

Prior to the 1970s, the Japanese semiconductor market was protected by a wide range of formal and informal barriers. Imports were restricted by prior approval requirements and quotas. Investment in semiconductors was restricted by placing the industry on the so-called "negative list." This meant that foreign majority ownership in such industries was not permitted without prior government approval, which was almost never granted. Those U.S. firms which were allowed to establish subsidiaries in Japan were often forced to agree to production limits and license their technology to their Japanese competitors.

These restrictions were reinforced by other measures. The Japan Electronic Computer Company (JECC), a government-funded company which bought Japanese-made computers and leased them on favorable terms to users, was required by MITI

to accept only computers which satisfied a local content requirement, which was progressively tightened from 80 to 95 percent.

In 1971, the Nixon Administration mounted a major effort to induce Japan to liberalize imports of computers and computer parts. The Japanese initially resisted U.S. pressure, but eventually agreed to liberalize after the United States threatened to lodge a complaint under the General Agreement on Tariffs and Trade. Liberalization of semiconductor imports was phased in stages from 1971 to 1974, with the least complex products liberalized first, and investment was liberalized from 1974 to 1975.

However, at the same time the Japanese government agreed to eliminate these formal restrictions, it was also developing a series of "liberalization countermeasures" to offset the impact of liberalization. These countermeasures included subsidies, government sponsorship of joint R&D projects, continued administrative guidance to buy Japanese, the creation of horizontal links between Japanese producers, an organized division of product markets, and encouragement of tight relationships between Japanese producers and consumers of semiconductors. As a result of these steps, U.S. share of the Japanese market in the post-liberalization period remained virtually the same (generally around 10-11 percent) as the U.S. share during the period of formal protection. In specific product areas, U.S. companies encountered a recurring phenomena. They could achieve sales in Japan with a given device as long as sufficient quantities of a competing Japanese product were not available. As soon as Japanese firms could supply the product (at times a copy of the U.S. device), U.S. firms' sales fell dramatically, sometimes to zero. The U.S. share began declining in 1980, and in 1982, was lower than the U.S. share in 1974, the last year the market was protected by quotas.

In 1982, the U.S. and Japanese governments began a series of bilateral discussions to address trade friction in semiconductors in the "High Technology Working Group." The Japanese government agreed to eliminate barriers to market access in high technology, and in 1983, MITI began to encourage Japanese companies to increase their purchases of U.S. semiconductors. Although initial signs were encouraging, increased U.S. penetration of the Japanese market lasted only as long as the world-wide boom in demand for semiconductors. In late 1984, as semiconductor demand started to decline, U.S. companies once more began to lose market share in Japan. U.S. companies in Japan reported that MITI was no longer encouraging Japanese firms to purchase U.S. chips, and Japanese firms showed little or no interest in forming long-term relationships.

Japan's failure to implement its 1983 commitments drove SIA to file its Section 301 case in 1985. The U.S.-Japan Semiconductor Trade Arrangement was signed in 1986. Under the agreement, Japanese semiconductor producers agreed to stop dumping in all world markets. In addition, the Japanese government recognized the expectation of the U.S. industry that the foreign company share of Japan's semiconductor market would "grow to at least slightly above 20 percent" by 1991.

Once again, however, Japanese compliance with the agreement was not forthcoming. Because foreign share of the Japanese market remained stagnant, and Japanese dumping in third country markets continued, President Reagan imposed sanctions of $300 million against Japanese goods in April 1987.

Japan eventually stopped dumping semiconductors, but, with only a year remaining in the agreement, Japan has yet to comply fully to its commitments on market access. Based on the "gradual and steady growth" committed to in the agreement, the foreign market share should have been over 17 percent in the first quarter of 1990. In contrast, foreign share of the Japanese market for the first quarter of 1990 was 13.0 percent, with U.S. share at 12.5 percent.

The painfully slow improvement in U.S. access to the Japanese market can not be attributed to lack of industry effort or competitive products. U.S. firms have opened and maintained 17 design centers, 60 sales offices and 30 test and quality centers throughout Japan. Total U.S. semiconductor industry personnel, sales, and capital expenditures in Japan in 1989 are significantly higher (14.5, 19.9 and 82.8 percent increases, respectively) than total expenditures for 1988. U.S. firms are highly competitive in third markets. In 1989, U.S. firms had 41 percent of the European market, while Japanese firms had only 20 percent.

The shortfall between where we are now with respect to Japanese market share and where we should be represents an annual loss of roughly $700 million in sales and about $80 million in investment in R&D.. By 1991, if current trends continue, this loss in revenue is projected to be about $1 billion. Lost R&D will exceed $100 million, which is more than the U.S. government invests in Sematech.

I do not want to imply that nothing has been accomplished. SIA is grateful for the time and energy that top Administration officials continue to devote to this issue, and we appreciate the efforts being made both by MITI and the Japanese industry.

Joint activities by the Semiconductor Industry Association and the Electronic Industry Association of Japan—such as the task force on consumer electronics—are gradually beginning to produce results.

But we have to recognize that Japan's compliance with the terms of the semiconductor agreement is short of what is called for. The Administration and Congress must tell all its trading partners in clear and convincing terms that anything short of full compliance with trade agreements is totally unacceptable.

As a nation, we no longer afford infinite patience—a willingness to wait for the "check in the mail" that is always promised but never arrives. In 1980, the U.S. merchant industry held a 61 percent share of the worldwide semiconductor market. By 1989, our share had dropped to 35 percent. In contrast, the share of the Japanese industry increased from 26 percent to 51 percent during the same period, a period during which the Japanese market was still not fully open to competitive products from abroad. Because semiconductors drive advances in computers, telecommunications equipment, consumer electronics and advanced weapons systems—the consequences of the continued erosion of our semiconductor industry are devastating. According to the National Advisory Committee on Semiconductors, if current trends continue, Asian suppliers could dominate "the U.S. downstream electronics industry and ultimately the global electronics landscape."

Opening foreign markets is a necessary (although not sufficient) step to ensure that the U.S. semiconductor industry remains world-class. For that reason, SIA is encouraged by the introduction of the Trade Agreements Compliance Act. SIA is convinced that passing the Trade Agreements Compliance Act would forcefully remind our trading partners that "a deal is a deal."

Prepared Statement of Howard D. Samuel

The Labor-Industry Coalition for International Trade (LICIT) is pleased to have the opportunity to testify at this hearing on the Trade Agreements Compliance Act of 1990. My name is Howard Samuel. I am the President of the Industrial Union Department of the AFL-CIO, and co-chair of the Labor-Industry Coalition for International Trade.

LICIT was formed in 1979 to represent the common interest of American workers and American firms in increased, balanced and equitable international trade. Our membership includes 20 major U.S. manufacturing firms and labor organizations. A list of our member organizations is attached.

In a recent telex to all U.S. ambassadors, Deputy Secretary of State Lawrence Eagleburger wrote that "it's no exaggeration to say that our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century."

If that is the case, and I am convinced that it is, then determining whether foreign governments are in compliance with trade agreements may be as important as counting troops, missiles and phased-array radar systems for purposes of arms control treaty verification. This is a startling, but true statement.

LICIT believes that the Trade Agreements Compliance Act is an important addition to U.S. trade laws. In our 1989 white paper on international trade, we noted that:

> In an unprecedented show of cooperation, business and labor worked closely with Congress to reform America's trade laws. These new laws must now be enforced. Top priority should be given to ensuring that foreign governments honor the commitments they make to stop unfair trade practices.

MAINTAIN U.S. TRADE LAWS

Before I explain why LICIT supports TACA, I want to make one observation at the outset. The effectiveness of this legislation will be reduced if U.S. trade laws are weakened during the course of the Uruguay Round. If we agree to make major changes in our trade laws—the United States government may not have the tools with which to enter into trade agreements.

LICIT is concerned about this issue because of the negotiating objectives of many of our trading partners in the Uruguay Round. All of our most important trade laws are under attack: Section 301, Section 337, and our antidumping and countervailing duty laws.

Section 301: High-level EC officials have said that a successful conclusion of the Uruguay Round will require modification or even elimination of Section 301 of the

1974 Trade Act—the law the United States uses to open foreign markets. The *Journal of Commerce* recently quoted one Administration official as saying:

> If we can agree on a rules and discipline process, you take away the underlying need for unilateral action, and the United States is in a better position to say it won't take unilateral action . . . If we get a clear package of rules and a binding dispute settlement mechanism, the United States would have to conform the 301 process to get authorization from GATT before it retaliates.

Section 337: A GATT panel report has determined that Section 337, the law we use to stop foreign piracy of our intellectual property, does not conform with GATT principles. If the United States loses the ability to respond quickly and effectively to foreign theft of our intellectual property—investment in new products and technologies will be curtailed.

Antidumping and countervailing duty laws: Numerous foreign government proposals would severely limit the ability of the United States to offset the adverse effects of dumped and subsidized goods. The current negotiating text on subsidies, for example, would legitimize regional subsidies, thereby undermining U.S. countervailing duty law.

LICIT hopes that the Senate Finance Committee will pay particularly close attention to any Uruguay Round negotiations that have the potential to weaken U.S. trade laws. It is our view that international disciplines over unfair trade practices must be *strengthened,* and that an Uruguay Round package that moves us in the opposite direction is not in our economic interests. We have expressed these concerns to Administration officials involved in the GATT talks, and have found them to be open to our point of view. However, given the leadership role that the Senate Finance Committee played in crafting the 1988 Trade Act, we feel that oversight by the Committee in this area would be extremely helpful.

TRADE AGREEMENTS: COMPLIANCE MUST BE IMPROVED

LICIT believes that TACA is a necessary improvement in our trade laws. There have been plenty of instances in which foreign governments have, to put it charitably, not fully complied with trade agreements they have entered into with the United States. Let me give you a few examples.

In 1989, the United States decided against naming South Korea as a "priority country" under Super 301 because it had agreed to several market-opening packages. Now that the spotlight is no longer on Korea's trade performance—U.S. businesses are reporting substantial backsliding. The Korean government has launched an all-out campaign against the consumption of foreign goods. The government is ordering tax investigations of people who buy imported cars or sell imported clothes; a Korean car company stopped distributing Ford Sables at the request of the Korean government; and Citibank has been unable to open branches in Korea as promised.

Similarly, the European Community has often tried to deny us the benefits of tariff concessions they made on soybeans during the 1961-62 Dillon Round. Most recently, they devised a system of processing subsidies which discriminated against U.S. exports of soybeans.

Japan also has a less than stellar record with respect to honoring its commitments. A study on national negotiating styles sponsored by the State Department's Foreign Service Institute concluded: "Americans see the negotiated solution as final and implementation naturally therefrom. Japanese see the negotiated solution as one more stage and implementation as a subject for further negotiation." This is led to what one might call the "Rip Van Winkle" phenomena. A U.S. trade negotiator who fell into a deep sleep for twenty years would wake up to find many of the same issues on the U.S.-Japan trade agenda. Consider the following passage which appeared in the Japanese press:

> "The U.S. side's assertion is [that] because the distribution structure in Japan is complicated, retail prices of goods imported from the U.S. do not go down. As a result of this, the sales are stagnant, and imports from the United States do not increase."

This story was not, as one might imagine, based on coverage of the recently concluded Structural Impediments Initiative. It is a July 5, 1972 story on U.S.-Japanese negotiations to liberalize the Japanese distribution system. Unfortunately, two years after President Nixon and Prime Minister Tanaka reached an understanding on the Japanese distribution system, Japan passed the Large-Scale Retail Store Law—

which gave small shopkeepers in Japan veto power over any new retail outlets over 500 square meters.

TACA: STRENGTHENING THE HAND OF U.S. TRADE NEGOTIATORS

TACA will enhance the leverage of U.S. trade negotiators. As a rule, our trading partners do only what is necessary to deflect U.S. pressure regarding their trade performance. Once an agreement has been signed, ensuring that it is implemented may not always receive high-level political attention in the United States. By providing a streamlined oversight process that the private sector can easily participate in, TACA increases the incentive of our trading partners to fully implement the agreement. Our trade negotiators can tell their counterparts that if commitments are not lived up to, the United States government will be required by law to achieve compliance or impose sanctions.

Clearly, the ability of foreign governments to violate commitments they have made without paying any price damages the credibility of U.S. trade policy. Although our trade negotiators are exceptionally dedicated and hard-working—the high degree of turnover limits our ability to develop an institutional memory on trade policy issues. All too often, a change in personnel or administration forces us to start from square one. By allowing the private sector to become more engaged in the implementation of trade agreements—TACA may increase the continuity and credibility of U.S. trade policy.

NEGOTIATE SOLID AND COMPREHENSIVE AGREEMENTS

Passage of the Trade Agreements Compliance Act will help improve the odds that U.S. trade agreements actually result in increased U.S. exports or an end to the foreign unfair trade practice in question. But the Committee should also consider why so many trade issues are hardy perennials. Sometimes it is because the agreement itself did not comprehensively deal with the problem.

For example, our 1986 agreement with the Japanese on supercomputers formally opened up the public sector bidding process. It did not, however, solve the problem of deep discounts. Japanese companies were selling their supercomputer manufacturers at discounts of up to 85 percent to research institutes and universities, which had the effect of shutting American companies out of the market. This is why the United States was forced to re-open this issue in 1989. Similarly, requiring the Japanese to publicize construction projects in their version of the *Federal Register* won't open up the Japanese construction market. We have to convince Japan to vigorously prosecute bid-rigging—the so-called "dango" system.

In some instances, where barriers are difficult to identify and remove, and there is no freely operating market to open, negotiating over process may not be enough. It may be necessary to determine in advance what level of increased exports would constitute success. This modest form of results-oriented trade policy will not, as some have claimed, bring about the collapse of the international trading system. It will lead to a more effective trade policy for U.S. exporters and, in the long-run, more harmonious relations with our trading partners.

PREPARED STATEMENT OF MAX TURNIPSEED

Good Afternoon, Mr. Chairman, Committee members, I am Max Turnipseed, Manager of International Trade Affairs for Ethyl Corporation. Company headquarters is in Richmond, Virginia. Ethyl Corporation appreciates this opportunity to testify. I will make my remarks brief this afternoon, and ask the Chairman that Ethyl's more detailed written statement be included in the record.

Ethyl is the sole U.S. producer of bulk ibuprofen, an anti-inflammatory agent and analgesic pharmaceutical product. It is known by brand names such as ADVIL, NUPRIN, MOTRIN and many others in the over-the-counter market supplied by Ethyl to customers using bulk ibuprofen. Ethyl produces ibuprofen in its Orangeburg, South Carolina facility where it employs approximately 500 workers.

In the last two or three years, Indian exports of ibuprofen to the U.S.—and indeed the global market—have increased dramatically. This successful export drive is directly attributable to the massive government export subsidization programs made available by the Government of India to Indian industries. In the case of ibuprofen, these export subsidies provide significant cost advantages of up to 20 percent.

Ethyl is frustrated over these trade distorting subsidies, especially in light of the 1981 U.S.-India Bilateral Subsidy Agreement, in which the Government of India specifically stated that it was its "policy to reduce or eliminate subsidies." This brings

me to the subject of today's hearing, Mr. Chairman, your bill S. 2742—The Trade Agreements Compliance Act of 1990.

In the 1981 Agreement, in return for India's promise to reduce or eliminate its subsidies, the United States granted Indian exports the substantial benefit of the U.S. International Trade Commission's injury test in Countervailing Duty investigations. This means that if a U.S. industry files a Countervailing Duty—or CVD—complaint, it must prove both subsidies and material injury or threat thereof in order to win duty relief, effectively raising the cost and the risk of the CVD process. Yet, nonetheless, we have strong evidence that the Government of India continues to provide a wealth of subsidies to its exporters on a wide range of products, including ibuprofen. Bulk ibuprofen produced in India is internationally competitive even without these trade distorting subsidies.

Ethyl has ample evidence that Indian ibuprofen producers and exporters benefit from as many as 10 different countervailable subsidies, and according to the U.S. Embassy in New Delhi, "Government of India expenditures on export promotion measures in recent years have increased substantially." Indeed, the Embassy reported in March 1990 that the Indian Government has announced "substantive export subsidies . . . for the entire pharmaceutical industry."

In addition to subsidizing its producers of ibuprofen and other goods, the Government of India maintains tremendously high market access barriers. In fact, after extensive market research, Ethyl's representatives have determined that it is currently "impossible" to export ibuprofen to India due to their custom import duties exceeding 100 percent and a restrictive import licensing system making Ethyl bulk ibuprofen non-competitive in the Indian market. The Government of India has instituted an effective embargo against ibuprofen imports, despite the fact that India is the world's second largest country market for this product.

The effects of India's trade distorting policies, which we believe violate the 1981 subsidy agreement, are clear. India's massive subsidization programs have caused not only depressed prices in the U.S. market, but in the global market as well. It has forced several developed-country producers, such as Italy, Finland and Japan out of the bulk ibuprofen business, and threatens the viability of Ethyl's ibuprofen operations.

Importantly, the damage to the U.S. ibuprofen market is the result of only *one* major bulk ibuprofen producer in India that has received FDA-approval for use of its product in the United States. The U.S. Embassy in New Delhi informed us that several other major Indian manufacturers have applied for, and are expected to receive, FDA approval to export bulk ibuprofen to the U.S. by the end of 1990. When additional Indian bulk ibuprofen suppliers are approved for U.S. export, we can expect further—even more damaging—price disruption due to Indian subsidies also available to these additional suppliers.

It is clear to Ethyl that, not only has India not complied with its commitments in the 1981 subsidy agreement, but the United States has not even begun to request such compliance in return for the *quid pro quo* CVD injury test we gave India. The Executive Branch seems to have a policy not to enforce the provisions of the 1981 subsidy agreement—a policy for which companies such as Ethyl pay a dear price. While we understand that USTR did review the Indian subsidies commitment in response to Section 1336 of the 1988 Omnibus Trade Act, the results of that review have never been released to the public.

Mr. Chairman, your bill will address this matter in a much more effective way. We also note that Senators Roth, Danforth, and Heinz have written letters to USTR in the past about USTR's lack of enforcement of bilateral subsidy commitments. Senator Roth's letter specifically addressed the 1981 U.S.-India Bilateral Subsidy Agreement.

In closing, let me urge the Congress to act swiftly to enact the Trade Agreement Compliance Act of 1990 in order to provide industry a better means by which to forcefully bring to the attention of USTR the non-compliance with trade agreements by such egregious subsidizers as India.

I thank the Chairman for his interest in this important issue and would be happy to answer any questions the committee may have.

COMMUNICATIONS

STATEMENT OF THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.

This statement is submitted by the American Textile Manufacturers Institute (ATMI) on behalf of its member companies operating in the textile mill products industry. ATMI's members account for approximately 75 percent of the raw fiber consumed by the textile mill industry in the United States.

The trade agreements of greatest interest to the domestic textile industry are those entered into under the auspices of the *Arrangement Regarding International Trade in Textiles* ("Multifiber Agreement" or "MFA") or under Section 204 of the Agricultural Adjustment Act of 1956. These agreements, which are bilateral in nature, define the quantity(ies) of textile and apparel products which a foreign country may export to the United States during a given period of time, usually a calendar year. There are currently 35 such agreements in effect with foreign governments.

Considering the very high level of import competition which the domestic textile industry is forced to contend with in its home market—for example, almost 60 percent of all apparel fabrics worn in the United States is produced overseas—these agreements are absolutely essential to the continued viability of the industry and the continued employment of its 726,000 workers.

Yet it is a fact that during the entire history of this program there have been repeated violations of the terms and conditions of these agreements and the offenses committed by certain of our trading partners so numerous as to be recidivist in nature.

These violations take many forms and include such practices as:

1. Overshipping (deliberately or not) the amount of textile and apparel products that had been agreed to and then asking the U.S. Government (in the person of the interagency Committee for the Implementation of Textile Agreements) to permit entry of the overshipment. Sadly, these requests are granted more often than not.
2. Deliberately and fraudulently misdeclaring the type of merchandise so as to evade quantitative restraints (quotas) on the merchandise actually being imported. The accompanying news item, labeled as Exhibit A, provides but one example, a very typical one, of this practice.
3. Deliberately and fraudulently misdeclaring the quantity of merchandise so as to evade quantitative restraints and, as an ancillary benefit, payment of import duties.
4. Finally, and most pervasively, mislabeling and transshipping merchandise through another country in order to evade quantitative restraints *agreed to by the country of true origin* (emphasis added). Thus, to cite a typical example, cotton trousers made in Hong Kong, which is subject to a restraint on its exports of cotton trousers to the United States, would simply have a label "Made in Lebanon," which country is not subject to restraint, sewn in them before importation into the United States.

All of the above are typical, ongoing violations of not only our many bilateral textile trade agreements but of United States law and regulation as well. Yet they persist because the United States Government has either condoned these practices or lacked an effective mechanism to properly deal with them. ATMI therefore welcomes enactment of S. 2742 since it does provide, for the first time, Congressionally-mandated retaliation against these blatantly unfair and illegal practices.

There can be no question but that the practices described above are, in the words of S. 2742, "in material noncompliance with the terms of such agreement(s)" and that noncompliance is economically damaging to American firms and American workers. ATMI therefore supports S. 2742 and urges its enactment.

Attachment.

EXHIBIT A—DICK GOODSTEIN ON DUTIES, QUOTAS

[Daily News Record, July 30, 1990]

Freelance designer Dick Goodstein first became aware of the design limitations and restrictions of the quota and duty laws back in the late '70s when he was working in the Orient for the Bidermann group. He explains garments had to be completely redesigned and fabric changed to beat the high cost of buying quota or paying duties.

"The problems with quotas and duties resulted from the U.S.'s desire to protect the manufacturing and embroidery industries here. Actually, the quota regulations and duties literally 'became' the designers. We simply had to work around them."

Over the years, Goodstein has designed for operations including Adidas and Macy's Corporate division. Today, one of his major clients is Saks Fifth Avenue.

Goodstein talks about today, and the good old days, when the quota regulations were in the designer's seat.

DNR: Is there one design in particular that resulted from tight quotas?

DG: At one point, vests were part of "basket quota"—a slippery category that changed every year. That category represented a certain amount of apparel production in marginal areas.

People wanted to bring in outerwear under the wide-open vest quota because the outerwear quota was filled. So we designed zip-off sleeves and shipped the sleeves separately from the jackets. The jackets came in as vests. You know what happened here."

DNR: Any other "quota-designed" items?

DG: Swimwear quotas were often wide open, but casual slacks were tight as a drum. So to bring in walk shorts, which were under slacks quotas, we sewed in nylon mesh liners to bring them in as swimwear. They were eventually torn out. I had to make sure the liners were sewn in with many, many fewer stitches to the inch.

DNR: Was Sportswear always the problem?

DG: Usually. There was also the situation of bringing in a short and top as sleepwear because of the tight quotas for each classification. The tops were woven sport shirts and the matched bottoms were pull-on shorts with an elastic waistband. When they arrived here, they became unmatched sets and ended up as two classifications.

DNR: How about the product design itself?

DG: Embroidery was a very big problem. If you used a basic typeface for a label embroidered on the garment, you were okay because it wasn't considered ornamentation. But if you designed a fancy script or design, you paid additional duty for the ornamentation.

—STAN GELLERS

STATEMENT OF AQUALON

I. INTRODUCTION

Aqualon, a Hercules Incorporated, is a major U.S. producer of guar gum and has headquarters in Wilmington, Delaware. Aqualon submits these comments for the record of the July 13, 1990 hearing before the Subcommittee on International Trade of Senate Finance Committee on S.2742—the Trade Agreements Compliance Act of 1990.

This submission is made in support of S. 2742 and explains Aqualon's position that (i) India has and continues an export subsidization program in violation of the 1981 U.S.-India Bilateral Subsidies Agreement, (ii) this export subsidy program gives Indian firms an unfair competitive advantage in the U.S. market, (iii) such advantage continues to result in serious injury to Aqualon, (iv) after repeated and continuing efforts, Aqualon has been unable to get the Executive Branch to enforce the 1981 Agreement, and (v) swift enactment by the Congress of S. 2742 is needed to precipitate appropriate action by U.S. trade officials. Aqualon produces guar gum at its plant in Kenedy, Texas where it employs 107 workers. Guar gum is a thickening agent used in certain food and industrial applications. Guar gum is the product of the guar plant, which was introduced to the southwest United States in 1903. However, 90 percent of the world plantings of guar are in India and Pakistan. The United States is the world's largest market for guar gum, and India accounts for

approximately 70 percent of imports into a market valued at between $60 and $80 million.

II. AQUALON'S EXPERIENCE

The export success of Indian guar gum in the U.S. market has led to depressed sales and price undercutting because the Government of India has maintained, and even increased, a massive export subsidization program for guar gum since the signing of the 1981 U.S.-India bilateral subsidies agreement. Aqualon is confident that, but for these export subsidies, it would be able to compete on a fair basis with Indian imports. The Indian export subsidies provide significant cost advantages of up to 20 percent over U.S. and other producers. In 1989 a cable from the U.S. Embassy in New Delhi to the U.S. Department of Commerce noted:

> GOI [Government of India] expenditures on export promotion measures in recent years have increased substantially. The 1989-90 budget projects an expenditure of Rs. [rupees] 16.21 billion, up from Rs. 13.91 billion in the previous year. (See, Attachment 1.)

Aqualon has documented that the Indian guar gum industry may be benefitting from at least seven categories of countervailable export and domestic subsidies. These include the following:

1. Cash Compensatory Scheme (CCS). The CCS Program is by far the most important export subsidy program granted by the Government of India. The Program offers a rebate to exporters of various indirect taxes paid during production of the exported product. Indian guar gum exporters receive CCS of 15 percent ad valorem on guar gum powder, which is the refined product, and 5 per cent ad valorem on guar gum splits, the raw material. Aqualon believes this amount significantly exceeds the amount of indirect taxes actually paid.
2. Market Development Assistance ("MDA"). The MDA Program grants individual guar gum exporters specific grants to assist exports.
3. Section 80 HHC Income Tax Deductions Based on Earnings from Exports and Foreign Exchange. Section 80 HHC of India's Tax Act allows exporters to deduct four percent of their foreign exchange earnings, plus fifty percent of their export profits above that.
4. Transportation Subsidies. Transportation subsidies include preferential handling and possibly reduced rates for exports by rail, and ocean freight. Other assistance includes diesel fuel subsidies, preferential pricing and allocation of raw materials and telecommunication priorities.
5. Packing Credits for Exports. The Reserve Bank of India provides a "packing credit" loan for exporters at below-market interest rates.
6. "Deemed Export" Benefits from Raw Materials and Capital Equipment. Suppliers of capital equipment and raw materials to exporters receive "deemed export" benefits which may be passed on to the exporter.
7. Government and State Incentives for Backward Area Development Through the Central Investment Subsidy Scheme ("CISS"). Indian Government development programs provide several benefits, but most significant among them is the Central Investment Subsidy Scheme for different categories of underdeveloped areas. The subsidy ranges from 10 to 25 percent, subject to various ceilings.

Aqualon has brought this issue to the attention of the Executive Branch and the Government of India through a number of channels. The company's efforts have included:

- Submissions to USTR, including those in the context of:

— The 1989 and
— 1990 National Trade Estimate Report to Congress;
— The 1989 Section 1336 Report to Congress regarding this country's subsidy commitments policy;
— The 1989 and 1990 "Section 310" investigations;
— The "Super 301" insurance and investment investigations; and,
— Bilateral negotiations with India.

- Meetings with USTR officials as well as officials with the Departments of State and Commerce;
- Meetings with Indian Government officials (e.g., the Indian Ambassador); and,
- Meetings with Senate and Congressional staff relevant to the introduction of proposed legislation to eliminate the ITC's injury test for guar gum in CVD cases.

The fact that these representations have not resulted in significantly better compliance with the 1981 Agreement on the part of the Government of India adds to Aqualon's frustration over the unfair competitive advantage and trade distorting effects of these subsidies, which threaten the viability of Aqualon's entire U.S. guar gum operations. This frustration is especially acute since, in the Agreement, the Government of India specifically stated that it was its "policy to reduce or eliminate subsidies." Aqualon believes that S. 2742—The Trade Agreements Compliance Act of 1990, represents a very useful and positive attempt to deal with such violations.

III. BACKGROUND ON THE U.S.-INDIA BILATERAL SUBSIDIES AGREEMENT

In the 1981 Agreement, in return for India's promise to reduce or eliminate its subsidies, the United States granted Indian exports the substantial benefit of the International Trade Commission's injury test in Countervailing Duty investigations. This means that if a U.S. industry files a Countervailing Duty—or CVD—complaint it must prove both subsidies and injury in order to win duty relief, effectively raising the cost and the risk of the CVD process. Yet, nonetheless, Aqualon has strong evidence that the Government of India continues to provide a wealth of subsidies to its exporters on wide range of products, including guar gum, which would be internationally competitive even without these trade distorting subsidies.

IV. CONGRESSIONAL BACKGROUND

In fact, S. 2742 follows on long-standing Congressional concern over the lack of adherence to trade agreements by our foreign trading partners, particularly in the area of subsidies. During the debate of the Omnibus Trade and Competitiveness Act of 1988 (the "1988 Act"), The Senate Finance Committee reported that:

> The Committee is concerned that, in some cases, the commitments made in the past by foreign governments, and accepted by the United States as a basis for granting the injury test, have not been honored . . . In particular, the Committee expects the USTR to review the Brazilian and Indian commitments in light of this provision, and to determine whether either country should no longer be considered a "country under the agreement" [and thus receive the ITC's injury test in CVD cases] if the USTR concludes that it has not honored its obligations under the agreement.

As a result of the Senate's concerns, Sec. 1314 of the 1988 Act gave USTR the authority to revoke the ITC's injury test if its subsidies commitment to the United States is violated. Furthermore, Section 1336 of the 1988 Act required USTR to review of the Brazilian and Indian subsidies commitments, and report to the House Ways and Means and Senate Finance Committees in 1989. Unfortunately, those reports have not been made available to the public, and interested parties such as Aqualon have no way of knowing to what extent USTR believes India may be in violation of the 1981 agreement.

It is clear to Aqualon that, not only has India not complied with its commitments in the 1981 trade agreement, but the United States has not even begun to request such compliance in return for the quid pro quo CVD injury test the U.S. Government gave India. The lack of a forceful Executive Branch policy to enforce the provisions of the 1981 trade agreement has a profoundly negative effect on the operations of companies such as Aqualon.

V. CONCLUSION

Aqualon urges the Congress to act swiftly and enact the Trade Agreement Compliance Act in order to provide industry the means by which to bring to the attention of USTR the non-compliance with trade agreements by such egregious subsidizers as India.

ATTACHMENT 1

APRIL 7, 1989

CABLE FROM U.S. EMBASSY, NEW DELHI

RE: GOVERNMENT OF INDIA EXPORT SUBSIDIES

RR RUEHOC
DE RUEHNE #0186 0971203
ZNR UUUUU ZZH
R 071206Z APR 89
FM AMEMBASSY NEW DELHI
TO RUEHC/SECSTATE WASHDC 7495
INFO RUEHOC/USDOC WASHDC
RUEHGV/USMISSION GENEVA 4328
BT
UNCLAS NEW DELHI 00186

E.O. 12356: N/A
TAGS: ETRD, GATT, IN
SUBJECT: SUBSIDIES: GOI CASH COMPENSATORY SCHEME

1. ON MARCH 31, THE GOI ANNOUNCED A NEW 3-YEAR (1989-91) CASH COMPENSATORY SCHEME (CCS), EFFECTIVE APRIL 1, 1989. THE CCS OBJECTIVE, ACCORDING TO THE GOI, IS TO COMPENSATE THE EXPORTERS FOR THE UNREFUNDED TAXES AND DUTIES PAID ON INPUTS FOR PRODUCTS MEANT FOR EXPORT. THE CCS COVERS BOTH TRADITIONAL AND NON-TRADITIONAL PRODUCTS. THE POLICY COVERS 271 PRODUCTS, INCLUDING 46 NEW ITEMS. THE NEW ITEMS BROADLY INCLUDE: CEMENT, CIGARETTES, AND CERTAIN PLASTIC, CHEMICAL AND ENGINEERING ITEMS.

2. THE NEW CCS RATES VARY FROM 5 TO A MAXIMUM OF 25 PERCENT, PAYABLE ON ONLY A FEW ITEMS. (COMMENT: THE MAXIMUM 25 PERCENT RATE REMAINS UNCHANGED.) THE CCS RATES FOR SOME OF THE MAJOR CATEGORIES ARE: (A) 5 TO 20 PERCENT FOR ENGINEERING AND CHEMICAL ITEMS OF F.O.B. VALUE; (B) TEN PERCENT FOR HANDICRAFTS AND SPORTS GOODS; (C) AND 5 TO 25 PERCENT FOR FRESH FRUITS, VEGETABLES AND PROCESSED FOODS.

3. COMMENT: GOI EXPENDITURES ON EXPORT PROMOTION MEASURES IN RECENT YEARS HAVE INCREASED SUBSTANTIALLY. THE 1989-90 BUDGET PROJECTS AN EXPENDITURE OF RS. 16.21 BILLION, UP FROM RS. 13.91 BILLION IN THE PREVIOUS YEAR. HUBBARD

BT
#0186

ATTACHMENT 2

SENATE REPORT NO. 100-71,
100TH CONGRESS, 1ST SESSION (1987)

Calendar No. 167

100TH CONGRESS *1st Session*	SENATE	REPORT 100-71

OMNIBUS TRADE ACT OF 1987

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

S. 490

together with

ADDITIONAL VIEWS

JUNE 12, 1987.—Ordered to be printed
Filed under authority of the order of the Senate of June 11, 1987

U.S. GOVERNMENT PRINTING OFFICE
73-614 WASHINGTON : 1987

In *Cabot*, the court held that nominl general availability of a subsidy should not be conclusive evidence that a subsidy is not provided to a specific industry. Instead, the Commerce Department must look on a case-by-case basis to the actual availability of a subsidy. A subsidy provided in law to a specific industry is clearly countervailable. The issue addressed in *Cabot* is whether a subsidy provided in fact to a specific industry is countervailable.

The purpose of the Committee provision is to correct past Commerce Department practice interpreting section 771(5)(B) in an overly narrow manner. Prior to the *Cabot* decision, the Commerce Department had held that benefits obtainable by any enterprise or industry, i.e., generally available, within the relevant economy were normally not countervailable. The Commerce Department based its "generally available benefits rule" on the statute's reference to countervailable domestic subsidies as those provided to a "specific" enterprise or industry. In a subsequent review of the determination under review in the *Cabot* case, the Commerce Department recognized that it had applied this test in an overly restrictive manner and determined that there were too few users of carbon black feedstock in Mexico to find that the benefit bestowed by providing such feedstock to domestic users at lower prices than the prices at which it was exported was generally available.

Cabot notes that, in enumerating some examples of countervailable subsidies, Congress explicitly states that the list is not inclusive. The Court concludes that "The determination of whether a bounty or grant has been bestowed must therefore be made upon the facts of each case." The Committee agrees with the Court's conclusion and intends this provision to require the Commerce Department to determine whether a bounty, grant, or subsidy is in fact, provided to, a discrete class of beneficiaries.

REVOCATION OF STATUS AS A COUNTRY UNDER THE AGREEMENT

(Section 334)

Under section 701 of the Tariff Act of 1930, if the Department of Commerce determines that a country to which the United States accords the benefits of the GATT Agreement on Subsidies and Countervailing Measures (a "country under the Agreement") is providing a subsidy on the manufacture, production or exportation of a product that is being imported into the United States, a countervailing duty to offset the subsidy must be imposed if the ITC determines that an industry is being materially injured, or threatened with injury, by reason of the subsidized imports. If the subsidized imports are from a country that is not considered a "country under the Agreement," countervailing duties may be applied under section 303 of the 1930 Act regardless of whether a domestic industry is being injured by such imports, unless the product is duty-free and from a country with which we have an international obligation to provide an injury finding, *i.e.*, the country is a member of the GATT.

Section 701(b) of the 1930 Act defines the term "country under the Agreement" as meaning a country:

(1) between the United States and which the Agreement on Subsidies and Countervailing Duty Measures (the GATT "Subsidies Code") applies;

(2) which the President determines has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Subsidies Code; or,

(3) between the United States and which there is an agreement in effect that requires unconditional most-favored-nation treatment of imports into the United States and meets the other requirements of section 701(b)(3) of the 1930 Act, as determined by the President.

Section 334 of the Committee bill authorizes the USTR to revoke a foreign country's status as a "country under the Agreement" if such country either:

(1) announces that it does not intend or is not able to honor the obligations with respect to the United States or the Agreement that it has assumed; or,

(2) does not in fact honor such obligations.

Prior to enactment of the Trade Agreements Act of 1979, U.S. countervailing duty law did not require that a domestic industry prove material injury by reason of subsidized imports for a duty to be imposed to offset such subsidies. Since the 1979 Act, countries that have agreed to assume the obligations of the GATT Subsidies Code have been entitled to an injury test before countervailing duties are imposed.

In practice, foreign governments have sought the injury test by signing bilateral agreements or the Subsidies Code in which they assume certain obligations to phase out or eliminate trade-distorting subsidies. The bilateral agreements concerned involve a clearly understood *quid pro quo* whereby foreign governments enter into commitments regarding their subsidies in return for an injury test under U.S. countervailing duty law. If a country has failed to honor its commitments, there is no reason for the United States to continue to be bound by its part of the understanding.

The Committee is concerned that, in some cases, the commitments made in the past by foreign governments, and accepted by the United States as a basis for granting the injury test, have not been honored. The purpose of this provision is to ensure that the commitments of foreign governments are honored if the United States is to continue providing an injury test in countervailing duty cases. In particular, the Committee expects the USTR to review the Brazilian and Indian commitments in light of this provision, and to determine whether either country should no longer be considered a "country under the agreement" if the USTR concludes that it has not honored its obligations under the agreement. The Committee expects the USTR to report the results of this review to the Senate Finance and House Ways and Means Committees within six months.

In determining whether to revoke a country's status as a "country under the Agreement," the USTR may take into account the progress or lack thereof that a country has made in meeting its commitments and the likelihood that the commitments will be fully honored within a short period of time.

The Committee expects that this provision shall apply whether or not any bilateral or Subsidies Code agreement explicitly provides for provisional application or revocation. The Committee further expects that, for any country as to which "country under the Agreement" status is revoked, such status shall be restored only if the country is fully in compliance with its commitments, has agreed to phase out its export subsidies and made demonstrable progress in that direction, and has recognized the right of the United States to withdraw the injury test in the event such country does not honor its commitments.

U.S. countervailing duty law is silent as to how, and by what authority, an injury test can be applied where the requirement of an injury test arises after a countervailing duty order has been issued. The Committee took no action on the retroactive application of the injury test with respect to such orders pending resolution of cases now under judicial review.

ALL LEASES TREATED AS SALES UNDER COUNTERVAILING DUTY PROVISIONS

(Section 335)

Pursuant to sections 701 and 731 of the Tariff Act of 1930, the antidumping and countervailing duty laws cover, in addition to sales of the merchandise under investigation, any leasing arrangement which is equivalent to a sale of that merchandise.

Section 335 of the bill would delete the section 701 requirement that only those leases which are "equivalent to a sale" may be investigated, thereby ensuring that all forms of leasing will be encompassed by the countervailing duty law. The amendment does not alter the antidumping law, which will continue to cover only those leases which are equivalent to a sale of the merchandise under investigation.

Subsidized foreign manufacturers presently have an opportunity to circumvent the countervailing duty law by offering U.S. customers lease terms which might not be regarded as fully equivalent to a sale of the imported merchandize. Subsidized imports marketed through such leases present no less an unfair threat to U.S. industry then subsidized sales or lease transactions which are in all respect equivalent to sales. By explicitly including all leases within the scope of the law, opportunities for circumvention of countervailing duties through imaginative leasing arrangement will be eliminated.

FICTITIOUS MARKETS

(Section 336)

Current antidumping duty law provides for the imposition of antidumping duties equal to the amount by which the foreign market value of the imported merchandise exceeds its U.S. price. As defined under section 773(a)(1) of the Tariff Act of 1930, the foreign market value of imported merchandise is generally based on the price at which such or similar merchandise is sold, or offered for sale, in the home market of the country from which it is exported. Section 773(a)(1) further states that, in ascertaining foreign