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RENEWING "SUPER 301"

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

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RENEWING "SUPER 301"

MONDAY, JUNE 14, 1993

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

The hearing was convened, pursuant to notice, at 2:04 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senators Conrad, Danforth, Chafee, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No. H–24–3, June 10, 1993]

INTERNATIONAL TRADE SUBCOMMITTEE SCHEDULES HEARING ON SUPER 301

WASHINGTON, DC.—Senator Max Baucus (D–MT), Chairman of the Senate Finance Committee's Subcommittee on International Trade, announced today that the Subcommittee will hold a hearing on proposals to renew the "Super 301" provision of U.S. trade law.

The hearing will begin at *2:00 p.m. on Monday, June 14, 1993,* in room SD–215 of the Dirksen Senate Office Building.

"Super 301 is the most successful piece of trade legislation the Congress has passed in years. In its short two-year tenure, it compiled an impressive record of opening markets for American products around the world," Senator Baucus said.

"Super 301 was good trade law when President Bush was in the White House, and it is still good trade law with President Clinton in the White House. It gives our trade negotiators the leverage they need to pursue a tough, market-opening trade policy," Senator Baucus added.

Section 310 of the Trade Act of 1974, commonly known as "Super 301," was added to U.S. trade law in the Omnibus Trade and Competitiveness Act of 1988. Super 301 required the United States Trade Representative (USTR), in 1989 and 1990, to identify U.S. trade liberalization priorities, both in terms of priority countries and priority practices. Within 21 days after the priority practices and countries were identified, Super 301 required USTR to initiate section 301 investigations with respect to all of the priority practices identified for each of the priority countries, and to seek agreements to eliminate the trade barriers over a 3-year period. Super 301 was in effect only for 1989 and 1990.

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

Senator BAUCUS. This hearing will come to order. Today we will discuss renewing the Super 301 trade remedy law. This law required the United States Trade Representative to publish an annual list of the worst barriers to trade each year and then proceed to negotiate their elimination. I think we should renew it as soon as possible.

Super 301 and the Special 301 law on intellectual property rights were the most successful provisions of the 1988 Trade Act. Why? Because both force us to set priorities. Both establish deadlines we

must meet. And both are credible because they hold out the threat of retaliation as a last resort.

Super 301 existed for 2 years. It was tough, but it was absolutely fair and it was a winner. Super 301 allowed us to tackle some of the most obnoxious trade barriers in the world—the Japanese Government's refusal to buy top quality, competitively priced American supercomputers and satellites; Japan's wood products market, which was not just closed, it was padlocked; and Brazil's blatantly protectionist import licensing requirements.

Super 301 put these at the top of our trade agenda. And because Super 301 required us to name the worst offenders, it made sure they got to the top of the foreign policy agenda as well. It stopped the bureaucratic weevils in the national security establishment from nibbling our trade policy to death.

Most important of all, Super 301 got results. Brazil agreed to eliminate its import licenses. The Japanese Government bought three American supercomputers out of four new purchases in 1990 and 1991. Before Super 301 they had bought a total of three American supercomputers out of 43 purchases.

They opened their public sector market to American satellites. Japan became the largest single importer of American wood products. It is no coincidence that over 1989 and 1990 with Super 301 in effect our trade deficit with Japan fell by $10 billion, a full 20 percent.

And while the Japanese recession and world economic troubles obviously play a big role, I do not think it is entirely coincidence that since Super 301 expired our trade deficit with Japan climbed right back up from $41 billion in 1991 to nearly $50 billion last year.

Once again, Super 301 sets deadlines, forces action and backs it up with the threat of retaliation. And that is why it works. We need to renew Super 301 this year if we hope to make the same sort of progress in opening markets the Special 301 brings about in protecting intellectual property rights.

We can prove the point by looking at two examples from this year's Special 301 listing process. Thailand, our software publishers, recording artists and movie studios tried for years to get the Thai Government to enforce laws against piracy. Our government backed them up.

But until we made it clear to the Thai authorities that failure to act would mean retaliation under Special 301, we got nowhere. This year, however, we faced a deadline and got a clear threat of retaliation and they got the pirates off the street. Copyright industries report virtually no pirate products for sale anywhere in Thailand. And if we keep the pressure on for the next few months, we can eliminate the problem.

We have worked with the Government of Taiwan for years to negotiate a copyright treaty that protected CDs and eliminated pirate broadcasts. When the Taiwanese Government did so, Taiwan's legislature attached reservations that made the treaty meaningless. But again, the Special 301 deadline and the prospect against Taiwanese exports worked. The legislature removed the reservations and passed the treaty.

We need the same kind of tough approach to market opening that Special 301 gives us in protection of intellectual property. The Uruguay Round is important. There is no doubt about that. But it will not solve all of our trade problems, particularly our most serious trade problem—that of a closed Japanese market.

The GATT will not open up a Japanese Government procurement system. It will do nothing to crack open Japan's Keritsu networks, which make it virtually impossible for American firms to succeed in Japan's construction, banking and auto parts markets among others. There are many more examples.

Only Super 301 solves these problems for us. That is why it is so important that Congress and the Clinton administration show a commitment to a strong trade policy and renew Super 301 as soon as possible. I am confident that we will do so.

The administration knows that the credibility of the President's campaign statements on trade depend on renewing Super 301. I am very pleased to see that U.S. Trade Ambassador Mickey Kantor will be testifying today and has repeated the endorsement of Super 301 on several occasions. We hope to hear another strong endorsement at this hearing.

We will also hear from representatives of some of the industries which benefited from Super 301 in 1989 and 1990. Cray Research, a supercomputer company involved in the Japanese supercomputer case is unable to be here today. It has very kindly provided written testimony for the record. In it Cray outlines how it became a believer in Super 301 very simply because it worked and other efforts to open Japan's market in their view have failed.

It promises to be an important and interesting afternoon. So with no further delays, let us begin. Before we turn to our first witness, the Honorable Senator from Michigan, I would like now to turn to Senator Chafee from Rhode Island.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Well, thank you, Mr. Chairman. In 1988 I was a supporter of Super 301 and voted for it; and, indeed, presented legislation somewhat similar to it.

I am somewhat disappointed, however, Mr. Chairman, in the makeup of the panel today because everybody here is a cheerleader for Super 301. Now maybe that reflects the situation; maybe nobody is against Super 301. But I recall that the former USTR, Mrs. Hills, had some reservations about Super 301. I am sorry that she, or somebody who dealt with it for a considerable period of time, such as she did, is not available to present some testimony here today, Mr. Chairman.

Maybe Super 301 is the greatest thing since sliced bread. I do not know. I have always been a supporter of it. But I would find it helpful if we had some witnesses who could give a view on the other side.

I just ran down the witness list. Both Senator Levin and Ambassador Kantor are strongly for it; and each of the other three witnesses, as I understand it, are for it. So I find it, as I say again, a little disappointing that we do not have more of a balance here

because there may be something to be said on the other side. Maybe there is not.

Senator BAUCUS. Senator Danforth?

Senator DANFORTH. I have no opening statement, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

Senator Levin, we are happy to have you here and appreciate and are looking forward to your testimony.

STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM MICHIGAN

Senator LEVIN. Thank you and thank you for allowing me to testify. I am not sure that this will satisfy Senator Chafee, but I am not a very strong supporter of Super 301 because I do not think it has proven strong enough in practice. I would strengthen Super 301. I do not think that quite addresses the issue which you raised.

But, nonetheless, that is my position on it and I appreciate the chance that you have given me, Mr. Chairman, to explain why I think we should strength Super 301 and not simply renew it.

It produced some results when it was used. As you, Mr. Chairman, mentioned, when Super 301 was utilized it did have some affect. The problem was that it was not used very often. The reason it was not used very often is it was too easy to escape its requirements.

In 1990, USTR's National Trade Estimate report of foreign trade barriers, listed hundreds of pages of trade barriers, and yet only India was identified in 1990 for continuing negotiations under Super 301. And when no agreement was reached with India, no action was taken anyway.

So I think we have to strengthen Super 301. It is the basis of a good idea. But it is not simply enough to renew it. We have to strengthen our negotiator's hands and increase our chances of success in opening closed markets by requiring action where there is trade unfairness.

Where the trade representative has identified hundreds of pages of unfair trade practices, and trade distorting practices, and discriminatory practices against American products, it is not enough to simply say we will leave it at that and take no action.

And President Clinton during his campaign recognized this. In his book, Putting People First, he acknowledges the need for a stronger trade law. In that book he specifically called for the passage of a stronger, sharper Super 301 trade bill. Not simply its renewal, but for a stronger, sharper Super 301 trade bill.

Senator Daschle and I have introduced S. 301 which will hopefully take us in that direction. I hope President Clinton will welcome a stronger, sharper Super 301 as reflected in this bill. This bill does extend the old Super 301 but it strengthens it in some very key respects.

It would give the President important new leverage when negotiating trade agreements because it provides some specific criteria to ensure that the law is used when there are major barriers identified and, and this is the heart of the matter, it would require equivalent restrictions to be placed on the products of countries that discriminate against American goods should negotiations fail to eliminate the identified barriers.

Under this proposed 301 procedure, each year the trade representative would identify as priority practices major trade distorting barriers or unfair practices in three sectors—agricultural, manufacturing and service—and must also include as priorities for correction trade distorting barriers and unfair practices of any country which has a trade deficit with us which accounts for 15 percent or more of the total U.S. merchandise trade deficit.

Once priority practices are identified an investigation and negotiations must be initiated in those cases. If negotiations fail, the bill would require equivalent restrictions to be placed on the products of that country, equivalent to the cost of the discriminatory practices that that country inflicts on our businesses and on our products.

This threat of equivalent restrictions, as the chairman has pointed out, is the only way to open the markets of some countries. We have learned that with Japan. Without this threat, we are not going to succeed. In fact, we are going backwards right now. And even with this threat, the process is extremely slow.

To make the threat credible, we must require that equivalent restrictions be placed in the absence of successful negotiations or in the absence of a plan approved by Congress for some alternative approach.

Finally, Mr. Chairman and members of this subcommittee, we have an Office of Foreign Missions in the State Department, whose purpose is to place equivalent restrictions on other countries who restrict our diplomats. When our diplomats are discriminated against in other countries, we have an office in the State Department which places equivalent restrictions on diplomats of the country that discriminates against our diplomats. We found that very effective in getting rid of those discriminatory restrictions.

When Ecuador placed a 25 percent tax on telephone charges at the American Embassy in Ecuador, we put an equivalent tax on Ecuadorian telephone charges at their Embassy here. Low and behold, the tax was dropped.

When the Netherlands applied a VAT tax to the United States Mission in the Netherlands, we responded by applying a tax to the Netherlands Embassy here. Low and behold, they reimbursed us for the VAT tax.

Now if we can protect our diplomats with equivalent restrictions, and if we have an office in the State Department whose sole function is to place equivalent restriction on countries that discriminate against American diplomats, surely we can fight just as hard for American products and American manufacturers and American agriculture and the American service sector as we do for our diplomats abroad.

Those restrictions that we have placed on diplomats here, which are equivalent to the ones that our diplomats face in other countries have not started a diplomatic war. They have eliminated the restrictions and that is the purpose of a stronger, sharper Super 301.

The difference in a number of regards from Super 301 which I will not go into now because I know you have a time limit here this afternoon, Mr. Chairman, but I will file for the record the side-by-

side comparison of the Daschle-Levin 301 bill in this Congress and compare it with Super 301. It strengthens Super 301.

[The information appears in the appendix.]

Senator LEVIN. We need this leverage on countries such as Japan which year after year, and may I say decade after decade, discriminate against American products. They try to talk us to death. They open up a little crack here and little crack there. But when you look at the overall trade deficit we find very little change.

This leverage is required. And the threat, a credible threat, of equivalent restrictions is essential if we are going to open up the markets of countries such as Japan, which have discriminated against American products and gotten away with it.

Again, Mr. Chairman, I thank you for permitting me to testify here today and for your leadership in trying to get stronger trade laws. We need stronger trade laws. The President committed himself to it during the campaign and we are looking forward to his carrying out that commitment in the legislative process.

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

Senator BAUCUS. Thank you very much, Senator.

I know when I travel overseas I hear a barrage of complaints against Super 301. The complaint is that it is protectionist. What is your reaction when you hear that? That is, Europeans or Asians or someone saying that our Super 301 is protectionist legislation.

I say to them, look, it is totally a market opening. There is not one protectionist straw in it and there is not one iota of protectionism in it. It is totally market opening. It is geared to open markets. Do you run across those same objections when you travel and, if so, what is your response?

Senator LEVIN. Well, my response is the purpose of 301 is to eliminate restrictions on trade. It is to eliminate barriers against the sale of American products abroad. It is anti-protectionist. Protectionism has been a one-way street that other countries have used to protect their markets against our goods.

We should not tolerate it. You know, if other countries want to put restrictions on our goods, Mr. Chairman, that is their decision. If we tolerate it, that is our decision. I tell my constituents, do not get mad at other countries that discriminate against our goods, get mad at us for not doing anything about it.

And that is what Super 301 does. It does something about it. And the purpose of 301 is to end the barriers against our products that can compete if they are allowed to compete.

The only other thing I would add to your question is, those comments by other countries are made to throw us off track. They are made to throw us off balance. They know no one likes to be labeled a protectionist in this country. Everybody is terrified of being labeled a protectionist. This kind of label is intended to end the debate and it should not be allowed to end the debate.

The debate is over access to markets abroad for American products and we cannot be deterred or deflect that.

Senator BAUCUS. One other question. In your view, if America had Super 301 on the books, would that help or hinder our negotiating advantage in the Uruguay Round talks?

Senator LEVIN. It will help us in our negotiations because it strengthens the negotiators' hands. They can say, look, Congress is requiring us to take action to end your discriminatory barriers. That is a big help in negotiations. But Super 301 was easily evaded in 1990. One country was identified despite hundreds of pages of barriers. That country was India. The worse offender was Japan. It was not even identified in 1990.

Senator BAUCUS. Well, the point is that it helps much more than it hinders?

Senator LEVIN. Oh, it helps negotiators a lot, but it has to be used. It is not just enough to sit there on the books unless it is used.

Senator BAUCUS. Thank you very much. We very much appreciate your testimony.

Senator Conrad?

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. I just want to echo the words of the chairman. I think the testimony of Senator Levin has been very useful, and especially useful since I happen to agree with it. I very much appreciate, Mr. Chairman, your having this hearing.

I think this is one of the most important subjects we are going to grapple with in trade legislation this year. I think it is critically important that we pass Super 301. I think the chairman of the subcommittee is moving in that direction and has been the leader in helping us make certain that that occurs.

I want to thank the Senator from Michigan who is also a strong ally in this effort. You know, in my previous incarnation as a tax administrator, I negotiated with the Japanese on state taxation of multi-national corporations. I must say I admire very greatly the negotiating ability of those with whom we compete.

They are very, very good negotiators. And they play to the weakness of those of us in western culture who like snap solutions, who like snap resolution of negotiations, who like to handle everything quickly and get it off the agenda.

All too often that plays to our disadvantage in these negotiations and I think Super 301 provides a very powerful tool that we need. So I again want to thank the Senator from Michigan for the testimony he has provided today.

Senator BAUCUS. Thank you very much. Thank you, Senator. Thank you both.

Senator LEVIN. Thank you, Mr. Chairman.

Senator BAUCUS. Our next witness is Ambassador Mickey Kantor. We are honored and very thankful the Ambassador is able to take time out of his very busy schedule. I do not know anyone in the U.S. Government that has a more hectic schedule than the Ambassador, with the possible exception of the President.

Ambassador Kantor. I was going to add that, Mr. Chairman.

Senator BAUCUS. Thank you very much, Ambassador for coming; and we appreciate your views on Super 301. You may proceed.

STATEMENT OF HON. MICKEY KANTOR, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Ambassador KANTOR. Thank you very much. Thank you, Senator Conrad.

I would like to submit my full testimony for the record.

Senator BAUCUS. Without objection it will be included in the record.

[The prepared statement of Ambassador Kantor appears in the appendix.]

Ambassador KANTOR. I will just summarize that testimony in order to give the committee enough time to ask any questions it might wish.

The President endorsed Super 301 during the Presidential campaign, the primary as well as general campaign, as Senator Levin has already indicated, because he believed it had been an effective market opening tool. I want to emphasize that today in my testimony, as the chair has emphasized. That is what we are about, is expanding trade and opening markets.

We continue to support Super 301. But let me add, we do not believe that adding it to the fast track renewal for the Uruguay Round would be effective. The reason which we can discuss, if you wish, Mr. Chair, or Senator Conrad, is because the Uruguay Round is also a market opening tool. We are moving forward in those negotiations, as you know, and we look forward to trying to end these negotiations by the end of this year.

We are committed to opening markets multilaterally, like in the Uruguay Round where possible, and bilaterally when necessary. We see those efforts as complementary and reenforcing, just as this committee and the Congress did when it wrote the 1988 Trade Act. You spelled out ambitious objectives for the Uruguay Round, but you also provided my office with strengthened tools to open markets bilaterally.

We are aggressively pursuing both paths to market opening and we agree with the Chair that priorities and deadlines are important as we proceed to open markets around the world.

The Uruguay Round is moving forward because we are negotiating for the first time a big market access package, which is the key to creating the momentum to successfully completing the round. We have significant work in the decisions facing us on market access in the coming weeks.

But I am encouraged that our trading partners share our commitment, both in terms of objectives and timing. It is necessary, as I have noted before publicly, to have fast track authority in advance of the G–7 Summit meeting in July so that the real outstanding issues, rather than our domestic process, remain the focus of attention in completing the Round.

With regard to Super 301, let me note that many of our trade disputes are resolved without resort to U.S. trade laws, but others require more concerted action. It is critical for the administration to focus intensely on identifying foreign trade barriers that pose the greatest impediment to our exports.

The identification of such practices puts significant pressure on the countries maintaining those practices to open their markets in critical areas. It is also valuable for our trading partners to know

that their significant trade barriers will be the subject of Section 301 investigations with the objective of eliminating those barriers.

The results of Super 301 in 1989 and 1990 are well known. The credible leverage of Super 301 was quite effective in opening foreign markets, not just to U.S. exports, but for the benefit of all nations. I might note that in Japan, wood products was a particular area where we were successful, as well as in satellites, and to a limited degree with supercomputers.

As you know, we instituted a monitoring mechanism on April 30 under Section 306 in terms of supercomputers because we are not satisfied in that area with our progress.

The objectives of Super 301 are to open foreign markets. I would like to review for you actions that the administration has taken to accomplish, frankly, these same objectives. The administration's commitment to conclude the Uruguay Round and our policy toward Japan, complemented by our internal review of potential candidates for self-initiated Section 301 investigations, should lead this committee to conclude that USTR and the administration are moving aggressively to identify and counter those barriers that are most detrimental to the export of U.S. manufactured goods, agricultural products and services.

When I assumed the office of USTR, there was not a single ongoing Section 301 investigation underway, despite the fact that Section 301 is an important tool for opening foreign markets.

On April 8, after intensive discussions, I asked the staff to review and report on the most significant barriers to U.S. products in their areas of responsibility, with an eye towards self-initiation of 301 investigations.

The staff review produced a number of practices maintained by a number of countries that we are examining further, including some practices that may be inconsistent with trade agreements. Some of those barriers are already being addressed under the Special 301 provisions on intellectual property.

As you know, on the 30th of April we addressed that issue. We indicated there were three priority foreign countries—Brazil, India and Thailand. We also initiated for the first time immediate action plans for two other countries—Hungary and Taiwan. And for the first time, we initiated a program of what we might call out-of-cycle reviews.

We have found that there is a flurry of activity on our trading partners' part when we get closer to April 30 of each year. We believe that that is not good enough. We believe that we ought to have out-of-cycle reviews, constantly paying attention to those most pernicious trade barriers around the world in order to make sure that countries, in fact, are adhering to their agreements and to U.S. law.

We will complete the review—the self-initiation review I talked about under 301—by July 15. I would expect that at the conclusion of that review, this committee would want to hear the results of what we have found, and I would want to, which may be unusual, offer ourselves up for a hearing at that point, Mr. Chairman, if the committee has time and the interest in reviewing that with us.

As you know, we have just begun our discussions concerning the so-called Japan framework policy. As you know, coming out of the

April meeting with Prime Minister Miyazawa and President Clinton, there was a general consensus on the part of Japan and the United States to go forward with discussions to try to reach agreement, before the G–7 meetings in Tokyo, as to a framework for discussing some of the most daunting issues which face the United States and Japan: In terms of the Japan trade surplus, not only with this country, but with the world; how that affects global trade and the global economy; and also looking at both sectoral and structural issues which face us in trying to address that trade imbalance.

Our meetings were on Friday. We made some progress. We will continue those discussions. We look forward to an agreement on the framework by the G–7 meetings. I would be happy to discuss those efforts if the committee wishes to do so.

Let me indicate in conclusion, in order to save the committee time, we have done a number of things after we came into office, to try to address the question of foreign trade barriers in order to open markets.

First of all, we initiated the Title VII sanctions against the European community for the invocation of the so-called Article 29, which discriminated against heavy electrical equipment and telecommunications producers, not only from the U.S. market but all around the world.

As you know, we reached agreement with the European community and they opened up a $20-billion-a-year heavy electrical equipment market. They failed to open the telecommunications market under Article 29 and we imposed sanctions as a result—the first time sanctions have ever been imposed under Title VII since it passed in 1988.

We now note, with some pleasure, that the German Government has refused to invoke Article 29. We then, of course, agreed not to invoke sanctions, which would not have been warranted under those circumstances. The German Government would not counterretaliate as the European Community has attempted to do.

So with Spain, Greece, Portugal and Germany now opening up their markets to our telecommunications equipment it's time for all 12 European community nations to be open in that market as well.

Also as a result of the U.S.-EC agreement we opened up a $7–13 billion market in goods and services and other government procurement for our companies and for our workers.

In addition, we initiated the 301 review I spoke about earlier. In addition to that, we invoked our authority under Special 301 with regard to Brazil, India, and Thailand, with immediate action plans, as I indicated before, and out-of-cycle reviews. We are trying to move forward fairly but in the interest of U.S. workers and U.S. business, Mr. Chairman.

We appreciate your efforts in this regard. We support a renewal of Super 301. We look forward to working with the committee during this year, not only to discuss the proper vehicle for that but also the precise wording and language of that statute.

Senator BAUCUS. Thank you very much, Ambassador. Do you support the extension of Super 301 this year?

Ambassador KANTOR. Yes, we do. We want to work with the committee, Mr. Chairman and Senator Conrad. We want to make sure

that we are flexible, all of us, in our approach to be as effective as we possibly can be. That is why we are not in favor, of course, of amending the fast track renewal request by the administration with Super 301 language because we think it gets in the way of a market opening device and we need to move quickly. We also think it would open the door to other amendments as well that might slow down the process.

But we are absolutely committed to working with you this year in a flexible way to reach agreement on Super 301 legislation.

Senator BAUCUS. So your primary concern about adding Super 301 to fast track is loading fast track up with other amendments that might be not market opening, but might be restrictive? Is that the concern?

Ambassador KANTOR. Could be restrictive on one hand. And also, we have made progress in our discussions with Japan, Canada and the European community on market access in both industrial products, services and agriculture.

Senator BAUCUS. That progress though does not in any way preclude the administration's nevertheless endorsement of extending Super 301 this year?

Ambassador KANTOR. Not at all. It is just that we are trying to separate these two issues in order to move forward as quickly as possible to try to get market access, preliminary agreement on the outlines of a market access package before the G–7 talks.

Senator BAUCUS. Would the enactment of Super 301 give the United States in your view additional negotiating leverage in the Uruguay Round, with respect to potential agreements in the Uruguay Round which may restrict country's trade laws?

Ambassador KANTOR. We believe the Uruguay Round, as we are negotiating it, is a market opening device. We do not believe that at this particular time Super 301 would be helpful in terms of reaching a big market access package, which I think is in the best interest of the United States and its workers and our businesses, as well as our agricultural interests.

Senator BAUCUS. But as a negotiator, don't you like to get in and negotiate from a position of strength rather than a position of less strength?

Ambassador KANTOR. I think we are in some position of relative strength here without—I think there is always a danger of beating our chests a little too strongly here. We are having great cooperation, frankly, from our trading partners in this connection, maybe not in every connection, but certainly in the Uruguay Round. So that is why we separate that from this discussion.

Senator BAUCUS. Is there not some concern though that other countries in the Uruguay Round—let us say, I think this is stretching it a bit, that might agree in agriculture subsidies, export subsidies in particular, and then come back and ask us in return, the United States to give up its trade laws—301, Special 301, et cetera—which could be of particular concern.

Because as you know better than anyone else in this room, the intellectual property right provisions in the NAFTA text are far better than the Dunkel intellectual property provisions.

Is there not some concern that the United States will be giving up to a very great degree its trade laws? Again, this is important

because we are still the largest market. It is the major leverage that we have in getting other countries to open up their markets to American products.

Ambassador KANTOR. Well, that is a matter of negotiating, as you know, of protecting our trade laws, whether it be 301 or antidumping laws is of critical importance to us and we need to do so. We do not believe the current language with regard, for instance, to antidumping, is adequate in the so-called Dunkel text. We will take this up in July in Geneva.

Second of all, you mentioned intellectual property, we believe the language in the Dunkel text that is currently there is not adequate.

Senator BAUCUS. That is my point.

Ambassador KANTOR. We would like it changed. Let me just indicate that with—just let me mention, Special 301, 301, with Title VII, we have plenty of tools right now in order to assert market opening interests. Also, through this discussion and with the obvious support that Super 301 has, I do not think we need to go any further in terms of that discussion with regard to the Uruguay Round. But the Uruguay Round is just part of a whole package of interests that we would like to address this year, including Super 301.

Senator BAUCUS. The Dunkel text in intellectual property is insufficient. It is inadequate. How do you plan to change it?

Ambassador KANTOR. We plan to negotiate changes or we are not going to have a successful conclusion of the Round and that means we are not going to have a Uruguay Round agreement.

Senator BAUCUS. In most negotiations you have to give something up in order to get something. What would you give up?

Ambassador KANTOR. Well, let me not go public with what we would so call give up or not give up.

Senator BAUCUS. I did not expect you to. Right.

Ambassador KANTOR. But let me indicate that it is clear to our counterparts that we are not happy with that language. Obviously, there are other areas in which we can agree with our counterparts in terms of certain concerns that they have; and I think we can reach a legitimate agreement, a good one, conclude a successful Uruguay Round, which is in the interest of global growth.

Senator BAUCUS. Well, Ambassador, I wish you would more strongly embrace Super 301 in your trade negotiating quiver, as an additional arrow in your quiver so you can be in a stronger position. But let me change to another subject here. That is the framework.

I very much applaud you, the administration, on the advances you have made in negotiations with Japan on the framework you are attempting to negotiate with Japan. I think it is very much in the right direction, both on the macro level, and addressing Japan's overall trade surplus with the world and also with the baskets that you are negotiating with Japan.

I think that is very much in the direction that we should proceed. Many of us on this committee for a long time have been encouraging the administration, particularly the previous administration, to move generally in this direction without any success. I very much commend you and the progress you seem to be making thus far.

In that respect, however, I am curious as to the degree to which, assuming the administration concludes this framework agreement with Japan, the degree to which the administration reserves the right to enforce these agreements. That is, particularly as U.S. trade laws—regular 301, Special and hopefully Super 301—to enforce them.

So far I have not seen any public statements on the subject. I am just concerned that there might not be any, either written provisions with respect to enforcement and sanctions if the agreement is not lived up to. I would just like to give you the opportunity to address that.

Ambassador KANTOR. Let me address it in two ways. First of all, as we moved forward on the framework discussions, we have also moved forward, as you know, with the implementation of Title VII: Citing the failure of the Japanese central government to procure construction, architectural and engineering services, not only from this country but from others. Failure to open their market is a discriminatory practice under that Title, under the 1988 Act.

Number two, we are also monitoring progress under Section 306 of the Japanese central government's failure to purchase supercomputers as a result of a—as you know, that was a result of a Section 301 action back in 1989, if I am not mistaken.

So those are two things going on. We have the framework discussions, where Japanese are engaged now in the Uruguay Round for the first time on literally a day-to-day basis, which I think is helpful. We are cooperating with the Japanese in trying to work on the Asian-Pacific economic cooperation forum, which I think has great promise in terms of opening trade in Asia and putting a framework around those activities.

But as we move forward with these framework discussions, to answer your question directly, our trade laws are not on the table. Our trade laws are not to be negotiated in these. They are not part of the framework discussion.

Senator BAUCUS. Which is to say that if Japan, for example, does not live up to the terms reached in the framework of other agreements related to it, that the United States reserves the full right to use our trade laws to enforce provisions in the framework or related to the framework.

Ambassador KANTOR. We always have the right to take considered and appropriate action.

Senator BAUCUS. Including the actions I outlined?

Ambassador KANTOR. Yes, that is right, Mr. Chairman.

Senator BAUCUS. Thank you.

Ambassador KANTOR. Let me just add, we hope, of course, in these framework discussions, that we not only reach an outline, but that they are successful and we hope and trust they will be.

Senator BAUCUS. I very much hope so. And again, I very much applaud the administration's direction they have taken on this.

I also apologize to the Senator of North Dakota. The lights did not go on when they should have. So you have 9 minutes, Senator, and not the usual 5.

Senator CONRAD. I thank the chairman. I will not take all 9 minutes, but I appreciate his courtesy.

First of all, I want to join the chairman in commending the administration. I think you walked into a very, very difficult situation with regard to international trade issues. And for the most part, given the mess you inherited from the previous administration, you have acquitted yourselves extremely well. I especially want to applaud you, Mr. Ambassador, because I think you really walked into an extraordinarily difficult situation and have performed extremely well.

During the campaign the President indicated in statements and in the book, "Putting People First," that he was committed to 301. I am sure you are aware of that, and that he went beyond that and called for a strengthened Super 301. Is that still the position of the administration?

Ambassador KANTOR. Yes, it is.

Senator CONRAD. If we were to follow the advice given here and not make Super 301 part of the fast track extension, do you have any thoughts on what an appropriate vehicle would be?

Ambassador KANTOR. We are prepared to work cooperatively with this committee, as well as the full committee, as well as this body and the other body to find the appropriate vehicle. We believe there will be more than just one vehicle between now and the end of the year to do that.

I do not think it would be appropriate for me to substitute my judgment for that of this committee or any other committee. I think we ought to work together and find the appropriate vehicle for that. But we are committed to it. We have been.

As the Senator mentioned today, in my previous incarnation, I had a little bit to do with the campaign and I am very familiar with Putting People First and we still support that position.

Senator CONRAD. Well, I would just say to you that if this is not going to be the vehicle then I think in order for those of us who feel strongly about this issue to be satisfied, another vehicle would have to be identified. And the sooner the better.

Mr. Chairman, if I might move to a different subject?

Senator BAUCUS. Go ahead.

Senator CONRAD. It is a subject near and dear to your heart as well.

Senator BAUCUS. All the more reason why you should go right ahead.

Senator CONRAD. Mr. Ambassador, we continue to have very serious problems with our neighbors to the north. We are now looking at not only serious incursions in our durum market, but in the spring wheat market; and now, with the recent Canadian announcement that its producers will have the option of selling directly into the United States market, we anticipate a flood of barley coming into our markets.

Not because the other side is more competitive. Not because they are more efficient. Not because somehow we are deficient, unable to defend ourselves. But because of very serious problems in the so-called Canadian Free-Trade Agreement.

I just wanted to take this opportunity to get an update. What is happening? What are we doing to try to redress the grievance? What are we doing with respect to sending a message to our neigh-

bors to the north that these continuing invasions into our market on an unfair basis have got to be dealt with?

Ambassador KANTOR. We are doing a couple of things we think are effective. One, of course, is the Wheat Board is something I know that we have shared concerns about and their lack of transparency. We are agreeing with the Canadians on an independent review of that in order to indicate exactly what has happened there and how the Wheat Board is operated in terms of supporting through subsidization the sale of wheat into our market.

But, number two, we have currently a review on, which is nearly completed, in the administration, and a decision-making process which will result in the recommendation to the President in terms of using our Export Enhancement Program, the so-called EEP Program, in order to address this question in a very direct way.

We believe that is the most effective action we can take in order to make sure that these practices which we all are concerned about, all of us are concerned about, are dealt with either through that or through negotiation as a result of the President taking action in that regard.

Senator CONRAD. Is there any Cabinet agency or any department of the government that is standing in the way of using the Export Enhancement Program as a lever to send a message to our friends to the north?

Ambassador KANTOR. Let me say, Senator, that we are moving through the process. I expect a recommendation to go to the President very, very soon. Let me not get into a question of what position any Cabinet agency is taking. Let me say that Secretary Espy and I have taken very strong positions in favor of moving forward and I believe that we will be effective.

Senator CONRAD. Well, let me ask it this way. Is the State Department expressing reservations on this matter?

Ambassador KANTOR. You know, I grew up as a lawyer, either for better or for worse, and I believe that lawyer/client privilege is something that we ought to pay strict attention to. Unlike some folks, I do not talk about what happens internally in the administration.

So, therefore, let me not indicate that one agency or the other is taking a position. I believe that we will address this question effectively in the very near future.

Senator CONRAD. Okay. I appreciate that. Let me just send a very clear message. If there is a department that is standing in the way—I think you have been very gracious here to your colleagues in the administration, because I have heard the State Department is standing in the way—maybe we need to send them a message. There are lots of ways around here to do that.

I just say that this is a matter of extreme urgency in our part of the country. By our part of the country I mean the chairman's part of the country, my part of the country. We are being dealt with in a way that has really raised the anger level as high as I have seen it in a very long time in my state. I think the chairman's state is probably about the same.

I hope the State Department gets the message. I thank the Chair.

Senator BAUCUS. Thank you, Senator. I do underline not once, but twice, the remarks of the Senator from North Dakota. It is a very great concern in our part of the country. I hear it every time I go home and that is often. So I would appreciate it and I know many members of this committee, as well as the Senate, would appreciate it if the administration could deal with this general question of subsidized Canadian grain which is unfairly competing with American grain producers. Thank you.

The Senator from Missouri?

Senator DANFORTH. Mr. Ambassador, I attended the swearing in of our new Senator from Texas and I was not here for your testimony. But it is my understanding that your position is that you do support the reauthorization of Super 301, but not as part of the fast track extension for the Uruguay Round.

Ambassador KANTOR. That is true, Senator.

Senator DANFORTH. So that the administration would support it on some other appropriate vehicle?

Ambassador KANTOR. Yes, we would, Senator.

Senator DANFORTH. Okay. I want to ask a question about the administration's position on trade with Japan. There has been a lot in the media about this. People have indicated that in their view it is managed trade. My understanding of managed trade is that it is the creation of numerical targets so that those targets are met one way or another, either by reducing imports or by increasing exports.

I have generally viewed managed trade—well, I have always viewed managed trade, or the concept of managed trade, as simply another way of restricting trade. Is it the view of the administration that its proposals relating to benchmarks with Japan constitutes managed trade and that the point of it all is to give us an excuse to keep out imports from Japan?

Ambassador KANTOR. Just the opposite, Senator, as you suggest. We are trying to stimulate trade, open markets, not the opposite. In fact, this is classically the antithesis of managed trade.

We believe that in critical areas that the content of our trade with Japan is such that there are exports into the United States, or imports of Japanese goods, much of which are high value-added goods representing high wage, high skill jobs. Correspondingly, markets in Japan are not open, or as open, to our businesses and, therefore, not open to our workers and to growing jobs here.

What we are attempting to do in the Japanese framework discussions, covering sectoral as well as structural issues, and where they intersect, is address that problem in order to stimulate trade. So I agree with the Senator in what you have been saying. This is not managed trade. This is stimulating trade. It is just the opposite of what has been done in other situations.

Senator DANFORTH. And it is not the intention of the administration to use this concept as a justification for a new wave of protectionism. You are simply saying that if the object of the United States is to increase exports, we would expect that to show in the actual exports that are represented by numbers.

Ambassador KANTOR. Absolutely. That is exactly what we are attempting to do. We believe that in opening markets, not only for the United States—we are doing this on an MFN basis—but for all

foreign purveyors of goods, opening those Japanese markets would, in fact, lead to more global growth, which is not only good for the United States, but good for our trading partners and good for Japan as well.

Senator DANFORTH. Now, one way of viewing the benchmark idea is the same way that we viewed the Structural Impediments Initiative, SII, as something that is outside the enforcement of the normal trade laws. As a result, SII was pursued instead of the enforcement of trade laws. The SII negotiations were not within the meaning of Section 301 of the Trade Act.

Do you view the benchmark concept as being a substitute for enforcement of trade laws? And should those of us who are advocates of not only negotiating agreements, but actually enforcing agreements and enforcing the law, view the benchmark concept with alarm? Should we see this as something that is going to replace enforcement with yet another round of discussions?

Ambassador KANTOR. Absolutely not. What we should all view it as, and what we are attempting to do, is use benchmarks or results in a practical and pragmatic way in order to, as I said before, stimulate trade, to open these markets, to look at the five areas, the so-called baskets, in an attempt to make sure the markets in Japan are as open as our markets.

I know we have had many discussions here in this subcommittee, as well as in the full committee, which have been very helpful to both me personally and to this administration. It is the content of our trade deficit, as well as the quantity, that really should concern us.

So to focus on these, to look for results, to be practical and pragmatic, we think will be effective. But that does not mean it takes the place of enforcing our trade laws. Those are not mutually inconsistent approaches.

Senator DANFORTH. So the administration would not flinch from taking advantage of the rights that we have under the current state of the law because we have now embarked on yet another course of dealing with the problem of Japan?

Ambassador KANTOR. No, we have not. In fact, as we are going through these discussions, as you know, Senator, we have already under Title VII indicated that the failure to open up the Japanese construction, architectural engineering market in central government procurement to not only the U.S. but to foreign suppliers violates or potentially violates that section. And, of course, there are 60 days under that law for talks. We are meeting, I think, this week, if I am not mistaken, for negotiations with our Japanese friends and counterparts to try to deal with that.

At the same time we are monitoring progress or lack thereof under Section 306 to indicate whether or not the Japanese Government is violating our agreement that we reached in 1989 in terms of the purchase of supercomputers. So we are moving forward in these other areas on a parallel track as we discuss the framework.

Senator DANFORTH. Let me say that I do not view the benchmark concept as just a stand-in for managed trade for exactly the reasons you have said. I think the administration is getting an unfair rap on this. I am heartened by your statement that this is not going to be a substitute for enforcement of the law as it stands.

Let me ask you just one other question, that is on the issue of NAFTA and the side agreements. A week or so ago what could be called the business community wrote a letter to the administration setting out their concerns with the side agreements. I have expressed similar concerns to you. And you know that I am strongly in favor of NAFTA and have been, and want to support it, believe that it is clearly in the best interests of the United States.

But I am concerned, and the business community is concerned, with the establishment of an entirely separate track by which complaining parties could pursue their complaints with respect to labor standards or with respect to the environment. The trend of litigiousness, which has plagued so many people, would have an entirely new outlet in addition to present law with the independent secretariat and with investigations and with trade sanctions used as ways of enforcing extraneous political objectives.

I am sure you have read the letter from the business community. Could you give us your response to that letter and to those concerns?

Ambassador KANTOR. Well, without getting into laborious detail, all of which would be not helpful in terms of our negotiations, there are a number of concerns raised in that letter which I think are well taken. There are a number of others that we do not agree with.

The fact is that I think that as we continue these negotiations with the Governments of Mexico and Canada, we continue to refine our ideas as you and I have discussed. We believe we can implement both a Commission on Labor and a Commission on the Environment which will address legitimate issues in an effective way without hampering, either hampering trade or resulting in the kind of process that would either be too litigious or would be not efficient.

We are convinced we can do that. We have a lot of hard negotiating to go. We welcome not only the input of the business community, but we also received a recent letter from the environmental community. I know it would shock you that they took somewhat of a different position than the business community.

So as we proceed, we will try to take the best ideas that are being propounded, not only by these committees and all of you here on the Hill who have been so helpful, but by the various communities, and come up with sound agreements that make sense, that are practical, that are reasonable, that are rational, that get the job done without getting in the way of a trade agreement which we believe is in the best interest of American workers and American business.

Senator DANFORTH. Well, if you need any more ideas, please feel free to look me up under "D." [Laughter.]

But you and I have discussed this matter. You do understand my concern, which is the concern that was expressed in the letter of June 4. I am really bothered by this whole concept of the side agreements and the damage that could be caused, I think, to American enterprise as a result of an entirely new bureaucracy with trade sanctions. But we have gone over that back and forth for a long period of time.

Ambassador KANTOR. And I am sure we will have many other discussions, Senator, about it.

Senator DANFORTH. Right. I just did not want this opportunity to pass without me expressing my concern yet again.

Senator BAUCUS. Thank you very much, Senator. We appreciate it.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Ambassador, on a separate issue other than NAFTA and Super 301, it seems to me there was some fairly encouraging news over the weekend in connection with the French views toward the agricultural situation under GATT and whether this represents a major breakthrough or a minor breakthrough or a slight penetration. I do not know.

Do you think it looks pretty hopeful as a result of that—I do not want to use the word concession; that might be too inflammatory—as a result of that decision by the French Prime Minister?

Ambassador KANTOR. We are encouraged by what has happened over, frankly, the last 3 or 4 months with regard to reengaging in the Uruguay Round, Senator. This is just the latest hurdle, as I would put it, that we have been able to jump together.

The European community, Canada, Japan and the United States have engaged in very hopeful discussions on market access. As you know, our goal is to reach the outlines of a so-called big market access package in three areas—industrial products, services and agriculture—by the G–7 and announce it there in order to give momentum to the Round itself.

The decision by the French Government and their ability to work with the European community with regard to the Blair House Agreement and the oilseeds portion of that agreement is extremely helpful. We look forward to working with the new French Government in other areas as well.

I would note that in their memorandum that they presented to the European Community, are other areas where we share concerns with them, including intellectual property and the opening of services around the world. So while there are so disagreements, there are wide areas of agreement as well.

Senator CHAFEE. Well, Mr. Ambassador, as you know, when you come up here frequently the discussions revolve around NAFTA and I consider that extremely important, as you know. And you and I have talked about that many times. But I hope in the great demands on your energies that no one will forget GATT also because that too is of extraordinary importance, as you well know.

Ambassador KANTOR. Let me indicate, just this week we had bilateral discussions with Japan. We had bilateral discussions with the European Community here in Washington. Then I go off to London, flying overnight on Wednesday night, coming back overnight Thursday night, for an all-day discussion on Thursday on the Uruguay Round with Sir Leon Brittan, who as you know has the trade portfolio for the Community.

So let me just say, we are on top of this on literally a minute-to-minute basis.

Senator CHAFEE. Well, I will say that the physical demands upon you, just as you outline that schedule, seem extraordinary. We are appreciative of what you do.

As I mentioned in my opening statement, the panel here is a cheerleading section for Super 301, which I supported back in 1988. But I have heard Mrs. Hill speak of Super 301, and I know that she—and I do not want to quote her because it has been some time since we had any discussion of that with her—but I think she did not want to be pressed too far on it.

Let me just ask you to start with, what do you think Super 301 does to the credibility of the U.S. in connection with the GATT, for example?

Here we are constantly hectoring other nations to engage in multi-lateral negotiations, yet and at the same time we are prepared to act in a unilateral manner under Super 301.

Ambassador KANTOR. I do not believe this is classically unilateral action, frankly, Senator, not 301, Super 301, Special 301 or Title VII. I think what Super 301 does, frankly, is prioritize practices and then allows us to prioritize countries that engage in these practices and puts time limits on actions and negotiations with regard to those practices.

Not in a sense, as I was discussing with Senator Danforth, to close markets or in any way to do something that would not be in the best interests of global growth or in the best interests of a free flow of goods, but just the opposite.

And so the Uruguay Round and what we are trying to do there with market access and other areas is completely consistent with what we would do with Super 301 or, in fact, in enforcing Title VII, Special 301, our self-initiation of a review of the inventory of trade agreements under 301.

So for those who would say they are inconsistent, I just do not agree with that. The administration does not agree.

What we are about and what we are trying to do is glow global growth by increasing trade. I think we can do that by—it is a fair and pragmatic and practical implementation of these laws where necessary.

Senator CHAFEE. I have never quite understood the difference between Super 301 and self-initiation under Section 301. You get a vigorous trade representative such as you are and you can proceed under section 301. You can do everything you can do under Super 301.

As I recall, in 1988 when we did Super 301 there was a feeling that the administration was not being tough enough and Congress had to force them to meet deadlines. I think that was the background in the 1988 passage of Super 301, but with Section 301 you already can do everything you feel that you need to do. Can you not?

Ambassador KANTOR. As long as you are vigorous and you are willing to self-initiate, you are willing to do a full inventory as we are doing now, of all your trade agreements and the various practices of countries as Senator Levin pointed out earlier in this hearing, the answer is yes.

But, you know, the fact is that it is a tool. It is an effective one. It was proven effective in 1989 and 1990. Number two, you may

or may not have someone sitting in this chair in the future—when hopefully you and I are both out playing tennis somewhere and not taking all night flights to various countries around the world—who may not be as vigorous as you or I might want them to be in enforcing these laws.

So, therefore, we believe—the President believes and we have believed since the campaign, during the campaign and since—that the invocation of a Super 301 would be helpful in that regard.

Senator CHAFEE. But you do not want Super 301 to be added to the fast track?

Ambassador KANTOR. No, we do not. We believe that first of all it would open up fast track as I have discussed, I think, with——

Senator CHAFEE. I am sorry.

Ambassador KANTOR. Well, let me just say quickly you were not in the room. But I can say this, I hope, very quickly. We believe it would open up fast track to other amendments. That, in fact, we need the fast track to go through as quickly as possible in order to show real momentum towards the Uruguay Round. That is why we do not want——

Senator CHAFEE. Well, I think your fears are totally justified.

Let me ask you my final question. What would we think in the U.S. if the EC or Japan, Australia—let us take Australia with whom we have a trade surplus—enacted their own Super 301 and came charging after us, alleging that we were keeping out their beef, for example? How would you as our USTR feel about that?

Ambassador KANTOR. Let me just point out, we have the largest open market in the world. That does not mean it is completely open as you know and I know. The European Community already has a sequel to 301 where they could act if they found that we were operating in violation of that regulation, is what it is. It is not a piece of legislation.

Therefore, we could hardly—we might argue about the facts of the case. We might negotiate over the particular situation. But we would not have any philosophical, at least I would not have any philosophical, problem with it.

Senator CHAFEE. Okay. Well, thank you very much.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you.

Thank you very much, Mr. Ambassador.

Ambassador KANTOR. Thank you, Mr. Chairman.

Senator BAUCUS. That helped create a very strong record for the passage of 301 this year, Super 301 this year. Thank you.

Ambassador KANTOR. Thank you. I thank the committee.

Senator BAUCUS. Our next witness is to include a panel—Mr. Willard Workman, vice president, international, U.S. Chamber of Commerce; Lori Garver, executive director of National Space Society; and Stephen Lovett, vice president, international trade, American Forest and Paper Association, Washington, DC.

I appreciate each of you for coming this afternoon. I regret, I have to be down at the White House before 4:00 so I will not be as lengthy with this panel as the preceding panel. Each of you have 5 minutes and I encourage you to summarize your statements in those 5 minutes. Your complete statements will be part of the record.

First, Mr. Workman.

STATEMENT OF WILLARD A. WORKMAN, VICE PRESIDENT, INTERNATIONAL, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. WORKMAN. Thank you, Mr. Chairman. I would like to submit my statement for the record and I will just summarize it very quickly.

The U.S. Chamber supports renewal of Super 301. We have been a strong supporter of the provision, dating back to 1987 and 1988. In 1989 we were the only large general purpose business organization to a month before the deadline identify the practices in the countries and publish them much to Mrs. Hill's consternation, I might add.

So we think it is a good tool and we think it, as has been noted before, has had a demonstrable beneficial affect. We would also point out that in its use there has been market openings, but zero retaliation has occurred. And retaliation is something that you do not want to happen. That is the last resort.

In the case of trade retaliation, it is the companies that lose sales and monies; and actually it is the government that takes in addition revenue. So it has the exact opposite affect.

We think that it should be a simple extension or renewal of the old legislation. And we are concerned that there would be some effort to beef it up or expand it. The language and the balance that was struck in the statute in 1988, we think, is about right.

That is not to say that we are totally happy with the way Super 301 was implemented. We disagreed with the Bush administration over the way they applied it, particularly vis-a-vis Japan. We thought it was too sector specific and that Super 301 was designed to go after more trans-sectoral barriers.

We would like to see the President retain a certain amount of discretion as is in the old law. And we also think that where you identify an unjustifiable practice, or where there has been a clear violation of an existing trade agreement, then in that instance retaliation should be mandatory.

Our members feel very strongly about this. It is very simply we have a contract with a client or with a customer. If they do not meet the contract or they violate the contract, then there are provisions in the contract to hold them liable.

So it is as simple as, you made a deal, you should live up to it. If you do not live up to it, you should suffer the consequences. So with that, I would argue and hope that the committee can get Super 301 through this year and we will be glad to support you in your efforts.

Thank you.

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

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

Senator BAUCUS. Ms. Garver?

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

Ms. GARVER. The National Space Society believes that the Super 301 trade proceeding against the Japanese Government regarding satellite procurement was very effective, ultimately frustrating Japanese attempts at unfair trade practices.

This was important, we believe, for two primary reasons. First, of course, the aerospace industry and the U.S. satellite providers had contracts worth several hundred million dollars. But most importantly, we believe, is that this stopped a clear effort to dominate the satellite market through unfair trade prices. For the time being, competition is now on a market basis.

It is this, the health of the industry and market competition that most interests the National Space Society. If you look historically at the industry you lead to the conclusion that the Japanese were, indeed, pursuing a classic targeting strategy with regard to satellite hardware.

The Super 301 action followed up with vigilant enforcement has caused the Japanese Government to reconsider this targeting effort. The importance of free and fair trade along market lines is particularly important in the commercial space area because the competition provides incentives for producers to lower costs and increase capabilities. This is, of course, not common in the space field generally.

The National Space Society is a membership organization with a long-term view of human colonization of space. And, of course, we are never going to be able to do this unless the cost of doing things in space declines substantially.

Market forces are the only clear way to cause this to happen. And although a regime of government subsidies might in a short term lower prices, over the long term when they have driven out the market competitors, undoubtedly the cost will rise.

Super 301 in this context, therefore, has kept market competition alive. The few recommendations we have for your committee for your consideration are that some mechanism like a Super 301 is vital to maintaining free market competition.

Without an international enforcement body, only unilateral national action can maintain free trade in the face of discriminatory and unfair practices by other governments. Such unilateral tactics are not protectionism, as discussed earlier, if negotiated properly.

We must not forget, however, that tools like the Super 301 are dangerous. They require skill and sensitivity or they may, in fact, make things worse. We would remind the administration and the Congress that the USTR should continue to utilize individuals with considerable expertise in each of the affected areas before they go into a Super 301.

The ability to enforce negotiated agreements cannot be overemphasized. The last time I appeared before this very subcommittee I was testifying about the importance of enforcement of the U.S.-China launch services agreement. Without the political will necessary to enforce these existing agreements, they become useless.

The United States must lead in fair trade not only for others but for ourselves. In the space area, this means the burdensome and

inefficient contracting system must be reformed for the goal of ultimately benefiting the customer as in commercial arenas.

And finally, we have to recognize that unfair foreign trade practices are only half the problem. U.S. industries must remain competitive in their own right. Balanced policies should include combined market procurement pull with a well-designed research and development push.

Again, from our point of view in the space arena, far too little is being invested in the new technologies with commercial applications. If the U.S. fails to invest in research and development in these fields, no amount of trade legislation will save its industries.

In conclusion, we believe that the Super 301 action in this area was successful. The USTR did a very good job in negotiating an agreement and perhaps more importantly was able to follow through with the political will necessary to enforce the agreement.

This action was, of course, popular with the industry as they gained hundreds of millions of dollars in new contracts. But most importantly was the retention of the importance of the industry for the long term. This is why we believe it is important that your subcommittee continue to look into the issue. Your oversight of space-related trade issues has been important for our industry in the past and we hope it will continue to be in coming years.

Thank you.

Senator BAUCUS. Thank you very much, Ms. Garver.

Mr. Lovett?

STATEMENT OF STEPHEN M. LOVETT, VICE PRESIDENT, INTERNATIONAL TRADE (WOOD), AMERICAN FOREST AND PAPER ASSOCIATION, WASHINGTON, DC

Mr. LOVETT. Thank you, Mr. Chairman, for this opportunity to testify today on the usefulness of Super 301 to improve market access.

Super 301 legislation sends a strong signal to our trading partners that the United States will aggressively pursue free and fair trade by providing a vehicle to address trade distorting practices.

Super 301 has benefited the U.S. wood products industry enormously. My testimony draws from the industry's experience with Super 301 and is given on behalf of the solid wood industry, which very much supports your legislation to reauthorize Super 301.

The work of USTR, USDA's Foreign Agricultural Service, and the Department of Commerce on Wood Products Super 301 agreement has been outstanding, as have been their other efforts to gain market access for our industry.

The wood products agreement contains guidelines for managed implementation, and broad objectives which require that measurable affects occur without establishing numeric targets. This was done both to ensure full implementation, and to ensure results in the marketplace.

Setting up a committee to ensure that an agreement is implemented is not managed trade and it is not protectionist. Establishing benchmarks, measuring against benchmarks and publishing results does not in itself distort trade and is not protectionist. It does help us identify problems so that they can be resolved in the future.

As for the wood products agreement, we have not yet seen the anticipated results, neither a shift to the consumption of value-added wood building products or the increased use of wood products in construction.

If compliance is identified narrowly as the implementation of the letter of the agreement, then Japan is in compliance in all but a limited number of areas, which are, nonetheless, crucial. However, if compliance is identified as achieving measurable results in the marketplace, then Japan is not clearly not in compliance.

For this reason, the forest products industry applauds the administration's new framework for trade negotiations with Japan, which makes the performance of existing agreements a priority objective. This will keep the pressure on Japan and ensure that existing agreements will be monitored, measured, and enforced, and that they bring about the anticipated affects in the marketplace.

Addressing the concerns raised in my written testimony, however, will require a new and broadened effort if the results anticipated from the Wood Products Super 301 agreement are to materialize.

It is becoming increasingly clear that the official Tokyo community which has long opposed liberalizing the wood products market is taking a very short and narrow view of the agreement. With the tacit approval of official Tokyo, the timber, housing and industrial housing sectors are acting to impede the trade generating potential of the agreement. It appears that the exclusive harmony between Japan's public and private sectors is working to insure that marketplace is not significantly disturbed.

Mr. Chairman, as you know, tariffs are a key element of the Wood Products Super 301 agreement and tariff elimination is the key to expanding the Japanese market for wood building products. While strictly speaking, Japan is not out of compliance in this area since the Uruguay Round has not yet been completed, nonetheless high Japanese wood products tariffs and tariff escalation continue to be the major obstacle to improve market access in Japan.

Our industry appreciates and strongly supports Ambassador Kantor's determination that full market access for our industry in Japan ultimately hinges on the elimination of Japan's wood products tariffs.

This summer, in fact in the next 3 weeks, we are looking forward to the fruits of many years' diligent efforts on your part and on ours to achieve this result. For us, a successful Uruguay Round gives us the best shot at having a successful Super 301 agreement.

Before I close, I would like to point out another important but often overlooked element of our industry's experience in Japan, the complimentary role of trade policy initiatives and market development.

The significant negotiating objectives reached under Super 301 were only possible because of long-term market development that preceded the negotiations. This market development helped identify barriers and make those barriers visible.

The forest industry companies and trade associations have asked me to urge you in the strongest terms to support the continuation of the programs managed by USDA's Foreign Agricultural Service. They want you to know that the FAS programs are a model of how

the best talents of government and the private sector can work together effectively to compete in the international environment. These programs should be supported, expanded and duplicated in other areas of government and are not deserving of the criticism and negative press that today threatened to tarnish their image and undo their effectiveness.

Mr. Chairman, that concludes my remarks. Thank you very much for the opportunity to testify.

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

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

Senator BAUCUS. I would like to ask any of you who wish to answer, what is your response to the sometimes stated point that now that we have arguably a more aggressive administration with respect to trade matters that we do not need Super 301 anymore because regular 301 is sufficient?

Mr. WORKMAN. Well, I would echo what Ambassador Kantor said: "Policy environment in the Executive Branch may change over time." There may be a different President from a different party in power.

From the business community's point of view, we would like to see this stabilized. We would like to have it certain. That is why we want a permanent extension of Super 301.

Senator BAUCUS. Does it not also give the President cover? That is, when he, thinking with heads of State in other countries, who make a complaint about the United States, we are concerned about a trade imbalance we have with that country, he can say, well, that is the law. Super 301 is on the books and it forces me to when the date comes up to look at trade barriers.

I mean does that not give the President a little bit of cover?

Mr. LOVETT. I certainly think it does, Mr. Chairman. It also gives industry cover. Companies do not want to sue their customers. During the Wood Products Super 301, in fact, our companies were able to forge closer ties with their Japanese buyers and improve the whole environment while the trade negotiations were going on. The overall result was very positive. Self-initiation by the government allowed that to happen.

Senator BAUCUS. That is an excellent point. Because I run into that comment, that concern from various sectors in out business community. They are that concerned. They do not want to be publicly associated with going after their customers. It has a very, very limiting, a very cooling affect on their ardor to try to redress a trade barrier.

Ms. Garver?

Ms. GARVER. Yes. I would like to second that for the aerospace industry who also has their aerospace satellite markets. And then a lot of them will also have airplane or launch markets and they do not like to confuse them. So it gives them that necessary cover as well.

Mr. WORKMAN. Well, if I would just interject here. That is one of the differences that we had with the Bush administration about the way they implemented the bill. That is, that they chose in the case of Japan to focus on satellites, forest products and supercomputers.

Senator BAUCUS. That is specific.

Mr. WORKMAN. It is our view, and it remains our view, that there is sufficient authority for that to be done under regular 301. Super 301, it is our understanding, and I think it is in the legislative history, was to go after trans-sectoral barriers. Things like the distribution system that affect a variety of different industries.

We would hope that in the legislative history around Super 301 and its renewal or extension that that would be made even clearer to this and future administrations.

Senator BAUCUS. Mr. Workman, I would like you to again just basically say why the U.S. Chamber of Commerce favors Super 301. There are some who might think that the American business community was not too concerned about this. That is, the American business community, multi-national companies in particular, can do business any place around the world where it gets the greatest rate of return.

And after all, capital no longer respects boundaries very much and travels at the speed of light to where it gets the greatest rate of return. Why is the American Chamber of Commerce, which includes membership that could do business anywhere in the world, set up factories in other parts of the world, still want Super 301?

Mr. WORKMAN. Well, certainly that segment of our membership, the big multi-national, is interested in the market opening features and potential and success of Super 301. But the larger segment of our membership, the 210,000 companies that employ less than 100 workers, their interest is as potential exporters.

Now, granted, most of them are not currently but interest is growing geometrically, particularly as it relates to the NAFTA, their interest is having more markets to go to. The recession bothered a lot of medium-sized companies because they saw themselves as not having spread their risk across several national markets and they got hurt by it.

So they are now looking beginning with the NAFTA potentially to spread that risk. Super 301 would open up more markets for them that are now closed to them potentially. So that is the interest. It is the medium-sized, the growing number of U.S. medium and small exporters that are interested in it.

Senator BAUCUS. Essentially, therefore, the Chamber sees Super 301 as definitely market opening? It is not in any way protectionist?

Mr. WORKMAN. Oh, absolutely.

Senator BAUCUS. The Chamber sees it as a tool to help open markets generally around the world?

Mr. WORKMAN. Absolutely. And that may sound strange to some people because ultimately when you have a failure, when you have a breakdown in market access negotiations, it is not the governments that get hurt; it is the companies that get hurt. They lose their sales.

Senator BAUCUS. Thank you.

Senator Grassley?

Senator GRASSLEY. Yes. I have one question of this panel. But first, Mr. Chairman, do we have an opportunity submit questions in writing to Mickey Kantor?

Senator BAUCUS. Absolutely. You could do so until the close of business today if you could.

[The questions appear in the appendix.]

Senator GRASSLEY. One question, I would like to have all of you answer whether or not you, or your respective organizations supported Super 301 when it was initially passed.

And then if you did not support it, I would still want to know if you think it worked out with regard to whatever the environment and expectations there was at the time of passage.

Then if you did support it, whether or not it fulfilled your expectations for the 2 years or so that it was in operation.

Mr. WORKMAN. Well, given the environment in 1987 and 1988, and if you will recall we had then something called the Gephardt amendment, as an alternative to the Gephardt amendment, and as a serious market opening tool, the U.S. Chamber supported Super 301 very strongly in 1988.

In terms of our expectations and about how well has it worked, we freely acknowledge, especially in the case of Korea and to a lesser extent with Brazil and Japan, that there was significant progress made because of Super 301. That more progress could have been made? Yes, we think there could have been more progress.

A lot of the issues, for example, that fell under this structural impediments initiative with Japan, it was our view that they should have been under the time table and structures of Super 301 rather than SII. So, yes, we think it could have been improved on its execution.

Senator GRASSLEY. Before you two answer, a follow-up, please. Was your support for Super 301 as a defensive measure against the Gephardt approach or do you think you were supporting 301 just because of the context of 301?

Mr. WORKMAN. It was both, to be honest about it. The Gephardt amendment we viewed as counter productive and quite frankly would not work. Super 301 we thought was more likely to have a positive effect.

Senator GRASSLEY. Ms. Garver?

Ms. GARVER. Yes. I think the National Space Society's expectations were more than met by the Super 301. We would have supported it early on had we known how effective it would be in the satellite area especially.

Super 301 we feel has not been utilized enough, I must say, because as I mentioned in my remarks that the agreement we have with the Chinese in the launch area has not been self-initiated and we feel it should be. So the Super 301 really in the satellite procurement area has exceeded our expectations.

Senator GRASSLEY. So you have been a convert to the proposition?

Ms. GARVER. I think early on we would have supported it had we been involved in the process.

Senator GRASSLEY. All right.

Ms. GARVER. Since the National Space Society, does not represent aerospace industry, per se. We represent the public who cares about the space program. People would like to see really the costs of getting into orbit and of launching things reduced. And, therefore, more of the aerospace industry might have supported it

early on, but we were not interested until we saw how effective it was.

Senator GRASSLEY. Mr. Lovett?

Mr. LOVETT. Yes, I think that we would be correctly characterized as converts. There was frustration over the Gephardt amendment back then. The solid wood industry did however support the Omnibus Trade Act. I think that there was some ambivalence about how Super 301 would go forward.

However, shortly thereafter we became converts for several reasons. Everyone knows what is going on in the Pacific Northwest right now. I think that Super 301 has proven to be a critical tool to help give our industry the best markets the world has to offer right now. This can help parts of our industry stay viable and healthy.

Ours is a cyclical industry which needs overseas markets in the off cycle. Further, there are product nitches that do not get the top dollar in the United States that they do overseas. Super 301 helped us open up those markets. And although we are perhaps opportunistic converts, but nonetheless we are very supportive.

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you all very all very much. This has been very helpful. The hearing is adjourned.

[Whereupon, at 3:38 p.m., the hearing was adjourned.]

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APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Thank you Mr. Chairman: I am pleased that you have chosen to hold a hearing this afternoon on the issue of Super 301. I was pleased to cosponsor your bill S. 1850 during the 102nd congress and was just as pleased to co-sponsor the legislation again when you introduced it early in the 103rd congress.

I believe that Super 301 is an excellent tool that our trade negotiators must have in their arsenal. Although the record on Super 301 has had mixed reviews over the course of the last few years, no one can doubt that when used, constructive results have been achieved. In fact, one could easily conclude that when cases are initiated under Super 301, procedures seem to get more attention here and abroad.

I believe that Super 301 tends to move U.S. trade policy in the direction of fair and free trade, while at the same time aggressively eliminating unfair foreign trade practices. Nevertheless, as strong as I feel about Super 301, I feel just as strong that it should not be considered as part of the legislation to extend fast-track for the Uruguay Round.

The Uruguay Round is important not only for reasons of market access, but also for the protection and enforcement of intellectual property rights, foreign investments, services, and agriculture. As important as Super 301 is, failure of the Uruguay Round would profoundly work against U.S. export interest far in excess of Super 301 on its own merits.

I hope we will be able to pass Super 301 during this session of Congress. Passage would assure us of procedures and time limits for determining whether an unfair practice existed and, if so, whether to retaliate.

Mr. chairman, I support you in the legislation you have sponsored, I applaud you on this hearing, and I look forward to working with you on the passage of Super 301.

Thank you Mr. Chairman, I look forward to the testimony of our witnesses.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, I have always opposed the "Super 301" concept. It is contrary to our own common law practices that nullify any contract made under duress. Telling sovereign nations and trading partners that they will see things our way—"or else," is language more suited to dealing with *military threats,* than with a problem of foreign commerce.

In fact, some nations cannot make the political and structural adjustments that create instant market access for foreign products. To respond with the "big stick" approach—and *that* is precisely what Super 301 does—is to suggest that *might,* in this case, a big market, makes *right.*

SUPER 301 IS UNNECESSARY

Mr. Chairman, what makes Super 301 worse is that we don't even need it. The procedures available under *Section* 301 have shown themselves adequate where there is the will to use them.

Within the past year, the threat of retaliation under *Section 301* brought trade settlements with both the European Community and, even more dramatically, China. China agreed to a whole new regime of intellectual property protections.

China, the EC countries and other nations understand well that the U.S. market is no longer up for grabs without reciprocal fair play. The Bush Administration con-

veyed that message with consummate patience. Ambassador Kantor, to his great credit, has left heavy footprints in many negotiation corridors signalling the end of U.S. patience on unfair trade practices.

SUPER 301 IS POTENTIALLY COUNTERPRODUCTIVE

In fact, Mr. Ambassador, you have been *so* successful, that I will argue that Super 301 threatens to undo the impressive record that you are continuing to compile.

CASE OF JAPAN

For example, in formulating this week's trade framework talks with the Japanese, they have outrightly rejected agreements that allow for unilateral actions under Super 301 as well as the current Section 301. You are presented with the making of an excellent compromise: Section 301 stays, Super 301 is not enacted.

Further, I don't think you can ignore what's happening in Japan right now. The effects of the recession, and the sudden shift of Japanese attention away from the U.S. and the EC, and toward Asia and the rest of the Pacific Rim, are creating new market access for U.S. companies unimaginable just two years ago.

Japan is divesting U.S. investments and disengaging from ventures here. This action is being taken in part to shift to better economic targets in Asia, but also to return capital to the depressed real estate and banking sectors. But, in the meantime, many U.S. companies are getting access to the Japanese market. This has a double benefit: not only are they on the edge of the Japanese consumer explosion, but they are also becoming better positioned, as venture partners with Japanese companies, to ride the tide into Japan's Asian market expansion. This is very much like the pattern of U.S. foreign investment successes in Europe in the generation following World War II.

In 1992, major foreign investments in Japan more than doubled over the previous year. There were 43 new foreign, corporate investment initiatives, compared to 18 in 1991, of which half were U.S. companies. By contrast, Japanese companies cut their investments in the U.S. in half in 1992, making $1.9 billion of acquisitions against $3.9 billion in 1991.

Let me add that Japan is not the only country limiting investment in the United States. Foreign direct investment in the United States in 1992 was at a level of $30,9 billion, down from $152.1 billion from the previous year, a loss of 40 percent. At a time when we are considering renewing the most powerful unilateral trade retaliation weapon in our arsenal, many of our most important trade partners are sending subtle messages to us. Let me hope, Mr. Chairman, that we're reading our own mail.

CASE OF INDIA

Like Brazil and Japan, India, too, was named a priority country under the Super 301 provisions then in place in 1989. Japan and Brazil eventually made arrangements with the U.S. to be removed from the list, Japan having said initially that it would not negotiate while facing a threat of retaliation.

India is a more intriguing situation. It was targeted for such priority practices as trade-related investment barriers and trade barriers related to the insurance sector of the financial services industry. India has a common law heritage, with many of its most distinguished barristers having been trained in England. India understands well the immorality of negotiation under duress and, rightly in my judgment, refused to negotiate under threat of retaliation.

How did the administration handle India? It did not impose retaliatory sanctions, arguing that India was making progress in the multilateral forum, that is, the Uruguay Round.

Again, Mr. Chairman, the cases of India and Japan show the futility of Super 301.

SUPER 301 A "MANDATORY SENTENCE"

Mr. Chairman, I suggest that continued tough negotiation technique, absent the threats implicit in Super 301, is a better route to follow.

Finally, Mr. Chairman, think of Super 301 as something analogous to mandatory sentencing—which compels action by a sanctioning authority once wrongdoing is established. The authority has no discretion, action must be taken. Super 301 is even worse than mandatory sentencing in two regards. First, the discretion to negotiate settlements could be fixed to a definitive time limit.

Second, Super 301 actions could be initiated under very vague circumstances. In one bill introduced in the previous Congress, Super 301 could be imposed on the basis of *threatened* rather than *actual* trade injuries.

I thank the chair for its courtesy in inviting my remarks.

PREPARED STATEMENT OF AMBASSADOR MICHAEL KANTOR

Mr. Chairman:

It is my pleasure to appear before you to discuss the "Super 301" provisions of U.S. trade law. As you know, the President endorsed "Super 301" during the Presidential campaign, because he believed it had been an effective market-opening tool.

As President Clinton stated in his American University speech in February, and as I have stated, somewhat less eloquently, before this Committee, the principal objective of the Administration's trade policy is to open markets and expand trade. Our manufacturers, farmers, service providers and workers are all world-class competitors. It is our job to insure that they have open markets to sell in. We are committed to opening markets multilaterally where possible, and bilaterally where necessary. We see those efforts as complementary and reinforcing, just as this Committee, and the Congress, did when it wrote the 1988 Trade Act. You spelled out ambitious objectives for the Uruguay Round, but you also provided the USTR with strengthened tools to open markets bilaterally.

We are aggressively pursuing both paths to market opening. In Paris two weeks ago, at the OECD meeting, we continued our intensive efforts with the EC, Japan and Canada to put together an ambitious market access package prior to the G-7 summit in Tokyo in early July. Along with my EC counterpart, Sir Leon Brittan, I believe that a big market access package is the key to creating the momentum to successfully complete the Round. We have significant work and hard decisions facing us on market access in the coming weeks, but I am optimistic that our trading partners share our commitment, both in terms of objectives and timing. Assuming we are successful in our efforts on market access, hard negotiations will remain over the improvements that we and others are seeking to strengthen the draft Final Act in significant areas. To mention some examples, we need improvements in areas such as intellectual property to address the concerns of our entertainment industry; in the environment-related texts to respond to concerns on environmental protection; in the rules on unfair trading practices such as dumping and subsidies, which are enormously important; and on the institutional provisions for the post-Uruguay Round GATT.

The "Super 301" Process

The Super 301 provisions of the Omnibus Trade and Competitiveness Act of 1988 required the Administration in 1989 and 1990 to identify "trade liberalization priorities," including "priority practices" and "priority countries." Priority practices were those the elimination of which was likely to have the most significant potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent. Priority countries were to be identified taking into account U.S. export potential and the number and pervasiveness of the barriers listed in the National Trade Estimates Report.

In 1989, Super 301 resulted in the identification of specific practices which, in addition to being serious barriers to trade, were emblematic of broader areas of concern to the global trading system. Six priority practices from three priority countries were identified, and six section 301 investigations were initiated on those practices: regarding Japanese government procurement of satellites, supercomputers, and imports of wood products, Brazil's import licensing practices, and India's insurance market barriers and trade-related investment measures. The results of Super 301 are well-known: the credible leverage of Super 301 was quite effective in opening foreign markets, not just to U.S. exports but for the benefit of all nations.

It is an extremely valuable process for the Administration to focus intensely on identifying foreign trade barriers that pose the greatest impediment to U.S. exports. Identification of such practices puts significant pressure on the countries maintaining those practices to open their markets in critical areas. While many of our trade disputes are resolved without resort to U.S. trade laws, others require more concerted action. It is valuable for our trading partners to know that their significant trade barriers will be the subject of section 301 investigations, with the objective of eliminating those barriers. For these reasons, the Administration supports reenacting a Super 301.

Nevertheless, the Administration continues to believe that Super 301 legislation should not be attached to a bill to extend fast track authority for the Uruguay Round. We proposed a "clean" fast track bill, free of terms or conditions, so that we can preserve our negotiating flexibility, and so that we can expedite the legislative process in order to conclude the Round this year. It is necessary to have fast track authority in advance of the Group of Seven meeting this July so that the real outstanding issues, rather than our domestic process, remain the focus of attention in completing the Round.

Nor do I believe we can obtain fast track approval by July if Super 301 is attached as an amendment, because it is unlikely to be the only amendment. However, I do believe that the Administration's policy toward Japan, complemented by all of our other initiatives, should lead you to conclude that USTR and the Administration are moving aggressively to identify and counter those barriers that are most detrimental to the export of U.S. manufactured goods, agricultural products and services.

Section 301 Review

When I became USTR, not a single on-going section 301 investigation was under way, despite the fact that section 301 is such an important tool for opening foreign markets. On April 8, I asked the professional staff at USTR to review and report on the most significant barriers to U.S. products in their areas of responsibility, with an eye toward self-initiation of section 301 investigations.

The staff's review produced a number of practices maintained by a number of countries that we are examining further, including some practices that may be inconsistent with trade agreements. Some of those barriers are already being addressed under the "Special 301" provisions on intellectual property protection. On April 30, I identified Brazil, India and Thailand as "priority foreign countries" under Special 301, and on May 28, USTR initiated an investigation of Brazilian intellectual property practices.

I also established special action plans for Taiwan and Hungary, under which these countries risk being identified as "priority foreign countries" by July 31 unless they implement measures to protect and enforce intellectual property rights. Moreover, ten additional countries will be subject to "out of cycle" reviews of their intellectual property practices. As these reviews will be held throughout the year, U.S. companies will not have to wait until next April for additional efforts by our foreign trading partners.

Others of those barriers are being addressed under the government procurement provisions in Title VII of the 1988 Trade Act, such as the EC's discrimination against U.S. producers of heavy electrical and telecommunications equipment, and Japan's discrimination against U.S. providers of construction services. We are also monitoring Japan's adherence to the terms of the 1990 supercomputer agreement.

We are continuing to assess the remaining barriers, and to prioritize them in relation to our other activities, both in terms of resources and whether they are significant enough to justify resort to self-initiated section 301 investigations. We will complete our review by July 15. This intense review of trade barriers has the same objectives as would Super 301 if it were presently on the books.

Parallel Efforts

Japan Framework. Multilateral efforts to expand U.S. exports and promote global growth will be complemented by our bilateral talks with Japan in the context of the Japan Economic Framework. What underlies the framework is the idea that Japan is paramount in our trading relations today and that it must be a central focus of our overall trade strategy. We have also spent an enormous amount of time, in an interagency process, identifying those priority barriers that we intend to attack: sectoral and structural. We are developing a concerted strategy which builds on our experiences to date, and I think you will be impressed with the thought that has gone into it.

When President Clinton and Japanese Prime Minister Miyazawa met in April, they agreed that our two countries needed to build a new partnership. The President explained that this would stand on three pillars -- our security alliance, the economic relationship, and cooperative efforts to address global issues. He also stressed that the economic pillar of the relationship urgently needs attention.

In order to address our economic imbalances, the President and the Prime Minister agreed to develop a framework for trade and economic negotiations to be announced at their next meeting in Tokyo in July during the G-7 Economic Summit. The goal would be to strengthen the world trading system by promoting growth and open markets.

Without a fundamental change in Japan's economic interaction with the United States and its other trading partners, support for maintaining an open and vibrant multilateral trading system was likely to erode.

Japan presents us with two central economic problems -- a huge current account imbalance and the lack of adequate market penetration by foreigners. First, Japan's large and continuing global current account and trade surpluses endanger the world economic system. The major asymmetry in the international economy resulting from Japan's large surplus must be rectified.

Second, Japan imports a far smaller share of manufactured products than do other industrialized countries. In 1991, U.S. manufactured good imports represented 6.9 percent of our GDP. In the rest of the G-7, excluding Japan, the average was 7.4 percent. In Japan, it was only 3.1 percent. This status as an importing outlier among the industrialized countries cannot be sustained.

Solution of this dual problem needs a two-part effort -- macroeconomic and microeconomic policies -- and our proposed Framework contains both elements. On the macroeconomic side, there must be a substantial decline in Japan's current account surplus measured as a percentage of GNP and a substantial increase in manufactured goods imports measured as a percentage of GNP.

On the microeconomic side, we intend to work for the removal of sectoral and structural barriers to trade, with a focus on areas where Americans would be highly competitive if the Japanese market were open. Let me stress that the results of any sectoral or structural negotiations must be applied to all foreign competitors, not just to the United States.

We believe it is critical that multiple benchmarks be established in order to monitor progress in improving market access. We hope to agree with Japan on these benchmarks, but, if we cannot, we reserve the right to establish such benchmarks ourselves in order to evaluate progress in an objective manner.

We will be pursuing a sophisticated strategy that depends on the interrelationships among macroeconomic, structural, and sectoral policies. Our goal is to encourage Japan to take more imports, not limit its exports. We want an expanding global trading system, and this requires a Japanese market, the second largest in the world, that is truly open to foreign competition.

In addition to these initiatives, the Administration has taken, and continues to take, steps on a number of bilateral fronts to open foreign markets, including those related to intellectual property protection and non-discriminatory government procurement.

Intellectual property protection. Mr. Chairman, since you are a principal author and advocate of the "Special 301" statute, there is little that I can tell you about its operation. I mention it, however, because the annual National Trade Estimate (NTE) report was the first step of the Super 301 process, when Super 301 was on the books. Our careful review of the NTE report this year indicated that many of the barriers most detrimental to U.S. exports were in the intellectual property area. Consequently, as I mentioned, we have been attacking those barriers through the Special 301 process, fighting to protect and advance the copyright, patent and trademark interests of U.S. companies.

As in past years, the Special 301 process, the April 30 deadline, and the possibility of identification combined to prompt action in many countries. Ten countries actually enacted new patent, copyright or trademark legislation between January and April 1993, ranging from Taiwan to Cyprus to Russia. In a number of other countries, including those with some of the worst pirates such as Korea and Thailand, there has been a significant increase in enforcement activities. We regard Special 301 as a high priority and are committed to pursuing our goals aggressively throughout the year, rather than letting countries

conclude they only have to act just prior to April 30. We are currently scheduling "out of cycle" reviews of ten countries, which will allow us to press forward with our objectives with Taiwan, Thailand, Brazil, India, Hungary, Argentina, Venezuela and others.

Government procurement. Title VII of the 1988 Trade Act requires USTR to identify discrimination against U.S. companies in the government procurement practices of our trading partners. Like Special 301, Title VII has led to the identification of some of the most costly barriers to U.S. exports, such as the European Community's (EC's) discrimination against U.S. producers of heavy electrical and telecommunications equipment and Japan's discrimination against providers of construction and construction-related services. As you know, we have been vigorously pursuing our case against the EC, with gratifying results in the area of heavy electrical equipment. In telecommunications, we have just imposed sanctions because of the continuing discrimination. Having cited Japan under Title VII for construction, we will again be involved in intense negotiations on this longstanding problem for U.S. companies. We have also used Title VII to focus public attention on persistent problems in foreign procurement that do not meet the statutory criteria for identification, or that are being pursued under other trade remedies. For example, we have noted problems with Japan on computers and supercomputers and anticipated actions to resolve them.

Conclusion

The Administration has a concerted strategy to move aggressively to identify and counter those barriers that are most detrimental to the export of U.S. manufactured goods, agricultural products and services, using the tools already available to us. Trade is central to the President's vision of America's future in the world, and our market-opening strategy is central to expanding trade. I would be happy to answer questions on that strategy.

RESPONSES OF AMBASSADOR KANTOR TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Question:

My question to you relates to the fact that I saw no mention of agriculture in the statement of areas that need improvement. Does this mean that you are satisfied with what's been achieved thus far in the area of agriculture, or that you feel much still needs to be done with the agriculture draft and lack of its mention was a simple oversight?

Answer:

With exports at $40 billion annually and representing over 10 percent of our total exports, agriculture is a critical part of our export strategy for this country. President Clinton is committed to the successful completion of the Uruguay Round, and agriculture continues to be a major item in the Uruguay Round.

Our farmers can compete with anyone in the world as long as tariff and non-tariff import barriers to agricultural products begin to come down. We believe that opening of markets around the world to U.S. agricultural products is a key factor in making a successful Uruguay Round agreement.

In the statement you mentioned, I was attempting to provide examples, not an exhaustive list, of issues that need to be resolved in order to complete the Round. The Uruguay Round market access negotiations are addressing three general areas -- agriculture, industrial products and services. Each of the areas is critical to the success of the Uruguay Round as far as we are concerned. We intend to get a good agreement in each of the areas. The failure in any one of these areas would be a negative blow to a successful Uruguay Round.

Question:

Although I support Super 301 and have co-sponsored it twice, I am curious as to what factor(s) specifically swayed you and the Clinton Administration to take an opposite point of view from the Bush Administration?

Answer:

As indicated in my testimony, we believe that it is an extremely valuable process for the Administration to focus intensely on identifying foreign trade barriers that pose the greatest impediment to U.S. exports in critical areas. It is also valuable for our trading partners to know that their significant trade barriers will be the subject of section 301 investigations, with the objective of eliminating those barriers.

We also believe Super 301 was effective when used in 1989. The United States reached agreement with Japan to open its markets for government procurement of satellites and supercomputers, and imports of wood products; and Brazil eliminated its import bans and changed its import licensing regime. The initial results were encouraging:

-- The first Japanese government satellite procurement following the conclusion of the 1990 agreement was awarded in December 1991 to a U.S. firm: two communications satellites valued at about $600 million. In September 1992 a U.S. firm was awarded a $70 million satellite contract.

-- Since concluding the supercomputer agreement, U.S. firms have bid on 6 contracts and won 3 bids. (Prior to the agreement, only 3 of 43 supercomputers installed in Japanese public sector market were U.S.-made.) We are continuing to monitor closely progress under this agreement.

-- Significant progress has been made in reducing market access barriers in Japan as a result of the wood products agreement; implementation to date has been marked by a high degree of cooperation.

-- U.S. exports to Brazil increased in 1990-92 by 11.8 percent from $5.1 to $5.7 billion, making Brazil the 17th largest U.S. export market.

In addition, Super 301 provided useful leverage with Korea and Taiwan. During the months leading up to Super 301 identifications in 1989, bilateral negotiations with Korea resulted in agreements to liberalize conditions for foreign investment and to eliminate import bans and other measures to protect local production. In addition, some progress was made with Korea on import restrictions affecting agricultural products. Similarly, the authorities on Taiwan agreed to develop an action plan that opened the market on Taiwan to all exporters, especially through reductions in tariffs on manufactured goods.

Question:

Could you also give me an example of what action you would take differently under section 301 from the previous administration?

I would like to use section 301 to enforce U.S. rights under all our trade agreements -- multilateral and bilateral -- and to exercise leadership in opening foreign markets for the benefit of all exporting countries, not just the United States. In my view, the United States must be a leader in global market-opening initiatives, just as we have been in seeking adequate and effective protection and enforcement of intellectual property rights abroad. As the President declared in his speech at American University, "For now and for the foreseeable future, the world looks to us to be the engine of global growth and to be its leaders."

RESPONSE OF AMBASSADOR KANTOR TO A QUESTION SUBMITTED BY SENATOR HATCH

Q. "INDIA AND JAPAN, AMONG OTHERS, HAVE EMPHASIZED THEIR DISTASTE FOR SUPER 301 - PERHAPS FOR OBVIOUS REASONS SINCE THOSE STATES HAVE INDISPUTABLE TRADE BARRIERS AGAINST U.S. EXPORTS.

"BUT, YOU STILL HAVE TO NEGOTIATE WITH THEM. WOULDN'T THE RENEWAL OF SUPER 301 MAKE THAT MORE DIFFICULT?"

A. We believe that Super 301 has been a valuable market opening tool. The successful completion of the GATT Uruguay Round promises to be the most effective means to address many of the foreign trade barriers facing U.S. goods and services. We also see the Japan Framework as a means to address a number of other trade barriers of concern to us in Japan. We are committed to opening markets multilaterally where possible and bilaterally when necessary. We see these efforts as complementary and reenforcing and will continue to select in regards to any particular barrier the most effective of the tools that are available to us to achieve our objective.

PREPARED STATEMENT OF SENATOR CARL LEVIN

Thank you Mr. Chairman and members of the Senate Finance Subcommittee on International Trade for giving me the opportunity to testify today on the Super 301 bill I have introduced with Senator Daschle, The Fair Trade Enforcement Act of 1993, S. 301.

The Super 301 law tried to *require* action, and produced some results when it was used. But it was abandoned in practice in 1990, the second and final year it was in effect. The U.S. Trade Representative's 1990 Report on Foreign Trade Barriers included 20 pages of Japanese trade barriers, 12 pages of Canadian barriers, and another 12 pages of EC barriers, yet only India was identified in 1990 for continued negotiations under Super 301. And when no agreement was reached with India, no action was taken as a result.

We don't need to put back in place something which had little effect. We don't need to re-create the wheel either, but we do need to improve it. Super 301 is the basis of a good idea, but in practice it proved with very few exceptions to be a toothless tiger. It is not enough to simply renew it. We must strengthen our negotiators' hands and increase our chances of success in opening closed markets by requiring action when fundamental trade fairness demands it.

President Clinton's "Putting People First" acknowledges the need for stronger trade law. It calls for passage of a "stronger, sharper Super 301." He also expressed concern about manufacturing jobs in the U.S. during the campaign and pledged to work to create more manufacturing jobs.

Senator Daschle and I have introduced S. 301 which will take us in that direction. President Clinton will hopefully welcome our bill because it is precisely what he asked for: a "stronger, sharper "Super 301." It extends the old Super 301, but strengthens it in some key respects. Our bill would give him important new leverage when negotiating trade agreements because it provides *specific criteria* to ensure that the law is used each year there are major barriers to our products, and it requires equivalent restrictions should the negotiations fail to eliminate the identified barriers. This legislation is intended to boost America and defend American jobs the way every other government defends its jobs.

Under our proposed Super 301 procedure, each year, the United States Trade Representative must identify as priority practices major trade distorting barriers or unfair practices in the agricultural, manufacturing and service sectors, and must also include as priorities for correction trade distorting barriers and unfair practices of any country with a trade deficit which accounts for 15 percent or more of the total U.S. merchandise trade deficit. Once priority practices are identified, an investigation and negotiations are initiated in each case.

This legislation seeks to open markets unfairly closed to our products by making a strengthened version of Super 301 a permanent part of our trade law. It would require the administration to attempt to negotiate away the most harmful trade barriers to American agriculture, manufacturing, and services. If negotiations fail to eliminate those barriers, this bill would require equivalent restrictions be placed on that country's products equivalent to the cost of those discriminatory practices to our businesses. The requirement for equivalent restrictions is the key to this bill. They are essential to successfully eliminating the trade barriers that cost the U.S. so many jobs. It is the threat of treating others as they treat you which provides the market opening leverage.

There is clear precedent for using equivalent restrictions to change behavior. There is a little known office in the State Department called the Office of Foreign Missions. Its role is to remove costly and unfair restrictions on American diplomats abroad. It does this by placing equivalent restrictions on the other country's diplomats in the United States. For instance, when Ecuador placed a 25 percent tax on telephone charges at the American Embassy in Ecuador, we put an equivalent tax on telephone charges at the Ecuadoran Embassy here. As a result, Ecuador's foreign ministry has recommended that the tax be dropped.

Similarly, when the Netherlands applied their VAT tax to the United States mission in the Netherlands, we responded by applying our sales tax to their mission here. The Netherlands has now agreed to reimburse us for the VAT tax.

Requiring equivalent restrictions is a common sense policy which we should surely apply to restrictions on American exports and not just to restrictions on American diplomats. Our policy of placing equivalent restrictions on foreign diplomats when they place restrictions on ours has not started a diplomatic war; it has usually eliminated the restrictions.

Under our bill the administration may waive the equivalent restrictions only with congressional approval. This process differs from former Super 301 which allowed the administration a waiver for economic or national security reasons. Our bill further differs from former Super 301 in that our legislation would *require* equivalent restrictions if negotiations fail. Our bill effectively uses access to our market to dramatically strengthen the hand of our negotiators because the individuals on the other side of the table will know for the first time what will happen if the practices are not eliminated.

Mr. Chairman, American manufacturers and farmers are ready, eager and able to compete, but it is up to the Government to ensure that they have access to foreign markets. Our trade deficit is growing not shrinking, particularly our trade deficit with Japan. In 1991, $43.44 billion of our total trade deficit was with one nation—Japan. In 1992, the U.S. trade deficit with Japan grew to $49.4 billion.

Ensuring that other countries trade fairly will go a long way to helping bring our soaring deficit into balance. We won the cold war by being strong. We will not win the economic contest ahead by keeping one hand tied behind our back. This legislation will help ensure that we have a strong trade policy, based on fairness, and the necessary tools to ensure a strong economic future.

SIDE-BY-SIDE COMPARISON OF THE DASCHLE-LEVIN 301 BILL AND SUPER 301

	Section 301	Super 301	Stronger/Sharper Super 301 (Daschle/Levin)
Initiation	Industry petitions USTR or USTR self-initiates. USTR may accept or reject industry petition alleging discriminatory practices.	USTR required to identify countries with barriers and discriminatory practices which ***in their judgment*** had a major effect on U.S. exports.	Each year, USTR must identify priority discriminatory practices and major barriers to trade & ***must*** include any country so engaged if it accounts for 15% of our trade deficit.
Action	Quite broad discretion as to whether a discriminatory practice or barrier will lead to any action.	Same as Section 301.	USTR ***must*** apply equivalent restrictions in above circumstances (subject to waiver).
Waiver	For economic or national security.	Same as Section 301.	Equivalent restrictions may only be waived with Congressional approval of an alternative action plan.

PREPARED STATEMENT OF STEPHEN M. LOVETT

Thank you very much, Mr. Chairman, for the opportunity to testify today on the need for Super 301 to improve market access for U.S. industry through the elimination of foreign trade barriers. Such access is critical if internationally competitive U.S. industries are to fulfill their export potential, and if the United States is to continue to fulfill its role as the leading advocate of trade liberalization.

My name is Stephen Lovett. I am International Vice President (Wood Products) of the American Forest & Paper Association. AFPA represents approximately 550 member companies and related trade associations (whose membership is in the thousands) which grow, harvest, and process wood and wood fiber, manufacture pulp, paper and paperboard products from both virgin and recovered fiber, and produce solid wood products. As a single national association, AFPA represents a vital national industry which accounts for over 7 percent of the total U.S. manufacturing output.

The industry employs some 1.4 million people, and ranks among the top 10 employers in 46 states, with an annual labor cost of about $46 billion. The forest and paper products industry generates sales of $200 billion annually. As a significant exporter to global markets, with exports of $17 billion in 1992, the industry makes an important contribution to the U.S. balance of payments.

This testimony today is solely on behalf of the solid wood sector of the forest products industry.

INDUSTRY SUPPORT FOR SUPER 301

The United States commitment to trade liberalization has been critical to post-war international prosperity. The American public cannot be expected to support this policy indefinitely unless we feel that other countries, notably Japan, the EC, Korea, and others, are playing the game by the same rules and opening their markets as much as the United States has. Super 301 can play a role in that regard.

Our industry has greatly benefitted from trade liberalization and our government's efforts to support market

access. My testimony discusses our industry's Wood Products Super 301 Agreement (which was concluded in 1990), and draws conclusions from that experience. The following points need to be emphasized:

1. For the wood products industry, Super 301 legislation has moved us toward the goal of free and fair trade with Japan, which means improved market access for U.S. products.

   - Cases initiated under Super 301 procedures seem to get more attention here and abroad. Super 301's strict timetable for investigation and negotiation, and ultimately, if necessary, retaliation, if proven trade barriers are not removed, do seem to encourage results when carefully applied.

   - Under normal 301 procedures, businesses which wish to take action against trade barriers are put in the extremely difficult position of having to sue their customers. If the U.S. government takes the lead by self-initiating 301 cases, industries do not face as serious a problem.

     This was the case with the wood products Super 301. The U.S. government took the lead in the negotiations and the implementation process, and the industry has been able to forge closer ties with Japanese customers through joint promotion projects, and so forth, a satisfactory, even gratifying, result.

   - Legislation would insure an annual process for evaluating U.S. trade strategy based on the National Trade Estimate of Foreign Trade Barriers. This would give affected industries an easier, more accessible, and hopefully cheaper vehicle to address barriers.

   - Only trade actions with clearly established procedures and deadlines tend to be executed in a timely manner.

2. This industry favors a Super 301 approach that moves U.S. trade policy in the direction of fair and free trade, aggressively eliminating unfair foreign trade practices.

   - The proper role of government is to level the playing field for U.S. companies doing business overseas, not to carve up markets, or close U.S. markets to exports from abroad. We would want any approach incorporating Super 301 to be solely market opening.

3. On the other hand legislation which seeks to manage levels of trade, without regard to the competitive conditions in an industry or the existence or nature of barriers, or in other ways distorts rather than opens markets, could have a deleterious effect on trade and even invite retaliation from our trading partners. Therefore:

   - Super 301 should tend to be used when other alternatives have been exhausted, for specific unfair barriers that cannot be otherwise readily resolved.

   - The need for Super 301 should be diminished, and atrophy through disuse, if ever a strong and reliable GATT dispute mechanism based on concrete rules of liberalization is implemented.

   - In fact, Section 301 already requires utilization of GATT dispute resolution procedures in circumstances involving exclusively GATT rights. Super 301 should be used for trade practices which cannot effectively be resolved through the GATT.

- Trade deficit percentage triggers, specified forms of retaliation, and so forth should be avoided.

4. In order to insure results, however, the U.S. could insist that trade agreements contain provisions for (1) managed implementation, (2) language that describes how the agreement should perform in the marketplace based upon reasonable expectations and industries' relative competitiveness, and (3) a description of how results can be measured. This approach could be an effective means to achieve results oriented trade liberalization in a sector in which simple quantitative targets might not be appropriate.

5. Therefore any Super 301 legislation should be a simple extension of the legislation contained in the 1988 Trade Act.

- In addition, extending the time period between the National Trade Estimate Report and the Super 301 initiation deadline would make the process more workable, as the one month deadline is difficult for both industry and government.

- Allowing the Senate and House Trade Committees the opportunity to submit petitions would invigorate the process, although mandating that USTR accept committee petitions could overly politicize the process.

INDUSTRY SUPPORT FOR THE TRADE AGREEMENTS COMPLIANCE ACT

This industry supports legislation -- such as the Trade Agreement Compliance Act -- or other action that encourages effective implementation and enforcement of trade agreements. Our experience under the U.S.-Japan Wood Products Super 301 Agreement, for example, demonstrates the necessity of constant monitoring and diligent enforcement by the Administration to ensure that agreements achieve their purposes.

This legislation, acting in tandem with Super 301, provides the necessary vehicle to take action against trade barriers which have not yielded to industry efforts and government negotiations, but remain stalled by foreign governments, or by U.S. government agencies which do not want to push foreign governments to remove unfair barriers or live up to their agreements.

STATUS OF THE WOOD PRODUCTS SUPER 301 AGREEMENT

This section examines how the Wood Products 301 Agreement is performing.

In order to insure that the Wood Products Super 301 Agreement would bring the desired results, U.S. negotiators insisted that the Agreement contain:

- first, language that describes how the agreement should perform in the marketplace:

  "The objectives of the Measures are to achieve substantial improvement in market access and to encourage the use of wood products in Japan." (Section V.A.1.).

  "With the implementation of the Measures, it is the intent of the GOJ that the use and importation of wood products and wood building systems will be facilitated..."(Section V.A.2.).

- and second, provisions for the managed implementation of the Agreement:

  "For the purposes of overseeing the implementation of the policies, procedures, and actions set forth in the measures, resolving disputes and problems arising under it, and facilitating trade in wood products as well as increased use of wood products, a Wood Products Subcommittee of the U.S.-Japan Trade Committee will be established." (Section V.B.);

Implementation is a means to an end, not an objective. The objectives set forth in the Wood Products Super 301 Agreement are increased wood utilization in construction and increased Japanese imports of value added products.

The Wood Products Agreement contains broad targets of principle, in other words, requirements that measurable effects occur, without necessarily putting target numbers on the effects. Nonetheless, the failure to see numerical results measured against a benchmark would be a failure to achieve the results of the broad targets of principle established by an agreement. Thus the evaluation that the Agreement is successful is not a matter of hitting a numerical target, but rather that the wood products market has opened as anticipated, in certain measurable ways.

Mr. Chairman, I would recommend this approach as a means to manage trade liberalization in a sector, if pursued effectively and aggressively by U.S. negotiators, especially when working with sectors or issues for which quantitative targets may not be appropriate.

The marketplace has not yet shown the effects anticipated from the Wood Product Agreement's implementation. We have seen neither a significant shift to the consumption of value added wood building products, or the increased use of wood products in construction in Japan. While it may simply be too soon to tell because the Agreement has not been fully implemented, it appears that in some areas Japan actively seeks to frustrate the performance of the Agreement, hoping that we will overlook or forget this failure to satisfy an international commitment because they have fulfilled most of the letter, if not the spirit, of the Agreement.

To summarize the current status of the Wood Products Super 301 Agreement: the "letter" of the agreement is generally being implemented on schedule, with significant portions already implemented. This summer with the "zero for zero" in the Uruguay Round and final actions on certain critical areas of the building codes, the agreement could be fully in place.

If compliance is defined narrowly as implementation of the "letter" of the agreement, then Japan is in compliance in all but a limited number of areas, which are, nonetheless, crucial. These are:

- Tariffs: While strictly speaking Japan is not out of compliance in this area since the Uruguay Round has not yet been completed, nonetheless high Japanese wood products tariffs and tariff escalation continue to be the major obstacle to improved market access in Japan.

  Our industry appreciates and strongly supports Ambassador Kantor's determination that full market access in Japan ultimately hinges on the elimination of Japan's wood products tariffs. Ambassador Kantor has pointed out that the Japanese agreed, as part of the Super 301, to significantly reduce tariffs in the Uruguay Round. Nevertheless, the Super 301 agreement was not, either explicitly or implicitly, a negotiation

of Uruguay Round results. USTR is seeking to go beyond the bi-lateral commitments and has been pressing very hard for the complete elimination of all wood products tariffs in the Uruguay Round.

Japan needs strong foreign pressure to overcome opposition to eliminating tariffs on wood products. Continued strong pressure from the U.S. government will enable Japan to eliminate tariffs in this area and thereby achieve results beyond those required, but not yet implemented, by the Wood Products Agreement.

- Performance based codes and standards: The Super 301 Agreement states that: "It is the policy of the GOJ that, in principle, building standards and requirements should be performance based and that, where the performance of wood products or wood building systems is equivalent to that stipulated by these standards and requirements, there use should be permitted."

  Only limited progress on conversion to performance based standards or on the development of new areas for wood utilization in construction has been made. Such changes, consistent with practices elsewhere in the world, could have real, significant impacts on the consumption of wood products in Japan and shipments from the United States. For example: wood frame construction continues to be limited to three stories--four or more stories should be permitted (at least in non-fire zones); wood use in interiors continues to be prescriptive rather than performance-based; garages protected by fire separations should be permitted beneath wood apartment buildings, and so forth.

- New Product Certification: Although the section of the Agreement dealing with Japan Agricultural Standards and incorporation of products into the building codes has generally been fulfilled, excessively long approval times for some new products, open certification, etc. continue to be a problem.

- Subsidies contravene the Wood Products Super 301 Agreement: Counterliberalization subsidies have increased, indicating that the GOJ has taken steps to nullify the effects of the Wood Products Super 301 Agreement. Japan's subsidies to its forestry sector approach US$3 billion a year, of which at least US$1 billion falls into the category of subsidies to Japan's wood products manufacturing sector. These subsidies are not in accord with the OECD Statement on Positive Adjustment Policies of 1982, and thus contravene Section VI of the Wood Products Super 301 Agreement.

  These subsidies complement government/industry programs to forecast, and effectively allocate, consumption and imports, with the overall result of the maintenance of Japan's sawmilling industry and the stable consumption of Japanese domestic timber at 30 million cubic meters a year, in spite of the fact that the U.S. and Canadian industries are more cost competitive, and large swings in total consumption, from 90 to 110 million cubic meters annually, exist.

However, if compliance is defined as achieving the objectives of the agreement, then Japan is clearly not in compliance because the objectives have not been reached.

It is becoming increasingly clear that the official Tokyo community which has long opposed liberalizing the wood products market is taking a very short and narrow view of the Agreement.

Further, and apparently with the tacit approval of this element of official Tokyo, the timber, housing, and industrial housing sectors are impeding the trade generating potential of the Agreement. Among the evidence for this is:

- A perception by official Tokyo that when the letter of the agreement is met, their responsibility ends. In fact, the Agreement calls for further liberalization. In his letter of transmittal to USTR Carla Hills, Ambassador Murata stated: "In addition as described in the Attachment [the Wood Products Super 301 Agreement], my Government has decided to establish a process to examine possibilities for further modification of the rules and regulations governing wood construction, while maintaining high levels of safety, with the aim of expanding the use of wood products in Japan."

- Pejorative interpretative language about wood frame construction has been developed by several very influential groups convened by the Ministry of Construction. If this language persists, and gains even unofficial credence, it could seriously dampen the markets opened by the 301 Agreement.

- Official Tokyo is turning critical aspects of Agreement implementation over to quasi official bodies and the private sector. For example, a report of the fire test on three story wood apartments, a document widely to be studied by fire officials, has been politically prejudiced in an unscientific manner against wood.

THE FOREST PRODUCTS INDUSTRY SUPPORTS THE ADMINISTRATION'S NEW FRAMEWORK FOR TRADE NEGOTIATIONS WITH JAPAN

An American Forest & Paper Association press release of June 11, 1993 described the U.S. forest products industry's support for the Administration's New Framework for trade negotiations with Japan. Association President Red Cavaney said that "President Clinton's initiative represents bold leadership that can put the important U.S.-Japan relationship on a new footing, both in terms of the broad economic relationship and specific market access initiatives."

"The President's new approach will develop 'multiple benchmarks' to measure progress in achieving market access commitments between the two countries," Cavaney said. "We welcome a results-oriented framework which, sensibly looks to the adoption of yardsticks to measure market penetration."

Mr. Cavaney stated that, "We do not believe that the President's framework proposal is a call for 'managed trade'. We do believe that, in order to move the U.S.-Japan trade relationship forward in a significant way, a cooperative effort by both governments is needed. We applaud the President's strong leadership in proposing an innovative way to achieve the promise of past agreements -- like the paper and wood products agreements -- and those to come in the future.."

GETTING RESULTS FROM THE WOOD PRODUCTS SUPER 301 AGREEMENT

In order to keep the pressure on Japan to make existing agreements perform, full compliance with existing agreements that have not been completely successful has been made a centerpiece in the Administration's important new Japan policy. In addition to a list of new strategic industries, a list of industries with existing trade agreements whose performance will be monitored, measured, and enforced will be included in the New Framework for Japan. These industries have been named; if the U.S. Government does not recognize existing agreements as important, Japan certainly won't.

The Wood Products Super 301 Agreement will require an expanded U.S. commitment if the expected results are to materialize. The concerns expressed herein are of a nature that requires a new and broadened effort for which the structure currently operating under the Wood Products Super 301 Agreement is not suffic'snt.

The objectives of the new effort follow:

- If we are to see results in the marketplace, the perspective of the Japanese Government toward this Agreement must be changed; implementation of specific commitments is not an end in itself, but a beginning, given the GOJ's broader commitments to open markets and reform of the building code system.

- Official Tokyo has the well documented ability to effect changes in the private sector. We must seek their intervention, especially in this area, because they control codes and standards, and can influence both code and building officials throughout Japan as well as the private housing sector. In addition, the history of trade barrier elimination shows the need for a proactive effort at liberalization.

- The evaluation of success cannot be judged by the thoroughness of implementation of specific provisions but rather by changed behavior, which is measurable against certain established benchmarks: wood utilization, market share of three story wood apartments, value-added imports as a share of total imports, and so forth.

- The Japanese housing sector must be the focus of the attention. How can we bring more affordable housing through construction efficiencies readily and broadly available to the average consumer?

- We cannot depend upon the "market" to make this happen because the long-history of barriers, and the harmonious and exclusive interrelatedness of Japan's public and private sectors, in the past have operated to insure that the existing order of the marketplace has not been significantly disturbed without pressure.

The potential created by U.S. government industry efforts in Japan, including the MOSS process, Super 301, and the industry's intensive decade long promotion program in partnership with USDA, will be realized if this final step can be successfully made.

Success should not be measured in terms of implementation of specific requirements, but in terms of post implementation impact upon behavior. Success must be defined in measurable terms such as increased market share, increased wood utilization in construction, and so forth. Post implementation attention is critical to overcoming Japan's ability to coordinate obstacles to market opening in spite of negotiated agreements. The harmonious but exclusive interrelatedness of Japan's public and private sectors will defeat us if we are not diligent and forceful.

EVALUATION OF U.S. GOVERNMENT EFFECTIVENESS IN THE WOOD PRODUCTS SUPER 301 CASE

I would like to draw attention to the office of the U.S. Trade Representative, USDA's Foreign Agricultural Service, and the Department of Commerce for their outstanding work towards implementing the Wood Products Super 301 Agreement, and other efforts to gain market access for our industry around the world.

Assistant U.S. Trade Representative Don Phillips and Joe Papovich of the Office of the U.S. Trade Representative; Larry Blum, Director, Forest Products Division and Mike Hicks, both of USDA's Foreign Agricultural Service; and Agricultural Minister Counselor Jim Parker and Dave Miller both of the American Embassy in Tokyo; have been intimately involved in every step of the negotiation and implementation process. We mention them because they deserve to be commended for their strong active involvement and success in obtaining confirmation from Japan during each step of the implementation process.

BACKGROUND OF THE WOOD PRODUCTS SUPER 301 AGREEMENT

Governments usually engage in trade distorting practices because it appears economically advantageous for 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 as they move on to other important business, or stubbornly refuse to implement if they think they can get away with it.

This is why an extension of the Super 301 legislation is so important. It sends a strong signal to our trading partners that the United States will continue an aggressive drive for free and fair trade. It also provides a vehicle to address distorting trade practices.

Our industry is export oriented, internationally competitive, and has worked hard to promote our products overseas. Our quality is excellent and our products are price-competitive. Export sales of wood products have doubled to $6.7 billion since 1986, and now run a trade surplus after having been a net importer for much of the 1980's.

Our exports would be far greater, with the potential to increase by at least several billion dollars, if foreign trade barriers were eliminated. Improved market access is extremely important to our industry for it would allow our industry's inherent competitiveness to operate to reduce the U.S. trade deficit.

Our industry has been deeply involved in developing the Japanese market for value added wood products for over a decade. Combined with individual company marketing programs, the U.S. wood products promotion effort in Japan has been enormous. Industry association promotion activities, in cooperation with USDA's Foreign Agricultural Service, have included trade shows, Japanese language publications, and demonstration projects, of which the Summit House, which coincided with the MOSS negotiations, is the most famous example. We now have another project called Super House which has set a precedent for the provisions in the 1990 Wood Products Super 301 Agreement permitting broader use of wood. Industry representative offices in Japan, seminars, trade missions, and new involvement in Japanese technical committees, round out our efforts.

Despite our industry's efforts and its competitiveness, however, it was estimated in the latter half of the 1980's that Japanese tariff and non-tariff barriers thwarted U.S. industry promotion efforts by several billion dollars in value added products annually. The inclusion of 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 did not 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 for help, which resulted in wood products being named as one of three sectors to be addressed under Super 301 negotiations with Japan.

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 package of measures that will eliminate many, but not all, trade barriers. More importantly, the industry and 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 commitment of USTR, Commerce, and USDA to full implementation has been the key to keeping implementation on track. Specifically, writing the U.S. Government into the Agreement, to be involved in implementation, monitoring, and enforcement action, brings certainty to a process that is sometimes stalled by confusion or lack of will in the interagency process, or by foreign government intransigence, any of which can result in a failure to successfully implement trade agreements.

We would like to point out that continued U.S. Government involvement after the Wood Products Super 301 Agreement was signed was deemed important because of the complexity of the Wood Products Agreement, which involves standards and technical barriers to trade. The continued involvement by USTR and USDA which have chaired and supported frequent technical meetings and monitored progress and provided a periodic injection of political will, has assured steady progress on implementation towards the deadlines stated in the Agreement. We are not implying that there are no problems, but we do believe that we will get there as long as the political fire is kept hot. If that heat were removed we fear that we would all be grey and cold before the markets open.

An extension of the Super 301 legislation, coupled with the Trade Agreement Compliance Act, will both stimulate more aggressive trade action against unfair trade barriers as well as allow the private sector to trigger monitoring and enforcement action. These two provisions, acting in tandem, provide the necessary vehicles to take action against trade barriers which have not yielded to industry efforts and government negotiations, but remain stalled by foreign governments, or by U.S. government agencies which do not want to push foreign governments to remove unfair barriers or live up to their agreements.

LONG TERM MARKET DEVELOPMENT COMPLEMENTS TRADE POLICY INITIATIVES

I would like to point out another important, but often overlooked element of our industry's experience in Japan: the complementary role of trade negotiations and long term market development efforts, and the effectiveness of coordinated trade policy and marketing initiatives.

It is important to recognize that a trade policy initiative like Super 301 can be made more successful in all phases (investigation, the negotiation, implementation, and achievement of market goals) if it is enhanced by a highly visible marketing initiative.

The significant negotiating objectives reached under Super 301 were only possible because of a long-term market development effort that proceeded these negotiations and which continues. This market development effort over the past ten years has built the technical foundation among Japanese industry and housing officials of the safety and performance of multi-story/multi-unit wood frame construction. Without this enormous effort we would never have been able to achieve our negotiating objectives.

The same is true if we are to gain the potential trade increases made possible by the Super 301. A concerted and long term marketing effort will be needed to educate builders, code and housing officials and eventually home-buyers.

USDA FOREIGN AGRICULTURAL SERVICE MARKET PROMOTION PROGRAM

The wood products industry's enormous commitment to promotion in Japan is largely a result of its partnership with USDA's Foreign Agricultural Service.

Forest industry companies and trade associations have asked me to urge you in the strongest terms to support the continuation of full funding for USDA's Foreign Agricultural Service including the Market Promotion Program (MPP) and the Foreign Market Development Program (FMD). They want you to know that MPP and FMD have worked and continue to work for the forest products industry.

- Wood products exports have more than doubled since 1985, from $3 to $6.7 billion.
- Dramatic export growth has helped create over 103,000 direct and indirect forestry sector jobs.
- A survey of the hardwood industry showed that exports helped hundreds of small mills stay in business during rough economic times. These companies point to MPP and FMD as the key programs that help them survive during one of the most severe recessions our industry has experienced.
- These programs establish the foundation for significant future export gains.
- FAS programs are revenue earners. Employment gains from the incremental increase in exports since 1985 have brought an estimated $345 million in increased annual Federal tax revenues from the wood industry alone, more than the cost of the entire MPP and FMD program.
- These programs are not a giveaway; our industry contributes significant resources, over $5 million in 1992. And, for every dollar of FAS funds spent, U.S. value-added wood products exports increased by $260. That's 260 to 1.

MPP and FMD do not benefit individual companies directly, but rather create demand overseas through generic promotion. This indirectly helps companies, especially small ones, that would otherwise not participate in export markets. Let me give two examples of how the MPP and FMD programs have helped American businesses.

Exports of value added hardwood products increased from $462 million in 1985 to $1.2 billion in 1991. Without strong and growing export markets fueled by the MPP program, hundreds of hardwood producers across the country would have gone out of business.

None of these companies received MPP or FMD funds, but they greatly benefitted from the generic marketing programs that made manufacturers and customers around the world aware of the advantages of American hardwoods. Even the smallest producers, many of whom do not export directly, have benefitted from the price and consumption stability that is a direct result of strong export markets stimulated by MPP and FMD.

Mr. Chairman, large forest products companies have also been positively affected by the MPP and FMD programs. I want to make it clear that no MPP or FMD funds have been used for branded

forest products promotion. Georgia Pacific provides a good example of a large company that dramatically changed its marketing strategy because of the effectiveness of the MPP and FMD programs. Ten years ago wood exports were not a high priority for GP. Recently however, the company allocated significant resources to international markets. GP's vice president for sales and marketing said that this decision was based upon the proven effectiveness of FAS generic marketing programs. He said that industry successes with FAS programs gave GP the evidence needed to push forward on their own.

Now let me give two brief examples of what these programs have accomplished in foreign markets:

(1) In 1987, the American hardwood Export Council began a program in the UK featuring seminars, trade shows, a mobile exhibit, articles, specifiers guides and other promotions. Between 1986 and 1990, U.S. hardwood exports to the U.K. increased 172%, from $33 million to $90 million. These gains have been especially beneficial to small companies, helping them through the tough times of the recession.

(2) Programs combating extensive trade barriers to finished wood products have helped increase exports to Japan. Lumber exports alone rose 219% from $200 million in 1985 to $637 million in 1990. Promotion activities have included demonstration projects, of which the American Plywood Association's Summit House is the most famous. APA is now cooperating technically and sponsoring the construction of Super House, a multi-story multifamily structure. These and a multitude of other industry promotions have created a positive climate for change, and supported the successful resolution of the Wood Products Super 301, which USTR estimates will yield an additional $1 billion annually in U.S. wood products exports.

In summary the MPP and FMD programs have changed traditional overseas buying habits, helped overcome foreign trade barriers, and laid the foundation for future export gains in new markets for wood frame construction. MPP and FMD have united our industry to work together in a single export program, and made it an effective international competitor, creating enthusiasm and a level of commitment not seen before.

Why has all this happened? Because the programs work. MPP and FMD are cost effective. They operate through a sophisticated management and control system which includes strategic planning and evaluation.

But most important, the FAS programs are a model of how the best talents of government and the private sector can work together effectively to compete in the international environment. These programs should be supported, expanded, and duplicated in other areas of government, and are not deserving of the criticism and negative press that today threaten to tarnish their image and undo their effectiveness.

Mr. Chairman, that concludes my remarks. Thank you very much for the opportunity to testify on the need for improved market access which has been, and will increasingly be, so important to our industry.

ment or adjust their income stream is constrained. This limited flexibility has been compounded by the precipitous decline in interest rates over the past several years.

Those in this middle income group who derive a greater share of their income from Social Security will be hit harder than higher income retirees because a much greater percentage of their overall income will be subject to new taxation. The dollar amount of their income tax increase can be as high as $1,000.

After state taxes, local property taxes, higher out-of-pocket costs for health care and the normal costs of maintaining a household are accounted for, another several hundred to a thousand dollars in new tax liability represents a significant loss.

Social Security represents only 20 percent of the income of filers with incomes between $50,000 and $75,000. For tax filers with incomes of $75,000 or more, Social Security is less than 8 percent of their total income, about half the amount they derive from either taxable interest or capital gains. In short, as beneficiaries' incomes rise, the importance of Social Security declines and the impact of a tax increase on higher income beneficiaries is less onerous. As a result, a tax described as affecting only "the wealthy" or "better off" elderly falls hardest on middle income beneficiaries.

Table A illustrates how this proposal creates additional inequities and, in essence, creates "cliffs." For example, if you compare single filers with $5,000 in Social Security benefits and $30,000 in other income to those with the same amount of Social Security and $50,000 in other income, the tax increase is the same even though their total income is different. Individuals with $100,000 in other income and $5,000 in Social Security benefits have a tax increase that is only $52 more than beneficiaries with one-third their income. Further, a $5,000 difference in other income (from $25,000 to $30,000 in total income) results in a tripling in the amount of new taxes for some single filers. (Married filers experience comparable tax increase inequities.)

IV. THE DISPROPORTIONATE SHARE

For elderly taxpayers, particularly the 4.3 million people (2.6 million "tax filing units") currently in the 15 percent tax bracket, the additional Social Security tax is a tax increase not borne by any other non-wealthy group under the Administration's package. In fact, the Administration's budget plan is based on the idea that the bulk of individual income tax increases should fall on those with the highest incomes—except as it affects older persons.

In particular, the Administration proposes to add a higher 36 percent marginal tax rate that would only apply to taxable income in excess of $140,00 for a couple and $115,000 for an individual. The Administration's plan would lift the current $135,000 cap on wages subject to the Medicare Hospital Insurance (HI) portion of FICA payroll taxes. To further improve the progressivity of the income tax structure, the Administration's proposal would also place a 10 percent surtax on taxable income in excess of $250,000.

These tax changes, which affect fewer than two percent of taxpayers, are intended to ensure that the bulk of individual tax increases are to be paid by those who are affluent. The Administration has taken great pains to insulate the bulk of middle-income taxpayers from income tax increases.

In contrast, older taxpayers would face significant tax increases at substantially lower income levels. The *average* income tax increase as a result of the Social Security change for individuals in the $30,000 to $40,000 AGI range is over 18 percent (See Chart 5). Many elderly couples under $50,000 of AGI will be experiencing tax increases over $1,000.

In addition to these benefit tax increases, older Americans are subject to all other tax increases (most notably the energy tax), as well as Medicare premium increases under the Administration's budget plan. These increases, which will not be offset for most older taxpayers, already reduce the available income of older Americans.

Other tax consequences will result from the proposal to tax 85 percent of benefits. For older taxpayers living in the many states that directly tax Social Security or piggyback on the federal income tax system, state tax liability will rise. By including a greater percentage of Social Security in AGI, other deductions based on AGI (particularly the medical deduction) will be reduced. The compounding effect results in an even greater tax bite on a group which is clearly middle income, *not* wealthy.

In addition to the actual dollar increase, the proposal also raises marginal tax rates, particularly for older workers, to excessive levels. It is actually possible—taking into account income taxes, payroll taxes, and the Social Security earnings limit—to lose money by earning extra income. While the hypothetical case may be unusual, it underscores the excessive marginal tax rates that will occur. In effect,

these rates will discourage additional earnings, and will act as an impossible hurdle for some desiring additional employment income.

Raising the taxable percentage of Social Security will also exacerbate the marriage penalty that exists with the current thresholds for single and joint filers so close together.

In total, older middle-income taxpayers are the only non-wealthy group of individuals that will experience a large tax increase under the budget plan. Almost half of these taxpayers are in the lowest tax bracket. For those closest to the current thresholds, the resulting tax increases from the Social Security proposal may be larger in both percentage and dollar terms than the tax increases on those in the proposed higher 36 percent tax bracket.

Some may argue that because of the existing partial exclusion of Social Security benefits from taxation, the tax burden of older Americans is too low. AARP believes that this is not the case. The *average* 62 year old retiree has a life expectancy of about 20 more years. Without wages, even a middle income retiree will have an uphill fight to remain middle income. As life expectancy increases, older persons will be hard pressed to maintain their standard of living over a longer lifetime. A reduced tax burden at retirement (of which an important component is the partial exclusion of Social Security) is wholly appropriate to maintain income adequacy as income declines (See Charts 1 and 2). Indeed, the Social Security cost-of-living adjustment (COLA), which helps older persons keep up with inflation, is nullified for these middle income taxpayers. Under the proposal, middle income older persons will pay in taxes an amount that roughly equals the value of 2 COLAs *every year*. These middle-income older persons are not likely to see their incomes grow in the future, but will experience an erosion of assets and buying power over time.

A reduced overall tax burden at retirement is appropriate and a long-time feature of the tax code. However, recent changes in the tax code have led to increased taxation of middle income older Americans. The Tax Reform Act of 1986 eliminated the extra exemption for persons over the age of 65 (replacing it with a smaller increased standard deduction for non-itemizers), and also cut back on one of the most important deductions for older persons, the medical deduction (raising the threshold from 5 percent of AGI to 7 1/2 percent of AGI). In addition, the Social Security Amendments of 1983 require that tax-exempt interest income be included in calculating the amount of Social Security benefits that is taxed. This provision, which may push beneficiaries over the tax thresholds, essentially requires (albeit indirectly) these taxpayers to pay tax on their tax exempt income. Given these recent changes, and the need for older persons to maintain an adequate income stream over their remaining lifetimes, the current tax burden at retirement is not "too low."

Finally, the overall thrust of this package is deficit reduction through shared sacrifice. Proponents of this package have attempted to limit the impact on the middle income taxpayer and ease the burden on lower income taxpayers. A Social Security tax increase that significantly impacts middle income older taxpayers falls far short of these goals.

V. THE RATE FOR TAXING SOCIAL SECURITY BENEFITS

When the National Commission on Social Security Reform (the Greenspan Commission) analyzed proposals to tax Social Security benefits, considerable attention was devoted to the appropriate percentage of benefits that should be subject to taxation. The level was set at up to 50 percent because the employee paid half of the contributions with after tax dollars. Those who are taxed on their benefits understand this rationale, even if they do not always agree with it.

The Greenspan Commission reviewed proposals to tax 85 percent of benefits. The higher taxation level was advanced because it would more closely conform the tax treatment of Social Security benefits with the taxation principles that apply to private pensions. However, Social Security is different from a private pension. It is an almost universal social insurance program established by the government to provide income protection to workers and their families if the wage earner retires, becomes disabled or dies. Given Social Security's unique features, it is not necessary to have parallel treatment to private pensions.

Post-Greenspan Commission analyses of the 85 percent level suggest that it may be too high. The Congressional Budget Office (CBO) has pointed out that the 85 percent level reflects the nominal value of payroll tax contributions and fails to adjust them for inflation. CBO suggests that a 60 percent rate would take inflation into account. A recent analysis by former chief actuary, Robert Myers, notes that the 85 percent rate represents double taxation. He recommends an initial 80 percent rate (for nominal, not inflation adjusted dollars), followed by a declining percentage until it reaches 72 percent in the next century.

Raising the percentage of benefits taxed represents a benefit reduction for 22 percent of current beneficiaries and for many of those approaching retirement. It heightens the anxiety of today's workers about the availability and value of their Social Security retirement benefits. While the "value" of Social Security for current workers is often understated because disability and survivor benefits are omitted from most analyses, workers' concerns about the impact of these proposals upon their retirement income security are understandable.

VI. THE PUBLIC'S REACTION

AARP asked the ICR Survey Research Group to track public opinion about the Administration's overall deficit reduction package and about the taxation of benefits proposal in particular. As Chart 7 indicates, opposition to the increase in taxation of benefits is substantial among *all age groups.* (These findings are consistent with other polling data). Chart 8 shows that opposition to this proposal has increased over time. Furthermore, as depicted on Chart 9, even among those who find the package acceptable, opposition to this proposal remains considerable. The taxation of benefits proposal is becoming increasingly unpopular. Americans of all ages understand how this proposal reduces the economic well-being of current and future beneficiaries.

VII. CONCLUSION—THE NEED FOR MODIFICATION

Many older Americans understandably are worried about the income they would lose if this proposal becomes law, and they have expressed this both to the AARP leadership and to their elected officials. Generally, they are not asking to be exempted from a deficit reduction package; they are simply asking that the sacrifice be commensurate with other taxpayers and with their ability to pay now and in the future.

To the 67 year old widow whose income in 1994 will be $26,809, plus Social Security benefits of $9,145, a $625 tax increase (an 18 percent income tax increase) represents a significant loss. When she reads that a non-elderly professional with triple her level of income will not have an income tax increase, it is little wonder that she feels she is being asked to sacrifice more than her fair share. For the couple that recently called AARP, with about $38,000 in annual income plus nearly $13,500 in Social Security, an almost $700 tax increase (a 14 percent income tax increase) means they will have less money to help support their disabled daughter and her husband.

While AARP supports "fair share" for deficit reduction based on the concept of shared sacrifice, the Association strongly believes there is a need to cushion middle income older persons from disproportionate tax increases. While some could argue that the 8 percent of beneficiaries affected by the $25,000/$32,000 thresholds established in 1983 were comparatively affluent, few would argue that a tax increase that affects 22 percent of beneficiaries—almost half of whom are in the 15 percent tax bracket—is a tax only on the rich.

Options for change have already begun to surface. The Senate is currently on record in support of the Lautenberg-Exon resolution that would raise the thresholds to $32,000/$40,000 (single/joint) for the higher 85 percent tax level. While clearly a step in the right direction, this proposal would protect only about half of the taxpayers in the fifteen percent bracket. More can and should be done to insulate middle income older Americans from disproportionate tax increases.

AARP remains committed to deficit reduction and the long-term improvement of our nation's economy. The Association is prepared to work with the Committee to improve the Administration's deficit reduction package and to reduce its disproportionate impact on middle income older Americans.

TABLE A

Additional Federal Income Tax Liability in 1994 Under the President's Proposal

	Annual social security benefit				
	$5,000	$10,000	$15,000	$20,000	$25,000
Other Income*	Additional tax liability				
Single					
$0-15,000	0	0	0	**	**
20,000	0	0	$ 131.25	**	**
25,000	$131.25	$ 262.50	579.00	**	**
30,000	490.00	980.00	1,225.00	**	**
35,000	490.00	980.00	1,470.00	**	**
40,000	490.00	980.00	1,470.00	**	**
50,000	490.00	980.00	1,483.50	**	**
75,000	542.50	1,085.00	1,627.50	**	**
100,000	542.50	1,085.00	1,627.50	**	**
Joint					
$0-15,000	0	0	0	0	0
20,000	0	0	0	0	$ 26.25
25,000	0	0	26.25	$ 157.50	288.75
30,000	26.25	157.50	288.75	420.00	551.25
35,000	262.50	420.00	551.25	682.50	813.75
40,000	262.50	525.00	1,047.50	1,536.50	1,944.00
50,000	490.00	980.00	1,470.00	1,960.00	2,450.00
75,000	490.00	980.00	1,470.00	1,960.00	2,450.00
100,000	490.00	1,085.00	1,627.50	2,170.00	2,712.50

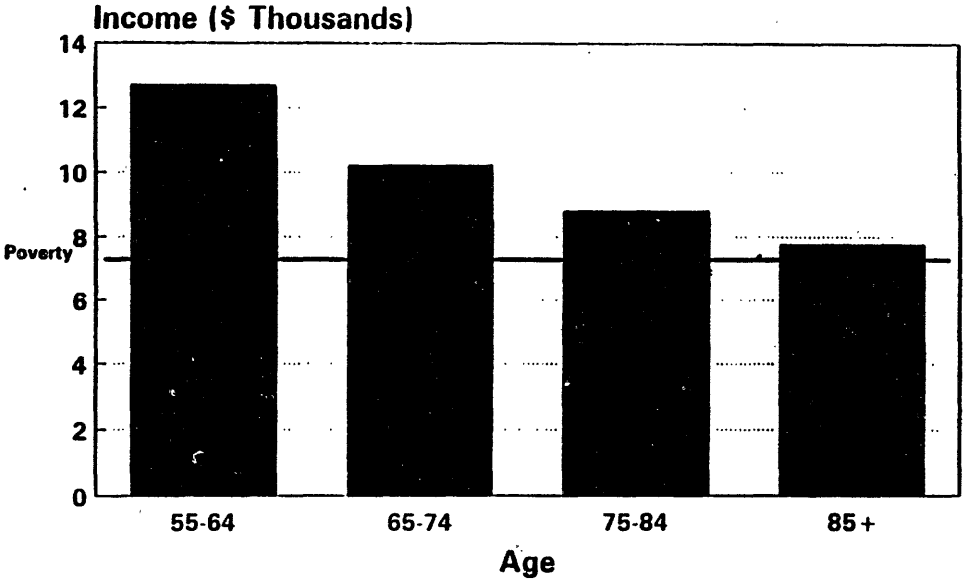
* Adjusted gross income *excluding* social security. *Total* income would be equal to other income *plus* social security. It is assumed no tax-free interest is received.

** Virtually no single individual currently receives this level of benefits. Very few receive $15,000 in yearly benefits.

Source: Congressional Research Service, May 15, 1993

CHART 1

Median Income: Non-Married Persons 1990

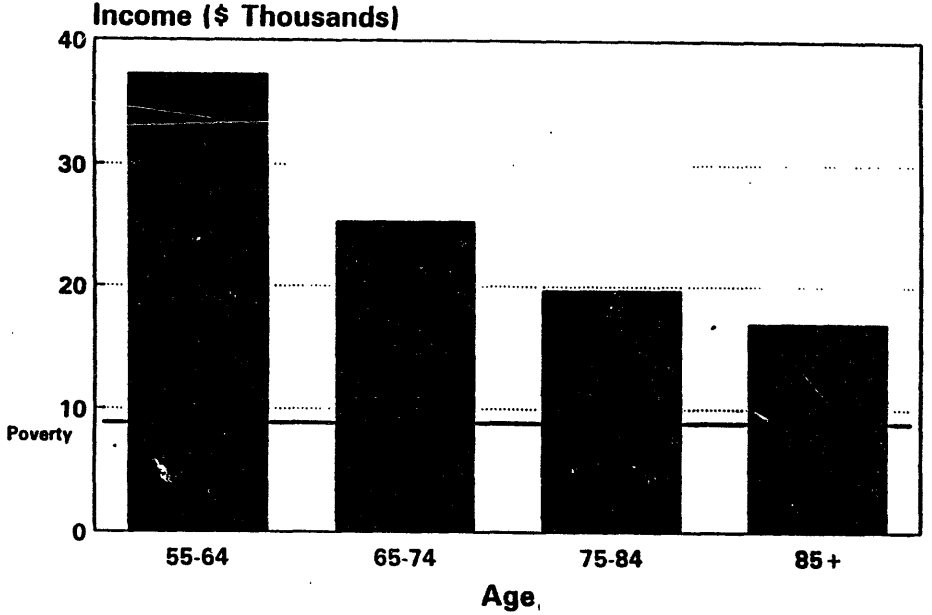


Source: Bureau of Labor Statistics
Prepared by AARP Public Policy Institute

Poverty threshold age <65: $6,880
Poverty threshold age 65+: $6,268

CHART 2

Median Income: Married Couples, 1990

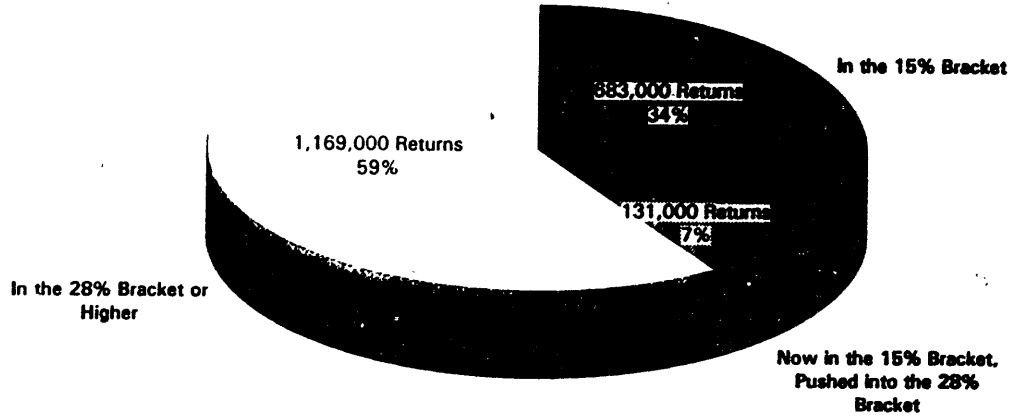


Source: HHS
Prepared by AARP Public Policy Institute

Poverty threshold age <65: $8,794
Poverty threshold age 65+: $7,905

CHART 3

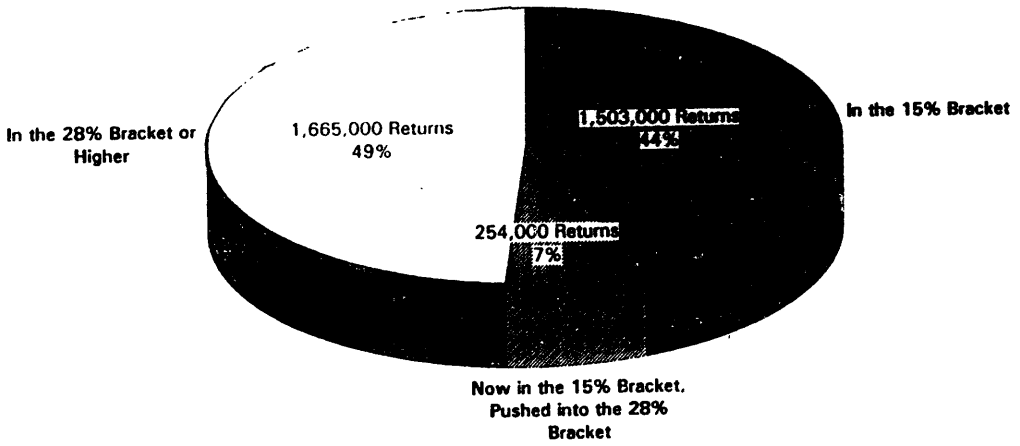
Administration's Proposal to Tax 85% of Social Security Benefits:
Tax Bracket of Affected Beneficiaries
Single Returns



Source: Price Waterhouse for AARP, April 27, 1993

CHART 4

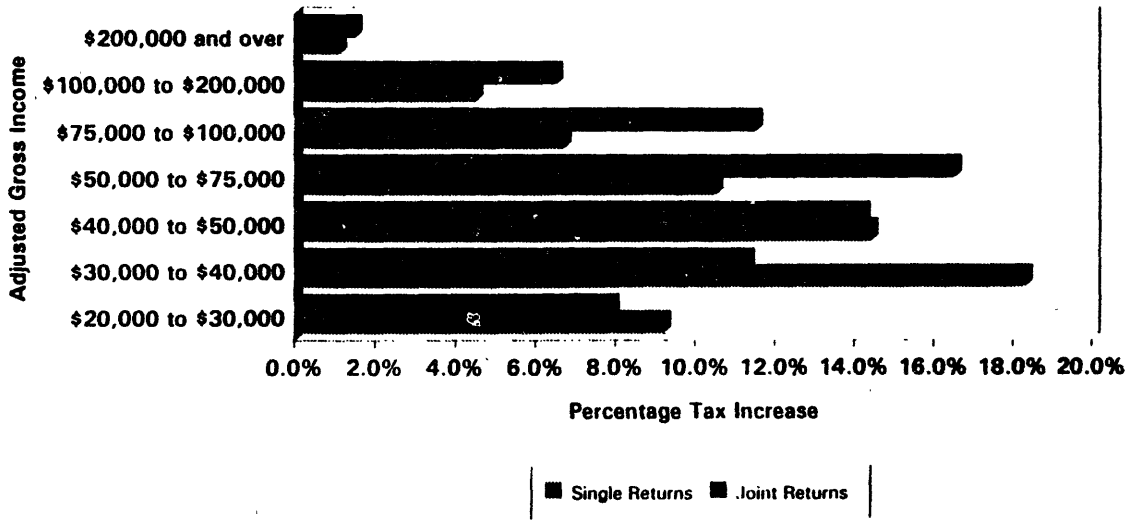
Administration's Proposal to Tax 85% of Social Security Benefits:
Tax Bracket of Affected Beneficiaries
Joint Returns



Source: Price Waterhouse for AARP, April 27, 1993

CHART 5

Administration's Proposal to Tax 85% of Social Security Benefits:
Average Income Tax Increase in 1994 by Income Class
(Average Percentage Increase)



Source: Price Waterhouse for AARP, April 14, 1993

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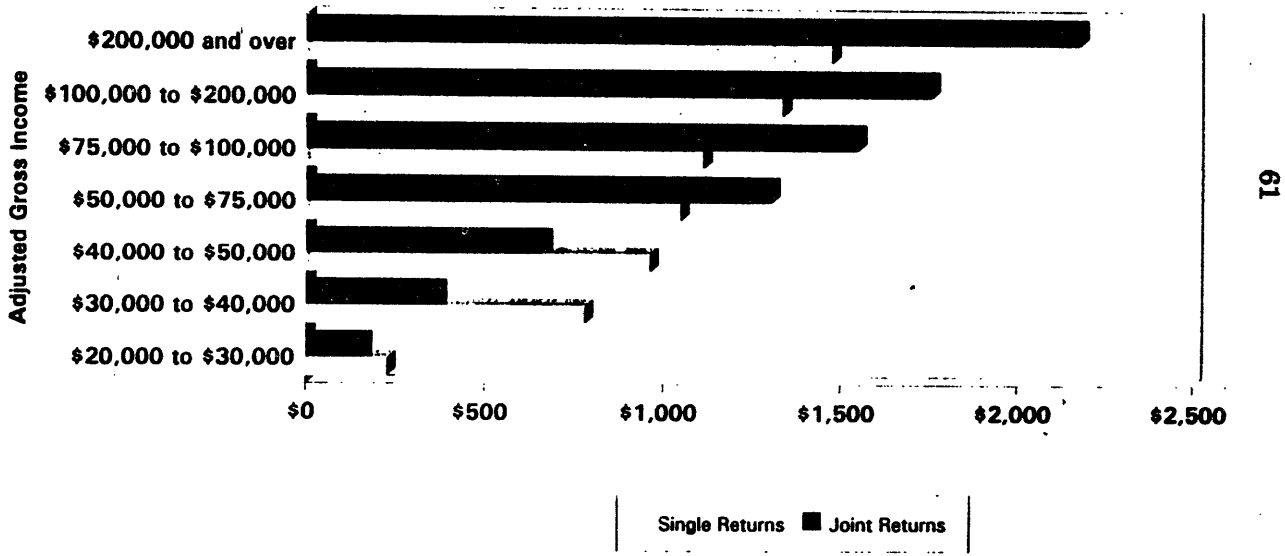
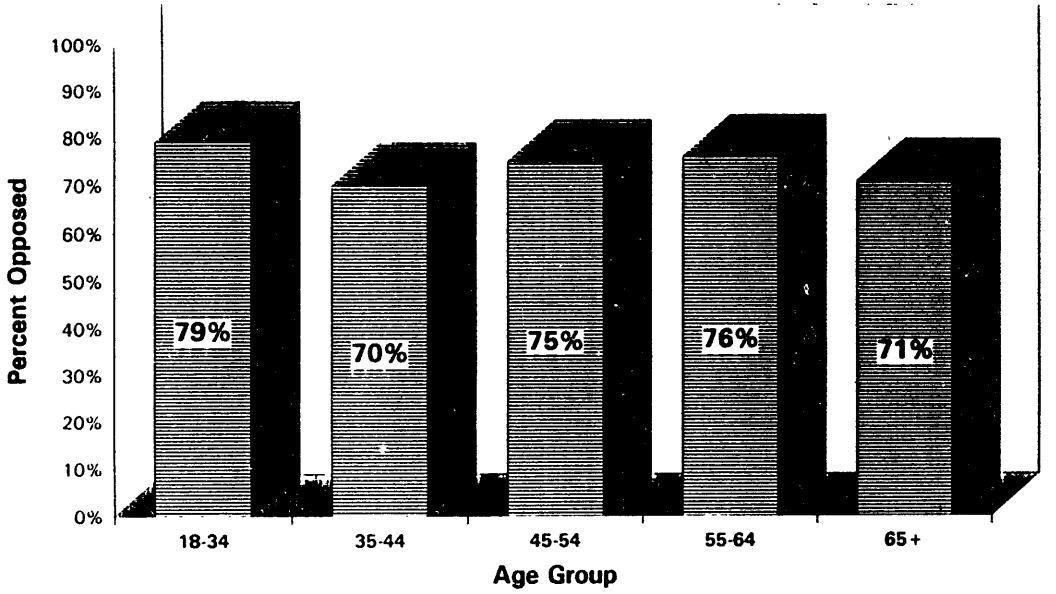
Administration's Proposal to Tax 85% of Social Security Benefits: Average Social Security Tax Increase in 1994 by Income Class (Average Dollar Amount)



Source: Price Waterhouse for AARP, April 14, 1993

CHART 7

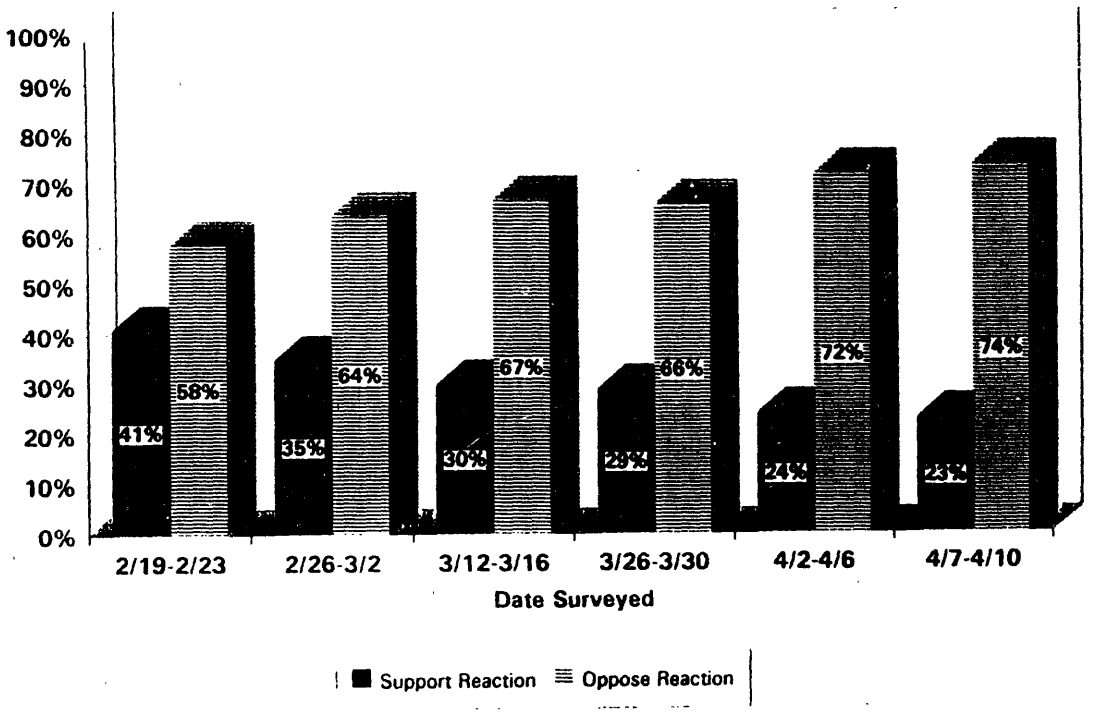
Opposition to Increased Taxation of Social Security Benefits by Age



Source: ICR for AARP, April 1993

CHART 8

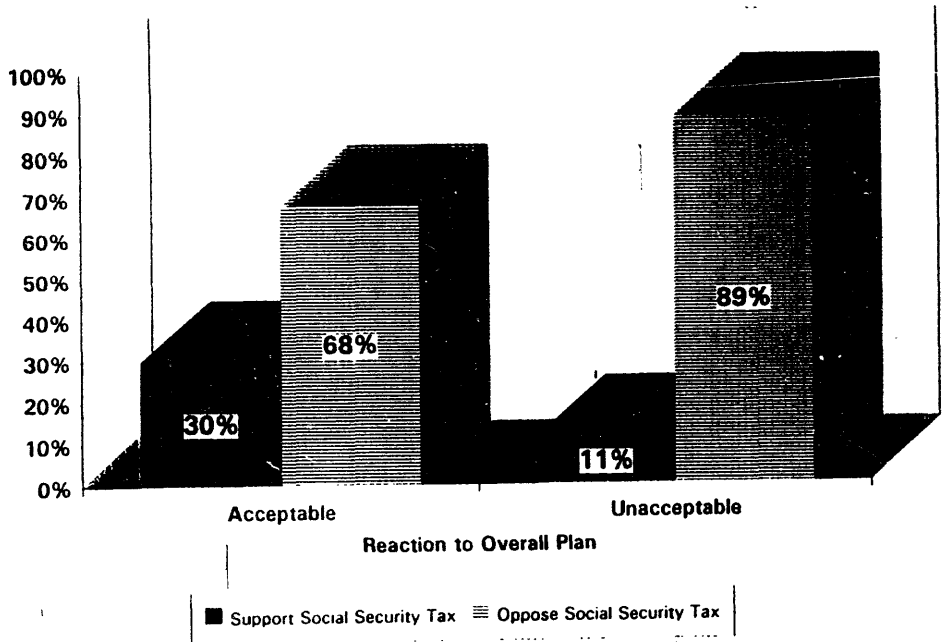
Trends in Reaction to Higher Taxes on Social Security Benefits



Source: ICR for AARP, April 1993

CHART 9

Opposition to Higher Taxes on Social Security Benefits by Position on Overall Deficit Reduction Plan



Source: ICR for AARP, April 1993

PREPARED STATEMENT OF LETITIA CHAMBERS

Mr. Chairman, I am honored to be asked to testify before this Committee on the issue of taxation of Social Security benefits. I am president of Chambers Associates Incorporated, a public policy consulting firm that specializes in tax and fiscal policy issues. I am appearing today as an individual and not on behalf of any client of the firm.

The Clinton Administration has proposed to increase the amount of Social Security benefits subject to taxation from 50 to 85 percent for individuals with annual incomes above a threshold of $25,000 and above $32,000 for couples filing jointly. The Administration proposes to credit the Medicare Hospital Insurance fund with an amount equal to the revenue from this tax. This differs from the current law taxation of benefits where an amount equal to the proceeds is posted to the Social Security Old Age and Survivors and Disability Insurance funds.

At the inception of the Social Security system, the issue of whether benefits should be taxed was raised. In 1938, before benefits were even paid and again in 1941, the Internal Revenue Service ruled that benefits were not taxable. This practice continued until Congress mandated taxation of up to 50 percent of benefits above the specified thresholds as a part of the Social Security Act Amendments of 1983, which restored the solvency of the Social Security system. One policy rationale for this change was made by the 1979 Social Security Advisory Council when it recommended "that the current tax treatment of private pensions is a more appropriate model for the tax treatment of social security . . ." and that while it would be too complicated to do so in the exact same fashion, " rough justice" would be served by taxing 50 percent of benefits. Another rationale is that the employer share of the social security tax is not included in a worker's taxable income during his or her working years.

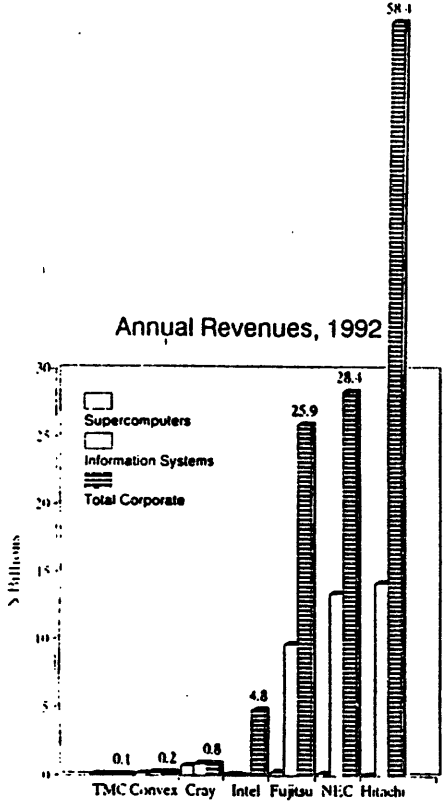
The policy decision before this Committee today is not whether Social Security benefits should be taxed like private pensions, that policy has already been adopted, but rather how the tax should be calculated. Because Social Security is not comparable to any other public or private pension or insurance program, there is no specific precedent to be followed, so some rather arbitrary decisions must be made to arrive at a level which could be termed comparable. Later in my testimony I discuss the issue of alternative assumptions and ways to calculate a comparable level. However, it is important first to make explicit why this policy change is under consideration.

The new Administration and the Congress, faced with a national debt that has tripled in only a dozen years, are attempting to bring the annual deficits under control. In addition, the current budget structure has allowed Social Security trust fund surpluses to mask or hide part of the annual deficits in general fund spending. Mr. Chairman, you have made an outstanding contribution in making this fact clear to the American people. Social Security spending is not responsible for one penny of the $264.1 billion deficit projected for Fiscal Year 1994, and in fact, Social Security receipts will exceed spending by $60.3 billion. Social Security receipts are projected to continue to exceed spending, building the total surplus, until the year 2025 when the surpluses will be needed to finance benefits. This issue is important because the Federal government should make clear to America's seniors why they are being asked to pay higher taxes. It is not because Social Security needs additional financing. Nor is it because Social Security spending of its dedicated trust fund revenues has any relationship to the current deficit problem.

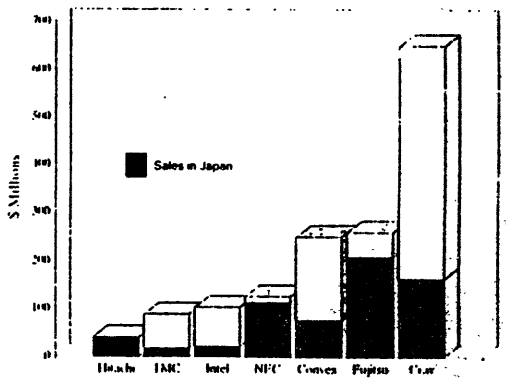
The Clinton Administration's proposal contains a tacit acknowledgement that Social Security is not part of the deficit problem, by proposing to post an amount equal to the additional revenue from this proposal not to the Social Security Trust Fund but to the Hospital Insurance trust fund. Under current law, the Hospital Insurance trust fund is projected in the Clinton budget to run a deficit of $0.85 billion in fiscal year 1994. The Administration proposal to increase the percentage of Social Security subject to taxation will bring $1.7 billion into the trust fund in Fiscal Year 1994, more than eliminating the deficit.

Everyone, including America's seniors, should understand the implications of this decision. The reduction of $1.7 billion in fiscal year 1994 in the incomes of seniors whose incomes exceeds the thresholds and of $ 17.5 billion through fiscal year 1997 will be used to help finance the health care of all seniors. If this proposal is enacted, I hope that the Administration and this Committee will keep in mind this increased contribution of seniors to the cost of their health care as the health reform package is put together.

This Administration is placing long-overdue emphasis on implementing budget and tax policies that will be fair, particularly to the middle class. From that perspective, the administration's proposal to increase the taxation of Social Security

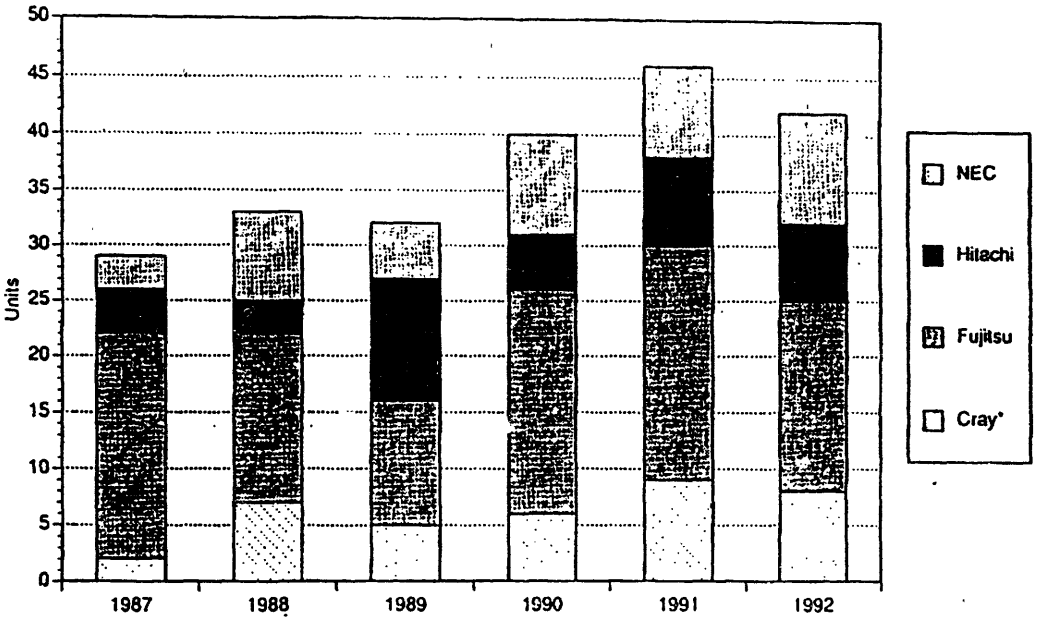


Source: Datamation



Source: U.S. Department of Commerce

Supercomputer Systems Shipped to the Japanese Market 1987 - 1992

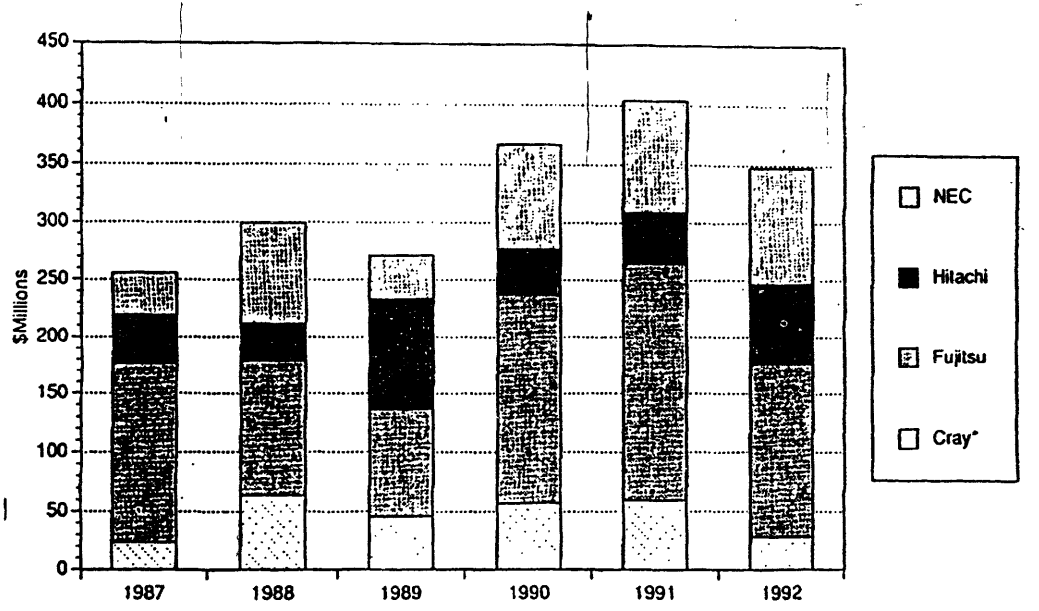


source. Dataquest
* CHI data

CRAY

Attachment #9

Supercomputer Revenues in the Japanese Market ($Millions) 1987 - 1992



source: Dataquest

* CRI data

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STATEMENT OF PROFESSOR GLENN H. REYNOLDS, CHAIR, POLICY COMMITTEE, NATIONAL SPACE SOCIETY

BEFORE THE UNITED STATES SENATE FINANCE COMMITTEE SUBCOMMITTEE ON INTERNATIONAL TRADE

Hearings on Implementation of "Super 301" Provisions of the Omnibus Trade and Competitiveness Act of 1988

Mr. Chairman, members of the Subcommittee:

I have been asked to describe the effectiveness of the "Super 301" trade proceeding against the Japanese government regarding satellite procurement.[1] The short answer is that the proceeding was very effective, frustrating a Japanese attempt to use unfair trade practices -- essentially, a protected home market -- to establish a base from which Japanese industry could target the satellite market worldwide.

This has produced two results, one trivial and one significant. The trivial result is additional sales for U.S. satellite providers, worth several hundred million dollars at a rough estimate. The significant result is that an effort at dominating the satellite market through unfair trade practices has been stopped, for the time being at least, so that any competition must be on a market basis.

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[1] See 54 Fed. Reg. 26136 (June 21, 1989) (initiation of investigation and request for public comment regarding Japanese ban on government procurement of foreign satellites); 55 Fed. Reg. 25761 (June 22, 1990) (suspending investigation after reaching agreement with Japanese government).

You may be thinking that only an academic, such as myself, could characterize hundreds of millions of dollars in sales as trivial. And, of course, it is a good deal of money even these days. But a few hundred million dollars in sales is trivial compared to the long-term health of the industry, and compared to the importance of market competition, as opposed to government-distorted trade, in the space arena.

Health of the Industry

I believe that the "Super 301" proceeding against Japan in fact played an important part in preserving the health of the U.S. industry. At the time of the investigation, it appeared that the Japanese were pursuing a classic "targeting" strategy with regard to satellite hardware.[2] Such strategies are based on a protected home market, with preferential government purchasing policies generally playing an important role.[3] By discriminating in procurement, the Japanese government would in effect have been paying out money to neutralize the natural competitive advantages developed by American industry as a result of investment and experience over several decades. Over time, as a result of the experience and expertise acquired in their protected market, Japanese satellite producers would have been able to compete on an even basis with American and other companies -- or perhaps even a superior one, if their protected market allowed greater research and development expenditures than companies competing in a freer market could afford.

The agreement reached by the U.S. Trade Representative largely put an end to these problems. Although great vigilance is required in enforcement (as the current dispute over supercomputers demonstrates), the guidelines set out in the U.S./Japan agreement were sufficient to address the problem. Indeed, I have anecdotal evidence that the unusually firm U.S. response in this area has caused the Japanese government to reconsider its "targeting" efforts in the commercial space field.

Benefits of Market Competition

As a teacher of international trade law, and a former lawyer in the field, I have often expounded on the benefits of free and fair trade along market lines. As everyone knows, free-market

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[2] See Glenn H. Reynolds, Comments on Japanese Satellite Procurement (July 11, 1989) (comparing Japanese strategy with that employed in semiconductor field) (copy attached). See also Laura D'Andrea Tyson, Who's Bashing Whom? Trade Conflict in High-Technology Industries 88 (1993) (noting that "[t]he history of the Japanese semiconductor industry is a dramatic story of successful infant-industry promotion and protection.").

[3] Id.

competition provides incentives for producers to lower costs and increase capabilities. This is important in every industry, but it is particularly important in the commercial space field.

My involvement in space-related international trade issues has been mostly pro bono, and on behalf of the National Space Society. As a grassroots pro-space group with members and affiliate groups in many countries, the National Space Society is not concerned with the competitive position of any particular nation. Instead, the National Space Society has been active in support of free trade in commercial space areas because the Society's main goal -- ultimately, human colonization of the solar system, a goal also endorsed by Congress[4] -- is only possible if the costs of space activity decline substantially.

In sectors where the technology is reasonably mature, market forces are a good way of causing that to happen. It is for this reason that the Society has been involved in issues ranging from satellite procurement and licensing[5] to commercial satellite launch services.[6] Although a regime of government subsidies and "targeting" might produce lower prices in the short run, it would

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[4] Space Settlements Act, Pub. L. 100-685, Title II, Section 217; 102 Stat. 4094; codified at 42 USCA 2451, note (1993) (declaring national purpose of "extension of human life beyond Earth's atmosphere, leading ultimately to the establishment of space settlements"). This position was also endorsed by President Clinton during the campaign, both in a position paper on space exploration and in answers to an Associated Press questionnaire.

[5] Not only in the instant case, but in the case of reported European discrimination against non-European satellite providers. See letter to Mickey Kantor from National Space Society, February 11, 1993; deSelding, U.S. Firms Protest EC Proposal to Limit Their Market Access, Space News, February 8-14, 1993, at 5.

[6] In 1990, the National Space Society filed a draft Section 301 petition with USTR for technical review. The petition complained that China was in breach of the 1989 U.S./China launch services agreement. Because the Bush Administration enacted a ban on satellite exports to China shortly afterward on other grounds, the petition was rendered moot. See Space Group Asks USTR for Sanctions on PRC for Low Prices on Launches, Inside U.S. Trade, June 22, 1990, at 1; Congressional Research Service, Commercial Space Launch Services: The U.S. Competitive Position 65-66 (1991) (describing history of NSS petition).

tend to keep prices higher in the long run by removing market incentives for improving performance or lowering costs. After all, who would be willing to invest in a better launch vehicle or satellite if he or she knew that the price or performance advantages that that investment produced would be offset by increased subsidies from foreign taxpayers?

The use of Super 301 in this context has helped to keep free-market competition alive. I believe that the satellite Super 301 story is a story of success.

Recommendations

Aside from the historical discussion set out above, I have a few recommendations for the future. First, tools such as "Super 301" are vital to maintaining free-market competition. In the absence of some sort of overarching international enforcement body -- going far beyond the GATT to something like the stillborn International Trade Organization -- only unilateral national action can maintain free trade in the face of discriminatory and unfair practices by other governments. Properly employed, such unilateral tactics are not "protectionism" any more than lawful self-defense is "assault." Both may be necessary in the absence of adequate policing, though both are "second best" solutions.

Second, however, we should not forget that tools such as Super 301 are dangerous. Unilateral trade statutes are necessarily blunt instruments. They require skill and sensitivity in their employment, or they may in fact make things worse. In the satellite context, USTR has demonstrated that such skill and sensitivity are not out of reach, but we must be careful to ensure that a blunt instrument, deftly applied, does not become a blunt instrument bluntly applied. Among other things, this means that USTR must possess, or be able to call on, individuals with considerable expertise in the affected industries.

Third, the United States must itself be a leader in promoting free trade -- not only for others, but for itself. In the space area, this means that the burdensome and inefficient contracting system must be reformed, and that NASA and the Defense Department's space programs must operate in a manner more compatible with commercial space.[7] And the U.S. must be willing to match increased foreign openness with equivalent openness

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[7] See generally Impact of Start Agreements and Other Industry Incentives on Commercial Space Markets, Hearings before the Subcomm. on Space, Committee on Science, Space and Technology, U.S. House of Representatives, July 31, 1991; Glenn H. Reynolds, Planting the Seeds of Commercial Space, Ad Astra, Jan./Feb. 1993 at 18.

itself. Over the long term, the U.S. government will do the most for American space industries if it pursues policies that will benefit consumers' long term interest in improved technology and lower costs. In pursuing such policies, it will also attract valuable support from enlightened consumers and consumer groups, making its task easier.[8]

Finally, we should recognize that unfair foreign trade practices are only half the problem. U.S. industries must remain competitive in their own right. Ensuring this means combining a market-oriented procurement "pull" with a well-designed research and development "push."[9] In the space arena, far too little is being invested in new technologies with commercial applications, although NASA Administrator Daniel Goldin appears to be working to change that. Right now the U.S. has a strong lead in many technologies, but we must not rest on our laurels.

Much more remains to be done, and its accomplishment will require the active participation and support of Congress. If the United States fails to invest in research and development in these fields, no amount of trade legislation will save its industries. And if those industries fail, this nation's long-term economic future is in doubt. Your Subcommittee is to be congratulated for its attention to this important issue. I hope that you will continue your oversight of space-related trade issues in the coming years.

Attachment:

Comments on Japanese Satellite Procurement, July 11, 1989

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[8] See generally Glenn Reynolds, United States Telecommunications Trade Policy: Critique and Suggestions, 58 Tenn. L. Rev. 573 (1991).

[9] For a discussion of this approach applied to one sector of the commercial space field, see Glenn Reynolds & Robert Merges, Toward an Industrial Policy for Outer Space: Problems and Prospects of the Commercial Launch Industry, 29 Jurimetrics: Journal of Law, Science and Technology 7 (1988) (calling for government/industry research and development consortia to create new, more efficient generic technologies for commercial launch applications). See also Glenn Reynolds & Robert Merges, Outer Space: Problems of Law and Policy 229-246 (1989) (describing space related international trade problems in general).

THE UNIVERSITY OF TENNESSEE
KNOXVILLE

College of Law

July 11, 1989

Chairwoman
Section 301 Committee
Office of the United
States Trade Representative
Room 223, 600 17th Street NW
Washington, DC 20506

RE: Comments on Japanese Satellite Procurement. 54 FR 26136

Dear Madam:

In its notice of June 21, 1989, the Office of the United States Trade Representative requested comments regarding Japan's ban on government procurement of foreign-made satellites. Following are comments, made in my personal capacity and not on behalf of any client, regarding the importance of the issue and the key considerations in formulating a policy response to undeniably restrictive purchasing practices on the part of the Japanese.

Although Japan bars government procurement of all satellites, my comments will focus primarily on communications satellites because of their particularly strategic nature. Weather and remote sensing satellites are important, but have less direct commercial relevance because of the nature of those markets; however, experience gained through construction and operation of these satellites also redounds to the benefit of the communications satellite industry because of the substantial scope economies involved. This, presumably, is the reason the procurement ban extends to these satellites as well.

Discussion and Background

Japan's restrictive satellite procurement policies are part of a long-term integrated strategy designed to create an internationally competitive commercial space industry. Toward this end, Japan is working to develop autonomous domestic industries in the commercial launch field, in satellite hardware, and in space manufacturing.1/ Japan appears to be applying the same strategy in attacking markets for space-related goods and services as it has previously employed in other areas: early dominance of essential but relatively low-technology areas coupled with development of higher-technology products behind the shelter of trade barriers.

In the computer industry, for example, Japan moved for early dominance of Dynamic Random Access Memory (DRAM) chips while simultaneously protecting its domestic markets for more advanced custom and semi-custom chips. These protected markets enabled Japanese producers to move up the learning curve and achieve both static and dynamic economies of scale that ultimately conferred a competitive advantage, even though Japanese companies might otherwise have never achieved the ability to compete in an open market.2/ Once Japan achieved a competitive position in both sectors, however, it began using its dominance in the "bottleneck" commodity DRAM sector to promote its position in the custom and semi-custom chip field, both by "tying" suddenly-scarce DRAMs to purchases of more sophisticated Japanese chips and by manipulating price and availability of DRAMs supplied to American competitors.3/

1/ See Reynolds & Merges, Toward an Industrial Policy for Outer Space: Problems & Prospects of the Commercial Launch Industry, 29 Jurimetrics: Journal of Law, Science & Technology 7 (1988); Kirwan, Japan Now Sets its Sights on Space, Wall Street Journal, March 19, 1987 at 34 col. 3.

2/ See R. Nelson, High-Technology Policies: A Five Nation Comparison 47-51 (1984); T. Howell, et al., The Microelectronics Race: The Impact of Government Policy on International Competition (1988).

3/ In the semiconductor area, as in the instant case, a key element was discriminatory procurement by Nippon Telephone & Telegraph (NTT).

A similar pattern can be expected in the commercial space arena absent effective action by the United States. The Japanese are moving rapidly to develop a commercial launch capability and will be offering satellite launches on the world market within a few years.4/ Evidence to date suggests that they are designing their vehicles to be highly competitive in the world launch services market with an eye toward capturing as large a share as possible. Experience suggests that if they are successful at dominating the launch services field, they will ultimately tie low-cost (perhaps dumped) launches to purchases of satellite hardware, thus threatening the U.S. position in that field as well.

Essential to this strategy is the development of a protected domestic satellite industry. Satellites, especially communications satellites, play a key role in the overall structure of space related industries. At the moment, communications satellites are by far the largest and most profitable sector of the space industry: they provide the largest source of customers for commercial launch services, and they are a crucial input for the telecommunications industry. Because of their ability to generate cash, and their importance (in both a marketing and a technological sense) to both upstream and downstream sectors, communications satellites represent a "strategic" market sector;5/ dominance in the communications satellite sector is thus a necessary element of dominance in the related space and telecommunications industries. Achieving such dominance without a protected home market would be extremely difficult. Even now, having already benefited to some degree from protection, Japanese satellite makers are

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4/ See Reynolds & Merges, supra; Commercial Space Industry Stages Major Comeback, Aviation Week & Space Technology, February 15, 1988 at 51. The Japanese launch vehicles are also being designed without U.S. technology as part of a very deliberate effort to avoid the reach of U.S. export controls. See Mayerchak, Asia in Space: The Programs of China, Japan, and Indonesia in Space: National Programs and International Cooperation 91, 94-96 (W. Thompson & S. Guerrier eds. 1989).

5/ For a discussion of strategic industry theory and its application to space industries see Reynolds & Merges, supra, and G. Reynolds & R. Merges, Outer Space: Problems of Law and Policy (1989) at chapters 6 and 7.

unable to compete economically with American producers.6/ This cost disadvantage is likely to disappear, however, with gains in experience and with the development of scale economies.

The existence of a protected home market makes it much easier for the Japanese producers to achieve these improvements without facing the substantial losses that they would otherwise incur before becoming competitive. By engaging in discriminatory purchasing, the Japanese government is in effect paying out money to neutralize the natural competitive advantages developed by American companies as a result of investment and experience over several decades.7/ This practice, since it involves deliberate manipulation of markets in order to deprive U.S. companies of fairly-won positions, should certainly be regarded as unreasonable and discriminatory.

The existence of such practices on the part of the Japanese is likely to be of considerable importance to the U.S. economy. The commercial space sector is already of considerable significance, accounting for more than 220,000 jobs. The growth rate is also very rapid: over twelve percent per year in the commercial sectors, with overall space employment growing at nearly five percent per year.8/ This growth rate is likely to accelerate as a result of several technological changes now on the horizon.

First, the enormous growth in the importance of communications to the service economy means that demand for communications services is likely to grow at an increasing

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6/ See Communications Daily, July 10, 1989, at 4.

7/ See generally Krugman, Import Protection as Export Promotion: International Competition in the Presence of Oligopoly and Economies of Scale, in Monopolistic Competition and International Trade (H. Kierzkowski ed. 1984). This approach is substantially different from that taken by the United States in developing the communications satellite industry. See Teubal & Steinmuller, Government Policy, Innovation and Economic Growth: Lessons from A Study of Satellite Communications, 11 Research Policy 271 (1982).

8/ See Space Related Employment Shows Strength, Aviation Week & Space Technology, February 15, 1988, at 73.

pace.9/ Second, the market is likely to change (because of changing technology) in ways that will reward the Japanese practices. Traditionally, communications satellites have been large and expensive, containing so many transponders that capacity must generally be parcelled out among several customers. The current move, however, is toward the deployment of lightweight satellites, perhaps containing only one or a few transponders instead of the dozens found on larger satellites. These smaller satellites are likely to spur growth in the communications satellite field in the same fashion in which micro- and minicomputers, being less expensive and more readily adaptable to user needs than mainframes, promoted growth in the computer field.

They are also likely to be the kinds of satellites emerging Japanese companies will first attempt to market abroad, and the kind that U.S. companies will attempt to produce for new commercial markets, leading to head-to-head competition. These smaller satellites will have important ramifications in the launch services field as well, for they are likely to provide the bulk of the launch business for smaller, purely commercial launch companies in the United States such as AmRoc, SSI, etc.10/ They will also be the sort of satellites that the new Japanese launch vehicle, the H2, will be suited to launch.11/ Thus, U.S. launch companies are likely to suffer from restricted procurement (since Japanese satellite producers will almost certainly favor Japanese launchers) and from dumping, since the Japanese can be expected to underprice H2 launches to the benefit of their domestic satellite producers.

9/ See generally G. Feketekuty, International Trade in Services 45-56 (1988) (describing growth in international services trade and relationship with telecommunications technology); Reynolds, Speaking with Forked Tongues: Mercantilism, Telecommunications Regulation, and International Trade, forthcoming in 21:1 Law & Policy in International Business (1989).

10/ See Start-up Rocket Companies Target Small Payloads, Aviation Week & Space Technology, February 15, 1988 at 67-68; Matlack, Payloads for Profit, National Journal, December 5, 1987 at 3083.

11/ See Reynolds & Merges, supra.

Recommendations

Not all of the problems described above can be addressed by USTR in the context of a "Super 301" action; the United States government will have to get its act together in a number of areas in order to see its commercial space industries flourish.12/ However, precisely because satellites represent a strategic sector, targeting restrictive Japanese practices in this regard is likely to have substantial benefits that affect the entire commercial space field.13/ In order for negotiations or sanctions to be effective, though, USTR must keep in mind two key factors: the interrelatedness of the different sectors within the space industry, and the pace and direction of technological change.

To achieve results that matter, USTR must ensure that Japanese purchases are genuinely based on considerations of cost and quality. Because of its excellent technology and record of reliability beyond design expectations, the U.S. satellite hardware industry is in a very strong position to compete on this basis. Claims that "unique" characteristics of the Japanese telecommunications network, or Japan's island geography, make U.S.-manufactured satellites unsuitable should be recognized as false -- Japan's network is entirely compatible with non-Japanese satellites, and other island nations, such as Indonesia, use U.S.-made satellites with great success.

12/ See, e.g., Foley, Government Faulted for Frustrating Commercial Space Entrepreneurs, Aviation Week & Space Technology, February 15, 1988, at 66; Foley, The Broken Promise of Commercial Space, Aviation Week and Space Technology, September 14, 1987 at 15; French, Paperwork is a Launch-Vehicle Roadblock, Aerospace America, April 1988, at 16. See also Reynolds & Merges, supra (calling for government/industry research and development program focusing on low-cost commercially oriented launch technology).

13/ Indeed, USTR has shown excellent judgment in targeting this sector. The product-specific nature of U.S. trade law and procedure tends to make it difficult to counter strategic trade policies on the part of foreign nations, but the particular importance of the satellite sector vitiates this problem in this particular case.

Any resolution of this issue should recognize that because the Japanese approach is sweeping and integrated, only major changes will make a difference: the removal of formal restrictions, or the purchase of one or a few satellites, will by themselves accomplish little more than cosmetic improvement. Not merely the procurement process, but procurement itself must be open and decisions must be made on demonstrable and quantifiable aspects of quality and price. Any benchmarks that are used should take into account not only the kinds of payloads being manufactured now but also those likely to appear over the next decade.

In addition, USTR should inform the Japanese government that it intends to pay special attention to Japanese practices in the area of launch services and to the relationship between launch services and satellite equipment sales. Such attention should help to discourage improper tying and dumping of launch services, which is otherwise a distinct possibility.

None of the above, of course, is intended to suggest that Japanese entry into the space industries is inherently a bad thing for the United States. Genuine competition in the field will be a good thing, driving costs down and promoting more capable and less expensive technologies -- something that the space field, which has suffered from the debilitating effects of the government procurement system in the past, could use. However, for such competition to exist in fact, procurement by all parties must be based on those qualities that competition is intended to promote, such as low price and reliability, not on the nationality of the purchaser or the supplier. If this is to be the case, the mercantilist practices favored by the Japanese in other areas must be discouraged in the satellite context.

Sincerely,

Glenn Harlan Reynolds
Associate Professor of Law

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