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ON
LEGISLATIVE OVERSIGHT REVIEW OF U.S. TRADE POLICIES

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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(of 2 Volumes)

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FOREWORD

On March 3, 1967, the Honorable Russell B. Long, Chairman of the Committee on Finance, announced that the committee would hold legislative oversight hearings on U.S. foreign trade policies and practices.[1] This announcement was in keeping with observations he made to the Economic Club of New York, that: "* * * our trade policies need a thorough new look, and some hardheaded American businessmen are needed to devote a great deal of independent thought and study to the overall program."[2]

The significance of such a study was quickly recognized. The Honorable Everett McKinley Dirksen, minority leader of the Senate and a member of the Committee on Finance, published a memorandum outlining and describing the areas he felt were worthy of study by the committee.[3]

On March 24, 1967, the Honorable Lyndon B. Johnson, President of the United States, announced that the Special Trade Representative, the Honorable William M. Roth was to: "* * * begin preparation for a long-range study of our foreign trade policy."[4]

The Kennedy round authorized by Congress in the Trade Expansion Act of 1962, is now history. This compendium of papers initiates the necessary study of the important questions associated with the formulation of a new trade policy for the future. It is appropriate that it be published at this time so that those who participate in the development of trade policies—both in and out of Government—may begin now to draw on the thoughts expressed in the views here collected. They will form the nucleus of a growing body of information marking the way to a commercial policy for this Nation under which the Yankee trader once again will become the equal of any in the world.

The papers that are published in this compendium are divided into three parts. Part I consists of those papers which concentrate on individual items mentioned by the chairman in the September 27 press release. Part II of the compendium consists of papers from organizations and individuals which cover a variety of the topics mentioned in the committee press release. Part III deals with specific industry problems. Part I of the table of contents is cross-referenced, enabling the reader to locate more readily those subjects covered in the papers included in parts II and III which deal with the individual items listed in the September 27 press release.

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[1] For text of press releases relating to these hearings, see pp. 1–2.
[2] Address of the Honorable Russell B. Long, Chairman, Committee on Finance, U.S. Senate, before the Economic Club of New York, Jan. 18, 1967. For the text of the address, see Congressional Record, Feb. 23, 1967, p. S2549.
[3] For the text of Senator Dirksen's memorandum, see p. 911.
[4] For the text of President Johnson's statement and other documents relating to this study, see pp. 920–927.

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[Press release of the Committee on Finance, U.S. Senate, Mar. 3, 1967]

RUSSELL B. LONG, DEMOCRAT, OF LOUISIANA, CHAIRMAN, COMMITTEE ON FINANCE, ANNOUNCES LEGISLATIVE OVERSIGHT REVIEW OF U.S. TRADE POLICIES

Chairman Russell B. Long today announced that the Committee on Finance soon would begin a review of the international trade structure of the United States and of the administration of the trade agreements program. He stated this review was in keeping with the request by the majority leader to committee chairmen for "a concentrated Senate exercise of the oversight function."

Chairman Long noted that although the committee had not made this sort of review before, rising congressional concern about trade matters, together with the impending termination of tariff-cutting authority under the Trade Expansion Act, makes it particularly appropriate at this time.

The review, which will include public hearings, is expected to touch on all aspects of the program, such as possible shortcomings in the applicable statutes, the negotiation process and ad hoc trade agreements, methods of reporting trade statistics, customs administration, valuation and dumping practices, procedures for aiding workers and industries harmed by excessive imports, and methods for expanding U.S. exports. The role of the Tariff Commission in these functions will also be explored.

He emphasized that knowledge gained from this legislative oversight activity would enable members of the committee to better understand problems involved in negotiating and administering complex trade programs and to more effectively deal with them in future legislation.

While emphasizing that the hearing schedule has not yet been fixed, the chairman extended an invitation to those desiring to participate and contribute to this study to contact Mr. Tom Vail, chief counsel, Committee on Finance, room 2227, New Senate Office Building, Washington, D.C., and state the specific areas of their interest.

[Press release of the Committee on Finance, U.S. Senate, Sept. 27, 1967]

RUSSELL B. LONG, DEMOCRAT, OF LOUISIANA, CHAIRMAN, ANNOUNCES COMMITTEE ON FINANCE WILL PUBLISH COMPENDIUM OF PAPERS ON LEGISLATIVE OVERSIGHT REVIEW OF U.S. TRADE POLICIES

On March 3, 1967, Chairman Russell B. Long announced that the Committee on Finance would undertake a thorough review in the nature of a legislative oversight investigation into all aspects of the U.S. trade structure and the administration of the trade agreements program. This review is to include public hearings. He emphasized that knowledge gained from this legislative oversight activity would enable members of the committee to gain a better understanding of the problems involved in negotiating and administering complex trade programs and to deal more effectively with them in future legislation.

As one part of this review, Chairman Long today announced that all interested parties are invited to submit written statements to the committee on U.S. foreign trade policies and practices. These papers will be published in a compendium which will form the basis for hearings at a later date. Under this procedure, it is hoped that each party participating in the oversight review will benefit from the views presented by other participants as well as from factual material that is developed in the papers. The chairman stressed that while this compendium is in addition to the public hearings, submission of a paper was not to be considered a prerequisite for presenting an oral statement when the hearings are scheduled.

He also expressed the hope that the papers submitted to the committee would be factual and objective. As a guideline in the preparation of statements, he indicated that the following areas might properly be explored and developed in the papers:

1. Possible shortcomings in the applicable statutes.
2. The negotiating process and ad hoc trade agreements.
3. Role of the Tariff Commission.
4. Customs administration.
5. Valuation of imported goods.
6. Dumping and unfair methods of competition in import trade.
7. Procedures for aiding workers and industries harmed by excessive imports.
8. Policies needed to expand U.S. exports.
9. The prospects for exports and imports over the next decade and how the Kennedy round negotiations will affect these trends.
10. The major tariff and nontariff barriers which must be faced in exporting, and some estimates of their relative effects.
11. The consequences for U.S. exports of the adoption by the European Economic Community of a common value-added tax.
12. The effect of U.S. foreign investment (and the voluntary restraint programs) on U.S. exports to developed and less-developed countries.
13. Tariff preferences for products of less-developed countries.
14. Commodity agreements.
15. A free trade area with U.S. participation.
16. The GATT as an instrument for assuring expanded world trade on a reciprocal, nondiscriminatory basis.

This list is not intended to be all inclusive and should not be interpreted as restricting the scope of the inquiry. Each statement may concentrate on those areas in which its sponsor has the greatest expertise.

The chairman also stated that the papers should be submitted no later than November 1, 1967, to Tom Vail, chief counsel, Committee on Finance, room 2227, New Senate Office Building, Washington, D.C. It is suggested that they be limited to approximately 20 pages and that they include a one-page summary of the highlights of the full statement.

PART I

The Negotiating Process and Ad Hoc Trade Agreements[1]

Executive Branch Statement

With few exceptions, the President has negotiated and implemented agreements modifying rates of duty pursuant to prior authority delegated to him by the Congress. This has been the practice since 1934 and has established a traditional relationship between the Congress and the President in this field.

This tradition has, however, tended to obscure the fact that the President has the constitutional authority to negotiate any agreement which is related to international trade. This was acknowledged by the Senate Finance Committee in its report on Senate Concurrent Resolution 100, in which it said:

> The Committee recognizes that our Constitution empowers the President alone to enter into international agreements and treaties. We do not question the legality of an agreement involving a trade matter for which no prior authority has been delegated. (S. Rept. 1341, 89th Cong., second sess. (1966), p. 3.)

It should be noted, however, that the authority to negotiate an agreement is not the same as the authority to implement an agreement. Any agreement, for example, which the President negotiated for the modification of duties could not be carried out until the Congress has provided for its implementation, as by a subsequent delegation of authority to the President. Such a delegation need not necessarily be made before the agreement is concluded and can just as appropriately be made after that time.

This raises a question of when and under what circumstances the Congress may, in fact, appropriately be requested to take such action after an executive agreement has been concluded. In considering this question, much has been made of the fear that if the President concludes an agreement first, the Congress will have no choice but to enact the necessary subsequent implementing legislation. In other words, will the Congress be able to consider the agreement on its merits and decide whether or not to enact the implementing legislation?

This question is not an unreasonable one, but the basis for such concern must be closely scrutinized in any given case. Essentially, the concern seems to be that, in some circumstances, the freedom of the Congress to refrain from enacting legislation to implement an ad referendum agreement might appear to be prejudiced. But this concern should not immediately result in opposition to the negotiation of any particular ad referendum agreement. The important considerations are the manner in which the agreement is negotiated and the manner in which it is presented to the Congress.

In short, having regard to the relationship between the executive branch and the Congress, the exceptional way of negotiating executive agreements in the trade field should not necessarily be viewed as an inappropriate way. Instead, the reasons for a given exception and the circumstances in which the Congress is asked to consider a particular ad referendum agreement should determine whether the appropriate relationship between the two branches has been respected.

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[1] For a complete list of all papers dealing with this or other subjects see the table of contents.

STATEMENT OF WILLIAM S. CHRISTOPHER, DIRECTOR OF MARKETING, HOOKER CHEMICAL CORP., ON BEHALF OF THE TARIFF COMMITTEE OF THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

Mr. Chairman and members of the committee, on behalf of the tariff committee of the Society of the Plastics Industry, Inc., I am pleased to have the opportunity to submit this statement for consideration by the Senate Committee on Finance in connection with its study of U.S. foreign trade policies and practices. At the outset, we wish to commend the committee for undertaking a broad review of those matters which are of such vital importance to the continued health and welfare of our Nation.

By way of introduction, the Society of the Plastics Industry, Inc. (SPI) is a corporation organized under the membership corporation laws of the State of New York. This society is formed for the purpose of assembling and disseminating scientific, engineering, and general information data on plastics; to cooperate with the military and allied departments of the U.S. Government in the furtherance of its plastics projects; to act as an authoritative central forum for its member companies, and to promote actively and advance the application and use of plastics through greater public acceptance and favorable recognition of plastics products. SPI is composed of approximately 2,500 member companies and individuals who supply raw materials, process or manufacture plastics or plastics products; engineer or construct molds or similar accessory equipment for the plastics industry; and engage in the manufacture of machinery used to make plastics products or materials of all types. The society is the major national trade association of the plastics industry, its membership being responsible for an estimated 85 to 90 percent of the total dollar volume of sales of plastics in this country. For your information, I am herewith enclosing two copies of the SPI directory which contains a great deal of information concerning the functions and activities of the society and includes a full listing of its membership.

(Note: The directory referred to was made a part of the official files of the committee.)

The tariff committee is a standing committee of the Society whose function is to consider, investigate, make recommendations, and take action on the industry's behalf with regard to tariff matters generally. One of the primary activities of the committee has been to represent the industry on matters involving plastics before appropriate governmental agencies such as the U.S. Tariff Commission, Office of the Special Representative for Trade Negotiations (STR), Department of Commerce, and the Trade Information Committee. In addition to being chairman of the SPI Tariff Committee, I am director of marketing for Hooker Chemical Corp., a major American producer of plastics and related commodities.

One of the significant shortcomings in U.S. trade policy has been the existence of a serious information gap between those in Government responsible for implementing our trade programs and those in the private sector who have such vital interests at stake, most notably domestic industry. This was evident in the recently concluded Kennedy round. Due to the lack of any really manageable system, it was difficult—often impossible—to establish a meaningful dialog between industry and those officials responsible for the conduct of our negotiations in Geneva. As a consequence, in many instances, our negotiators were deprived of the indepth knowledge needed to make fully informed and truly enlightened decisions.

This was true even though real effort was made by the STR to assemble, and organize industry data, and make it available to the negotiators. As one of the technical specialists for industry, I was involved in the preparation of many studies and reports. and on many occasions responded to questions from the STR. Near the end of the negotiations, I spent several days in Geneva. At all times, the officials contacted in STR and in other Government agencies, showed a sincere interest in the information provided. Yet, there remained the very real problem of making use of this information in the course of the negotiations, and especially at the point of decision.

The problem stems primarily from the fact that the industry technical specialist system, as presently conceived, is basically unworkable. To begin with, there are far too many technical specialists. Moreover, they are not organized in any rational way nor do they have the kind of official status needed to make them effective in their contacts with Government, and in their dealings with industry itself. Added to this, the technical specialists are not utilized by our Government to the degree possible with the result that their talents are left untapped in many areas.

In an effort to make any industry-advisory program effective and helpful to our Government in formulating and carrying out its trade policies, we would make the following recommendations:

1. The title technical specialist should be abandoned, and a more meaningful title such as industry adviser should be established.

2. The number of advisers should be substantially reduced, from the present 250 or so technical specialists to no more than 50 industry advisers.

3. The industry advisers should be organized on a "sector" concept, with a minimum number of industry representatives for each industry sector. In turn, the industry advisers would organize contacts within their industries so that prompt and reliable data would be readily available.

4. The appointment of the industry advisers should be made official instead of unofficial and off the record. Among other things, this would give rise to obligations which would substantially solve problems of confidentiality. Moreover, those appointed would be senior, experienced individuals accustomed to handling confidential information and they could be relied upon to do so. This would result in far greater access to reliable and pertinent economic data.

5. The industry advisors should be called upon to participate in discussions and conferences, and in continuing two-way dialog on all aspects of trade negotiations. This would include counseling conferences with the Office of the Special Representative for Trade Negotiations, advisory participation in GATT negotiations, attendance at OECD Industry Committee and other committee meetings, participation in or an advisory relationship to participants at UNCTAD conferences, and participation in or advisory service for regional trade organization conferences.

In our judgment, the above recommendations, if adopted and implemented, would provide an answer to the major problem of trade negotiations—getting depth of knowledge at the point of decision at the time decisions are being made.

A second important consideration for future trade policy is a better coordination or "orchestration" of the various Government information sources, such as the Tariff Commission, the Department of Commerce, the Bureau of Customs, and many other agencies and departments involved. Under present procedures, each agency gathers and disseminates its information and views within the limited context of its own particular functions. Clearly, their horizons must be expanded to encompass the worldwide competitive and trade situation. Undoubtedly, this will require some redefinition of responsibilities and functions for each agency source.

We trust that the views expressed in this statement will be helpful to the Senate Committee on Finance in its review of U.S. foreign trade policies and practices. This statement is brief and is intended only to summarize the important conclusions drawn from 6 years' involvement with the issues of the Trade Expansion Act and the Kennedy round negotiations. We would welcome the invitation of the Finance Committee to amplify further any of the points made. Again, on behalf of the SPI Tariff Committee, I wish to express my thanks for having been given the opportunity to submit this statement.

Customs Administration

Executive Branch Statement

The Bureau of Customs is responsible for assessing and collecting import duties and taxes and enforcing certain other laws and regulations relating to the flow of international trade and traffic into and out of the United States. It enforces customs laws and some navigation laws and the regulations of numerous other Federal agencies applicable to the importation or exportation of merchandise. In performing its mission, customs administrative procedures and policies undergo continuous reassessment to make certain that they are in accord with the Bureau objectives of expediting the flow of international commerce and travel and encouraging a better understanding of (and maximum voluntary compliance with) the import-export laws and regulations of the United States. In 1967 the Bureau of Customs processed more than 2,152 million formal entries of imported merchandise with no more personnel than was employed to process 808,320 formal entries in 1928.

I. THE CUSTOMS STRUCTURE

A. The operating districts

The administrative structure of the Bureau of Customs has been streamlined pursuant to Reorganization Plan No. 1 of 1965 to help meet the increasing demands of customs administration. The primary customs functions of appraising and classifying merchandise and liquidating entries are now consolidated in the ports under the responsibility of district directors of customs, who supervise customs operations in 47 customs districts within the customs territory of the United States. The clearance of commercial importations from their entry in the various ports through liquidation of such entries is the general responsibility of import specialists. These personnel appraise and classify merchandise and liquidate entries in a continuing and accelerated process which, since the reorganization, has substantially reduced the time of such processing.

B. Customs regional headquarters

A second major step in the streamlining of customs administration of the duty and tax collection process is the interpolation of a regional structure between the Bureau headquarters and the operating districts. As a result of the 1965 reorganization, nine customs regions, each headed by a regional commissioner, were established within the customs territory of the United States. The New York region also functions uniquely as an operating district.

Regionalization and its attendant decentralization promoted more uniform customs operations from district to district within a region, closer supervision of district functions, better employment of manpower and equipment, and more timely actions and decisions on local problems. These improvements have reduced the unit cost of customs administration while providing better service to the affected public.

The regional office coordinates all activities pertaining to entry, examination, appraisement, classification, liquidation, and statistical verification of imported merchandise entered formally or through the mails at all districts and ports within the region. It also reviews certain protests and claims of clerical error before they are allowed at the district level or are transmitted to the customs court.

In cases involving duty increases proposed by import specialists, the forwarding to the regional office for liquidation of complex entries involving multiple invoices, different commodities, and different manufacturers has reduced substantially the district workload, and has expedited the processing of simple entries and those entries which involve no change from the estimated duty paid at the time of entry. Billings and refunds, previously controlled by the individual ports, are also handled in the regional office.

Modernized accounting procedures and the increased use of automated equipment has further streamlined the fiscal side of customs administration, and, to a large extent, has made regionalization of these fiscal functions possible, assuring a more uniform fiscal administration and additional free time at the port level for the basic processing of merchandise and travelers.

C. Bureau headquarters

Bureau headquarters in Washington performs primarily a review and support function for the basic field administration of the customs laws. As a result of the customs reorganization, headquarters officials are now in a position to oversee the field operations more efficiently and to review important questions more thoroughly in the interest of uniformity, equity, or where decisions on a national level are otherwise required by law or in the public interest.

The Bureau of Customs is headed by the Commisioner of Customs and his Deputy Commissioner, who shares in the executive leadership in the supervision and the direction of the customs fields organization. This office is primarily responsible for the administration of all executive and legislative directives affecting the customs mission. Five Special Assistants to the Commission (in the fields of equal employment opportunity, foreign customs assistance, priority correspondence, public information, and security) report directly to the Office of the Commissioner. The chief counsel and his staff act as legal advisers to the Commissioner and to his Assistant Commissioners on any phase of operations pertaining to the administration and enforcement of customs and other related laws within the Bureau's area of responsibility.

Four Assistant Commissioners of Customs, each heading a major office organized along functional lines, also report directly to the Commissioner of Customs.

The Assistant Commissioner (Operations) is specifically responsible for the development and evaluation of programs relating to the identification, control, and disposition of imported merchandise; the control of carriers arriving in and departing from the United States; and the enforcement of regulations by customs personnel. These assignments are divided among the Division of Inspection and Control, the Division of Appraisement and Collections, the Quota Unit, the Fibers Administration, and the Customs Information Exchange.

The Assistant Commissioner (Administration) is specifically responsible for the development, implementation, and evaluation of national programs relating to budgeting, accounting, personnel, data processing, audit, management analysis, and other administrative functions. These assignments are performed in five divisions which report to this Assistant Commissioner.

The Assistant Commissioner (Investigations) directs the investigative activities of the Bureau of Customs, which function in the field through five regional offices of the Customs Agency Service. Each of these five regions is headed by a supervising customs agent who reports directly to the Assistant Commissioner for Investigations. In addition, there are two overseas regions, each headed by a regional customs representative. The regional offices are located in Rome, Italy, and Tokyo, Japan, respectively. Their primary function is to prevent and detect offenses against customs and related laws.

The Assistant Commissioner (Regulations and Rulings) heads an office which issues legal and technical decisions, interpretations, and rulings under the customs, navigation, and other laws administered by the Bureau of Customs. Questions considered within the different divisions include the proper classification of specific merchandise, entry procedures, marine and transportation law interpretations, drawback of duties, and the application of marking, trademark, and other laws restricting the right to import merchandise.

II. CLEARANCE OF GOODS THROUGH CUSTOMS

The primary customs function is the clearance of merchandise imported into the customs territory of the United States. After the shipment reaches the United States the consignee, with the aid of an invoice, files an entry for the goods with the district director of customs at one of the ports of entry. If the goods are to be released from customs custody forthwith, an entry for consumption is filed. Estimated duties are deposited with the district director of customs at the time dutiable goods are entered. If it is desired to postpone the release of dutiable goods which are not perishable or explosive substances, and which are not prohibited importation, they are placed in a customs bonded warehouse under a warehouse entry. The goods may remain in the bonded warehouse up to 3 years from the date of importation. At any time during this period, warehoused goods may be reexported without the payment of duty or they may be withdrawn for consumption upon the payment of duty at the rate of duty in effect on the date of withdrawal.

While imported merchandise is in the bonded warehouse, it may be manipulated under customs supervision by cleaning, sorting, repacking, or otherwise changing in condition by processes which do not amount to a manufacture. After manipulation, the merchandise may, within the warehousing period, be exported without the payment of duty or it may be withdrawn for consumption upon payment of duty at the rate applicable to the goods in its manipulated condition at the time of withdrawal.

Imported merchandise may be transported in bond from the port of arrival to another port of entry and entered at the latter port under the same conditions as at a port of arrival. Arrangements for transporting the goods to an interior port in bond may be made by the consignee, by the carrier, by a customhouse broker, or by any other person having a sufficient interest in the goods for that purpose.

After an entry for goods has been filed with the district director of customs, he will designate representative quantities for examination by customs officers under the conditions properly safeguarding the goods.

Examination is necessary to determine (1) the value of the goods for customs purposes and their dutiable status, (2) whether the goods are of a kind which must be marked with the country of their origin or with special marking and, if so, whether they are marked in the manner required by the applicable law, (3) whether the shipment may contain prohibited articles, (4) whether the goods have been truly and correctly invoiced, and (5) whether goods in excess of the invoiced quantities are present or a shortage of goods exists. Some kinds of goods must be examined also to ascertain whether they meet the requirements of law such as those which deny admission to food and beverages unfit for human consumption.

Merchandise arriving in the United States by commercial carrier must be entered by the consignee (importer), his authorized regular employees, or the consignee's agent. U.S. customs officers and employees are not authorized to act as agents for importers or forwarders of imported merchandise, although they may give all reasonable advice and assistance to inexperienced importers.

The only persons who are authorized by the tariff laws of the United States to act as agents for importers in the transaction of their customs business are customhouse brokers who are private individuals and firms licensed by the Bureau of Customs. Customhouse brokers prepare and file the necessary customs entries, arrange for the payment of duties found due, take steps to effect the release of the goods from customs custody, and otherwise represent their principals in customs matters.

Appraisements of merchandise by customs officers (which determine its value for customs purposes) do not become final until 30 days have elapsed after the personal delivery or mailing of a written notice of appraisement to the consignee, his agent, or his attorney. Importers who believe that too high a value has been placed on their merchandise may within 30 days after appraisement appeal to the U.S. Customs Court for a reappraisement. American manufacturers are entitled to complain to the Secretary of the Treasury if they believe that imported merchandise of a class or kind manufactured, produced, or sold at wholesale by them is being appraised too low. In the event that such a complaint is rejected, the American manufacturer may appeal the appraisement of subsequent importations to the U.S. Customs Court. Standards applicable to valuation of imported merchandise under the customs laws are treated in a separate paper.

More than 25,000 appeals for reappraisement were filed by importers in the U.S. Customs Court during the last fiscal year. Approximately 100 appeals were filed by U.S. manufacturers during that period.

After the valuation of imported merchandise is determined, the amount of duty payable on such goods, or their "free" status, is established by the import specialist. He examines the goods and states on the invoice, for each item of goods listed, his conclusion as to the item in the Tariff Schedules of the United States in which it is described, and the applicable rate of duty or the "free" status. These statements are his "advisory classification" which is ordinarily adopted by the district director of customs and formally expressed in a liquidation of the entry.

Liquidation is the final ascertainment of the rate and amount of duty due. Notice of liquidation informs the importer of any classification at a rate or amount of duty higher or lower than that at which his goods were entered. The importer may file a written protest with the district director of customs within 60 days after the liquidation of the entry if he is dissatisfied with the decision of the district director as to the rate or amount of duty due. Unless the district director agrees with the importer's claims and reliquidates the entry in accordance with those claims, the protest is forwarded to the U.S. Customs Court for a determination of the issues involved.

American manufacturers are also entitled to complain to the Secretary of the Treasury if they believe that the proper rate of duty is not being assessed on imported merchandise of a class or kind manufactured, produced, or sold at wholesale by them. If such a complaint is rejected, the American manufacturer may litigate the classification issue in the customs court.

During the last fiscal year, more than 108,000 protests against classifications by the Bureau of Customs were filed in the customs court by importers. Fewer than 10 such protests were filed in the customs court on behalf of American manufacturers.

III. RESTRICTIONS ON ENTRY

Import quotas

Various import quotas, established by Presidential proclamations or specific legislation, are administered by the Commissioner of Customs. These quotas are of two types: Tariff rate and absolute.

Tariff-rate quotas provide for the entry of a specified quantity of the quota product at a reduced rate of entry during a given period. There is no limitation on the amount of the product which may be entered during the quota period, but quantities entered in excess of the quota for the period are subject to higher duty rates.

Absolute quotas are quantitative; no more than the amount specified may be permitted entry during a quota period. Some absolute quotas are global, while others are allocated to specified foreign countries. Imports in excess of a specified quota may be exported or held for entry in a subsequent quota period.

The usual customs procedures generally applicable to other imports apply with respect to commodities subject to quota limitations.

The quota status of a commodity subject to a tariff-rate quota cannot be determined in advance of its entry. The quota rates of duty are ordinarily assessed on such commodities entered from the beginning of the quota period until such time in the period as it is determined that imports are nearing the quota level. District directors of customs are then instructed to require the deposit of estimated duties at the overquota duty rate and to report the time of official acceptance of each entry. A final determination of the date and time when the quota is filled is made by the Commissioner of Customs, and all district directors are advised accordingly.

Certain of the absolute quotas are invariably filled at or shortly after the opening of the quota period. Each of these quotas is therefore officially opened at a specified time on the first day of the quota period in order that all importers may have an equal opportunity for the simultaneous presentation of entries under the quota. When the total quantity for which entries are filed at the opening of the quota period exceeds the quota, the merchandise is released on a pro rata basis of the ratio between the quota quantity and the total quantity offered for entry. This assures an equitable distribution of the quota.

Other restrictions and prohibitions on importations and exportations

Customs officers at ports of entry must apply the provisions of many laws and regulations of customs and other Government agencies which either prohibit or restrict the importation of certain articles of merchandise. The importation of obscene, immoral matter is absolutely prohibited by law, as is the importation of certain narcotic drugs and derivatives. Arms, ammunition, and implements of war as designated in the U.S. munitions list and merchandise of Communist Chinese, North Korean, North Vietnamese and Cuban origin are prohibited importations except when proper licenses have been issued by the Department of State or the Treasury Department. Counterfeit coins, currencies, stamps, and securities are also absolutely prohibited importations.

In addition, articles bearing a name which copies or simulates the name of any manufacturer or trader of the United States, or of a foreign country which affords similar rights to citizens of the United States, and articles bearing a name or mark which copies or simulates a registered trademark recorded with the Treasury Department, may not be imported without the written consent of the owner of the protected trademark or trade name. Importations of fur and fiber products are subject to the provisions of various labeling acts administered by the Federal Trade Commission; wearing apparel and fabric or film intended or sold for use in wearing apparel may not be imported when so highly flammable as to be dangerous within standards set by the Flammable Fabrics Act and regulations of the Federal Trade Commission thereunder, except in certain circumstances; and importations of motor vehicles and motor vehicle equipment manufactured after certain dates is prohibited unless such vehicles or equipment comply with standards set by the Department of Health, Education, and Welfare and the Department of Transportation in regulations pursuant to the Motor Vehicle Air Pollution Act and the Motor Vehicle Safety Act, respectively.

The Bureau of Customs is also charged with enforcing restrictions on the exportation of certain articles of merchandise under laws and regulations administered by other departments and agencies, such as the Munitions Control Act and the Trading With the Enemy Act.

The foregoing restrictions and prohibitions are merely illustrative of the more than 200 laws whose enforcement in connection with imported merchandise is a vital part of customs administration, although the primary administration of most of these laws is the responsibility of other Federal agencies.

STATEMENT ON BEHALF OF THE INDUSTRIAL RUBBER PRODUCTS DIVISION OF THE RUBBER MANUFACTURERS ASSOCIATION, INC., NEW YORK, N.Y., BY RICHARD J. KAPLAN, LAMB & LERCH, COUNSELORS AT LAW

We are submitting this paper as counsel for the Industrial Rubber Products Division of the Rubber Manufacturers Association, Inc. The members[1] of the Industrial Rubber Products Division manufacture such products as V-belts, other power transmission or drive belts, conveyor belting, rubber mats and matting, rubber covers for printers and other types of rollers, rubber or plastic hose, and sheet rubber and other types of rollers, rubber or plastic hose, and sheet rubber for gaskets, gasketing material and various other industrial applications.

Secrecy in prenegotiation hearings

Pursuant to sections 221 and 223 of the Trade Expansion Act of 1962, hearings were held in 1963–64 and again in 1966 by both the U.S. Tariff Commission and the Trade Information Committee. These hearings purported to give interested persons an opportunity to present their views as to whether certain articles should be considered by the President for the purpose of granting concessions at the then forthcoming Kennedy round trade negotiations. Along with many other industries the Industrial Rubber Products Division submitted its views to both the U.S. Tariff Commission and the Trade Information Committee. Along with these other industries the Industrial Rubber Products Division never did and probably never will know the conclusions which either of the Government agencies drew from the hearings. The hearings and their results are kept secret. The participants have no way of knowing whether the facts and arguments which they presented were properly analyzed. We do know that the U.S. duties on industrial rubber products were cut during the Kennedy round negotiations. We have no way of knowing whether they were cut in conformity with the reports of the Tariff Commission and/or the Trade Information Committee or whether they were cut despite the findings made in those reports.

We believe that the results of such hearings, preparatory to trade negotiations, should be made public, or at the very least should be made available to the participants in such hearings. Otherwise the determinations entering into the Executive's decision to exercise its delegated power to grant tariff reductions remain undisclosed. If policy dictates that such matters be kept secret until after the completion of the pending trade negotiations, then the public and the Congress would be better served if full disclosure had to be made even after the negotiations were completed and the reports had been acted upon. In this way, at least, the cloak of secrecy would be removed and Commission and Committee reports and the negotiator's determinations would be exposed to scrutiny by the concerned public and the Congress.

Need for more effective enforcement of customs marking laws

Pursuant to the provisions of section 11.8 of the customs regulations and of section 304 of the Tariff Act of 1930, as amended, imported

[1] See appendix to this statement for a list of the member companies of the Industrial Rubber Products Division of the Rubber Manufacturers Association, Inc.

articles, in general, must be legibly, indelibly, and permanently marked in a conspicuous place so as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. During the early 1960's the domestic industrial rubber products industry became concerned with the increasing appearance in U.S. markets of imported industrial rubber products which were either unmarked or if marked, were marked in such an impermanent manner as to allow the easy removal of the marking from the imported article. The industry's concern was brought to the attention of the Commissioner of Customs. Consequently the Commissioner issued rulings which set forth the specific manner in which imported hose, belting, V-belts, and sheet packing had to be marked in order to comply with the requirements of the Tariff Act and the customs regulations.

The industrial rubber products industry is especially susceptible to injury by unmarked imports. Domestic industrial rubber products, such as hose, V-belts, et cetera, are manufactured in conformity with critical industrywide specifications. The sale of unmarked imports, often passed off as U.S. products, which do not comply with such standards has an extremely deleterious effect upon the reputation of the entire domestic industry and upon the acceptability of these industrywide specifications.

The customs marking laws are administered by customs commodity, or imports specialists (previously known as customs examiners before the Bureau's recent reorganization) in each of the many customs ports of entry throughout the United States. These highly trained, experienced, and generally knowledgeable customs fieldmen are supposed to determine whether the articles contained in an importation are marked in accordance with the law. Section 304 of the Tariff Act stipulates that an additional duty of 10 percent ad valorem be imposed upon any improperly or unmarked imported merchandise. Section 304 also provides a criminal penalty for persons intentionally defacing, destroying, removing, altering, and so forth; any marking required by law. However, in current actual practice the rubber commodity specialists (as well as other customs import specialists) seldom, if ever, get to actually see or examine the imported merchandise. Import specialists face an ever-increasing workload—which necessarily increases as the volume of imports increases—and are apparently being encouraged to rely more and more upon the entry papers filed by importers and less upon actual examination of the imported merchandise. In most, if not all cases, the only physical examination of imported merchandise occurs when a random sample is inspected by a customs inspector.

An inspector is not a specialist in a commodity line as is an import specialist nor is he as highly trained, experienced, or knowledgeable in the interpretation or application of the customs laws. The inspector is probably engaged in inspecting thousands of different types of imported articles. It is far less likely that he will be aware of the specific type of marking necessary for imported industrial rubber products. Some types of articles are properly marked if they have attached a paper tag or label indicating the name of the country of origin—not so industrial rubber products. It has been our experience that even some import specialists at some customs ports were unaware of the Bureau rulings regarding the marking of industrial rubber products.

Under customs procedure, domestic manufacturers of industrial rubber products have no official way of knowing whether improperly marked imported industrial rubber products are being erroneously permitted entry into the United States. However, when improperly marked goods are imported, domestic manufacturers often become aware of the fact by coming into contact with such goods in the marketplace. During the past 5 years the Industrial Rubber Products Division of the Rubber Manufacturers Association, Inc., has, from time to time, filed complaints directing the Commissioner of Customs attention to at least 20 specific instances in which improperly marked imported industrial rubber products were being sold by importers or distributors in the United States. In some instances there was no evidence that the goods had ever been marked, properly or otherwise. In other instances impermanent marking, such as paper labels or removable paint and ink, had been removed from the goods after importation and prior to sale in the United States. In still other instances, short lengths of unmarked rubber hose were being sold in the United States; the short lengths having been cut from longer lengths which had been imported with a single marking at one end. The Bureau rulings anticipated such an attempt to avoid the effect of the marking law and required long lengths of imported hose to be permanently marked at regular intervals. However, the imported articles seen by the domestic manufacturers in each of the above instances were not marked in compliance with the Bureau rulings.

With respect to most of these complaints, the Bureau of Customs subsequently advised us that their investigation confirmed the facts and that an importer was selling unmarked goods in the United States. We were assured that the importer had now been informed of the type of marking required on such imported goods and that the marking requirements would, in the future, be strictly enforced against that particular importer. To the best of our knowledge no marking duties were assessed and no penalties invoked against any of these importers. In fact, complaints from domestic manufacturers regarding unmarked imported goods being offered for sale in U.S. markets, have increased in recent months. Some foreign suppliers frankly state in their promotional material that their products are marked in such a manner that the marking can be easily removed after importation. It appears that in the absence of the strict enforcement of existing marking laws, through the imposition of penalties or of the additional 10 percent duty provided for unmarked goods, importers will be encouraged to continue to purchase and sell improperly marked goods such as industrial rubber products. The laws exist, they only await stricter enforcement. Without such enforcement the law is easily flouted.

We believe that the best, if not the only way to effectively administer the marking laws is to have the import specialists—the officials responsible for determining whether imports of their particular line of commodities are properly marked—physically examine the imported merchandise. Where, as is the case with industrial rubber products, there have been confirmed complaints regarding importations of improperly marked goods, all future importations of such goods should have to be subjected to close scrutiny and examination by the import specialists involved. Such examination could be accomplished by requiring an actual public stores examination of the imported merchandise by the import specialist. Unfortunately there is no existing procedure whereby domestic manufacturers or domestic industry can compel customs officers to strictly enforce the marking laws.

The lack of an effective remedy for domestic manufacturers against unfavorable customs administration

Whenever an importer is aggrieved by Customs' administration of the marking laws—or any other law—he can avail himself of a ready remedy by filing a protest (an appeal in the case of questions of value) against the action taken by the customs officer. The protest is reviewable by the U.S. Customs Court. If the court agrees with the importer the action taken by Customs is overruled and the imported merchandise (even if imported years before the court's decision) is treated in accordance with the decision of the court (favorable to the importer). No such effective remedy is available to a domestic manufacturer who is injured as a result of Customs' administration of the law in a manner which is contrary to the clear congressional intent and meaning of that law.

The only recourse which an injured domestic manufacturer has against improper administration of the customs law is to utilize the so-called American manufacturers protest or appeal procedure provided for in section 516 of the Tariff Act of 1930, as amended. Under the procedures set forth in section 516 the injured domestic manufacturer must formally request the Secretary of the Treasury to furnish him with the official position regarding Customs' treatment of designated imported articles. After receiving the Secretary's answer the domestic manufacturer may file a complaint which the Secretary in turn must answer. If still dissatisfied the domestic manufacturer has 30 days in which to file a notice of dissatisfaction and intention to protest. The Secretary must then publish his decision and thereafter give the domestic manufacturer notice of importations of the designated merchandise made after the Secretary had published his ruling. The domestic manufacturer is then notified of the first of such entries which is liquidated and has 30 days in which to file his protest. After the protest is filed it is sent to the U.S. Customs Court where it is set down on a future docket so that the domestic manufacturer can obtain judicial review of the alleged improper customs action. After the case is tried, the parties are usually allowed time for the filing of briefs and after a suitable lapse of time to enable the court to adequately review the matter, a decision is rendered. During this entire procedure, which can easily, and often does, take 2 years, the law continues to be administered to the detriment of the domestic manufacturer. If the court decides in favor of the domestic manufacturer the effect of the decision is only prospective; it does not affect the treatment of merchandise imported before the decision even though such merchandise was imported after the domestic manufacturer commenced his proceeding under section 516.

By way of illustration, in August 1966, we commenced an American manufacturer's protest proceeding on behalf of a domestic manufacturer in a different industry. The domestic manufacturer just recently received notice of the liquidation of an entry and immediately filed its protest. As of this date, almost one and a half years after the proceeding was commenced, the protest has not yet been forwarded by Customs to the U.S. Customs Court. During this entire period, imports have continued to enter the United States at the lower rate of duty which the domestic manufacturer claims Customs has been wrong in assessing. Regardless of the final outcome of the pending case, the importers will have been allowed to benefit, to the detriment of the domestic manufacturer, from the lower rate of duty which Customs has continued to assess upon their merchandise.

What is needed is an expeditious and effective remedy for domestic manufacturers injured by the improper administration of customs laws with respect to imports of merchandise of a class or kind manufactured, produced, or sold at wholesale by them. It seems to us that the easiest way of allowing domestic industry an effective remedy against unfavorable customs administration without unduly prejudicing the rights of importers would be to grant to the U.S. Customs Courts jurisdiction over an action by interested domestic manufacturers in the nature of a mandamus or certiorari against the acts of customs officers. Such a form of action should also constitute a procedure whereby domestic manufacturers could compel customs officers to enforce such existing laws as the marketing laws, previously discussed.

Need for more effective adjustment assistance provisions

The so-called adjustment assistance provisions of title III, sections 301, et cetera, of the Trade Expansion Act for 1962 are in need of amendment if they are to have any effect. The present requirements for qualification have proved far too restrictive. Consequently, not one of 21 petitioners have been found eligible for relief under the act. The requirements that (1) trade agreement concessions must have been the major cause of the increased imports of an article into the United States and that (2) such increased imports must have been the major factor in causing, or threatening to cause, serious injury to the domestic industry producing an article like or competitive with the imported article, must be relaxed. It should be sufficient that the increased imports were in part caused by the concessions and that such increased imports were a factor in causing, or threatening to cause, serious injury to the domestic industry. Without such modification the adjustment assistance provisions will continue as sterile as they have been and industries, workers, and/or firms which have suffered injury as a direct result of trade agreement concessions will continue to suffer such injury without recourse to the emergency relief which Congress obviously intended them to be able to obtain.

Conclusion

Perhaps the most needed innovation in customs matters is for Congress to reassert its constitutional authority to determine and oversee the operation of customs laws and their administration. These legislative oversight hearings are a welcome step in the right direction. The establishment of a standing subcommittee to regularly oversee customs matters would be a further restoration of Congress collective role as ombudsman or public representative charged with the direction and review of the administration of customs laws. We sincerely hope these hearings are a forerunner of future increased congressional interest in customs matters.

Appendix

Member Companies of the Industrial Rubber Products Division of Rubber Manufacturers Association, Inc.

Ace Rubber Products, Inc. 100 Beech Street, Akron, Ohio 44308.
Acme-Hamilton Manufacturing Corp., Post Office Box 361, Trenton, N.J. 08603.
American Biltrite Rubber Co., Inc., Boston Woven Hose & Rubber Division, Post Office Box 1071, Boston, Mass. 02103.
American Rubber Manufacturing Co., 1145 Park Avenue, Oakland, Calif. 94608.
Ames American Co., North Easton, Mass. 02356.
Bearfoot Sole Co., First and Water Streets, Wadsworth, Ohio 44281.
Beebe Rubber Co., 20–22 Marshall Street, Nashua, N.H.
Buffalo Weaving & Belting Co., Inc., 260 Chandler Street, Buffalo, N.Y. 14207.
Buxbaum Co., 1212 Seventh Street, S.W., Canton, Ohio 44707.
Carlisle Tire & Rubber Division Carlisle Corp., College and C Streets, Carlisle, Pa. 17013.
Cincinnati Rubber Manufacturing Co., Franklin Avenue, Cincinnati, Ohio 45212.
Continental Rubber Works, 2000 Liberty Street, Erie, Pa. 16506.
Tyer Rubber Corp., 392 Pearl Street, Malden, Mass. 02148.
Crown Products Co., Ralston, Nebr. 68051.
Dayco Corp., Post Office Box 1004, Dayton, Ohio 45401.
Dunlop Tire & Rubber Corp., Post Office 1109, Buffalo, N.Y. 14240.
Easthampton Rubber Thread Co., 26 Payson Avenue, Easthampton, Mass. 01027.
Electric Hoe & Rubber Co., 12th and Dure Streets, Wilmington, Del. 19899.
Firestone Tire & Rubber Co., 1200 Firestone Parkway, Akron, Ohio 44317.
Garlock, Inc., 402 East Main Street, Palmyra, N.Y. 14522.
Globe Manufacturing Co., 221 Pleasant Street, Fall River, Mass. 02722.
Goodall Rubber Co., 572 Whitehead Road, Trenton, N.J. 08604.
B. F. Goodrich Industrial Products Co., 500 South Main Street, Akron, Ohio 44318.
Goodyear Rubber Co., 2400 Third Street, San Francisco, Calif. 94107.
Goodyear Tire & Rubber Co., 1144 East Market Street, Akron, Ohio 44316.
Hewitt-Robins, Inc., Glenbrook Road, Stamford, Conn. 06906.
Home Rubber Co., 30 Woolverton Avenue, Trenton, N.J. 08605.
Jomac Roller Co., Inc., 2218 West Lake Street, Chicago, Ill. 60612.
Karpex Manufacturing Co., Inc., 1436 East 19th Street, Indianapolis, Ind. 46218.
McCreary Tire & Rubber Co., Post Office Box 749, Indiana, Pa. 15701.
Moreland Corp., York & Fitzwatertown Road, Willow Grove, Pa. 19090.
National Hose Co., West Clinton Street, Dover, N.J. 07801.
Parker, Stearns & Co., Inc., 300 Sheffield Avenue, Brooklyn, N.Y. 11207.
RCA Rubber Co., 1833 East Market Street, Akron, Ohio 44305.
Rapid Roller Co., 5050 South Kedzie Avenue, Chicago, Ill. 60632.
Raybestos-Manhattan, Inc., Manhattan Rubber Division, 61 Willett Street, Passaic, N.J. 07056.
Rubber Rolls, Inc., 1905 Boulevard of the Allies, Pittsburgh, Pa. 15219.
Stowe Woodward Co., Division of S–W Industries, Inc., 181 Oak Street, Newton, Mass. 02164.
Swan Rubber Co., 436 East Mansfield Street, Bucyrus, Ohio 44820.
Uniroyal, Inc., 1230 Avenue of the Americas, New York, N.Y. 10020.
Vail Rubber Works, Inc., 521 Langley Avenue, St. Joseph, Mich. 49085.
Wild & Stevens, Inc., 5 Connecticut Street, Woburn, Mass. 01801.

Valuation of Imported Goods

Executive Branch Statement

I. INTRODUCTION

The Tariff Act of 1930, as amended, specifies the dutiable treatment to be accorded merchandise imported into the United States. A large group of commodities are free of duty. The remainder are subject to duties in one form or another.

The Tariff Act levies two main types of duties: Specific and ad valorem. Specific duties are assessed on such characteristics of the products as count, weight, volume, area. Examples of these would be rates such as 10 cents per dozen, 5 cents per pound, 2 cents per gallon, 6 cents per square-foot. Some specific rates apply to goods on the basis of value range: For example, valued over 40 cents per pound, valued not over $1.75 per dozen. Application of such rates requires an appraisement of the value of the import before the appropriate specific rate can be determined. Ad valorem rates, which are expressed as percentages of the value of the goods, also require an appraisement. When both a specific rate and an ad valorem rate are assessed on a particular product—e.g., 3 cents per pound plus 15 percent ad valorem—the combination is termed a compound rate of duty.

Prior to any determination of value, imported commodities must be classified; that is, must be identified by reference to applicable provisions of the Tariff Act. In addition to physical identification, this process often requires chemical analysis, use identification, et cetera. If the goods are classified in a tariff item that bears either no duty or a specific rate of duty not dependent upon value, the import transaction ordinarily may be completed by what is known as a liquidation. If, however, it is determined that an ad valorem or a compound rate of duty applies, then a statutory value must be determined.

II. DESCRIPTION OF CUSTOMS VALUATION STANDARDS

The bases of value are defined in the administrative provisions of the Tariff Act in sections 402 and 402a (19 U.S.C. 1401a and 1402). There are nine bases of value and their application depends upon the type of commodity and on conditions under which it is marketed.

The nine bases are:

Section 402: Export value, U.S. value, constructed value, and American selling price.

Section 402a: Foreign value, export value, U.S. value, cost of production and American selling price.

Section 402 is now the basic U.S. valuation method. It became effective in 1958 as a result of the passage of the Customs Simplification Act of 1956. Section 402a is the continuation of the system in effect prior to the passage of the act and is applicable to commodities appearing on the "Final List."

Prior to the Customs Simplification Act of 1956, the statute required appraisement on either foreign value or export value, whichever was the higher. In the absence of either of these, U.S. value had to be determined or, lacking this, cost of production. American selling price was applicable only to certain commodities specified either by statute or by Presidential proclamation under the authority of section 336 of the Tariff Act. A brief description of the bases of value provided for in section 402a follows:

Foreign value is defined as the market value or price at which the imported goods are freely offered for sale for home consumption in the principal markets of the country of exportation in the usual wholesale quantities and in the ordinary course of trade to all who wish to purchase. Export value is the market value or price at which the imported goods are freely offered for sale for exportation to the United States in the principal markets of the country of exportation in the usual wholesale quantities and in the ordinary course of trade to all who wish to purchase.

If the appraising officer finds that there is neither a foreign value nor an export value for the goods, he will find the U.S. value, if it exists. The U.S. value is the price at which such or similar imported merchandise is freely offered for sale in the United States to all who wish to buy, in usual wholesale quantities and in the ordinary course of trade, less U.S. customs duty, transportation costs and insurance and other necessary expenses from the place of shipment to the place of delivery; a commission not exceeding 6 percent, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 percent and a reasonable allowance for general expenses, not to exceed 8 percent on purchased goods.

If neither a foreign value, export value, nor U.S. value can be found, the customs valuation will then be based on the cost of production of the imported goods. The cost of production is the sum of the cost of materials and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar goods, plus the usual general expenses (not less than 10 percent), profit (not less than 8 percent of both of the above elements), and cost of packing.

American selling price is a basis for valuation of certain commodities. It is the price at the time of exportation of the imported articles to the United States at which like or similar competitive articles produced in the United States and packed ready for delivery are sold or offered for sale for consumption in the principal U.S. market in the usual wholesale quantities, or the price which a U.S. manufacturer would have received or was willing to receive for them when sold for consumption in the United States.

The two main commodity groups subject to American selling price valuation are a large class of chemicals (benzenoids) and certain footwear of the sneaker or basketball type. In the case of chemicals, use of the American selling price has resulted in duties as high as 170 percent of the invoice value of the imported products. In the case of footwear, the 20-percent duty, when assessed on the American selling price, may result in duty as high as 100 percent of the invoice value of the imported footwear.

Not only is the degree of protection afforded by American selling price inordinately high, but the whole American selling price system is, in a sense, arbitrary as well as difficult to administer. Administration is difficult because customs officers are required to undertake the burden of exploring the domestic markets for comparable products and to determine appropriate value. More importantly, however, the American selling price system is unique and arbitrary in that, in effect, it allows the American producer to set the value on which his competitor's goods will be appraised. He can do this by making suitable adjustments in his offers and sales. Moreover, one aspect of the law requires customs officials to appraise on what a producer would have been willing to receive for an article which, in fact, he did not sell. Obviously, this provision gives the producer a virtually unlimited power to fix the value of the affected goods.

For these reasons, American selling price valuation has come to be regarded as an unfair trade barrier by many foreign countries.

III. ADMINISTRATIVE PROBLEMS

The mounting backlog of unappraised entries in the early 1950's caused considerable concern and prompted a search for improved methods of appraisement. It was determined that the delay could be imputed to two major factors: first, the existence of foreign value as a basis for appraisement; and, second, the difficulties inherent in the definitions of each basis of appraisement. To lessen these delays, Treasury proposed to amend the Tariff Act of 1930 by eliminating foreign value and redefining the remaining bases to accord with commercial trade practices. In 1956, a bill was introduced in Congress which became the Customs Simplification Act of 1956, and which was designed to simplify and expedite the determination of value on imported articles. A study of the proposed bill revealed, however, that a slightly lower valuation would result therefrom. It was estimated that this decrease would average about 2½ percent for all ad valorem products but in some cases would substantially exceed the average reduction. In order to overcome objections to decreases which were likely to be greater than average, the bill was redrafted to separate such products from the main body of imports and retain the then-existing provisions for use solely in valuing such commodities. The Congress instructed the Secretary of the Treasury to prepare a list of commodities which, under the provision of the new law, would be appraised at a value of 95 percent or less than the value at which they were actually appraised in fiscal year 1954. Such articles were to continue to be appraised under the old standard, which was redesignated as section 402a. The list contains 1,015 items and is referred to as the "final list." The Secretary of the Treasury is not authorized to add to or delete items from this list.

In order to apply the valuation provisions of the Tariff Act to imported merchandise, customs officers must determine which of the two sections of the law apply. On a casual reading of the standards, sections 402 and 402a would appear to be identical for all practical purposes. However, there are signficant distinctions between them. Some of the distinctions are as follows:

The two standards for U.S. value differ in their treatment of the amounts which may be deducted from the sale price in the United States of the imported merchandise to allow for commissions, profits, and general expenses to the importer. Section 402a fixes the percentages of maximum deductions which may be allowed for commissions (6 percent of the domestic selling price), profits (8 percent), and general expenses (8 percent). Section 402 allows the deduction of the "usual commissions, profits, and expenses" in determining dutiable value.

The "constructed value" standard in section 402 is the counterpart of the "cost of production" standard in section 402a. However, under "cost of production," a minimum profit of 8 percent and minimum general expenses of 10 percent of the cost of materials, labor, etc., must be included in determining the dutiable value of an article. Under "constructed value" the "usual profits and expenses" are to be included.

Certain common terminology appearing in the valuation standards of sections 402 and 402a have different meanings. The meanings of the terms appearing in section 402a have been established by administrative or judicial precedent over a long period of years, whereas some of the same terms appearing in section 402 have been statutorily defined to have meanings that differ from those in section 402a. For example, the term, "usual wholesale quantities" in section 402a means the price freely offered for quantities in which the largest number of sales are made. Under section 402, it means the price freely offered for quantities in which the largest volume of sales is made. The term, "freely offered" in section 402a contemplates the highest price which any willing buyer must pay for the foreign goods in the "usual wholesale quantities." Under section 402 the terms means the highest price any industrial user or reseller other than retailer must pay for a "usual wholesale quantity." Additional distinctions of lesser importance exist in the mean of common terms which at times, result in differences between the dutiable values found under section 402a and under section 402. The solution to problems such as the foregoing requires a considerable amount of time and effort. In addition, appraising officers must be guided by judicial decisions under each law.

The Bureau of Customs conducted a study of importations occurring during April and September 1965 to ascertain the current effectiveness of the final list. The study reveals that while the final list was originally intended to include only those products which would have been appraised at least 5 percent lower under the new provisions, the listed products averaged only 2.1 percent lower for April and September combined. Several products on the final list would, under present conditions, be appraised at higher values if the final list were terminated.

Final list products amount to 6.6 percent of all entries, yet their appraisement on the old basis raises revenue collections by only one-tenth of 1 percent. Considerable time and effort is spent in establishing final list values. In addition, special problems and delays are encountered in connection with the valuation of final list products including court actions, administrative appeals, and reviews, which materially increase the uncertainties facing the trading community and generate serious administrative problems.

The passage of time, in effect, has nullified the final list and its intended purpose is no longer served. The present 2.1 percent average difference is, in fact, less than the 2½ percent average difference that had applied across the board to *all* ad valorem products in 1956 when the Customs Simplification Act study was being made. Today the final list is really nothing more than a group of ad valorem commodities subject to a special appraisement. Having lost its original special features, the final list tends to remain an administrative burden and a source of delay and irritation for those engaged in international trade.

Administrative problems also arise in the determination of export value. This value can be determined either on an ex-factory basis or f.o.b. port of shipment basis in the country of exportation, depending upon how the product is sold in the principal markets in the country of exportation. If the importer has the option of buying merchandise at the price prevailing at the factory or at the price including shipping and handling charges to the port of shipment, the merchandise is appraised at the ex-factory price. In such a case, inland shipping charges are not part of the dutiable value. However, if the importer can only buy at a price including delivery costs to the port of shipment, the merchandise is appraised at the f.o.b. price and the charges become a part of the dutiable value. In order to arrive at the correct dutiable value, it must be determined which of these conditions exists. Such a determination at times requires extensive investigation in the country of exportation.

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SUMMARY

Valuation of imported goods subject to ad valorem rates; the Brussels definition of "value."

Commodity classification systems and the collection of statistical data on imports and exports.

- One system for both imports and exports.

Administering the U.S. system of duty assessment.

- Consolidation of valuation and classification proceedings.
- Statute of limitations.
- Rules of evidence: Burden of proof.
  - A uniform rule for valuation and classification.

A look at some provisions of H.R. 18533 (The Customs Administrative Act of 1966), 89th Congress, second session.

A look at some provisions of the Tariff Act of 1930, as amended, which are not treated by H.R. 18533.

STATEMENT

Determining dutiable value on articles subject to ad valorem duties

"Brussels publication," hereinafter mentioned, refers to "Customs Valuation," Doc. 7500 (1960) of the Customs Co-operation Council, Brussels, Belgium.

Other sources:

Volume 31. Federal Register, page 2878, March 17, 1966.

Volume 101. Treasury Decisions, No. 7, page 81, March 2, 1966 (unbound pamphlet).

Volume 171. United Nations Treaty Series, page 322.

Adoption of the Brussels Definition of Value will have a salutary effect upon customs valuation activities, whether relating to the import public or to the Government.

The Definition is a workable one and is in harmony with modern commercial practices.

The Brussels Definition speaks of (1) a price at the time when duty becomes payable (in the United States, at the time of making entry), (2) on a sale in the open market between buyer and seller independent of each other (probably the tax concept of "Fair Market Value").

Commissioner v. *Marshman*, 279 F. 2d 27, 60-2 USTC Par. 9484 (1960): Under long established rulings fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell.

Fitts Estate v. *Commissioner*, 237 F. 2d 729, 731, 56-2 USTC Par. 11,648 (1956): Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell.

In re Williams Estate, 256 F. 2d 217, 218, 58-1 USTC Par. 9252 (1958): By definition, fair market value means the price at which a willing buyer and a willing seller would arrive, after negotiation for sale, where neither is acting under compulsion.

Par. 960, CCH Master Tax Guide, 1965: The Commissioner has recognized a judicial definition of fair market value as being the price which property will bring when offered for sale by a willing seller to a willing buyer, neither being obliged to buy or sell.

26 CFR 20.2031-1(b): Valuation of property in general. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (Estate Tax Regs.)

26 CFR 25.2512-1: Valuation of property; in general. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of relevant facts. (Gift Tax Regs.)

For the purpose of customs value, the Brussels definition assumes that delivery to the buyer occurs at the port of importation. This assumption has overtones of the (1) "price" and (2) "risk of loss" concepts of the law of sales, as codified in article 2 of the Uniform Commercial Code.

Of course, in the actual transaction, the price might be in terms other than those of the Brussels definition, for example, c.i.f. to the buyer's premises. This would not alter the Brussels assumption.

Also, in the actual transaction, the parties might provide that the risk of loss will shift elsewhere than at the port of importation: for example, at the seller's premises, or at the buyer's premises, or at the port of shipment. Or, the parties might not specifically stipulate as to risk of loss, thereby bringing into operation the risk-of-loss provisions of the Uniform Commercial Code. Again, this would not alter the Brussels assumption.

While we are primarily concerned with "price" as a means of establishing customs value, "risk of loss" is of interest to the parties because it determines, as between buyer and seller, upon whom the risk of loss, damage or deterioration shall fall at a given instant. ("Price" and "risk of loss" arise out of the same state of facts).

Where, as happens in a substantial proportion of instances, the terms of the transaction are other than those of the Brussels definition, the various data usually appearing on the invoice and allied papers can be readily used to determine customs value.

For example, the transaction might be at an ex-factory price. Such items as freight, insurance and commissions which appear on the papers on the papers would simply be added to the ex-factory price to arrive at customs value. Desired data which does not appear on the papers must, of course, be obtained through inquiry—by telephone, letter or other suitable means.

Invoice prices of current transactions at arm's length are generally strong evidence of market value. So that the tendency will be toward a given commodity, crossing the border into the United States on a given day, having a customs value which realistically reflects market conditions.

The question has been raised, Suppose the transaction is between related parties, or between parties not dealing at arm's length—how is customs to appraise the merchandise?

"The primary criterion is that of expected realizations for the goods to be valued. Where valuation can be deferred, actual realizations can be used. If these criteria are not available, or appropriate, *the usual alternative is that of acceptable prices for comparable* goods. Whatever criteria are used it is of course necessary to aline their application with the terms of sale which would apply to the goods had they been sold in open market conditions" (p. 161, Brussels publication). [Emphasis supplied.]

The present valuation sections, 402 and 402a of the Tariff Act, have been the cause of much of the delay and vacillation that have plagued valuation activities. As a result, there has evolved through the years a rigidity in thinking, with an emphasis upon minutiae, to the detriment of expeditiously arriving at a value which approximates what purports to be the statutory standard.

It is the built-in inflexibility of the statutory sections themselves which opens the door to delay in the determination of something called a value.

In applying the valuation statute, what has been lost sight of is the distinction between issues of fact and issues of law. For example, a decision (judicial or administrative) might be to the effect that the amount of duty to be deducted from a duty-paid price is to be governed by the rate of duty used by the seller, rather than the rate appearing in the customs tariff. The decision will often be pounced upon as if it were a rule of law for general application, whereas the determination was one of an issue of fact, arising out of a state of facts.

It would be preferable to have as a standard of value a concept, rather than a procedure such as embodied in sections 402 and 402a. (The Brussels publication makes a distinction between a notional concept and a positive concept. The Brussels definition is referred to as a notional concept while, presumably, sections 402 and 402a are embraced by a positive concept. See p. 43, Brussels publication.)

A standard such as the Brussels definition will enable a clearer delineation between the law (which is the standard) and the facts. To paraphrase the Brussels publication (p. 75): facts entirely consistent with the conditions which the definition prescribes are no more than the materialization of its concept. The task, therefore, is to seek and apply those facts which are consistent with the standard.

Fifteen nations of the world have employed the Brussels definition since before 1960.

U.S. taxation authorities have applied the concept under the banner, "fair market value," since 1916.

Enactment of the Brussels definition will have the immediate effect of reducing, immeasurably, correspondence, misunderstanding and recurrent problems.

It will have the broad effect of expediting valuation and facilitating the movement of importations and exportations, for the reason that it is commensurate with the importer's and the exporter's notion of value; it is harmony with the law of sales and commerce; it contributes to realistic results; it is in accord with the value concepts of the revenue laws; it is in accord with the customs valuation law of many of our trading partners.

Protection of domestic industry will not be adversely affected. Congress, in its wisdom, can always raise or lower rates according to fiscal policy and economic conditions. Nevertheless, questions of protection need not stand in the way of an expeditious and realistic standard of valuation.

The administration of the commodity classification system and the collection of statistical data on imports and exports

A. Value

The Bureau of the Census compiles statistics on U.S. foreign trade—both imports and exports.

The source of import statistics is customs entries; "entered values" on imports are based upon sections 402 and 402a of the Tariff Act of 1930, as amended.

The source of export statistics is shipper's export declarations; "Value at U.S. Port of Export" is the selling price, or cost if not sold.

So that, statistics of dollar values of imports are based upon a criterion which is, prima facie, different from that of exports.

Yet, imports and exports are both integral phases of the selfsame U.S. foreign trade. Statistics of imports and exports are used in the same context. The widespread discussion of the U.S. balance of payments crystallizes the notion that imports and exports are faces on the same coin and points up the anomaly of employing separate criteria for values of imports and those of exports.

The value as reported on the shipper's export declaration is in harmony with the Brussels definition of value. The adoption of the Brussels definition will furnish analogous criteria for imports and for exports.

B. Classification

Comparable in significance to the relation of value to statistical reporting, is the relation of tariff classification and commodity number to such statistical reporting.

At the present juncture in the history of world trade, it is incongruous for the United States to maintain two separate classification systems, one for imports (Tariff Schedules of the United States) and the other for exports (schedule B).

Further, U.S. foreign trade statistics would be amenable to more meaningful correlation if the same classification were used both for import and for exports.

Schedule B, based essentially upon the standard international trade classification (SITC), is used by the Commerce Department in connection with exports from the United States.

It would seem desirable that schedule B also be used for the assessment of import duties.

The import duty rates in TSUS can be readily transferred to applicable classifications in schedule B.

Statistical refinements may continue to be revised, as heretofore, by administrative action of the Secretaries of Treasury and Commerce, and the Chairman of the Tariff Commission.

Discontinuance of TSUS will, of course, require congressional action.

Administering the U.S. system of duty assessment

A. Reappraisement and classification proceedings

Appeals for reappraisement (value) and protests (classification) (sections 501 and 514, Tariff Act; section 210, Antidumping Act (19 U.S.C. 169)) are conducted as separate proceedings. This is incongruous when the appeal for reappraisement and the protest grow out of the same state of facts and the selfsame importation.

The Customs Court should decide whether the appeal for reappraisement and the protest should be tried in one proceeding or as severed ones.

Necessary legislative action should be taken to permit the trial of reappraisement and protest issues in the same proceeding.

B. Statute of Limitations

A glaring void in the jurisprudence of customs valuation and tariff classification is the absence of a statute of limitations running from the inception of the transaction: the filing of the entry with customs.

There should be a time limit, commencing at the time of entry, within which the Government would be required to furnish the statutory notice of the assessment of additional duties. Three years (or whatever period is appropriate) is recommended.

The administrative stages in the processing of an importation entry are: (1) filing of the entry by the importer: (2) appraisement by the Government; (3) liquidation by the Government. Under the present law, time limits apply only to the importer. He has 30 days to appeal the appraisement (19 U.S.C. 1501) and 60 days to protest the liquidation (19 U.S.C. 1514).

Protracted administrative handling can delay liquidation. Added to the time for administrative procedures is the time for judicial proceedings. In the interim, the importer, who might have a large monetary stake in the outcome, is caught between the horns of a dilemma.

The mere existence of a statute of limitations will induce expeditious administrative treatment of the entry.

In tax administration, the Internal Revenue Code prescribes a general 3-year period of limitation from the filing of a tax return for the purpose of assessment (26 U.S.C. 6501).

Customs duties are no less fiscal than taxes.

A period of limitation should be written into the Tariff Act.

C. Rules of evidence: Burden of proof

Section 2633, title 28, United States Code, states in part:

The value found by the appraiser shall be presumed to be the value of the merchandise. The burden shall rest upon the party who challenges its correctness to prove otherwise.

It seems desirable to repeal the sentence,

The burden shall rest upon the party who challenges its correctness to prove otherwise.

As an alternative, the following rule can be adopted into title 28, United States Code.

The burden of proof shall be upon the petitioner [protestant], except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent [defendant]. Rule 32. Burden of Proof, Rules of Practice, Tax Court of the United States.

The above statutory rule of evidence (28 U.S.C. 2633) has virtually evolved through judicial interpretation into a settled rule of placing a double burden upon the plaintiff, akin to the rule in tax refund cases:

(U.S. Court of Claims) When suing for a refund the taxpayer must not only prove that the Commissioner's determination is wrong, but also must prove the facts upon which the correct tax can be determined. Sec. 58A.19 Mertens, Law of Federal Income Taxation.

(U.S. District Court) Since the action for refund of tax is in the nature of a common law action for money had and received and is governed by equitable principles, the burden of proof is upon the taxpayer to prove not only that the determination of the tax is wrong, but to produce evidence from which another and proper determination can be made. Sec. 58A.35 Mertens.

Tax cases may be tried in any of three courts, U.S. Tax Court, U.S. district court, or the U.S. Court of Claims. However, the latter two courts are available only upon payment of the deficiency, after which the plaintiff sues for refund.

However, Customs Court is the sole trial court for deciding customs valuation (appraisement) and classification (rate of duty) cases.

Like the Customs Court, it is the U.S. Tax Court which is available to the taxpayer-petitioner without prior payment of the deficiency.

In the Tax Court, the rule is that the Commissioner's determination is presumed correct. This presumption casts upon the taxpayer-petitioner the burden of going forward with evidence to rebut the presumption. Such rebuttal shifts the burden of going forward to the Commissioner. While the burden of proof remains upon the taxpayer, the Commissioner's failure to meet the burden of going forward subjects him (Commissioner) to the risk of an unfavorable determination.

A presumption, similar to that of the Tax Court, attaches to the district director's (collector's) decision in customs protests (classification).

It is difficult to reconcile the plantiff's having (in many instances) a double burden of proof in reappraisements (valuation), on the one hand, with the plaintiff in protest cases (rate of duty), on the other hand, having the single burden of proof to establish his own claim, and upon overcoming the presumption of correctness, shifting to the district director the burden of going forward.

The line of decision in the Customs Court leaves much room for doubt as to the quality and quatum of proof appled to the evidence.

Seemingly, the court sometimes applies one, and sometimes another, of the following criteria:

(*a*) A showing by the preponderance of the evidence, both, that the district director's decision is erroneous, and that the plaintiff's claim is correct.

(*b*) A prima facie showing to overcome the district director's decision, thus shifting the burden of going forward with proof to the district director.

The following quotations point up the varying judicial applications of the burden of proof provision (28 U.S.C. 2633) as to appraisement (value), together with examples relating to classification (rate of duty):

Kenneth Kittleson v. *United States*, 40 CCPA 85, 89, C.A.D. 502 (1952): It was not incumbent upon the Government to prove that the appraised value was proper, until or unless the importer had shown said appraisement to be erroneous and established a different value in the place thereof. * * * It is definitely fixed by the Tariff Act of 1930 and judicial interpretations of the provisions thereof that the burden upon a party attacking an appraised value is twofold, and the validity of such action enjoys a presumption of correctness until such burden is met.

United States v. *G. Klein & Son*, 42 CCPA 73, 76, C.A.D. 574 (1954) : There is a presumption of correctness which attaches to Customs Collector's classification. In order to overcome this presumption, the importer has the burden of proving that the Customs Collector was wrong in his classification and that he (the importer) is correct.

Arditi v. *United States*, 50 CCPA 49, 51, C.A.D. 818 (1963) : There is a statutory presumption that the finding of value by the appraiser is correct and the burden here rests on the appellant to prove that the appraised value is erroneous. If successful in this step, he must go further and establish that some other dutiable value is proper. This burden does not shift unless and until the importer shows prima facie such appraisement to be erroneous and establishes a different value in lieu thereof.

United States v. *Getz Bros & Co. et al.*, A.R.D. 214, Vol. 101 weekly Treasury Decisions, No. 48, December 14, 1966, page 84: (quoting from 46 Cust. Ct. 753) : * * * the presumption of correctness attaching to the appraiser's return of value was overcome by appellee's *prima facie* showing and the burden of going forward with proof shifted to the appellant.

Novelty Import Co., Inc. v. *United States*, C.A.D. 872, Vol. 101, weekly Treasury Decisions, No. 12, April 6, 1966: * * * the law is well settled that the collector is presumed to have found every fact necessary to sustain the classification. * * * It was incumbent upon appellant to rebut the presumption as to the correctness of the classification * * * (page 117).

The law is so firmly settled, as not require recitation of authority therefor, that the burden of proof is on the protestant to show by substantial evidence not only that the collector's classification is wrong but also to establish the classification of the merchandise in issue which is asserted to be proper (page 118).

Midland Industrial Company v. *United States*, R.D. 11235, Vol. 101, weekly Treasury Decisions, No. 46, November 30, 1966, page 32: Under the applicable statute, "the value found by the appraiser shall be presumed to be the value of the merchandise. The burden shall rest upon the party who challenges its correctness to prove otherwise," 28 U.S.C. 2633. It is therefore, axiomatic that a twofold responsibility develops upon a plaintiff in a reappraisement action. To sustain his burden of proof and overcome the presumption of correctness, it is incumbent upon plaintiff, the arty challenging the value as found by the apraiser, to show *prima facie* that the action of appraiser was erroneous and to establish some other dutiable value as proper.

International Distributors, Inc. v. *United States*, C.D. 2822, Vol. 101, weekly Treasury Decisions, No. 47, December 7, 1966, page 19: Since evidence of some probative force supplies the links of proof needed and not established by the collector's findings or by stipulation, we do not have to consider whether it is the weightiest that could be adduced. It casts the burden on the Government to refute it. The presumption of correctness of the classification falls upon the making by plaintiff of a *prima facie* case, and it has no further evidential value.

A. L. Erlanger Co., Inc. v. *United States*, C.D. 2845, Vol. 101, weekly Treasury Decisions, No. 50, December 28, 1966, page 44: While plaintiff has overcome the first part of its burden of establishing the classification to be erroneous, it has failed to go forward and establish by a preponderance of creditable evidence the correct classification.

H & S Originals v. *United States*, R.D. 11244, Vol. 101, weekly Treasury Decisions, No. 50, December 28, 1966, pages 52, 53: The probative evidence of record is sufficient to overcome the statutory presumptive correctness ordinarily attaching to the value found by the appraiser, 28 U.S. Code, section 2633. The plaintiff has presented competent and persuasive evidence making out a *prima facie* case which successfully challenges the appraiser's finding of value made on the basis of invoiced unit prices, plus a varied percentage * * * As the appraisement in each case is erroneous, and as the importer established a different value in place thereof, it was incumbent upon defendant to prove that the appraised value in each case is correct and proper. Evidence introduced by defendant does not support the appraised value.

As suggested previously, the following sentence in 28 U.S.C. 2633 should be repealed: "The burden shall rest upon the party who challenges its correctness to prove otherwise." In similar fashion, any future amendment of title 28, United States Code, relating to customs litigation should not include the sentence herein recommended for elimination.

Hence, there will be consistency in that the application of the rule of evidence as to the burden of proof will be the same in [re-]appraisements and in protests [classification].

Surely, if and when reappraisements and protests are combined into one proceeding, a uniform rule will be desirable.

A look at some provisions of H.R. 18533 (The Customs Administrative Act of 1966), 89th Congress, second session

A. Statute of limitations

The following subsection should be added to the new section 500 in the bill:

(f) Except as otherwise provided in this Act, the amount of any increased or additional duties due to any excess of duties deposited pursuant to this section shall be determined within 3 years after the entry was filed.

A statute of limitations was discussed previously in this paper. It is repeated here that time limits as to valuation and classification (duty rates) seem to apply only to the importer. (New sec. 514 of the bill).

B. Editorial correction: Appraisement, classification, and liquidation procedures

Section 500(b) of the bill should be amended to read as follows:

(b) ascertain the classification of, and the rate of duty applicable to, such merchandise;

Addition of the word, "classification", would bring new section 500(b) into harmony with the other sections of the bill. (For example, see these places in the bill: p. 15, line 16; p. 16, line 25; p. 17, line 11.)

C. Time for filing protests

The following words in section 514(b)(2) of the bill should be eliminated: "but not before" (p. 13, line 13).

This is the kind of language which should be purged from the Tariff Act.

It penalizes the person who is diligent.

Experience has shown that the course of conduct of the Customs Service causes the importer to file a protest prematurely. A Customs Form 5555 (Notice of Action; Increase of Duties) is sent to the importer. In situations where a "taken" action is indicated, the importer sometimes understandably proceeds to seek his remedy, without waiting for the prescribed mode of notification of the liquidation.

Realistically, one piece of paper is as much notice as another piece of paper.

Presently, when the matter reaches Customs Court, the protest is dismissed as being untimely (premature).

In contemplation of law, the importer should not be adjudged premature for acting upon a "taken" notice.

It is significant that section 516 of the bill (Protest by American Producers) does not contain the restrictive words, "but not before."

The mode of liquidation is prescribed by mere regulation (19 CFR 16.2 (d) and (e). (Sec. 505, Tariff Act of 1930).

D. Review of protests

Amend the entire section 515 of the bill to read as follows:

REVIEW OF PROTESTS

SEC. 515. ADMINISTRATIVE REVIEW AND MODIFICATION OF DECISION.—Upon the filing of a protest as provided in section 514 of this Act, the appropriate customs officer shall, within sixty days after the expiration of the period within which such protest could have been filed under section 514 of this Act, review the decision with respect to which such protest is made and may affirm such protest or deny the same in whole or in part. Thereafter, he shall remit or refund any duties, charge, or exaction found to have been assessed or collected in excess, or pay any drawback found due. Notice of any affirmance or denial in whole or in part shall be given as in the case of the original decision. For purposes of section —— of title 28, United States Code, a protest which has not been affirmed or denied in whole or in part within sixty days after the expiration of the period within which such protest could have been filed under section 514 of this Act shall be deemed affirmed at the termination of such sixty day period.

When sections 514 and 515 of H.R. 18533 are read together, it can be seen that, at most, 60 days can be truncated from a possible total of 180 days by a "request for accelerated disposition of protest."

We should stay clear of creating unnecessary administrative categories such as requests for accelerated disposition.

It is adequate that the importer is given 90 days to file a complaint in the Customs Court and that Customs is given 60 days to review a protest.

Sixty days for Customs to review is a good compromise between section 515(a) and section 515(b) of H.R. 18533.

Quite often, delay within Customs results in the failure to review the protest within the period provided in section 515.

In many cases, Customs would have affirmed the protest if it had acted within the required period. As a result, the importer is compelled to go to court merely because of Customs' delay.

Inserting the presumption of affirmance of the protest in section 515 will make the word, "shall," meaningful.

On the other hand, a presumption of denial of a protest would enable the matter to be pigeonholed until the expiration of the review period, creating much unnecessary litigation.

E. Editorial correction: Publication of rulings

The words, "Federal Register," should be substituted for the words, "weekly Treasury Decisions" (now Customs Bulletin) in section 516(b) of H.R. 18533 (p. 16, line 4).

The words, "Federal Register," should be substituted for the words, "weekly Treasury Decisions" (now Customs Bulletin) in section 315 (d) of the current Tariff Act of 1930.

While acknowledging that the Customs Bulletin (formerly weekly Treasury Decisions) is the authoritative instrument of the Commissioner of Customs for the announcement of official rulings and decisions of the Bureau of Customs, it remains that the Federal Register is the primary vehicle in the executive branch for the publication of statements of policy and interpretations and statements of established and uniform practice.

Needless to say, such announcements are also published in the weekly Customs bulletin.

The recommendation herein adheres to the tenor of sections 551–554, title 5, U.S. Code (Administrative Procedure).

The persistence of the words, "weekly Treasury Decisions" in the statutes is because of historical reasons. The Federal Register commenced publication in 1936, whereas "Treasury Decisions" was already in existence at that time.

F. Editorial correction: Refunds and errors

Current section 520(c)(2) of the Tariff Act should be amended to read as follows: (see p. 19, line 18 of H.R. 18533):

> * * * any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with the appropriate customs officers, within one year after the date of entry.

There will be consistency with the other provisions of H.R. 18533, with respect to the phrase, "appropriate customs officer."

A look at some provisions of the Tariff Act of 1930, as amended, which are not treated by H.R. 18533

Section 321. (a)(1) "$10" should be substituted for "$3." As amended, the provision would read as follows:

> SEC. 321. (a) * * *
>
> (1) disregard a difference of less than $10 between the total estimated duties or taxes deposited, or the total duties or taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties or taxes actually accruing thereon; and

Section 321. (a)(2)(C) "$1 in any other case" should be repealed. The following new subdivision (3) should be added:

> (3) admit articles free of duty and of any tax imposed on or by reason of importation where the aggregate duty and tax on articles imported by one person on one day does not exceed $1.

Section 321. (a)(1) In view of the recent large-scale reductions of rates of duty resulting from the Kennedy round of negotiations at Geneva, $10 tolerance would seem practicable. At a 10-percent rate of duty, it would require a variance of $100 of entered value to cause a duty consequence of a mere $10.

In December 1964, the Stover report (An Evaluation of: Mission, Organization, Management, Bureau of Customs, Treasury Department) recommended an increase from $3 to $5 (Recommendation VI-41, p. VI-52). Subsequent events have already rendered obsolete the recommended $5 amount, even though it has yet to be effectuated.

Section 321. (a) (2) (C) and suggested (3). This was a recommendation of the Stover report (Recommendation VI-15, p. VI-15). Considering today's commercial realities, it seems practicable to apply the $1 limitation to the duty and tax, rather than to the value of the merchandise.

Section 482, Certified invoice, should be repealed in its entirety. The certified invoice has gone out of vogue. Since it is no longer the practice to use the certified invoice, section 482 of the Tariff Act is now obsolete. Because it serves no useful purpose, it should be repealed.

Section 484(b) should be amended as follows:

> PRODUCTION OF CUSTOMS INVOICE.—The Secretary of the Treasury shall provide by regulation for the production of a customs invoice with respect to such merchandise as he deems advisable and for terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a customs invoice.

As intimated above (sec. 482), any reference to the certified invoice should be excised from the statute. The suggested amendment to 484(b) would accomplish this purpose. The word, "special" is superfluous in the phrase, "special customs invoice," in the present 484(b), and should be deleted.

Section 484. (h) and (i) There should be repealed, in their entirety, subsections (h) and (i) of section 484, pertaining to the right to make entry (carrier's certificate and duplicate bill of lading).

Section 484. (j) The following language in the first sentence of subsection (j) of section 484 should be repealed:

> Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that

Common carriers are strictly regulated by the Federal Maritime Commission, the Civil Aeronautics Board, or the Interstate Commerce Commission.

Further, common carriers are subject to liability under the Federal Bills of Lading Act (49 U.S.C. 81–124). They are also subject to the "Bills of Lading" provisions of the Uniform Commercial Code as enacted by 47 States.

It is presumed that the common carrier is acting lawfully and within the scope of its authority when it conveys bills of lading and other papers and receipts to a consignee, or when it processes an entry, either directly with customs or through a customhouse broker.

The carrier, or a customhouse broker selected by the carrier, or the consignee, in making the entry in his own right (importer of record), is accepting the responsibilities and obligations entailed in the transaction. In any event, the various bonds posted by the carrier, or by the broker, or by the consignee, protect the rights of the Government. The various liabilities which inure to the benefit of the Government are safeguarded.

The benefits will be the elimination of paperwork, forms, and requirements which retard making and processing entries, and which delay the movement of importations; better service to the importing public; reduction of paper handling, without injuring the interests of the Government.

The recommendations are in accord with expeditious and sound business practice.

Section 485. (e) Separate forms for purchase and nonpurchase importations. Subsection (e) of section 485 should be repealed in its entirety. The provision has not been complied with for many years. It is obsolete. It clutters the statute. The current special customs invoice (Customs Form 5515), for example, is a consolidated "purchase" and "nonpurchase" form.

Section 498. (a) (1) "$500" should be substituted for "$250".

The current maximum limit of $250 for informal entries is out of step with the present-day commercial realities of international trade. The need for a higher maximum will be emphasized by forthcoming effectuation of the substantial reduction in rates of duty resulting from the Kennedy round of tariff negotiations at Geneva.

A maximum of at least $500 is reasonable. It would avoid the extensive precautionary procedures surrounding formal entries and which do not usually affect informal entries, those presently not greater than $250.

The duty consequence of a $500 entry at 20 percent, for example, is $100. Such a duty amount can safely go through the less burdensome procedure of an informal entry.

World trade has doubled in the past 8 years, and will double in the next decade. It will be very necessary, on a continuous basis, to gear the administrative provisions of the Tariff Act to business conditions. The trend is toward the obliteration of the distinction between an entry of the "informal" type and that of the "formal" type.

Forthcoming data processing and retrieval operations, enabling speedy decisionmaking, will be capable of absorbing virtually all entries, regardless of dollar amounts, however large or however small.

Section 522. Conversion of currency. The following changes should be made in section 522:

Repeal subsection (a) in its entirety.
Redesignate subsection "(b)" as subsection "(a)".
Delete catchline of redesignated subsection "(a)".
Amend redesignated subsection "(a)" as follows:

For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, whenever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (b), shall be made at the values first certified as the buying rate by the Federal Reserve Bank of New York for the quarter in which the merchandise was exported.

Redesignate subsection "(c)" as subsection "(b)".
Delete catchline of redesignated subsection "(b)".
Amend redesignated "(b) (1)" as follows:

(b) (1) If the buying rate at noon on the day of exportation varies by 5 per centum or more from the buying rate first certified for a day in the quarter in which the day of exportation falls, then conversion of the foreign currency involved shall be made at a value measured by such buying rate on the day of exportation.

The provision for proclaimed rates is obsolete. Under current practice, all rates for customs purposes are certified to the Secretary of the Treasury by the Federal Reserve Bank of New York. Statutes should reflect realities.

NOTE.—Of course, if the Brussels Definition of Value is adopted, "day of exportation" would be changed to "the time when duty becomes payable." In the United States, duty becomes payable at the time of making entry.

Revised Statutes: Obsolete provision

Revised Statutes, section 251 (R.S. 251, 19 U.S.C. 66) should be repealed. It grants to the Secretary of the Treasury authority to promulgate regulations pertaining to imports and duties.

Section 624 of the Tariff Act of 1930 (sec. 624, 46 Stat. 759; U.S.C. 1624) grants such authority to the Secretary of the Treasury.

It is redundant to have two provisions granting the same authority.

GRAUBARD & MOSKOVITZ,
New York, N.Y.

(Attention of Tom Vail, Esq., Chief Counsel).
COMMITTEE ON FINANCE,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

GENTLEMEN: We enclose five copies of a statement of the Organic Chemicals Group of the American Importers Association, Inc., concerning American selling price valuation which is submitted for inclusion in the compendium being compiled by the committee for use in its "Legislative Oversight Review of U.S. Trade Policies."

For the information of the committee, in accordance with 22 U.S.C. section 611(q)(ii), we inform you that the names of the companies in the Organic Chemicals Group which have foreign parents, and the names of such foreign parents, are as follows:

ORGANIC CHEMICALS GROUP MEMBER COMPANY	FOREIGN PARENT COMPANY AND COUNTRY OF INCORPORATION
American Hoechst Corp.	Farbwerke Hoechst AG., Federal Republic of Germany
BASF, Colors & Chemicals, Inc.	Badische Anilin-& Soda-Fabrik AG., Federal Republic of Germany
Chemore Corp.	A.C.N.A. (Aziende Colori Nazionali Affini S.p.A.) Italy
Francolor, Inc.	Française des Matières Colorantes S.A., France
ICI America, Inc.	Imperial Chemical Industries, Ltd. England
Naftone, Inc.	Farbenfabriken Bayer AG., Federal Republic of Germany
Rhodia, Inc.	Société des Usines Chimiques Rhône-Poulenc, France
Verona-Pharma Chemical Co.	Farbenfabriken Bayer AG., Federal Republic of Germany

Very truly yours,

GRAUBARD & MOSKOVITZ.

Statement of the Organic Chemicals Group of the American Importers Association—Considerations Favoring the Elimination of American Selling Price Valuation [1]

INTRODUCTION

This statement is submitted by the Organic Chemicals Group of the American Importers Association, Inc. (AIA) in response to the invitation of the Honorable Russell B. Long, chairman of the committee, contained in a release dated September 27, 1967, to interested parties to submit statements on subjects to be covered in the committee's "Legislative Oversight Review of U.S. Trade Policies."

The Organic Chemicals Group is a group formed and existing under the auspices of the AIA, a national organization of American companies, firms, and individuals who subscribe to a liberal trade policy and to the goal of expanded international trade. The AIA has over many years devoted its attention to broad matters of trade policy before the Congress and other branches of the Government such as, for example, support for the enactment of the Trade Expansion Act of 1962. Its commodity groups, among them the Organic Chemicals Group, in turn, deal with trade matters affecting particular groups of products.

The Organic Chemicals Group was formed approximately 4 years ago by importers of benzenoid chemicals who were members of the AIA principally because it was expected—an expectation which was fully borne out—that special attention would be paid during the Kennedy round to the tariff structure on chemicals. The U.S. chemical industry for many years has had an unusual type and degree of tariff protection. In addition to high tariff rates, the industry for the last 45 years has been the beneficiary of a method of customs valuation, American selling price (ASP), which is unique among the major trading nations. Under ASP, the value for customs appraisement purposes of a benzenoid chemical import, which is competitive with a chemical manufactured in the United States, is not its own market value but rather the American wholesale price of the U.S. manufactured chemical. The Kennedy round negotiations afforded an opportunity to reduce or eliminate these American barriers to the chemical trade in return for important trade concessions on the part of the U.S. principal trading partners.

The Group has appeared before the U.S. Tariff Commission and the Trade Information Committee of the Office of the Special Representative for Trade Negotiations to expose ASP as an unwarranted barrier to expanded U.S. trade in chemicals and to document the fact that elimination of this barrier will not adversely affect the U.S. chemical industry. It has also undertaken the task of demonstrating that the resulting lower chemical duties on both sides of the Atlantic and Pacific will be economically beneficial to all.

The Group, because of its composition, was in a uniquely favorable position to undertake this task. A number of its member companies,

[1] For other views on the American Selling Price issue see statements by Synthetic Organic Chemical Manufacturers Association, p. 487, and Michael Daniels on behalf of the Swiss Union of Industry and Commerce, p. 64.

all of whom are U.S. corporations not only import chemicals but also have important manufacturing facilities in the United States. Thus, the Group's membership has an intimate knowledge of and an important stake in not only the U.S. import trade in chemicals but also in their domestic manufacture and sale.

It would not be practicable within the limits of this statement to detail the overriding economic benefits to the United States of the Kennedy round's basic chemical package. Nor does this appear to be the appropriate place to detail the reasons why the supplementary chemical package, conditioned upon elimination of ASP valuation, was a very good economic bargain indeed from the U.S. point of view. The Group has commissioned economic studies, which are nearing completion, to demonstrate to the domestic chemical industry and the Congress what seems to be obvious to most professional economists: The industry and the U.S. economy have far more to gain than to lose from a congressional ratification of the supplementary chemical package by repeal of ASP valuation. It is hoped that these studies will aid in dispelling the fears so far expressd by segments of the U.S. chemical industry over the results of the chemical sector of the Kennedy round negotiations, when they are presented at future congressional hearings on an administration trade bill to repeal ASP.

Indeed it is rather sad that some members of the domestic chemical industry have let themselves be blinded by subjective fears to the Kennedy round's substantial achievements in opening up new markets for sophisticated American chemicals throughout the world. For if the domestic industry—one of the most dynamic and strongly competitive internationally of all of our industries—views of these achievements objectively and support the Kennedy round's supplementary chemicals package, such support will provide important impetus toward the goal of U.S. long-term trade policy, expanded trade and its concomitant, expanded economic activity in the United States and the rest of the free world.

This statement will discuss ASP in terms of broad U.S. trade policy. We will show that ASP's retention would not be sound, forward-looking trade policy, but rather an unwarranted continuation of an outmoded and archaic statute. We will also show that ASP's elimination will fulfill a long overdue treaty pledge of the United States to its trading partners and will reconfirm the U.S. role as the leader of the free world in the liberalization and expansion of international trade.

ASP VALUATION IS OUTMODED AND ARCHAIC

While the history and original purpose of ASP valuation have been detailed many times, a brief reiteration is in order to demonstrate that its retention today is unwarranted.

The Fordney-McCumber Tariff Act of 1922 provided for ASP valuation of so-called "coal tar" or benzenoid chemicals as a means of maximizing the protection, already afforded by high rates mandated by that act, to the then infant American benzenoid chemical industry which had grown up during and after World War I. Congress believed that without this protection the industry might be damaged severely or destroyed by the European chemical industry, which had previously been the chief supplier of the U.S. and other world markets and which was seeking to reestablish itself in these markets after the war.

The theory of Senator Smoot and other sponsors of ASP valuation for benzenoids was that it would compensate for the wide spread between the prices of the relatively inefficient U.S. industry and those of the better developed foreign industry. Moreover, it would serve as one protection against price cutting raids by the foreign industry in its attempt to recapture old American customers. Finally, it would offset the effects of the exchange rate fluctuations arising from the unstable post-World War I economic conditions in Europe. These reasons for ASP's enactment may well have been valid in 1922. They certainly have no validity today.

Another reason for ASP valuation which was brought out in the Senate debate over its enactment was that it served to disguise extremely high effective ad valorem tariff rates so, as it was put by one Senator, they would not "shock the public conscience." While American law provides a number of valuation standards in addition to ASP, the normal standard now is "export value" which generally speaking is the value of the imported merchandise at the foreign port packed ready for shipment to the United States. ASP valuation, on the other hand, is based not on the value of the imported product but rather on the price in the American market of a comparable U.S. produced product. Thus, the spread between the foreign port price of imported merchandise and the price of competitive U.S. produced merchandise constitutes the multiple by which ASP valuation inflates the effective duty rate.

The U.S. Tariff Commission made its Report 181 of July 1966, after exhaustive investigation and public hearings in which our group participated, on the ad valorem or percentage equivalent of rates converted from an ASP to a normal valuation basis. While there has been some dispute over the results—the domestic industry claiming the converted rates are too low and our group's economist viewing them as on the high side—the basic correctness of the Tariff Commission's report is essentially conceded. It shows that better than one-third of the converted rates are approximately the same as they would be under conventional valuation and that the bulk of the balance are not excessively higher except in intermediates and dyes.

Thus, in terms of tariff protection per se all that the United States will be conceding if it eliminates ASP valuation and brings the rates for dyes down to 30 percent and the rates for intermediates down to a maximum of 20 percent ad valorem—themselves high rates compared to the overall U.S. average—will be a significant tariff cut on a relatively minor portion even of U.S. imports of benzenoids. By comparison, virtually no duty rates in the EEC or United Kingdom will remain above 12.5 percent and many will be substantially below that level, if the supplementary package is ratified by the United States.

This is why our group finds it so hard to understand the cries of anguish from some members of the domestic chemical industry over the prospect of losing the "protection" of ASP valuation. An industry which on the basis of sales is the largest in the world, numbers among its members among the largest individual chemical companies in the world, which exports annually more than three times the value of chemicals that are imported by this country, and which is well above

U.S. industry average in profitability, should not be concerned about the reduction of a relatively few chemical tariffs which the supplementary chemical package and elimination of ASP valuation will bring.

The Congress should eliminate this relic of a bygone day. It is simply illogical to have the vast majority of U.S. imports valued for customs purposes on an "export value" standard, which approaches the goal set in the General Agreement on Tariffs and Trade (GATT) of valuation based upon the actual market value of the imported merchandise, and at the same time to preserve an outmoded, archaic standard of value for a small portion of those imports. Our group believes that when the modern, forward-looking majority of the American chemical industry once looks objectively at the question of whether to eliminate ASP, it will agree.

ELIMINATION OF ASP VALUATION WILL FULFILL A U.S. OBLIGATION UNDER THE GATT AND WILL CONFIRM U.S. FREE WORLD LEADERSHIP IN LIBERALIZATION AND EXPANSION OF INTERNATIONAL TRADE

We have almost reached the 20th anniversary of the coming into force of the GATT. The distance that this country and its trading partners have traveled toward the goal of international trade unfettered by tariff barriers in these two decades is phenomenal. The successful conclusion of the Kennedy round was a fitting climax.

However, in another aspect, the Kennedy round was just the beginning. As has been pointed out by the chairman and other members of this committee, if nontariff trade barriers are thrown up in place of tariff barriers, elimination of tariffs as obstacles to trade will have proved a pointless exercise.

This fact was recognized by the drafters of the GATT and they set forth goals for the elimination of nontariff as well as tariff barriers. In the protocol of provisional application, the United States and other of the signatories, while exempting legislation existing prior to 1947 from the GATT's absolute prohibitions of various nontariff trade barriers, undertook as soon as possible to bring their laws in line with the GATT standards.

In the area of customs valuation, the GATT, article VII, subparagraph 2(a) provides:

> The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

Thus the United States, 20 years ago, undertook a clear treaty obligation to eliminate as soon as practicable ASP valuation.

The domestic chemical industry, therefore, cannot complain that it has not had fair warning or an opportunity to adjust to the eventual repeal of ASP. It has had a full two decades to prepare.

As analyses of the proposed final rates reveal, the elimination of ASP will not reduce the industry's overall tariff protection. It will, however, remove a real nontariff trade barrier, recognized as such by the United States in a solemnly concluded international trade compact which has charted the course of expanded trade and free world prosperity since World War II.

It is not difficult to see why ASP valuation was pinpointed specifically as a nontariff trade barrier by the GATT's drafters, and why the United States undertook specifically to eliminate it from U.S. law. Nor is it difficult to understand why the negotiators of the Common Market and Great Britain, among others, made it an issue of principle at the Kennedy round negotiations. It introduces an element of uncertainty into customs valuation which can do more to impede and disrupt trade than a high duty, and it is the clearest example of appraisement based on an arbitrary or fictitious value rather than the GATT standard of "actual value."

Indeed, the chief proponent of ASP valuation for benzenoids pointed out the difficulties created by this means of valuation in explaining why ASP was rejected as a basis for valuation of all U.S. imports. In the 1922 Senate debate on the question, then chairman of the Committee on Finance, Senator Smoot said:

> The [ASP valuation] plan was abandoned early in the discussion first, because of the limited number of exactly comparable domestic and foreign products; second, the difficulty and probably litigation involved in defining comparability to the satisfaction of importers, domestic manufacturers, and customs officials; and third, the disturbance to business while these difficulties were being adjusted.

It is apparent that, with the best will in the world, the Bureau of Customs must have a difficult job in ascertaining whether a particular domestically produced benzenoid chemical is comparable to another chemical being imported, and this difficulty increases with the progress of the chemical industry to more and more sophisticated products. Moreover, if a comparable competitive domestic benzenoid chemical is found the Bureau next must ascertain a wholesale price. Obviously the Bureau's source for this information must be the members of the domestic benzenoid industry, a group who has an understandable interest in as high a valuation as possible and therefore an incentive possibly to err on the high side when asked about its prices for this purpose. Moreover, the domestic price can vary from time to time. Thus, the importer never knows what the valuation of his merchandise for duty purposes is going to be until the day his merchandise is entered, if then.

Finally the ASP system of valuation has the unique feature of enabling an American manufacturer to raise the amount of duty on an imported product simply by beginning to manufacture the product. ASP valuation does not apply to a definite group of benzenoids but only those as to which there is competitive domestic production at a particular time. Thus, the final uncertainty is introduced. An exporter and his importer may go to trouble and expense to build a market in the United States for a benzenoid chemical product not produced here, and one day may find their market foreclosed by a U.S. manufacturer who decides to manufacture the product and sell it at a price which makes the import now dutiable under the ASP standard noncompetitive.

By its enactment of the Customs Simplification Act of 1956, the Congress went a long way toward satisfying the U.S. GATT commitment concerning customs valuation. The adoption for most imports of an "export value" standard was a commendable step in this direction. By approaching invoice price Congress has come close to the GATT ideal of "actual value." In view of the substantial benefits which this country will receive from the supplementary chemicals package in terms of further tariff cuts on chemicals by our trading partners, this appears to be the ideal time for Congress also to fulfill our long outstanding GATT commitment, by repealing ASP valuation.

Finally, but not by any means of least importance, favorable action on repeal of ASP by Congress at this critical stage in the development of world trade could be the impetus necessary to move us on into a period of rapid elimination of nontariff trade barriers abroad to U.S. trade. Thus by prompt congressional action, this country can reassert its leadership of the free world in the development and expansion of international trade.

It has been through the strong leadership of the United States that the free world has been successful over the last 20 years in negotiating down tariff barriers to the point where they now constitute little if any impediment to international trade. The expansion of ours and our trading partners' trade which has resulted has meant unprecedented prosperity for all.

It will only be through the same type of strong leadership by the United States that a similar development can take place with respect to elimination of nontariff trade barriers. Congressional ratification of the Kennedy round's supplementary chemicals package by repeal of ASP valuation is the logical first step in this new campaign for broadened free world trade.

It is not generally recognized in the United States that to most of our friends abroad, particularly in Western Europe, the term ASP has an emotional impact far beyond its actual impact on trade. It is regarded by them as as the prime symbol of old fashioned, reactionary protectionism. For the elimination of this symbol, our trading partners are willing to pay a great deal, not only in terms of lower tariffs, but also by way of elimination of their own nontariff trade barriers. In return for elimination of ASP valuation, the Common Market, United Kingdom, and Switzerland have agreed to make concessions on certain of their nontariff trade barriers including some European road taxes which discriminate against U.S. automobiles, a reduction by the United Kingdom in Commonwealth preference on tobacco, and a revision of Swiss regulations on imports of canned fruit.

This, of course, is just the beginning. As noted by Representative Thomas B. Curtis, a member of the House Ways and Means Committee and a congressional delegate to the Geneva talks, in his July 10, 1967, report there are a number of other nontariff and alleged nontariff trade barriers to be discussed and acted upon by the members of the GATT.

It is up to the United States as the greatest trading Nation in the world and therefore the Nation with the greatest stake both economic and political in expanded trade to take the lead. And repeal of ASP valuation is the sine qua non of further progress to liberalize and expand our trade and the prosperity of this country and its trading partners which depends upon such increased exchange of goods and services.

The Organic Chemical Group deeply appreciates the opportunity afforded it by this committee and its learned chairman to express the group's views on a trade matter of major current concern. We will welcome the opportunity to appear at the forthcoming hearings if the committee believes it will be useful for the group to elaborate orally on the importance to U.S. trade of the elimination of ASP valuation.

Memorandum of American Institute for Imported Steel, Inc., Submitted by Seymour Graubard and Michael H. Greenberg, Attorneys, Graubard & Moskovitz [1]

STUDY OF VALUATION LAWS OF THE UNITED STATES AND THE PRINCIPAL TRADING PARTNERS OF THE UNITED STATES

The institute is a nonprofit trade association, incorporated under laws of the State of New York, with a membership of approximately 50 U.S. firms. Among its members are the leading U.S. importers of steel, principally from Western Europe, some of whose steel producers' trade associations are correspondents of the institute. The member firms, which have offices across the United States, on the east and west coasts, in the gulf and Great Lakes, also import steel from the other major steel-producing nations of the world.

While steel importing is the principal business of most of the institute's members, a number also export steel and a wide range of other U.S.-manufactured products. Thus, the institute strongly favors studies such as the present Commission study, which explore the possibility of simplifying and making uniform basic customs standards and practices throughout the free world.

For this reason, the institute has given very careful attention to one of the principal areas of inquiry being pursued in this investigation by the Commission: the feasibility and desirability of adopting the Brussels definition of value (Brussel definition). As a result of this examination, we have concluded that adoption of the Brussels definition would not further the laudable aims either of simplification of U.S. customs valuation standards and practices or of making them uniform with those of its principal trading partners in the free world.

Indeed, the Brussels definition constitutes a step backward from present American law with regard to the goals of simplicity of application and uniformity of result.

The illusory verbal uniformity with its trading partners which might be achieved by the U.S. adoption of the Brussels definition would be far outweighed by the well-nigh insuperable problems of an equitable adjustment of ad valorem and compound rates of duty to take account of the change to the Brussels CIF port-of-entry valuation base.

Moreover, there would appear to be a substantial question whether a shift by the United States to a CIF valuation base would comport with the U.S. Constitution's requirement of uniformity of duties at all ports.

For these reasons, which will be elaborated upon hereafter, the Institute is opposed to the adoption by the United States of the Brussels definition of value for purposes of the assessment of ad valorem and compound duties.

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[1] This memorandum was submitted to the U.S. Tariff Commission on behalf of the American Institute for Imported Steel, Inc. (institute) pursuant to the authorization of the Commission, published in the Federal Register of September 28, 1966 (31 F.R. 12692) and reiterated by the Commission Chairman at the public hearings held on November 3, 1966, for the submission of written views of interested persons.

It also opposes such a change for statistical purposes, because it does not view ocean freight and insurance payments as proper components of the value of imports.

The Institute, however, does believe that the definition of the present primary U.S. value base, "export value," can be changed in such a way as to eliminate a present inequity and also to improve valuation procedures by simplifying them. The changes we propose are to make the time of valuation the contract date rather than the shipment date and to make the invoice price prima facie the custom's value.

POINT I.—THE BRUSSELS DEFINITION OF VALUE SHOULD NOT BE ADOPTED BY THE UNITED STATES FOR DUTY ASSESSMENT PURPOSES

As we have indicated, there are three basic reasons why the Brussels definition of value should not be adopted by the United States for purposes of assessment of duties:

(a) *Adoption will not promote the goals of simplicity or uniformity.*—One of the most knowledgeable critics of the Brussels definition, the International Chamber of Commerce, has pointed out:

> Under the Brussels definition of value, the dutiable value of imported goods is not the actual price paid or payable for the goods but "the normal price." This "normal price" is in turn defined as "the price which they (the goods) would fetch * * * on a sale in the open market between buyer and seller independent of each other."
>
> That means that in order to apply the definition as established by the Brussels Convention the customs administrations ought to compare the declared value with a fictitious value corresing to a theoretical transaction carried out under imaginary conditions.[1]

Obviously, such a vague, theoretical definition of value will not be simple to apply and will not lead to uniformity of practice among countries, nor even among customs appraisers within a single country. Thus, even if the Brussels definition were adopted by the United States and its principal trading partners, there, at most, would be a verbal uniformity which in practice would be illusory. The fact is that, as this Commission's preliminary report notes, Canada and Japan, which are the United States largest volume trade partners, are not parties to the Brussels Convention of 1950.[2]

While the present primary U.S. valuation standard—"export value"—can be improved,[3] in its present form it is superior to the Brussels definition in clarity and in ease of application. Thus, rather than notional concept, "export value" is to be determined by actual sales prices on real contemporaneous transactions. Indeed, when section 402 of the Tariff Act of 1930 was recently amended, the word "sold" was added to the definition of "export value" to confirm the prior case law and to make clear that prices on actual sales, and not merely offers for sale, were to be considered first in determining the value of imported merchandise under the provision.[4]

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[1] "Customs Valuation of Imported Goods," International Chamber of Commerce Brochure 198 (1959) (hereinafter "ICC Brochure 198") at p. 6.

[2] U.S. Tariff Commission, Customs Valuation—Preliminary Report to the Committee on Finance of the U.S. Senate, on investigation No. 332–48, under section 332 of the Tariff Act of 1930, pursuant to a resolution of that committee adopted Feb. 9, 1966 (July 1966) (hereinafter "Preliminary Commission Report") at pp. 16–18.

[3] See point III. We do not discuss either the final list or American selling price valuation. The apparent inequities inherent in these two provisions will be best exposed by persons who have had to deal with them.

[4] See hearings before the Committee on Ways and Means, House of Representatives on H.R. 6040 (Customs Simplification Act of 1955), 84th Cong., first sess. (1955) at p. 10.

Thus the present primary U.S. valuation standard looks to concrete transactions and thereby approaches the ideal of valuation based upon the price charged in the important transaction in question.[5] Because the range of prices on sales for export to the United States of particular merchandise from a particular foreign producer at a particular time is relatively small, the determination of value by customs under the "export value" standard usually is an objective and mechanical one. This simplified standard in turn speeds the customs appraisement procedure.[6] Because "export value" embodies a primary objective standard—prices on contemporaneous sales of like or similar merchandise for export to the United States—it tends to produce uniform valuations for the products of the same exporter at the different ports.

Why then should the United States regress to the imprecise, subjective "normal price" standard in the Brussels Convention, which if adopted could only lead away from the goals of simplicity of application, and uniformity and certainty of result?[7] The answer, we respectfully submit, is that the United States should not do so.

(b) *Adoption would create insuperable problems of equitable adjustment of ad valorem and compound duty rates.*—The Brussels definition uses essentially a CIF port-of-entry standard, which includes in value for duty purposes inter alia freight and insurance charges.[8] The United States, on the other hand, uses essentially either an ex-factory or FOB port-of-export standard. It is apparent, therefore, that adoption by the United States of the Brussels definition would have the effect of inflating the present valuation base by these additional costs.

While the signatories of the Brussels Convention, most of whom are European countries with borders contiguous with their principal trading partners, may have a reason for using a port-of-entry place of valuation standard because their intercountry freight costs are not significant and tend to balance out, the United States bordered by vast oceans is not in this situation.

The effect of adding freight and insurance charges incurred on exports, for example, of steel products to the United States may be to increase the valuation base of such products subject to an ad valorem or compound rate of duty by as much as 10 to 20 percent. Of course, the precise amount would depend upon the mode of transportation (i.e. tramp or conference vessel), and the location of the exporter and of the U.S. port of entry. Thus it would be impossible to determine the precise increase in the valuation base for a class of products on a

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[5] See General Agreement on Tariffs and Trade (GATT), art. VII 2 (a) and (b) definitions of "actual value."

[6] This was one of the stated purposes of the amendment of section 402 by the Customs Simplification Act of 1956 to eliminate foreign value as an alternative primary standard of valuation. S. Rept. 2560, 1958 United States Code Cong. and Admin. News at pp. 4179–4191.

[7] As discussed in the International Chamber of Commerce studies of valuation under the Brussels definition, the imprecision and subjective nature of the definition has in fact vitiated the ostensible purpose of the Brussels Convention to make more uniform the customs valuation practices of its signatories. See ICC Brochure 198 (1959); Customs Valuation—The case of the "Sole Buyer," International Chamber of Commerce Brochure 228 (1963).

Moreover, if the results of the application of the Brussels definition to the typical "sole buyer" import transaction are in fact as arbitrary and as productive of fictitious values as the ICC studies indicate, the definition is in conflict with GATT art. VII which prohibits the signatories from adopting such "arbitrary or fictitious values."

[8] Brussels Convention on the Valuation of Goods for Customs Purposes, art. I(2) (a) and (b), addendum to art. I, note 2, preliminary Commission report, pp. 9–10.

theoretical basis. The increase in the valuation base would vary on each specific import transaction.

However, the United States is obligated, as a signatory of GATT and by its trade agreements negotiated thereunder, not to impair the value of trade agreement concessions by altering its method of determining dutiable value.[9] In other words, we cannot increase ad valorem and compound duty rates set by trade agreements by a shift in the valuation base. Thus, if the United States were to adopt the Brussels definition, adjustments would have to be made in the duty rates to take account of the shift to the Brussels Convention's CIF base.

The Commission will recall the difficulty in adjusting duty rates as part of the recent simplification and consolidation of customs classifications in the new tariff schedules, done pursuant to a Commission study authorized by the Customs Simplification Act of 1954 and adopted by Congress in the Tariff Classification Act of 1962. Few would argue that the Commission's labors were not worthwhile. On the contrary, the entire importing community applauded the tremendous advances made by the Commission toward simplicity and certainty in customs classifications in the new tariff schedules. The difficulties encountered in adjusting rates were more than overweighed by the impressive accomplishments of the Commission resulting in greatly simplified customs classification.

A similar balancing of the problems of adjustment of rates versus the benefits of a changeover to the Brussels definition indicates, however, that the difficulties which would arise far outweigh any supposed benefits. As we have shown above, U.S. adoption of the Brussels definition would at best give rise to a verbal uniformity of valuation standard with the Brussels Convention signatories. It would not advance true practical international uniformity and might well constitute a retreat from the goals of simplicity and certainty of application approached by present U.S. law.

Balanced against the illusory benefits are the truly enormous difficulties of making adjustments in the ad valorem and compound duty rates to maintain the same effective duties after such a change to a CIF valuation base. As previously indicated, ocean freight and insurance charges, particularly the former, vary markedly depending upon a number of factors the principal ones of which are distances and modes of transportation.

Thus to make an equitable adjustment even of straight ad valorem rates would present monumental problems. A procedure of arriving at average freight and other charges for a particular class of merchandise in order to arrive at an average required reduction of the percentage rate would of necessity benefit some exporting nations while putting others at a disadvantage and would do the same for exporters. Presently irrelevant factors of the distance of the exporting country from the United States and the means of transportation employed would determine who would receive these fortuitous duty benefits and who would suffer the corresponding penalties.

More difficult problems still would be presented by products subject to compound duty rates and varying ad valorem rates. Thus, for example, a number of basic steel products are subject to so-called split

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[9] See GATT, art. II(3).

rates of duty determined by the value of the merchandise. If a certain value per unit is exceeded, a higher rate applies. Sometimes, as in the case of wire rods, both the high and the low rates are specific rates of duty. In other cases, the split rates may both be ad valorem rates such as in the case of reinforcing bars, plates, sheets, and strip in nonrectangular shapes, or may be combinations of the two as in the case of hollow drill steel.

In all cases, the same problem would be created by a change to a c.i.f. valuation base—the adjustment of the breakpoint (as well as of the ad valorem duty rates, where one or both of the split rates) to account for the increase in the valuation base. While the institute membership has discussed this problem at length from the commercial point of view, we have been unable to think of any means by which an equitable adjustment could be made to account for a change to c.i.f. valuation base that would at the same time preserve the present scheme of duty rates contained in the tariff schedules.

We respectfully submit that the enormous difficulties of adjusting ad valorem compound and split rates to account for a change to a c.i.f. valuation base, adverted to above, by themselves more than overweigh any conceivable advantage of adopting the Brussels definition.

(*c*) *Adoption would give rise to a serious constitutional question.*— Article 1, section 8, clause 1 of the U.S. Constitution provides:

> The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and General Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

The Supreme Court long ago held that a duty on imports in substance is a tax on the imported articles. *Brown* v. *State of Maryland*, 25 U.S. 419 (1827). And it is equally well established that the plain meaning of the constitutional requirement that duties "be uniform throughout the United States" is that they be uniform on a geographical basis *C. J. Tower & Sons* v. *United States*, 135 F. Supp. 874 (U.S. Cust. Ct. 1955). See *Fernandez* v. *Wiener*, 326 U.S. 340 (1945); *Head Money Cases* (*Edye* v. *Robertson*), 112 U.S. 580 (1884).

It seems apparent that use of a c.i.f. valuation base would not comport with this constitutional requirement of geographical uniformity of duty—tax on the imported article—throughout the United States. On the contrary, c.i.f. valuation will inevitably give rise to variations in duty on the same article from the same exporter depending upon the U.S. port of entry. Thus, for example, the identical steel product dutiable at an ad valorem or compound rate imported from Belgium may be liable for one amount of duty if landed in New York and another amount if entered in New Orleans, simply because of the difference in ocean freight to the two destinations.

In turn this variation in the absolute amount of duty depending on the port of entry may cause an importer to choose one U.S. port over another through which to import goods because of such difference in the duty. But one of the basic reasons for the constitutional requirement of geographic uniformity is to prevent just such a favoring of a port in one State over a port in another State by requiring a uniform duty on the same article regardless of the port of entry.[10]

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[10] Indeed the constitutional restriction against preferences among U.S. ports inter alia by means of the revenue laws is explicit. U.S. Constitution, art. 1, sec. 9, clause 6.

We suggest, therefore, that the Commission consider whether one of the reasons why the United States has never adopted a valuation standard dependent in whole or in part on the distance of the exporter from the various ports of this country is because of the grave question to which such a standard—embodied in the Brussels definition—would give rise under article 1, section 8, clause 1 of the U.S. Constitution.

For the foregoing reasons, we submit, the Commission should recommend in its final report that the United States not adopt the Brussels definition of value for duty assessment purposes.

POINT II.—THE BRUSSELS DEFINITION OF VALUE SHOULD NOT BE ADOPTED BY THE UNITED STATES FOR STATISTICAL PURPOSES

The institute has previously this year registered its opposition to the reporting of import statistics on a c.i.f. basis.[11] We briefly summarize here the institute's reasons for opposing the use of the Brussels definition—embodying such c.i.f. basis—for statistical purposes.

First, it seems apparent that import statistics should be reported on the same value basis as is used for the assessment of duty. This has always been the case in the United States. It makes good sense because the statistics are a mirror of U.S. trade, the pattern of which in turn is affected by the statutory duty structure. We have given above the reasons why the Uniter States should not adopt the Brussels definition for duty assessment purposes. If, as we recommend, there should not be a change to the Brussels Convention's c.i.f. basis for duty assessment, neither should there be such a change for statistical reporting purposes.

Second, just as in the case of its application to duty assessment, the Brussels definition has little to commend it, or to overweigh the added expense of such a system, for statistical purposes. Indeed, the contrary is true—use of the Brussels definition of value for reporting U.S. imports would present a distorted and misleading picture of U.S. trade.

Because U.S. export figures are reported on an f.o.b. port-of-export basis, using the Brussels definition's c.i.f. port of entry basis to statistically report imports would make comparison of U.S. exports and imports for balance-of-trade purposes like comparing apples and oranges. The exclusion of ocean freight and insurance charges from export statistics, while including them in the import figures, would make balance-of-trade data prepared on such basis totally meaningless.

We have been recording our trade statistics on an f.o.b. basis since 1832. There is a very good reason why for over 135 years our Government has considered ocean transportation and international insurance charges not proper entries in our trade account. It has long been recognized that transportation and insurance charges are positive or negative factors in the overall balance-of-payments account depending on whether U.S. or foreign companies furnish and are paid for the transportation and insurance services. Whether the charges are incurred on an export or on an import transaction is not relevant from a balance-of-payments point of view.

In sum then, it is the institute's position that the Commission should find that the present, well-tried U.S. reporting system for trade

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[11] See statement of Seymour Graubard on behalf of the AIIS on S.J. Res. 115, before the Committee on Finance, U.S. Senate, 89th Cong. (Sept. 1, 1966).

statistics is productive of accurate, meaningful data. It should recommend in its final report that the United States should continue to report import, as well as export, figures on an f.o.b. port-of-export basis.

POINT III.—VALUE SHOLD BE DETERMINED ON CONTRACT DATE AND INVOICE PRICE SHOULD BE PRIMA FACIE CUSTOMS VALUE

As previously indicated, we believe that the present U.S. valuation standard as applied to steel imports in general is objective and productive of accurate results. It approaches the ideal customs valuation standard—the actual price on the import transaction in question.

However, there are two ways in which, in our view, the standard can be improved:

(*a*) *Value should be determined on the contract date.*—Under the present definition of "export value" embodied in section 402, the date on which value is determined is "the time of exportation to the United States." No consideration is given to prices at the time of the purchase by the importer of the imported product. While, with respect to other kinds of imported merchandise there may be little or no practical difference between value on contract date and shipment date, as applied to steel products imports the "time of exportation" rule can lead to anomalous results.

Normally, steel is ordered by the importer 3 to 4 months in advance of the date of shipment from the foreign ports, the leadtime being required by the mills to schedule production and to roll the steel. Imported steel is sold on a firm contract price, not, as in the case of the bulk of the U.S. mills, on a price governing at time of shipment. During the 3 to 4 month period between the making of the contract and the shipment date the market price of course fluctuates and at time of shipment may be higher or lower than the price at which the importer purchased the steel.

Because the price for imported steel is determined in the free, competitive international marketplace, the importer has no way of knowing what the market price will be at the time of shipment. He, therefore, cannot ascertain his duty liability in advance, although, as is most often the case, he has resold the steel to a domestic customer also at a firm contract price well before the shipment date.

Thus, the "time of exportation" standard leads to unwarranted commercial uncertainty on the part of the importer of steel products subject to ad valorem and compound rates of duty. The burden of this uncertainty is particularly heavy where the product involved is subject to a split rate of duty with a value breakpoint because a small upward adjustment of "value" can bring with it a disproportionate duty increase.

We have been unable to determine any reason, other than an historical one, why value is determined at time of exportation. As we have shown, to a substantial extent in the case of steel imports and to a certain extent in the case of any class of imported merchandise subject to ad valorem or compound duty rates, it must lead to unnecessary and undesirable commercial uncertainty.

The time of exportation standard is not required from the point of view of uniformity or U.S. treaty commitments. A time-of-contracting standard would produce uniformity of valuation treatment of all exports of a class of merchandise from a particular exporting country sold at the same time. There appears to be no reason why this uniformity is not just as acceptable as a uniformity based on the fortuity of the shipment date. The GATT does not specify the time of valuation to determine "actual value" but rather leaves that specification to the legislatures of the signatory nations.[12]

In addition to and possibly more important than the advantage to importers of commercial certainty, a time-of-contracting test has the advantage of logic. The dutiable value of an imported article should be the value determined by the marketplace. To test whether the value declared by the importer is one established by the marketplace, one should look to the market price when the importer purchased the imported article, not an unrelated market price some months later.

Thus, because a time-of-contracting test has the advantages of commercial certainty and commercial reality, we submit, the Commission should recommend that the United States adopt such a test in place of the present time-of-exportation test embodied in section 402.

(*b*) *Invoice price should be prima facie the customs value.*—As we have indicated throughout, customs value should be actual commercial value of the imported article determined by the marketplace. In turn, the best evidence of such market value is what the importer agreed to pay, and what the exporter agreed to receive, for the article—the invoice price.

No doubt as a practical matter the invoice price more often than not presently governs in determining export value. However, there is no provision of law requiring the customs official to use invoice price *prima facie* as customs value. We believe that if there were such a provision in section 402, it would further speed the customs appraisement procedure by affirmatively encouraging the customs officials to do so.

Such a provision, of course, would not preclude the customs official from requiring other information to substantiate market value if he should have reason to believe that the invoice price does not represent a true arm's-length market price.[13] However, the provision would make it clear that such an extended inquiry should be the exception and not the rule.

The incidence of commercial invoices containing fictitious prices for purposes of obtaining a lower duty liability is small. No reputable importer would be a party to such a fraud on the Government. The large majority of reputable importers should not be penalized by slow cumbersome appraisement procedures to catch the few malefactors. Rather a system, such as is used in income tax collections, which relies basically on the honest reporting of the taxpayer, should be extended to the collection of ad valorem and compound duties.

A first giant step toward such a system—which would relieve some of the ever-increasing burden on the Customs Service—would be to make the invoice price prima facie the customs value. Even more

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[12] GATT, art. VII (2) (b).

[13] It should be noted that an informal system has grown up whereby the Customs requests, and most importers furnish, a copy of the contract between the exporter and importer at the time it is made. We believe that this system should be formalized and made mandatory. It furnishes a ready source of market information for the Customs to spot check the bona fides of invoice prices.

important, making the invoice price prima facie the customs value will bring U.S. customs valuation completely in line with the commercial realities.

LINCOLN & STEWART,
ATTORNEYS AT LAW,
Washington, D.C.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your public notice of September 27 and the invitation received in a letter bearing that date from the committee's chief counsel, I am pleased to submit on behalf of the World Trade Committee, Parts Division, Electronic Industries Association, a memorandum pertaining to the valuation of imported goods.

The World Trade Committee has an interest in many of the areas of consideration set forth in your public notice, but we are limiting our submission of views at this time to the topic of the valuation of imported goods so that we might, within the space limitations suggested by the chief counsel, treat with one subject in depth.

On behalf of the Parts Division, the World Trade Committee would expect to participate in the oral hearings to be held by the committee during the next session of the Congress, and we understand from your notice that the submission of a paper on particular topics is not to be considered a prerequisite for presenting an oral statement on such topics when the hearings are scheduled.

Accordingly, at this time we invite your attention to the particular topic which is the subject of the accompanying memorandum, "The Need for the Reestablishment of Customs Valuation Rules Designed to Check Undervaluation of Imported Merchandise."

Sincerely yours,

EUGENE L. STEWART,
Special Counsel, World Trade Committee, Parts Division,
Electronic Industries Association.

SUMMARY

In repealing the customs valuation rules of long standing in the Customs Simplification Act of 1956, the Congress evidenced an intention to prevent harm to domestic industries as a result of lower import values and lower duties resulting from the use of the new value rules. Congress undertook to safeguard against this possibility by reliance on two procedures:

(*a*) The retention of the former value rules for articles found by the Secretary of the Treasury on the basis of analysis of 1954 imports to be subject to a reduction in import value of 5 percent or more; and

(*b*) A strengthened enforcement of the Antidumping Act.

Neither of these safeguards has proved to be of significant help in preventing the result which Congress wished to avoid in the enactment of the 1956 act. The final list of products published by the Secretary of the Treasury embraced only articles that moved in the import trade in that year and did not provide for similar safeguards against articles which commenced to move in the import trade at a later date, and the scope of the article descriptions set forth in the final list has been constricted by administrative interpretation with the result that imports of electronic components have been denied the benefit of the final list procedure.

In regard to the enforcement of the Antidumping Act, the absence of foreign value information, formerly required under the customs valuation rules repealed by the 1956 act, has handicapped the Bureau of Customs in initiating antidumping investigations and has tended to frustrate the type of enforcement of the Antidumping Act which Congress specifically called for as a check against the undervaluation of imported goods under the new valuation rules.

Without question, return by the United States to the effective use of home market value (foreign value) as the primary basis for customs valuation is necessary if we are to (1) slow the increasing import trend and the imbalance of trade in manufactured goods which flows from this trend; (2) reverse the erosion of our present favorable balance of trade in commercial manufactures with its resultant adverse effect on the growth rate of our gross national product; (3) provide a fair share of U.S. market growth to our domestic industries; and (4) strengthen the enforcement of our antidumping laws which are so important to our domestic industries in combating unfair competition from foreign producers in U.S. markets.

The Need for the Reestablishment of Customs Valuation Rules Designed To Check Undervaluation and Provide Domestic Producers With a Fair Share of U.S. Market Growth

In enacting the Customs Simplification Act of 1956 (19 U.S.C. secs. 1401a, 1402), the Congress was persuaded by the executive branch, under the guise of customs simplification, to make basic and far reaching changes in customs valuation of rules which for more than 30 years had been reasonably effective in checking undervaluation. The basic change made by this act was the elimination of the use of the higher of foreign (home market) or export value as the primary valuation basis and the making of export value the principal valuation base. Of lesser importance, but still of serious impact, were the redefinitions of various valuation bases.

The domestic industries most affected by these changes in customs valuation rules opposed the enactment of this legislation at that time on two principal grounds: "* * * (1) that the abolishment of foreign value would result in lower dutiable values on items dutiable on an ad valorem (percentage of the value) basis and thereby would reduce the amount of protection on similar items made in the United States, and (2) that the changes would result in a weakening of the enforcement of the antidumping law." (S. Rept. 2560, 84th Cong., second sess. (1956), "Customs Simplification Act of 1956," p. 3.)

In response to the first of these objections the Senate Finance Committee in reporting the bill adopted an amendment providing for the publication of a list of articles (so-called final list) which would be reduced by 5 percent or more in value and preserving the then existing system of using the higher of foreign or export value on all items so listed.

With regard to the enforcement of the antidumping law, when the Customs Simplification Act of 1956 was considered in the Senate, the then majority leader, Senator Lyndon Johnson, in presenting and explaining the bill, stated that "Treasury representatives advised the committee that there would likely be more effective enforcement of the antidumping law" under the new act because "foreign value information would continue to be required on customs invoices" so that there would be available "the information needed to initiate full-scale investigations whenever dumping was indicated." (Congressional Record, July 18, 1956, p. 12064.)

Unfortunately neither the final list nor the assurances of Treasury with respect to the enforcement of the antidumping law have proved to be adequate substitutes for the realistic customs valuation rules which were in effect prior to the enactment of the Customs Simplification Act of 1956.

To illustrate the fact that the final list procedure has not worked as intended by the Committee on Finance, we need only to refer to the situation of electronic components. The final list includes the words "television apparatus and parts thereof." This was intended to include such electronic components as capacitors, resistors, transistors, television yokes, chokes, relays, connectors, and other parts chiefly used in the manufacture of television receiving sets.

The parts division of the Electronic Industries Association through counsel inquired of the regional commissioner of customs in New York as to the practice of the customs service in regard to the recognition of electronic components as items on the final list under the above terminology entitled to customs valuation on the basis of the higher of foreign or export value. In February 1967 the parts division was informed that no electronic components other than loudspeakers (receiving duplicators which are separately listed) are recognized as being included on the final list.

Therefore, this major U.S. manufacturing industry whose tariff protection was supposed to be safeguarded against erosion by the final list procedure finds that it has received none of the benefits intended by the Committee on Finance in approving this legislation.

The former rules, which provided that foreign merchandise should be appraised for value upon entry into the United States at the price at which such merchandise sells in its country of production for use there, were based on the realities of international commerce and were inherently fair in protecting the valid interests of both domestic and foreign producers in the markets of the United States.

In the calculation of ad valorem duties, the ascertainment of value is fully as important to the ultimate determination of the amount of duties to be collected as the rate of duty itself. Prior to 1956, the use of the higher of foreign or export value had consistently been retained by Congress as a prime feature of our customs valuation system which seeks (1) to maintain some stability in the incidence of the tariff, (2) to serve as an automatic deterrent against undervaluation, and (3) to discourage attempted manipulation of the U.S. tariff by foreign interests.

Foreign value had in the past played a key role in the accomplishment of these objectives. In most commodity lines, prices for the home market (foreign value) are reasonably stable for long periods of time, while prices for export to the United States of the same commodity are subject to constant fluctuations. Obviously an ad valorem tariff is meaningless which is principally tied to a constantly fluctuating price level such as export value.

Furthermore, a system which has export value alone as the principal value base gives the foreign exporter partial control of the amount of duty which his goods will pay when imported into the United States. This is so because export value is the price at which goods are sold for export to the United States. Any system which tends to place control of the amount of the U.S. duty in the hands of the foreign exporter seriously handicaps domestic industries within the U.S. markets.

Finally, since foreign value is determined by the interplay of market forces in the country where such goods originate, it tends most often to be significantly higher than the special export prices established for such merchandise for sale to selected importers in the United States. The use of export value as the principal value base therefore results in the imposition of substantially lower duties and a loss of the protection which Congress intended to provide for domestic industries.

The use prior to 1956 of the higher of foreign or export value as the primary valuation basis also provided the customs service with a continous body of foreign price information, thereby facilitating the administration of the Antidumping Act. Following the enactment of the Customs Simplification Act of 1956, the administration of the Antidumping Act appears virtually to have collapsed inasmuch as there have been very few instances in which antidumping duties have been imposed notwithstanding many hundreds of complaints. In fact, there appear to be less than a dozen cases in which antidumping duties have actually been imposed out of several hundred complaints filed since 1956.

Equally disturbing to domestic industries is the probability that customs personnel at the ports have, under pressure of the mounting workload of the sharply rising number of import transactions, settled into an administrative practice in which the price appearing on the commercial invoice covering the goods imported is accepted as evidence of the export value for customs valuation and duty purposes.

Thus it is strongly feared that domestic industries are being injured not only by the nonadministration of the Antidumping Act, but also by the reduction in the amounts of duties collected as a result of the acceptance of deflated prices as a basis for customs valuation under the export value rule.

The need for a return to the use of foreign value as the primary valuation basis is amply demonstrated by our experience during the past 11 years in using export value as the principal valuation base with its resultant reduction in the level of duties below that required to maintain a fair and reasonable share of the U.S. market growth for our domestic industries and to contribute to a correction of our imbalance of payments which has plagued us in recent years.

One of the most disturbing elements of this experience has been the differing trends of our imports and exports of manufactured goods. In constant 1956 dollars our exports of commercial manufacture rose from $9 billion in 1965 to $15.8 billion in 1966 or at an annual average rate of increase of 6 percent. For the 10-year period this represented an aggregate growth of 76.2 percent. On the other hand, our imports of these goods during the same period climbed from $4.2 to $14.2 billion or at an average annual rate of increase of 13.6 percent. The aggregate growth of our imports for the same period was 238.6 percent. Our balance of trade in these goods thus declined from $4.8 billion in 1956 to $1.6 billion in 1966. (See table 2, appendix.)

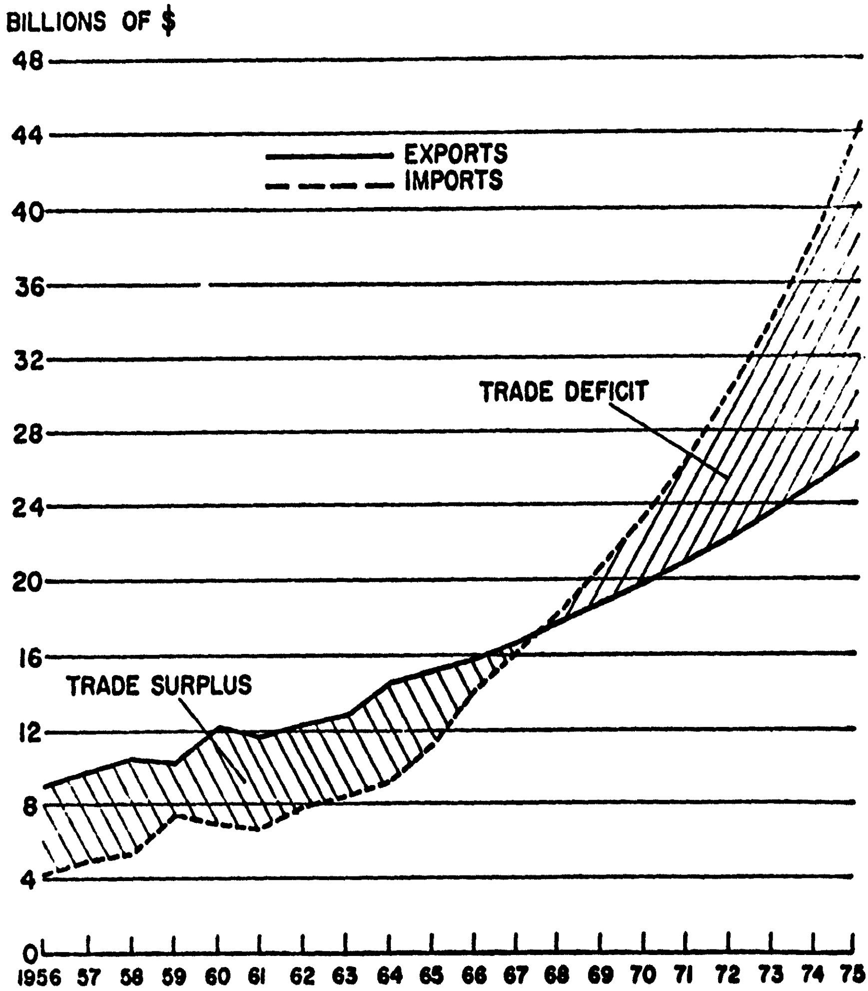
If these trends are permitted to continue at the same rate, our favorable balance of trade in commercial manufactures will be eliminated by 1968 and by 1975 we will have an unfavorable balance of trade in these goods of $18 billion—almost four times the favorable balance of trade which we enjoyed in 1956.

These disturbing facts are shown by the following charts:

CHART I

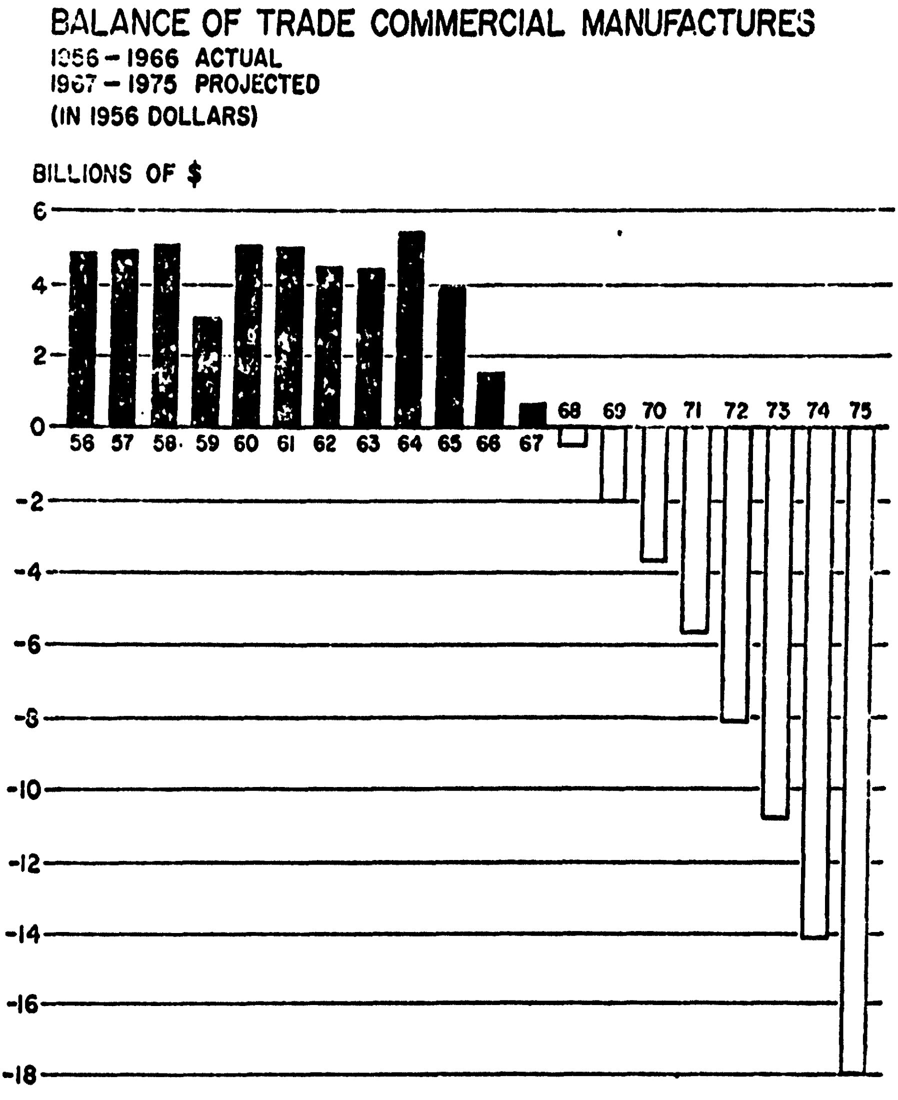
U.S. IMPORTS & EXPORTS OF COMMERCIAL MANUFACTURES

1956 – 1966 ACTUAL
1967 – 1975 PROJECTED
(IN 1956 DOLLARS)



Source: Appendix, Tables 2 and 2(a).

CHART 2



Source: Appendix, Tables 2 and 2(a)

The adverse effect of these startling trends on our balance-of-payments position is apparent. We can ill afford at this time to pursue a trade policy which is contributing to such a deterioration in this important component of our Nation's balance of payments.

The impact of this unfavorable trend in our balance of trade in commercial manufactures, unfortunately, is not limited to its effect on our balance-of-payments position. Equally serious is its negative effect on the growth trend of our gross national product.

In 1956 our gross national product stood at $419.2 billion. During the following 10-year period this barometer of our Nation's economic productivity had risen to $608.6 billion in constant 1956 dollars or a real growth for this period of 45.2 percent. In 1956 our exports of commercial manufactures represented 2.1 percent of our gross national product, while imports represented only 1 percent. By 1966, our exports of commercial manufactures had risen to an amount equal to 2.6 percent of our gross national product or a real growth of 76.1 percent. But, during this same period, our imports of these goods had reached the equivalent of 2.3 percent of our gross national product or a real growth of 238.6 percent—more than three times the increase in our exports (see table 5, appendix).

Projecting our gross national product and our exports and imports of commercial manufactures at their respective average annual rates of growth, we find that by 1975 our exports of commercial manufactures will have reached a level equal to 3.1 percent of our gross national product, whereas our imports of these goods will have soared to an amount equal to 5.2 percent of our projected gross national product (see table 5, appendix).

Although balance of trade in commercial manufactures is not a large component of our gross national product, it is nonetheless, one component in which we are developing an unfavorable position and thus represents a measurable drag on the growth of our gross national product.

Equally serious is the fact that as our imports of commercial manufactures mount, the greater the displacement in our markets of such goods of domestic manufacture, with the resultant slowing down of the developument of our domestic economy and the ultimate loss of employment and reduction of capital investments in these domestic industries.

Without question, return by the United States to the effective use of home market value (foreign value) as the primary basis for customs valuation is necessary if we are to (1) slow the increasing import trend and the imbalance of trade in manufactured goods which flows from this trend; (2) reverse the erosion of our present favorable balance of trade in commercial manufactures with its resultant adverse effect on the growth rate of our gross national product; (3) provide a fair share of U.S. market growth to our domestic industries; and (4) strengthen the enforcement of our antidumping laws which are so important to our domestic industries in combating unfair competition from foreign producers in U.S. markets.

TABLE 1.—U.S. IMPORTS AND EXPORTS OF COMMERCIAL MERCHANDISE, 1956–66

[Data in millions]

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	Average annual rate of growth, 1956–66 (percent)
EXPORTS												
Merchandise [1]	$17,379	$19,390	$16,264	$16,295	$19,489	$19,954	$20,604	$22,071	$25,297	$26,276	$29,180	
Financed by Government grants and capital [2]	2,434	2,251	1,734	1,729	1,831	2,183	2,345	2,720	2,812	2,714	2,944	
Net commercial merchandise (current dollars)	14,945	17,139	14,530	19,566	17,658	17,771	18,259	19,351	22,485	23,562	26,236	
Net commercial merchandise (1956 dollars) [3]	14,945	16,488	14,167	14,377	17,234	17,007	17,656	18,751	21,608	21,983	24,609	5.5
IMPORTS												
Commercial merchandise (current dollars) [4]	12,804	13,291	12,952	15,310	14,732	14,510	16,187	16,992	18,621	21,488	25,550	
Commercial merchandise (1956 dollars) [5]	12,804	13,092	13,276	15,800	14,953	14,844	16,850	17,502	18,733	21,316	25,116	7.3
Net commercial merchandise trade balance (1956 dollars)	+2,141	+3,396	+891	−1,423	+2,281	+2,163	+806	+1,249	+2,875	+667	−507	

[1] Source: 1956–65, "Economic Report of the President," January 1967, table B–80; 1966, U.S. Department of Commerce, Office of Business Economics, "Survey of Current Business," March 1967.

[2] Source: Table 4.

[3] Implicit price deflators for exports and imports developed from "Economic Report of the President," January 1967, table B-3.

[4] See note 1, supra.

[5] See note 3, supra.

TABLE 2.—U.S. IMPORTS AND EXPORTS OF COMMERCIAL MANUFACTURES, 1956–66

[Data in millions]

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	Average annual rate of growth, 1956–66 (percent)
EXPORTS												
Manufactures [1]	$9,941	$11,077	$11,546	$11,171	$12,892	$13,037	$13,912	$14,611	$16,366	$17,258	$18,176	
Adjusted for 1965 schedule B reclassification [2]	9,742	10,855	11,315	10,948	12,634	12,776	13,634	14,319	16,366	17,258	18,176	
Financed by Government grants and capital [3]	772	647	482	419	259	523	799	1,134	1,142	1,021	1,329	
Net commercial manufactures (current dollars)	8,970	10,208	10,833	10,529	12,375	12,253	12,835	13,185	15,224	16,237	16,841	
Net commercial manufactures (1956 dollars) [4]	8,970	9,820	10,562	10,392	12,078	11,726	12,411	12,776	14,630	15,149	15,802	6.0
IMPORTS												
Commercial manufactures (current dollars) [5]	4,186	5,072	5,284	7,090	6,847	6,523	7,626	8,066	9,108	11,250	14,421	
Commerical manufactures (1956 dollars) [6]	4,186	4,996	5,416	7,317	6,950	6,673	7,939	8,308	9,163	11,160	14,176	13.6
Net export trade balance, commercial manufactures (1956 dollars)	+4,784	+4,824	+5,146	+3,075	+5,128	+5,053	+4,472	+4,468	+5,467	+3,989	+1,626	

[1] Manufactures represents aggregate of the following commodity groups: chemicals, machinery and transportation equipment, and other manufactured goods.

Data source: 1956–65, U.S. Department of Commerce, Bureau of the Census, "Statistical Abstract of the United States," 1965 and 1966 editions; 1966, U.S. Department of Commerce, Bureau of the Census, reports FT-900-E (exports) and FT-900-I (imports), Jan. 25, 1967. (Manufactures export data for 1966 adjusted to exclude Department of Defense shipments.)

[2] For purposes of comparison data for 1956–63 adjusted at ratio of 1964 original manufactures data to 1964 manufactures data adjusted to conform to 1965 schedule B reclassification.

[3] Source: Table 4.

[4] See note 3, supra.

[5] See note 6, supra.

[6] See note 3, supra.

TABLE 2(a).—PROJECTION OF U.S. IMPORTS AND EXPORTS OF COMMERCIAL MANUFACTURES BASED ON AVERAGE ANNUAL RATE OF GROWTH, 1956-66, IN CONSTANT 1956 DOLLARS (TABLE 2)

[Data in millions]

	1966 actual	1967	1968	1969	1970	1971	1972	1973	1974	1975
EXPORTS										
Commercial manufactures (6 percent growth rate)	15,802	16,750	17,755	18,820	19,949	21,146	22,415	23,760	25,186	26,697
IMPORTS										
Commercial manufactures (13.6 percent growth rate)	14,176	16,104	18,294	20,782	23,608	26,819	30,466	34,609	39,316	44,663
Commercial manufactures trade surplus	+1,626	+646	−539	−1,962	−3,659	−5,673	−8,051	−10,849	−14,130	−17,966

TABLE 3.—U.S. IMPORTS AND EXPORTS OF NONMANUFACTURED COMMERCIAL MERCHANDISE, 1956-66

[Data in millions]

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	Average annual rate of growth, 1956-1966 (percent)
EXPORTS												
Nonmanufactured commercial merchandise (1956 dollars)	5,975	6,668	3,605	3,985	5,156	5,281	5,245	5,975	6,978	6,834	8,807	6.9
IMPORTS												
Nonmanufactured commercial merchandise (1956 dollars)	8,618	8,096	7,860	8,483	8,003	8,171	8,911	9,194	9,570	10,156	10,940	2.5
Nonmanufactured merchandise trade balance (1956 dollars)	−2,643	−1,428	−4,255	−4,498	−2,847	−2,890	−3,666	−3,219	−2,592	−3,322	2,133	

Source: Tables 1 and 2. Nonmanufactured commercial merchandise represents net of net commercial merchandise minus commercial manufactures.

TABLE 4.—MERCHANDISE EXPORTS FINANCED BY GOVERNMENT GRANTS AND CAPITAL, 1956-66

[In current dollars]

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Total merchandise expolts financed by Government grants and capital [1]	2,434	2,251	1,734	1,729	1,831	2,183	2,345	2,720	2,812	2,714	2,944
Agricultural exports [2]	1,622	1,604	1,252	1,310	1,572	1,660	1,546	1,586	1,670	1,693	1,615
Manufacturers exports [3]	772	647	482	419	259	523	799	1,134	1,142	1,021	1,329

[1] Source: 1956-59 represents aggregate of agricultural and manufactured exports. (See footnotes 2 and 3.) 1960-66, U.S. Department of Commerce, Office of Business Economics, "Survey of Current Business," March 1963, 1964-67.

[2] Source: 1956-58 based on average of fiscal years, 1956-1957, 1957-58, 1958-59: Source, U.S. Department of Agriculture, Economic Research Service. 1959-64: Source, U.S. Department of Agriculture, "Agricultural Statistics," 1965 and 1966 editions. 1964-65: Source, U.S. Department of Agriculture, Economic Research Service.

[3] Source: 1956-59 represents AID exports: Source, Agency for International Development, Statistics and Reports Section. 1960-66 represents net of merchandise exports (footnote 1) minus agricultural exports (footnote 2).

TABLE 5.—EXPORTS-IMPORTS OF COMMERCIAL MANUFACTURES AS PERCENT OF GROSS NATIONAL PRODUCT, 1956-75

[GNP in billions]

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Gross national product (1956 dollars) [1]	419.2	425.2	420.5	447.4	453.8	467.6	497.5	517.9	545.2	577.7	608.6	631.7	655.7	680.6	706.5	733.5	761.4	790.3	820.3	851.5
Exports: Commercial manufactures as percent of gross national product [2]	2.1	2.3	2.5	2.3	2.7	2.5	2.5	2.5	2.7	2.6	2.6	2.7	2.7	2.8	2.8	2.9	3.0	3.0	3.1	3.1
Imports: Commercial manufactures as percent of gross national product [2]	1.0	1.2	1.3	1.6	1.5	1.4	1.6	1.6	1.7	1.9	2.3	2.5	2.8	3.1	3.3	3.6	4.0	4.4	4.8	5.2

[1] Source: "Economic Report of the President," January 1967. Table B-1 converted to 1956 dollars.
[2] Exports-Imports commercial manufactures based on tables 2 and 2a.

Note: GNP average annual rate of growth for 1956-1966 is 3.8 percent.

STITT, HEMMENDINGER & DANIELS,
ATTORNEYS,
Washington, D.C.

Mr. ROBERT BEST,
Committee on Finance,
New Senate Office Building,
Washington, D.C.

DEAR BOB: I enclose a copy of my paper for the Trade Compendium.

In accordance with the statutory requirements, I wish to inform you that I am registered as an agent of the Swiss Union of Industry & Commerce under the terms of the Foreign Agents Registration Act and a copy of this registration is on file with the Department of Justice.

With best regards.

Sincerely,

MICHAEL P. DANIELS.

STATEMENT ON BEHALF OF THE SWISS UNION OF INDUSTRY AND COMMERCE BY MICHAEL P. DANIELS, COUNSEL

This statement is submitted pursuant to the request of the committee dated September 27, 1967, for written statements in connection with a legislative oversight review of U.S. trade policies and practices.

This statement is on behalf of the Swiss Union of Industry and Commerce in furtherance of their objective of achieving a liberalized world trade, and particularly the abolition of American selling price valuation of benzenoid chemicals. This statement also embodies the individual thoughts of Washington counsel, specializiing in international trade regulation and customs law, and concerned with future developments in this field.

Scope of this paper

The Finance Committee should, in the near future, have before it legislation implementing the ASP package. It would appear to be more appropriate to evaluate the ASP package in detail at such time as it is before this committee and the Congress for approval rather than in connection with this proceeding, which is, as stated in the committee's announcement, an oversight proceeding concerned with a comprehensive evaluation of trade policy. This paper, therefore, within the 20-page limit set by the committee, will deal with the relationship of the ASP issue to the future objectives and problems of U.S. trade policy, leaving to another occasion argumentation concerned solely with ratification of the ASP package.

The significance of the ASP issue

Although the ASP system of valuation covers only a very minor part of U.S. trade, it has, largely because of its historical background, and its central importance in the Kennedy round negotiations, taken on a significance well beyond its actual economic importance.

The chemical negotiations in Geneva accomplished a fully reciprocal balance of concessions. The results represent a fair bargain reached in good faith after arduous negotiation for the highest stakes. Our negotiators insisted upon to the end, and finally won, acceptance for the fundamental position of the United States in these negotiations.

It can be stated without exaggeration, that unless ASP package is acted upon favorably by the U.S. Congress, there would be little prospect for trade negotiations in either tariffs or nontariff barriers in the foreseeable future. Failure to ratify the ASP package could also have an adverse impact upon American capital investment in overseas markets.

This is not to say that such consequences would flow out of any sense of hostility or retaliation on the part of other countries. Rather, failure of ratification would signify to our potential bargaining partners a serious lack of capacity on the part of the United States to engage in trade negotiations, especially in the field of nontariff barriers. It can be expected that they might turn to other alternatives and other arrangements in order to accommodate their trade and economic interests.

The ASP issue has thus become one of the keys, not only to future trade negotiations but has broader implications in the whole field of economic relations between nations.

Before proceeding in this analysis and discussion of future problems and policies, it would be well to briefly review how the issue came to take on its present significance.

The ASP system

"American Selling Price" refers to a system of valuation of imports for purposes of calculating ad valorem duties. It is applicable only to benzenoid chemicals, rubber footwear, canned clams and knit gloves. This paper is confined to a discussion of ASP in the chemical sector.

Under present U.S. law, the normal basis of valuation is export value, which is roughly speaking, and subject to a number of important qualifications, the wholesale price of an article in the exporting country for export to the United States. Again speaking generally, export value in most cases is equivalent to the transaction value, or the FOB price. It is to this value that ad valorem duty rates are applied. Thus, an article valued at $100 FOB, dutiable at 30 percent ad valorem, would be subject to a duty of $30.

There is considerable certainty and security of transaction for the importer and the exporter in the export value system of valuation since it is possible to calculate the amount of duty in advance with a fair degree of accuracy. The major uncertainty in export value is the possible difference betwen transaction value and market value at the time of export, but this is not often a substantial difference and can usually be taken into account by the parties to the transaction. There is an elemental fairness in the system as well, since the duty is based upon values which by and large reflect the actual transaction price of goods for export to the United States.

ASP valuation, in contrast, values imported goods not upon their actual value, but upon the price at which competitive goods are offered by American manufacturers. This involves a number of distortions, difficulties and uncertainties which have made ASP a formidable nontariff barrier, and indefensible as a valuation principle.

A principal fault is that it conceals the level of duty actually being exacted—in many cases exorbitant and prohibitory rates of duty. To take the previous example of an article valued at $100 FOB with a rate of duty of 30 percent, if it is further assumed that an American manufacturer is offering a competitive article at wholesale for $200, then the duty becomes 30 percent of $200 or $60 under ASP. Applied to the FOB value, the equivalent rate under export value of this duty would be $60 on $100 or an actual rate of 60 percent instead of 30 percent.

These rather simple examples understate the duty effect of ASP, which in many cases reaches over 100 percent in equivalent duties if export value were applied and a height of 172 percent as found by the U.S. Tariff Commission. Even the 172 percent rate understates the actual height of duties since it is an average rate for 11 dyes. For some of these dye products the rate is about 300 percent.

In addition to concealing and obscuring the actual level of protection the really vicious elements of the ASP system involve its susceptibility to manipulation by American manufacturers and the resultant uncertainty for American importers and foreign exporters. Thus, by merely stating his willingness to accept an offer on a competitive product, an American manufacturer can subject an imported article to ASP duties. Within the parameters of the market, an American manufacturer can list a price which sets the level of duty. Since in many cases the bona fides of both the offer for sale and the price at which the article is offered are more than questionable, the American manufacturer is able, in effect, to determine the duties for imported goods. Actual sales, if any, by the American manufacturer are often well below the offer, or list price, accepted by the Bureau of the Customs for ASP valuation purposes. The American manufacturer can thereby enhance the measure of protection he has received, undersell duty-paid imports and effectively keep imports out of the market.

The uncertainties for the exporter or the importer are obvious. He may not know whether an American manufacturer will offer a competitive article for sale until after the import transaction is contracted for. He may not know the price at which a competitive article will be offered. He may not know whether a particular article will be deemed competitive. These determinations may not be made until months after an article has been landed and released under customs bond to the ultimate customer.

These uncertainties, and the opportunity for manipulation, are in many ways greater obstacles to trade than the exorbitant rates of duty themselves.

In addition to the difficulties to exporters and importers, ASP is an administrative nightmare for the Bureau of Customs, and indeed, in 1951, the Bureau recommended to the Congress that ASP be abolished in the interest of customs simplification and ease of administration.

The Kennedy round

These difficulties and the inherent discriminatory effects of ASP will be dealt with in detail when ratification of the ASP package is before the Congress. Even this brief and generalized description, however, should make it clear why ASP became an important issue in the Kennedy round.

The ASP system of valuation is violative of the GATT, article VII, section 2(a):

> The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and *should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.* [Emphasis added.]

Because the ASP system of valuation antedated our adherence to the GATT, we were allowed to continue this system without being in technical violation of the article. However, since it clearly violates accepted principles of international valuation, ASP is, has been, and remains unacceptable to our trading partners.

It quickly became clear, early in the Kennedy round, that no negotiation in the chemical sector would be possible without some provision for the abolition of ASP. Without some resolution of the chemical issue, a negotiation in the industrial area was doubtful.

ASP thus became one of the crucial points for the entire Kennedy round. The United States took the position that it had not been granted authority by the Congress to negotiate the abolition of ASP and that, therefore, it could not be abolished in the Kennedy round. Our negotiators proposed that the Kennedy round tariff negotiations and abolition of ASP should be separated, a principle termed by the Europeans "decoupage"—to cut apart.

The eventual acceptance of the principle of decoupage by our bargaining partners, at the 11th hour, represented an important victory for the United States, and allowed the Kennedy round to conclude, as it did, successfully. What other nations conceded was the insistence that abolition of ASP had to be an integral part of the chemical negotiation, and of the Kennedy round. What the United States promised was that it would seek abolition of ASP from the Congress.

This essential element of the bargain was accompanied and made possible by the negotiation of the Kennedy round package and the ASP package.

The Kennedy round package

In the Kennedy round package, the United States cut its duties on most chemical products by an average of 43 percent. This cut covered only $325 million of imports from the major suppliers of chemicals to the United States. These suppliers, in turn, reduced their rate of duties on chemicals by 26 percent, but the trade coverage was on $900 million worth of imports from the United States. The essential feature for the United States, however, was that the ASP method of valuation on the benzenoids was retained. This package, both in terms of the ground rules for reciprocity in the Kennedy round and on an actual trade effect basis, was fully reciprocal from the point of view of the United States.

Not only was the trade coverage of our concessions much less than the trade coverage of the concessions granted by our trading partners, but the significant disparity between the high U.S. rates, aggravated by the ASP system of valuation, and the relatively low rates of other chemical suppliers, rendered our greater depth of cut less meaningful than the lower depth of cut of our trading partners. Retention of ASP obviously limited the effect of some of our concessions in this area.

The ASP package

In the ASP package, in return for elimination of ASP by the United States, our trading partners agreed to further tariff reductions and they also made important concessions on nontariff barriers. If the second package is adopted, the combination of duty cuts on chemicals in both packages by our trading partners will range from 44 to 49 percent. If the package is adopted, the United States will make additional reductions in duties, raising its average cut for the two packages to 48 percent. These calculations are based on official statements. However, some analysts believe that due to the operation of flat duty rates in some sectors, notably dyes at 30 percent, there actually will be a slight increase in U.S. duty from the first to the second package.

As indicated above, a detailed treatment of the balance of concessions will be submited to the committee at an appropriate time. It is believed, however, that each package is fully reciprocal. The result of adoption of both packages will still leave the United States with significantly higher duties in the chemical field than the EEC, Switzerland, the United Kingdom, and Japan.

Reaction of the U.S. chemical industry

The lower duties of our trading partners are expected to enhance considerably the U.S. export position. U.S. exports for the base year of negotiations, 1964, were $2.7 billion and the United States enjoyed a favorable balance in chemical trade of $1.8 billion. The extremely low duties on chemicals in our major export markets, which will result from the ASP package, should be of great interest to the chemical industry.

It is somewhat shocking, therefore, to find not only a lack of interest, but opposition to the ASP package by the trade associations representing the chemical industry. While it might be understandable that a few small sectors would object, the overall position of the chemical industry is incomprehensible if one considers only the trade situation.

Foreign investment versus exports

We assert that the attitude of the major chemical companies is motivated not by their trade position, but considerations flowing from their foreign investments, actual and planned. The chemical industry in 1964 had an estimated overseas investment totaling $3.1 billion (Office of Business Economics, USDC) and a conservative estimate of present foreign investment would be over $4 billion. Substitution of licensing for exports cannot be estimated, but clearly involves substantial amounts.

The chemical industries apparently would rather substitute increased investment overseas for export opportunity. If the ASP package is not ratified, they would enjoy a protected market in the United States as well as a protected market in Europe and other countries. This would allow them to maximize profits in each protected market.

Clearly, this decision on the part of the U.S. chemical companies is against the best interests of the United States. There is a fourfold loss for the United States involved:

1. The United States loses the potential foreign exchange earnings through increased exportation.

2. The United States loses the foreign exchange involved in increased investment abroad.

3. The United States loses the employment which would be created in the United States through exportation rather than investment abroad.

4. A protected market in the United States means a higher level of prices and the other adverse consequences of protection.

Although we believe in a free movement of capital, and concede that investment decisions are not made on the basis of tariff treatment alone, the United States has a clear interest in not perpetuating or adopting artificial stimuli to foreign investment by U.S. firms and should pursue a policy of encouraging export rather than investment where this is economically feasible.

Effect upon policies toward U.S. foreign investment

The committee must be well aware of the fears an anxieties aroused in other nations by massive foreign investment on the part of the larger American companies, including those companies in the chemical sector. There is an increasing fear in Europe, for instance, that American capital will come to dominate the European economy. Thus far the United States has been able to maintain relative freedom of investment in Europe and is making progress in freeing investment opportunities from restrictive regulation by other nations.

This freedom would be placed in jeopardy if the United States rejected the ASP package, thus stimulating foreign investment by U.S. companies and denying export opportunities to other chemical exporting nations.

This is not a dire prediction of things to come but, rather, a suggestion that in considering their own interests foreign nations would increasingly question and could conceivably take action to counter such a move by the United States. It is doubtful whether such restrictions on investment could be confined to the chemical sector alone; rather, they would tend to become generalized.

Thus, a shortsighted policy on the part of the chemical industry to substitute foreign investment for exports could have serious repercussions upon their ability and the ability of other American industries to continue to invest and maintain present investment under favorable conditions in foreign markets.

It also appears reasonable to suppose that the chemical industries of other countries would search for alternative trade arrangements if their export trade in chemicals to the United States continues to be impeded by American selling price valuation.

Consequences for future tariff negotiations

Failure to ratify the ASP package would also render academic most of the inquiries which the committe is concerned with in this oversight proceeding. It is extremely doubtful whether any major tariff negotiation could take place in the future without ratification of ASP. The United States would be up against the same problem of the chemical sector which it faced in the Kennedy round. ASP would become even more essential in any future negotiations on industrial tariffs. Added to the difficulties of the Kennedy round would be the disenchantment of foreign nations. We simply do not believe they could be brought to the bargaining table under such conditions. While major tariff negotiations are not in the immediate offing, and would probably await such time as the results of the Kennedy round are digested, the ASP issue would be an effective block to any future tariff negotiations.

Consequences for nontariff barrier negotiations

With a decreasing level of international tariffs, it has become increasingly clear that the major problem faced in the field of trade is that of nontariff barriers. The reduction in tariffs has not only focused attention on the nontariff barriers, but such devices may be adopted increasingly to conceal real protection as tariffs fall.

Some devices are adopted with a directly protective intent. The most troublesome problems, however, involve nontariff barriers resulting from national legislation, regulation, or practice which are intended to accomplish other goals but which have an incidental discriminatory effect against imports.

ASP, of course, stands in the directly protective category. It was adopted with protective intent and the proponents of continuing ASP have not attempted to conceal that their goal is continued protection. There is no other justification for American selling price valuation since, as pointed out above, it is completely contrary to accepted standards of valuation and to an efficient administration of the customs.

Other examples of directly protective nontariff barriers are (1) valuation provisions in American law such as the final list; (2) national preference regulations such as buy-American provisions pertaining to governmental procurement; (3) antidumping laws, regulations, or practices; (4) classification problems; and (5) delays or unduly complicated formalities at customs.

The "incidental" type of nontariff barrier is to be found particularly in the health, safety, and consumer protection fields. For example, the United States has a definite interest in protecting the safety of its citizens on our highways through the adoption of automobile safety standards. The form of these regulations, however, could conceivably discriminate against the imported automobiles, either by requiring safety devices of features which are not susceptible of adaptation to foreign automobiles, or by any number of other means which would make it more difficult for imported automobiles to meet the standards or prove that standards have been met.

Other countries, of course, have, and will increasingly establish, laws or regulations protective of the consumer interest in the fields of health, safety, and consumer information.

In these difficult fields, the problems usually revolve around appropriate standards, inspection procedures, enforcement techniques, and procedures at the customs. There is, understandably, a strong sense of national sovereignty when it comes to protection of the public health and safety and in the consumer protection field. However, in view of the multiplicity of regulations in these fields around the world and their possibly inhibiting effect on trade, every nation, including the United States as a major exporter, has an interest in fair regulations and procedures by other countries with a minimum of interference with legitimate trade.

Arrangements connected with interregional cooperation or union have also become increasingly important in their trade effect. The EEC, for instance, in the fields of taxation, fiancial policy, protection of industrial property, antitrust policy, transportation, and especially agriculture has taken steps to harmonize various national policies. In the process, there may be some import discriminatory effects, which are incidental to such harmonization. Regionalism will probably be increasingly adopted, viz the Canadian auto agreement and the Latin American market arrangements.

In all of these areas, the United States has a decided stake in assuring that nontariff barriers are not erected, or are dismantled or are modified so as not to discriminate against or adversely affect U.S. exports. As a nation, we will be increasingly faced with such barriers and it will be an essential element of national trade policy to be able to induce other nations to cooperate with us in these areas.

ASP, in our view, is the key to the success of our efforts to eliminate nontariff barriers in the future. The manner in which ASP, an obvious and unacceptable trade barrier, is treated in the Congress will demonstrate to the rest of the world our capacity to deal with such problems.

Nontariff barriers and the negotiating process

We believe the committee should give careful attention to the problems of negotiation involved in the elimination of nontariff barriers. The ASP issue, in one sense, provides little precedent for such negotiations. Since ASP is so directly tied to the level of duties it was feasible to quantify, to some extent, the effect of ASP valuation, which made a combined tariff and nontariff barrier negotiation in the chemical field possible and allowed the notion of reciprocity to play an important part in these negotiations. Even in ASP, however, the nontariff effects were difficult to quantify. Our trading partners were apparently willing to pay for the elimination of ASP valuation with substantial tariff reductions on their imports of chemicals.

Negotiation, however, in the other nontariff barriers mentioned above will be extremely difficult to quantify and it will be difficult to gage reciprocity. It is suggested further that negotiations in the traditional manner would put a premium upon having nontariff barriers of one's own to trade for concessions by others. It would appear more desirable, therefore, to tackle the problems of nontariff barriers in an entirely different negotiation context. We suggest that this would be most appropriately accomplished by the negotiation of international standards, perhaps in particular problem areas, and machinery to insure compliance with such standards.

It is worth noting in this connection that great progress has been made in some of the fields mentioned above and that in the particular fields of valuation and customs procedure the GATT stands as an international expression of acceptable standards and practices.

But for the fact that ASP antedated our adherence to the GATT, the ASP problem would have been handled in exactly the manner suggested. It is violative of the GATT and the United States would have been expected to bring its laws into conformity with the GATT. The idea of reciprocity would never have entered into a discussion of removal of the ASP system of valuation.

While we believe strongly that the ASP package negotiated is fully reciprocal, the difficulties of trading concessions in the nontariff barrier field in the future on the basis of reciprocity, in our view, calls for a different kind of negotiative technique, which we suggest should be based upon the concept of international standards and effective enforcement machinery. In the trade field clearly the GATT is the instrument with which we must start.

The increasing complexity of internal trade regulation in all of the countries of the trading world and an increased awareness of the significance of nontariff barriers calls for new and imaginative approaches to these problems. Elimination of ASP would place us in a strong position of leadership to effect a reduction of nontariff barriers, a course clearly in our interest as the largest exporter in the world.

Dumping and Unfair Methods of Competition in Import Trade

EXECUTIVE BRANCH STATEMENT ON DUMPING

General

In common trade terminology, dumping normally refers to sales for export at prices which are lower than in the exporter's home market or the constructed value of the merchandise. The Antidumping Act of 1921, as amended, provides that if a foreign exporter makes sales to the United States at prices which are "less than the fair value" of the merchandise and if an American industry is being injured, antidumping duties shall be assessed upon importation of the merchandise. These duties are equal to the amount by which the purchase price or exporter's sales price of the merchandise is less than its foreign market value or constructed value.

Under the act it is the responsibility of the Treasury Department to determine whether the merchandise is being sold at less than fair value. If Treasury makes an affirmative finding of dumping, it is the responsibility of the Tariff Commission to determine whether injury has resulted.

An international antidumping code consistent with the Antidumping Act of 1921 was recently negotiated during the Kennedy round of tariff talks. The code, which becomes effective on July 1, 1968, will require some amendments to the customs regulations as they relate to the Antidumping Act but will not require amendment of the act. This code will assure our exporters of fair and open procedures in their dealings with foreign governments in dumping matters. Under the code, our exporters will be provided by foreign governments with notice of an antidumping investigation, will be given an opportunity to confront those who have made the dumping complaint, and will have an injury test provided before the application of dumping penalties against them. Few countries outside the United States have had such methods in the past. On the other hand, these procedures will continue to be a part of U.S. practice. The code will in no way lessen the effectiveness of the current procedures in the United States and will insure a more expeditious handling of dumping and investigations.

The amendments to the customs regulations to implement the provisions of the code were published in the Federal Register in proposed form on October 28, 1967. All interested parties were invited to comment on them before they are adopted in final form.

Merchandise is ordinarily deemed to have been sold at less than fair value if the purchase price or exporter's sales price to U.S. purchasers is less than the home market price, the price to countries other than the United States, or the constructed value of the merchandise, whichever is appropriate.

The fair value of the merchandise is usually represented by the price at which the merchandise is being sold to purchasers in the exporter's home market, on a net, ex-factory basis. If, however, insufficient sales are made in the home market to afford a reasonable basis for determining fair value, the prices at which the exporter sells to purchasers in countries other than the United States may be used. Finally, if no acceptable sales are made in either market, a constructed value, including production costs, administration and overhead, and an addition for profit, may be used.

The price to U.S. purchasers which is used for comparison with fair value, as calculated above, usually is the purchase price of the merchandise. This is the price at which unrelated purchasers in the United States buy the merchandise from the foreign supplier. If the price is inclusive of charges to bring the merchandise to the United States, such charges are deducted to arrive at a net, ex-factory price.

At times, the importer in the United States is a subsidiary or is otherwise related to the exporter. In such circumstances, the price to be used for comparison with fair value is the exporter's sales price of the merchandise. This is the price at which the importer resells to unrelated U.S. purchasers. From this price are deducted all costs, charges, and expenses to arrive at a net, ex-factory price in the foreign country. In addition, any selling costs incurred by the related importer in reselling in the United States are deducted.

Normally, sales in the home market or to third countries are made under circumstances which differ from those incurred in the sales to the United States. Frequently, the quantities involved in the compared market differ from the quantities involved in sales to the United States. To place the sales on a basis as nearly equivalent as practicable, the law provides for adjustments for differences in quantities and circumstances of sales. The customs regulations further define those circumstances which normally will be deemed legitimate for adjustment. Among these are differences in credit terms, technical services, and assumption by the seller of the purchaser's selling, advertising, and other related expenses. Differences in sales price based on large quantity sales will normally be allowed only when the exporter has been selling 20 percent of his merchandise either in the home market or to third countries at a discount equal to or greater than the discount on sales to U.S. purchasers in equivalent quantities. Absent such a history of sales, the exporter may provide cost justification for the quantity allowance.

Frequently, merchandise of the type exported to the United States is not sold in the home market or to third countries. In such cases, if a similar product is available which is sold in these markets, it may be compared with the price of the article exported to the United States after appropriate adjustment for differences in the merchandise.

Many types of merchandise are sold in the home market or to third countries at prices which differ from purchaser to purchaser or from time to time. Under such circumstances, the foreign market value, or third country price, is determined by calculating a weighted-average price of all the sales during a representative period. If, however, the large majority of sales are made at a single price while some are sold at other prices, the price at which a preponderance of the sales were made may be used in determining fair value.

Administration

Antidumping investigations are sometimes initiated on the basis of advice provided by customs officers; however, they are normally triggered by the complaint of an affected domestic industry filed with the Commissioner of Customs. Upon receipt of a complaint with supporting information, the Commissioner of Customs conducts a summary investigation to determine if grounds exist for further consideration of the case. If he concludes that such grounds do exist, he publishes an "Antidumping Proceeding Notice" in the Federal Register and immediately conducts a preliminary investigation based on the examination of information from sources immediately available to him. At this point, he may determine that no grounds exist for continuing the investigation, and so advise the Secretary of the Treasury. If, on the other hand, further inquiry is required, he initiates a full scale investigation. In this stage, the Bureau of Customs requests from the foreign exorter answers to a standard questionnaire.

If the Commissioner of Customs determines during the course of his summary investigation that reasonable grounds exist to believe or suspect that sales at less than fair value are taking place, he orders the withholding of appraisement of shipments of the merchandise being imported into the United States. A notice to this effect is published in the Federal Register. While this action in no way delays the release of the merchandise from customs custody, it insures that should a dumping finding be made the Government will be able to collect any antidumping duties which may be due on these shipments. Normally, the withholding of appraisement is effective only on shipments imported after the date of the notice. In instances in which the exporter and importer are related, however, the withholding is effective retroactively to 120 days prior to the date that the complaint was accepted by the Commissioner of Customs.

After analysis of the information received from all sources during the investigation, the Commissioner makes a report of his findings to the Secretary of the Treasury. When the Secretary has considered the matter, he publishes in the Federal Register a Notice of Tentative Determination which includes a statement of reasons for his action. Interested parties are thereupon given an opportunity to submit argument or appear in person in support or in opposition to the tentative determination.

After examination of all arguments and evidence submitted in response to the tentative determination, the Secretary publishes a final determination in the Federal Register. If the final determination is affirmative, that is, that sales at less than fair value are taking place, the case is referred to the Tariff Commission for a determination concerning injury.

Under the proposed new regulations designed to conform the Treasury's antidumping procedures with the provisions of the International Anti-Dumping Code, tentative determinations of sales at less than fair value will no longer be issued. Instead a determination of sales at less than fair value would be issued, where appropriate. The procedures provide for a revocation of this determination if it is found to have been in error and the Tariff Commission has not yet issued a determination relating to injury.

If the Tariff Commission makes a determination of injury, the case is returned to the Secretary of the Treasury who publishes a finding of dumping in the Federal Register, and customs officers assess antidumping duties on any shipment on which the purchase price or exporter's sales price is less than the foreign market value or constructed value as appropriate.

Frequently, during the course of an investigation the foreign exporter becomes aware that it appears his price to the United States is lower than the price being used for comparison. In such cases he often agrees either to cease further shipments to the United States, or to revise his prices to eliminate these potential sales at less than fair value. On this basis, if the amount of potential dumping duties on past shipments is deemed to be minimal, the Secretary considers closing the case with a determination of no sales at less than fair value. Since such action by the exporter effectively gives the complainant the relief which he sought, the elimination of "dumped" imports, no further purpose would be served by continuation of the investigation. In any event, the revision of prices or cessation of shipments would prevent any assessment of dumping duties on such shipments in the future, making any affirmative determination in fact inoperative. Further processing in these circumstances would be to no purpose.

Statistics

Attached is a table showing the administration of the Anti-Dumping Act from January 1, 1955, to September 30, 1967. Of the 366 cases decided during the period, 11 resulted in findings of dumping, and an additional 87 resulted in price revisions or cessation of shipments before the case was closed. In 40 cases after a finding of sales at less than fair value, the Tariff Commission determined that no domestic industry was being injured.

Actions taken on dumping cases

[Record, Jan. 1, 1955,[1] to Sept. 30, 1967]

1. Relief warranted under Antidumping Act:	
(a) Findings of dumping	[2] 11
(b) Cases terminated as result of price revision ending previous price discrimination; or termination of sales	[3] 87
Total	98
2. No relief warranted under Antidumping Act:	
(a) No price discrimination	228
(b) No injury	40
Total	268
3. Dumping findings currently in effect	[2] 9

[1] The Antidumping Act, which was first enacted in 1921, was amended in 1954 to make the Tariff Commission responsible for injury determinations. Records of the reasons for injury determinations from 1921 to 1955 are incomplete.

[2] In 1 case not included, the Tariff Commission has found injury but "Finding of Dumping" had not been published on Sept. 30, 1967.

[3] Technically these cases are terminated with a finding of no sales at less than fair value and are familiarly referred to as "price revision cases."

EXECUTIVE BRANCH STATEMENT ON COUNTERVAILING DUTIES

THE STATUTORY PROVISION

The countervailing duty law is found in section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). It provides that whenever the Secretary of the Treasury finds that any dutiable imported merchandise has received a bounty or grant, directly or indirectly, from the exporting country, he shall exact a countervailing duty equal to the amount of such bounty or grant on each importation of the commodity in question. The countervailing duty is in addition to normal customs duties.

The law is mandatory, leaving the Secretary of the Treasury no discretion as to the imposition of countervailing duties once he determines that a bounty or grant is being bestowed and estimates the amount thereof.

Unlike the countervailing duty laws of many countries and the provisions of the GATT, the U.S. law does not require that injury to a domestic industry be shown as a condition to the imposition of countervailing duties. However, the United States is not in violation of the GATT in this respect, since this Government at the time of its accession to the GATT expressly reserved commitment on matters inconsistent with existing legislation.

ADMINISTRATIVE PROCEDURE

Countervailing duty cases may arise either on the basis of information supplied by customs officers or by persons outside the customs service. The procedure is detailed in section 16.24 of the Customs Regulations (19 CFR 16.24). Under a recent amendment to the regulations, a notice that a countervailing duty question is under investigation by the Bureau of Customs is published in the Federal Register and comments by interested persons invited. Upon a determination by the Commissioner of Customs, with the approval of the Secretary of the Treasury, that a bounty or grant is being paid or bestowed, an order requiring the imposition of countervailing duties is published in the Federal Register and Customs Bulletin. These determinations are subject to review by the U.S. Customs Court on the merits of whether a bounty or grant was paid or bestowed within the meaning of the statute.

RECORD OF ADMINISTRATION

The United States has had a countervailing duty statute since 1897. Approximately 65 basic countervailing orders have been issued. There are many more than 65 orders regarding countervailing duties, but these are orders which take such actions as revoking earlier decisions and amending countervailing duty rates in existing orders.

There are 10 countervailing duty orders outstanding. They are (listed alphabetically, by country):

Australia: Sugar content of certain articles.
Australia: Butter.
Canada: Cheese, 93–94 score, from whole milk, cheddar.
Canada: Cheese, 93–94 score, blue vein of Roquefort type.
Cuba: Cordage.
Denmark: Butter.
Great Britain: Spirits.
Great Britain: Sugar.
Ireland: Spirits.
Italy: Steel transmission towers.

CAST IRON SOIL PIPE INSTITUTE,
Washington, D.C.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. VAIL. Reference is made to your letter of September 27, 1967 requesting the Cast Iron Soil Pipe Institute, as one of those parties interested in testifying before your Committee on the Trade Policies of the United States, to submit a statement containing some factual information to be used in a compendium to be published by the committee prior to holding hearings.

I am pleased to enclose five copies of a short statement on behalf of the 22 companies who are members of the institute.

Our experience in antidumping cases is, we feel, most interesting and should be of value to the committee in considering both the present administration of our existing antidumping regulations, and the International Antidumping Code recently agreed upon during the Kennedy round of the GATT.

While it is generally known that the Senate and the chairman and members of your committe are extremely busy at this time, we hope very much that public hearings will be held in the near future and, as we have already informed you, we wish to be heard and to submit to any questions which the members of the committee may deem to be of interest to them.

Kindest personal regards.

Sincerely yours,

J. O. HENDRICKSON.
Executive Vice President.

STATEMENT OF THE CAST IRON SOIL PIPE INSTITUTE

The Cast Iron Soil Pipe Institute represents 22 companies which, together, produce over 95 percent of the cast iron soil pipe and fittings manufactured in the United States.

This institute understands that the Committee on Finance of the Senate will review the foreign trade policy of the United States and will give special attention to the action taken by this country's representatives at the recently concluded tariff negotiations at Geneva (the Kennedy round) including the agreement for an international antidumping code.

In this connection, the Cast Iron Soil Pipe Institute would like to address itself especially to the importation of pipe and fittings at less than fair value as described in the Tariff Act of 1930, as amended, since this has a direct bearing on the International Dumping Code which the Senators will be asked to approve.

The cast iron soil pipe producers are well aware of the injury which may be caused by the importation of such pipe at less than fair value. In 1955 there was a complaint against the United Kingdom which brought a finding of dumping by the U.S. Tariff Commission. In 1964 the Tariff Commission heard another case against Australia but did not make a finding of dumping because the Australians agreed to cease and desist. In November 1965 investigation was made of pipe and fittings sold in this country at less than fair value. The preliminary finding of dumping was not issued by the Treasury Department for a whole year and final determination required another 5 months so that it was September of 1967 before the Tariff Commission agreed that the U.S. industry was being injured by reason of imports from Poland at "dumping" prices.

The length of time required for this one case against Poland is, we fear, typical of nearly all of the cases having to do with Soviet bloc countries which are placed before the Treasury Department. We believe that this is one of the items which should receive adequate investigation by your committee, and that some limitation should be placed upon the Bureau of the Customs and the Treasury Department as to the time required for their investigations. Once the Secretary of the Treasury has certified that goods are entering at less than fair value, the Tariff Commission has only 60 days to make a finding of injury. Surely the Customs could render their decision in not more than 6 months.

The Treasury Department contends that investigation takes much longer when a country of Eastern Europe is involved. A different formula is used since our Government is unable to obtain some data from the Communists countries and cannot trust that which it does receive. Despite this, the administration is trying very hard to promote trade with these countries.

It was never contemplated by the Congress which established the antidumping laws that one country should be treated differently from another. For this reason, one wonders how such nations as Poland and Czechoslovakia, both of which are members of the General Agreement on Tariffs and Trade, would fit into the new International Antidumping Code.

Sine 1955 there have been 40 cases of dumping initiated against the Communists countries. The Treasury Department has found that in 10, only two (including the recent cast iron soil pipe case against Poland) resulted in final finding of injury. Twenty-six cases resulted in negative findings by the Treasury Department and four others have been pending for a very long time. The case against East Germany on pig iron, for example, has been in the hands of the Treasury Department for more than a year.

Administration policy appears to be that if we do not make it easy for the Soviet-bloc countries to sell in the United States, then they will not earn the dollars to purchase from us. If one examines the class of the few products which Poland, for example, purchases from the United States, one will note that their prime interest is only in certain sophisticated machinery, etc. which they cannot get elsewhere. This is inclined to be a single purchase and these machines are then utilized in the production of consumer goods for export to the United States on a regular basis.

Today Poland manufactures soil pipe and fittings on the same machines as those used by American producers. One of the few items Poland desires from this country is new metallurgical machinery. To add insult to injury, the Polish Government-owned monopolies of manufacture and export of cast iron pipe have even cast on such pipe the name of a U.S. manufacturer who is also an importer of pipe. We are happy to say that this manufacturer is not a member of this institute. It is probably not known that soil pipe and fittings are exempt from the general rule contained in the U.S. Tariff Act of 1930, that each piece of imported material shall bear an indelible mark as to country of origin. From information elicited during the hearings before the Tariff Commission, we believe that soil pipe and fittings should be removed from the exempt list.

Returning to the recent case against Poland, the Treasury's preliminary decision was that both pipe and fittings were being imported at less than fair value. The Polish Government exporter then realized that by making only a slight adjustment in the f.o.b. price of a handful of fittings to bring them in line with the price of Mexican fittings, the Secretary of the Treasury might be satisfied. Mexican fittings had been imported only into southern California for some time and were the only "third country" supplier which the Customs had for purposes of comparison. Just previously, the Czechoslovak exporters of hat bodies had been successful in having their case dismissed by a slight increase in their export price but without raising the cost to importers enough to make them competitive with American hat bodies.

The Treasury Department gave the impression that it welcomed such a move since, in the light of present policy, it gave them a chance to remove the article in question from a finding of "importation at less than fair value." It is, therefore, understandable why 26 out of 36 cases against Communist countries have been dropped since 1955.

During the long period of litigation, the Polish exporter shipped a large amount of both pipe and fittings to this country and assured the importers, even after the preliminary finding of dumping, that any extra levies would be absorbed by the exporter. It was noticeable that exports of fittings—which require triple the man-hours of pipe—were equal in tonnage to that of pipe despite the normal ratio of one to four. Since the final finding of injury by the Tariff Commission, the importation of fittings from Poland continues to flow into the Northeastern quarter of the United States where the market is already unstable.

Manufacturers of cast iron soil pipe and fittings have based their plant investment and operating schedules on the usage of pipe and fittings in the porportion normally required in sanitary systems. In making the decision that there was dumping of pipe but not of fittings, the Treasury Department appears not to have considered that it takes both pipe and fittings to make a drainage system. Naturally, we feel that the Treasury Department erred in this, especially since the original complains covered both units rather than presentation as two separate products. The net result was to prevent our industry from taking its entire case before the Tariff Commission. Our producers still feel that they are being injured by the import of fittings for cast iron soil pipe.

The American cast iron soil pipe industry has suffered from large amounts of pipe and fittings imported at low prices over the past 13 years. Because of this, and due to the experience related above, the members of this institute do not look with favor upon the International Anti-Dumping Agreement as negotiated in Geneva during the Kennedy round.

In the first place, the legality of the negotiation and agreement is questionable since the terms of reference covered only negotiations concerning tariffs. Be that as it may, it is believed that any agreement which would prove satisfactory to all members of the GATT would of necessity be much weaker than the present U.S. law. Furthermore, the terms of the international agreement would necessitate an amendment to the American antidumping law.

The American producers of cast iron soil pipe and fittings feel very strongly that this is much too important to be decided in Switzerland and that it should first be discussed openly and voted upon by the Congress of the United States. This institute is on record as giving its support to the resolution along those lines submitted by Senator Ribicoff last year. Regretfully, the Ways and Means Committee of the House of Representatives did not have time to hold hearings on the resolution.

The members of the Cast Iron Soil Pipe Institute, individually and collectively, welcome every opportunity to be of assistance to the Senate Committee on Finance in its review of the various aspects of the trade policy of the United States. They feel that this is necessary to the economic life and well-being of this country.

AMERICAN MINING CONGRESS.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The U.S. Antidumping Act of 1921 has been amended several times by the Congress and is in need of further amendment today. The chances of effective amendment by the Congress are seriously jeopardized, however, by the International Anitdumping Code, negotiated in Geneva during the Kennedy round, should the State Department—as it has done with other international agreements signed by the Executive without prior approval of the Congress—assert that such amendment would embarrass the President because of his international commitment.

Many concepts and substantive procedures of this Code are directly in conflict with the provisions of the U.S. Antidumping Act and Treasury regulations and administrative interpretations of both the Treasury and the U.S. Tariff Commission. I believe that massive uncertainty as to which provisions will be applicable can be expected among importers, foreign manufacturers, and domestic producers, as well as the Tariff Commission and the Treasury Department, should the Code go into effect on July 1, 1968, as scheduled, without any congressional guidelines.

At our September convention in Denver, Colo., the Mining Congress concluded its resolution on antidumping with these words:

> . . . we consider it essential that the Code negotiated in Geneva be submitted to Congress for study, hearings and action as proposed in Senate Concurrent Resolution 38, 90th Congress, before it is made effective.

A copy of our full resolution on antidumping is attached.

It is heartening that the Senate Finance Committee is undertaking its own review of U.S. trade policy and, in response to your request, I would like to take this opportunity to offer for its consideration and convenient reference the staff study and comparative analysis by the

American Mining Congress of the International Antidumping Code as it relates to the antidumping provisions, article VI, GATT the U.S. Antidumping Act, 1921, as amended, the U.S. Treasury antidumping regulations and S. 1726, introduced by Senator Vance Hartke and others (90th Congress). We are hopeful that this section-by-section comparison of related portions of these basic documents will prove useful to your committee in reviewing the scope and severity of the areas of conflict between the International Antidumping Code and present U.S. law and the pending legislative proposals.

We respectfully request that our submission be included in the compendium which your committee is preparing.

Please let us know if we can be of any further assistance.

Respectfully,

J. ALLEN OVERTON, Jr.,
Executive Vice President.

DECLARATION OF POLICY, 1967–68, AMERICAN MINING CONGRESS, ADOPTED AT DENVER, COLO., SEPTEMBER 10, 1967

Antidumping.—Foreign manufacturers who sell their goods in the United States at discriminatory prices—below the prices prevailing in the countries of origin—are engaging in a practice which is clearly contary to the principles embodied in our domestic fair-trade laws and the intent of Congress as expressed in the Antidumping Act of 1921.

After 46 years, legislative amendment of this act is now urgently needed; not as protection against fair international trade, but as a necessary countermeasure against the unfair trade practice of dumping. Experience has shown that congressional guidelines are necessary to clarify basic concepts. There is an immediate need to eliminate loopholes revealed in administrative practices and to provide greater speed and certainty in the handling of dumping cases.

Bills designed to accomplish those objectives were introduced in the 89th and 90th Congresses under broad legislative sponsorship and with significant and substantial support from both industry and labor. The recent negotiation of an International Antidumping Code (referred to below) has stimulated further interest in antidumping legislation. As a consequence, additional bills—similar to the foregoing ones—may be introduced in the near future for the purpose of dealing comprehensively with this important subject. We urge Congress to assign a high priority to such legislation.

The International Antidumping Code, drawn up in Geneva during tariff negotiations under the Trade Expansion Act of 1962 and scheduled to become effective July 1, 1968, has been agreed to by the President and was made public on June 30, 1967. The code is inconsistent with the provisions of the Antidumping Act of 1921 and, we believe, could expose American industry to increased unfair competition from foreign manufacturers.

Because implementation of the International Antidumping Code may produce this result, its acceptance is clearly a usurpation of the legislative functions of our Government and is contrary to Senate Concurrent Resolution 100, adopted in 1966. Therefore, we consider it essential that the code negotiated in Geneva be submitted to Congress for study, hearings and action as proposed in Senate Concurrent Resolution 38, 90th Congress, before it is made effective.

Summary of Issues Discussed in AMC Staff Study of International Antidumping Code

The U.S. Antidumping Act, 1921, as amended, as the law of the land, should prevail in areas of conflict with the International Antidumping Code, which is only in the nature of an executive international agreement. Yet, conformity with the code of domestic law, regulations and administration is pledged by all signatory governments. Thus, endless arguments can be expected first, over whether conflicts exist, and second, over whether present U.S. law or the code should prevail. Approximately 35 out of 60 major points of substance are mandatory [see app. A]. It is difficult to believe that the remaining permissive criteria will not also be asserted as controlling in U.S. antidumping proceedings.

Areas of conflict go to the heart of whether or not the United States will have an effective deterrent to injurious dumping of foreign products. At stake are such issues as:

(1) The amount and type of injurious activity which must be shown [see Art. 3(a)].

(2) The scope of the market area in which the impact of injury may be measured [see art. 4(a)].

(3) Whether injury determinations are to be undertaken without a knowledge of the margin of dumping involved and whether Treasury is, in effect, going to take portions of such determinations out of the Tariff Commission's hands contrary to the intent of Congress in the 1954 amendment [see art. 5(b)].

(4) Whether the finality of dumping cases is going to be eroded by discretionary administration [see art. 8(a)].

(5) Whether a "basic price" concept in certain exporter countries will circumvent the margin of dumping concept [see art. 8(d)].

(6) Whether importers may dump in one regional market, stop, and then dump in another, and thereby elude the reach of U.S. law [see art. 8(e)].

(7) Whether by redesigning the time limits and retroactive features of provisional measures the effectiveness of the U.S. Antidumping Act will be irreparably diluted [see arts. 9, 10, and 11].

American Mining Congress Memorandum

To: Those concerned with Antidumping.
From: J. Allen Overton, Jr., executive vice president.
Subject: Comparative Analysis of International Antidumping Code as it relates to provisions of GATT, U.S. law and regulations and pending legislation.

The subject of antidumping is one of grave concern to a number of the member companies of the American Mining Congress. In view of the recent conclusion of an International Antidumping Code, there is much interest and discussion of its scope and potential impact.

In the attached memorandum, we have set out a section-by-section comparison of:

(1) the provisions of the International Antidumping Code;
(2) the existing antidumping provisions in article VI of GATT;
(3) the existing U.S. Antidumping Act, 1921, as amended;
(4) the current U.S. Treasury regulations on antidumping; and
(5) the pending legislative proposal (S. 1726, 90th Cong.).

Staff commentary and explanation have been interspersed to highlight some of the aspects which are likely to come up for discussion.

Also enclosed is an appendix containing all of the basic documents from which the analysis was made. These materials have been assembled for convenient and continuing reference purposes; and also, as a working device to assist in developing American Mining Congress position.

Editor's Note: Appendix E, Senate bill 1726, was not printed.

Staff Study and Comparative Analysis by the American Mining Congress of the International Antidumping Code as It Relates to Antidumping Provisions, Article VI, GATT; U.S. Antidumping Act, 1921, as Amended, and U.S. Treasury Antidumping Regulations

S. 1726 Introduced by Senator Vance Hartke and Others (90th Cong.)

Note: This section-by-section comparative analysis and the basic materials from which the analysis was made are for convenient and continuing reference purposes; and as a working device to assist in developing American Mining Congress position. Staff commentary and explanation are intended to highlight some of the aspects which are likely to come up for discussion of the code's scope and potential impact.—J. Allen Overton, Jr., Executive Vice President.

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INTRODUCTION

SOME GENERAL OBSERVATIONS

REPRESENTATIONS THAT NO CONGRESSIONAL ACTION IS NEEDED

(a) *A code in legal limbo*

Many pious statements have been made by members of the Office of Special Representative for Trade Negotiations that no congressional approval of the code would be required. They rave claimed that this could all be done by mere changes of Treasury regulations. They seem to overlook the facts that:

(1) While the President as Head of State has the power to conduct U.S. foregn policy and to conclude executive agreements which have international force and effect, the power over U.S. commerce has constitutionally and historically been in the hands of Congress and has only been parceled out piece-meal in the international trade field to the President by specific acts of Congress in the reciprocal trade agreements program starting in 1934.

(2) Congress did not, in the Trade Expansion Act of 1962, authorize the entry into an international agreement which would change the U.S. Antidumping Act, just as it did not authorize a change in American selling price.

(3) The Senate has not approved the International Antidumping Code as if it were a treaty, nor has the Congress implemented it by legislation.

The conclusion is inescapable that the U.S. accession on June 30, 1967, to the code is without force and effect in relation to the U.S. antidumping law, unless implementing legislation is approved by the Congress. In the absence thereof, there is no change in the applicability of existing U.S. law.

(b) *The permissive argument*

One of the arguments which is likely to be raised in defense of the assertion that the code will not require implementing legislation is that a good portion of the code is permissive; that is, the word "may" is used rather than the word "shall." A rough tabulation of approximately 60 major points of substance contained in the code [see app. A] reveals that approximately only 25 will fall in this permissive category while 35 will fall in the mandatory category. Two major areas of the Tariff Commission's concern would become almost completely mandatory if the code were to apply. Article 3, for example, which sets out detailed standards for measuring injury and the threat of injury is completely mandatory. In article 4(a) the term "domestic industry" is required to be defined on a nationwide basis except where, under very limited conditions, the regional market can be isolated and a narrow competitive product concept is superimposed on both the national and regional industry concepts.

CAST IRON SOIL PIPE INSTITUTE,
Washington, D.C.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. VAIL. Reference is made to your letter of September 27, 1967 requesting the Cast Iron Soil Pipe Institute, as one of those parties interested in testifying before your Committee on the Trade Policies of the United States, to submit a statement containing some factual information to be used in a compendium to be published by the committee prior to holding hearings.

I am pleased to enclose five copies of a short statement on behalf of the 22 companies who are members of the institute.

Our experience in antidumping cases is, we feel, most interesting and should be of value to the committee in considering both the present administration of our existing antidumping regulations, and the International Antidumping Code recently agreed upon during the Kennedy round of the GATT.

While it is generally known that the Senate and the chairman and members of your committe are extremely busy at this time, we hope very much that public hearings will be held in the near future and, as we have already informed you, we wish to be heard and to submit to any questions which the members of the committee may deem to be of interest to them.

Kindest personal regards.

Sincerely yours,

J. O. HENDRICKSON.
Executive Vice President.

STATEMENT OF THE CAST IRON SOIL PIPE INSTITUTE

The Cast Iron Soil Pipe Institute represents 22 companies which, together, produce over 95 percent of the cast iron soil pipe and fittings manufactured in the United States.

This institute understands that the Committee on Finance of the Senate will review the foreign trade policy of the United States and will give special attention to the action taken by this country's representatives at the recently concluded tariff negotiations at Geneva (the Kennedy round) including the agreement for an international antidumping code.

In this connection, the Cast Iron Soil Pipe Institute would like to address itself especially to the importation of pipe and fittings at less than fair value as described in the Tariff Act of 1930, as amended, since this has a direct bearing on the International Dumping Code which the Senators will be asked to approve.

The cast iron soil pipe producers are well aware of the injury which may be caused by the importation of such pipe at less than fair value. In 1955 there was a complaint against the United Kingdom which brought a finding of dumping by the U.S. Tariff Commission. In 1964 the Tariff Commission heard another case against Australia but did not make a finding of dumping because the Australians agreed to cease and desist. In November 1965 investigation was made of pipe and fittings sold in this country at less than fair value. The preliminary finding of dumping was not issued by the Treasury Department for a whole year and final determination required another 5 months so that it was September of 1967 before the Tariff Commission agreed that the U.S. industry was being injured by reason of imports from Poland at "dumping" prices.

The length of time required for this one case against Poland is, we fear, typical of nearly all of the cases having to do with Soviet bloc countries which are placed before the Treasury Department. We believe that this is one of the items which should receive adequate investigation by your committee, and that some limitation should be placed upon the Bureau of the Customs and the Treasury Department as to the time required for their investigations. Once the Secretary of the Treasury has certified that goods are entering at less than fair value, the Tariff Commission has only 60 days to make a finding of injury. Surely the Customs could render their decision in not more than 6 months.

The Treasury Department contends that investigation takes much longer when a country of Eastern Europe is involved. A different formula is used since our Government is unable to obtain some data from the Communists countries and cannot trust that which it does receive. Despite this, the administration is trying very hard to promote trade with these countries.

It was never contemplated by the Congress which established the antidumping laws that one country should be treated differently from another. For this reason, one wonders how such nations as Poland and Czechoslovakia, both of which are members of the General Agreement on Tariffs and Trade, would fit into the new International Antidumping Code.

Sine 1955 there have been 40 cases of dumping initiated against the Communists countries. The Treasury Department has found that in 10, only two (including the recent cast iron soil pipe case against Poland) resulted in final finding of injury. Twenty-six cases resulted in negative findings by the Treasury Department and four others have been pending for a very long time. The case against East Germany on pig iron, for example, has been in the hands of the Treasury Department for more than a year.

Administration policy appears to be that if we do not make it easy for the Soviet-bloc countries to sell in the United States, then they will not earn the dollars to purchase from us. If one examines the class of the few products which Poland, for example, purchases from the United States, one will note that their prime interest is only in certain sophisticated machinery, etc. which they cannot get elsewhere. This is inclined to be a single purchase and these machines are then utilized in the production of consumer goods for export to the United States on a regular basis.

Today Poland manufactures soil pipe and fittings on the same machines as those used by American producers. One of the few items Poland desires from this country is new metallurgical machinery. To add insult to injury, the Polish Government-owned monopolies of manufacture and export of cast iron pipe have even cast on such pipe the name of a U.S. manufacturer who is also an importer of pipe. We are happy to say that this manufacturer is not a member of this institute. It is probably not known that soil pipe and fittings are exempt from the general rule contained in the U.S. Tariff Act of 1930, that each piece of imported material shall bear an indelible mark as to country of origin. From information elicited during the hearings before the Tariff Commission, we believe that soil pipe and fittings should be removed from the exempt list.

Returning to the recent case against Poland, the Treasury's preliminary decision was that both pipe and fittings were being imported at less than fair value. The Polish Government exporter then realized that by making only a slight adjustment in the f.o.b. price of a handful of fittings to bring them in line with the price of Mexican fittings, the Secretary of the Treasury might be satisfied. Mexican fittings had been imported only into southern California for some time and were the only "third country" supplier which the Customs had for purposes of comparison. Just previously, the Czechoslovak exporters of hat bodies had been successful in having their case dismissed by a slight increase in their export price but without raising the cost to importers enough to make them competitive with American hat bodies.

The Treasury Department gave the impression that it welcomed such a move since, in the light of present policy, it gave them a chance to remove the article in question from a finding of "importation at less than fair value." It is, therefore, understandable why 26 out of 36 cases against Communist countries have been dropped since 1955.

During the long period of litigation, the Polish exporter shipped a large amount of both pipe and fittings to this country and assured the importers, even after the preliminary finding of dumping, that any extra levies would be absorbed by the exporter. It was noticeable that exports of fittings—which require triple the man-hours of pipe—were equal in tonnage to that of pipe despite the normal ratio of one to four. Since the final finding of injury by the Tariff Commission, the importation of fittings from Poland continues to flow into the Northeastern quarter of the United States where the market is already unstable.

Manufacturers of cast iron soil pipe and fittings have based their plant investment and operating schedules on the usage of pipe and fittings in the porportion normally required in sanitary systems. In making the decision that there was dumping of pipe but not of fittings, the Treasury Department appears not to have considered that it takes both pipe and fittings to make a drainage system. Naturally, we feel that the Treasury Department erred in this, especially since the original complains covered both units rather than presentation as two separate products. The net result was to prevent our industry from taking its entire case before the Tariff Commission. Our producers still feel that they are being injured by the import of fittings for cast iron soil pipe.

The American cast iron soil pipe industry has suffered from large amounts of pipe and fittings imported at low prices over the past 13 years. Because of this, and due to the experience related above, the members of this institute do not look with favor upon the International Anti-Dumping Agreement as negotiated in Geneva during the Kennedy round.

In the first place, the legality of the negotiation and agreement is questionable since the terms of reference covered only negotiations concerning tariffs. Be that as it may, it is believed that any agreement which would prove satisfactory to all members of the GATT would of necessity be much weaker than the present U.S. law. Furthermore, the terms of the international agreement would necessitate an amendment to the American antidumping law.

The American producers of cast iron soil pipe and fittings feel very strongly that this is much too important to be decided in Switzerland and that it should first be discussed openly and voted upon by the Congress of the United States. This institute is on record as giving its support to the resolution along those lines submitted by Senator Ribicoff last year. Regretfully, the Ways and Means Committee of the House of Representatives did not have time to hold hearings on the resolution.

The members of the Cast Iron Soil Pipe Institute, individually and collectively, welcome every opportunity to be of assistance to the Senate Committee on Finance in its review of the various aspects of the trade policy of the United States. They feel that this is necessary to the economic life and well-being of this country.

AMERICAN MINING CONGRESS.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The U.S. Antidumping Act of 1921 has been amended several times by the Congress and is in need of further amendment today. The chances of effective amendment by the Congress are seriously jeopardized, however, by the International Anitdumping Code, negotiated in Geneva during the Kennedy round, should the State Department—as it has done with other international agreements signed by the Executive without prior approval of the Congress—assert that such amendment would embarrass the President because of his international commitment.

Many concepts and substantive procedures of this Code are directly in conflict with the provisions of the U.S. Antidumping Act and Treasury regulations and administrative interpretations of both the Treasury and the U.S. Tariff Commission. I believe that massive uncertainty as to which provisions will be applicable can be expected among importers, foreign manufacturers, and domestic producers, as well as the Tariff Commission and the Treasury Department, should the Code go into effect on July 1, 1968, as scheduled, without any congressional guidelines.

At our September convention in Denver, Colo., the Mining Congress concluded its resolution on antidumping with these words:

> . . . we consider it essential that the Code negotiated in Geneva be submitted to Congress for study, hearings and action as proposed in Senate Concurrent Resolution 38, 90th Congress, before it is made effective.

A copy of our full resolution on antidumping is attached.

It is heartening that the Senate Finance Committee is undertaking its own review of U.S. trade policy and, in response to your request, I would like to take this opportunity to offer for its consideration and convenient reference the staff study and comparative analysis by the

American Mining Congress of the International Antidumping Code as it relates to the antidumping provisions, article VI, GATT the U.S. Antidumping Act, 1921, as amended, the U.S. Treasury antidumping regulations and S. 1726, introduced by Senator Vance Hartke and others (90th Congress). We are hopeful that this section-by-section comparison of related portions of these basic documents will prove useful to your committee in reviewing the scope and severity of the areas of conflict between the International Antidumping Code and present U.S. law and the pending legislative proposals.

We respectfully request that our submission be included in the compendium which your committee is preparing.

Please let us know if we can be of any further assistance.

Respectfully,

J. ALLEN OVERTON, Jr.,
Executive Vice President.

DECLARATION OF POLICY, 1967–68, AMERICAN MINING CONGRESS, ADOPTED AT DENVER, COLO., SEPTEMBER 10, 1967

Antidumping.—Foreign manufacturers who sell their goods in the United States at discriminatory prices—below the prices prevailing in the countries of origin—are engaging in a practice which is clearly contary to the principles embodied in our domestic fair-trade laws and the intent of Congress as expressed in the Antidumping Act of 1921.

After 46 years, legislative amendment of this act is now urgently needed; not as protection against fair international trade, but as a necessary countermeasure against the unfair trade practice of dumping. Experience has shown that congressional guidelines are necessary to clarify basic concepts. There is an immediate need to eliminate loopholes revealed in administrative practices and to provide greater speed and certainty in the handling of dumping cases.

Bills designed to accomplish those objectives were introduced in the 89th and 90th Congresses under broad legislative sponsorship and with significant and substantial support from both industry and labor. The recent negotiation of an International Antidumping Code (referred to below) has stimulated further interest in antidumping legislation. As a consequence, additional bills—similar to the foregoing ones—may be introduced in the near future for the purpose of dealing comprehensively with this important subject. We urge Congress to assign a high priority to such legislation.

The International Antidumping Code, drawn up in Geneva during tariff negotiations under the Trade Expansion Act of 1962 and scheduled to become effective July 1, 1968, has been agreed to by the President and was made public on June 30, 1967. The code is inconsistent with the provisions of the Antidumping Act of 1921 and, we believe, could expose American industry to increased unfair competition from foreign manufacturers.

Because implementation of the International Antidumping Code may produce this result, its acceptance is clearly a usurpation of the legislative functions of our Government and is contrary to Senate Concurrent Resolution 100, adopted in 1966. Therefore, we consider it essential that the code negotiated in Geneva be submitted to Congress for study, hearings and action as proposed in Senate Concurrent Resolution 38, 90th Congress, before it is made effective.

Summary of Issues Discussed in AMC Staff Study of International Antidumping Code

The U.S. Antidumping Act, 1921, as amended, as the law of the land, should prevail in areas of conflict with the International Antidumping Code, which is only in the nature of an executive international agreement. Yet, conformity with the code of domestic law, regulations and administration is pledged by all signatory governments. Thus, endless arguments can be expected first, over whether conflicts exist, and second, over whether present U.S. law or the code should prevail. Approximately 35 out of 60 major points of substance are mandatory [see app. A]. It is difficult to believe that the remaining permissive criteria will not also be asserted as controlling in U.S. antidumping proceedings.

Areas of conflict go to the heart of whether or not the United States will have an effective deterrent to injurious dumping of foreign products. At stake are such issues as:

(1) The amount and type of injurious activity which must be shown [see Art. 3(a)].

(2) The scope of the market area in which the impact of injury may be measured [see art. 4(a)].

(3) Whether injury determinations are to be undertaken without a knowledge of the margin of dumping involved and whether Treasury is, in effect, going to take portions of such determinations out of the Tariff Commission's hands contrary to the intent of Congress in the 1954 amendment [see art. 5(b)].

(4) Whether the finality of dumping cases is going to be eroded by discretionary administration [see art. 8(a)].

(5) Whether a "basic price" concept in certain exporter countries will circumvent the margin of dumping concept [see art. 8(d)].

(6) Whether importers may dump in one regional market, stop, and then dump in another, and thereby elude the reach of U.S. law [see art. 8(e)].

(7) Whether by redesigning the time limits and retroactive features of provisional measures the effectiveness of the U.S. Antidumping Act will be irreparably diluted [see arts. 9, 10, and 11].

American Mining Congress Memorandum

To: Those concerned with Antidumping.
From: J. Allen Overton, Jr., executive vice president.
Subject: Comparative Analysis of International Antidumping Code as it relates to provisions of GATT, U.S. law and regulations and pending legislation.

The subject of antidumping is one of grave concern to a number of the member companies of the American Mining Congress. In view of the recent conclusion of an International Antidumping Code, there is much interest and discussion of its scope and potential impact.

In the attached memorandum, we have set out a section-by-section comparison of:

(1) the provisions of the International Antidumping Code;
(2) the existing antidumping provisions in article VI of GATT;
(3) the existing U.S. Antidumping Act, 1921, as amended;
(4) the current U.S. Treasury regulations on antidumping; and
(5) the pending legislative proposal (S. 1726, 90th Cong.).

Staff commentary and explanation have been interspersed to highlight some of the aspects which are likely to come up for discussion.

Also enclosed is an appendix containing all of the basic documents from which the analysis was made. These materials have been assembled for convenient and continuing reference purposes; and also, as a working device to assist in developing American Mining Congress position.

Editor's Note: Appendix E, Senate bill 1726, was not printed.

Staff Study and Comparative Analysis by the American Mining Congress of the International Antidumping Code as It Relates to Antidumping Provisions, Article VI, GATT; U.S. Antidumping Act, 1921, as Amended, and U.S. Treasury Antidumping Regulations

S. 1726 INTRODUCED BY SENATOR VANCE HARTKE AND OTHERS (90TH CONG.)

Note: This section-by-section comparative analysis and the basic materials from which the analysis was made are for convenient and continuing reference purposes; and as a working device to assist in developing American Mining Congress position. Staff commentary and explanation are intended to highlight some of the aspects which are likely to come up for discussion of the code's scope and potential impact.—J. Allen Overton, Jr., Executive Vice President.

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INTRODUCTION

Some General Observations

REPRESENTATIONS THAT NO CONGRESSIONAL ACTION IS NEEDED

(a) *A code in legal limbo*

Many pious statements have been made by members of the Office of Special Representative for Trade Negotiations that no congressional approval of the code would be required. They rave claimed that this could all be done by mere changes of Treasury regulations. They seem to overlook the facts that:

(1) While the President as Head of State has the power to conduct U.S. foregn policy and to conclude executive agreements which have international force and effect, the power over U.S. commerce has constitutionally and historically been in the hands of Congress and has only been parceled out piece-meal in the international trade field to the President by specific acts of Congress in the reciprocal trade agreements program starting in 1934.

(2) Congress did not, in the Trade Expansion Act of 1962, authorize the entry into an international agreement which would change the U.S. Antidumping Act, just as it did not authorize a change in American selling price.

(3) The Senate has not approved the International Antidumping Code as if it were a treaty, nor has the Congress implemented it by legislation.

The conclusion is inescapable that the U.S. accession on June 30, 1967, to the code is without force and effect in relation to the U.S. antidumping law, unless implementing legislation is approved by the Congress. In the absence thereof, there is no change in the applicability of existing U.S. law.

(b) *The permissive argument*

One of the arguments which is likely to be raised in defense of the assertion that the code will not require implementing legislation is that a good portion of the code is permissive: that is the word "may" is used rather than the word "shall." A rough examination of approximately 60 major points of substance contained in the code [illegible] reveals that approximately only 25 will fall in the permissive category while 35 will fall in the mandatory category. [illegible] Tariff Commission's concern [illegible] datory if the code were to apply. [illegible] detailed standards for measuring injury [illegible] completely mandatory. [illegible] required to be defined [illegible] limited conditions. the [illegible] competitive product [illegible] regional industry concept.

There is an incredibility factor in this permissive argument which raises these questions:

> Is the Congress to stand by and see the U.S. Antidumping Act emasculated on the basis of the excuse that approximately 25 out of 60 of the substantive provisions of the code are couched in terms not mandatory, but permissive? Would our negotiators have us and our trading partners believe that it was really the U.S. intent all along not to implement the approximately 42 percent of the international code whose provisions were couched in the permissive?

This is difficult to believe insofar as signatories to the code pledge in article 14 to conform their laws, regulations, and administrative procedures with the provisions of the antidumping code.

(c) *The "Treasury regulation can provide conformity" argument*

It has also been asserted that a change in Treasury regulations will be sufficient to effect any necessary changes to conform with the U.S. antidumping approach to the new code. However, a number of mandatory provisions would apply to both the Treasury's dumping and the Tariff Commission's injury determinations. For example, the definition of "like product" in article 2(b) is central to the Commission's competitive product market concept contained in 3(d) as well as the Treasury's determination of dumping in article 2(d). Clearly, a change in the Treasury regulations could not accomplish the mandatory application of the like product concept in 2(b) to the Tariff Commission's determination of the competitive product market in 3(d)—if the Tariff Commission does not choose to do so itself.

Similarly, in article 6, containing 10 evidentiary provisions of which six are mandatory, four would apply equally to the Tariff Commission as well as to the Treasury Department. These would include the right to present evidence 6(a)), and to examine evidence 6(b), to the treatment of confidential information 6(c), and the right to confrontation and rebuttal 6(g).

(d) *Simultaneous dumping and injury investigations*

The requirement in article 5(b) that evidence of both dumping and injury must be considered simultaneously in the decision of whether or not to initiate an investigation, "and thereafter," affects both the responsibilities of Treasury and the Tariff Commission in the prosecution of their respective dumping and injury finding duties. Insofar as the Treasury, under U.S. law, initiates the antidumping investigation by attempting to determine if there is a margin of dumping, it is presumed that the intent of this paragraph is to move up the start of the injury determination by the Tariff Commission to not later than the earliest date from which provisional measures may be applied. By definition in article 10(a) this is after a preliminary decision has been taken that there is dumping and sufficient evidence of injury. It must be concluded, therefore, that the preliminary determination of whether sufficient evidence of injury exists must be made either by the Tariff Commission or by the Treasury Department. If the Tariff Commission would make such determination, it would be a violation of the U.S. law which requires that the Tariff Commission take up the injury question after the Treasury has made a finding that there are sales at less than fair value. If the Treasury would make such determination, such action would be contrary to the 1954 amendment of the U.S. Antidumping Act which took the determination of injury to industry away from Treasury and gave it to the Tariff Commission without any reservations to the Treasury Department for preliminary injury decisions (see comments under art. 5(c)). Thus, the procedure outline either cannot be accomplished under U.S. law or a change of U.S. law is required.

(e) *Many principal mandatory code provisions will conflict with U.S. law*

A list of some of the more obvious conflicts would include these areas:

Principal cause of material injury [see art. 3(a)].
National markets [see art. 4(a)].
Simultaneous dumping and injury [see art. 5(b)].
Discretion of authorities [see art. 8(a)].
Basic price system [see art. 8(d)].
Dumping cessation in regional markets [see art. 8(e)].
Time limit on provisional measures [see art. 10(d)].

CONSIDERATIONS RE IMPLEMENTING LEGISLATION

Should the Congress consider the possibility of implementing legislation, it would seem appropriate to examine the relationship of the code provisions to all aspects of existing U.S. law and regulations in order to understand the differences that exist and the consequences of any action which would superimpose the code upon the existing law and regulations. Sufficient disparities exist between the code and U.S. law to require many congressional decisions as to which shall govern and nothing short of a massive overhaul of the U.S. antidumping law and implementing regulations would seem to be required, not to mention the effect such action would have in effectively foreclosing the chances of unilateral U.S. legislative improvements of its antidumping law in the future [see discussion under art. 1].

Article 1

Code, the Exclusive Remedy

International antidumping code

The imposition of an antidumping duty is a measure to be taken only under the circumstances provided for in article VI of the general agreement. The following provisions govern the application of this article, insofar as action is taken under antidumping legislation or regulations.

Comment

To require U.S. antidumping actions to conform to the conditions set out in the code is to limit use of the present U.S. Antidumping Act and regulations to those areas in which the U.S. law and regulations are in accordance with the international code. In those areas not in accordance, it will be necessary to either change U.S. law and regulations to conform to the international code or to cease to use U.S. law and regulations now on the books, a situation which it is doubtful that the Congress intended.

Whereas the code contains many permissive points which the authorities "may" apply, and therefore which would not seem to require conformity by countries signatory to the international code, the danger of these permissive provisions lies in the fact that they prescribe the outer limits of any national legislation in the future, on the points they cover, just as effectively as those provisions which are mandatory under the new code—should the Congress at a later time be persuaded that any legislation contrary to the code would embarrass the President as being contrary to our international obligations. If this were the case, while Congress could still pass any legislation it desired, it would, as a practical matter, be effectively foreclosed from legislatively achieving many of the needed reforms outlined in S. 1726 and other industry proposals.

ARTICLE 2

A. DETERMINATION OF DUMPING

Fair Value *v.* Normal Value

International Antidumping Code

2 (a). For the purpose of this code a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

Article VI. GATT

I. "The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products."

Antidumping Act, 1921, as amended

Antidumping Act, 1921, does not specifically define dumping, but rather is directed only at sales at "less than fair value," which is undefined. Thus, Treasury is left free to define dumping in its regulations as it sees fit.

U.S. Treasury Regulations

At present fair value, as defined in paragraph 14.7 of the Treasury Regulations (19 CFR 14.7) may be found if purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended) is not, or is not likely to be, less than the foreign market value (as defined in section 205) or constructed value (as defined in section 206) after adjustments as provided for in section 202 at which such or similar merchandise (as defined in section 212(3)) is sold for consumption in the country of exportation.

Footnote 15 of the Treasury Regulations makes it clear that the definition of fair value "does not in any way modify or affect definitions of foreign market value or constructed value, or their application as a basis for determining whether or not to withhold appraisement under section 201 or impose the duty under section 202.

S. 1726 (90th Congress)

The term "at less than fair value" would be defined in the statute so as to preclude Treasury from changing its regulations or the interpretation of its regulations. Therefore, the bill provides for a comparison of provisions already defined in the present act—purchase price or exporter's sales price and foreign market value or constructed value. Section: 1[201(f)(1)].

Comment

Raises question of whether U.S. "fair value" is equivalent to code's "normal value." If U.S. Treasury regulations have to be changed to read "normal value" then U.S. law would also have to be changed to read "normal value" since Treasury Regulations are intended to reflect the U.S. antidumping law.

Like Product

International Antidumping Code

2(b). Throughout this code the term "like product" ("produit similaire") shall be interpreted to mean a product which is *identical*, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Antidumping Act, 1921, as amended

No comparable all-purpose concept under U.S. law. There is no such concept regarding injury but there is a concept somewhat similar for dumping; the section 212(3) definition of "such or similar merchandise" is used in determining foreign market value in sections 205, 202 (b) and (c). Strict priorities are set out in section 212(3), however, for which there is no parallel in the International Antidumping Code.

U.S. Treasury Regulations

Section 14.7(b)(3) of the Treasury Regulations requires that in any consideration of "similar merchandise" as described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended, due allowance be made for differences in the merchandise, primarily the effect of such differences upon the market value. Consideration may also be given to differences in cost of manufacture if the amount of any price differential is wholly or partly due to such differences.

Comment

The code term "characteristics closely resembling those of the product under consideration" is thoroughly ambiguous. Are these to be physical characteristics, competitive equality, similarity of productive processes? What kind of variations would determine "closely resembling"?

Like product is further clarified in the code only with regard to qualifications for comparison under the injury test—production process, the producers' realizations, profits. (See discussion in art. 3(d)).

Thus, U.S. law and Treasury regulations are much more specific than international code. This raises the question of whether these provisions must be scrapped in favor of the more generalized code provisions.

Trans-Shipments

International Antidumping Code

2(c). In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

Article VI, GATT

1. "* * * For the purposes of this article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another (a) * * * is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or * * *"

Antidumping Act, 1921, as amended

Antidumping Act, 1921 has no such intermediate country concept.

U.S. Treasury Regulations

Not covered by Treasury regulations.

Comment

Article 2(c) is permissive, not mandatory, so that United States need not adopt such procedure. Thus, Treasury could continue to use country of export on trans-shipments, and go to third country prices rather than to country of origin. If Treasury wanted to use country of origin, a change in Treasury regulations would be required and section 205 (foreign market value) of the U.S. law would have to be amended to bypass the parenthetical requirement in section 205 to use third country sales.

Third Country Sales

International Antidumping Code

2(d). When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

Article VI. GATT

1(b). "* * * in the absence of such domestic price, is less than either—

"(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

"(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit."

Antidumping Act, 1921, as amended

Antidumping Act has generally same purpose but many differences of details. No reference to highest export price.

The format of priorities under U.S. law in sections 201(b) and 205 are as follows:

First, try to establish "foreign market value" in country of export (sec. 205).

Second, if either (1) inadequate quantities in country of export compared to sales for export to countries other than the United States or (2) no sales, or, in the absence of sales, offers for sales in the principal markets of the country from which exported, in the usual quantities and in the ordinary course of trade—looks to sales in third country by exporter (this is still "foreign value") section 205.

Third, if no foreign value possible—use a constructed value (sec. 201(b)) (sec. 206).

U.S. Treasury Regulations

Paragraph 14.7 follows priorities set out in U.S. law with exception that section 14.7 (a) (2) of the Treasury regulations focuses exclusively on inadequacy of quantities without mentioning other factors such as absence of sales or offers for sales in the principal markets * * * in the usual wholesale quantities * * * in the ordinary course of trade.

S. 1726 (90th Congress)

Third country sales

The bill would specify that the exporter's home market will be the basis for determining foreign market value so long as at least one vendor's sales of like merchandise in the home market account for 15 percent or more of his total sales, excluding sales to the United States. This provision would greatly reduce the number of instances in which third country markets are used as the basis for determining foreign market value. Section: 4 [205 (a) (1)].

If no such vendor can be found, resort is to sales in country which is the largest consumer of the vendor's sales. Section 4 [205 (a) (2)].

In absence of proof of sales at a different price, foreign market value is presumed to be sellers' list or published price. Section 4 [205 (a)].

Comments

U.S. law has definite priorities for using sales in exporter's home market, third countries, and then constructed value, while article 2(d) of the International Antidumping Code would allow resort to either third-country sales or constructed value once sales in exporter's home market were found not to permit a proper comparison. Thus, for the U.S. authorities to follow the GATT, a change in U.S. law would seem to be required. However, Treasury might try to get around this by not going to constructed value before third-country sales, or by claiming that third-country sales were insufficient or inadequate before using constructed value.

The requirements of third-country price to be the highest but representative price is permissive. (Also, United States has already subscribed to those portions of article VI of GATT not in conflict with U.S. law.)

The ability to use sellers' list or published prices contained in S. 1726 was not covered in the code.

Unreliable Prices

International Antidumping Code

2(e). In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2(f) (last sentence). In the cases referred to in article 2(e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

Antidumping Act, 1921, as amended

Section 207 defines specific relationships that will require use of section 204 exporter's sales price which is the price at which imported merchandise is sold or agreed to be sold in the United States, by or for the account of the exporter.

U.S. law does not contain the flexibility to use a "reasonable basis as the authorities may determine" where no resale to an independent buyer or no resale at all in the condition as imported.

Section 206 (b) and (c) dealing with constructed value, allow valuations to be disregarded if transactions between related parties do not reflect market value. Resort is to best evidence available.

Section 205 (last sentence) dealing with foreign market value authorizes use of prices at which such or similar merchandise is sold through a sales agency or other organization related to the seller to determine foreign market value.

U.S. Treasury Regulations

One type of compensatory arrangement exists where foreign exporters offer to reimburse U.S. importers for the payment of any dumping duties which may be incurred. This usually takes the form of a warranty of nonapplicability of dumping duties. Under the Treasury Regulations such a warranty will reduce purchase price or exporter's sales price except to the extent that it covers merchandise which is (1) purchased or agreed to be purchased before publication of a withholding of appraisement notice, and (2) exported prior to a dumping determination by Treasury. (14.9(f).)

S. 1726 (90th Congress)

There are a number of features of S. 1726 designed to deal with the problem of the unreliability of foreign price data. Remedies are proposed in the following areas:

Reliance on list or published prices: In the absence of conclusive evidence that merchandise was actually sold at a different price, the seller's list or published price will prevail. Section: 4 [205(a)(2)].

"Usual wholesale quantity": Certain classes of transactions which are not likely to reflect a fair price freely arrived at on the open market should not distort Treasury's determination of what constitutes the "usual wholesale quantity." The bill would exclude:

a. Quantity discounts not freely available to all purchasers at the time sales in question were made.

b. Transactions between "related" persons described in section 207.

c. Contracts pursuant to exclusive dealing arrangements, e.g., exclusive distributorships or exclusive requirements contracts. Section: 7(1).

Cost-justification of quantity discounts.—Treasury's recently revised regulations on antidumping, in effect, acknowledged that the longstanding complaint by domestic industry had been valid. Treasury's practice had been to make allowance for differences in quantity discounts—on sales to the United States compared with sales in the home market—if they were "reasonable" without explaining what standards it uses in ascertaining what is "reasonable."

Treasury's revised regulations specify that an allowance ordinarily will be made for a quantity discount only if it is actually in effect for 6 months with respect to 20 percent of the merchandise sold in the home market or in the third-country markets were applicable, or, in the alternative, unless it is cost justified.

The 1965 bill would limit the allowance for quantity discounts to differences in the cost of manufacture, sale, or delivery resulting from differences in wholesale quantities actually considered and taken into account by the vendor in establishing his price. Section: 2 [202(b)(1) and (c)(1)].

Dummy exporter loopholes.—Importers could avoid the act simply by setting up a foreign subsidiary to the parent company as the exporter of the dumped merchandise, and by seeing to it that the bulk of the profits from the sale of such merchandise are made by the subsidiary itself in the country of export. The bill, therefore, provides that such markup for expenses and profits by the exporting subsidiary shall be deducted in determining the exporter's U.S. sales price.

In addition, if Treasury finds a margin of dumping both ways—whether it recognizes or sees through the subsidiary—the bill provides that the dumping duty shall be equal to the greater margin. This would relieve Treasury of the need for extensive investigations to determine the bona fide nature of the exporting subsidiary in such cases. Section: 3.

Comment

Article 2(e) is permissive. It appears to envision some sort of a work-back from retail sales to an independent buyer, or if such sales are not available or if there is further manufactured by importer before sale the resort is to "such reasonable basis as the authorities may determine."

The last sentence of 2(f) is less permissive, using the words, "should also be made." The question raised is whether Treasury could claim that almost any situation would enable it to use "such reasonable basis as the authorities may determine" so that any hope of getting more specific provisions such as are proposed by S. 1726 may be permanently foreclosed.

Adjustments for Differences

International Antidumping Code

2(f) In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI: 1(b) of the General Agreement, the two prices shall be compared at the same level of trade normally at the ex factory level and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale for the differences in taxation, and for the other differences affecting price comparability. * * *. [last sentence is shown with 2(e)].

Article VI. GATT

I. * * * "Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

Antidumping Act, 1921, as amended

Section 202 (b) and (c) and sections 203, 204, and 205, taken together, would give substantially the same results. However, section 212(4) describes "usual wholesale quantities" as being the price of the quantity in an aggregate volume which is greater than the aggregate volume for any other quantity.

U.S. Treasury Regulations

Section 14.7(b) expands on differences in quantities in relation to discounts, differences in circumstances of sale, offers, cost of manufacture, the use of sales agencies, and sales at varying prices.

Also to be considered are adjustments for differences in merchandise: Due allowance will be made for variation in the quality of the merchandise being sold in the United States and the home market. Treasury will be guided primarily by the effect of such differences upon the market value of the merchandise, but in appropriate circumstances will also make adjustments for differences in the cost of manufacture where it is established that a price differential is wholly or partly due to such differences. (14.7(b)(3).)

Quantity discounts will be allowed if actually enjoyed by 20 percent of the exporter's home market for 6 months and freely available; or, in the alternative, are cost justified. (14.7(b)(1).)

S. 1726 (90th Cong.)

Circumstances of sale.—The bill would specify that due allowance shall be made for other differences in circumstances of sale affecting the cost of doing business to the extent that such differences were actually considered and taken into account by the vendor in establishing his price. This attempts to get at the realities of the transactions and to discourage sham manipulations and theories developed after the fact as spurious defenses to thwart Treasury's administration of the act. Section: 2 [202 (b) (2) and (c) (2)].

Quantity discounts.—Must reflect differences in costs resulting from different wholesale quantities actually considered and taken into account in setting price. Section: 2 [202(b)(1) and (c)(1)].

Usual wholesale quantities.—The level of trade in general is those quantities at which offered for sale and sold in the ordinary course of trade to wholesale purchasers, but excluding wholesale quantities offered for sale or sold at quantity discounts only available to selected or preferred purchasers, all transactions between related parties, and exclusive dealing arrangements. Section: 7(1)

Comment

The real infighting in an antidumping case involves the allowances for differences affecting price comparability. Sizable dumping margins may be reduced to de minimis or even explained away completely. U.S. industry has been aiming for more specific regulations which would pin down the application of factors affecting comparability. S. 1726 would add the principle that such factors must have actually been considered by the vendor and taken into account in setting his price. On the other hand, there must be a possibility for weeding out exclusive dealing arrangements, preferential quantity discounts, and transactions between related parties if price rigging for purposes of avoiding dumping is to be dealt with effectively. Conceivably, Treasury could now say that a number of the more specific provisions in U.S. law and regulations are not covered by article 2(f) and therefore invalid. Article 2(f), for example, contains no provision such as in section 212(4) of U.S. law which requires the products in the greater aggregate volume to be the basis for finding "usual wholesale quantities."

State Trading Monopolies

International Antidumping Code

2(g). This article is without prejudice to the second supplementary provision to paragraph 1 of article VI in annex I of the general agreement.

Article VI. GATT

The second supplementary provision to paragraph 1 of article VI found in annex I of the GATT recognizes that prices in state-trading monopolies may not be appropriate.

Antidumping Act 1921, as amended

No comparable provision.

S. 1726 (90th Congress)

In dealing with countries which control home market prices by state fiat, Treasury has had to resort to procedures not explicitly authorized heretofore by the act. The bill makes it clear that Treasury may continue this necessary flexibility to determine the foreign market value of merchandise produced in Communist or centrally planned economies or adopt other reasonable standards. Section: 4 [205(b)].

Comment

As East-West trade increases this will become increasingly important. Article 2(g) merely would allow authorities to disregard State trading monopoly prices, but offers no positive guidelines. To date, the United States has no legislation to deal with this problem.

ARTICLE 3

B. DETERMINATION OF INJURY

Principal Cause of Material Injury

International Antidumping Code

3(a) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall, in all cases, be based on positive finding and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example, that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

Article VI. GATT

6(a) "No contracting party shall levy antidumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry."

Antidumping Act, 1921, as amended

The Antidumping Act, 1921, delegates to the Tariff Commission the determination of whether an industry in the United States is being or is likely to be injured or is prevented from being established, by reason of the importation of such merchandise into the United States. There are no specific guidelines for finding injury.

S. 1726 (90th Congress)

Section 201(b) of the bill would set forth several tests for determining whether material injury exists or is likely to exist. [See discussion under art. 3(b)].

Section 1 [201(b) (2) (3) and (4)] of the bill recognizes that dumping may be one of several contributing causes of injury. [See discussion under art. 3(c)].

Comments

Adherence to code provision not only would limit the Commission's judgment function without any offsetting benefit, but also would prevent Tariff Commission from giving relief from dumping where dumping is only a contributing cause not of "principal" proportions. It would also be likely to preclude S. 1726 purpose of allowing dumping to be found even if concurrent causes are present. S. 1726 rational asks why relief against one cause of injury should be denied merely because other causes also exist.

It is extremely doubtful that any dumping effect ever could outweigh all other factors taken together which may be adversely affecting an industry.

If article 3(a) had been written without the second sentence, it is likely that the "principal cause of material injury" concept could be considered as making it easier to show injury than having to show that dumped imports caused all of the material injury. But the second sentence, by requiring that all other factors which "may be adversely affecting industry" be put on the scale, has replaced the concept of material injury with one which is open ended concept of adverse effects which can be expanded to infinity.

U.S. acceptance of GATT provided that GATT would apply only to the extent it is "not inconsistent with existing legislation" which, of course, included the Antidumping Act of 1921 and thereby excluded the United States from the need to base its injury test on "material" injury.

Forms of Injury

International Antidumping Code

3(b). The valuation of injury—that is the evaluation of the effects of the dumped imports on the industry in question—shall be based on examination of all factors having a bearing on the state of the industry in question, such as: Development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one of several of these factors can necessarily give decisive guidance.

Antidumping Act, 1921, as amended

No comparable provisions; Tariff Commission has complete discretion in determining what amounts to injury.

S. 1726 (90th Congress)

Definitions of "injury"

Section 201 (b) of the bill sets forth the following tests for determining whether material injury exists or is likely to exist:

Test 1. Percentage Loss of Market Share

The Need.—Members of the Tariff Commission have tended to agree that a domestic industry must show "material" injury to obtain relief, but have disagreed on the percentage of a market which dumped imports must seize to be deemed "material."

Proposal.—Injury shall be found if imports determined by Treasury to be dumped: Capture 5 percent of the total domestic sales of the relevant product in the competitive market area.

Defense Available.—Unless there is clear and convincing evidence that had such dumped sales not been made, the industry in the United States still would not have increased its sales.

The Commission could measure dumping in any 3-month timespan during a period starting 6 months before the initiation of the investigation by the Treasury Department and ending at the conclusion of the Commission's investigation.

Comment.—The choice of 5 percent can be justified on the basis of concepts borrowed from U.S. antitrust laws, and on the fact that domestic industry cannot be expected to suffer a 5-percent loss of sales to dumped merchandise without serious adverse effects. Section: 1 [201(b)(1)].

Test 2. Forcing a Price Break

The Need.—There has been wide disagreement within the Tariff Commission as to the role dumped imports must play in forcing a price break before they are considered injurious.

Proposal.—Injury shall be found if imports determined by Treasury to be dumped are:

A contributing cause of a decline in the prices of 50 percent or more of the relevant domestic merchandise supplied to the competitive market area.

The price break occur in any month within the period starting 6 months before the Treasury investigation and ending at the close of the Commission's investigation.

Comment.—Injury may be caused when, in order to protect their market position from dumping, domestic producers are forced to reduce prices. Even small quantities of imports at dumped prices can cause widespread price breaks in the competitive market area. Section: 1 [201(b)(2)].

Test 3. Losses by Labor

The Need.—The interests of domestic labor cannot be separated from those of domestic industry in the face of dumped imports. At present the act makes no direct reference to injury to labor, only to "an industry."

Proposal.—Injury shall be found if imports determined by Treasury to be dumped are:

A contributing cause of a decline of 5 percent or more (in man-hours worked or in wages paid) of direct labor employed by a domestic industry in producing merchandise of the same class or kind supplied to a competitive market area.

Comment.—To measure a decline the Commission would compare man-hours worked or wages paid during any three of the months from 6 months before the initiation of the dumping investigation to the conclusion of the injury investigation, with the average monthly level of such employment during the year ending on the date the Treasury investigation began. Section: 1 [201(b)(3)].

Test [illegible]

The Need.—To allow the [illegible] to deal with factors indicative of [illegible] listed above, there is a need for a [illegible]

Proposal.—Injury shall be found if imports [illegible] to be dumped:

Have been a contributing cause of any [illegible] effects in any competitive market area.

Comment.—Market disruption which follows dumped imports would be sufficient to justify the imposition of dumping duties. The Commission also should be expected to consider the disruptive effects of dumped imports on established patterns of trade, customer relationships, and market habits which force serious adjustments in the reasonably expected results of a business venture, to name a few examples. Section: 1 [201(b)(4)].

Defenses: A necessary clarification

No domestic sales lost: Under test 1 the importer has a defense if he can show by clear and convincing evidence that the domestic industry would not have supplied that share of the market taken over by dumped imports even if no dumping had occurred. Section: 1 [201(b)(1)]. Meeting competition: Meeting competition from other nondumped imports would not alone constitute a defense. Section: 1 [201(d)]. Predatory intent: In recent years the Commission has introduced into its determinations the irrelevant question of whether foreign merchandise was sold with predatory intent, as though this psychological inquiry had something to do with the question of injury to domestic industry. The bill would make it clear that the exporter's or importer's intent is irrelevant. Section: 1 [201(d)].

Comment.—The last sentence of article 3(b) is a two-edged sword. On the one hand, U.S. industry has lost injury cases because of Tariff Commission focus on one or several factors. On the other hand, U.S. adherence to such multifactored approach would preclude any future U.S. legislation to create several automatic injury tests which have been suggested by domestic industry. Without statutory tests such as those which are proposed by S. 1726 experience has shown that there is no assurance the Commission will find injury in even such obvious situations.

Contributing Cause

International Antidumping Code

3(c). In order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined, for example: the volume and prices of undumped imports of the product in question, competition between the domestic producers themselves, contraction in demand to substitution of other products or to changes in consumer tastes.

Antidumping Act, 1921, as amended

No comparable provision.

S. 1726 (90th Cong.)

Recognizing "dumping" as a "contributing cause"

The second, third, and fourth tests of injury, outlined in connection with article 3(b), require that the dumping of foreign merchandise must be a contributing cause of the stated effects. It is rarely the case that any event is the sole or even the predominant cause of any other event, especially in the field of economic cause and effect. Yet, the Tariff Commission has recently refused to recognize injury from dumping because injury might have been explained in part by causes other than dumping. The bill would make clear that the mere presence of concurrent causes may not be used to avoid a finding of injury from the dumping. Section: 1 [201(b) (2), (3), and (4).]

Comment

Article 3(c) seems to be a causal relation test whereas article 3(b) is concerned with the scope of injury.

Article 3(c) picks up several of the defenses which Tariff Commission used to deny injury finding.

The words "individually, or in combination" in article 3(c) are particularly damaging because they require the "principal cause" of article 3(a) not only to be the largest single cause, but also of greater effect than all other causes combined. Read in conjunction with the words in article 3(a), "all other factors taken together" this becomes the inescapable intent of the code which the Tariff Commission would have to implement because no exception has been accorded the United States as was originally done regarding article VI of the GATT.

Competitive Product Market

International Antidumping Code

3(d). The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Antidumping Act, 1921, as amended

No comparable provision. The "such or similar" provisions in section 212(3) of the U.S. Antidumping Act apply to comparability for purposes of determining whether there is dumping, not to the injury question.

S. 1726 (90th Cong.)

The product market would include merchandise which is reasonably interchangeable in use with the class or kind involved. Other lines of commerce in which one or more members of a domestic industry may be engaged, but which are outside the scope of competition with dumped imports, are not to be considered by the Commission in weighing the impact of dumping upon a domestic industry. Section: 1 [201 (f) (4)].

Comment

Article 3(d) attempts to solve the "relevant product line" problem. This concept would be superimposed upon the definition of industry as set out in article 4 by article 4(c).

The code's reference to production process would seem to preclude any subsequent possibility of legislation to allow a claim on injury to be made by a competing product not necessarily of the same material or made by similar processes, although such broadening of product line may be dangerous where broadening the relevant market base may make it more difficult to show injury.

The usefulness of this provision would depend upon whether the availability of data and "necessary information" provisions can be satisfied.

Threat of Injury

International Antidumping Code

3(e). A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture, or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent.[1]

Antidumping Act, 1921, as amended

Section 201(a) gives the Tariff Commission the responsibility for determining whether an industry "is being or is likely to be injured."

S. 1726 (90th Cong.)

Likelihood of Injury

The Need.—The Tariff Commission has recently ruled that "likelihood of injury" can be found only on a showing of clear and imminent injury. This rigid standard, borrowed from an irrelevant concept defined under wholly different words used in the old escape clause, is almost impossible to satisfy. In keeping with the rule in other laws designed to curb unfair competition, the Commission should be able to cope with future dumping on a showing of reasonable likelihood of injury.

Proposal.—Likelihood of injury shall be found when:

> The Commission finds a reasonable likelihood that an injury described in the tests above will occur by reason of dumping. Section: 1[201(c)].

Comments

Neither the act nor its legislative history gives any explicit indication as to the meaning of "likelihood of injury." None of the domestic antitrust laws has been interpreted so narrowly as the Commission's "clear and imminent" requirement. It is generally accepted that the effective implementation of unfair trade laws requires the judging body to make some estimates from evidence of records plus common business experience, and a probability of injurious effects even though this probability could not be demonstrated to a certainty.

[1] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

By its very nature, the likelihood of injury concept is forward looking in time. Its purpose is to be prepared to deal with an inflow of dumped imports so that their impact may be headed off by rapid imposition of a special dumping duty.

As the Tariff Commission cases have shown, if the clear and imminent injury test is required, any attempt to show the threat of injury will become a dead letter in antidumping cases.

International Antidumping Code

3(f). With respect to cases where material injury is threatened by dumped imports, the application of antidumping measures shall be studied and decided with special care.

Comment

A meaningless provision. The requirement of study and decision "with special care" would seem to be at cross-purposes with the need for speedy action where dumping is imminent.

Article 4

DEFINITION OF INDUSTRY

National and Regional Markets

International Antidumping Code

4(a). In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products except that:

(i) When producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers;

(ii) In exceptional circumstances a country may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a separate industry, if, because of transport costs, all the producers within such a market sell all or almost all of their production of the product in question in that market, and none, or almost none, of the product in question produced elsewhere in the country is sold in that market or if there exist special regional marketing conditions (for example, traditional patterns of distribution or consumer tastes) which result in an equal degree of isolation of the producers in such a market from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

* * * * * * *

4(c). The provisions of article 3(d) shall be applicable to this article.

Antidumping Act, 1921, as amended

No comparable provision. The Tariff Commission in only a few cases departed from the nationwide concept of industry and measured injury of dumped imports in relation to the portion of the total U.S. industry selling in the market area affected by the dumped imports.

S. 1726 (90th Congress)

Definitions of "industry"

The bill borrows from antitrust principles in defining the domestic industry, the geographical market and the product market so as to assure that the Tariff Commission will focus upon the effects of dumping in a competitive market area, and to reverse the recent tendency of the Commission to consider the overall health of domestic industries, dogmatically presumed to be nationwide, before deciding whether the dumping caused injury.

The competitive market area would be the geographical area in which the dumped imports compete with the domestic merchandise. Section: 1 [201(f)(3)].

The domestic industry would be those domestic vendors who supply merchandise directly or indirectly to the competitive market area. Section: [201(f)(2)].

The product market would include merchandise which is reasonably interchangeable in use with the class or kind being dumped. Section: 1 [201(f)(4)].

Comment

Article 4(a) defines domestic industry generally as the domestic producers as a whole of the like products or to those providing a major proportion of the total domestic production.

Article 4(c) superimposes the "relevant product line" requirement in article 3(d) upon the industry concepts in article 4.

Recognition is given (in only exceptional cases) to the possibility of a country being divided into two or more "competitive markets" which the producers within each market regarded as a separate industry. However, this feature is severely limited by the requirement that the producers within such market sell all or almost all of their production of such product in that market because of transport costs and that there be no, or almost no, sales into that area of other U.S. production situated outside such market. The code also recognizes the possibility of special regional marketing conditions such as traditional patterns of distribution or consumer tastes, which result in an equal degree of isolation of the producers in such a market from the rest of the industry. Both of the aforementioned possibilities are also strictly limited by a further provision that injury must be found "to all or almost all" of the production of the product in the market defined.

S. 1726, on the other hand, incorporates a regional geographic market concept but is not restricted by requiring all those producers selling in that market to sell exclusively in that market. If the code provisions are adopted, injury in any regional market could never be shown if there were some sales in that market by a producer selling on a broader or nationwide basis.

Subparagraph 4(a)(i) raises the question of whether the production of a domestic producer would be excluded merely because he has some imports from his foreign subsidiary of "the allegedly dumped product."

While the decision to divide a country into two or more competive market areas is permissive, the requirements for doing so are mandatory. Although there seems to be no rational basis for the extreme isolation of the production in this market area which is the goal of article 4(a)(ii) it is conceivable that the Tariff Commission could follow this concept rather than their earlier regional market decisions.

Integrated-Countries Markets

International Antidumping Code

4(b). Where two or more countries have reached such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in article 4(a).

Comment

Apparently not applicable to United States, but since "level of integration" is not defined as either political or economic integration, where negligible tariff or other barriers exist it might be argued that the "integration" referred to in article 4(b) of the code is the type of economic integration resulting in certain industries, such as is fostered by the United States-Canadian automotive pact. The effect of this would be to expand the industry and make an injury finding more difficult.

Geographic/Product Market

International Antidumping Code

4(c). The provisions of article 3(d) shall be applicable to this article.

Comment

Superimposes a "relevant product line" requirement upon the industry concepts in article 4. This approach is also envisaged in S. 1726.

Article 5

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

Initiation and Subsequent Investigation

Substantiation of Complaint

International Antidumping Code

5(a). Investigations shall normally be initiated upon a request on behalf of the industry [1] affected, supported by evidence both of dumping and of injury resulting therefrom for this industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have evidence both on dumping and on injury resulting therefrom.

Antidumping Act, 1921, as amended

Section 201(b) implies that there be a preliminary dumping investigation by Treasury to determine whether the Secretary has "reason to believe or suspect, from invoice or other papers or from information presented to him or his delegate" that a margin of dumping exists.

Section 201(a) requires the Tariff Commission to initiate the question of injury upon receiving advice from the Secretary of the Treas-

[1] As defined in art. 4.

ury that merchandise is being, or is likely to be sold in the United States or elsewhere at less than its fair value.

U.S. Treasury Regulations

The domestic industry's complaint must present detailed data reasonably available, as well as suggestions concerning specific avenues of investigation. 14.6(b)(2) and 14.6(b)(4).

Secretary may defer making an affirmative determination during the pendency of proceedings relating to similar merchandise from another country. He must consider the date of the complaints, the volume of sales involved in each proceeding, any hardship, and probable extent of delay which deferral would entail. (14.8(a).)

S. 1726 (90th Congress)

Regarding the consolidation of complaints, the Secretary of the Treasury would be required to consolidate all affirmative findings on complaints filed simultaneously, and to keep them consolidated when he forwards them to the Tariff Commission in order to permit appraisal of total impact of such dumped imports by the Commission. Hitherto, there have been as many separate antidumping proceedings before the Treasury and the Commission as there have been foreign sources of merchandise dumped in the United States. This fragmented way of dealing with what really is a singular injury to a domestic industry has caused needless repetition and expense in the administration of the act, and has led the Commission unjustifiably to deny the remedy in cases where that injury is the result of dumping from several foreign sources. Sections: 1 [201(a)] and 6 [212(a)(1)].

Unsupportable complaints can be dismissed within 15 days, and where imports from a country or countries are found not to be dumped, they can be dismissed from the consolidated investigation. Section: 6 [212 (b) and (c)].

Comment

Complainant cannot merely show injury to his own company—he is required to show evidence of injury to the entire industry at the time he initiates his complaint.

Simultaneous Dumping and Injury Investigations

International Antidumping Code

5(b). Upon initiation of an investigation and thereafter, the evidence of both dumping and injury should be considered simultaneously. In any event the evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter, during the course of the investigation, starting on a date not later than the earliest date on which provisional measures may be applied, except in the cases provided for in article 10(d) in which the authorities accept the request of the exporter and the importer.

Antidumping Act, 1921, as amended

Antidumping Act, 1921.—The code provision requiring the simultaneous consideration of dumping and injury with regard to the basic question of whether or not to initiate an investigation is patently contrary to the specific intent of Congress as expressed in the legislative history of the 1954 amendment of the U.S. Antidumping Act of 1921.

U.S. Treasury Regulations

Section 14.8(a) states, "Whenever the Secretary makes a determination of sales at less than fair value he will so advise the U.S. Tariff Commission."

S. 1726 (90th Congress)

Section 1[201(a)] of S. 1726 was modified slightly compared to S. 2045, the Antidumping Act amendment offered in the 89th Congress to make it clear that the Tariff Commission's injury determination shall be made within 3 months "after notification from the Secretary" of the Treasury of sales at less than fair value.

Comments

Article 5(b) would require simultaneous consideration of the evidence of dumping and injury. The U.S. Congress in 1954 specifically removed the injury determination from the Treasury Department, giving it to the U.S. Tariff Commission, and requiring the Tariff Commission to conclude its injury determination within 90 days after receipt of a finding of a dumping margin by the U.S. Treasury Department.

The code does not make it clear whether Treasury would again make both a preliminary dumping and injury determination for which there is no basis in U.S. law, especially after the 1954 amendment, or require the U.S. Tariff Commission to determine ab initio the injury question without the benefit of knowing the margin of dumping, if any, which may exist.

The requirement in article 5(b) for simultaneous consideration of dumping and injury not only during the course of such investigation but also in the decision whether or not to initiate an investigation, is a complete innovation from the statutory scheme set up by the 1954 amendment which required the determination of sales at less than fair value to be made before the question of injury even became pertinent.

The sentence beginning "In any event" makes no sense except as an attempt to require the U.S. Tariff Commission to begin consideration of evidence of injury once a preliminary decision has been taken that there is dumping and sufficient evidence of injury (the earliest date on which provisional measures may be applied—see article 10(a)).

The Tariff Commission could informally be supplied with information by Treasury on the injury question prior to a formal finding of a dumping margin—and conceivably could make a finding of "no injury" on the first day of the statutory 90-day period available for its injury determination—unless the domestic complainant requested the Tariff Commission to hold a public hearing on the question of injury. Conceivably, this is what our U.S. negotiators have in mind. The unavoidable question, however, is how the Tariff Commission is supposed to determine the injury question prior to knowledge of the margin of dumping involved in a finding of sales at less than fair value which, according to U.S. law, must be first supplied to the Tariff

Commission by the U.S. Treasury so that the Tariff Commission can measure the impact of the goods containing the margin of dumping.

Dismissal of Insubstantial Complaints

International Antidumping Code

5(c). An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

Antidumping Act, 1921, as amended

No comparable provision.

U.S. Treasury Regulations

Under section 14.6(d)(1) the Commissioner of Customs can close a case after conducting a summary investigation to determine if the merchandise is not being and is not likely to be imported in more than insignificant quantities.

S. 1726 (90th Congress)

Where no evidence to support a dumping complaint is found from a particular source, the Secretary can dismiss the complain within 15 days. Section: 6 [212(b)].

Furthermore, where complaints have been consolidated in a single antidumping proceeding, the Secretary may prepare and publish a proposed negative dumping determination as to a country or countries whose exports to the United States are found not to be dumped, rather than wait until the preparation and publication of any proposed affirmative dumping determination. Section: 6 [212(c)].

Failure to dismiss complaint would not cause automatic withholding of appraisement.

Comment

Section 14.6(d)(1) of the Treasury Regulations has no specific basis in the present Antidumping Act, 1921, as amended. Because the Tariff Commission only gets into the antidumping picture after the Treasury has found dumping, the Commission never sees "the ones that got away." It might be claimed that any residual administrative power regarding injury rests with the Secretary of the Treasury, particularly insofar as before 1954 the Treasury could dismiss a case on the basis of either no dumping or no injury.

However, as the law stands today, it appears the Treasury is usurping Tariff Commission's injury function if it dismisses a case for a lack of injury where there was potential for an affirmative dumping finding to have been made. Should the combined impact from several sources of dumping have been injurious, the Tariff Commission would never have had an opportunity to find injury, because the Treasury could have dismissed each case piecemeal.

No Customs Clearance Delay

International Antidumping Code

5(d). An antidumping proceeding shall not hinder the procedures of customs clearance.

Antidumping Act, 1921, as amended

Section 201(b) authorizes the Secretary of the Treasury to withhold appraisement, on unappraised entries made up to 120 days before dumping complaint was lodged if he has reason to believe or suspect a margain of dumping to exist.

Such withholding applies "until further order of the Secretary," or until a finding of dumping plus injury has been made public. If the goods have already been appraised at the time of the withholding notice, they are not subject to the special dumping duty. (Sec. 202(a).)

U.S. Treasury Regulations

Section 14.10 provides that if there has been a withholding of appraisement notice or a Tariff Commission finding of injury, the customs collector may release any involved merchandise in his custody or which is thereafter imported if an appropriate bond is filed or on file, or if he is advised by the appraiser that merchandise involved in a specified entry will be appraised without regard to the Antidumping Act.

ARTICLE 6

EVIDENCE

Right to Present Evidence

International Antidumping Code

6(a). The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the antidumping investigation in question. They shall also have the right, on justification, to present evidence orally.

U.S. Treasury Regulations

Section 14.8(a) gives interested persons an opportunity to make written submissions regarding tentative determinations. The Secretary of the Treasury retains the discretion (1) if an opportunity for oral presentation will be accorded, and (2) to whom it will be accorded.

S. 1726 (90th Congress)

The bill provides that both importers and domestic industries shall receive a fair hearing in any antidumping proceeding, and shall have at any oral hearing the right to counsel, to present evidence, to confront interested parties, and to conduct whatever cross-examination may be required for a full and fair disclosure of pertinent facts. Section: 6 [212 (d) and (h)].

General Comment on Article 6

While code standards regarding treatment of evidence are similar to current Treasury Regulations in many respects and can be conformed with by Treasury and Tariff Commission administrative regulations, they should be compared with the provisions of S. 1726 because a number of significant differences based on the practical experiences of industry in antidumping cases are reflected therein.

Right to Examine Evidence

International Antidumping Code

6(b). The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph (c) below, and that is used by the authorities in an antidumping investigation, and to prepare presentations on the basis of this information.

U.S. Treasury Regulations

Section 14.6a(a) makes generally available to any person all information, but not necessarily all documents, obtained by Treasury in connection with any antidumping proceeding. (There is no specific mention of the governments of exporting country.) Summaries of factual documents prepared by officers or employees of the United States, as distinguished from recommendations or evaluations, will be made available.

Information will be made available in specific or generalized form unless competitors would get a significant advantage, or the persons supplying the information would be adversely affected. Though Treasury has discretion over degree of disclosure, the names of particular customers, business or trade secrets, production costs, or distribution costs unless accepted for justifying quantity discounts or differences in circumstances of sale, ordinarily will not be disclosed [14.6a(c)(3)].

S. 1726 (90th Cong.)

Complainant and reviewing court would receive supplemental statement of information relied on by the Secretary, except confidential costs used to ascertain constructed value or justify claimed discounts for differences in quantities or circumstances of sale. Section: 6 [212 (c) and (i)].

Confidential information

International Antidumping Code

6(c). All information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an antidumping investigation, shall be treated as strictly confidential by the authorities concerned who shall not reveal it, without specific permission of the party submitting such information.

U.S. Treasury Regulations

Section 14.6a(c) sets out standards for determining whether information will be regarded as confidential. This ordinarily includes situations where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. The final decision rests with the person supplying the information.

Section 14.6a(b) sets out the provisions for strict confidentiality and the control of the party submitting the information.

S. 1726 (90th Cong.)

Parties involved should know the evidence used against them. The provision for "reasoned opinions" contained in section: 6[212(c)(d)(e)(i)] usually will help accomplish this. While Treasury and the Tariff Commission would retain discretion to refuse publication of information which would impede them from obtaining similar information in the future, they would be required to prepare a supplemental statement of the information withheld for the use of the interested parties and a reviewing court to enable them to analyze the agency findings. Section: 6 [212 (c) and (i)].

An importer would be provided with the right to review data in Tariff Commission injury investigation similar to that in proposed 1963 Antidumping Act Amendment for domestic complainant review in Treasury dumping proceeding. In addition, right to review data in the case at Treasury level would be limited to exclude the costs of manufacture in justification of quantity discounts, as well as costs used in determining "constructed value." Section: 6 [212 (c) and (i)].

Confidentiality unwarranted

International Antidumping Code

6(d). However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

U.S. Treasury regulations

If, however, disclosure is requested and it is determined that confidentiality is unwarranted, and the submitting party does not agree to disclose any specific part or summary or approximation thereof—to the extent it is self-serving, it will be disregarded by Treasury in determining sales below fair value and will not be relied on in this connection.

S. 1726 (90th Cong.)

If an importer or exporter fails or refuses to furnish the information requested by the Secretary, all doubts relating only to such information will be resolved against the person failing or refusing to furnish it, section 6 (212(f)).

Foreign Investigations

International Antidumping Code

6(e). In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

Comment

No comparable provision.

Notice of Investigation

International Antidumping Code

6(f). Once the competent authorities are satisfied that there is sufficient evidence to justify initiating an antidumping investigation pursuant to article 5, representatives of the exporting country and the exporters and importers known to be concerned shall be notified and a public notice may be published.

Antidumping Act, 1921, as amended

The first notice requirement is contained in section 201(b) which requires Secretary of Treasury to publish notice in the Federal Register that he has reason to believe or suspect a dumping margin to exist.

U.S. Treasury Regulations

Section 14.6(d)(1)(i) merely provides for an antidumping proceeding notice upon the Secretary's decision that the information received in complaint is in proper form, and will specify the shipments by certain firms or persons involved, the date received, and a summary of the information.

Section 14.6(e) provides for a withholding of appraisement notice in the Federal Register where reasonable grounds to believe or suspect a dumping margin to exist. Where the investigation is limited to transactions of certain shippers or producers the notice shall name them.

Section 14.9(a) requires each appraiser to notify the collector and importer immediately of each lot of merchandise with respect to which appraisement is withheld.

Confrontation and Rebuttal

International Antidumping Code

6(g). Throughout the antidumping investigation all parties shall have a full opportunity for the defense of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

U.S. Treasury regulations

Section 14.8(a) gives interested persons an opportunity to present views including new or additional information or arguments after a notice of tentative determination is published in the Federal Register. Where accuracy of information before Treasury is challenged, oral presentation of information or argument in person or through counsel is possible for all parties who the Secretary decides are concerned. The notice of tentative determination includes a statement of reasons on which the tentative determination is based.

S. 1726 (90th Cong.)

The bill provides that both Treasury, with regard to dumping, and the Tariff Commission, with regard to injury, give an opportunity for a fair hearing and, at any oral hearing, the right to counsel, to present evidence, to confront interested parties, and to conduct whatever cross-examination may be required for a fair disclosure of pertinent facts, section 6(212 (d) and (h)).

A proposed dumping determination would be published indicating nonconfidential specific data, concepts, and computations relied on by Treasury in making its proposed decision. Parties would have opportunity to be heard on whether relevant documents should be made part of the record (section 6(212(c)).

Notice of Determinations

International Antidumping Code

6(h). The authorities concerned shall notify representatives of the exporting country and the directly interested parties of their decisions regarding imposition or nonimposition of antidumping duties, indicating the reasons for such decisions and the criteria applied and shall, unless there are special reasons against doing so, make public the decisions.

Antidumping Act, 1921, as amended

Section 201(a) requires the Secretary of Treasury to make public notice of any affirmative dumping and injury findings.

Section 201(c) requires Treasury and the Tariff Commission to publish their respective dumping and injury findings in the Federal Register "with a statement of the reasons therefor."

U.S. Treasury Regulations

Section 14.13(a) requires publication in the Federal Register of both the notice of tentative determination regarding Treasury's dumping investigation and the Tariff Commission's determination regarding injury, including statements of the reasons therefor. Tariff Commission findings will also be published in the weekly issues of Treasury Decisions.

S. 1726 (90th Cong.)

The bill requires the Tariff Commission, as well as the Treasury Department, to publish full reports indicating specific data such as manufacturers, dates, prices, discounts, quantities, home consumption, cost of containers, taxes, duties and commissions, as well as delivery, selling, advertising, technical service, and other expenses, but not including confidential cost information used in ascertaining constructed value or costs of manufacture. Section: 6 [212(c)(d)(e)(i)].

Preliminary Determinations

International Antidumping Code

6(i). The provisions of this article shall not preclude the authorities from reaching preliminary determinations, affirmative or negative, or from applying provisional measures expeditiously. In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

U.S. Treasury Regulations

Section 14.6(d)(ii) allows the Commissioner of Customs to conduct a brief preliminary investigation and still promptly decide whether reasonable grounds exist to believe or suspect a dumping margin to exist.

Section 14.6(e) specifies that where insufficient information exists to state whether purchase price or exporter's sales price are to be used for the comparison with fair value, he may publish a supplementary notice "as soon as possible" with such information and that withholding of appraisement shall not begin until such supplemental notice is received by the appraisers.

S. 1726 (90th Cong.)

If an importer or exporter fails or refuses to furnish the information requested by the Secretary of Treasury, all doubts relating only to such information will be resolved against him. Section: 6 [212(f)].

Comment

There is no provision in U.S. law or regulations allowing a final finding on the basis of the facts available where any interested party withholds "necessary information."

Article 7

PRICE UNDERTAKINGS

Conditions for Terminating Investigations

International Antidumping Code

7(a). Antidumping proceedings may be terminated without imposition of antidumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices so that the margin of dumping is eliminated or to cease to export to the area in question at dumped prices if the authorities concerned consider this practicable, e.g., if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable.

7(b). If the exporters concerned undertake, during the examination of a case, to revise prices or to cease to export the product in question, and the authorities concerned accept the undertaking, the investigation of injury shall nevertheless be completed if the exporters so desire or the authorities concerned so decide. If a determination of no injury is made, the undertaking given by the exporters shall automatically lapse unless the exporters state that it shall not lapse. The fact that exporters do not offer to give such undertakings during the period of investigation, or do not accept an invitation made by the investigating authorities to do so, shall in no way be prejudicial to the consideration of the case. However, the authorities are, of course, free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

U.S. Treasury Regulations

Section 14.7(b)(9) allows Secretary of Treasury to terminate a dumping investigation if "promptly after the commencement of the investigation" either (1) price revisions have been made which eliminate the likelihood of sales below fair value and there is no likelihood of the resumption of such prices, or (2) sales have terminated and will not be resumed, or (3) the Secretary determines there are other changed circumstances (undefined) on the basis of which it may no longer be appropriate to continue an antidumping investigation.

Opponents are given 30 days after public notice in the Federal Register to challenge the facts relied on with "persuasive evidence or argument to the contrary." Otherwise, there will be a finding that "there are not and are not likely to be sales below fair value."

S. 1726 (90th Cong.)

The bill would require that an investigation once begun be terminated only if (1) dumping ceased promptly after the start of the investigation, (2) assurances were given that such dumping would not be resumed, and (3) the quantities involved are insignificant. Section 6(212(a)(2)).

Comment

Denies complainant the right to have injury investigation completed merely because of voluntary price revisions or cessation of the exports (unless the authorities concerned so decide). This is contrary to U.S. law which has no provision allowing the Tariff Commission not to complete its investigation.

ARTICLE 8

D. ANTIDUMPING DUTIES AND PROVISIONAL MEASURES

Imposition and Collection of Antidumping Duties

Discretion of Authorities

International Antidumping Code

8(a). The decision whether or not to impose an antidumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the antidumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories parties to this agreement and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

Article VI. GATT

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an antidumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph I.

Antidumping Act, 1921, as amended

Section 202(a) requires a special dumping duty to be applied for which the full margin of dumping is to be the basis.

S. 1726 (90th Cong.)

Judicial Review

Rather than allow "the authorities" the ultimate decision, the bill makes clear that judicial review is available to both importers and complainants when proceeding concluded. This would clarify the confusion as to the extent courts can review Treasury Department and Tariff Commission findings. Appeals would be direct to the Court of Customs and Patent Appeals. The court would be authorized only to continue, not to initiate, the withholding of appraisement pending an appeal. Section: 6 [212(j)].

Comment

NOTE: The fact that once dumping and injury have been found the authorities still have a decision (1) whether or not to impose an antidumping duty, and (2) whether the amount of duty to be imposed is the full margin of dumping is a direct circumvention of section 202(a) of the Antidumping Act, 1921, as amended, in which the imposition of a special dumping duty in the full amount of the dumping margin is mandatory.

Suppliers Named

International Antidumping Code

8(b). When an antidumping duty is imposed in respect of any product, such antidumping duty shall be levied, in the appropriate amounts in each case, on a nondiscriminatory basis on imports of such product from all sources found to be dumped and causing injury. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

Antidumping Act, 1921, as amended

Section 201(a) requires Secretary of Treasury after an affirmative finding of injury by the Tariff Commission to describe the class or kind of merchandise involved "in such detail as he shall deem necessary for the guidance of customs officers."

U.S. Treasury Regulations

No comparable provision for notifying and naming the supplier of the product concerned.

Comment

Treasury Regulations could interpret the phrase "for the guidance of customs officers" to authorize naming suppliers or countries involved.

Duties limited by dumping margin

International Antidumping Code

8(c). The amount of the antidumping duty must not exceed the margin of dumping as established under article 2. Therefore, if subsequent to the application of the antidumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

Comment

No comparable provision.

Basic Price System

International Antidumping Code

8(d). Within a basic price system, the following rules shall apply, provided that their application is consistent with the other provisions of this code:

> If several suppliers from one or more countries are involved, antidumping duties may be imposed on imports of the product in question found to have been dumped and to be causing injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that for products which are sold below this already established basic price a new antidumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, antidumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

Antidumping Act, 1921, as amended

Section 202(a) requires the special dumping duty, in an amount equal to the difference between purchase price or exporter's sales price and foreign market value (or, in the absence of such value, the constructed value, which are defined in sections 203, 204, 205, and 206 of the Antidumping Act, 1921, as amended, respectively.

Comment

Neither U.S. Antidumping Act, 1921, as amended, nor Treasury regulations contain any "basic price system" concept for finding the amount of the special dumping duty. If the Secretary of the Treasury were to incorporate this into the Treasury regulations it is quite probable that it would create an anomalous situation in which sales at less than fair value are found by Treasury on the basis of one price [the actual price], but any special dumping duty is assessed on the basis of an entirely different price [the base price]; e.g., where the particular supplier's home market price is higher than the "lowest normal price" which article 8(d) requires to be the basic price. Conceivably, the low home market price in country A on wire rods, for example, would set the base price. Export sales by countries B and C at prices below this price would precipitate a new antidumping investigation of B and C sales. Since B and C home market sales are at a higher price, their margin would be their export price compared to their home market sales, but the margin for dumping duty purposes would only be their export price compared to A's home market price, the base price.

In this situation, a foreign supplier could raise his home market price and know that the only dumping duty he might have to pay would be equivalent to the margin that his export price was below the "lowest normal price." If his export price were the same as, or higher than, the "lowest normal price" he would not pay any special dumping duty at all.

How this basic price would be established is not clarified in article 8(d). Neither are "normal conditions of competition" defined. In effect, the entire mechanism for determining the margin of dumping under U.S. law would be circumvented and all parties dumping at prices higher than the basic price could continue to dump with impunity.

Dumping Cessation in Regional Markets

International Antidumping Code

8(e). When the industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in article 4(a)(ii), antidumping duties shall only be definitively collected on the products in question consigned for final consumption to that area, except in cases where the exporter shall, prior to the imposition of antidumping duties, be given an opportunity to cease dumping in the area concerned. In such cases, if an adequate assurance to this effect is promptly given, antidumping duties shall not be imposed, provided, however, that if the assurance is not given or is not fulfilled, the duties may be imposed without limitation to an area.

U.S. Treasury Regulations

Section 14.7(b)(9) merely allows the Secretary of Treasury to find no likelihood of sales at less than fair value if sales to the United States have terminated and will not be resumed.

Comment

Giving the exporter an opportunity to cease dumping in the particular market area, and thereby absolving himself of antidumping duties on products consigned for consumption in that area, would seem to enable him to be home free on the dumping he has already done. This will encourage such area dumping, and exporters may dump into one different area after another with impunity.

It would not be possible to claim that Treasury regulations already cover this point since section 14.7(b)(9) only applies to a time period before a determination on the question of the likelihood of sales at less than fair value has been made, insofar as Treasury's authority under its regulations is only to make a finding of no likelihood of sales at less than fair value. Conformity with article 8(e) would enable dumper to absolve himself from dumping duties merely by terminating such sales at some time during the Tariff Commission's injury investigation, insofar as article 8(e) enables such termination any time "prior to the imposition of antidumping duties" which occurs after the Tariff Commission finds injury.

It is difficult to conceive of the Congress delegating authority of the Secretary of Treasury to set up without any prior congressional approval such a system of duty avoidance when the market area concept is not even spelled out in the U.S. law.

Article 9

DURATION OF DUMPING

Duties

International Antidumping Code

9(a). An antidumping duty shall remain in force only as long as it is necessary in order to counteract dumping which is causing injury.

9(b). The authorities concerned shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if interested suppliers or importers of the product so request and submit information substantiating the need for review.

U.S. Treasury Regulations

Section 14.12 provides that to modify or revoke a finding of dumping plus injury, detailed information must be submitted in writing showing any change in circumstances or practice which has prevailed for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists. Notice of intent to modify or revoke a finding will be published in the Federal Register and comments received from interested parties within 30 days will be given consideration.

Comment

The use of the present tense, "is causing injury," would require lifting an antidumping duty finding as soon as the dumped imports have entered the commerce of the United States in spite of any threatened injury or the possibility that another dumped shipment may arrive imminently.

Article 10

PROVISIONAL MEASURES

Preliminary Decision Required

International Antidumping Code

10(a). Provisional measures may be taken only when a preliminary decision has been taken that there is dumping and when there is sufficient evidence of injury.

Antidumping Act, 1921, as amended

Antidumping Act, 1921, requires withholding of appraisement in section 201(b) whenever the Secretary has reason to believe or suspect that the purchase price or exporter's sales price is less or likely to be less, than the foreign market value (or in the absence of such value, then the constructed value).

U.S. Treasury Regulations

Section 14.6(e) requires a determination that reasonable grounds to believe or suspect a dumping margin exists to be made by the Commissioner before he publishes a withholding of appraisement notice.

Comment

Clearly, there is no injury test involved in the U.S. provision for withholding of appraisement.

Forms of Provisional Measures

International Antidumping Code

10(b). Provisional measures may take the form of a provisional duty or, preferably, a security—by deposit or bond—equal to the amount of the antidumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the antidumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

Antidumping Act, 1921, as amended

The only provisional measure is withholding of appraisement as provided in section 201(b).

U.S. Treasury Regulations

Section 14.10(a) allows for a release on bond for all merchandise subject to a notice of withholding of appraisement or a finding of dumping plus injury.

Notice of Provisional Measures

International Antidumping Code

10(c). The authorities concerned shall inform representatives of the exporting country and the directly interested parties of their decisions regarding imposition of provisional measures indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public such decisions.

Antidumping Act, 1921, as amended

Section 201(b) does not specifically require publication of notice in the Federal Register that appraisement is being withheld; he is required to publish notice in the Federal Register that he has reason to believe or suspect that a dumping margin exists. He then shall authorize the withholding of appraisement.

U.S. Treasury Regulations

The withholding of appraisement notice is described in section 14.6(e) to include a description of the merchandise, the name ~~of the~~ country of exportation, certain shippers or producers involved, the date of the receipt of information in proper form, and the appropriate basis of comparisons for fair-value purposes.

Time Limit on Provisional Measures

International Antidumping Code

10(d). The imposition of provisional measures shall be limited to as short a period as possible. More specifically, provisional measures shall not be imposed for a period longer than 3 months or, on decision of the authorities concerned upon request by the exporter and the importer, 6 months.

Antidumping Act, 1921, as amended

Section 201(b) requires appraisement to be withheld "until such order of the Secretary" or until the results of an injury investigation are made public. Thus, there is no such 3 months' time limit as it contained in article 10(d) of the international code.

S. 1726 (90th Cong.)

The amendment would impose a limitation of 6 months on Treasury proceedings—and has an "escape value" for added time when needed. The provision is a reasonable one; in 1954 Congress limited Tariff Commission "injury" investigations to 3 months. Section: 6 [212(e)].

Comment

The 3 months' time limit would be an incentive to keep on importing at dumped prices beyond the 3-month period because all dumped imports after that time would be home free (in the absence of a new investigation and the corresponding provisional measures).

Other Limits on Provisional Measures

International Antidumping Code

10(e). The relevant provisions of article 8 shall be followed in the application of provisional measures.

Comment

The intended scope of this provision is unclear without further clarification by negotiators of the international code.

Article 11

RETROACTIVITY

General Rule

International Antidumping Code

Antidumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under articles 8(a) and 10(a), respectively, enters into force, except that in cases: * * *

Antidumping Act, 1921, as amended

Section 202(a) allows reachback for unappraised entries made up to 120 days before question of dumping was raised.

U.S. Treasury regulations

Section 14.9(a) provides that if the withholding of appraisement notice finds the proper basis of comparison for fair value purposes is exporter's sales price or if the notice does not specify the appropriate basis of comparison, the withholding of appraisement is retroactive 120 days before the question of dumping was raised; if purchase price is the proper basis, the withholding of appraisement starts after the date of publication of such notice.

This provision that dumping duties will no longer be assessed retroactively in cases where purchase price is controlling as the basis for comparison with foreign market value is reasonable since importers in such cases are not related by ownership or control to their foreign supplier, and hence cannot be presumed to know the home market price of the foreign supplier, 14.9(a).

Comment

The general rule of article 11 is no retroactivity with certain exceptions.

Section 202(a) of U.S. law merely sets outside limit of 120 days on retroactivity. Treasury can reduce the length of this reachback to less than 90 days by regulation without violating U.S. law.

Exception: For Duration of Provisional Measures

Exception: Final Duty Limited by Provisional Duty

International Antidumping Code

11(i). Where a determination of material injury (but not of a threat of material injury, or of a material retardation of the establishment of an industry) is made or where the provisional measures consist of provisional duties and the dumped imports carried out during the period of their application would, in the absence of these provisional measures, have caused material injury, antidumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the antidumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

Antidumping Act, 1921, as amended

Section 202(a) limits retroactivity to a reachback for unappraised entries made up to 120 days before question of dumping was raised.

Comment

Retroactivity is limited to the period covered by provisional measures. However, since provisional measures would have a limited 3-month life, as per article 10(d), the application of antidumping duties would also be limited to those products entered within the 3-month operation of provisional measures. If the investigation took longer to complete than 3 months after the start of provisional measures, all entries after the 3-month period could be dumped with impunity. Where no provisional measures were taken at all, there would seem to be no basis for any retroactivity.

Exception: Unrelated Suspension

International Antidumping Code

11(ii). Where appraisement is suspended for the product in question for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping, retroactive assessment of antidumping duties may extend back to a period not more than 120 days before the submission of the complaint.

Antidumping Act, 1921, as amended

Section 202 does not require, as does article 11(ii) of the International Antidumping Code, that the 120-day reach-back before submission of the complaint only apply to entries on which appraisement was suspended for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping.

Comment

Article 11(ii) seems to make a concession to 120-day reach-back provision in U.S. law but limits this to exclude products on which appraisement was suspended after the initiation of the dumping case for reasons related to the question of dumping. Thus, any suspension of appraisement after initiation of complaint and before provisional measures (see art. 11(i)) would not be subject to dumping duty. (This would seem to be aimed at informal withholding or "foot dragging" by appraisers sympathetic to complainant; the workload excuse would still seem to be unaffected because unrelated to the question of dumping.)

Exceptions: Historic and Sporadic Dumping

International Antidumping Code

11(iii). Where for the dumped product in question the authorities determine—

(a) either that there is a history of dumping which caused material injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause material injury, and

(b) that the material injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to assess an antidumping duty retroactively on those imports,

the duty may be assessed on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

Antidumping Act, 1921, as amended

No special provision for historical or sporadic dumping in the U.S. law. The 90-day reach-back provision of article 11(iii) does not add anything not contained in the present U.S. law which allows a 120-day reach-back, except that in situations described in section 14.9(f) of the Treasury regulations, where purchase price is the basis for comparison with foreign market value, retroactivity which is not allowed under section 14.9(f) of the Treasury regulations would be possible under article 11(iii) if the importer should have known about the exporter's practice of dumping and that material injury would be caused thereby.

Comment

As a practical matter, since provisional measures would only be initiated upon a preliminary decision of dumping and sufficient evidence of injury, any benefits of such 90-day reach-back may be watered down by a delay in reaching such preliminary decision. For example, if such decision is reached 30 days after complaint, the reach-back would only be retroactive 60 days before the complaint, et cetera. The Treasury could completely negate the effectiveness of this provision by delaying its preliminary decision until 90 days after complaint so that there could be no reach-back to entries made before the complaint.

Article 12

ANTIDUMPING ACTION ON BEHALF OF A THIRD COUNTRY

International Antidumping Code

(a) An application for antidumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

(b) Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The Government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

(c) The authorities of the importing country in considering such an application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

(d) The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the contracting parties seeking their approval for such action shall rest with the importing country.

Article VI, GATT

6(b). The contracting parties may waive the requirement of subparagraph (a) of this paragraph so as to permit a contracting party to levy an antidumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

Comment

Although there is no comparable concept in U.S. law or regulations, by having originally subscribed to article VI of GATT, the United States might be deemed to have accepted this provision in principle. Insofar as the Antidumping Act, 1921, as amended required injury to be measured in terms of whether an industry in the United States is being or is likely to be injured, it would seem to require a change in U.S. law to authorize the Tariff Commission to find injury to a third country.

ARTICLE 13

Accession, Effective Date

International Antidumping Code

This agreement shall be open for acceptance, by signature or otherwise, by contracting parties to the general agreement and by the European Economic Community. The agreement shall enter into force on July 1, 1968 for each party which has accepted it by that date. For each party accepting the agreement after that date, it shall enter into force upon acceptance.

Comment

Was signed for the United States by Ambassador Michael Blumenthal in Geneva, Switzerland on June 30, 1967.

ARTICLE 14

Conformity to Code

Each party to this agreement shall take all necessary steps, of a general or particular character, to insure, not later than the date of the entry into force of the agreement for it, the conformity of its laws, regulations, and administrative procedures with the provisions of the Antidumping Code.

ARTICLE 15

Notice of Changes to GATT

Each party to this agreement shall inform the contracting parties to the general agreement of any changes in its antidumping laws and regulations and in the administration of such laws and regulations.

ARTICLE 16

Annual Report to GATT

Each party to this agreement shall report to the contracting parties annually on the administration of its antidumping laws and regulations, giving summaries of the cases in which antidumping duties have been assessed definitively.

ARTICLE 17

Consultation with GATT Committee on Antidumping Practices

The parties to this agreement shall request the contracting parties to establish a Committee on Antidumping Practices composed of representatives of the parties to this agreement. The Committee shall normally meet once each year for the purpose of affording parties to this agreement the opportunity of consulting on matters relating to the administration of antidumping systems in any participating country or customs territory as it might affect the operation of the Antidumping Code or the furtherance of its objectives. Such consultations shall be without prejudice to articles XXII and XXIII of the general agreement.

Appendix A

International Antidumping Code

Tabular summary of mandatory and permissive provisions

Title of article	Mandatory	Permissive	Affected investigation
1. Antidumping Code	Code, the exclusive remedy		Dumping, injury.
2. Determination of dumping	2 (a) Fair value versus normal value		Dumping.
	(b) Like product		Dumping, injury.
		2 (c) Transshipments	Dumping.
	2 (d) [Part] 3d country sales	(d) [Part] 3d country sales	Do.
		(e) Unreliable prices	Do.
	(f) [Part] adjustments for differences.	(f) [Part] unreliable prices	Do.
		(g) State trading monopolies	Do.
3. Determination of material injury, threat of material injury and material retardation.	3 (a) Principal cause of material injury.		Injury.
	(b) Forms of injury		Do.
	(c) Contributing cause		Do.
	(d) Competitive product market		Do.
	(e) Threat of injury		Do.
	(f) Threat of injury		Do.
4. Definition of industry	4 (a) [Part] national markets	4 (a) [Part] regional markets	Do.
	(b) Integrated-countries markets		Do.
	(c) Geographic/product markets		Do.
5. Initiation and subsequent investigation.		5 (a) Substantiation of complaint	Dumping, injury.
	5 (b) [Part] simultaneous dumping and injury investigations.	(b) Simultaneous dumping and injury investigations.	Do.
	(c) [Part] Dismissal of insubstantial complaints.	(c) [Part] dismissal of insubstantial complaints.	Do.
	(d) No customs clearance delay		Dumping.
6. Evidence	6 (a) Right to present evidence		Dumping, injury.
	(b) Right to examine evidence		Do.
	(c) Confidential information		Do.
		(d) Confidentiality unwarranted	Do.
		(e) Foreign investigations	Dumping.
	(f) [Part] notice of investigation	(f) [Part] notice of investigation	Do.
	(g) Confrontation and rebuttal		Dumping, injury.
	(h) Notice of determination		Dumping.
		(i) Preliminary determinations	Dumping, injury.

Tabular summary of mandatory and permissive provisions—Continued

Title of article	Mandatory	Permissive	Affected investigation
7. Price undertakings		7 (a) Conditions for terminating investigations.	Do.
	7 (b) [Part] exceptions and consequences.	(b) [Part] exceptions and consequences.	Do.
8. Imposition and collection of antidumping duties.	8 (a) [Part] discretion of authorities	8 (a) [Part] discretion of authorities	Do.
	(b) [Part] suppliers named	(b) [Part] suppliers named	Dumping.
	(c) Duties limited by dumping margin.		Do.
	(d) [Part] basic price system	(d) [Part] basic price system	Do.
	(e) [Part] dumping cessation in regional markets.	(e) [Part] dumping cessation in regional markets.	Injury.
9. Duration of dumping duties.	9 (a) and (b) Duration of dumping duties.		Dumping, injury.
10. Provisional measures	10 (a) Preliminary decision required		Do.
		10 (b) Forms of provisional measures	Dumping.
	(c) Notice of provisional measures		Do.
	(d) Time limit on provisional measures.		Dumping, injury.
	(e) Other limits on provisional measures.		
11. Retroactivity	11 General rule		Dumping.
	11 (i) [Part] exception: final duty limited by provisional duty.	11 (i) [Part] exception: For duration of provisional measures.	Dumping, injury.
		11 (ii) Exception: Unrelated suspension.	Dumping.
		(iii) Historic and sporadic dumping.	Dumping, injury.
12. Antidumping action on behalf of a 3d country.	12 (a) (b) (c)	12 (d) Implementation of article 12	Do.
13. to 17. Final provisions	13. Accession; effective date. 14. Conforming to code. 15. Notice of changes to GATT. 16. Annual report to GATT. 17. Consultation with GATT Committee on Antidumping Practices.		

Appendix B

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade

The parties to this Agreement,

Considering that Ministers on 21 May 1963 agreed that a significant liberalization of world trade was desirable and that the comprehensive trade negotiations, the 1964 Trade Negotiations, should deal not only with tariffs but also with non-tariff barriers;

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases; and

Desiring to interpret the provisions of Article VI of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Hereby agree as follows:

Part I. Anti-Dumping Code

Articles 1

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement. The following provisions govern the application of this Article, in so far as action is taken under anti-dumping legislation or regulations.

A. DETERMINATION OF DUMPING

Article 2

(a) For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

(b) Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

(c) In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

(d) When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

(e) In cases where there is no export price or where it appears to the authorities[1] concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products

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[1] When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.

are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

(f) In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in Article 2(e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

(g) This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement.

B. DETERMINATION OF MATERIAL INJURY, THREAT OF MATERIAL INJURY AND MATERIAL RETARDATION

Article 3. Determination of Injury [1]

(a) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

(b) The valuation of injury—that is the evaluation of the effects of the dumped imports on the industry in question—shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

(c) In order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined, for example: the volume and prices of undumped imports of the product in question, competition between the domestic producers themselves, contraction in demand due to substitution of other products or to changes in consumer tastes.

(d) The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

(e) A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent.[2]

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[1] When in this Code the term "injury" is used, it shall, unless otherwise specified, be interpreted as covering cause of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

[2] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

(f) With respect to cases where material injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

Article 4. Definition of Industry

(a) In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products except that

(i) when producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances a country may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a separate industry, if, because of transport costs, all the producers within such a market sell all or almost all of their production of the product in question in that market, and none, or almost none, of the product in question produced elsewhere in the country is sold in that market or if there exist special regional marketing conditions (for example, traditional patterns of distribution or consumer tastes) which result in an equal degree of isolation of the producers in such a market from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

(b) Where two or more countries have reached such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in Article 4(a).

(c) The provisions of Article 3(d) shall be applicable to this Article.

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

Article 5. Initiation and Subsequent Investigation

(a) Investigations shall normally be initiated upon a request on behalf of the industry[4] affected, supported by evidence both of dumping and of injury resulting therefrom for this industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request they shall proceed only if they have evidence both on dumping and on injury resulting therefrom.

(b) Upon initiation of an investigation and thereafter, the evidence of both dumping and injury should be considered simultaneously. In any event the evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter, during the course of the investigation, starting on a date not later than the earliest date on which provisional measures may be applied, except in the cases provided for in Article 10(d) in which the authorities accept the request of the exporter and the importer.

(c) An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

(d) An anti-dumping proceeding shall not hinder the procedures of customs clearance.

Article 6. Evidence

(a) The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.

(b) The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph (c) below, and

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[4] As defined in art. 4.

that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

(c) All information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation shall be treated as strictly confidential by the authorities concerned who shall not reveal it, without specific permission of the party submitting such information.

(d) However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

(e) In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

(f) Once the competent authorities are satisfied that there is sufficient evidence to justfy initiating an anti-dumping investigation pursuant to Article 5 representatives of the exporting country and the exporters and importers known to be concerned shall be notified and a public notice may be published.

(g) Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

(h) The authorities concerned shall notify representatives of the exporting country and directly interested parties of their decisions regarding imposition or non-imposition of anti-dumping duties, indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public the decisions.

(i) The provisions of this Article shall not preclude the authorities from reaching preliminary determinations, affirmative or negative, or from applying provisional measures expeditiously. In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

Article 7. Price Undertakings

(a) Anti-dumping proceedings may be terminated without imposition of anti-dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices so that the margin of dumping is eliminated or to cease to export to the area in question at dumped prices if the authorities concerned consider this practicable, e.g., if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable.

(b) If the exporters concerned undertake during the examination of a case, to revise prices or to cease to export the product in question, and the authorities concerned accept the undertaking, the investigation of injury shall nevertheless be completed if the exporters so desire or the authorities concerned so decide. If a determination of no injury is made, the undertaking given by the exporters shall automatically lapse unless the exporters state that it shall not lapse. The fact that exporters do not offer to give such undertakings during the period of investigation, or do not accept an invitation made by the investigating authorities to do so, shall in no way be prejudicial to the consideration of the case. However, the authorities are of course free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

D. ANTI-DUMPING DUTIES AND PROVISIONAL MEASURES

Article 8. Imposition and Collection of Anti-Dumping Duties

(a) The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the antidumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

(b) When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

(c) The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

(d) Within a basic price system the following rules shall apply provided that their application is consistent with the other provisions of this Code:

> If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on imports of the product in question found to have been dumped and to be causing injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that for products which are sold below this already established basic price a new anti-dumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

(e) When the industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in Article 4(a)(ii), anti-dumping duties shall only be definitively collected on the products in question consigned for final consumption to that area, except in cases where the exporter shall, prior to the imposition of anti-dumping duties, be given an opportunity to cease dumping in the area concerned. In such cases, if an adequate assurance to this effect is promptly given, anti-dumping duties shall not be imposed, provided, however, that if the assurance is not given or is not fulfilled, the duties may be imposed without limitation to an area.

Article 9. Duration of Anti-Dumping Duties

(a) An anti-dumping duty shall remain in force only as long as it is necessary in order to counteract dumping which is causing injury.

(b) The authorities concerned shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if interested suppliers or importers of the product so request and submit information substantiating the need for review.

Article 10. Provisional Measures

(a) Provisional measures may be taken only when a preliminary decision has been taken that there is dumping and when there is sufficient evidence of injury.

(b) Provisional measures may take the form of a provisional duty or, preferably, a security—by deposit or bond—equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

(c) The authorities concerned shall inform representatives of the exporting country and the directly interested parties of their decisions regarding imposition of provisional measures indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, publish such decisions.

(d) The imposition of provisional measures shall be limited to as short a period as possible. More specifically, provisional measures shall not be imposed for a period longer than three months or, on decision of the authorities concerned upon request by the exporter and the importer, six months.

(e) The relevant provisions of Article 8 shall be followed in the application of provisional measures.

Article 11. Retroactivity

Anti-dumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under Articles 8(a) and 10(a), respectively, enters into force, except that in cases:

(i) Where a determination of material injury (but not of a threat of material injury, or of a material retardation of the establishment of an industry) is made or where the provisional measures consist of provisional duties and the dumped imports carried out during the period of their application would, in the absence of these provisional measures, have caused material injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

(ii) Where appraisement is suspended for the product in question for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping, retroactive assessment of antidumping duties may extend back to a period not more than 120 days before the submission of the complaint.

(iii) Where for the dumped product in question the authorities determine

(a) either that there is a history of dumping which caused material injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause material injury, and

(b) that the material injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to assess an anti-dumping duty retroactively on those imports.

the duty may be assessed on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

E. ANTIDUMPING ACTION ON BEHALF OF A THIRD COUNTRY

Article 12

(a) An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

(b) Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

(c) The authorities of the importing country in considering such an application shall consider effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

(d) The decision whether or not proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Contracting Parties seeking their approval for such action shall rest with the importing country.

Part II. Final Provisions

Article 13

This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to the General Agreement and by the European Economic Community. The Agreement shall enter into force on 1 July 1968 for each party which has accepted it by that date. For each party accepting the Agreement after that date, it shall enter into force upon acceptance.

Article 14

Each party to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of the entry into force of the Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Code.

Article 15

Each party to this Agreement shall inform the Contracting Parties to the General Agreement of any changes in its anti-dumping laws and regulations and in the administration of such laws and regulations.

Article 16

Each party to this Agreement shall report to the Contracting Parties annually on the administration of its anti-dumping laws and regulations, giving summaries of the cases in which anti-dumping duties have been assessed definitively.

Article 17

The parties to this Agreement shall request the Contracting Parties to establish a Committee on Anti-Dumping Practices composed of representatives of the parties to this Agreement. The Committee shall normally meet once each year for the purpose of affording parties to this Agreement the opportunity of consulting on matters relating to the administration of anti-dumping systems in any participating country or customs territory as it might affect the operation of the Anti-Dumping Code or the furtherance of its objectives. Such consultations shall be without prejudice to Articles XXII and XXIII of the General Agreement.

This Agreement shall be deposited with the Director-General to the Contracting Parties who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each contracting party to the General Agreement and to the European Economic Community.

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this thirtieth day of June, one thousand nine hundred and sixty-seven, in a single copy, in the English and French languages, both texts being authentic.

Appendix C

The General Agreement on Tariffs and Trade (GATT)

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Article VI. Anti-Dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either

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(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

4. No product of the territory of any contracting party imported into the territory of any other contracing party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

(b) The Contracting Parties may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The Contracting Parties shall waive the requirements of sub-paragraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

(c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the Contracting Parties; *Provided* that such action shall be reported immediately to the Contracting Parties and that the countervailing duty shall be withdrawn promptly if the Contracting Parties disapprove.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

(a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and

(b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

Appendix D

Customs Regulations Relating to Procedures Under the Antidumping Act, 1921, as Amended[1]

(Revised December 1964)

PART 14. APPRAISEMENT

14.6 *Suspected Dumping.*—(a) If any appraiser or other principal customs officer has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b) Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in section 14.7, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as required in paragraph (b), if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may communicate such information in writing to the Commissioner of Customs. Every such communication shall contain or be accompanied by the following:

(1) A detailed description or sample of the merchandise; the name of the country from which it is being, or is likely to be, imported; the name of the exporter or exporters and producer or producers, if known; and the ports or probable ports of importation into the United States. If no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either.

(2) Such detailed data as are reasonably available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(3) Such information as is reasonably available to the person furnishing the information as to the total value and volume of domestic production of the merchandise in question.

(4) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

(c) If any information filed pursuant to paragraph (b) does not conform with the requirements of that paragraph, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

(d)(1) Upon receipt pursuant to paragraph (a) or (b) of this section of information in proper form,

(i) the Commissioner shall conduct a summary investigation. If he determines that the information is patently in error or that the merchandise is not being and is not likely to be imported in more than insignificant quantities he shall so advise the person who submitted the information and the case shall be closed. Otherwise, the Commissioner shall publish a notice in the Federal Register that information in proper form has been received pursuant to paragraph (a) or (b) of this section. This notice, which may be referred to as the "Antidumping Proceeding Notice," will specify whether the information relates to all shipments of the merchandise in question from an exporting country, or only to shipments by certain persons or firms; in the latter case, only the names of such persons and firms will be specified. The notice shall also specify the date on which information in proper form was

[1] The Antidumping Act, 1921, as amended, is set out on page 145.

received and that date shall be the date on which the question of dumping was raised or presented for purposes of sections 201(b) and 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161(a)). The notice shall also contain a summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name shall be included in the notice unless a determination under section 14.6a of these regulations requires that his name not be disclosed.

(ii) The Commissioner shall thereupon proceed promptly to decide whether or not reasonable grounds exist to believe or suspect that the merchandise is being, or likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value). To assist him in making this decision the Commissioner, in his discretion, may conduct a brief preliminary investigation into such matters, in addition to the invoice or other papers or information presented to him, as he may deem necessary.

(2) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do exist to believe or suspect that the merchandise is being or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) he will thereafter proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by section 14.8(a).

(3) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do not exist to believe or suspect that the marchandise is being, or is likely to be, sold at less than its foreign market value (or in the absence of such value, than its constructed value), he will thereafter

(i) proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by section 14.8(a), or

(ii) recommend to the Secretary that a full-scale investigation is not warranted by the facts of the case and that the case be closed by a finding of no sales at less than fair value.

(e) If the Commissioner determines pursuant to paragraph (d)(1) (ii) of this section, or in the course of an investigation under paragraph (d)(3)(i) of this section, that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the Antidumping Act, he shall publish notice of that fact in the Federal Register, furnishing an adequate description of the merchandise, the name of each country of exportation, and the date of the receipt of the information in proper form, and shall advise all appraisers of his action. This notice may be referred to as the "Withholding of Appraisement Notice." If the belief or suspicion relates only to certain shippers or producers, the notice shall specify that this is the case and that the investigation is limited to the transactions of such shippers or producers. The notice shall also specify whether the appropriate basis of comparison for fair value purposes is purchase price or exporter's sales price if sufficient information is available to so state; otherwise a supplementary notice will be published in the Federal Register as soon as possible which will specify which of such prices is the appropriate basis of comparison for fair value purposes. Upon receipt of such advice, the appraisers shall proceed to withhold appraisement in accordance with the pertinent provisions of section 14.9 (Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

14.6a *Disclosure of information in antidumping proceedings.*—(a) *Information generally available.*—In general, all information, but not necessarily all documents, obtained by the Treasury Department, including the Bureau of Customs, in connection with any antidumping proceeding will be available for inspection or copying by any interested person, such as the producer of the merchandise, any importer, exporter, or domestic producer of merchandise similar to that which is the subject of the proceeding. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such document will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to section 24.12 relating to fees charged for providing copies of documents.

(b) *Requests for confidential treatment of information.*—Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confidential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the United States Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales below fair value and no reliance shall be placed thereon in this connection.

(c) *Standards for determining whether information will be regarded as confidential.*—

(1) Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in (b), however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) Information will ordinarily be regarded as appropriate for disclosure if it

(i) relates to price information;

(ii) relates to claimed freely available price allowances for quantity purchases; or

(iii) relates to claimed differences in circumstances of sale.

(3) Information will ordinarily be regarded as confidential if its disclosure would

(i) disclose business or trade secrets;

(ii) disclose production costs;

(iii) disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;

(iv) disclose the names of particular customers or the price or prices at which particular sales were made.

(Sec. 407, 42 Stat. 18; 19 U.S.C. 173.)

14.7 *Fair Value.*—(a) *Definition.*[2]—For the purposes of section 201 (a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined as follows:

(1) *Fair value based on price in country of exportation—the usual test.*—Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (a defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for consumption in the country of exportation on or about the date of purchase

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[2] Definition of fair value is set out on p. 150.

or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(2) *Fair value based on sales for exportation to countries other than the United States.*—If, however, it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, and to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(3) *Fair value based on constructed value.*—If the information available is deemed by the Secretary insufficient or inadequate for a determination under paragraph (a)(1) or (2) above, he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Calculation of fair value.*—In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the following criteria shall be applicable:

(1) *Quantities.*—In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade. Allowances for price discounts based on sales in large quantities ordinarily will not be made unless

(i) the exporter during the six months prior to the date when the question of dumping was raised or presented had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers, or

(ii) the exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(2) *Circumstances of sale.*—In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, which ever is less.

In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

(3) *Similar merchandise.*—In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a (3)), due allowance shall be made for differences in the merchandise, in this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences.

(4) *Offering price.*—In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

(5) *Sales agency.*—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921, as amended (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(6) *Fictitious sales.*—In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(7) *Sales at varying prices.*—Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in subparagraphs (1), (2), and (3) of this paragraph), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold.

(8) *Quantities involved and differences in price.*—Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant. (Sec. 407, 42 Stat. 18; 19 U.S.C. 173.)

(9) *Revision of prices or other changed circumstances.*—Whenever the Secretary of the Treasury is satisfied that promptly after the commencement of an antidumping investigation either

(i) price revisions have been made which eliminate the likelihood of sales before fair value and that there is no likelihood of resumption of the prices which prevailed before such revision, or

(ii) sales to the United States of the merchandise have terminated and will not be resumed;

or whenever the Secretary concludes that there are other changed circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary shall publish a notice to this effect in the Federal Register. The notice shall state the facts relied on by the Secretary in publishing the notice and that those facts are considered to be evidence that there are not and are not likely to be sales below fair value. The notice shall also state that unless persuasive evidence or argument to the contrary is presented within 30 days the Secretary will determine that there are not and are not likely to be sales below fair value. (Sec. 407, 42 Stat. 18; 19 U.S.C. 173.)

14.8 *Determination of fact or likelihood of sales at less than fair value; determination of injury; finding of dumping.*—(a) Upon receipt from the Commissioner of Customs of the information referred to in section 14.6(d), the Secretary of the Treasury will proceed as promptly as possible to determine tentatively whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value. As soon as possible the Secretary will publish in the Federal Register a "Notice of Tentative Determination," which will include a statement of the reasons on which the tentative determination is based. Interested persons will be given an opportunity to make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any new or additional information or argument submitted. If any person believes that any information obtained by the Bureau of Customs in the course of an antidumping proceeding is inaccurate or that for any other reason the tentative determination is in error, he may request in writing that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known thier respective points of view and to supply such further information or argument as may be of assistance in leading to a conclusion as to the accuracy of the information in question. The Secretary or his delegate may at any time, upon appropriate notice, invite any such person or persons as he in his discretion may deem to be appropriate to supply him orally with information or argument. As soon as possible thereafter, the Secretary will make a final determination, except that the Secretary may defer making an affirmative determination of sales below fair value during the pendency of any other antidumping proceeding which relates to the same class or kind of merchandise imported from another foreign country. The Secretary will defer making an affirmative determination only if he is satisfied that deferral is appropiate under all of the circumstances. Circumstances which the Secretary will take into consideration will include the dates on which informatin relating to the various antidumping proceedings came to his attention, the volume of sales involved in each proceeding, elements of hardship, if any, and probable extent of delay which deferral would entail. No determination that sales are not below fair value will be deferred because of this provision. Whenever the Secretary makes a determination of sales at less than fair value he will so advise the United States Tariff Commission. (Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

(b) If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise. (Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

14.9 *Action by the appraiser.*—(a) Upon receipt of advice from the Commissioner of Customs pursuant to section 14.6(e), if the Commissioner's "Withholding of Appraisement Notice" shall specify that the proper basis of comparison for fair value purposes is exporter's sales price or if that notice does not specify the appropriate basis of comparison for fair value purposes, each appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, on any date after the 120th day before the question of dumping was raised by or presented to the Secretary of the Treasury or his delegate. If the Commissioner's "Withholding of Appraisement Notice," including any supplementary notice, shall specify that the proper basis of comparison for fair value purposes is purchase price, the appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisement Notice." Each appraiser shall notify the collector and importer immediately of each lot of merchandise with respect to which appraisement is so withheld. Upon advice of a finding made in accordance with section 14.8(b), the appraiser shall give immediate notice thereof to the collector and the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment. Customs Form 6459 shall be used to notify the collector and importer whenever appraisement is withheld under this paragraph.

(b) If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the appraiser is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

(c) If a finding of dumping has been made, the appraiser shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

FORM 1. NONEXPORTER'S CERTIFICATE—ANTIDUMPING ACT, 1921

Port of................
Date............., 19....

Re: Entry No. ......, dated ...., 19......
Import carrier: ...., Arrived ...., 19......

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by .... on ...., 19...., and that the purchase price is ....

(Signed) ....

FORM 2. EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN—ANTIDUMPING ACT, 1921

Port of................
Date............., 19....

Re: Entry No. ......, dated ...., 19....
Import carrier: .... Arrived ...., 19....

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the appraiser of all the circumstances.

The merchandise was acquired by me in the following manner: .... and has been sold or agreed to be sold to (name and address) at (price) .

(Signed) ....

FORM 3. EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN—ANTIDUMPING ACT, 1921

Port of................
Date............., 19....

Re: Entry No. ......, dated ...., 19....
Import carrier: .... Arrived ...., 19....

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the appraiser within 30 days after the sale of any such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the appraiser upon such expiration date.

The merchandise was acquired by me in the following manner: ....

(Signed) ....

FORM 4. EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD—ANTIDUMPING ACT, 1921

Port of................
Date ...., 19..

Re: Entry No. ......, dated ...., 19...
Import carrier: .... Arrived .... 19...

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that such merchandise has not been, and will not be, sold in the United States for the following reason: ....

(Signed) ....

(d) If an unqualified certificate on Form 4 is filed and the appraiser is satisfied that no evidence can be obtained to contradict it, he shall notify the collector promptly that the shipment will be appraised without regard to the Antidumping Act and proceed to appraise the merchandise in the usual manner.

(e) If the importer fails to file an appropriate certificate within 30 days following notification by the appraiser that a certificate is required under paragraph (c) above, the appraiser shall proceed upon the basis of the best information available.

(f) In calculating purchase price or exporter's sales price, as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties granted to an importer with respect to merchandise which is.

(1) purchased, or agreed to be purchased, before publication of a "Withholding of Appraisement Notice" with respect to such merchandise and

(2) exported before a determination of sales below fair value is made, will not be regarded as affecting purchase price or exporter's sales price. (Secs. 201, 202, 203, 204, 208, 407, 42 Stat. 11, as amended, 12, 13, 14, 18, sec. 480, 46 Stat. 725, as amended; 19 U.S.C. 160, 161, 162, 163, 167, 173, 1480.)

14.10 *Release of merchandise; bond.*—(a) When the collector has received a notice of withheld appraisement provided for in section 14.9(a), or when he has been advised of a finding provided for in section 14.8(b), and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in this section, or unless he is advised by the appraiser that the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act.

(b) If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in section 14.9(a) or by a finding provided for in section 14.8(b), a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished to the person making the entry or withdrawal, unless

(1) a bond is required under subsection (c), or

(2) in cases in which there is no such requirement the collector is satisfied that the bond under which the entry was filed is sufficient. The penalty of any additional bond required under this subsection shall be in such amount as will assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case less than $100.

(c) If the merchandise is of a class or kind covered by a finding provided for in section 14.8(b) and the importer or his agent has filed a certificate on Form 3 (section 14.9(c)), the bond required by section 208 of the Antidumping Act, 1921, as amended (19 U.S.C. 167), shall be on customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond of customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The penalty of such bond shall be in an amount equal to the estimated value of the merchandise covered by the finding. (Secs. 208, 407, 42 Stat. 14, 18; 19 U.S.C. 167, 173.)

14.11 *Conversion of currencies.*—In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of section 14.7 of these regulations, or of section 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and section 16.4 of these regulations, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison. (Secs. 201, 202, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 161, 173.)

14.12 *Modification or revocation of finding.*—An application for the modification or revocation of any finding made as provided for in section 14.8(b) will receive due consideration if submitted in writing to the Commissioner of Customs, together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby. Notice of intent to modify or revoke a finding will be published by the Secretary in the Federal Register. Comments received from interested parties within 30 days following date of publication will be given consideration. (Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

14.13 *Publication of findings.*—(a) Each determination made in accordance with section 14.8(a), whether such determination is in the affirmative or in the negative, and each finding made in accordance with section 14.8(b), will be published in the Federal Register, together with a statement of the reasons therefor. Findings made in accordance with section 14.8(b) will be published also in a weekly issue of the Treasury Decisions.

(b) The following findings of dumping are currently in effect:

Merchandise	Country	T.D.
Chromic acid	Australia	56,130
Portland cement, other than white, nonstaining portland cement	Belgium	55,428
	Dominican Republic	55,883
	Sweden	55,369
Portland gray cement	Portugal	55,501
Steel reinforcing bars	Canada	56,150
Carbon steel bars, bars, shapes under 3 in., and structural shapes 3 in. and over	do	56,264

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

[Antidumping Act, 1921, as amended]

"SEC. 201. (a) Whenever the secretary of the Treasury (hereinafter called the 'Secretary') determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a 'finding') of his determination and the determination of the said Commission. For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if the Commissioners of the said Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

"(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

"(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the

United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

"SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the constructed value) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

"(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

"(c) In determining the foreign market value for the purposes of subsection (a); if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

"SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

"SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commission, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

"SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

"SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

"(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

"(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than

10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

"(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

"(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

"(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

"Sec. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such persons; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

"Sec. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales prices of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the said Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States; (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise; and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe."

"SEC. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of constructed value to the contrary notwithstanding) and report to the collector the foreign market value or he constructed value, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

"SEC. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

"SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

"SEC. 212. For the purposes of this title—

(1) The term 'sold or, in the absence of sales, offered for sale' means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term 'such or similar merchandise' means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term 'usual wholesale quantities', in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

"SEC. 213. That this title may be cited as the 'Antidumping Act, 1921'.

"SEC. 406. That when used in Title II * * *

"The term 'person' includes individuals, partnerships, corporations, and associations; and

"The term 'United States' includes all Territories and possessions subject to the jurisdiction of the United States, except the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

"SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this Act." (Antidumping Act, 1921,as amended; 19 U.S.C. 160–173.)

DEFINITION OF FAIR VALUE

The definition of fair value does not in any way modify or affect definitions of foreign market value given in section 205 of the Antidumping Act, 1921, as amended (19 U.S.C. 164), or of constructed value given in section 206 (19 U.S.C. 165) or the application of a foreign market value (or, in the absence of such value, constructed value) as defined in the Antidumping Act, 1921, as amended, as a basis for determining whether or not to withhold appraisement under section 201(b) (19 U.S.C. 160(b)) or for imposition of duty under section 202 (19 U.S.C. 161).

An industry in the United States which considers that it is being injured by sales of merchandise at less than fair value will ordinarily have insufficient information on which to submit proof either of fair value as herein defined, or foreign market value or constructed value as defined in said sections 205 and 206 (19 U.S.C. 164, 165). The industry may, however, submit, and appraisers will consider, such material as is available to it, including information indicating the market price for similar merchandise in the country of exportaton and in any third countries in which merchandise of the producer complained of is known to be sold. Information submitted by an industry and information submitted by the foreign producer and others will be of value in assisting the Treasury to establish the basis for fair value, foreign market value, or constructed value.

Fair value is computed on the basis of sales for consumption in the country of exportation or for exportation otherwise than to the United States at or about the date of purchase or agreement to purchase of the merchandise to be imported into the United States, or the date of exportation. However, in cases where it may be important to determine either the stability of the market or its trend, as well as to determine whether there has been a fictitious sale as described in paragraph 14.7(b)(6) of these regulations, it will be helpful to the Secretary to have information as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time immediately preceding the date of purchase or agreement to purchase, or exportation.

EXAMPLES FOR PURPOSES OF ILLUSTRATION

A few examples of what would and would not be considered sales at less than fair value are given below. Unless otherwise indicated, it is assumed that individual sales are in the same average quantities and that they are also made under the same circumstances of sale.

It must be understood that these examples of necessity oversimplify for purposes of illustration. Each actual case of alleged sales at less than fair value must be considered in the light of all relevant facts, and it may be seldom that cases will be presented for consideration which are as free of complications as are the cases cited in these examples. The tentative conclusions set forth below cannot, therefore, be considered as decisions which are binding upon the Secretary of the Treasury. They are in particular subject to the qualification that there may be other factors present, not here stated, or not sufficiently emphasized for the purposes of an actual case, which would lead to different or opposite results.

As in the case in respect of other laws administered in whole or in part by him, the Commissioner of Customs stands ready to answer specific inquiries arising under the Antidumping Act, 1921, as amended, which relate to contemplated transactions, to the best of his ability, notably those involving questions as to whether paragraph 14.7 (a)(1) or (a)(2) of these regulations applies, and questions as to the method of computation which may be used in connection with paragraph 14.7(b)(7) hereof.

Example 1

A foreign producer has made the following sales of a particular product over a representative period:

Sales for consumption in country of exportation	Sales for exportation to countries other than the United States	Sales to the United States
75,000 units, at $1	25,000 units, at $0.85	15,000 units, at $0.90.

The quantity of sales of this product in the country of exportation amounting to 75,000 units, is sufficiently large in relation to the total of 25,000 units sold for exportation to countries other than the United States to constitute an adequate basis for comparison with sales to the United States. (See paragraphs 14.7(a)(1) and (2) of these regulations.) The price for sale to the United States is less than the price in the country of exportation. The foreign producer is, therefore, selling in the United States at less than fair value.

Home market sales will form the basis of comparison whether or not they are restricted. This example concerns home market prices which are either free of restrictions or accompanied by restrictions that do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made. Third country prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 2

A foreign producer has made the following sales of a particular product:

Sales for consumption in country of exportation	Sales for exportation to countries other than the United States	Sales to the United States
25,000 units, at $0.95	75,000 units, at $0.90	15,000 units, at $0.90.

The foreign producer can show that the quantity of sales of this product in the country of exportation, amounting to 25,000 units, is so small in relation to the total of 75,000 units sold for exportation to countries other than the United States, as to be an inadequate basis for comparison with sales to the United States. Determination of fair value will therefore be based on the selling price for exportation to countries other than the United States, pursuant to paragraph 14.7(a)(2) of these regulations. In the absence of special circumstances, it would appear that the sales for exportation to the United States were not below fair value.

Third country sales will form the basis of comparison whether or not they are restricted. This example concerns third country sales which are either free of restrictions or accompanied by restrictions which do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made. Home market prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 3

A foreign producer has sold his merchandise for consumption in the country of exportation at or about the date of the sale or exportation to the United States at the following prices: 2,000 tons each $32.80 ton; 1,000 tons each $32.85 ton; 2,000 tons each $33 ton; 1,000 tons each $33.10 ton.

It is conceded that the price depends upon the bargaining of the parties rather than upon quantity purchased. Sales to the United States have been made by this supplier in the same average quantities at a uniform price of $32.90 per ton during the period. The difference in price between the producer's home market sales or any average thereof and his sales to the United States is so slight that it will not be regarded as more than insignificant unless unusual market conditions in the United States or the quantities involved as compared to United States production justify a contrary conclusion.

Example 4

A foreign producer makes all of his sales, other than those to the United States, for consumption in the country of exportation. The majority of the merchandise thus sold by him is sold in 50-ton lots at list prices, net. However, a discount of 5 percent is granted on sales of more than 500 tons and is freely available to those who purchase in the ordinary course of trade. During the six months preceding the date when the question of dumping was raised, the producer made sales of more than 500 tons each with respect to 15 percent of such or similar merchandise which he sold in the home market. Sales for exportation to the United States are at list prices less 5 percent and have been in quantities of over 500 tons. The 5 percent will not be allowed as a quantity discount because less than 20 percent of such or similar merchandise was sold in the home market in quantities to which such discount was applicable, unless the 5 percent discount can be justified by cost savings. Cost savings can also be used to justify a quantity discount where there were no sales in the home market in quantities sufficient to warrant the granting of the 5 percent discount, and no offers because there is no potential market for such quantities.

In determining whether a discount has been given, the presence or absence of a published price list reflecting such a discount is not controlling. In certain lines of trade, price lists are not commonly published and in others although commonly published they are not commonly adhered to.

The following example also relates to quality allowances.

Example 5

A foreign producer has the following record of sales at or about the date of sale or exportation to the United States:

Price per lb. for sales in units of 100 lbs. and 1,000 lbs.	Sales for consumption in country of exportation	Sales to the United States
$0.85 (100 lbs.)	200,000 lbs	0.
$0.85 (1,000 lbs.)	20,000 lbs	100,000 lbs.

Although the lower price in the home market appears to obtain for quantities the same as those sold for exportation to the United States at the same price, the quantity sold for home consumption at the lower price is less than 20 percent of the quantity sold in the home market. Accordingly, the price for exportation to the United States is not justified, unless cost savings can be shown to justify the lower price. If 44,000 pounds had been sold in the home market at the $.80 price, the lower price would have been justified for comparison with the price for exportation to the United States.

Example 6

A foreign producer sells for consumption in the country of exportation at $12 a unit, regardless of quantities and regardless of whether the sales are to wholesalers or retailers. He sells to retail purchasers in the United States at $12 a unit and wholesale purchasers in the United States at $10 a unit, in each case regardless of quantities.

The circumstances in this case indicate that the foreign producer will be deemed to have been selling to wholesalers in the United States at less than fair value. Should, however, his record of sales for consumption in the country of exportation show that he sells, regardless of quantities, at $10 a unit to wholesalers and at $12 a unit to retailers, then, making allowances for the circumstances of sale, the sales in the United States will not be deemed to be sales at less than fair value.

Example 7

A foreign producer sells for consumption in the country of exportation at $105 a unit, delivered anywhere within the country of exportation. He has no f.o.b. factory price for home consumption. He sells to the United States f.o.b. factory for $100 a unit. Evidence indicates that it costs the producer on the average $.50 a unit to deliver on home consumption sales.

Giving due consideration to the circumstances of sale, the sales to United States purchasers at $100 a unit will be deemed to be sales at less than fair value.

Should the delivery cost on home consumption sales average $5 a unit instead of $.50, the sales to United States purchasers at $100 a unit will not be deemed to be sales at less than fair value.

PART 16. LIQUIDATION OF DUTIES

16.21 *Dumping duty; notice to importer.*—(a) Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the appraiser reports that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.[8]

The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the appraiser has approved the resulting entered value shall not prevent the assessment of the special dumping duty. However, a mere difference between the purchase price or exporter's sales price and the foreign market value or constricted value, without a finding by the Secretary of the Treasury, as above referred to, is not sufficient for the assessment of the special dumping duty.

(b) Before dumping duty is assessed, the collector shall notify the importer of the appraiser's report, as in the case of an advance in value. If the importer files an appeal for reappraisement, liquidation shall be suspended until the appeal for reappraisement is finally decided.

(c) If the necessary conditions are present, special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country. Secs. 202, 209, 407, 42 Stat. 11, as amended, 15, 18; 19 U.S.C. 161, 168, 173.)

16.22 *Method of computing dumping duty.*—If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921, as amended (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States money as of the date of exportation. (Secs. 202, 207, 42 Stat. 11, as amended, 14, as amended; 19 U.S.C. 161, 166.)

APPENDIX F

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., July 25, 1967.

DEAR COLLEAGUE: The Office of the Special Representative for Trade Negotiations has only recently made public the provisions of the International Antidumping Code which was signed on June 30. Ambassador Roth, the President's Special Representative for Trade Negotiations, recently testified before the Joint Economic Committee of the Congress that no congressional action is required to make the code effective. The code is scheduled to become effective on July 1, 1968.

The position of Ambassador Roth evidently is that the code does not conflict with the Antidumping Act of 1921 and therefore no congressional approval or implementation is necessary. By the same process of reasoning, Ambassador Roth presumably would agree that if the code in any way amends the act, congressional approval or implementation is necessary before the code becomes binding in the United States.

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[8] See sec. 14.13 of these regulations.
For regulations regarding finding of dumping by the Secretary and procedure under the Antidumping Act, 1921, see secs. 14.6–14.13.

It seems to me that Ambassador Roth's position that there is no conflict between the Antidumping Act of 1921 and the code is clearly erroneous. At this stage, I am not concerned with whether the provisions of the code are desirable or undesirable as a matter of economic policy, but only with whether the Congress has been improperly bypassed and whether Senate Concurrent Resolution 100, described below, has been defied by the failure of the Office of the Special Representative to present the code to Congress for aproval. The crucial question at this point, therefore, is whether the provisions of the code conflict with any of the substantive provisions of the act. As noted, it is my position there is direct conflict between the code and the act and that the code can become effective in the United States only if approved by Congress.

While the code would subject the Antidumping Act to a multitude of amendments, I limit myself here to an examination of three fundamental amendments of the act. First, article 3 of the code specifies that a determination of injury may be made only if it is found that "dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry * * *." Section 201(a) of the Antidumping Act vests the Tariff Commission with authority to determine whether "an industry in the United States is being or is likely to be injured * * * by reason of the importation of (dumped) merchandise." The act does not restrict the Tariff Commission to affirmative findings of injury or likelihood of injury only when satisfied that dumped imports are "demonstrably the principal cause of material injury."

Thus, it is clear that the Tariff Commission's authority to make injury determinations, as conferred upon it by section 201 of the Antidumping Act, would be materially altered and circumscribed by article 3 of the Antidumping Code.

Secondly, article 4 of the code defines the term "domestic industry" to include all of a country's producers of a product which is "like" the dumped imported product under consideration. Only in "exceptional circumstances" may a regional competitive market be considered as the industry affected. Such exceptional circumstances can be found only if the producers supplying a regional competitive market sell "all or almost all of their products in such market." Further, an additional restriction on the Tariff Commission's authority to find injury is imposed, since "all or almost all of the total production" in the regional market must be injured.

Section 201 of the Antidumping Act does not restrict the Tariff Commission in its determination of what constitutes "an industry in the United States." In a considerable number of cases, the Commission has concluded that regional markets and regional industries may be found without regard to whether the producers suplying a limited competitive market "sell all or almost all their products" in such market, and without regard to whether "all or almost all" of the producers are injured.

Thus, it is clear that article 4 of the code in providing substantial limitations in its definition of industry and in adding a further restriction on the authority to make affirmative determinations of injury, would severely curtail the present powers of the Tariff Commission under section 201 of the Antidumping Act.

Thirdly, article 5 of the code provides that a dumping investigation shall be initiated only when supported by evidence of both dumped prices and of injury shall be "considered simultaneously." In addition, article 10 forbids the institution of any provisional measures, which specifically include the authority to order withholding of appraisement unless there is "sufficient evidence of injury" as well as of dumping.

Section 201(a) of the Antidumping Act was amended in 1954 and transferred from Treasury to the Tariff Commission sole responsibility for injury determinations. This subsection specifies that the Commission shall make a determination of injury only after being advised by Treasury that a dumping price has been found by that agency. The Senate Finance Committee report on the 1954 amendment made this crystal clear:

"This title would also transfer the injury determination under the dumping law to the Tariff Commission and provide that it be made within 3 months from the determination of the question of a dumping price by the Secretary."

Furthermore, section 201(b) of the act specifically requires that Treasury "shall authorize * * * the withholding of appraisement" whenever Treasury, in the course of an investigation and before a formal finding of dumping prices, "has reason to believe or suspect" that sales have been made at a dumping price. The act specifies Treasury then "shall forthwith publish notice of that fact * * * and shall authorize * * * the withholding of appraisement reports." At that stage the Tariff Commission, not having been advised by Treasury of a determination of dumping, has no authority to institute an investigation, much less make a finding or injury or of the existence of "sufficient evidence of injury," whatever this phrase as used in the code may mean.

Thus, it is patently clear that by requiring simultaneous investigations of dumping and of injury, and by requiring decisions on dumping and on the existence of "sufficient evidence of injury" as conditions precedent to the withholding of appraisement, articles 5 and 10 of the code conflict directly with the provisions of subsections (a) and (b) of section 201 of the Antidumping Act.

The refusal of the Office of the Special Representative to recognize and respect the areas of policy determinations which are the province of Congress, can hardly be viewed as a mere oversight, attributable to inadequate familiarity with the well-established doctrine of the separation of powers. Last summer the Senate overwhelmingly adopted Senate Concurrent Resolution 100, advising the executive branch generally and warning the Office specifically against including in the Kennedy round negotiations matters outside the scope of the Trade Expansion Act of 1962. Dumping was one of the matters which was specified. As summed up by the Senate Finance Committee in its report on Senate Concurrent Resolution 100:

"This problem (dumping) concerns unfair trade practices in a domestic economy and it is difficult for us to understand why Congress should be bypassed at the crucial policymaking stages, and permitted to participate only after policy has been frozen in an international trade agreement."

Notwithstanding this clear warning by the Senate, the Office of the Special Representative persisted in negotiating the Antidumping Code which conflicts directly with, and, if the code becomes effective, would amend the Antidumping Act of 1921 in many substantive respects. In point of fact the code would emasculate the Antidumping Act of 1921 and for all practical purposes strike the act from the statute books. As I mentioned earlier, the three points of conflict listed above are merely illustrative of a multitude of substantive changes in the act. In my opinion, these changes would prevent it from imposing any meaningful restraint on the unfair trade practice of dumping.

This usurpation of congressional functions should not be allowed to go unchallenged. I therefore intend to urge the chairman of the Senate Finance Committee that an appropriate resolution should be favorably reported by the committee and should be adopted by the Senate and by the House, expressing the sense of Congress that the code should not become effective in the United States unless and until the code has been approved by the Congress. The resolution should also advise the President to withdraw from the code immediately, well before it is scheduled to become effective on July 1, 1968. The resolution should further advise the President that if he desires to have the code become effective in this country, the United States must first withdraw from the code and then submit it as a proposed international agreement to the Congress for approval. At that time, I will, of course, oppose Congress giving its approval to the complete emasculation of the Antidumping Act. The act, which is concerned with the unfair trade practice of price discrimination in this market, needs to be strengthened not weakened and emasculated. This is the purpose sought to be achieved by S. 1726 which I introduced on May 9, 1967, for myself and for 40 other Senators on both sides of the aisle.

I hope that you will agree with me that the action of the Office of the Special Representative in defiance of the clear will of the Senate constitutes usurpation of congressional authority and must not be allowed to go unchallenged. If you do agree with me, I urge you to communicate your views to the chairman of the Senate Finance Committee, to other Members of the Senate and also to the chairman of the Ways and Means Committee of the House and other Members of the House.

Sincerely,

VANCE HARTKE, *U.S. Senator.*

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D.C.

TOM VAIL, Esq.,
Chief Counsel, Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR TOM: Upon my return from a trip overseas dealing with Interpol, I found the Committee on Finance press release of September 27 which invites interested parties to submit written statements to the committee on U.S. foreign trade policies and practices.

It is just possible that the committee might be interested in a paper I prepared on the Antidumping Act a year ago. This was background for a short talk I gave before a meeting of the Synthetic Organic Chemical Manufacturers Association. It is terribly long, terribly dull, and it fails to take into account the international code approved as part of the Kennedy round, or decisions made by either Treasury or Tariff Commission in the last year. Nonetheless, I believe it is a more complete description of the operation of the Antidumping Act than any other article I know of. It has not been published.

Very best wishes.

Sincerely yours,

J. P. HENDRICK,
Special Assistant to the Secretary
(for Enforcement).

ADMINISTRATION OF THE U.S. ANTIDUMPING ACT—PROCEDURES AND POLICIES

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ADMINISTRATION OF THE U.S. ANTIDUMPING ACT—PROCEDURES AND POLICIES

INTRODUCTION*

The Antidumping Act [1] provides that where a foreign producer practices price discrimination in his sales to the United States—by which is generally [2] meant selling to the United States at a price lower than that charged in his home market sales—with resultant injury to a U.S. industry, a special dumping duty will be assessed. The dumping duty is measured by the extent of the price discrimination—that is, by the difference between the higher home market price and the lower price charged the U.S. importer.

The question as to whether there is price discrimination is determined by the Secretary of the Treasury. The question as to whether there is injury is determined by the U.S. Tariff Commission. The Tariff Commission does not consider the question of injury unless Treasury has first determined that the case involves price discrimination.

PART I—PRICE DISCRIMINATION

A positive Treasury determination of price discrimination is technically referred to as a "determination of sales at less than fair value."

Summary investigation

A dumping case may be instituted on the basis of a communication to the Commissioner of Customs in Washington, D.C., from a principal customs officer [3] or a person outside the Customs Service.[4] If the communication indicates a situation which may come within the purview of the Antidumping Act,[5] the Commissioner of Customs will undertake a "summary investigation" based on examination of the information submitted.[6] If this investigation shows there is obviously

*Footnotes start at p. 177.

no warrant for further consideration of the case, it will thereupon be closed forthwith.[7]

Preliminary investigation

Should further consideration be warranted, the Commissioner will publish an "Antidumping Proceeding Notice" briefly describing what is at issue,[8] and he will make a "preliminary investigation" based on examination of invoices and other information immediately available to him.[9]

Full-scale investigation

Following the further "preliminary" investigation, the Commissioner will recommend to the Secretary of the Treasury that the case be closed out forthwith if he believes the information shows no price discrimination.[10] In the alternative, he may continue to consider the case, either because there is ground to believe or suspect that there is price discrimination [11] or because the information at hand is not sufficient for a determination.[12] If the investigation is thus continued, it will take the form of a "full-scale investigation." [13] Such investigation starts with the provision of answers to a standard questionnaire sent to the foreign producer by the Bureau of Customs and is usually followed by a customs representative's visit to the foreign producer's plant.

Tentative determination by Treasury

Unless the case is closed out by the Commissioner of Customs following the "summary investigation," it is necessary, in accordance with established procedure, for the Commissioner to make his recommendation for disposition of the case to the Secretary of the Treasury. When the Secretary reaches his conclusion in the matter, he publishes a "Notice of Tentative Determination" which includes the reasons on which the tentative determination is based.[14] Interested parties are thereupon given an opportunity to submit argument or appear in person in support of or in opposition to the tentative determination.[15]

Final determination by Treasury

The final determination as to whether or not a case involves price discrimination, or, to use the technical term, sales at less than fair value, is made by the Secretary of the Treasury (or, in the usual case, by the Assistant Secretary to whom responsibility in this field has been delegated). The determination is required to be in written form, to include a statement of reasons, and to be published in the Federal Register "as soon as possible" after the Secretary has considered the arguments submitted.[16]

If the determination is negative; that is, no sales at less than fair value, the procedure is at an end. However, if the determination is positive, the case must proceed to a further determination as to whether a U.S. industry has been injured.

Determination by Tariff Commission

As indicated in the introduction above, consideration as to whether or not a dumping case involves injury is within the jurisdiction of the U.S. Tariff Commission, and such consideration will not be given

See footnotes on p. 177.

unless the Secretary of the Treasury has made a positive determination of sales at less than fair value.[17]

Once there has been a positive Treasury determination of sales at less than fair value, the Tariff Commission examines the economic situation which may have been created by such sales. The Commission will then proceed to determine whether or not the result has been, or is likely to be, injury to an industry in the United States. It will then proceed to publish a determination in the matter.[18]

As indicated above, if the determination is negative, that is no injury, the procedure is at an end. However, if the determination is positive, the case goes back to the Secretary who proceeds to publish a finding of dumping.[19]

Finding of dumping

The Secretary of the Treasury's finding of dumping follows as a matter of routine after positive determinations have been made both as to sales at less than fair value and injury. Once the finding has been published, customs officers proceed to assess and collect the dumping duties.[20]

Submissions in confidence

The determination as to whether or not there is price discrimination will be based on the best available evidence. Ordinarily, this will be submitted by the parties chiefly concerned in the case—the complainant and the foreign producer whose exports to the United States are the subject of the complaint. Often the complainant's information is secured from sources which will dry up if he reveals their origin. Often information supplied by the foreign producer will include business secrets. In many cases the reasons for requesting confidential treatment are obvious and are accordingly respected. But there are instances in which the request for confidential treatment is abused.

Price information submitted to Treasury by any person interested in a dumping case will in every case be kept confidential if the person submitting it so requests; however, if the Commissioner of Customs does not believe the confidential treatment is warranted, the information—to the extent it is self-serving—will not be considered as pertinent to the determination of the case.[21] Information is ordinarily to be regarded as appropriate for disclosure if it relates to price information, freely available quantity discounts or differences in circumstances of sale.[22] Information is, on the other hand, ordinarily to be regarded as inappropriate for disclosure if it relates to business or trade secrets, production costs, distribution costs (other than those which substantiate quantity discounts or other circumstances of sale), names of customers or prices of particular sales.[23]

Withholding of appraisement

When an import arrives in the United States, its processing by customs includes appraisement as a necessary step in ascertaining what, if any, ordinary duties are owed on it. In general, it can be said that once the appraisement has been completed, no further change can be made by customs in the ascertainment of duties payable, whether ordinary duties or dumping duties. It follows that while a dumping case is being

See footnotes on p. 177.

processed, there is no method provided by United States law to protect domestic industry against imports which may thereafter be made the subject of a dumping finding, unless appraisement of these imports is temporarily suspended or, to use the technical term, "withheld."[24] The Antidumping Act accordingly provides that when the Secretary of the Treasury[25] "has reason to believe or suspect" that there is price discrimination, he shall withhold appraisement of the merchandise in question.[26] When this is done, a "Withholding of Appraisement Notice" is published.[27]

In the usual case the importer faces the possibility of dumping duties assessed only on importations entered after the notice is published, because with two exceptions the withholding is not applied retroactively. The first of these exceptions is where the importer and the exporter are related one with the other.[28] The second exception is when—an event of rare occurrence—past importations happen not to have been appraised prior to the issuance of a dumping finding.[29] To the extent that dumping duties are assessed retroactively, because the case falls within one or the other of the two exceptional situations thus noted above, the retroactivity may not extend beyond 120 days prior to the filing of the complaint.[30] Otherwise appraisement is withheld without retroactivity starting as of the date of publication of the "Withholding of Appraisement Notice." [31]

If at any time while appraisement is withheld imports come in which do not involve price discrimination, they will be appraised despite the withholding order.[32]

It is important to note that withholding of appraisement does not involve denial of entry of the goods—they are allowed freely to come into the United States and be sold in the same way as any other merchandise, provided a bond is on file in an amount sufficient to cover the dumping duties which might be thereafter assessed.[33]

Price comparison between fair value and price to the United States

At the outset of this paper, it was stated that price discrimination under the Anti-Dumping Act is found when a foreign producer sells in the United States at a lower price than he sells in his home market. This is the situation ordinarily complained of in dumping cases.

However, there are cases when the foreign producer has no home market sales, or insufficient home market sales to furnish an adequate basis for comparison. If this is the situation, then price discrimination will be found if the foreign producer sells in the United States at a lower price than in his sales to "third countries," i.e. sales in exportation to countries other than the United States.

If there are no home or third country sales or offers, then price discrimination will be found if the foreign producer sells at less than cost.

This is the situation expressed in relatively simple language.

Fair value

If one uses the language of the Anti-Dumping Act and regulations issued thereunder, reference must be made to the term "fair value." Fair value may mean, depending upon the circumstances, the foreign producer's home price, his third country price, or his cost.[34]

See footnoets on pp. 177–178.

Repeating what has been said above, this time with specific reference to the language of the Anti-Dumping Act and the regulations, the determination to be made on the subject of price discrimination is whether merchandise imported into the United States is sold at less than its fair value.[35]

In the usual case, fair value is based on "the price * * * at which such or similar merchandise" (i.e. merchandise identical or similar to the import complained of) "is sold for consumption in the country of exportation." [36] If, however, the quantity sold in the home market is "so small, in relation to the quantity sold for exportation to countries other than to the United States, as to be an inadequate basis for comparison," then fair value is based on the price sold in exportation to countries other than to the United States, familiarly known as "third country price." [37] If, however, the information available is deemed by the Secretary of the Treasury "insufficient or inadequate" to justify use of home or third country price, fair value will be determined on the basis of constructed value as defined in section 206 of the Anti-Dumping Act.[38] Section 206 in effect defines constructed value as the cost of materials and of fabrication together with an addition for overhead ("general expenses") which shall be not less than 10 percent of the cost of materials and fabrication and an addition for profit which shall be not less than 8 percent of the cost and general expenses.

To summarize: Price discrimination is found where sales to the United States are at a price lower than home price in the country of export if there are sales there in quantity sufficient to be representative; if not, at a price lower than third country sales; if there are no third country sales, then price discrimination is found if sales to the United States are at less than cost.

Standard for determining whether to base fair value on home or third country price

As set forth above, fair value will be based on home price unless home market sales are so small, in relation to third country sales, as to provide "an inadequate basis for comparison." The customs regulations give two examples as guides to a determination as to what quantity of home market sales will be adequate or inadequate to serve as a basis for comparison.

In the first example, a foreign producer sells 15,000 units of his product to U.S. importers at a per unit price of 90 cents. Inquiry into the situation shows that he has sold 75,000 units of the same product in his own country at a per unit price of $1 and 25,000 units to other (third) countries at a per unit price of 85 cents. The price comparison is between the $1 home price and the price to the United States of 90 cents. This can be considered selling at less than fair value.[39]

In the second example, a foreign producer sells 15,000 units of his product to U.S. importers at a per unit price of 90 cents. Inquiry into the situation shows that he has sold 25,000 units of the same product in his own country at a unit price of 95 cents and 75,000 units to other (third) countries at a per unit price of 90 cents. Were the price comparison made as in the preceding paragraph, this could be considered selling at less than fair value. However, the quantity sold in the home market is here considered so small, in relation to the quantity sold for

See footnotes on p. 178.

exportation to third countries, as to be an inadequate basis for comparison. Therefore, comparison is made between the 90 cents third country price and the 90 cents price to the United States. Since the latter is not less than the former, this cannot be considered selling at less than fair value.[40]

While no examples are given as to what the decision will be if home market sales are less than 75 percent but more than 25 percent of all sales other than to the United States, the Treasury Department has as a matter of practice used 25 percent as the cutoff figure. In general, it can be said that home price will constitute the basis for fair value if over 25 percent of sales other than to the United States are made in the home market; if the home market sales constitute 25 percent or less of sales other than to the United States, then the third country sale price will constitute the basis for fair value.

Price to the United States

The price comparison in a dumping case is between the "fair value," defined as indicated above, and the price to the United States. Ordinarily the price to the United States will be the price paid by the importer, defined in the law as "purchase price." [41] However, if the importer and the exporter are related—as, for example, if one is parent and the other subsidiary—then the price to the United States will be the price at which the importer sells the merchandise in the United States, defined in the law (somewhat confusingly) as "exporter's sales price." [42]

Adjustments for differing quantities

Having determined in accordance with the principles above set forth whether fair value is to be based on home price, third country price, or cost, and whether price to the United States is to be based on purchase price or exporter's sales price, attention must be given to adjustments which should be made in order that the two prices may be properly comparable. First to be considered in this connection is the subject of quantity discounts.

Quite obviously, there can be occasions when costs of manufacturing go down as quantities sold increase; indeed, this can be said to be a basic element in the success of businesses here and abroad. However, the computation of just what the saving is on any particular increase is not always easy, nor is it always clear that an order for, say, 1,000 units of a given product costs the producer less per unit than one order for 500 units. The customs regulations presently in effect supplement a general statement in the law which provides for adjustment for differences in quantities.[43] The more specific regulations recognize without question any discount claimed because of quantities involved in shipments to the United States if a similar (or greater) discount has been made freely available and has been granted with respect to at least 20 percent of total purchases in the home market (or in third countries where sales to third countries are the basis for the price comparison) over the 6 months preceding the filing of the complaint.[44] However, if the 20-percent figure cannot be established, then the quantity discount must be cost justified—that is to say, the foreign producer must show that the cost of filling the larger order shipped to the United States

See footnotes on pp. 178 179.

was less than the cost of filling smaller orders in the home market in an amount at least equal to the discount allowed.[45] For example, a foreign producer sells at 85 cents a pound in his home market, each order for 100 pounds. Over 6 months, he has thus sold 200,000 pounds. In addition, he has sold in his home market 20,000 pounds at 80 cents a pound, each order for 1,000 pounds. He also sells to the United States 100,000 pounds, at 80 cents a pound, each order for 1,000 pounds. This quantity discount in the sales to the United States must be cost justified.[46] However, if the record had shown 80,000 pounds sold at 85 cents a pound in the home market, each order for 100 pounds, and 20,000 pounds sold at 80 cents a pound in the home market, each order for 1,000 pounds, then the 20 percent figure would be established, and sales to the United States, at 80 cents a pound, each order for 1,000 pounds, could not be considered to have been made at less than fair value, even though cost justification was not apparent.

Adjustments for other circumstances of sale

Reasonable allowances are made for other differences in circumstances of sale as between the sale in the home market (or third country market where applicable) and the sale to the U.S. importer.[47] Everyone knows that automobiles sold in the United States by U.S. manufacturers are sold with a warranty covering servicing over a period of time. This warranty is part of the cost of the automobile. European automobiles have been imported with the importer assuming the servicing warranty. Where the European automobile is sold in the home market in Europe with servicing warranty but sold to the United States without servicing warranty, this is a difference in circumstances of sale for which allowance should be, and is, made. The adjustment permits the European manufacturer to sell to the United States below European home price, without being subject to successful complaint under the Antidumping Act, as long as the difference in the two prices does not exceed the cost of the servicing warranty which is given in the home market.[48] Failure to make the adjustment would be inequitable: the U.S. importer must provide the servicing himself, which can be expected to cost him as much as he saves by purchasing the automobiles without servicing warranty from the European seller.

Other examples of differing circumstances of sale for which adjustment may be made are:

Credit terms;

Guarantees;

Technical assistance:

Assumption by a seller of a purchaser's advertising or other selling costs;

Commissions; and

To a very limited extent, research and development and other costs.[49]

The scope of these allowances has been considerably reduced from those permitted prior to 1960, principally with respect to advertising, where claims had been successfully made that home market price should be reduced by per unit cost of stimulating sales to wholesale purchasers, and selling costs, where deductions were claimed for expenses such as salesmen's salaries, rent of office space for salesmen and

See footnotes on p. 179.

other overhead items.[50] It must now be fully established "that the amount of any price differential is wholly or partly due to * * * bona fide differences in circumstances of sale." [51]

The final paragraph in the 1965 regulations relating to allowances for differences in circumstances of sale provides that determination of the amount of the allowances shall be based primarily on "the effect of such differences upon the market value of the merchandise." [52] This contrasts with the provision theretofore in effect, which stated that the allowance was to be based on the difference in cost. The change was made in order to close what was regarded as a loophole. In a particular case pending before the Treasury Department, steel pipe was being imported at a lower price than that obtaining in the home market. The difference was explained on the ground that skelp the most important ingredient in the pipe, was obtained at a high cost from home market producers for the purpose of home market sales, whereas the skelp obtained for pipe sold to the United States was a low cost import, not allowed to be used in production of pipe for the home market. Strictly speaking, this was a difference in circumstances of sale which allowed lower price to the United States because of the lower skelp cost, and decision was made to this effect.[53] However, under the regulation wording presently in effect, adjustment for the difference would not be allowed.

Similar merchandise

In many cases the merchandise sold in the home market can be considered identical with that sold to the United States. However, there are cases in which there are differences of no great significance, so that there is no difficulty in considering the products similar, but where it is necessary in order to make a fair price comparison that allowance should be made for these differences. The Antidumping Act and regulations issued thereunder specify that in making a price comparison reference shall be had to "similar" merchandise if there are no sales of merchandise identical to that which is the subject of the complaint.

If shovels were produced in a particular country where the workmen preferred short handles, and produced for export to the United States where the workmen preferred longer handles, the question of dumping would be considered with reference to a comparison of "similar" merchandise as opposed to a situation in which identical shovels were sold in both markets. We would take the home price and the export price and compare one with the other after making adjustment for the difference in cost of the short and the long handles.

The customs regulations on the point are brief, being limited to a reference to the law, but including also a provision that the difference shall be allowed for primarily with reference to the effect of the differences "upon the market value of the merchandise." [54] The reason for this wording is the same as the reason for the similar wording contained in regard to circumstances of sale, dealt with in the final paragraph of the above discussion on circumstances of sale. Use of unnecessarily expensive ingredients in the production for the home market, which would not increase its market value, would not justify an allowance therefor.

See footnotes on p. 179.

The provisions of the Antidumping Act to which the regulations refer in dealing with similar merchandise are unusually precise. The preferred price comparison is, of course, identical merchandise.[55] The order of priorities is (A) identical merchandise produced by the foreign produced in his home country; [56] (B) identical merchandise produced by another foreign producer in the same country; [57] (C) similar merchandise produced by the foreign producer in his home country;[58] (D) similar merchandise produced by another foreign producer in the same country.[59]

An interesting question has from time to time arisen in deciding whether to base fair value on a foreign producer's home or third country price. Assuming that the foreign producer sells only in export, should fair value for him be based on the home price at which another producer in his country sells? Ordinarily it should, in conformity with the above-cited order of priorities. However, should this be so even though the second producer is a far higher, or lower, cost producer? A few decisions have been made that in such circumstances each producer is to be judged on his own record. In these, fair value for the first producer, who sold only (or for very much the most part) in export, was based on his third country price, and not the second producer's home price.[60] This result is justified by the fact that while the regulations "ordinarily" would indicate a different interpretation,[61] the Secretary of the Treasury has discretion to judge otherwise if the result seems to him proper.

Offering price

Prior to 1955 fair value was determined by the price at which the merchandise was "sold or offered" in the home market in the country of export if there were any sales or offers in that market. However, the 1955 and subsequent regulations have required reference to third country price where the volume of home market sales is insufficient to furnish an adequate basis for comparison.[62] The result has been to diminish greatly the importance of offers in the determination of price under the Antidumping Act. In effect, offers are of importance only when there are no sales. Thus, if there are no sales in either home or third country markets, fair value will be based on offers in the home market, if any; otherwise in the third-country market, if any. Reference will be had to constructed value only if there are no offers in either of these markets.

The regulations regarding offering price are limited to a brief statement to the above effect together with a warning of the obvious point that "an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer." [63]

Fictitious sales

Supplementing the point above described in regard to the need for offers to be bona fide, the regulations provide that "no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account" in the determination of fair value.[64]

Sales between related persons

If home market sales are made through an agency or other organization related to the seller, such as parent and subsidiary, the regula-

See footnotes on p. 179.

tions follow the statute in stating that the resales by such agency or organization may be used in determining the value to be used for the purpose of comparison.[65]

Sales at varying prices

The customs regulations make it clear that fair value can be calculated on the basis of prices over a representative period.[66] In addition, it can, in the absence of sufficient home market sales to furnish an adequate basis for comparison, be calculated on the basis of third country sales. In either event, this can necessitate consideration of a number of varying prices. Here the regulations give the Secretary of the Treasury discretion to calculate fair value either as the price at which a preponderance of the merchandise has been sold or as the figure reached after compiling a weighted average of the sales under consideration.[67]

Quantities involved or differences in prices "not more than insignificant"

Following the well-known legal maxim de minimis non curat lex, the regulations provide that no determination of sales at less than fair value is to be made unless the quantity involved in the sales to the United States is "more than insignificant." [68] Similarly, unless the sales involve a dumping margin (difference between fair value and price to the United States) which is more than insignificant, they do not qualify for a determination of sales at less than fair value.[69]

Revision of prices or other changed circumstances

The processing of a dumping case can be an elaborate, time-consuming, expensive matter. Given the U.S. Government's interest in the free flow of trade and its interest in eliminating unnecessary bureaucratic expenditures, there has developed over the past decade or more a new technique in the disposition of dumping cases. This new technique consists in closing out a case where commonsense dictates that nothing is to be gained by further processing it.

This situation is most often met when a foreign producer, having sold to the United States at a price below that in his home market, gives notice that such sales will not be continued in the future.

The Antidumping Act is not designed to be punitive or to be a revenue-collecting measure. It is designed to put an end to injurious price discrimination.[69a] Where there has been price discrimination, but the practice is speedily ended as soon as the matter is brought to the foreign producer's attention, commonsense ordinarily dictates that the Antidumping Act has accomplished the result for which it was enacted. The law has accordingly been construed to permit determinations of no sales at less than fair value under such circumstances, as long as Treasury is assured that the price discrimination will not be resumed in the future. This was done for some years with reference to the principle of de minimis non curat lex referred to above; since 1965 it has been done with reference to a specific regulation on revision of prices.[70]

The price revision is ordinarily accomplished by raising the price to the United States to an amount equal to the home market price. However, the price discrimination may also be ended—as far as the

See footnotes on pp. 179–180.

Antidumping Act is concerned (though this is not so satisfactory a solution as far as the complainant is concerned)—by lowering the home market price to an amount equal to the price to the United States. A third alternative method of similarly ending the price discrimination is, of course, to discontinue the exports.

Persons who comment on administration of the U.S. law often cite the large proportion of cases in which the decision goes against the complainant, either because of a determination of no sales at less than fair value or no injury. Statistically, the proportion is large, as is shown in the figures given at the conclusion of this article. What the commenters fail to realize, or what they choose for reasons of their own to disregard, is that price revision gives relief to the complainant substantially equivalent to that achieved by a dumping finding. In addition, the complainant achieves this relief despite the fact that if carried to its conclusion the dumping investigation might have resulted in a determination of no injury—thus allowing the importer to continue the price discrimination which has been the subject of the complaint.

From the standpoint of the importer, on the other hand, the question is whether to take a chance on this aspect of the case. Assuming he believes he will get a no-injury decision, it can be to his advantage to have no price revision, because if his belief proves to be correct he will know that he can continue importations below the foreign producer's home price at least until there is a change for the worse in the economic situation of the domestic complainant. On the other hand, if he fears that the decision on injury will be positive, the safer procedure on his part can be the price-revision route.

In one occasion, Treasury Department refused to close a case despite price revision on the ground that this may have involved "hit and run" dumping.[71] However, it seems unlikely that this theory will be applied in the future in the absence of very clear justification.

Simultaneous consideration of cases involving the same product

On occasion complaints will be received covering imports of the same product from two or more countries. An example in point was a series of cases involving steel wire rods imported from Luxembourg, Belgium, West Germany, France, and Japan. The Treasury Department concluded that there had been sales at less than far value in respect of the European imports, but not in respect of the Japanese.[72] The Tariff Commission, in making its determinations of no injury as to the European imports, took notice of the fact that the Japanese steel wire rods were coming into the United States at a delivered price no higher than the Europeans' price, with the Japanese presumably having the capacity to take over the Europeans' market in the United States if the Europeans were forced by dumping findings to raise their prices. This drew attention to the desirabilty of simultaneous considerations of cases by Treasury under certain circumstances. Without the Treasury determination of no sales at less than fair value in the Japanese case, the Commission would have been in ignorance of what proved to be an important factor in its no-injury determinations. Shortly thereafter, Treasury adopted a regulation on this point, providing that "the Secretary may defer making an affirmative determina-

See footnotes on p. 180.

tion of sales below fair value during the pendency of any other anti-dumping proceeding which relates to the same class or kind of merchandise imported from another country." Such deferral is not to be made as a matter of course, but only if the Secretary is satisfied it is "appropriate under all of the circumstances." These circumstances will include the dates of the various complaints, the volume of sales involved in each case, possible hardship to parties concerned, and the probable extent of delay.[73]

Reimbursement of dumping duties

Assuming one has a case involving true predatory dumping, the foreign producer will not mind how much he spends over a reasonably short space of time in order to put the U.S. competition out of business. With this in mind, a foreign producer could be successful if he promised his U.S. importer that whatever dumping duties might be assessed would be reimbursed. Should such a guarantee be unconditionally allowed, a dumping finding would be ineffective. The purpose of a dumping finding is to raise the importer's purchase price to an amount equal to the foreign producer's home price, with the usual result that the importer's resale price to the U.S. market will at least be correspondingly increased, and with the further result that the foreign producer will either (1) increase the price to the importer by an equivalent amount (because he would rather have this in his own pocket than in Uncle Sam's pocket) or (2) discontinue selling (because the addition added on to the importer's resale price will make the product too expensive to meet U.S. domestic production competition). But if the dumping duty is paid for by the foreign producer, the economic pressure on the importer is relieved, and the importer can continue to market the import in the United States at a price uninfluenced by this duty.

Bearing this in mind, an amendment to the customs regulations was published in 1960 the effect of which was to increase the amount of any dumping duties by the amount of reimbursement thereof.[74] The result of this would be that if a dumping duty of, say, $2 a unit was assessed on the importer, and this was reimbursed by the foreign producer, Customs would increase the total dumping duty to $4. Should the foreign producer in turn reimburse the $4, then Customs would assess another $4, bringing the total to $8, and so on until the foreign producer had had enough, and called an end to the practice.

From the standpoint of strict economic theory, no one could question the application of the amendment as a protection to U.S. producers against predatory dumping. But the question was raised in responsible quarters as to the extent to which predatory dumping was in fact going on today, if by this term one meant driving out the domestic competition so as to destroy it and then be able to raise prices in a newly created monopoly. More importantly, the question was raised as to how U.S. importers—in large measure "small business" companies or individuals—could import if they had to take their chances on assurances of the foreign producers with whom they dealt that the prices the importers were paying (which the importers knew) were not lower than the foreign producers' home prices—which the foreign producers knew but the importers did not know. The compromise solution reached

See footnotes on p. 180.

in 1965 was to allow reimbursement of dumping duties in all cases where the agreement to purchase is made before notice of withholding of appraisement and where, in addition, the merchandise is exported before a determination of sales at less than fair value.[75]

"Fair value" contrasted with "foreign market value"

If a foreign producer sells a single bicycle to the United States for $10 when his home market price is $15, that is a sale below foreign market value. It need not be considered a sale below fair value. As has been pointed out above, when sales are made to the United States at less than home price[76] but there is prompt revision of price after the situation is brought to the foreign producer's attention, section 14.7(b)(9) of the regulations justifies a determination that the sales are not at less than fair value, despite the fact that there have been sales at less than foreign market value.

Similarly, the pricing pattern in the home sales may be sometimes higher, sometimes lower, than the price to the United States. As long as the price to the United States is not lower than a weighted average, or the preponderance, of the home sales during a representative period, the Secretary of the Treasury may in his discretion determine that there have not been sales at less than fair value.[77] But here again there would have been sales at less than foreign market value. Foreign market value is calculated on a day-to-day basis. With regard to each importation, an exact date is required by law to be fixed for the price comparison. In the usual case, this will mean that home price is calculated as of the date of purchase.[78] Thus, the home price may be $100 from January through March except for a sale on January 15 at $105 and an equal quantity sale on February 15 at $95. Under these circumstances, fair value could be calculated on a weighted average basis at $100. Foreign market value, however, would have to be in accord with the exact figures calculated with reference to the date of purchase of each sale to the United States. Assuming a price to the United States of $100 on equal day-to-day purchases, there would be no sales below fair value during this 3-month period, but there would be a sale below foreign market value as of January 15.

The usual absence of any need to average or ascertain proponderance in the calculation of foreign market value facilitates the determination needed in the case of witholding of appraisement where reference is made, not to sales at less than fair value, but to sales at less than foreign market value.[79]

Modification or revocation of finding

Once a dumping finding has been in effect over a period of time, the foreign producer will, if he continues shipments to the United States, presumably increase his price to the United States so as to eliminate the dumping margin. In effect, he has the choice of doing this, to his own profit, or allowing the dumping margin to go to the U.S. Treasury in the form of dumping duties, to his own loss.[80] Should the pattern of sales no longer dumped appear sufficiently well established to justify such action, the dumping finding may be revoked. As long as the dumping finding remains in effect customs officers must examine each importation to ascertain whether a dumping duty can be collected.

See footnotes on pp. 180–181.

Accordingly, as soon as adequate price revision (or cessation of sales to the United States) makes it clear there is no likelihood that further dumping duties can be collected, rescission of the dumping duty is a matter of administrative convenience, and it has been effected many times despite the absence of any specific provision of the law authorizing it.[51] There are no known instances of revocation of dumping findings in cases where, despite continuance of imports below fair value, there is no further injury. However, it would seem reasonable to suppose that should the importer believe the facts clearly show there is no further injury or likelihood thereof from such imports, means could be found to give the Tariff Commission jurisdiction of the case, with revocation of the finding following its negative injury determination, similarly despite the absence of any specific provision in the law authorizing such action.

Where the dumping finding relates to imports from a country, or from several named foreign producers, it will, of course, be necessary to show that the reason for continuing it in effect has ceased in respect of all foreign producers concerned before revocation will be justified. However, modification is feasible excluding individual named foreign producers from the finding as any of them show sufficient reason therefor. This was the procedure effected in the Swedish hard board case, where one after another among individual Swedish companies were excluded from the finding, leaving the others covered by it, until finally all had been excluded and the finding was therefore revoked.[52]

PART II—INJURY

As indicated in the introduction at the outset of this paper, the question whether there is price discrimination—sales at less than fair value—in a dumping case is determined by the Treasury Department, and the question whether an industry in the United States is injured is determined by the U.S. Tariff Commission.

During the 12 years since the Tariff Commission was given responsibility for making Antidumping Act injury determinations, it has considered 51 cases. It has found injury or likelihood of injury in 11 and no injury in 40.

In the following pages the writer will set forth his entirely unofficial, unauthorized, and personal views as to what he believes to be a consistent philosophy which has been the basis for the Commission's determinations. This will be set forth first in a series of summary statements and second in a detailed treatment of these statements.

SUMMARY

1. In determining whether domestic industry is injured, the Tariff Commission considers only the impact of dumped imports; it does not consider the impact of imports which are not sold at less than fair value even though this impact may in fact be harmful.
2. Injury must be material to justify a positive determination.
3. There is no presumption of injury from dumped imports.
4. It is not necessary to show that a foreign producer intended to harm U.S. industry, in order to justify a positive injury determination.

See footnotes on pp. 181-182.

5. If the domestic industry complainant withdraws its complaint, the Commission can be expected to close out the case with a no-injury determination.

6. Ordinarily if the foreign producer promptly revises his pricing so as to put an end to the dumping and gives assurance there will be no future price discrimination, the case will be closed on a negative determination.

7. The following are examples of facts justifying positive injury determinations:

U.S. producers were forced to lower their prices because of dumped imports;
U.S. producers lost sales because of dumped imports;
Dumped imports were rapidly growing;
U.S. industry was operating at only 70 percent of capacity;
Dumped imports amounted to a substantial portion of domestic consumption;
Dumped imports displaced significant part of the U.S. market.

8. The following are examples of facts justifying negative injury determinations:

Dumped imports furnished insignificant competition;
Dumped imports had no effect on prices in the U.S. market;
The foreign producers gained no new customers, or lost customers;
U.S. industry was expanding;
U.S. prices were rising;
U.S. production was insufficient to supply U.S. demand;
The foreign product was obviously of inferior quality.

9. Dumped imports priced to meet domestic competition are not injurious; indeed, a slightly lower price for the imported product may be justified where because of the risk of uncertain and late deliveries no U.S. purchaser could be found in the absence of a price inducement. There have also been determinations of no injury where dumped imports meet the competition of nondumped imports, if it can be shown that the result of a positive determination would merely be to allow the nondumped imports to fill the entire gap left by discontinuance of the dumped imports.

10. Injury need not be nationwide: It can be to the industry in a geographic segment consisting of a few States, or only one State.

11. Where the geographic segmentation principle has been applied, injury has been found in cases where the dumped imports constitute a very small proportion of U.S. production or consumption; where it is not, however, the Commission rulings establish that the dumped imports must have been in substantial volume to justify a positive injury determination.

12. Positive determination can be made where there is likelihood of injury or where an industry is prevented from being established.

Detailed discussion

1. *Injury limited to that caused by dumped imports.*—Although the U.S. law could permit a different interpretation, the Tariff Commission limits its consideration of injury to that caused by imports which have been dumped (using the term "dumped" to mean sold "at less

than fair value"; that is, typically at less than home price in the foreign producer's country).[83]

2. *Injury must be material.*—The U.S. law justifies a dumping finding if an industry in the United States is injured. There is no qualifying word here, as in the cast of GATT, article VI, which requires a showing of material injury. Nor is the United States bound by this provision of GATT, because its adherence thereto was subject to a proviso that where its law differed from article VI, its law could prevail. Nonetheless, the Tariff Commission has stated that it will base its positive determinations only by establishment of material injury.[84]

3. *No presumption of injury from dumped imports.*—In line with the theory enunciated some years ago by the Treasury Department,[85] the Tariff Commission finds nothing unfair in sales at less than fair value. Dumped imports are not *ipso facto* injurious,[86] they are not malum per se,[87] nor do they involve ever a presumption of injury.[88]

4. *Intent of the exporter a matter of interest but not necessarily a deciding factor.*—The question whether enforcement of dumping laws should be dependent upon what are the intentions of the foreign producer has been a favorite subject of discussion among economists. At the time when the U.S. Legislature first considered the subject, there was fresh in the minds of its proponents experience with the predatory practices of pre-World War I cartels.[89] In a number of Tariff Commission no-injury decisions, there is reference to the fact that the foreign producer did not realized he was dumping,[90] or to the fact that there were extenuating circumstances.[91] In several no-injury decisions, the Commission notes the absence of predatory intent or motivation,[92] or the fact that "technical dumping" is involved,[93] or that the dumped sales were "inculpable."[94] However, none of the Commission's positive injury determinations contains any mention of "predatory" intent. The few that refer to intent, directly or by inference, indicate little more than that the foreign producer knew just what he was doing when he undertook to penetrate or remain in the market by his less than fair value prices.[95] Under these circumstances, the most that can be said is that while the Tariff Commission has considered the foreign producer's intent a matter of interest and perhaps a factor which will be weighed in the balance in reaching a decision, positive injury determinations can be made entirely without reference to what was the foreign producer's state of mind at the time the dumped imports were contracted for.

5. *Attitude of domestic industry can be a decisive factor relating to a no-injury decision.*—In the usual dumping case, domestic industry is the active complainant and gives its evidence as to the extent it claims to have been injured. However, in cases where it has expressed its opinion or preference that a positive injury determination should not be made, the Tariff Commission has ruled there was no injury.[96]

6. *Price revision ordinarily justifies a negative determination.*—As is indicated in part I above in the discussion of revision of prices, there have been many cases in which the Treasury Department has made a determination of no sales at less than fair value, where the foreign producer, after being advised its imports are coming into the United States at less than home price promptly revises its prices, or ceases exporting, so as to put an end to the practice and gives assur-

See footnotes on pp. 182–183.

ance that there will be no price discrimination in the future.[97] A few such cases have nonetheless been referred to the Tariff Commission; here the Commission's general rule has been to make no-injury determinations, as is explained in the discussion of likelihood of injury at the conclusion of this memorandum. An exception to this rule was found in a case where, despite prompt termination of imports, sales from inventory already accumulated in the United States were continuing with the result that the price of the product in the United State continued to be depressed.[98]

7. *Rationale for positive injury determinations—examples.*—The U.S. law gives no definition of the term "injured," nor has the Tariff Commission attempted to provide any single definition other than to state that the injury must be "material"[99] and by enumerating on a case-by-case basis what facts justify its positive determinations.

Positive injury determinations have been made where the result of the sales at less than fair value has been to make the U.S. producers lower their price[100] or maintain prices already lowered by previous sales at less than fair value.[101] Similarly, injury has been found in cases where U.S. producers lost sales to the imports which entered at less than fair value,[102] or where such imports were rapidly growing, absorbing almost half of the U.S. market under consideration.[103] Injury has been found where the imports entered "in sufficient volume to displace a significant part of the U.S. market" for low price bicycles.[104] Similarly, where the sales at less than fair value amounted to a "substantial portion" of domestic consumption, while two major producers were operating at a loss and two other companies were virtually foreclosed from entering the business, there was injury.[105] Likelihood of injury from sales at less than fair value was found in a case where the domestic industry was operating at only 70 percent of capacity,[106] and in another where low price imports were increasing relative to U.S. production and the foreign producer had moved to a larger plant.[107]

Typically, a necessary element in a positive injury decision is import price below domestic competition,[108] and the Commission has indicated an important factor may be whether or not the sales below fair value have been "systematic."[109] No doubt, however, it would be prepared to view with concern harmful instances of sporadic, "hit-and-run" dumping, which is traditionally viewed by some classical economists as the only kind of dumping which should be regarded as undesirable.[110]

8. *Rationale for negative injury determinations.*—No injury was found where imports at less than fair value furnished "insignificant competition," or were not a "disruptive factor,"[111] had no effect upon prices in the U.S. market,[112] or where the foreign producers gained no new customers[113] or lost customers.[114] As is indicated under heading No. 11 below, no injury has been found when the volume of imports is small. Among the reasons given for some no-injury decisions has been a record showing expansion of the U.S. industry in question.[115] rising U.S. prices in spite of the dumped imports,[116] or U.S. production insufficient to supply U.S. demand.[117] In determining no likelihood of injury from certain Iron Curtain imports, consideration was given to the inferior quality of the particular product and the ideological objections to its use.[118]

See footnotes on pp. 183–184.

9. *Meeting competition.*—A fundamental factor in the Tariff Commission's determinations has been a comparison of the price of the import with the price of the similar U.S. product. The price comparison made by the Treasury Department in determining whether there are sales at less than fair value is ordinarily on an ex-factory basis. In other words, this comparison is between what (1) a purchaser for consumption in the foreign market and (2) a U.S. importer would himself have to pay, in either case if he took delivery at the foreign producer's factory. Irrespective of how the purchase contracts may be in fact worded, the ex-factory prices used in the Treasury Department calculation do not include additional charges, such as transportation, nor, in the case of the importer, duties. In the case of an injury determination, however, it stands to reason that the important price comparison is typically between (1) the price of a given domestic product in a given U.S. commercial center and (2) the price to the importer of the competing foreign product delivered and duty paid in the same commercial center.[119] No-injury decisions have been made where the import is priced higher than the competitive domestic product, though sold at less than fair value.[120] And in a number of instances no-injury decisions have been made where the import, though sold at less than fair value, merely meets the domestic competition.[121] Such decisions have at times been justified on the ground there was "no evidence that the price cutting practice of the exporter * * * was made other than in good faith to meet the prices of comparable goods sold by domestic competitors." [122]

In four cases involving steel wire rod,[123] no-injury decisions were made where the less than fair value imports, instead of meeting the domestic competition, met the competition of imports from another country not sold at less than fair value. In these cases it should be noted that although low-price imports had "disturbed the integrated [United States] producers," the less than fair value imports had "not been a significant factor in the situation." It may have been that the one country which sold at a price not below fair value could have filled the gap which would have been caused by discontinuance of the other imports, had there been positive injury determination. Were this not the case, it is by no means sure that no-injury determinations would be justified in respect of the countries selling at less than fair value. In the steel wire rod cases, the question of who initiated the low-price imports—the foreign producers selling at fair value or the foreign producers selling at less than fair value—was held to be immaterial.[124] As might be expected, the fact that dumped imports underprice the domestic competition has been cited as an important element in injury decisions.[125] However, in an extremely significant case where the facts showed a $0.23 ex dock (east coast, United States) price for a dumped import, when the domestic product sold, delivered anywhere east of the Rockies, for $0.25,[126] the Commission made a no-injury determination. The Commission pointed out that the U.S. purchaser of the foreign product "risks uncertain and late deliveries * * *. In the absence of a price inducement, he would not generally purchase the imported product at all." [127]

10. *Scope of the domestic industry claiming to be injured.*—It must be recognized that the geographic area of the United States is suffi-

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See footnotes on pp. 184–185.

ciently large so that in certain cases substantial damage can be inflicted on industry in one part without impact on the same industry in another part. This being the case, one of the most controversial subjects to have been considered by the Tariff Commission is the scope to be given to the term "an industry in the United States." The Tariff Commission has in some instances held that a portion of the United States, rather than the entire country, could constitute the geographic segment or "competitive area" within which companies could qualify as "an industry" within the meaning of the Antidumping Act. The areas thus defined have consisted in some cases of one or two States; in others, of parts of one or more States—even, in one case, of New York City.[128]

In general, the Commission appears to adopt geographic segmentation in cases where the imports in question were physically of heavy weight, and of no great value, so that shipment to points distant from the ports at which they were entered would not be economically justified. Thus, the Commission has adopted geographic segmentation in cases involving cement and heavy steel products.[129] It refused to apply the principle in cases where "virtually all such domestic producers, in greater or lesser degree, regularly penetrate one another's 'natural' markets." [130]

In a few cases, the Commission has considered not only the industry producing the particular product whose imports are the subject of complaint but also the industry producing another product which is interchangeable with it. This has been true with reference to anatase and rutile titanium dioxide;[131] and nepheline syenite and feldspar.[132] Ordinarily, however, the Commission limits the scope of the industry. For example, work shoes are distinguished from dress shoes.[133] Indeed, the limitation is often quite strict. Examples in point are pencil sharpeners limited to novelty type,[134] tissue paper limited to directly comparable items,[135] steel wire rods similarly limited,[136] baby carriages with specific accessories,[137] and "unique multipurpose tools." [138]

11. *Volume of imports.*—In instances where the geographic segmentation principle is applied so that the injury considered typically relates only to a small group of domestic companies in a given geographic area, the volume may be small with reference to overall U.S. production and nonetheless the Tariff Commission has found injury within the meaning of the Antidumping Act. Applying this geographic segmentation principle, injury has been found in cases where imports were less than 1 percent of total domestic production.[139] On the other hand, where the geographic segmenation principle was not applied, a positive-injury decision is justified where the imports amounted to a substantial percentage of the U.S. market,[140] and no-injury decisions have been rendered where the imports were in small volume.[141]

12. *Likelihood of injury.*—The U.S. law provides for a finding of dumping not only where domestic industry has been "injured" but also when it is "likely to be" injured.[142] In a decision rendered solely on the ground of likelihood of injury, the Commission noted that the foreign producer under consideration had in the past sold at less than fair value, that its home market absorbed only one-half of its production, that its sales to the United States, though below home price, were not below cost and made "a positive contribution to net return," so that "the capacity and the incentive for making such [less than fair value]

See footnotes on pp. 185-186.

shipments remain."[143] In another, the Commission found, despite absence of present injury, a deliberate program to obtain a substantial share of the U.S. market by its lower priced dumped shipments at a time when the U.S. industry was facing increased costs. It stated that likelihood of injury "must not be based on pure conjecture nor be related to material injury that might occur at some future time." But it noted that "the Antidumping Act is designed to be preventive as well as remedial," and it determined that the facts warranted a determination of likelihood of injury.[144] On the other hand, where the less than fair value imports, though they may have been potentially injurious, are discontinued, no-injury decisions have on frequent occasions been rendered.[145] In at least some of these cases, the Commission has noted that, having been discontinued, the less than fair value imports are not likely to be resumed.[146] In one case, the no-injury decision was made despite a 9-month increase in volume of imports when there was price revision thereafter.[147]

Also, in certain of these cases, the Commission has given favorable attention to the cooperative attitude of the foreign producers in their endeavor to avoid sales at less than fair value.[148] In another case, despite evidence that the sales at less than fair value would be resumed if there was a negative injury determination, the Commission made a negative determination on the ground that there was no "clear and imminent likelihood that injury will be inflected."[149] A concurring opinion of two Commissioners in this case noted "the very limited potential for expansion of shipments" by the foreign producer. Finally, in determining that there was no injury where, despite past sales at less than fair value, these were not expected in the future, the Commission has on occasion noted the absence of any significant inventory of goods purchased at less than fair value remaining unsold.[150]

The U.S. law also provides for a finding of dumping when a domestic industry has been prevented from being established. No cases have been decided on this exact point, but an injury decision was reached in one case where two major domestic producers were operating at a loss and two other companies were "virtually foreclosed from" entering the business.[151]

PART III—STATISTICS

1. *Disposition of cases 1921–66.*[152]—Herewith is a statistical summary of decisions during the entire history of the Antidumping Act.

Final disposition of dumping complaints filed with the Treasury Department—Jan. 1, 1921–Oct. 31, 1966

1. Determinations of no dumping:	
A. Cases closed as to which there is no record of the reason for the no dumping determination	[1] 123
B. Cases closed on basis of determination of no injury	[2] 154
C. Cases closed on basis of determination of no sales at less than fair value	333
Total determinations of no dumping	610
2. Findings of Dumping	[3] 74
Total	684

[1] See footnote 153.
[2] See footnote 154.
[3] See footnote 155.
See footnotes on p. 186.

2. *Analysis of cases 1955–66.*—There follows a somewhat more detailed summary showing the record, year by year, during the period since the 1954 amendment of the Antidumping Act[156] which gave the Tariff Commission jurisdiction over injury determinations.[157] It will be noted that in approximately one-fourth of the cases the complaint received relief, either in the form of a finding of dumping or in price revision.

RECORD, YEAR BY YEAR, JAN. 1, 1955, THROUGH OCT. 31, 1966

Year	Finding of dumping	No dumping			Total
		No price discrimination	Price revision or termination of sales	No injury	
1955	1	40	5	5	51
1956	0	19	1	2	22
1957	0	21	4	2	27
1958	0	20	5	2	27
1959	0	23	13	1	37
1960	1	19	7	2	29
1961	3	25	5	5	38
1962	0	9	12	2	23
1963	1	19	4	6	30
1964	3	14	12	9	38
1965	1	12	9	1	23
1966 (1st 10 months)	1	3	4	3	11
Total	11	224	81	40	356

FOOTNOTES

[1] Antidumping Act, 46 Stat. 201 et seq., 19 U.S.C. 160 et seq.

[2] As indicated hereafter in the detailed discussion of "Price Comparison Between Fair Value and Price to the United States" Bureau of Customs regulations provide alternate methods for determining whether a case involves price discrimination where the foreign producer makes relatively few or no home market sales.

[3] 19 CFR 14.6(a).

[4] 19 CFR 14.6(b).

[5] A dumping case will not be processed if the communication is obviously frivolous or fails to show any facts indicating price discrimination.

[6] 19 CFR 14.6(d)(1)(i).

[7] 19 CFR 14.6(d)(1)(i) provides that "the case shall be closed" if the Commissioner of Customs "determines that the information is patently in error or that the merchandise is not being or is not likely to be imported in more than insignificant quantities."

[8] 19 CFR 14.6(d)(1)(i).

[9] 19 CFR 14.6(d)(1)(ii).

[10] 19 CFR 14.6(d)(3)(ii).

[11] 19 CFR 14.6(d)(2).

[12] 19 CFR 14.6(d)(3)(i).

[13] 19 CFR 14.6(d)(2), (3).

[14] 19 CFR 14.8(a).

[15] 19 CFR 14.8(a).

[16] Antidumping Act, 201(a)(c), 19 U.S.C. 160(a)(c).

[17] Antidumping Act 201(a), 19 U.S.C. 160(a).

[18] Ibid.

[19] Ibid.

[20] Antidumping Act 202(a), 19 U.S.C. 161(a).

[21] 19 CFR 14.6a.

[22] 19 CFR 14.6a(c)(2).

[23] 19 CFR 14.6a(c)(3).

[24] A number of European countries apply as an alternate "provisional measure" the system of collecting provisional dumping duties, which will be refunded

FOOTNOTES—Continued

entirely if the case results in a finding of no dumping or which will be refunded in part if there is a finding but the duties were calculated too generously.

[25] This function has, in fact, been delegated to the Commissioner of Customs.

[26] Antidumping Act 201(b), 19 U.S.C. 160(b).

[27] Ibid., 19 CFR 14.6(e), 14.9.

[28] 19 CFR 14.9(a) (first sentence).

[29] This could be because appraisement has been suspended because of a question concerning interpretation of the Tariff law not connected with dumping; or it could be because of a backlog of entries in the particular port. Ordinarily an importer who has been notified of a dumping complaint will request customs officers to give priority to appraisement of the importations which could be affected by the proceeding.

[30] Antidumping Act 202(a), 19 U.S.C. 161(a).

[31] 19 CFR 14.9(a) (second sentence).

[32] 19 CFR 14.9(b).

[33] 19 CFR 14.10(a). During the period of withholding the importer cannot be sure whether he will eventually be charged ordinary duties only or ordinary duties plus dumping duties. While this can result in diminished imports because of the uncertainty, Customs has found a substantial number of cases in which imports did not decline and some in which they actually increased during the withholding period. A test run on 29 cases showed that during the withholding period in 10 there was a clear reduction in imports; in eight there was an erratic pattern with some reduction; in eight there was no reduction; and in three there was an increase in imports.

[34] "Fair value" is nowhere defined in the law. For the first 34 years of the law's existence it was defined in customs regulations as the exact equivalent of "foreign market value," which is defined in detail in section 205 of the Antidumping Act as an essential element in the calculation of dumping duties. (TD 39165 (1922); CR 712 (1923); ibid. 791 (1931); ibid. 789 (1937); 19 CFR 14.7, footnote 15 (1944).) Starting with the publication of TD 53773 in 1955, however, detailed regulations were promulgated which set forth very specifically how fair value was to be calculated. The present regulation definition appears in 19 CFR 14.7. As is hereafter explained in the text under the heading "Fair Value Contrasted with Foreign Market Value," fair value and foreign market value are similarly, though not identically, defined.

[35] Antidumping Act 201(a), 19 U.S.C. 160(a). The law refers to merchandise which "is being, or is likely to be, sold in the United States or elsewhere at less than its fair value." The use of the present tense, "is being," is construed to refer to the period at or reasonably near to the time when the complaint was filed. Japanese titanium dioxide (second case) (note 71 below). The phrase "sold in the United States or elsewhere" is construed to mean imported into the United States either pursuant to a purchase contract made "in the United States" or a purchase contract made in some other country—i.e., "elsewhere." The term "or elsewhere" is not construed to extend the purview of the Antidumping Act to imports into countries other than the United States. This point is more fully explained in the transcript of a luncheon meeting held under the auspices of the National Council of American Importers, Inc., New York, N.Y., Thursday, Dec. 10, 1964, on p. 10. Edwin F. Rains, Esq., at that time Senior Assistant General Counsel of the Treasury Department, was asked "Why should the Treasury be concerned if the merchandise in question is being sold elsewhere than in the United States at less than fair value?" His answer was as follows: "That provision seems at first glance to be a real puzzler. It seems to suggest that we are concerned with dumping in foreign countries. Actually, it means no such thing. This section is concerned only with possible dumping in the United States. However, while under some contracts providing for shipments of goods to the United States the sales are legally considered to have been made in the United States, other such contracts are considered to have been made in the exporting country or, indeed, in a third country. The provision is designed to cover this technical point so as to allow consideration under the Antidumping Act of relevant sales whether they took place here or abroad."

[36] 19 CFR 14.7(a)(1).

[37] 19 CFR 14.7(a)(2).

[38] 19 CFR 14.7(a)(3). Sec. 206 is also found in 19 U.S.C. 165.

[39] See example 1 in footnote 15 to 19 CFR 14.7(a).

[40] See example 2 in footnote 15 to 19 CFR 14.7(a).

[41] Antidumping Act, sec. 203, 19 U.S.C. 162.

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[42] Antidumping Act, sec. 204. Exporter's sales price similarly applies to merchandise imported on consignment. The pertinent provisions of the regulations, sec. 14.7(a) (1) and (2) state that purchase price or exporter's sales price, as the case may be, shall be as defined in the Antidumping Act.

[43] Antidumping Act, sec. 202(b), 19 U.S.C. 161(b).

[44] 19 CFR 14.7(b)(1)(i).

[45] 19 CFR 14.7(b)(1)(ii).

[46] 19 CFR 14.7(a) footnote 15, example 5.

[47] This is provided for, without explanatory detail, in Antidumping Act, sec. 202(b)(2), 19 U.S.C. 161(b)(2). Further differences in circumstances specifically set forth in one or more of the act's definitions of purchase price (sec. 203, 19 U.S.C. 162), exporter's sales price (sec. 204, 19 U.S.C. 163) and foreign market value (sec. 205, U.S.C. 164) are: packaging, transportation, import duties, taxes, and commissions.

[48] English Hillman automobiles, 27 F.R. 2809 (1962); Italian Fiat automobiles (first case), ibid. 2810 (1962); United Kingdom MGA automobiles, ibid. (1927); United Kingdom Ford Anglia automobiles, ibid. (1962); West German Opel automobiles, ibid. (1962); United Kingdom Vauxhall automobiles, 27 F.R. 2811 (1962); French Renault automobiles, 28 ibid. 4675 (1963); Italian Fiat automobiles (second case) 29 ibid. 8234 (1964).

[49] 19 CFR 14.7(b)(2).

[50] See discussion in 58 the American Journal of International Law 915, 922–923.

[51] 19 CFR 14.7(b)(2).

[52] Ibid.

[53] French steel pipe, 29 F.R. 6653 (1964).

[54] 19 CFR 14.7(b)(3).

[55] The wording of the law is "such" merchandise, which is construed to mean "identical" merchandise. Antidumping Act, sec. 212(3), 19 U.S.C. 171(3).

[56] Antidumping Act, sec. 212(3)(A), 19 U.S.C. 171(3)(A).

[57] Ibid. sec. 212(3)(B), 19 U.S.C. 171(3)(B).

[58] Ibid. sec. 212(3)(C), 19 U.S.C. 171(3)(C).

[59] Ibid. sec. 212(3)(D), 19 U.S.C. 171(3)(D). The law distinguishes what might be designated "more similar" and "less similar" merchandise. "More similar" merchandise—if one uses this designation (which is not found in the law) for the differentiation—is "like the merchandise under consideration *in component material* * * * and in the purposes for which used," whereas the "less similar" merchandise is merely "like the merchandise under consideration in the purposes for which used." (Italic supplied.) In addition, "more similar" merchandise is "approximately equal in commercial value to the merchandise under consideration," whereas the "less similar" merchandise need only be merchandise "which the Secretary * * * determines may reasonably be compared * * * with merchandise under consideration." Antidumping Act 212(3) (C), (E), 19 U.S.C. 171(3)(C), (E). The comparison is with the "less similar" merchandise only if "more similar" merchandise cannot be found.

[60] West German luggage locks, 24 F.R. 3121 (1959); Danish luncheon meats, 28 F.R. 9848 (1963); French steel wire rods, 28 F.R. 5392 (1963); Italian steel wire mesh, 31 F.R. 13448 (1966). The normal rule, basing fair value on other producers' home price, was applied (to cite only one example) in Belgian steel wire mesh, 24 F.R. 9218 (1959).

[61] 19 CFR 14.7(a) (1), (2).

[62] 19 CFR 14.7(a)(2), as amended in 1955, 1960, and 1965.

[63] 19 CFR 14.7(b)(4). The background memorandum relative to the amendments to the regulations under the Antidumping Act, which was issued by the Treasury Department, December 4, 1964, cites an offer of sale of heavy winter overcoats for local consumption in a tropical country as an example of an offer to which no weight should be given.

[64] 19 CFR 14.7(b)(6). This follows the wording of Antidumping Act, sec. 205, in regard to calculation of foreign market value.

[65] 19 CFR 14.7(b)(5), Antidumping Act, sec. 205, 19 U.S.C. 164.

[66] 19 CFR 14.7(a), footnote 15.

[67] 19 CFR 14.7(b)(7). Among many examples of cases involving use of weighted average may be cited French steel wire mesh, 28 F.R. 6408 (1963); and involving use of preponderant price, Japanese monosodium glutamate, 24 F.R. 10232 (1959).

[68] 19 CFR 14.7(b)(8). Just how much will be considered a sufficient or an insufficient quantity to qualify a case for consideration will depend upon the particular merchandise and its market. With certain products variations in price are

FOOTNOTES--Continued

a frequent occurrence, and fairly substantial quantities can be absorbed at a dumping price without harm being done. With others, even the suggestion of a change can produce chaotic results. This provision of the regulations is not construed to deter proceedings under the Antidumping Act where there are likely to be sales in quantities which are more than insignificant, even though such sales have not, in fact, been made.

[69] Ibid. This provision has been used chiefly in cases where a small dumping margin has appeared occasionally rather than consistently. Ferrochromium, Norway—30 F.R. 13585 (1965); ferrochromium, Sweden—30 F.R. 9011 (1965); welded wire mesh, Belgium—30 F.R. 7198 (1965); fertilizer, Canada—30 F.R. 3275 (1965); litharge, Mexico—29 F.R. 14798 (1964); wire rope, United Kingdom—29 F.R. 13352 (1964); cigar bands, Netherlands—29 F.R. 8016 (1964). In French titanium dioxide, 28 F.R. 10467 (1963), the Tariff Commission found no injury where the import was priced at 23 cents as against a domestic price of 25 cents, stating that unless there was a price inducement the U.S. purchaser "would not generally purchase the import at all." However, Treasury has several times made determinations of sales at less than fair value where the dumping margin was as small as this. Examples are: Vital wheat gluten, Canada—29 F.R. 1701; steel wire rods, Luxembourg—28 F.R. 2027; rayon staple fiber, Belgium—26 F.R. 1671; rayon staple fiber, France—26 F.R. 1671; nepheline syenite, Canada—25 F.R. 4875.

[69a] Report of Secretary of the Treasury to the Congress on the "Operation and Effectiveness of the Antidumping Act," published in hearings before House Committee on Ways and Means on amendments to the Antidumping Act, July 29, 1957, pp. 16, 17; testimony of Hon. David W. Kendall, Assistant Secretary of the Treasury, before Committee on Ways and Means, House of Representatives, on amendments to the Antidumping Act, ibid. 43, 44. In Czech leather work shoes, 31 F.R. 10906 (1966), the Tariff Commission stated that sales at less than fair value are "not made unlawful by the Antidumping Act. They are subject to additional duty if they are found to be injurious by the Tariff Commission." See below under heading number 3, "No presumption of injury from dumped imports," in the discussion of material injury as defined by determinations of the U.S. Tariff Commission.

[70] 19 CFR 14.7(b)(9), which authorizes dismissing a case where there is price revision or cessation of imports or other changed circumstances justifying such action. The "other changed circumstances"—other than price revision or cessation of sales to the United States—justifying closing out a case are not specified. Several cases have been closed following withdrawal of the complaint. Examples are: United Kingdom steel pipe, 29 F.R. 5840 (1964); West German steel pipe, ibid. 2358 (1964); French steel pipe, ibid. 6653 (1964); Japanese steel pipe, ibid. 10113 (1964). A Polish bicycle case, 30 F.R. 6660 (1965), was closed on a technical determination of no sales at less than fair value, after a no-injury determination in a case concerning Hungarian bicycles involving analogous circumstances with respect to the bicycles imported from Poland made it "no longer appropriate" to continue the investigation.

[71] Japanese titanium dioxide, 31 F.R. 3198 (1966). This determination of sales at less than fair value was justified on the ground that the case might involve "hit and run" dumping, and that the assurance given of no further sales at less than fair value was not so broad in its terms as to cover the situation if the case were referred to the Tariff Commission and the Commission were to render a no-injury decision. In a subsequent case which involved very large orders which were promptly canceled after the filing of complaint, the assurance that there would be no further price discrimination was worded so as to hold good even if the case were referred to the Tariff Commission and a no-injury determination made by the Commission. No reference to the Commission was in fact made: after receiving the assurance, the case was closed on a determination of no sales at less than fair value. United Kingdom whole frozen eggs, 31 F.R. 7764 (1966).

[72] Luxembourg steel wire rods, 28 F.R. 2027 (1963); Belgian steel wire rods, ibid. F.R. 2747; German steel wire rods, ibid. F.R. 3364; French steel wire rods, ibid. F.R. 5392; Japanese steel wire rods, ibid. F.R. 4636. Citations of the Tariff Commission decisions in the four European cases are given in note 123 below.

[73] 19 CFR 14.8.

[74] T.D. 55286.

[75] 19 CFR 14.9(f).

[76] As is the case elsewhere in this article, reference to home price means home price if this is the appropriate basis for calculating fair value or foreign market

FOOTNOTES—Continued

value, as the case may be. If it is not the appropriate basis, then reference should, of course, be made to third country price or constructed value, whichever may be applicable according to sec. 19 CFR 14.7(a) (1), (2), (3) (for fair value) or Antidumping Act sec. 205 (for foreign market value).

[77] 19 CFR 14.7(b)(7). Should the prices in the sales to the United States vary, with some above and some below the home price weighted average or preponderance, then the only question will be whether the sales below such home price are sufficient in volume or in differential to be worthy of consideration. Reference here would be made to 19 CFR 14.7(b)(8), which states that "Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value (i.e., the dumping margin) is more than insignificant."

[78] Antidumping Act 205, 19 U.S.C. 164. As explained in the "except that" clause at the close of the almost unbelievably complicated first sentence, this is the case where importer and exporter are dealing at arm's length and price to the United States is calculated in terms of "purchase price" pursuant to sec. 203 of the Antidumping Act, 19 U.S.C. 162. Theoretically, one can say that this would not be the case should the purchase be made after the date of exportation—in that event foreign market value would be calculated as of the date of exportation; however, custom officials advise that in practice the purchase is always construed to have been made prior to exportation. If the importer and exporter are related one to the other within the meaning of sec. 207 of the Antidumping Act, 19 U.S.C. 166, then the price to the United States will be calculated in terms of "exporter's sales price" pursuant to sec. 204 of the Antidumping Act, 19 U.S.C. 163, and this may be compared with foreign market value calculated as of the date of exportation, as set forth in the opening statement of sec. 205 of the Antidumping Act, 19 U.S.C. 164. If there is no basis for calculating foreign market value—which will be the case if there are no home or third country sales or offers—then the price to the United States will be compared with constructed value, calculated in accordance with sec. 206 of the Antidumping Act, 19 U.S.C. 165, as of a date sufficiently in advance of the time of exportation to permit the merchandise to be constructed. In the Swedish hardboard case (1954), foreign market value was calculated on the basis of the price at which the preponderant quantity was sold when it was found that there were several sales on the same day. There is no provision of the law to cover such a situation, and the provision in the regulations relating to sales at varying quantities relates to fair value, not foreign market value.

In this connection, it may be noted that until the 1958 amendment of the Antidumping Act foreign market value was calculated on the basis of the highest priced sale, if more than one sale was eligible for consideration. The reason for this was that foreign market value was defined in terms of a "freely available" price, and it was considered that among several prices the only one which could come under this definition was the highest, because presumably anyone would be able to buy at this price. The definition was abandoned at the time of the 1958 amendment when it had become a loophole for avoiding home price comparisons by the tactic of making all home sales subject to restrictions and thus not freely available. Foreign market value in such event had to be calculated with reference to third country sales which were lower priced than the home sales. See discussion in the February 1, 1957, Report of Secretary Humphrey on the Operation and Effectiveness of the Antidumping Act, printed in Hearings before the Committee on Ways and Means, House of Representatives, 85th Cong., first sess., on H.R. 6006 (1957), pp. 18, 19.

GATT article VI sets forth a highest price standard when several third country prices are eligible for calculation of "normal price," in line with the U.S. law and practice at the time of its adoption. No provision is made in article VI as to what should be the basis when there are several home prices which are eligible for calculation of normal value.

[79] Antidumping Act, 201(b), 19 U.S.C. 160(b).

[80] To his loss, because otherwise the amount of the dumping margin would go into his own pocket.

[81] Provision is now made in section 14.12 of the regulations for modification or revocation of a dumping finding on application to the Commissioner of Customs, supported by "detailed information concerning any change in circumstances or practice which has obtained for a reasonable period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer

FOOTNOTES—Continued

exists with respect to all or any part of the merchandise covered thereby." Should the Commissioner regard the application favorably a notice of intent to modify or revoke will be published in the Federal Register and interested parties, including, of course, the complainant, be given a chance to comment before decision is reached. As a general rule, consideration will not be given to revocation until 2 years have elapsed since the last sale at less than fair value. During the 45-year history of the Antidumping Act some 73 findings of dumping have been made. Of these nine remain in effect. They are:

Portland cement from Sweden, Apr. 14, 1961.
Portland cement from Belgium, July 12, 1961.
Portland cement from Portugal, Oct. 31, 1961.
Portland cement from the Dominican Republic, Apr. 30, 1963.
Chromic acid from Australia, Mar. 12, 1964.
Steel reinforcing bars from Canada, Apr. 17, 1964.
Carbon steel bars and structural shapes from Canada, Sept. 17, 1964.
Azobisformamide from Japan, May 28, 1965.
Steel jacks from Canada, Sept. 1, 1966.

[82] 21 Fed. Reg. 6395; 21 ibid. 7495; 25 ibid. 10691; 25 ibid. 159; 25 ibid. 3824; 25 ibid. 8506; 29 ibid. 180.

[83] Antidumping Act, 1921, 46 Stat. 201 et seq., 19 U.S.C. 160 et seq. Canadian vital wheat gluten, 29 Fed. Reg. 5921 (1964); Canadian carbon steel bars and shapes, 29 Fed. Reg. 12599 (1964).

[84] French titanium dioxide, 28 Fed. Reg. 10467 (1963); Japanese white Portland cement, 29 ibid. 9636 (1964); Canadian carbon steel bars and shapes (note 83 above).

[85] Testimony of Hon. David W. Kendall, Assistant Secretary of the Treasury, before Committee on Ways and Means, House of Representatives, on amendments to the Antidumping Act, July 29, 1957, p. 43.

[86] Cuban rayon staple fiber, 26 Fed. Reg. 4478 (1961); German rayon staple fiber, 26 ibid. 6537; French titanium dioxide (note 84 above).

[87] French titanium dioxide (note 84 above).

[88] French titanium dioxide (note 84 above); Japanese white Portland cement (note 84 above).

[89] See 1919 report of the alien property custodian, A. Mitchell Palmer, citing situations involving predatory price cutting of foreign produced industrial chemicals.

[90] French rayon staple fiber (first case), 24 Fed. Reg. 10092 (1959). Similarly, in a no-injury decision involving Canadian vital wheat gluten (note 83 above), the Tariff Commission noted that "if the Canadian producer had been fully aware of the exact calculations used by Treasury in determining sales at less than fair value, he might well have avoided such sales." See also Belgian rayon staple fiber (note 93 below) and French rayon staple fiber (1961) ibid., where an anticipated quantity discount expected to be given the importer became inapplicable because anticipated volume of sales did not materialize.

[91] Canadian cement, 24 Fed. Reg. 10267 (1960). Here shipments briefly had to be made by rail, with higher freight charges, rather than by water, resulting in sales temporarily below fair value on an ex-factory basis, though no change in the delivered price to the U.S. importer.

[92] East German potash, Tariff Commission press release dated Feb. 25, 1955; Finnish tissue paper, 23 Fed. Reg. 8891 (1958); Norwegian tissue paper, ibid. 8892; French rayon staple fiber (note 90 above); Canadian cement (note 91 above); Canadian nepheline syenite, 25 ibid. 8394 (1960); Canadian nepheline syenite (second case), 26 Fed Reg. 956 (1961); Dominican cement (first case), 27 ibid. 3872 (1962); Australian cast iron soil pipe, 29 ibid. 5253 (1964) (concurring opinion of two Commissioners). See Viner, "Dumping, A Problem in International Trade" (1923), p. 147: "Where the dumping is activated by predatory motives, the suppression of such dumping is clearly and unqualifiedly consistent with free trade principles, just as the suppression of unfair competition in domestic trade is wholly reconcilable with the general argument for free and unhampered competition in such trade." Predatory dumping is regarded by Dr. Viner as "the most objectionable form of dumping from the point of view of the country dumped upon" (ibid., p. 26). However, Dr. Viner, who had been an active participant in the drafting of the Antidumping Act, 1921, at no point states that this is the only form of dumping which should be actionable under the U.S. law. (See discussion of the Antidumping Act, 1921, ibid. pp. 258–265.)

FOOTNOTES—Continued

[93] French rayon staple fiber (1959) (note 90 above); Belgian rayon staple fiber, 26 ibid. 4477 (1961); French rayon staple fiber (second case), 26 ibid. 4428 (1961); Canadian cement, 24 ibid. 10267 (1960); Cuban rayon staple fiber, 26 ibid. 4478 (1961); German rayon staple fiber, ibid. 6537.

[94] French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); Cuban rayon staple fiber (ibid.); German rayon staple fiber (ibid.).

[95] The following positive injury decisions can be considered to have mentioned or implied mention of intent. In Czech bicycles, 25 Fed. Reg. 9782 (1960) the Commission found "indication of an intent on the part of the exporting organization to continue its practice of selling the bicycles at less than fair value." In Portuguese cement, 26 Fed. Reg. 10010 (1961) the importers had successively brought in cement from a number of countries at prices which were less than fair value or were, at the time the case was decided, suspected to be less than fair value. Under these circumstances, the Commission stated "the imports were not accidental or technical in nature but on the contrary were designed to make the statute inoperative." In Canadian carbon steel bars (note 88 above) the foreign producer, unable to compete without price discrimination and faced with an ample supply of U.S. bars, "priced his goods to the importer far below the level that was necessary to make his products reasonably price competitive. The successful penetration of the market was therefore due directly to the less-than-fair-value pricing policy." In Canadian steel jacks, 31 Fed. Reg. 11197 (1966), likelihood of injury was based in part on the "attitude" of the foreign producer whose "program of selling below fair value was deliberately undertaken and calculated to obtain by this means a substantial share of the U.S. market for the tools in question."

[96] South African hardboard, Treasury Department press release, Dec. 27, 1957; Canadian hardboard, ibid.; French rayon staple fiber (1959) (note 90 above). The decision in the last-named case includes the following:

"The domestic industry, in its written statement, discounted any basis for a finding that the industry is being or is likely to be injured in the circumstances of this case. The domestic producers further stated that for the industry to urge a finding of injury in this case would be only vindictive and that the Antidumping Act was intended to be preventive rather than punitive. The Commission agrees."

See also United Kingdom plastic sheet, 29 Fed. Reg. 13354 (1964), a no-injury decision in which the Commission commented on the failure of any domestic industry representative to appear at the Commission's public hearing on the case.

[97] As indicated in pt. III of this paper, 81 cases have been thus closed since 1955 with findings of no dumping after price revision (or after shipments had been discontinued). See also comment of Commissioner Fenn on Japanese white portland cement (note 84 above): "Though shipments at less than fair value did markedly increase during each of the first three quarters of 1963, a fact of some concern, I see no reason for refusing to take at face value the Japanese assurance that any future sales will be made at fair value."

[98] Australian chromic acid, 29 Fed. Reg. 2919 (1964).

[99] See cases cited note 84 above.

[100] Australian chromic acid (note 98 above) ("triggered a price war"); Canadian steel reinforcing bars, 29 Fed. Reg. 2839 (1964) (depressed price levels from 9 to 24 percent).

[101] Swedish cement, 26 Fed. Reg. 3002 (1961); Belgian cement, ibid, 5102.

[102] Swedish cement (note 101 above); Belgian cement (ibid); Portuguese cement (note 95 above). In each of these cases, the sales of the foreign product were described as "substantial" with reference to the geographically segmented portion of the U.S. market (for explanation of geographic segmentation see discussion in text under "10. Scope of Domestic Industry Claiming to be Injured" and cases cited in note 128). With reference to the entire U.S. market, the volume of sales in these cases would presumably have been considered insignificant. In justifying its no-injury decision in the Canadian cement case (note 91 above), the Commission was careful to explain that "the quantity of cement sold 'at less than fair value' was not only insignificant in comparison with the total domestic production of cement but also exceedingly small in comparison with either the production or sales of cement in the market area in which the aforementioned imported cement was sold."

[103] Australian chronic acid (note 98 above). However, the fact that the quantity of imports which entered at less than fair value was "substantial and growing"

FOOTNOTES—Continued

did not justify a positive determination where the other factors in the picture (see note 124 below) did not add up to what the Commission considered injury in the Canadian vital wheat gluten case (note 83 above).

[104] Czech bicycles (note 95 above).

[105] Japanese azobisformamide, 30 F.R. 6130 (1965). In Canadian steel jacks (1966) (note 95 above) an element in the likelihood of injury determination was increased cost to domestic industry due to a wage increase.

[106] Dominican cement (second case), 28 F.R. 4047 (1963).

[107] Canadian steel jacks (1966) (note 95 above).

[108] Czech bicycles (note 95 above); Australian chromic acid (note 98 above); Canadian steel reinforcing bars (note 100 above) (the import prices "grossly lower" than the domestic competition).

[109] French rayon staple fiber (1959) (note 90 above); Canadian nepheline syenite (1961) (note 92 above).

[110] See, for example, Haberler, "The Theory of International Trade," 314 (1936): "Dumping is harmful only when it occurs in spasms and each spasm lasts long enough to bring about a shifting of production in the importing country which must be reversed when the cheap imports cease." Viner, op. cit. note 92 above, is the same general effect: "The chief menace of dumping from the point of view of the importing country arises out of intermittent or sh t-run dumping." Despite the possibility of hit-and-run dumping referred to in Treasury's decision of sales at less than fair value in the second Japanese titanium dioxide case (note 35 above), the Tariff Commission found no indication of injury in its consideration of the case (note 115 below).

[111] Canadian peat moss, 29 F.R. 4843 (1964); Australian cast iron soil pipe (note 92 above); Japanese titanium dioxide (first case), 29 F.R. 5479 (1964).

[112] Japanese titanium dioxide (note 111 above).

[113] French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); German rayon staple fiber (ibid.).

[114] Czech sheet glass, 27 F.R. 11568 (1962).

[115] Canadian nepheline syenite (1961) (note 92 above); French titanium dioxide (note 83 above); Japanese titanium dioxide (1964) (note 111 above); Hungarian bicycles, 30 F.R. 3341 (1965); German titanium dioxide, 31 F.R. 5852 (1966); Japanese titanium dioxide (second case), 31 F.R. 7495 (1966); Canadian steel jacks (1966) (note 95 above)—no present injury, despite decline in net return on sales.

[116] U.S.S.R. window glass, 29 F.R. 13581 (1964).

[117] South African hard board (note 96 above); Canadian vital wheat gluten (note 83 above); Czech leather workshoes, 31 F.R. 10906 (1966) "U.S. production and sales have increased * * * to the point where domestic suppliers have been hard put to fulfill demand." See also United Kingdom plastic sheet (note 96 above) where the domestic producers all operated at or near full capacity.

[118] U.S.S.R. window glass (note 116 above); Czech window glass, 29 F.R. 15549 (1964). In Czech leather workshoes (note 117 above) reference was made solely to reluctance of distributors to carry a Communist product; in Japanese titanium dioxide (1966) (note 115 above) reference was made solely to the poorer quality of the import, which made it difficult for the importers to dispose of it.

[119] The price spread between the (less than fair value) imports from France and domestic TiO2 is not governed by the margin of difference determined by the Treasury for French TiO2 French titanium dioxide (note 84 above). See also Australian chromic acid, 29 F.R. 2919 (1964), where the foreign product undersold every domestic product on a delivered price basis. It is true that the margin of difference is stated to be one of the 10 different factors which the Commission took into account in making its no-injury decisions in the European steel wire rod cases (note 123 below), but it seems reasonable to suppose that this margin at most would be of secondary importance.

[120] German pencil sharpeners, Treasury Department press release, Aug. 29, 1955; Finnish tissue paper (note 92 above); Norwegian tissue paper (ibid); Czech sheet glass, 27 F.R. 11568 (1962); Canadian vital wheat gluten (note 83 above).

[121] South African hard board (note 96 above); Canadian hard board (ibid.); Finnish tissue paper (note 92 above); Norwegian tissue paper (ibid.); French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); German rayon staple fiber (ibid.); Cuban rayon staple fiber (ibid.); Canadian technical vanillin, 28 F.R. 4048 (1963). In a case involving Japanese plastic

FOOTNOTES—Continued

baby carriers, 29 F.R. 13990 (1964), there was no injury when the dumped imports sold on a delivered, duty-paid basis in the upper range of the U.S. producers' prices.

[122] German rayon staple fiber (note 93 above); Cuban rayon stample fiber (ibid.); cf. Robinson-Patman law, 38 Stat. 730, 49 Stat. 1526, 15 U.S.C. 13, which provides that a seller may rebut a prima facie case of price discrimination in domestic commerce by showing that his lower price * * * was made in good faith to meet an equally low price of a competitor. It may be noted that freight absorption is a common practice in U.S. domestic market pricing, but it is not allowed by Treasury Department in its price discrimination determinations.

[123] Four European steel wire rod cases: Luxembourg steel wire rods, 28 F.R. 6476 (1963); Belgian steel wire rods, ibid. 6476; German steel wire rods, ibid. 6006; French steel wire rods, ibid. 7308. See also Japanese titanium dioxide (1964) (note 111 above).

[124] Four European steel wire rod cases (note 123 above). Similarly, a no-injury decision was made in the Canadian vital wheat gluten case (note 83 above) where the margin of difference was small and was not a significant factor in enabling the Canadian product to penetrate the domestic market.

[125] See cases cited, note 108 above.

[126] In view of rail or trucking charges against the import from U.S. dock to points of delivery within the United States, the 2-cent differential would, for inland sales, be reduced or could disappear.

[127] French titanium dioxide (note 83 above). The two Japanese titanium dioxide cases (notes 111 and 115 above) and the German titanium dioxide case (note 115 above) involved similar facts. See also discussion in the text above of no-injury determinations because of inferior quality and ideological objections in the U.S.S.R. and Czech window glass cases (notes 116 and 118 above).

[128] United Kingdom cast iron soil pipe, Treasury Department press release, Oct. 27, 1955 (California); Swedish cement (note 101 above) (North Atlantic seaboard of three States); Belgian cement (ibid.) (east coast of Florida); Dominican cement (1962) (note 92 above) (Puerto Rico and Metropolitan New York City); Dominican cement (second case) 28 F.R. 4047 (1963) (Metropolitan New York City); Canadian steel reinforcing bars (note 100 above) (Oregon and Washington, accounting for 5 percent of domestic consumption); Canadian carbon steel bars and shapes (note 83 above) (Northwestern States where three domestic producers protected by high transportation costs sold 95 percent of their product); U.S.S.R. window glass (note 116 above) (a no-injury decision—North Atlantic States).

[129] See cases cited, note 128 above. While in the Australian chromic acid case (note 98 above) the injury decision was based on imports into the west coast, this can scarcely be considered a geographic segmentation case—rather, the decision was justified on the ground that a market which accounted for 10 percent of the total domestic consumption was a major U.S. market, and it was unnecessary to consider the effect or lack of effect on U.S. production elsewhere.

[130] Four European steel wire rod cases (note 123 above). In Czech leather workshoes (note 117 above) it was noted that workshoes are sold nationally and the industry was treated on a countrywide basis. In German titanium dioxide (note 115 above) the domestic complainant's argument that it be considered an industry apart from other domestic producers of the same product was found to have no validity in view of the homogeneity of the product, and the uniform pricing without regard to geographic location of the domestic plants or their customers.

[131] Japanese titanium dioxide (note 111 above).

[132] Canadian nepheline syenite (note 92 above).

[133] Czech leather workshoes (note 117 above). Here it was noted that "machines for producing workshoes are for the most part not interchangeable with those for producing dress shoes."

[134] German pencil sharpeners (note 120 above).

[135] Finnish tissue paper (note 92 above); Norwegian tissue paper (ibid.).

[136] Four European steel wire rod cases (note 123 above).

[137] Japanese plastic baby carriers (note 121 above): "a molded one-piece plastic shell, a padded cushion, safety straps, rattle balls on a cord or plastic straps, and a wire stand that can be positioned to permit the infant to be placed in various reclining or sitting positions."

FOOTNOTES—Continued

[138] Canadian steel jacks (note 95 above). These were produced by one company only; they were designed for use not only as jacks, but as fence stretchers and devices for performing a variety of lifting, pushing, and pulling functions.

[139] United Kingdom cast iron soil pipe (note 128 above). This is understood to have been the situation also in the Portuguese, Swedish, Belgian, and Dominican cement cases (notes 95, 101, and 128 above). (See discussion in note 102 above.)

[140] In Czech bicycles (note 95 above), the imports captured 28 percent of the domestic market. It may be noted that in the Australian chromic acid case (note 98 above), the entire west coast market was considered—a market of considerable size—and the imports represented 14 percent of it.

[141] German pencil sharpeners (note 120 above)—imports, small in number; German titanium dioxide (note 115 above) volume, very minimal. No-injury determinations have been made where the imports were a small percentage of U.S. consumption: Australian cast iron soil pipe (note 92 above) an insignificant quantity in comparison therewith; Japanese titanium dioxide (1966) (note 115 above) a small fraction of 1 percent; Norwegian tissue paper (note 92 above) 1 percent; U.S.S.R. window glass (note 116 above) 1 percent; Japanese white portland cement (note 83 above) 1 percent; Finnish tissue paper (note 82 above) 2 percent; Czech leather workshoes (note 117 above) less than 4 percent. No-injury determinations have been made where the imports were a small percentage of total imports: Netherlands nicotine sulphate, Treasury Department press release, Aug. 29, 1955—3 percent, or where the imports were a small percentage of the U.S. production; Hungarian bicycles (note 115 above) 0.5 percent; Czech window glass (note 118 above) 0.4 percent; United Kingdom plastic sheet (note 96 above) 1 percent; Finnish tissue paper, supra, and Norwegian tissue paper, supra—a very small proportion.

[142] The Tariff Commission's mission, as set forth in sec. 201(a) of the Antidumping Act is "to determine * * * whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States." "Such merchandise" refers to "a class or kind of foreign merchandise" which the Treasury "determines * * * is being, or is likely to be, sold in the United States or elsewhere at less than its fair value."

[143] Dominican cement (1963) (note 128 above). "Similar conditions" were found to "prevail" in the Canadian steel reinforcing bars case (note 100 above).

[144] Canadian steel jacks (note 95 above).

[145] Canadian cement (note 93 above); French rayon staple fiber (1959) (ibid.); French rayon staple fiber (1961) (ibid.); Belgian rayon staple fiber (ibid.); Canadian nepheline syenite (1960) (note 128 above); Canadian nepheline syenite (1961) (note 92 above); Canadian peat moss (note 111 above). See discussion under heading No. 6, "Price Revision Ordinarily Justifies a Negative Determination."

[146] Canadian cement (note 93 above); Canadian nepheline syenite (1961) (note 92 above); French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); Dominican cement (1962) (note 92 above); Canadian vital wheat gluten (note 84 above).

[147] Japanese white portland cement (note 83 above; see also note 97 above).

[148] French rayon staple fiber (1959) (note 90 above); French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); Canadian nepheline syenite (1961) (note 92 above); Dominican cement (1962) (ibid.).

[149] Australian cast iron soil pipe (note 92 above).

[150] French rayon staple fiber (1961) (note 93 above); Belgian rayon staple fiber (ibid.); German rayon staple fiber (ibid.); Dominican cement (1962) (note 92 above). The reverse situation, as noted above in connection with heading No. 6, was found in the Australian chromic acid case (note 98 above).

[151] Japanese azobisformamide (note 105 above).

[152] Through Oct. 31, 1966.

[153] Most of these cases were closed during the period 1921–33. It is understood there may have been further determinations of no dumping during this period which were not published as Treasury decisions, there having been no requirement of publication in those days.

[154] Of this number, 40 were Tariff Commission determinations, made since 1954.

[155] See table following footnotes.

[156] Sept. 1, 1954, ch. 1213, title III, sec. 301; 68 Stat. 1138.

[157] There were no Tariff Commission determinations in 1954.

FINAL DISPOSITION OF DUMPING CASES CLOSED, 1921-OCT. 31, 1966

Commodity	Country	Date of finding
Cases resulting in a finding of dumping:		
Paper, goatskin parchment	England	Oct. 11, 1921
Embroideries, cotton	Switzerland	Nov. 1, 1921
Hamburgs	Austria	Jan. 13, 1922
Do	Switzerland	Feb. 25, 1922
Chair seats, veneer	Canada	Mar. 3, 1922
Tomatoes, peeled, in tins	Italy	Mar. 4, 1922
Rugs	Canada	Mar. 6, 1922
Paper, tissue	England	Mar. 13, 1922
Glassware, cut	do	Mar. 28, 1922
Plates, dry, photo	do	Mar. 31, 1922
Paper, sheathing	British Columbia	Apr. 18, 1922
Flour, wheat	Canada	Apr. 22, 1922
Glasses, high pressure tube gage	England	May 19, 1922
Syringes, fountain	Canada	May 26, 1922
Rasberries, canned, red	Ontario, Canada	June 19, 1922
Iron oxide	Quebec, Canada	July 26, 1922
Leather, sole	Ontario, Canada	Aug. 3, 1922
Brick, plastic	Quebec, Canada	Oct. 13, 1922
Earthenware, cereal sets	Czechoslovakia	Oct. 16, 1922
Chinaware, decorated jugs	do	Oct. 28, 1922
Canvas	England	Oct. 30, 1922
Roofing, deadening felt	British Columbia	Nov. 4, 1922
Chinaware, cereal sets	Czechoslovakia	Dec. 14, 1922
Balls, rubber	Germany	Jan. 20, 1923
Castings, No. 1 spuds, malleable	Ontario, Canada	Feb. 26, 1923
Ferrosilicon	do	Mar. 23, 1923
Veneers or thin lumber	Quebec, Canada	Apr. 16, 1923
Calcium carbide	do	May 16, 1923
Iron, pig	Ontario, Canada	Mar. 25, 1925
Paper, white sulfite wrapping, or bag	Germany	July 1, 1925
Strychnine	Switzerland	July 28, 1925
Magnesium chloride, fused	Germany	Aug. 27, 1925
Pins, common and safety	do	July 19, 1926
Glass, colored antique wd	England	Sept. 9, 1926
Iron, pig	Germany	Jan. 29, 1927
Phosphate rock	Morocco	Feb. 1, 1928
Carbons, lighting	Germany	Sept. 18, 1928
Butyl acetate	do	Feb. 19, 1930
Matches, safety	Soviet Russia	May 19, 1930
Do	Finland	Mar. 23, 1930
Do	Sweden	Do.
Do	Austria	Do.
Do	Latvia	Do.
Do	Holland	Do.
Do	Norway	Do.
Do	Poland	Do.
Do	Estonia	Do.
Ammonium sulfate	Poland	Aug. 13, 1932
Do	Germany	Do.
Do	Belgium	Do.
Carbons, lighting	France	May 12, 1933
Tacks, thumb, celluloid covered	Germany	Sept. 12, 1933
Acid, stearic	Holland	Do.
Footwear, rubber-soled, fabric-topped	Japan	Do.
Lamps, electric	do	Do.
Fencing and netting, woven-wire	Germany	Jan. 11, 1934
Berets, wool-knitted	France	Dec. 12, 1939
Ribbon fly catchers	United Kingdom	Do.
Do	Japan	Do.
Do	Belgium	Do.
Do	Germany	Do.
Glass frostings	do	[1] Sept. 20, 1940
Glass frostings (amendment to Sept. 20, 1940, finding)	do	[1] Aug. 1, 1942
Hardboard	Sweden	Aug. 26, 1954
Cast iron soil pipe other than "American pattern"	United Kingdom	Oct. 27, 1955
Bicycles	Czechoslovakia	Oct. 12, 1960
Cement, portland	Sweden	Apr. 14, 1961
Do	Belgium	July 12, 1961
Do	Portugal	Oct. 31, 1961
Do	Dominican Republic	Apr. 30, 1963
Acid, chromic	Australia	Mar. 12, 1964
Bars, steel reinforcing	Canada	Apr. 17, 1964
Bars, carbon steel and structural shapes	do	Sept. 17, 1964
Azobisformamide	Japan	May 28, 1965
Steel jacks	Canada	Sept. 1, 1966

[1] Sept. 20, 1940, and Aug. 1, 1942, considered as 1 finding of dumping.

STATEMENT OF THE CEMENT INDUSTRY COMMITTEE FOR TARIFF AND ANTIDUMPING, SUBMITTED BY DONALD HISS OF COVINGTON & BURLING, WASHINGTON, D.C.

TOM VAIL, Esq.,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. VAIL: This statement is submitted to the Committee on Finance, in conjunction with its legislative oversight review of U.S. trade policies, on behalf of the Cement Industry Committee for Tariff and Antidumping. The Cement Industry Committee consists of 35 member companies, which constitute approximately 90 percent of the total U.S. cement capacity. A list of the committee members is attached hereto.

The cement industry is primarily concerned with the U.S. policy with respect to the unfair trade practice of dumping, which was one of the subjects suggested for exploration in the Finance Committee's press release of September 27, 1967. The cement industry has in recent years suffered serious injury from dumped cement imports. As a result, the industry has had considerable experience under the U.S. Antidumping Act of 1921; it filed a total of 19 antidumping complaints during the period 1958 through 1965. Furthermore, the industry has been active for several years in a concerted industry effort to amend the Antidumping Act.

The Cement Industry Committee would like to take this opportunity to reaffirm its full support for legislation to amend the Antidumping Act of 1921. The cement industry has publicly endorsed and supported S. 1726, which has been introduced by Senator Vance Hartke of Indiana, a member of the Finance Committee, and 40 bipartisan cosponsors in the Senate. The Hartke bill is designed to strengthen and tighten the Antidumping Act so that it will provide meaningful and effective relief to domestic industries injured by the unfair trade practice of dumping. The critical "injury" and "industry" provisions of the act have not been updated since 1921, and the result has been that the act has not served its purpose of protecting domestic companies from unfair competition.

The Hartke bill is based on appropriate antitrust principles and court precedents, since the act is an integral part of the unfair trade laws regulating the sale of merchandise in domestic markets. There is manifestly no reason why foreign manufacturers exporting to this market should not be required to observe the same standards of fair trade that competing domestic sellers must observe.

Such a requirement is in no way inconsistent with the liberal trade policy which the Cement Industry Committee supports. The antidumping statute is directed solely at a form of unfair competition that has been universally condemned. In strengthening the act, no direct or indirect barrier against legitimate foreign trade would be interposed. Therefore, it is a complete misnomer to refer to S. 1726 in any way as a protectionist tariff measure.

The Cement Industry Committee has on numerous occasions submitted statements and briefs which document in full the compelling need for a bill to strengthen the Antidumping Act. Such statements have been submitted most recently to the House Subcommittee on

Labor, chaired by Congressman Dent, and to the Trade Information Committee in connection with its hearings on the International Antidumping Code. In addition, the committee has prepared an informative brochure, entitled "Dumping: A Threat to American Industry and Labor," which was circulated to all Members of Congress. Accordingly, the committee does not deem it necessary to again set forth its position in full, particularly since the Finance Committee has placed a 20-page limitation on statements. If the Finance Committee would like to have any of the statements described above for inclusion in its compendium, the Cement Committee will be pleased to furnish copies.

The cement industry urges the Finance Committee to hold hearings on S. 1726 as soon as possible. Amendment of the Antidumping Act of 1921 is long overdue. If hearings are conducted on S. 1726, the Cement Industry Committee would be most anxious to testify and otherwise assist the Senate Finance Committee in its consideration of this essential legislation.

The Cement Industry Committee would also like to take this opportunity to reaffirm its publicly stated position with respect to the International Antidumping Code which was negotiated in Geneva, and is scheduled to become effective July 1, 1968. The cement industry is deeply concerned with the Antidumping Code for two paramount reasons. First, and most important, the administration proposes to implement the code without legislation by the Congress. It is the committee's position that the Antidumping Code would substantially amend and revise the Antidumping Act. It is a most alarming prospect if a domestic unfair trade law can be altered or amended without the prior deliberation and consent of the Congress.

The cement industry's second source of concern with the Antidumping Code is that it completely emasculates the present act. The industry has been convinced through experience that the act has not provided adequate relief to domestic industries injured by dumping, and yet, the code would so weaken the act that it would be effectively removed from the statute books.

It is for these reasons that the Cement Industry Commitee supports fully Senate Concurrent Resolution 38, which has been introduced by Senator Vance Hartke. This resolution would express the sense of Congress that the Antidumping Code should be submitted to the Congress before it can become effective. The compelling need for prompt passage of this resolution is manifest. The appropriate forum for consideration of domestic unfair trade legislation is in the committee rooms and Halls of Congress, and not through international negotiations in Geneva.

It is clear that if the code becomes effective on July 1, 1968, it will thereafter be most difficult for the Congress to consider any legislation to amend the Antidumping Act. Such legislation would be met by the argument that the code is an international moral obligation of the United States, and that the United States is bound by the code unless it is revised by means of executive negotiations with other countries.

The administration has taken the position that congressional approval of the code is not required because it is consistent with the Antidumping Act and is merely interpretive of that act. This position is wholly insupportable. There is no need to discuss in any detail the clear inconsistency between the code and the act, and the extent to which the code would remove the limited relief provided by the present act, because this has already been set out in full in two statements made by Senator Hartke. These are Senator Hartke's letter of July 25, 1967, to his colleagues in the Congress, which appears in the Congressional Record of August 2, 1967, at S10572, and Senator Hartke's address in the Senate, which appears in the Congressional Record of September 27, 1967, at S13792.

The Cement Industry Committee is in full agreement with these two statements of Senator Hartke and in his conclusion that the Antidumping Code should be submitted to the Congress for approval and that it emasculates the present act.

The Cement Industry Committee therefore urges the Senate Finance Committee to hold hearings on Senate Concurrent Resolution 38 in the very near future. The code is scheduled to become effective July 1, 1968, and there is little time to spare for the Congress to take appropriate action. The cement industry would expect to participate in these hearings and to assist the Finance Committee and the Senate in its deliberation with respect to the Antidumping Code.

The above discussion has been intended primarily to reaffirm the cement industry's vital interest in antidumping and its support for S. 1726 and Senate Concurrent Resolution 38. Although the industry is hopeful that the Finance Committee will soon conduct full hearings on these two matters, the industry would be willing to testify or otherwise participate in the legislative oversight hearings if the committee deems it advisable to consider the antidumping problem directly in conjunction with that review.

THE CEMENT INDUSTRY COMMITTEE FOR TARIFF AND ANTIDUMPING

Allentown Portland Cement Co.
Alpha Portland Cement Co.
American Cement Corp.
Ash Grove Lime & Portland Cement Co.
Atlantic Cement Co., Inc.
California Portland Cement Co.
Columbia Cement Corp.
Coplay Cement Manufacturing Co.
Diamond Alkali Co.
The Flintkote Co.
General Portland Cement Co.
Giant Portland Cement Co.
Gulf Coast Portland Cement Co.
Huron Portland Cement Co.
Ideal Cement Co.
Kaiser Cement & Gypsum Co.
Keystone Portland Cement Co.
Lehigh Portland Cement Co.
Lone Star Cement Corp.
Marquette Cement Manufacturing Co.
Martin Marietta Corp.
Medusa Portland Cement Co.
Missouri Portland Cement Co.

National Cement Co.
National Portland Cement Co.
Nazareth Cement Co.
Northwestern States Portland Cement Co.
Oklahoma Cement Co.
Oregon Portland Cement Co.
Penn-Dixie Cement Corp.
Puerto Rican Cement Co., Inc.
San Antonio Portland Cement Co.
Southwestern Portland Cement Co.
Whitehall Cement Manufacturing Co.
Wyandotte Chemicals Corp.

Brief of American Institute for Imported Steel, Inc., New York, N.Y., in Support of an International Antidumping Code

STATEMENT

This brief is submitted to the Trade Information Committee, Office of the Special Representative for Trade Negotiations, on behalf of the American Institute for Imported Steel, Inc. ("institute"), pursuant to, and in accordance with, the authorization of the committee, published in the Federal Register on July 15, 1966 (31 F.R. 9619).

The institute is a nonprofit trade association, incorporated under the laws of the State of New York. Among its approximately 50 member firms are the leading U.S. importers of steel, principally from Western Europe, some of whose steel producers' trade associations are correspondents of the institute. The institute's member firms, which have offices across the United States, on the eastern seaboard, the Great Lakes, the Pacific coast, and in the gulf, also import steel from all of the other major steel producing nations of the world. We thank the committee for the opportunity to testify.

While the institute's members are primarily importers of steel, some of its members engage (and prior to the domestic steel industry's virtual withdrawal from the international steel trade engaged quite heavily) in the export of U.S. steel products. A number of institute members are also involved in the export of a wide range of other U.S.-made products. Above all, the members and their officers and employees are vitally concerned as American citizens with the health of the American economy, an important factor in which is the continuation and expansion, of reciprocally beneficial international trade.

Thus, the institute's interest in the negotiations of an international antidumping code to make uniform and to liberalize antidumping regulation both here and abroad is manifest. Indeed, this interest was expressed, and the institute's general veiws were presented to the committee, at its prior hearings on nontariff trade barriers in February of 1964. At that time the committee solicited views inter alia, on a range of nontariff trade barriers. The institute then emphasized (as we do hereafter) antidumping regulation as a principal subject for fruitful negotiations.[1]

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[1] See brief of the American Institute for Imported Steel, Inc., in support of negotiations for amelioration and rationalization of U.S. nontariff trade barriers.

GENERAL CONSIDERATIONS

As has long been recognized by leading experts on international trade, a failure to restrict antidumping regulation to its proper sphere—the restraining of predatory price discrimination—may lead to very serious consequences for legitimate and economically beneficial international trade.[2] An abuse of such regulation to proscribe all price disparities among national markets without regard to intent, economic justification, or whether there has been material injury to a national industry can only lead to a stultifying and shrinkage of that trade to the detriment of all of the economies of the free world.

Therefore, we are gratified to note that at the current Kennedy round in Geneva discussions on this most important potential nontariff trade barrier have progressed to the point where the committee deems it appropriate to solicit from all interested parties, both public and private, concrete proposals on the specific questions with respect to an international agreement.

As the committee properly observes in its notice of hearing, such an agreement should take into account and build upon the salutory standards for antidumping regulation already embodied in article VI of the General Agreement on Tariffs and Trade (GATT). But we believe that it is no longer sufficient merely to publicize such precatory, though laudatory standards. If the threat (and too often the actuality) of abusive antidumping regulation is to be removed from international trade, an international agreement must make the limitations upon national antidumping regulation specific and mandatory.

Failing due observance of the standards of such international agreement, the signatories to that agreement should be empowered to apply to the noncomplying nations' imports as stringent anti-price-disparity standards as are applied to their exports.

To assure uniformity of regulation and equitable treatment to the exporters of all of the signatory nations, the agreement should create a tribunal, drawing its personnel from the member nations of GATT, and empowered to review dumping determinations of the member natoins on application of the affected exporter's country, and thus create a body of biding precedent to guide the national administrators of the agreement's provisions.

One final general comment on an international antidumping code before we turn to the specific questions propounded in the committee's notice of hearing. The United States stands to be a chief beneficiary of an international agreement on antidumping. Our statute, the Antidumping Act, 1921,[3] and its administrative implementation over the years can serve in many ways as a model for our trading partners. While, as we will subsequently discuss, there are some important defects in the statute and its implementing regulations, on the whole exporters and importers charged with injurious dumping under our law are accorded a significantly greater opportunity (in almost all instances including a public hearing) to defend themselves against the charges than are U.S. exporters accorded by a number of our principal trading partners.

[2] See e.g., Viner, "Dumping: A Problem in International Trade," (1923); Ellsworth, "The International Economy" (1950).
[3] 19 U.S.C. secs. 160 et seq.

Only recently this disparity in "due process" in antidumping proceedings between the United States and its principal free world trading partners was highlighted by the action of one of this country's closest political as well as commercial partners. The committee, we believe, is well aware of the circumstances under which, without any opportunity to defend itself, one of the United States major producers and exporters of chemicals was severely penalized by Great Britain for the alleged dumping of a single shipment of chemicals in that nation.

Without regard to the specific facts of the case, it is painfully apparent that Great Britain—the home of the common law—accorded the American exporter considerably less than a minimum of procedural "due process" in abruptly imposing a duty a number of times the value of the merchandise in question without first giving the American exporter some opportunity to be heard in its own defense.

A number of other instances of similar treatment of American exporters and importers of U.S.-made products could be recalled. Suffice to say that, in return for smoothing the rough edges of U.S. antidumping regulation, the American negotiators at Geneva can and should seek an international antidumping code which in future will assure U.S. exporters of both substantive and procedural due process abroad when faced with allegations of injurious dumping.

THE SPECIFICS OF AN INTERNATIONAL ANTIDUMPING CODE

The five questions propounded in the committee's notice of hearing accurately chart the major areas of inquiry. The subject matter of an international agreement on antidumping will be discussed within that framework.

Initially, however, it should be noted that antidumping regulation partakes of two, usually discreet, areas of law: tariff and international trade law and the law governing the prohibition of domestic, unfair, and anticompetitive commercial practices. Thus, it is inevitable that there will be some apparent conflicts in philosophy and approach in antidumping to weld them into one unified body of rules to govern and define the permissible and the prohibited areas of price disparities between national markets. In dealing with the specific questions, we will attempt to identify and resolve these apparent conflicts, suggesting what appears to be the most intelligent approach in the context of the economic and political realities of international trade.

I

"Actionable dumping" should be defined as price discrimination by a producer-exporter among customers in different markets with the predatory intent of injuring or destroying competition so as to establish the conditions for a monopoly. The interdiction of this unfair trade practice was the original purpose of antidumping regulation in the United States,[4] and, we believe, continues to be the proper aim of such regulation. As the Tariff Commission has wisely observed:

> It is evident that Congress did not consider sales "at less than fair value" as being malum per se: such sales are condemned in the act only when they have

[4] In the report of the committee of he House of Representatives which reported out the Antidumping Act, 1921, the practice to be interdicted was described as "commercial warfare." H. Rept. No. 1, 67th Cong. first sess. 28.24 (1921). The Senate floor manager similarly described the act's purpose. 61 Cong. Rec. 1011, 1021 (1921.)

an anticompetitive effect; and it is only then that such sales may be equated with the concept of "unfair competition." As the Supreme Court states in *Federal Trade Commission* v. *Gratz* (253 U.S. 421) with reference to section 5 of the Federal Trade Commission Act, "The act was certainly not intended to fetter free and fair" competition as commonly understood and practiced by honorable opponents in trade.[5]

However, taking account of the difficulty of positive proof of such predatory intent,[6] and the extreme delicacy of such an inquiry on an international level, such intent may be presumed conclusively and "actionable dumping" may also be found where the price discrimination gives rise to material injury to a national industry of the receiving country. It should be equally emphasized in the language of the agreement that such presumption of predatory intent should be applied only where true materiality of injury exists in or is imminently threatened to a significant proportion of the producers of the national industry of the receiving country.

Price disparities per se without a clear showing of predatory intent or its presumption because of material injury should never be the basis for affirmative antidumping action against imports. For, as the Tariff Commission observed in its report which, inter alia, lead to the enactment of the Antidumping Act, 1921:

> Ordinary price cutting and underselling are so universal, both in domestic and foreign fields, that it is taken for granted that restrictions are contemplated only when their practice is accompanied by unfair circumstances or by unfortunate public consequences.[7]

The Treasury Department, in its 1957 report to Congress during the most recent legislative review of the Antidumping Act, pointedly stated the reason why price disparities per se should not be deemed objectionable:

> It is * * * clear that Congress did not adopt a concept of price fixing in 1921, whereby shipments to the United States were to be "fair traded."
>
> Any such formula would seem to be even less admissible 36 years later.[8]

Such a concept of "price fixing," which often parades under the misnomer of "fair trading," has no place in the regulation of international trade. Because goods often must move great distances from the exporting to the importing countries and thereby incur substantial transportation charges, it is to be expected that disparities in ex-factory prices to domestic purchasers and to foreign importers often will exist.[9] Moreover, the exporter in order to sell at all in foreign markets often has to accept a somewhat lesser return than on his domestic sales because of the inherent competitive disadvantages which face imported goods, inter alia, of longer delivery time and the general preference for goods produced in the customer's own nation. Such price

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[5] *Titanium Dioxide From France* [AA 1921–31] (1963). The Tariff Commission in its most recent decision again emphasized the prohibition of such predatory conduct in *Steel Jacks From Canada* [AA 1921–49] (Aug. 19, 1966).

[6] The first U.S. law to combat dumping, which provided criminal penalties based upon proof of a predatory intent (15 U.S.C. sec. 72), has been a virtual dead letter since its enactment in 1916 because of the difficulty of proving such specific intent beyond a reasonable doubt.

[7] U.S. Tariff Commission, Dumping and Unfair Competition (1919).

[8] Hearings on H.R. 6006, H.R. 6007, and H.R. 5120 before the House Committee on Ways and Means, 85th Cong. first sess. 17 (1957) (hereafter cited as "1957 Antidumping Hearings").

[9] It is worthy of note that under the Robinson-Patman Act (15 U.S.C. sec. 13), which regulates domestic price discrimination, it has long been held that a uniform delivered price system per se is unobjectionable. Of course, because of freight absorption that such a system entails, the ex-factory price of the seller varies depending on the distance to the customer.

disparities, not involving the "unfair circumstances" (predatory intent) or "unfortunate public consequences" (material injury to a national industry) spoken of by the U.S. Tariff Commission at the genesis of our antidumping statute, are neither morally or legally reprehensible nor, indeed, undesirable. In fact, they may be the only means of making available goods at reasonable prices to the consumer.

It is readily apparent that prohibition of price discrimination per se would seriously restrict and might virtually eliminate international trade in products competitive with those produced in the receiving country. Yet trade in just such products makes up a significant share of U.S. exports [10] and the exports of other major industrialized trading nations of the free world.

Elimination of the price competition afforded domestically produced goods by such imports may—as in the case of steel in the United States—mean the elimination of the only significant price competition in the market. As experience under the Canadian antidumping statute—which makes price disparities per se actionable dumping—shows, the chief victims of such a regulatory scheme are consumers of the receiving country who must pay higher prices than otherwise. They quite literally pay the price for the unjustifiable protection of domestic industry from competitive imports.

Thus the keystone of an international antidumping code should be a clear and unequivocal statement that price disparities among national markets are not in and of themselves objectionable and do not furnish grounds for antidumping action. "Actionable dumping" must be defined as involving two elements: (*a*) price discrimination, and (*b*) a clear showing of predatory intent to injure or destroy competition or an equally clear showing of material injury or its imminent threat to a national industry directly resulting from such price discrimination. As a necessary corollary, the signatory nations should bind themselves to take no affirmative action disruptive of normal trade until and unless a sufficient showing has been made of both elements.[11]

II

Experience under our own antidumping statute, and its administration, shows that a critical element in proper antidumping regulation is a set of clear but nevertheless sufficiently flexible guidelines for determining "normal value." Guidelines are required in three areas: (*a*) determining the proper market; i.e., home or third country, for comparison with the price of the allegedly dumped import; (*b*) determining the exporter's price in that market; (*c*) determining proper adjustments to these prices to account for physical dif-

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[10] The Treasury Department has noted the danger to U.S. exports if there should be a proliferation abroad of antidumping statutes prohibiting price discrimination per se:

"The American producer * * * is now—far more than in 1921—interested in export markets. To the extent he secures a rigid price-fixing law as to imports in this country, he will be greeted by like provisions in other countries, where—either today or in the future—he may have to sell below U.S. price in order to sell at all." 1957 Antidumping Hearings p. 17.

The domestic producers, who will appear before the committee during these hearings, can testify that for quite justifiable economic reasons American exports are often sold at ex-factory prices lower than the domestic price charged by the producer.

[11] As will be discussed hereafter, this will require significant changes in U.S. antidumping regulations with regard to the acceptances of compliants and initiation of a public duming proceeding and the utilization of withholding of appraisement or other provisional measures. See V, pp. 22–26, infra.

ferences in products sold to different markets and to account for differences in circumstances of sale.

With regard to (*a*), the international agreement should provide a standard for determining when the home market sales of the exporter are sufficient to allow reference to them to determine "normal value." In setting this standard, the negotiators should keep in mind a principal purpose of antidumping regulation—to prevent a producer-exporter from using profits in his principal market to finance price-cutting raids on other markets. Thus, it is essential that home market sales be used only to determine "normal value" where the producer-exporter's home market is his principal market. It might be questioned whether a home market is a principal market unless the producer-exporter sells at least 50 percent of his production there. At minimum, the agreement should provide that one-third of the producer-exporter's sales must be home-market sales before that market can be used as the reference for the "normal value" determination.

The international agreement should also recognize that a home market is determined by economic realities and not necessarily by national political boundaries. Thus, economic groupings and tariff unions such as the Common Market should be defined as the home market for producer-exporters located in these geographical areas.

With regard to (*b*), the international agreement should provide economically realistic standards for determining the price charged by the producer-exporter in his principal market. While no particular difficulty exists where actual prices are list prices or where forms of uniform administered prices prevail, a significant problem does exist where—as in the international steel market—prices fluctuate rapidly in response to supply and demand. Since the purpose of determining "normal value" is to determine the producer-exporter's normal rate of return on his sales, the proper formula to be embodied in the international antidumping code is a weighted average of sales prices during the relevant time period.[12]

The international agreement also will have to provide a guideline for determining the relevant time period. An analogy to domestic price discrimination legislation for such a standard would not be inappropriate. The Robinson-Patman Act standard is "current" price. Thus, while a specific time period would be inappropriate as a standard because the relevant time period will vary depending on the facts of the particular case, the national administrators should be directed to determine a "current" price taking into account the economic circumstanes.[13]

With regard to (*c*), guidelines with respect to adjustments for physical differences in merchandise and for different circumstances of sale should be general and flexible enough to permit the national administrators to apply their expertise to the particular facts of each

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[12] In this regard, the GATT rules with respect to "normal value" on third-country sales are deficient. GATT article VI, 1(b)(i) provides for the "highest comparable price." Obviously, the prices on a few sales to one third-country market do not establish the producer-exporter's normal charges. A weighted average of all third-country sales prices is required to arrive at "normal value."

[13] In addition, provision might be made for advisory opinions on the relevant time period by national administrators on application of interested parties. It has been found particularly difficult in the past to obtain such rulings from the Treasury Department to enable exporters to the United States to determine their "fair value" under our statute.

case. If it cannot be assumed then it must be specified that the signatories to the international agreement will appoint as administrators persons competent in the economic, legal, and other disciplines required to administer the provisions of the agreement in accordance with both its letter and spirit.

In view of the fact that there is an almost infinite variety of adjustments to which particular economic circumstances may give rise, rigid standards can only impede an economically realistic approach.[14] Therefore, we recommend that the present language of GATT for "due allowance" in the particular circumstances of each case be carried forward into the international agreement. A significant degree of equity and uniformity in the application of such standard can be realized in the decisions on appeals from national administrators' rulings by the international tribunal we have suggested.

III AND IV

The concepts of "injury" and "industry" are inextricably intertwined. The quantum of "injury" required to find actionable dumping must, of course, depend upon the market against which the impact of the imports is to be measured. As we have previously noted, a properly fashioned international antidumping code should embody the concept that actionable dumping can be found only where the imports at less than normal value involve a predatory intent on the part of the exporter or are the direct cause of material injury to a national industry of the receiving country.

The materiality of injury should be measured by the impact of less than normal value imports on all of the producers of the physically like or similar product in the receiving country. There are two principal reasons why a national industry concept against which to measure the materiality of injury is essential to a properly drafted international agreement.

First, as previously observed, a finding of actionable dumping because of material injury must be based upon a presumption (in the absence of a direct finding of fact) that such unfortunate public consequence is the result of predatory intent on the part of the exporter. Such a serious finding should be made only in the exceptional case. The finding of actionable dumping is a public act of the National Government having wide repercussions on the international level. No analogy can be drawn to private disputes between domestic firms with regard to localized price discrimination.

Second, an antidumping law in the context of the remedy applied—a duty offsetting the dumping margin[15]—is a tariff law. Particularly in the case of the United States, the imposition of duties must be uniform at all of the ports of entry.[16] Thus a finding of actionable dumping must give rise to a dumping duty on all imports from the "offend-

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[14] Rigid rules such as the Treasury Department's 20-percent rule on discounts (19 CFR 14.7(b)(1)(i)) should be affirmatively discouraged. They act only as presumptions which too often conflict with the economic realities in a particular case. If it is believed that discounts form a discrete and specific enough area for a more specific standard, the agreement might embody as such a standard whether the discount is a "logical extension of the producer-exporter's principal market discount pattern."

[15] GATT, art. VI, 2.

[16] U.S. Constitution, art. I, sec. 8.

er" no matter in what part of the country they are entered or sold.[17] It seems clear that such a national remedy should be applied only where the impact of the less than normal value imports is material as measured by a national standard.

Moreover, the national industry should be defined in the international agreement as comprehending all of the production of the industry, whether production for sale or for use by the manufacturer (so-called captive production). In its aspect as a tariff law, antidumping regulation protects not only capital but also labor from material injury from unfairly low-priced imports. The closing of a plant which produces semifinished material for further processing may constitute as much an injury to labor as the closing of a plant which produces merchandise for direct sale to the consumer. By the same standards, it follows that to find "injury" an industry may not be severed into its many component parts.

The industry, moreover, should be limited by definition to the producers of products like or similar physically to the imports involved, the standard presently applied by the Treasury Department. Introducing concepts of "interchangeability in use," as has been proposed in a recent bill introduced in Congress, can only lead to confusion and possible misuse of the antidumping remedy.[18] "Use" definitions have only recently been removed from our tariff laws because of the vagueness of such standards and their unworkability in practice. Additionally, so to broaden the industry concept would not be in consonance with the unfair competition aspect of antidumping regulation.[19] It might also so attenuate the potential impact of the less than normal value imports as to make a material injury finding well-night impossible in what might otherwise be a clear case for remedial action.

We agree with the suggestion implicit in the committee's notice of hearing that certain specific absolute defenses to a charge of material injury to a national industry be recognized in the international antidumping code. Certainly the defense of good-faith meeting of legal competition, from producers in the receiving country or from other exporters to the receiving country, should be affirmatively recognized. Such a defense has been found to be implicit in our antidumping statute by the Tariff Commission.[20] It is explicitly recognized in our domestic anti-price-discrimination legislation.[21] The reason for such a defense has been succinctly stated by one of the leading commentators on legislation to prohibit price discrimination destructive of competition:

> * * * If a seller proves that his challenged price reduction was made in good faith to meet a lawful price previously quoted by a competitor he thereby rebuts

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[17] In two of the cases in which the Tariff Commission found injury to a "regional industry," involving soil pipe from Great Britain and cement from the Dominican Republic, the imports which were subsequently penalized were entered at ports and sold to consumers located far from the producers found to be injured. *Cast-Iron Soil Pipe From the United Kingdom* (AA 1921–24) (1965); *Portland Cement From the Dominican Republic* (AA 1921–25) (1963).

[18] H.R. 8510, S. 2045, 89th Cong. The so-called Herlong-Hartke bill.

[19] See Adams and Dirlam, *"Dumping, Antitrust Policy and Economic Power,"* Business Topics, spring 1966, pp. 20, 24, for an illuminating analysis of this and other problems in comparing antidumping policy with the policies embodied in our domestic antitrust laws.

[20] See, e.g., *Rayon Staple Fiber From West Germany* (AA 1921–21) (1961) (meeting an equally low price of a domestic competitor); *Hot-Rolled Carbon Steel Wire Rods From Belgium* (AA 1921–27) (meeting an equally low "fair value" price of another exporting nation).

[21] The so-called 2(b) proviso of the Robinson-Patman Act, 15 U.S.C. sec. 13(b).

and dispels any inference that his price was causally detrimental to competition. In short, as perceived at the time of the Clayton Act's passage in 1914 and reconfirmed in 1936, the meeting competition proviso could operate as a legal trusim, since proof that the seller lowered his price in good faith to meet competition would pro tanto refute the charge that his price could cause a detriment to competition.[83]

It is self-evident that if meeting competition cannot be "causally detrimental to competition," it cannot cause material competitive injury to a national industry.

Another defense which should be considered for inclusion in the international antidumping code is that of "self-inflicted injury." If the domestic industry complaining of less than normal value imports maintains a rigid, administered price structure and has made no attempt to meet normal value import competition, it is apparent that there cannot be a causal connection between less than normal value imports and any alleged injury which the industry claims to be suffering. Put another way, if there would be a significant margin between the price of the imports and the administered domestic industry prices, even if the imports in question were being sold at normal value, any loss of sales by the domestic industry is of its own commercial choosing and not the result competition from unfairly low-priced imports.

Except for these few specifics, we recommend that no rigid standards be provided for determining "material injury to a national industry." Again, reliance should be placed upon the expertise of the national administrators, with review by the international tribunal as a last resort in extreme cases. "Material injury" must be determined on a case-by-case basis. Rigid percentage or other standards can only impede the economic experts in their inquiry into, and their determination of, the economic factors unique to each case.

V

In the realm of procedural rules, the United States has the most to gain in terms of protection of its exporters by the negotiation of an international antidumping code. Our open hearing procedure before the Tariff Commission, at which the alleged "dumper" has the opportunity to defend himself against the charge of predatory conduct, is in the best tradition of our legal system and deserves to be included as a required procedure in the international antidumping code.

There have been valid objections made concerning our procedural rules with respect to the acceptance of complaints, the initiation of public antidumping proceedings, and the application of provisional measures. These objections are based to a large extent upon the present artificial separation under our law of the normal value ("fair value") determination from the determination of material injury, with the result that these determinations are made consecutively rather than concurrently.

It seems clear that this procedural scheme conflicts with the spirit, if not the letter, of article VI of GATT. It permits of serious interferences with normal international trade in cases where, while price

[83] Rowe, "Price Discrimination Under the Robinson-Patman Act," 268 (1962).

disparities may exist, there is scarcely and possibility that predatory intent or material injury ultimately will be found.

The commencement of a public antidumping proceeding may in and of itself create uncertainties injurious to trade. Certainly such a proceeding should not be commenced without factually supported allegations both of price discrimination and of predatory intent or material injury—the two necessary bases of actionable dumping.

Yet, under our statute such a proceeding may be commenced by a local customs official who has not the slightest idea whether the imports are affecting a U.S. industry, let alone whether there exists material injury to such an industry from the imports in question. Or a proceeding may be initiated by the complaint of a single marginal, inefficient producer, wholly unrepresentative of its industry, which is merely seeking shelter from legitimate competition.

An equally if not more serious procedural defect in present U.S. antidumping regulation is the fact that a withholding of appraisement order may issue merely because of a finding of a reason to believe or suspect that sales at less than fair (normal) value are taking place.[23] Because of the threat of heavy antidumping duty penalties and the uncertainties this threat creates for the importer, such an order often brings trade to a standstill.[24] Again there has been no inquiry into, let alone a substantial showing of, predatory intent or material injury, the sine qua non of actionable dumping. Yet, normal trade relations have been materially injured.[25]

We therefore recommend the following procedural provisions for the international antidumping code with respect to initiation of antidumping proceedings and provisional measures:

First, an antidumping proceeding should be commenced only on the complaint of producers in the receiving country representing a "substantial proportion" of the production of the national industry allegedly materially injured by the imports in question. Such complaint should be required to contain factual allegations sufficient to form a belief or well-founded suspicion that imports at less than normal value are being entered and material injury exists or is imminently threatened by such imports.

Recognizing that only in those industries which have well organized and active trade associations could a substantial proportion of producers be expected initially to join in filing such a complaint, we suggest that, when a national administrator receives a complaint from a single firm, or a group of firms which do not meet the substantiality test, the national administrator, after making a brief preliminary investigation to determine whether less than normal value sales are occurring, be empowered promptly to send an inquiry with respect to material injury to as many firms in the allegedly affected industry as is practicable. He should then determine whether the

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[23] 19 CFR sec. 14.10.

[24] In an antidumping proceeding with respect to rayon staple fiber, imports ceased for 11 months following withholding of appraisement; 1957 antidumping hearings, p. 198. The withholding of appraisements in the 1962 antidumping proceedings against steel wire rods from Europe brought trade to a limping halt until the Tariff Commission found no actionable dumping.

[25] For a detailed and well-reasoned discussion of the present inequities of our antidumping regulation with respect to withholding of appraisements, see Prosterman, "Withholding of Appraisement under the United States Antidumping Act: Protectionism or Unfair Competition Law," 41 Wash. L.

complaint is sufficient to require the initiation of a public antidumping proceeding based upon the response to his inquiry.[26]

Second, the application of provisional measures such as withholding of appraisements should be restricted to cases where a persuasive preliminary showing has been made, not only that sales at less than normal value are occurring, but also that material injury exists or is so imminently threatened that remedial action may not safely be delayed. If practicable, the alleged "dumper" should be accorded a hearing on the charge in advance of the application of the provisional measure. In all cases, a hearing should be held promptly.

The provisional measure should be limited to 3 months' duration, thereby encouraging an expeditious final determination in the proceeding and rapid end to the interference with trade if the charge should prove, on further inquiry, to be unfounded.

Except insofar as the provisional measure entails some possibility of retroactive imposition of antidumping duties, the international code should specify that a final antidumping order should be prospective only. Ex post facto penalties are repugnant to our legal system and to those of virtually all other sophisticated legal systems of the free world. The purpose of a provisional antidumping measure is to deal with the extraordinary case where it is necessary to take action to forestall irreparable harm prior to a full adjudication.[27] Only in such case should there be a possibility of retroactivity, and then strictly confined to the imports as to which the imminent threat of irreparable injury has been found, and only for a limited time period dating from the imposition of the provisional measure.[28]

Turning to the matter of the investigation and hearing procedure to be provided in the International Antidumping Code, as we have observed, the present investigation and hearing procedures of the Treasury Department and Tariff Commission, with appropriate modifications, might well be used as a model for the drafters of the international agreement.

We recommend that the procedural section of the code contain two important principles with respect to the procedure governing an antidumping proceeding:

(*a*) The determination of normal value and of predatory intent or material injury to a national industry must be made concurrently, preferably under the supervision and control of a single administrator, as a prerequisite to the application of any corrective measures. All intermediate decisions, such as whether a complaint is sufficient to set

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[26] A similar procedure has been used for many years by the Tariff Commission in its administration of the various "escape clauses" under various trade agreements. Another example of this type of procedure is found in the Bankruptcy Act. Where the number of creditors initially filing an involutary petition are legally insufficient, the other creditors of the alleged bankrupt are solicited to determine whether they wish to join in the petition.

[27] In this regard, it is analogous to the preliminary injunction in our Federal and State courts.

[28] The Treasury Department, in its most recent revision of its antidumping regulations, has recognized the inequity of ex post facto antidumping penalties in the large majority of cases. See 19 CFR sec. 14.9(a).

None of the Western European nations appears now to apply a retroactive penalty on a finding of dumping. See speech of Hon. James Pomeroy Hendrick, before the National Council of American Importers, Inc., on "The Future of the Antidumping Act," May 22, 1968.

A recent amendment to the German antidumping law does permit provisional, refundable antidumping duties which, however, are limited to a 3-month period following a finding of a "high degree of probability" of material injury which is "imminent and must be prevented in the interest of the commonweal." "The Recent Amendment to the German Antidumping Law," German American Trade News, July 1966, p. 8.

into motion a formal proceeding, and whether provisional measures are required, should be based upon proof concerning both aspects of actionable dumping.

(*b*) Although the specified proceeding should provide for a full opportunity for the complaining domestic industry to present proof with respect to the charge, and to the importer and exporter involved to defend themselves, the proceeding is essentially a public one in which the prime object is for the national administrator to become apprised of all relevant facts in order to reach his determination. If there be actionable dumping, it is a public not a private wrong. In this respect the proceeding is not analogous to a private litigation. As a corollary, the rules of evidence must be fashioned with the primary end in mind to obtain the maximum disclosure to the national administrator of all facts and economic circumstances.

Traditionally, the way that this has been done in tariff law investigations is to permit information concerning prices, costs of production, and other competitive information to be submitted to the administering agency on a confidential basis.[29] Businessmen both here and abroad are justifiably sensitive to the possibility of such data falling into the hands of competitors, and, therefore, are reluctant to submit data without an assurance of confidentiality.[30]

However, it must also be recognized that a prerequisite of a public hearing and adjudication procedure presupposes disclosure of sufficient facts with respect to both the domestic industry's and the exporter's and importer's positions to permit a meaningful confrontation. Obviously a party cannot use confidentiality as a shield and at the same time use nondisclosure as an affirmative weapon to prevent the opposing party from adequately preparing and presenting its case.

In reconciling these divergent considerations, the drafters of the international agreement should provide, first, that there is a policy of confidentiality of specific price, cost, and other sensitive competitive data submitted either by the domestic complaining industry or the exporter or importer. The national administrator, with this policy in view, should be empowered in his discretion to make available to either side information essential to its case in such summary or other form as to preclude disclosure of specific transactions, prices, costs, and other competitively privileged data.

CONCLUSION

In the foregoing answers to the questions put in the committee's notice of hearing on the specifics of an international agreement on antidumping, we have sought to state what we believe are important first principles which a well-conceived international antidumping code should embody. We have also sought to delineate specific problem areas and practical solutions. Of course, the specific language of an international agreement is the province of the practiced and com-

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[29] *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294 (1933).

[30] The Treasury Department admitted as much in its 1957 testimony before Congress on antidumping administration. 1957 antidumping hearings, pp. 81–82. However, apparently under intense pressure from certain domestic industries, the Treasury Department revised its regulation in 1964 to create an initial rebuttable presumption of nonconfidentiality. 19 CFR, sec. 14.6a.

petent U.S. negotiators at Geneva. We hope that our suggestions are some small aid to them in their praiseworthy endeavor to reach an agreement which will benefit international trade and thereby the United States and all of its trading partners.

Respectfully submitted.

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Procedures for Aiding Industries, Firms, and Workers Harmed by Expansion Act

Executive Branch Statement

A. ASSISTANCE UNDER THE TRADE EXPANSION ACT

One of the major innovations in the Trade Expansion Act of 1962 (TEA) was the provision for direct adjustment assistance to specific firms and workers adversely affected by increased imports resulting from a trade agreement concession. This provision recognized the need for (1) an alternative or a supplement to increased import restrictions as a means of remedying serious injury to an entire industry resulting from trade agreement concessions, and (2) a means of relief in cases of serious injury to individual firms and groups of workers even though there was no serious injury to their industry considered in its entirety.

Prior to the TEA, the only means provided in the trade legislation for relieving injury caused by increased imports resulting from trade agreement concessions was to raise duties or impose quotas, or both. Such action was authorized only when an entire industry was injured. Although provision of this type of relief may be the only adequate countermeasure in exceptional cases, it may also happen that an entire industry may not require tariff or quota protection, when at the same time, there are injured firms and worker groups in the industry who may require assistance. The adjustment assistance program was, therefore, introduced to supplement or replace traditional relief as appropriate. Moreover, if increased tariffs or quota protection are imposed on products subject to trade agreement concessions, we must compensate affected countries by reducing tariffs on other products or face retaliation in the form of increased tariffs against our own exports, thus affecting a domestic industry by denying it access to export markets.

The inclusion of adjustment assistance provisions in the Trade Expansion Act also emphasized the belief that it is preferable to improve the productivity of resources displaced by import competition rather than to restrict imports. While the reduction of trade barriers is desirable because such reductions increase the amount and variety of goods available and lower their prices, these benefits depend on the mobility of productive resources. If such resources—labor, capital, and management—cannot move quickly, the enhanced productivity which follows the reciprocal lowering of trade barriers may be delayed. Adjustment assistance increases mobility and productivity by providing necessary assistance to firms and workers in adjusting to the impact of increased imports and in reestablishing their competitive strength.

The TEA thus provides that in cases of injury to an industry the President may either increase tariffs or impose quotas as in the past, enter into orderly marketing agreements to limit imports, or he may authorize trade adjustment assistance to the import injured firms or groups of workers in the industry, or take any combination of such actions. More importantly, this act provides for eligibility of individual firms and groups of workers to receive adjustment assistance on determination that they have been injured by concession-generated imports, without regard to whether their respective industries have been injured.

In practice, the TEA criteria for adjustment assistance have proven so strict that none of the petitions presented by a firm or group of workers has met the prescribed tests. The administration, therefore, expects to propose legislation modifying the TEA criteria for eligibility of firms and workers to receive adjustment assistance.

Procedures under the Trade Expansion Act

The TEA provides that a petition for tariff adjustment may be filed on behalf of an industry or that an individual firm or group of workers may file a petition with the Tariff Commission for a determination of eligibility to apply for adjustment assistance. The Tariff Commission's report to the President on a petition for tariff adjustment is required to be made not later than 6 months after the filing of the petition. The Commission's report on a petition by a firm or group of workers for determination of eligibility to apply for adjustment assistance must be submitted not later than 60 days after the filing of the petition.

The criteria which must be met before it is determined that the petitioning industry is eligible for tariff relief or that the firm or group of workers is eligible to apply for adjustment assistance are as follows:

(1) Imports must be entering in increased quantities.

(2) The increased imports must be a result in major part of concessions granted under trade agreements.

(3) The industry, firm, or group of workers producing the like or directly competitive article must be seriously injured, or threatened with serious injury.

(4) The increased imports resulting from trade agreement concessions must be the major factor in causing, or threatening to cause, serious injury to the industry, firm, or group of workers.

In making its determination on an industry or firm petition, the Tariff Commission is required to take into account all economic factors which it considers relevant, including (1) idling of productive facilities; (2) inability to operate at a level of reasonable profit; and (3) unemployment or underemployment. Injury in the case of a group of workers is defined as unemployment or underemployment, or threat thereof, of a significant number or proportion of the workers of the firm or appropriate subdivision.

Subject to the Tariff Commission's affirmative determination on a petition for adjustment assistance, or where the President authorizes adjustment assistance in the case of an affirmative industry determination, the firm is then eligible to apply to the Secretary of Commerce and workers to apply to the Secretary of Labor for certification and for the assistance provided by the act.

Adjustment assistance to firms and workers

The Trade Expansion Act authorizes the following assistance to certified firms and groups of workers:

a. *Firms.*—A firm certified eligible by the Secretary of Commerce to apply for adjustment assistance must submit a proposal for its economic adjustment. Assistance to firms is premised upon the Secretary's certification of a sound economic adjustment proposal reflecting the firm's efforts toward self-help and consideration of the interests of the firm's workers. The certified adjustment proposal will be referred by the Secretary to such Government agency or agencies as he determines appropriate to furnish the necessary assistance.

Three types of assistance are available to eligible firms:

(1) Financial assistance in the form of loans, loan guarantees, and agreements for deferred participations in loans. Loans may be made available for land, plant, equipment, and, in some cases, working capital. Repayment terms may not exceed 25 years and interest rates, as fixed by the Treasury, may be no less than 4 percent. Financial assistance is conditional upon the determination that such assistance is not available from private sources on reasonable terms and upon reasonable assurance of repayment by the firm.

(2) Technical assistance including research and development assistance, managerial advice and counseling, market and other economic research, and assistance in preparing a sound adjustment proposal. To the maximum extent practicable, technical assistance will be furnished through existing Federal agencies, and otherwise through private individuals, firms, or institutions. The cost of this assistance, where and to the extent deemed appropriate, will be shared between the Government and the firm.

(3) Tax assistance in the form of a net operating loss carryback over a 5-year period rather than the normal 3 years.

b. *Workers.*—(1) Cash readjustment allowances: A worker may receive weekly payments of up to 65 percent of his average weekly wage, but limited to 65 percent of the national average weekly wage in manufacturing. Normally a worker may receive payments for up to 52 weeks, but he may be allowed up to 26 additional weeks to complete approved training or 13 additional weeks if he was over 60 when separated.

(2) Testing, counseling, training, and job placement: Through maximum use of the State employment security agencies' counseling, testing, and job referral facilities, laid-off workers will be assisted in locating new jobs or jobs in new occupations. If necessary, workers will be referred to appropriate training courses.

(3) Cash relocation allowances: In certain instances the head of a household may receive a relocation allowance to cover his basic moving expenses when a job has been found for him or he has located one in another city and there is no suitable job for him in his own city. No worker can be compelled to move against his wishes.

The criteria established in the TEA have been so rigid that no petitioning firm or group of workers has been able to meet the test. Five groups of workers and five firms have petitioned the Tariff Commission for a determination of eligibility to apply for adjustment assistance, but none was found by the Commission to meet the criteria.

Adjustment Assistance Advisory Board

The Trade Expansion Act created an Adjustment Assistance Advisory Board, consisting of the Secretary of Commerce as Chairman, and of the Treasury, Agriculture, Labor, Interior, and Health, Education, and Welfare Secretaries, the Small Business Administrator, and others the President deems appropriate, to advise the President on the development of coordinated programs for adjustment assistance. The Chairman is authorized to appoint for any industry a committee representing employers, workers, and the public to advise the Board.

B. ADJUSTMENT ASSISTANCE UNDER THE AUTOMOTIVE PRODUCTS TRADE ACT

Adjustment assistance provisions for individual firms and groups of workers were also included in the Automotive Products Trade Act of 1965. These provisions were established as a separate program because of the unique features of the United States-Canadian Automotive Products Agreement. The standards of eligibility are less stringent than under the TEA but the actual assistance which firms and workers may receive is the same under both acts.

The Automotive Products Trade Act of 1965 implements the United States-Canadian Automotive Products Agreement. The agreement eliminates tariffs between the two countries on most new motor vehicles and parts for use as original equipment in the manufacture of such vehicles.

This agreement is unique in that it was designed to eliminate barriers to the optimum efficiency of a single industry producing and selling the same products on both sides of the United States-Canadian border. It was anticipated that although production and employment would increase on both sides of the border, some dislocations could result not only from increased imports, but also from decreasing exports or internal shifts within the industry as production operations were rationalized. Because dislocations caused by the latter two situations were not covered by the Trade Expansion Act and because the agreement immediately reduced tariffs to zero, the eligibility criteria of the Auto Act were changed from those required by the Trade Expansion Act.

Procedures

Petitions for determination of eligibility to apply for assistance under the Auto Act are initially submitted by either firms or groups of workers to the Automotive Agreement Adjustment Assistance Board. This Board, consisting of the Secretaries of Commerce, Labor, and the Treasury, reviews the petitions to insure that they are properly filed and then requests the Tariff Commission to conduct an investigation of the facts related to the petition. The Board makes its determination on the basis of the facts disclosed in the Tariff Commission report and advice from other Government agencies. The maximum time which may elapse from the date on which the petition is deemed properly filed and the date of the final determination is 70 days, unless a supplemental report is requested from the Tariff Commission, in which event an extra 35 days are permitted.

In determining whether to certify the petitioning firm or group of workers as eligible to apply for adjustment assistance, the Board must consider the following criteria:

1. Dislocation of the firm or group of workers has occurred or threatens to occur.

2. Automotive product: The firm must produce or have produced (or the workers must have been employed in a firm which produces or did produce) an automotive product. As defined by the act, an automotive product is a motor vehicle or a part to be used as original equipment in the manufacture of motor vehicles.

3a. The role of the operation of the agreement: If the Board determines that the operation of the agreement has been the primary factor causing the actual or threatened dislocation, it will certify that the firm or group of workers is eligible to apply for adjustment assistance, or

b. Economic criteria: If the following economic criteria are met, it is presumed that the operation of the agreement has been the primary factor in causing the dislocation unless the Board finds evidence to the contrary:

1. Production in the United States of the automotive product concerned or its directly competing product must have decreased appreciably; and

2. Either of the following two events must have occurred:

(*a*) Imports into the United States of the Canadian automotive product like or directly competitive with the American automotive product must have increased appreciably; or

(*b*) Exports from the United States to Canada of the American product produced by the U.S. firm concerned and like or directly competitive American products must have decreased appreciably relative to Canadian output.

As under the Trade Expansion Act, the assistance which eligible firms receive is administered by the Department of Commerce and workers receive benefits administered through the Department of Labor.

Experience

Experience under the APTA shows that adjustment assistance can be an effective means of helping workers dislocated because of our Nation's trade policy. Petitions for adjustment assistance under the act have been filed by 17 groups of workers in nine States. As of October 31, 1967, the Auto Board has acted on 15 of these cases and issued 12 certification of eligibility covering 2,500 workers. Three petitions were denied; no petitions have been submitted by firms. Of the nearly 2,500 who have been certified as eligible for assistance, approximately 1,700 of these have actually received weekly payments which total just under $2½ million.

In addition to receiving weekly benefits, special counseling and guidance, testing, and job referral services were also provided the dislocated workers by the State employment security agencies. Many workers were placed immediately in new jobs while others were referred to training, returned to their former employers, or left the labor force. No workers have been relocated under provisions of this act.

For example, when workers of the Ford Motor Co.'s Del-Val Parts Depot, Pennsauken, N.J., were notified of their pending layoff in

March 1966, the New Jersey and Pennsylvania employment service agencies worked together in developing a reemployment program. With advance notice of the layoff, the New Jersey agency was able to provide prelayoff job counseling and guidance to most of the 200 workers at the plant. Of these workers, 98 registered for employment assistance with local employment officers in New Jersey and 47 registered with those in Pennsylvania.

Partly because of a systematic job development campaign, most of the registrants found new jobs after about 10 weeks of unemployment on the average. In August the Ford Co. began to recall former workers. By January 15, 1967, only 39 of the separated workers remained unemployed and in August 1967 approximately 20 of the former Ford workers collected adjustment assistance benefits. Most of these were above or near the retirement age.

Statement of National Cherry Growers & Industries Foundation—Legislative Oversight Review of U.S. Trade Policies

This statement is submitted by the National Cherry Growers & Industries Foundation, 801 Standard Plaza, Portland, Oreg. 97204, a trade association of growers, processors, and shippers of sweet cherries grown in Oregon, Washington, California, Michigan, New York, Idaho, and Utah. The foundation was organized in 1946.

SUMMARY OF STATEMENT

1. The U.S. sweet cherry industry, which must rely entirely upon the domestic U.S. market with no export potential, requires reasonable protection in that market from imported processed cherries.

2. "Adjustment assistance" such as authorized by the Trade Expansion Act of 1962, has no practicable application to growers of cherries or other perennial tree crops. Resettlement, retraining, etc., of such growers, subsidization of their conversion to production of other products, or outright cash compensation, would provide no equitable, workable, or satisfactory remedy for the loss of their primary market. A producing cherry orchard enterprise cannot be converted to other production or use without an intolerable loss of time, effort, and investment.

3. Any new trade legislation should authorize establishment, in appropriate instances, of import quotas, by unilateral U.S. action or by international commodity agreements.

4. A fair, workable, and promptly functioning "escape" mechanism is an essential provision in any new trade agreements legislation.

This statement relates to the U.S. industry which grows, processes, and markets the sweet varieties of cherries, as distinguished from red tart or "sour" cherries. These two types of cherries differ significantly as to utilization, competition from imports, and available export outlets; their production and handling in the United States constitute two different, separate, and independent industries, and are so recognized by U.S. Department of Agriculture and Tariff Commission reports.

The U.S. sweet cherries have no present or potential export market, and must depend entirely upon the domestic markets. Import competition consists mainly of brined (also known as "sulfured") cherries from Italy and Spain and glace (candied) cherries from France.

Brined cherries are cherries which have been packed in a sulfur dioxide brine for further processing into marachino, glace, and candied cherries widely used by the confectionary, ice cream, and bakery trades, sold as cocktail cherries, included in the large canned fruit salad or fruit cocktail packs, and bottled for household use.

The principal market for the U.S. sweet cherries is in brined form. A much lesser proportion of each year's crop is shipped for fresh consumption, and canning is third in importance. Almost half of each year's U.S. commercial production of sweet cherries goes into brine for further processing. In a normal year, more than 90 percent of the large production of sweet cherries in the Willamette Valley of Oregon are brined, approximately 65 percent of the rapidly increasing Michigan sweet cherry production, and most of the New York production. The average utilization for brining during the 5 years 1961–65 was 44 percent.

The importance of the brined outlet to the domestic cherry industry goes even beyond the proportion of production represented. Cherry crops vary widely from year to year in different areas, due to normal production cycles or climatic conditions during production or harvest. Brining permits excess production of 1 year to be carried over to relatively short-crop years, thus avoiding the necessity of leaving cherries unharvested in years of low prices, and making possible the leveling of supplies from year to year and thus a more stable and orderly market than otherwise would be possible. Brining thus gives the normally highly perishable cherries the characteristics and advantages of a nonperishable commodity. It provides a market for very large quantities of cherries which could not possibly be absorbed by the markets in fresh form or canned.

A further economic advantage of brining is that it takes the cherries out of competition with other fresh or canned fruits. A further advantage, particularly from the standpoint of the growers, is the fact that cherries intended for brining are harvested at an earlier stage of maturity than those destined for other uses and are thus less vulnerable to adverse weather conditions affecting the fruit prior to or at the time of harvest.

The market for cherries in brined form is thus the keystone of the orderly and economic marketing of the entire United States sweet cherry production.

The imported cherries, consisting of brined cherries from Italy and Spain and glace cherries from France, compete directly with the U.S. cherries in this key market. Imports in recent years have consisted principally of glace cherries under the stimulus of two glace tariff reductions under the trade agreements program. Imports of brined cherries, the duty rates on which have been maintained without change since 1930, are secondary to the glace imports. The glace imports of course displace domestic brined cherries available for use for the domestic manufacture of glace cherries. The importers are able to offer the French glace cherries, delivered in the United States, at approximately the same price as the cost to the U.S. manufacturers of U.S. brined cherries, the basic U.S. raw material.

The United States produces a minor portion of the world's supply of cherries. Italy, France, and Spain, the principal exporters to the United States, have all substantially increased their production in recent years. The U.S. markets are thus exposed to extremely heavy potential importations.

"ADJUSTMENT ASSISTANCE"

"Adjustment assistance" such as authorized in the Trade Expansion Act of 1962 (U.S.C. sec. 1901 et seq.) is not practicable for a perennial specialty orchard crop such as cherries. Cherry orchards, of course, cannot be diverted to other production without intolerable sacrifice of long years of effort and heavy investment. In any event, diversion of present cherry acreage into other crops would not provide a satisfactory "adjustment," as much of the cherry acreage is not suitable for economic production of any other product, or such other crops as could satisfactorily be produced in the climatic areas and on the soils involved already are in surplus production or face heavy imports competition. The equipment used in cherry brining plants is specialized, and could not be converted to other uses.

Cherry growers thus obviously cannot readily "adjust" to a loss or restriction of their markets. They must either contrive to bear the loss or destroy their orchards. Loss or reduction of market outlets thus would be much more serious and involve a much greater sacrifice for the domestic sweet cherry industry than for producers of other commodities who may more readily go into or out of production. "Adjustment assistance," even if made more readily available than proved to be the case under the Trade Expansion Act of 1962, would provide no substitute, so far as the sweet cherry industry is concerned, for reasonable imports protection, either through adequate duty rates or by means of appropriate import quotas. This is true also as to other perennial tree crops.

This inadeqaucy of "adjustment assistance" as to much of agriculture was pointed out in an analysis of the bill which was enacted as the Trade Expansion Act of 1962, published by the Giannini Foundation of Agricultural Economics, University of California, as follows:

> It is clear that the adjustment-assistance provisions of the bill, recognizing their favorable aspects in general, were not framed with agriculture in mind. One may appreciate the importance of the adjustment-assistance provisions for nonagricultural workers, firms, and industries; but that cannot explain the apparent lack of recognition and understanding by the architects of the bill of the differential nature of the adjustment-assistance problem in agriculture.
>
> In fact, one could believe that the agricultural adjustment-assistance problems, as they are related to the Trade Expansion Act of 1962, did not enter the minds of the drafters of the legislation, and if they did, they certainly made little imprint.[1]

IMPORT QUOTAS AND COMMODITY AGREEMENTS

As above stated, the domestic cherry industry now shares its U.S. market to a substantial extent with the exporters of foreign brined and

[1] "The European Common Market, Trade Expansion Act and California Agriculture," by Sidney Hoos, Mar. 2, 1962, Giannini Foundation of Agricultural Economics, University of California, Berkeley, Calif.

finished cherries. Present duty rates, in the light of the differences in the foreign and domestic costs of production, are no serious deterrent to such imports, but do provide a floor to the price competition from the foreign products. The domestic industry does not seek to prohibit or escape from competition from the imported cherries, but does rely upon having a reasonable share of the domestic market and a reasonable opportunity to compete in that market.

From the standpoint both of the domestic industry and the export-import interests, import quotas might be much more realistic and more satisfactory than import duties. Production and marketing programs on both sides of the Atlantic could be developed with greater assurance. The domestic producers would be protected against ruinous flooding of their market in years of excess foreign production. The foreign producers not only would gain from removal of the duty rates, but would be assured of a stable outlet in the U.S. market.

Any new legislation should leave the door open to international commodity agreements negotiated possibly in replacement of fixed import duties. These might or might not include import quotas, but would provide for market sharing both of current market volume and also of future expanded markets. This foundation supported H.R. 1172 introduced in the 89th Congress to amend the Agricultural Trade Development and Assistance Act of 1954 so as to provide for the use of counterpart funds for international agricultural conferences, with specific provision for representation of agricultural industries in the negotiation of international commodity arrangements. Similarly, any new trade legislation not only should include authorization of and procedure for negotiation of such international commodity agreements, but should expressly provide for representation on the U.S. negotiating team of the domestic industry or industries involved.

THE "ESCAPE" MECHANISM

Any new trade agreements legislation must, of course, include means whereby tariff protection, once relaxed, may be restored upon appropriate showing of substantial injury. Such relief must be available not only to the possibly few manufacturers or processors of the ultimate finished product involved, but also to the producers of the basic raw material of such manufacture. Specifically, the cherry growers have a vital and necessary interest in any tariff or trade regulation proceeding involving brined or processed cherries, the major outlet for the growers' production. The tremendous volume of sweet cherries which go into brine each year pass through the hands of only 47 brining establishments. The "domestic industry" involved certainly is not confined to those 47 firms, but includes the many thousands of cherry growers who produce the cherries involved.

The cherry growers are especially sensitive on this point because a 1952 Tariff Commission ruling in an escape-clause proceeding brought by glace cherry manufacturers indicated that injury to the cherry growers through loss of market to imported glace cherries was immaterial because the growers could not be considered a part of the domestic industry producing glace cherries. This resulted in an amendment, in 1955, to the trade agreements legislation then under consideration, known as the Morse-Magnuson "cherry amendment" which made growers proper interested parties in any escape-clause and peril-point proceedings under the Trade Agreements Act (see Congressional Record of May 4, 1955, pp. 4806–4808, and 4818–4819).

This problem is covered by the definition of "directly competitive with" in section 401(4) of the Trade Expansion Act of 1962 (19 U.S.C. 1806).

Dated October 27, 1967.

Respectfully submitted.

JAMES H. BRYCE, *President.*

Policies and Programs Needed to Expand U.S. Exports

Executive Branch Statement

As recounted in another paper in this series, tariffs affecting U.S. exports have been substantially reduced in the last 30 years through reciprocal trade agreement negotiations culminating in the Kennedy round of GATT trade negotiations. Progress has also been made in the reduction of nontariff barriers both in the GATT framework, including the Kennedy round, and through bilateral efforts to persuade individual governments to remove such barriers when they are unnecessary or discriminatory. The steady expansion of U.S. exports to their record level of $29.4 billion in 1966 and an annual rate of $31.1 billion in the first 8 months of 1967 was very materially assisted by the market opportunities opened up by these activities.

Likewise essential to the expansion of U.S. exports are numerous other governmental policies and programs which directly or indirectly affect the ability of U.S. industry and agriculture to compete in world markets. As in the case of the trade agreements program, these policies and programs require the coordinated efforts of many branches of the U.S. Government.

The nature and scope of the services and programs presently offered by U.S. Government agencies to promote export expansion are outlined in the annex to this report, together with indications of plans for their improvement and expansion. Although activities are in a number of cases reported in terms of the responsibilities of a single agency, they are in fact complementary and directed to the same goal, the stimulation and facilitation of U.S. export trade.

In achieving this goal, the following are some of the principal means that need to be employed:

(1) *A long-term commitment by the U.S. Government to the maintenance and development of export promotion programs—market analysis, commercial intelligence, and trade facilitation services to exporters—commensurate with national needs.*—While the provision of commercial information has been a long-established element of U.S. trade policy, direct trade promotional programs in such forms as foreign exhibitions of U.S. products and trade missions are for the most part of relatively recent vintage. The response of industrial and agricultural producers and the very favorable returns from these programs indicate the desirability of stepping up these activities. If U.S. firms are to be encouraged to become new exporters, or to expand their existing export activity, undertaking significant expenditures of their resources and often in markets which are less stable and which offer limited short-term rewards, their readiness to act can be expected to be importantly influenced by their estimate of the depth and continuity of the Government's interest. They will want to be able to count on the requisite facilities of the Government being sustained, and augmented as needed, over the long term. This implies multiyear

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Government export promotion programing complementary to industry needs. (For a discussion of existing programs and future plans, see Annex I: Export Promotion.)

(2) *Assurance of adequate and competitive export financing through commercial banks and governmental services.*—A number of actions have been taken in the last few years to help overcome the recurring balance-of-payments deficits by expanding and improving export financing facilities. Among these has been the adoption in the last few years, primarily by the Export-Import Bank, of new programs of export credit guarantees for both industrial and agricultural products, the Bank's extended use of direct credits for purchases of U.S. supplies for large foreign projects, and the development of both short-term and medium-term export credit insurance coverage of exporters by the Foreign Credit Insurance Association, a group of insurance companies operating in conjunction with the Export-Import Bank.

The Commodity Credit Corporation encourages exports of agricultural commodities through the offering of short-term credit, mostly 12 months or less, although credit can be for as much as 3 years. This program has been expanded and has been effective in facilitating exports. It also serves to facilitate the transition of developing countries from aid to trade.

Efforts of the operating agencies, in conjunction with other Departments and the business community, have improved the scope and effectiveness of these programs, and the effectiveness of the operations of the older governmental export credit programs of other major trading countries requires that these efforts continue. Particular consideration must be given, moreover, to improvements in rediscounting of export credit paper; to means of funding exports to developing countries which have unusual commercial significance; and to policies which will provide sufficient liquidity to meet our export expansion objectives and adequate scope for export credit operations within our voluntary credit restraint program. (See Annex—II: Export Financing.)

(3) *Provision of basis for expanding commercial exports within economic assistance programs.*—While the economic development objective of U.S. aid programs is paramount, these programs offer opportunities, through the selection of projects and commodity imports to be funded and the transition to long-term dollar credits from foreign currency payments for Public Law 480 agricultural shipments, to assist U.S. firms and products to gain a foothold for the long term. Moreover, careful analysis and program planning are required to assure that aid-financed shipments from the United States are not merely substitutive for U.S. commercial exports—in other words, that aid shipments are "additional" to the maximum feasible extent. (See Annex V: Trade and Investment in Developing Countries.)

The economic development that is built into the food aid programs measurably improves U.S. export sales opportunities, and a number of countries have moved from "aid" to "trade." This development is enhanced by one of the major changes in recent U.S. policies, which is to tie food aid to a maximum effort by developing countries to mobilize their own resources. The long-term credit program has proved a useful bridge in helping a number of developing countries to begin their transition from purchases with local currency to purchases for dollars.

(4) *Encouragement of exports in connection with foreign investment operations.*—While analysis of trade benefits and disadvantages has proven difficult (see Paper No. 12: Evaluating the Effects of Direct Foreign Investment on Exports), foreign investments can serve as vehicles for expanded sales of capital equipment and materials to foreign affiliates, for marketing of U.S.-produced items through affiliates, and for acquisition of technology and components for use in U.S.-based manufacturing which could increase the export competitiveness of particular export products.

To the extent they are additional, these exports, especially when coupled with substantial short-term earnings remitted from the foreign subsidiary, help mitigate the adverse balance-of-payments effects of investment capital outflows. The voluntary balance-of-payments program takes these benefits into account.

(5) *Assurance of fair and reasonable export transportation costs and reduction and simplification of export formalities.*—Transportation costs constitute an important element in export pricing, and policies and procedures to remedy inequities should be continued, and improved where feasible. At the same time the U.S. Government should continue to provide leadership and support in simplifying trade documentation requirements. (See Annex IV: Ocean Transportation, Freight Rates, and Export Expansion.)

(6) *Actions relevant to U.S. and foreign fiscal policy and tax laws and procedures.*—Any consideration of policies to promote exports must take into account U.S. and foreign fiscal policy and tax laws and procedures affecting U.S. firms in international trading operations. U.S. policies and actions in this field must balance trade needs against general considerations of fiscal policy and international trade policy. (See Annex III: Taxation.) At the same time, the policies and actions of other countries in this field must be closely examined, for example, the general adoption of the value-added system of excise or consumption taxes in the EEC, to insure that U.S. trade is not being disadvantaged. (See Paper No. 11: The Consequences for U.S. Exports of the Adoption by the European Economic Community of a Common Value Added Tax.) International tax conventions have proven useful in facilitating international trade and other international transactions, and the program of negotiating them with other countries should be pursued.

(7) *Expansion of East-West trade in peaceful goods.*—Although massive commercial gains would not be likely, expanded trade with Eastern European countries could yield benefits to individual traders and for the balance of payments. When generally favorable political circumstances develop vis-a-vis these countries, commercial negotiations would be in order to remove current disabilities.

(8) *Other governmental policies and actions.*—Among other actions necessary to facilitate the expansion of U.S. export trade are the following:

(*a*) Appropriate consideration must be given to the maintenance and improvement of price conditions favorable to the export competitiveness of U.S. products.

(*b*) Free competition policies and programs of the United States and other countries must be kept under continuing examination to take into account their effect on export operations.

(c) Policies and actions are needed to protect or secure fulfillment of an exporter's industrial property rights through negotiation of international agreements which will simplify industrial property right protection procedures and broaden the scope of protection.

(d) Joint efforts of the U.S. Government and the U.S. business community must be continued to improve arrangements for arbitration and conciliation in international trade disputes and toward international harmonization of commercial law and practices.

Annex

INTRODUCTION

In April 1967 a comprehensive review of policies and programs necessary to expand exports was completed by the National Export Expansion Council (NEEC), a group of leading business and professional men appointed to provide advice and assistance to the Secretary of Commerce on the various aspects of export expansion. The council had appointed five separate NEEC action committees, each composed of officers drawn from manufacturing industries, exporting firms, and banks with day-to-day operations in these specific areas. The subjects covered by the action committees were: "Export Expansion," "Export Finance," "Taxation and Exports," "Transportation," and "Trade and Investment in the Developing Countries."

The Commerce Department and other agencies of the executive branch had assigned observers and had provided relevant information to the action committees, and Commerce provided continuing staff backup to assure followthrough on the many recommendations made by the committees. The NEEC action committee effort therefore represents a full-scale review of major policy issues encountered in developing joint Government-business export expansion programs.

The council's recommendations were delivered to the President by the Secretary of Commerce and NEEC leaders for consideration within the Government. Copies of the recommendations have also been submitted to the Senate Finance Committee in connection with this legislative oversight review of U.S. trade policies. The NEEC review, together with the established interdepartmental mechanism for coordinated action on the balance-of-payments problem—culminating in the Cabinet Balance-of-Payments Committee—has involved several departments and agencies whose activities have an impact on international trade and investment.

A substantial number of policy, program, and administrative changes are encompassed in the NEEC proposals. Since the policy recommendations are consonant with the general thrust of the main policy points outlined above, they are sumarized in the annex for convenience of presentation along with the program and procedural revision proposals with which they are entwined. The major proposals and related actions are grouped in accordance with the NEEC action committee assignments. Particular attention is given to current activities and future plans of the Government agencies in the field of export promotion.

I. *Export promotion*

The National Export Expansion Council's Action Committee on Export Promotion presented 18 recommendations.

Particular stress was placed on the need for short-term and long-term Government export expansion programs around which industry could plan its own efforts. An important feature would be intensive and highly specific market analysis with full utilization of electronic data processing to provide "a systematic study of trade opportunities abroad and the corresponding mating of American capabilities against these opportunities." Responsive action to these recommendations is discussed at length later under this heading.

Other recommendations involving Government action include reinforcement of recommendations of other action committees in the areas of finance, taxation, and transportation; expansion of East-West trade; continued Government efforts respecting patent and trademark protection abroad; and more export orientation in Commerce Field Service and Foreign Service personnel administration.

Measures have been taken by the Government which bear on these recommendations.

For example, the United States participated in the Intellectual Property Conference in Stockholm in mid-1967 which effected improvements in procedures available to the United States under the 75-Country Paris Union Patent and Trade Mark Convention. A new World Intellectual Property Organization was created at the Conference to administer the Paris Convention and others. Another example is the current revision and expansion of programs covering export orientation and training of Foreign Service and Commerce Field Service personnel. Action on other action committee recommendations is covered in subsequent sections of this annex.

Several Government agencies have been carrying out trade promotion programs for many years, and with increased intensity, scope, and coordination in recent years as a major aspect of balance-of-payments improvement programs. The NEEC action committee's recommendations have provided encouragement and impetus to the formulation of short-term programs designed to produce immediate results and of long-term programs around which U.S. firms could plan and program their export operations over several years.

Outlined below are current agency export promotion activities, together with future plans.

DEPARTMENT OF COMMERCE

A. EXISTING PROGRAMS AND ACTIVITIES

The Department of Commerce has broad responsibility for export promotion. Its activities can be grouped into three programs and generally described as follows:

International commercial information.—These activities encompass the collection, analysis, and dissemination of economic and commercial information necessary to firms to plan and carry out international business activities. This covers an informational spectrum ranging from regional and country economic conditions through foreign trade regulations and import duties, and patent, trademark, and copyright systems, to information about individual foreign firms with which U.S. exporters have or might establish business relations.

Export development.—To heighten industry's awareness of the importance of international trade and the value of export opportunities, the Department of Commerce, through its field offices, conducts world trade conferences, workshops, and seminars, and consults with individual firms about their particular export problems and potential. These objectives are also served by the "E" Awards programs, whereby the President formally cites firms with outstanding export expansion achievements. To help potential exporters get started and expand their business, the weekly International Commerce magazine carries world trade opportunities, lists of foreign companies interested in buying or distributing specific U.S. products. Commerce also helps the new exporter through the "piggyback" program, by arranging contact with active exporters whose established distribution systems are suited to carry the inexperienced exporters' complementary products. Studies of export potential are prepared and disseminated to help direct initial or expanding export efforts.

Overseas trade promotions.—Commerce operates six and is developing the seventh overseas promotional activity to provide opportunities for immediate and future sales of U.S. products by exposing U.S. products, and in most cases, the men who sell them, to identified foreign market opportunities and potential foreign representatives.

(1) U.S. trade centers are permanent sales and showroom facilities in six locations—London, Frankfurt, Milan, Stockholm, Tokyo, and Bangkok. This program is designed to introduce U.S. firms and products to new export markets, with particular emphasis on continuing trade development through the establishment of new agencies and distributorships. Approximately 50 full-scale promotions are mounted each year through trade centers.

(2) U.S. commercial exhibitions are Commerce-sponsored U.S. exhibitions in international trade fairs or "solo," where no suitable trade fair exists. Approximately 20 major commercial exhibitions are mounted each year. The objectives are the same as those of U.S. trade centers, but the flexibility of the trade-fair medium permits Commerce to take advantage of promising markets wherever they exist.

(3) Trade missions are groups of selected businessmen traveling overseas to make business contacts. On official Government missions, the members represent their industries. On industry-sponsored missions, organized and operated with the assistance of Commerce, the members pay their own expenses and do business for themselves.

(4) America Weeks are designed specifically to promote overseas sales of U.S. consumer goods through cooperative promotions with the foreign department stores.

(5 and 6) Mobile trade fairs and sample display service are two promotional techniques that permit the display and sales of U.S. products throughout the world, especially in less developed markets.

(7) Trade development and service centers, a new activity, will provide an overseas export promotion facility that is specially adapted to trade promotion needs in developing markets. Its main objectives will be to introduce and establish U.S. products, service and distribution methods, and business concepts, and, where necessary, to train sales

and service personnel in the operation and maintenance of such products. Although immediate sales and agency relationships will be generated, the primary objectives will be the introduction of business concepts and methods necessary for effective marketing of U.S. products, and the development of technological and brand preferences as a base for continuing and expanding sales opportunities for U.S. business as economic development expands the market potential. Project-type promotions will be developed to allow the U.S. exhibitors longer and more varied exposure in the market.

The project-oriented promotional techniques are presently being developed and tested at the Bangkok Trade Center in anticipation of the establishment of the first trade development and service center in the near future.

Commerce has been developing cooperative trade promotion programs with other Government agencies, sharing techniques and facilities, and carrying out joint efforts. Thus Agriculture is assisting Commerce in promoting visits of foreign buying groups for the purchase of U.S. industrial equipment along the lines employed by Agriculture for foreign commodity buying groups. The two Departments share the use of Commerce-operated trade centers and contemplate joint exhibits, e.g., food products and food-related equipment. Other joint ventures would cover America Week exhibits and other in-store activities abroad, and joint solicitation of trade opportunities. Joint export promotion seminars and workshops have also proven useful.

Commerce's export expansion programs depend importantly on the activities of commercial and economic officers and local personnel in our embassies and consulates abroad. (See section on Department of State activities.)

B. PROGRAM EXPANSION PLANS

The Department of Commerce has recently developed plans for the expansion of selected existing activities and for the establishment of several new export expansion programs. Developments promoting these moves are the anticipated continuation of the adverse balance-of-payments situation for a number of years; the increasing competitiveness of foreign industries in the world market threatening further decline in the U.S. trade surplus and the U.S. share of world trade; the opportunity to expand U.S. exports presented by the Kennedy round tariff reductions; and the May 1967 recommendations to the President by the National Export Expansion Council (NEEC) calling for both short-term and long-term Government action programs around which business and industry can plan their export expansion programs.

As they relate to the NEEC recommendations on export expansion the elements of the Commerce plans are as follows:

(1) Recognizing the need for a short-term action program designed to produce immediate results, Commerce would:

> (*a*) increase its commercial exhibitions from the present level of about 20 per year to about 30 within the next year or so, and increase the scope of these exhibitions to accommodate more exhibitors, and
>
> (*b*) increase markedly the mobile trade fairs and the America Weeks promotions in foreign department stores.

(2) Regarding the need for a longer term program around which industry can plan its international business for the next decade, the following steps are planned:

(a) creation of four new overseas trade centers—for a total of 10; and

(b) initiation of a new cooperative Government-industry market development program. Aimed particularly at increasing the U.S. share of major markets, and gaining a foothold for U.S. products in developing markets, the cooperative Government-industry market development program is a trade development activity involving contractual relations with private U.S. trade organizations to provide for continuing, long-term development of export markets. The Department of Commerce would cooperate with the interested firms and associations by helping them plan and carry out integrated sales campaigns over periods of 2 or more years. The sales campaign would include utilization of the Department's trade promotion activities and facilities—with the industry enjoying longer and fuller exposure in the market than it can achieve through a single participation and one of the Department's other promotional activities.

(3) The plans include acceleration of present automation projects in the commercial information system, as does the NEEC report.

(4) Expansion of the export market identification analysis would be progress toward the NEEC goal of market-by-market analysis of the total export potential for American goods.

(5) Also included in the plans, but not directly related to any specific NEEC recommendation, is substantial expansion of promotional efforts to make U.S. industry more export minded. As planned, this would be carried out in close cooperation with the national and 42 regional export expansion councils (REEC) and thus would contribute substantially to the NEEC recommendation that REEC effectiveness should be increased.

The Department of Commerce considers its present plans to be only the first step in developing an export expansion program that is responsive to the national need. Recognizing the long-term needs of U.S. industry, the Department is engaged in an extension of the 5-year program-planning-budgeting (PPB) projection of existing and planned export expansion activities over the 10-year span to 1978. In its efforts to measure present program outputs the Department has identified the areas where further study will be most fruitful. All of this is pointed toward a single objective, a 10-year program of measurable activities that provide a meaningful basis for setting and achieving national export goals.

Department of Agriculture

A. Existing Programs and Activities

The U.S. Department of Agriculture carries out programs to expand commercial sales of all U.S. agricultural products in foreign markets and to sell and ship U.S. farm products to less developed countries under the provisions of Public Law 480. These programs include market promotion, market intelligence, various types of sales programs and support activities.

Market promotion.—The maintenance and expansion of foreign markets for agricultural products are promoted by:

(*a*) Coordinating, directing, financing, and supervising the operation of market development programs for agricultural products.

The program is based on joint industry-Government activities in which Government funds are augmented by contributions from private trade groups in the form of cash, goods, and services. Typical activities involve market analysis, dissemination of technical information, general education, influencing of key decisionmakers, making news, advertising and publicity, point of sale promotion and getting others to promote. U.S. Department of Agriculture participation in such activities is organized through four channels including (1) cooperator programs (more than 60 U.S. trade associations working actively in over 70 countries; more than 100 foreign trade associations cooperating with the U.S. associations under formal agreements; more than 300 nongovernmental employees spending from half to all of their time on overseas market development work and $7.4 million in private contributions to the program in the form of cash, goods, and services); (2) trade fairs and trade centers (since the inception of the international trade fairs program some 11 years ago, the U.S. Department of Agriculture has sponsored 191 exhibits in 37 countries throughout the world. The U.S. Department of Agriculture also maintains permanent staffs at trade centers in London, Milan, and Tokyo. Year-around services are provided to the U.S. seller and the foreign buyer); (3) USDA projects for special situations; and (4) research, particularly on the import needs in all major overseas agricultural markets.

(*b*) developing agreements with foreign countries for sales of U.S. agricultural commodities under Public Law 480 and following up on the shipments of those commodities (about one-fourth of U.S. agricultural exports move under Public Law 480 programs). Under the present law, as amended last year, the requirement that agricultural commodities be in surplus has been eliminated and emphasis is placed on self-help by the recipient country to improve its food production and marketing, as well as on a transition to dollar sales.

The new program seeks to speed up the progress of countries from "aid" status to "trade" status. This transition will be helped by the availability of long-term credit for dollars, thus making it easier to make a start toward purchasing U.S. farm products in the commercial market. The program aims at making this transition by December 31, 1971.

Commodity and information programs.—Information on foreign market requirements for specific commodities is obtained, analyzed, and made available to farm and trade groups as is information on production, trade, prices, etc. The demand for more detailed and timely information has increased with rapid growth in agricultural exports and with the development of economic communities, international trade agreements, etc. A continuous program is carried on to maintain and expand the market abroad for U.S. farm products. This program includes developing and supervising commodity market development projects. Assistance is rendered to domestic trade representatives in negotiations with foreign government officials, importers, and consumers and bringing together American exporters and foreign importers under conditions favorable to trade.

The barter export program.—The USDA in cooperation with other Government agencies, conducts a barter program designed (1) to utilize agricultural commodities, in lieu of dollars, in acquiring from other countries, goods, materials, and services required abroad by U.S. Government agencies or for the national and supplemental stockpiles and (2) to develop or expand foreign markets for U.S. agricultural products. Barter exports are commercial sales insofar as the importing country is concerned. Restrictions are placed on the countries to which agricultural exports may move in order to provide reasonable assurance that barter exports will not displace, but will be in addition to, anticipated cash sales of U.S. farm products.

General sales program.—The USDA conducts a general sales program to develop dollar export sales for agricultural commodities and pricing policies and programs for sales for export including sales for credit. Special export programs are designed to make price-supported commodities and certain products thereof competitive in world markets through (1) sales of CCC stocks for commercial exports; (2) sales of CCC stocks for restricted uses such as school lunch, welfare, and disaster relief; and (3) payment of export subsidies.

Credit programs.—These programs include short-term commercial credit (up to 3 years) and special credit programs both to the private trade and on a government-to-government basis under Public Law 480. The Department also advises and collaborates with the Export-Import Bank in connection with the Bank's medium-term guarantee and export credit insurance programs as they finance exports of U.S. agricultural commodities.

Agricultural attachés.—Agricultural attachés located in 60 posts assist in the development of markets abroad for U.S. agricultural commodities. As representatives abroad, their responsibility cuts across nearly all program activities to promote export markets for agricultural products. These activities include major responsibility for supervision of market activities carried out in cooperation wth trade groups. They check and report on arrivals of commodities and on compliance with terms of concessional sales. In addition, they have an active role in promoting U.S. agricultural interests in bilateral and multilateral trade policy negotiations. A comprehensive schedule of foreign agricultural market and trade reporting is maintained to meet the needs of the American agricultural industry.

The attaché's appraisal of the agricultural situation, in his assigned area, is fundamental in the development of export programs, whether under sales promotion, Public Law 480, CCC sales authorities, or barter. These programs may involve the attaché in special investigations and negotiations and impose upon him the important responsibilities for verifying arrivals and dispositions of commodities and taking other actions to determine and assure compliance with program provisions.

B. PROGRAM EXPANSION PLANS

This past year (fiscal 1967) the United States exported nearly $6.8 billion of farm products. Exports have increased about 40 percent during the 1960's. The following actions would help continue this upward trend:

(1) Expand short-term dollar credit (up to 36 months) as necessary to meet competition.

(2) Export payments for U.S. commodities be used where desirable in order to meet price competition in foreign markets.

(3) Continue to barter agricultural commodities for the procurement of goods and services abroad wherever this proves advantageous to the United States.

(4) Sales under the food-for-freedom program be maintained at levels that are practical and feasible as the United States does its share to combat hunger and malnutrition and to encourage economic development and market expansion in the developing countries.

(5) Developing countries that get substantial U.S. assistance or a large part of their food and fiber imports through our food-for-freedom program be encouraged to buy from us on commercial or quasi-commercial terms a similarly large portion of their remaining needs.

(6) The USDA's market development program be stepped up to keep pace with increasing activity from competitors and to capitalize on new marketing opportunities.

(7) Intensify research to facilitate the management of export market development programs and to derive indicators of cost effectiveness.

(8) Improve geographic coverage of areas important to U.S. agricultural trade and increase the depth and quality of reporting.

Department of State

The Department of State attaches major importance to trade promotion activities by Foreign Service posts. The Secretary of State repeatedly has impressed upon chiefs of missions the need to increase U.S. exports. Under the leadership of the ambassador all other officers at our posts abroad are expected to be alert to opportunities and to make contributions to trade promotion efforts. The contributions of the Foreign Service posts are very substantial during trade mission visits and in support of programs such as those conducted at trade centers and commercial fairs and in special trade promotion activities such as America Weeks.

Commercial/economic officers in the Foreign Service devote most of their efforts to trade promotion, directly or indirectly. In fiscal year 1966, for example, 60 percent of the time of the 530 economic-commercial officers serving in our embassies and consulates abroad was devoted to commercial work.

The Department receives from the Foreign Service a continuous stream of economic and commercial information, much of which is made available to American banks and business firms through the facilities of the Department of Commerce and AID.

Most of the economic and commercial reporting by our missions abroad is designed to be useful to American businessmen and industry as well as to Government agencies. This reporting includes a periodical Economic Trends Report on the economy of all countries with which we have diplomatic relations. This report, which is widely disseminated by the Department of Commerce and U.S. press services, provides American businessmen with current information on market and business conditions in any country in which they may have interest.

Visiting American businessmen who call at Foreign Service posts are supplied up-to-date information on the local economy and on local government policies and programs. They are assisted in arranging appointments and in many other ways. Many posts in developing countries issue commercial newsletters to publicize new American products and specific trade and investment opportunities.

The Department has consultation programs under which U.S. ambassadors and senior Foreign Service officers meet with business executives in New York and Chicago under arrangements made by business associations. These consultations acquaint the officers with the problems faced by U.S. companies abroad and provide opportunities for business executives to increase their knowledge of overseas situations and U.S. Government policies.

The Department has negotiated treaties of friendship, commerce, and navigation with 20 countries since World War II. The treaty commitments confer upon American businessmen a very substantial body of economic privileges in foreign countries, and are designed to assure the ability to operate in a foreign country on a basis of competitive equality with local business concerns.

Department of Defense

The Department of Defense is authorized by the Congress (Foreign Assistance Act of 1961, as amended) to make foreign military sales as a means of replacing or supplementing grant aid for the purpose of facilitating the kinds of arrangements for individual and collective security required to promote world peace and the foreign policy, security, and general welfare of the United States.

The foreign military sales program has three principal objectives:

1. To promote the defensive strength of our allies, consistent with U.S. political-economic objectives.
2. To promote the concept of cooperative logistics with our allies.
3. To offset the unfavorable balance of payments resulting from essential U.S. military deployments abroad.

Three basic standards govern the conduct of the Department of Defense foreign military sales program:

1. It will not sell equipment to a foreign country which it cannot afford or should not have.
2. It will never ask a potential foreign customer to buy anything not truly needed by its own forces.
3. It will not ask any foreign country to purchase anything from the United States which it can buy cheaper or better elsewhere.

Every proposed sale is consonant with overall policy established by the Department of State or specifically subjected to a careful and thorough review within the U.S. Government before a sale negotiation is initiated. This review involves not only the Defense Department, but also the State Department, AID, the Arms Control and Disarmament Agency, and other relevant agencies. This review is concerned with the military legitimacy of the requirements, the recipients' ability to pay, the potential effect on peace or stability in the area, and on other foreign policy considerations.

Department of the Interior

A. EXISTING PROGRAMS AND ACTIVITIES

The Department of the Interior's export promotion efforts focus on fishery products and coal.

Interior's promotion of U.S. fishery products overseas consists of encouraging domestic producers and processors to display and sample their products at major international food trade fairs. These efforts are carried out in cooperation with the Foreign Agriculture Service. International trade specialists from the Bureau of Commercial Fisheries meet with prospective importers and distributors at these fairs and lay the groundwork for developing and expanding export markets for U.S. fishery products at a minimal cost to the U.S. company. Since the implementation of the program, July 1, 1965, new overseas markets have been established for Maine shrimp, frozen lobsters, shrimp cocktail, and scallops. Also, export sales have increased for frozen salmon, canned shrimp, and pasteurized crab meat. With their improved economy and additional spendable income, many Europeans are anxious to try high quality, attractively packaged U.S. fish and shellfish.

Interior efforts to promote coal exports include preparation of reports on current market estimates, forecasts, evaluation and analysis of economic and statistical data in special studies, survey, and the servicing of specific inquiries dealing with energy trade and markets abroad. Day-to-day liaison is carried on with industry associations, and the regular monthly publication of pertinent data in International Coal Trade aids and advises exporters of new and expanding coal markets. The participation in regional and international agencies (such as the OECD, ECE, and the World Power Conference) serves both the importer and exporter of U.S. coal and by the appraisal of foreign markets and availability of U.S. coal for exports. Liaison and cooperation with other Government agencies in exporing ways and means of promoting coal sales in existing and potential markets is carried out through a special interdepartmental coal export committee.

B. PROGRAM EXPANSION PLANS

Long-range plans of the Department of the Interior includes in-store promotions of U.S. fishery products throughout the larger metropolitan areas in Western Europe. In addition, "do it yourself" trade missions involving direct participation by industries, and organized in cooperation with the Department of Commerce, would be undertaken.

Plans for the future for coal export promotion include continued efforts toward maintaining complete market and energy availability data in foreign countries, the publication of regional surveys and reviews, and exploring new approaches aimed at expanding existing markets despite severe inroads in the foreign coal markets by alternate energy sources.

Meetings of the interagency committee and industry will be held to discuss problems and impediments to coal availabilities and exports, covering such areas as coal mine capacities, internal rail freight rates, port facilities, ocean shipping and freight rates, and the assessment of the coal demand abroad to encourage both the exporter and the importer to find ways of expanding sales and reducing costs on stable, large-volume, long-term sales contracts.

Small Business Administration

The Small Business Administration (SBA) is charged with applying its resources in every possible way to increase small business' contribution to the Nation's welfare. As a result of an arrangement formalized on November 13, 1967, small business assistance programs and trade promotion programs that have been carried out independently by SBA and Commerce, respectively, will be coordinated with additional emphasis on export trade to insure that small business firms receive the greatest possible exposure to foreign market opportunities and assistance in exploiting these opportunities.

The major elements of this arrangement include the following:

1. SBA will give additional emphasis to that aspect of its lending program that can help small businesses participate in foreign trade.
2. Whenever appropriate SBA, in cooperation with Commerce, will include subjects related to export trade in SBA-sponsored administrative management courses.
3. In conjunction with its counseling and assistance to small business, SBA will take every opportunity to stimulate interest in international trade and investment, and refer interested persons to Commerce for substantive counseling and assistance.
4. Commerce is designating a senior officer to serve as small business export adviser.
5. Commerce will also provide planning and material assistance to enable SBA to give appropriate emphasis to export trade in its many programs.
6. Both agencies will maintain closer reciprocal liaison to insure that every opportunity for cooperative action is fully exploited.

II. *Export financing*

The National Export Expansion Council's Action Committee on Export Financing developed 26 specific recommendations. Many involved expansion, liberalization, and simplification of the export credit facilities, including guarantees and insurance, provided by the Export-Import Bank and its insurance arm, the Foreign Credit Insurance Association.

Shortly after the Action Committee's report, the Export-Import Bank in May 1966 introduced several revisions in its programs, including the liberalizing of provisions respecting maturities, reducing downpayment requirements, reducing Export-Import Bank fees and FCIA premium charges, and increasing the discretionary authority of commercial banks and FCIA to commit the Export-Import Bank without prior consultation.

Two proposals related to the Government's voluntary balance-of-payments program, one exempting export credits from the Federal Reserve voluntary credit restraint program, and the other permitting exports of U.S. equipment to a plant established abroad to be used as an offset to "outflow of direct investment" under the Commerce voluntary program.

In its 1967 guidelines the Federal Reserve sought to provide additional preferential treatment for export loans of commercial banks by requesting them to restrict nonexport credits to developed countries to 10 percent of any leeway they may have under their ceilings. Commerce considered the proposal to offset equipment exports to foreign subsidiaries against direct investment outflow when framing its 1966 and 1967 programs, but found the administrative and definitional difficulties too great.

Another major recommendation was for the establishment of a rediscount facility within the Export-Import Bank for export paper in order to help insulate export credit from the effects of monetary stringency and to promote greater export orientation on the part of the banks.

An Export-Import Bank discount loan program went into effect in September 1966. Commercial banks are able to borrow from the Export-Import Bank up to 1 year against their holdings of the export obligations of more than 180 days related to exports shipped after March 1, 1966. These "current export" loans may aggregate up to 50 percent of the borrowing banks' export debt obligations outstanding. Further, beginning in September 1967, the Export-Import Bank provides "net increase" loans based on any increase from the commercial bank's portfolio of September 1, 1966.

Still another proposal was for the provision of a national interest fund for financing exports on softer terms and at greater risks than under present Export-Import Bank policy, particularly with respect to sales to countries phasing out of the U.S. aid program, to meet intense foreign competition, and to penetrate difficult foreign markets.

Another recommendation called for effort by AID and other agencies to secure increased export benefit from the AID program.

Commerce, AID, State, and Treasury have intensified their efforts to secure greater U.S. export "additionality" in conjunction with our AID program loans. Teams comprised of policy officials and trade and financial specialists have been spending extended periods in aid-recipient countries, consulting with embassy and AID officials, foreign government officials, and business firms in order both to develop general recommendations and specific courses of action for the countries studied.

III. *Taxation*

The Council's Action Committee on Taxation made recommendation both for administrative changes in tax treatment of international operations of U.S. firms and for legislation to ease current treatment of export earnings and provide a positive incentive to expanded export activity.

A major administrative revision would bear on intercompany pricing between U.S. corporations and their foreign subsidiaries and the reallocation by the Internal Revenue Service of income and expenses between the parties under section 482 of the Internal Revenue Code. The proposal would seek to liberalize existing criteria by issuing regulations which would determine the reasonableness of export selling prices to related corporations abroad in accordance with varying economic circumstances—type of goods, local competitive conditions, tariffs, etc.

Proposed regulations were issued by the Treasury Department in August 1966 and hearings held. The regulations have not yet been put in final form. The principal problem in this area centers on industry's desire to have recovery of incremental manufacturing costs accepted as a reasonable measure of intercompany pricing and to shift the burden of proof of reasonable pricing from the taxpayer to the Government.

Another recomendation sought to extend the time period within which taxpayers might repatriate funds from foreign affiliates without additional taxes, following a reallocation of income by the IRS, and substantial procedural changes have since been made in this direction.

Legislative recommendations included proposals to ease the provisions of the Tax Revision Act of 1962 relating to the current taxability of U.S. corporations on export earnings, irrespective of repatriation, of their foreign subsidiaries; extra depreciation allowance for equipment producing goods for export; and an extra incentive deduction for promotion expenses in connection with export sales.

All of these recommendations and others have been under detailed study and consideration by the Cabinet-level Balance of Payments Committee.

IV. *Ocean transportation, freight rates and export expansion*

The NEEC Council's Action Committee on Ocean Transportation, Freight Rates and Export Expansion produced recommendations respecting freight rates, American-flag shipping requirements, maritime subsidies, documentation, containerization, and promotion of use of U.S. insurance and transportation facilities.

In the freight rate area, the recommendations call for continued Federal Maritime Commission efforts to correct unjustified disparities and unfair discrimination in ocean freight rates; for cooperative activity by ocean carriers and U.S. shippers in developing rate schedules conducive to increased trade; for initiatives by American-flag lines to seek better revenue equilibrium between inbound and outbound rates within their respective conferences; for U.S. Government initiatives to induce coal-carrying railroads to reflect cost savings in rate reductions likely to assist expanded foreign sales of coal; for a review by American-flag steamship lines and shipping conferences of iron and steel export rates and the establishment of procedures to facilitate rate adjustments; and for modification of antitrust law, if necessary, to assure shippers of rights to negotiate collectively with shipping conferences.

There have been a number of actions related to the substance of those recommendations. The Federal Maritime Commission has conducted formal hearings concerning the possible disparate rate structure between U.S. Atlantic ports and the United Kingdom, and is now reviewing the voluminous testimony. The Department of Commerce has concerned itself with third-country discrimination by assisting international forums such as the UNCTAD (United Nations Trade and Development Conference) Shipping Committee and the Trade Committee of ECAFE (U.N. Economic Commission for Asia and the Far East) with their studies concerning the level and structure of conference freight rates. The Commerce and Interior Departments have met with the coal-carrying railroads respecting rates on export coal, and the discussions appear to have been useful. The trade expansion program of the Committee of American Steamship Lines (CASL) includes expediting requests from exporters for ocean freight rate adjustments. Respecting the establishment of shipper-carrier consultative machinery, the Commerce and Industry Association of New York has formed a Joint Ocean Shipper-Carrier Committee, composed of major shippers and U.S.-flag carriers, which has been discussing the possibility of establishing shippers' councils in the United States.

Recommendations bearing on American-flag requirements include the removal of the 50 percent shipping requirement on commercial sales of surplus agricultural commodities to Soviet-bloc countries and liberalization of cabotage laws limiting commerce between U.S. ports to American-flag ships.

Modification of coastal shipping restrictions and the proposal for direct maritime subsidies to American-flag tramp operators appear to require consideration within the context of the general examination of merchant marine policy now being carried on in the executive branch.

Measures to facilitate the shipment of goods were given considerable Action Committee attention. One proposal pressed for general acceptance and use of the standard export format (a multipurpose export documentation form developed through industry-U.S. Government collaboration). Private shippers and carriers on the Atlantic and Pacific coasts are using this format extensively, but those in the Midwest and on the gulf coast have been slower to adopt it. Those who have adopted it report reduced costs and simpler processing of export shipments. In the meantime, the Government is seeking to increase the utility of the format by bringing major Government export documents into alinement with it. The Government is also working on proposals for harmonizing the standard export format with the principal European layout for external trade documents with a view toward eventual agreement on a single international format incorporating the basic principles of the U.S. standard export format.

Promotion of the development of containerization was also advocated. The Government is acting to support the concept of unitized transport by revising regulations to facilitate container travel, conducting experimental container movements, developing new kinds of unitized equipment, and studying possible innovations in ratemaking for containerized shipments. Industry is making large investments in containers, container ships, and new port facilities. Also, it is actively promoting use of container services by shippers.

The Action Committee pressed for education of shippers about their rights and responsibilities as exporters. In response, Commerce and the Federal Maritime Commission collaborated on a booklet entitled "Ocean Freight Rate Guidelines for Shippers" which was published in May 1966. The Committee of American Steamship Lines has set up a Trade Expansion Committee to help shippers.

Other recommendations called for promotion of greater use of American-flag ships and an educational program to promote the sale of U.S. exports on a c.i.f. rather than on an f.o.b. or f.a.s basis, in order to advance the use of American shipping and insurance. The

U.S. insurance industry has been encouraging c.i.f. exports through the publication and distribution of educational materials such as the American Institute of Marine Underwriters booklet entitled "Exporters' Guide to Cargo Insurance," articles in news media, and speeches. The Maritime Administration has distributed a publication entitled "Your Interest in U.S.-Flag Merchant Ships," which encourages U.S. exporters to quote prices to overseas customers on a c.i.f. basis.

V. *Trade and investment in the developing countries*

The Action Committee on Trade and Investment in Developing Countries was originally assigned to seek means of encouraging export expansion through U.S. aid programs. This task was ultimately broadened out into a general review of the interrelationships between economic development and international trade. The underlying thesis of the Action Committee findings is that encouragement of the growth of less-developed countries (LDC's) will result in expanded markets for U.S. products.

The committee findings reflected the following general conclusions:

(1) Since LDC's follow a policy of "import substitution" in order to conserve foreign exchange, U.S. exporters must arrange for their products to have value added locally via manufacturing or assembly operations.

(2) LDC's seek rapid industrialization as the major avenue of economic development, and as a means of achieving prestige on the international scene. This gives further impetus to foreign businessmen to use investments as a device for securing entree to LDC markets.

(3) Investing in the LDC's entails a high element of risk. Private investors therefore must be offered a high rate of return plus certain Government guarantees against loss.

(4) LDC industries tend to be less efficient than those of developed countries. The developed countries should therefore offer special tariff treatment and special export marketing assistance for the products of these industries.

(5) Since foreign aid levels are not likely to increase appreciably, future expansion of LDC markets depends on the ability of these countries to earn more foreign exchange through exports and tourism.

(6) Judicious allocation of U.S. foreign aid funds can help establish future "post-AID" markets for commercial exports, can channel LDC resources into investment projects undertaken by U.S. businessmen, and can assist such projects to survive by assuring them adequate foreign exchange for imported raw materials and maintenance needs.

The Committee recommended specific actions by U.S. business, by the U.S. Government, and by foreign governments. Recommended steps for business were generally in the direction of placing more emphasis on investment and export expansion possibilities in the developing countries, so as to be in a position to capitalize on longer run growth potentials in the postaid era when presumably these countries would have substantial amounts of hard currency available for purchases from the developed nations. Business was encouraged to adapt its products and marketing methods to the special circumstances of trading with the LDC's, giving new weight to the fact that such trade quite often involves willingness to invest in manufacturing facilities in these countries. As to foreign governments, the report stressed the desirability of establishing a climate attractive to private enterprise, with due regard for the fact that trading and investment operations by American companies must show an adequate return commensurate with the risks involved.

The Department of Commerce has thus far concentrated attention on recommendations which would involve action by the U.S. Government—primarily AID and the Eximbank. These recommendations fall into six major groupings as outlined below.

(1) *Financial assistance and guarantees.*—These recommendations derive from the general theme that trade and investment operations in the LDC's need to be closely integrated. Improvements in the AID investment guarantee program are suggested. In response AID has agreed that the Agency's newly established Private Investment Center will be designated as the channel for referral by Commerce to AID of specific cases which U.S. firms present as promising to promote exports in conjunction with investment activities.

The report urges continuing steps to improve Eximbank export financing for the LDC's. It also points to needed improvements in FCIA credit insurance facilities. Commerce staff have been actively pursuing these matters, as outlined in the report on status of recommendations made by the Export Financing Action Committee.

The report recommends broadening existing legislation and administrative regulations to make loans of U.S.-held local currencies more generally available to U.S. firms for constructive business operations in the LDC's. AID has undertaken to review its eligibility criteria for "Cooley loans" (private investment loans from Public Law 480 local currency proceeds), giving specific attention to possibilities in the agribusiness sector.

(2) *Export marketing assistance.*—The report recommends that the general economic business information service provided by the U.S. Foreign Service and by the Departments of Commerce and State should be improved. Cost-sharing arrangements for market surveys are proposed.

(3) *Securing export additionality through AID programs.*—The report points out that it would be possible for AID to do more to assure that the exports it finances are in fact additional to exports which would normally flow to the LDC's through regular commercial channels financed by the countries' own foreign exchange. Several methods of tailoring AID programs so as to secure collateral benefits in the promotion of U.S. commercial exports are suggested.

Joint State/AID, Treasury, and Commerce teams have visited a number of LDC's to examine with U.S. country teams, local government officials, and resident U.S. businessmen the possibilities for expanding U.S. commercial exports concurrently with AID programs, and also to develop follow-on commercial business in anticipation of the eventual phaseout of U.S. economic aid.

In response to the Committee's recommendations, AID plans to review the potential use of technicians and advisors in LDC's where such services are likely to lead to significant follow-on exports from the United States. A stepup is planned in the cooperative program under way between AID and Commerce's Office of International Trade Promotion in training LDC export and domestic marketing personnel. AID missions will be asked to review their training programs to assure maximum effectiveness in support of private enterprise activities, with emphasis on utilizing private training facilities wherever possible. Arrangements are being made for AID to work closely with Commerce in consulting with private enterprise about the possibility of stepping up the sale to LDC's of American engineering and construction services. AID in its programs will undertake to use commercial U.S. systems and operating firms more extensively in its technical assistance activities, so as to increase the potential for follow-on commercial business.

(4) *Tax incentives.*—The committee recommended a program of tax inducements for exports to and investments in the LDC's. Possibilities mentioned included investment credits, writeoff of losses, and special low rates applicable to profits derived from operations in the LDC's. Revision of current tax regulations and IRS audit practices under the present tax code were also encouraged.

(5) *Trade policies.*—The NEEC report recommended that the United States make increased efforts to help the LDC's expand their exports so that they would be more able to buy from the United States through commercial channels of trade. A series of proposals on trade policies vis-a-vis the LDC's was included. These questions are currently being considered in several international forums, including GATT, OECD, and the UN.

(6) *Organization and management.*—The committee made a number of recommendations as to better coordination among the executive branch agencies dealing with trade policies, taxation, foreign assistance, investment, and the balance-of-payments problem. Commerce is following up with AID to assure in particular that adequate facilities are established for concerted action in promoting exports and investment in the LDC's.

A special area for joint action is that of "agribusiness" where a substantial potential exists not only for investment in the LDC's but also for the export from the United States of agricultural requisites such as fertilizer, pesticides, farm machinery, and food processing equipment. Arrangements have been made to establish with AID's Office of the War on Hunger a joint trade and investment activities plan.

NATIONAL EXPORT EXPANSION COUNCIL,
U.S. DEPARTMENT OF COMMERCE.
Washington, D.C.

Hon. RUSSELL B. LONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: From press release dated September 27, it is my understanding that the Committee on Finance would like to have statements on a number of subjects including, "Policies needed to expand U.S. exports."

Forwarded herewith are five reports from the National Export Expansion Council which are recommendations on expanding U.S. exports. Also enclosed is a reprint from Business Abroad of an interview with me on the subject.

Sincerely,

CARL A. GERSTACKER, *Chairman.*

[From the Dun & Bradstreet publication, "Business Abroad"]

NEEDED: A PROFIT BREAK FOR EXPORTERS; DOW'S GERSTACKER CALLS FOR ACTION ON EXPORT EXPANSION COUNCIL PROPOSALS FOR TAX INCENTIVES, EASIER FINANCING, MORE EQUITABLE FREIGHT RATES

The way to boost exports is to make them more profitable.

This uncomplicated view, though widely held by businessmen, has never gone down well with Government officials. Last month the National Export Expansion Council stated it again and emphasized it by voting to concentrate on selling some of its old recommendations rather than presenting new ones.

Through five study committees, the Council has made more than 100 recommendations for boosting exports. Many would act to increase export profits. Few have been acted upon by the administration, fewer by Congress.

To Carl A. Gerstacker of Dow Chemical, chairman of the Council, Washington's failure to enlist the profit motive in the export drive is a serious lapse. He said:

The government has been waving the American flag and saying "export for patriotism." We are all good red-blooded patriots, but this was in a way a mistake.

Businessmen are saying there must be something wrong with this. When one has to say "do it for patriotism," it must not be profitable.

I've been stressing export for profit, because I think businessmen are primarily motivated by profit. If they know a way to make more profit than they are now making, or think they know, their ingenuity is fantastic.

Before his appointment as head of the entire Council, Gerstacker chaired its committee on taxation. It reported in the spring of 1966, along with the committees on export financing and ocean transportation. Most of its recommendations have languished.

Gerstacker still feels that tax policy is an important area where Government can give exports a big boost. He explained:

Exporting is less profitable now than selling in the domestic market. People will generally export only when they cannot sell enough here. You have to invest a lot to export. You have to learn different languages and different writing and different containers and different markets. The little fellow simply won't overcome those obstacles without some incentive. Tax incentives would either reduce his losses in exporting or make exporting more profitable.

We don't need as much in tax incentives as our foreign competitors have. We don't need exporting to be as profitable as selling domestically. We just need to close the gap a little.

Almost if not every nation with which we compete does something to help its exports. In Europe they rebate virtually all of the taxes. In our country, since the 1962 Revenue Act, we essentially do nothing for our exports tax-wise. This means our exporters are at a competitive disadvantage. Taxes are a major share of the cost of business.

One problem for the United States is that the rebate of direct taxes (such as income taxes) to encourage exports is prohibited under the General Agreement on Tariffs and Trade. The United States collects most of its revenue through income taxes, while most European nations collect much of their revenues by indirect taxes on sales or turnover. Such taxes can be rebated to exporters under GATT rules.

The Council urged several steps to put U.S. exporters on a better competitive footing. A key one asked that Congress liberalize the tax laws concerning export trade corporations. The 1962 Revenue Act, which generally taxes income from exports just like domestic income, provided the ETC to grant some relief for exporters. Gerstacker noted:

> But the ground rules are so unworkable that almost no one can have one and operate under these rules. There are only about 23 of them in the whole country. These belong to the big corporations. The medium- or small-sized corporation just couldn't possibly do the paperwork to live under the rules.

Probably the provisions for export trade corporations are in violation of GATT. But none of the other GATT signatories have objected, perhaps because some of their own tax incentives may also be in violation of the GATT rules.

For example, Japan offers its manufacturers an accelerated depreciation allowance on equipment used for exports. Australia allows overexpensing of export promotion costs.

Each of these methods has been proposed by the National Export Expansion Council as a way the United States could encourage its exporters. The Treasury has them under consideration. The Commerce Department has submitted to Treasury a plan for incentive tax deductions, of, say, 150 percent of cost of export promotion efforts. So far, no action.

The committee dealing with export financing made at least 26 recommendations. An important suggestion—that export credits should be exempt from the voluntary controls on overseas lending by commercial banks—has been turned down by the Federal Reserve System, but several have produced results.

Export-Import Bank, in particular, has adopted many of the Council's suggestions. A major one is the Exim rediscount facility, established last September, which permits commercial banks to borrow from Exim up to 1 year against their holdings of export obligations of more than 180 days.

Gerstacker estimates this could make $500 million more export credit available. But he still has one complaint about Eximbank. He said:

> The Export-Import Bank has been running at a profit, a large profit. The bigger the profit Exim makes, the less encouraging they are to exports because they charge the exporters more. Our foreign competition doesn't expect to make a profit on export financing.

One of the transportation committee's recommendations called for the Federal Maritime Commission to continue efforts to correct unjustified discrimination in ocean freight rates. Often it costs more to ship goods to Europe than vice versa.

The Commission is conducting hearings on the question, but carriers have not changed their rates. They maintain that the smaller volume of trade from Europe to the United States accounts for the differential.

Some progress has been made on standardizing export documentation. Many shippers and carriers are now using the standard export format. Both Government and industry are promoting through documentation on containerized shipments, which could cut the cost and trouble of exporting.

Two committees reported last month. The one considering export promotion urged expansion of East-West trade. It wants Congress to enact a law similar to the East-West Trade Relations Act of 1966, which failed to pass last year but is due to come up again this year.

The Council has authorized its officers to testify in Congress, if asked, in favor of liberalizing East-West trade. It has also urged its regional councils to study the issue.

The fifth committee made some 33 suggestions for increasing trade and investment in less developed countries. One was for the United States to consider cutting tariffs of particular importance to LDC's and to urge other industrialized countries to do the same. The committee did not rule out preferential tariff treatment for LDC's if other rich nations would follow suit.

There has been a tendency thus far to give the National Export Expansion Council's recommendations a rather low priority. On Capitol Hill, particularly, most of them have gathered dust while legislators turned their attention to more dramatic affairs like the Vietnam war and Adam Clayton Powell.

If Gerstacker's views on the prospects for this year's merchandise-trade surplus are correct, however, then the Council's work is extremely important. Administration officials, noting the slower pace of the U.S. economy, figure exports will grow at least as fast as imports this year. They expect a $500 million improvement in the trade surplus.

Last year, the booming U.S. economy sucked in 20 percent more imports. Exports only rose 10 percent. This cut the trade surplus to $3.7 billion, from $6.7 billion in 1965.

Noting the Government's optimism, Gerstacker warned:

> I do not share that optimism. Much of the rest of the world—with the exception of Japan and perhaps Italy—also has surplus capacity and will be most competitive, in their own markets, and in third markets, and in the U.S. market.

This helps explain why Gerstacker feels it's high time exporting was made more profitable and why the Council intends to press for action on its current recommendations this year rather than writing new ones.

"There is an awful lot of meat that hasn't been chewed," he said.

Report of the Action Committee on Export Promotion, National Export Expansion Council

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NATIONAL EXPORT EXPANSION COUNCIL ACTION COMMITTEE ON EXPORT PROMOTION

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William Blackie	do	Caterpillar Tractor Co.
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Kenneth Youell	Washington representative.	Public Relations Society of America.
Vern G. Zeller	Vice president international.	Electric Storage Battery Co.

U.S. DEPARTMENT OF COMMERCE LIAISON OFFICERS

Name	Title	Organization
Roderick M. Gillies	Executive director, export expansion councils.	Office of Field Services.
Paul E. Pauly	Director	Office of International Trade Promotion.
James F. Laverty	Special assistant to the director.	Do.
James E. Murrin	Chief, Program Evaluation Staff.	Do.
Jan B. Verschuur	Director, Trade Conferences Division.	Office of Field Services.

NATIONAL EXPORT EXPANSION COUNCIL,
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., February 10, 1967.

Mr. CARL A. GERSTACKER,
Chairman, National Export Expansion Council,
U.S. Department of Commerce,
Washington, D.C.

DEAR MR. GERSTACKER: I am pleased to forward the report of the Action Committee on Export Promotion for consideration by the National Export Expansion Council, the Department of Commerce, and other Government agencies concerned.

This report represents an intensive study conducted over a period of months by a dedicated group of senior business executives who represent a wide range of skills and involvement in the business community and in the world of international trade. I cannot emphasize too strongly the amount of thoughtful consideration and planning which has gone into the development of this report.

In the development of this report, we divided the preliminary work between two subcommittees. The first Subcommittee on Government Services was headed by Gen. James M. Gavin, chairman, Arthur D. Little, Inc. The second Subcommittee on Business Policy was chaired by Mr. Jose de Cubas, president, Westinghouse Electric International Co. Both of these subcommittees met several times and developed reports which were of major value in guiding the full committee to its final recommendations.

The report is complete, yet in summary form. Factual information and documentation exist to support all of the conclusions which have been reached by the Committee and which are presented here as recommendations.

Because the report is complete in itself, I will not attempt here to summarize its basic features, except to highlight two points of view around which the report has been designed.

To date, there has been substantial effort by the Department of Commerce and the U.S. Government, as a whole, on the subject of export expansion. This has drawn upon the background and judgment of senior officers in the Department and members of the National Export Expansion Council. This effort has resulted in programs designed to stimulate interest in, and focus attention on, the need for export expansion as well as various marketing aids for American businessmen.

We now feel that additional growth in exports can only come from a sharply directed, business-oriented program which draws upon skills and techniques of proven effectiveness in the attainment of national objectives and measurable goals. As the world's largest trading nation, the United States must retain its awareness of the important contribution which trade can make to its international economic and political leadership.

If the United States is to realize its full potential in the competitive struggle of nations for markets of the world, it must design a program of specific objectives, utilize the most contemporary tools to reach such objectives and design a system for auditing results so that results can be measured in definitive terms.

We consider that this report is important enough to merit major consideration, not only by the Department of Commerce but by other departments of the U.S. Government. We believe that cooperation on the part of all interested agencies is essential for achievement of success in this important national effort.

Sincerely,

JOHN R. KIMBERLY,
Chairman, Action Committee on Export Promotion.

INTRODUCTION

Upon the recommendation of its executive board, the National Export Expansion Council at the sixth plenary meeting, April 29, 1966, established the National Export Expansion Council Action Committee on Export Promotion.

Although the need for such an action committee had been discussed at previous meetings of the National Council, the decision was made first to concentrate on three other specific areas affecting the ability of American exporters to compete profitably in world markets. These were (1) export financing; (2) taxation in relation to exports; and (3) ocean transportation and freight rates.

The action committees in these three areas completed their studies early in 1966, and presented individual reports and recommendations through the Department of Commerce to the Cabinet Committee on Balance of Payments, and subsequently to the President in May 1966.

The completion of these reports brought the work of the National Export Expansion Council to the point where a serious study of export promotion was the next step necessary in the development of a new and dynamic program to increase national exports.

The Action Committee on Export Promotion first met on June 29, 1966, and at this first meeting it became apparent that its considerations would be concerned largely with two basic areas of activities: (1) The broad areas of government services, and (2) the important area of business policy.

Accordingly, the task was assigned to two subcommittees.

The Subcommittee on Government Services served under the chairmanship of Gen. James M. Gavin, chairman of Arthur D. Little, Inc.; and the chairmanship of the Subcommittee on Business Policy was held by Mr. Jose de Cubas, president, Westinghouse Electric International Co. of New York.

The recommendations embodied in this report, which were adopted unanimously at the final meeting of the committee on January 12, 1967, reflect the concerted efforts of the individuals who composed these two groups.

The opportunity

Before summarizing the recommendations of the committee, it would seem practical to comment upon the atmosphere which currently exists in international trade and which, therefore, controls the opportunities presented for American business throughout the world.

There is a remarkable change in the standard of living taking place in many parts of the world. A rising middle class, with disposable income, has injected a new note of vitality into the economies of the developed countries such as those of Western Europe and Japan. Even in the less sophisticated areas of the world there is a noticeable increase in the capability of ordinary people to purchase goods and services, which even a generation ago would have been beyond their grasp.

Improved transportation, highlighted by the jet airplane, has reduced the "size of the world" by eliminating the enormous barrier of travel time which inhibited the growth of international commerce in large sections of the globe.

The many emerging nations, although not affluent at this time, are providing a new base for economic expansion and new opportunities for American marketers. The elimination of colonial economies, and the establishment of independent natoinal entities are new and vital forces in foreign trade.

Technical advancement in communications has given international trade a new capability; has shortened the time span for completion of transactions; and has accelerated the flow of marketing information.

Some of the risks of international trade have been reduced by containerization, improved port facilities, new vessels and planes, and new materials handling techniques.

Improved education on international subjects has provided a growing knowledge of economics, geopolitics, and other factors pertinent to an understanding of the opportunities presented by the flow of commerce between nations.

The accelerated mobility of people, demonstrated by the soaring growth of international tourism, has created an interest and awareness of the products, services, and cultures of other people, which in turn has stimulated consumer demand for products of foreign origin.

Lastly, there is a resurging effort on the part of all major nations of the Western World to compete vigorously for international markets. Markets for products and services, influenced by American business in the past, are now under vigorous competitive attack by other nations with improved export capabilities.

In addition, the countries of the Socialist bloc are rapidly becoming serious contenders in the foreign markets of the world. Their increased capability to market and service their own products will make them stronger contenders in the future.

The committee assumes that major governmental attention will be given to the problems of taxation, finance, and transportation covered by other action committees. In the face of the market conditions which have been summarized above, it is now vital that we have a carefully coordinated, highly integrated and effective promotional campaign to give the United States of America its maximum share of world trade.

The needs of business can best be met by a program which includes both short- and long-term goals. Such a program would allow business to plan intelligently its own requirements and actions in the field of foreign trade. Adoption by Government of a long-term program, such as suggested by the committee, would provide business with assurance of our Government's commitment to provide stable, sustained, and vigorous support for the business effort required to expand exports.

CONCLUSIONS AND RECOMMENDATIONS

1. The committee recognizes a need for both a short-term export expansion action program, designed to produce immediate results, and

a long-range program around which business and industry can plan and program their international business for the next decade.

2. Short-term efforts should be centered on those companies presently accounting for the major share of U.S. exports. These companies have the knowledge and capability to make a major contribution to export expansion without delay.

3. Both the long- and short-range programs should be as specific as is practicable. They should have tangible, measurable goals. They should provide for a system of measurement against these goals, which can permit the program to be evaluated periodically during the next decade.

4. An export expansion program, projected for 10 years, should be planned to analyze the total potential for American exports, market-by-market, based upon three kinds of growth: (1) a normal growth based on an expanding world economy; (2) a penetration growth based on increasing the U.S. share of foreign markets; and (3) the introduction of new products and services which are presently unavailable in world markets.

5. There should be an expansion of electronic data processing involving market information, trade opportunities, identification of prospective exporters, and the compilation of export data to permit tabulation of results.

6. Government should take such action as may be necessary in the areas of finance, taxation, and transportation to achieve early export increases from major American companies. The committee has noted that recommendations have been made in these fields by other NEEC action committees. Since exports to U.S. subsidiary companies abroad constitute an important and vital part of total U.S. exports, prolonged restrictions on further investments in subsidiary companies can only have a dampening effect on export expansion.

7. It is the consensus of the committee that an expansion of East-West trade is highly desirable. It recommends enactment of legislation similar to the proposed East-West Trade Relations Act of 1966, which was not enacted by the Congress. In trading with the eastern bloc countries, the committee favors a nondiscriminatory tariff approach and urges the removal of obstructions now blocking trade expansion in this area.

8. It is recommended that the Senate be urged to approve the President's recommendations for five classes of Carnets which will simplify border formalities and place the United States on an equal competitive footing with other countries in the promotion of foreign trade.

9. The U.S. Government is urged to continue its efforts for product protection for American industry on a worldwide basis in the important areas of patent and trademark protection.

10. The committee feels that responsibility for development of U.S. international trade must be centralized, with permanent provision for the representation of international trade interests in the highest councils of government (at the Cabinet level). It is strongly urged that the President require all agencies of the Government to recognize this centralized authority and responsibility in the formulation and conduct of programs affecting this Nation's exports.

11. Drawing upon the success achieved by the International Air Transport Association (IATA) in the development of a worldwide

airline ticket which vastly simplifies the transportation of passengers and the exchange of revenue, the committee strongly urges that the U.S. Government exercise leadership in developing international instruments which would sharply reduce the burdensome requirements for forms, affidavits, and other documents currently involved in international trade.

12. It is recommended that the selection, training, and utilization of personnel in such areas as the Department of Commerce field offices and commercial attachés be reviewed and reoriented to meet the needs of an accelerated export expansion program. Additions to staff as required should be provided.

13. A standing committee should be appointed from the membership of the National Export Expansion Council to work with trade associations and other business organizations to insure that all such associations have within their annual programs, activities which directly support the work and the objectives of export expansion.

14. The importance of service industries and indirect contributors to the balance of payments should not be overlooked. Tourism, for example, represents a major factor in the international flow of money. Other nations, through important national programs of tourist development, have made the tourist industry a significant element of their national economy. Our program in this important area is inferior to many other nations of the world. The tourist industry requires centralized promotion of national destinations. The U.S. Government should accelerate its support of private industry in the promotion, development and accommodation of foreign visitors to the United States.

15. The committee recognizes the cooperation between the Departments of Commerce and Agriculture in promoting the sale of agricultural products abroad, and recommends its continuance.

Because nutrition and hunger are major human, social and economic problems in two-thirds of the world, imaginative marketing of agricultural products could be a major factor in an improved balance-of-payments position.

16. We should (1) increase the effectiveness of regional export expansion councils by defining their role more precisely; (2) develop regional council programs aimed at specific targets with assigned priorities; and (3) organize area conferences similar to the productive 1966 Atlanta conference.

17. We should broaden the base of support for international business within all elements of the executive branch and U.S. business. Many of the problems, for which remedies are sought, would evaporate if international business were accorded greater importance. In such an atmosphere, all elements of the executive branch would view export expansion as a more vital long-range problem and thus the development, funding, and implementation of constructive programs would be made much easier.

18. Assuming the adoption of a major number of these recommendations, and recommendations of other action committees, a second White House Conference on Export Expansion should be called to launch a new assault on the expansion of our international trade and a revitalized program of export activities.

BASIC ELEMENTS OF AN EXPORT PROMOTION PROGRAM

I. Long-range planning

A. Recurring throughout the discussion, during the meetings of the committee, was the need for improved long-range planning. It was the impression of the committee that the Department of Commerce, in the past, appears to have dealt with trade situations on a crisis basis, and that it seemed to feel compelled at times to raise its level of effort to meet contingencies in the trade balance. There should be a long-range plan supported by a detailed program projected over the next 10 years. This may now become a manageable planning problem with the availability of information being collected by the Department of Commerce looking to the construction of an input-output matrix of the U.S. economy. Similar econometric studies are being initiated abroad. In the near future, it should be possible to match our own potential output with that of competing countries and, on the basis of these comparisons to begin to develop forecasts of what our export opportunities might be. Once such a plan is developed, it may then be used as a basis for detailed programing on a year-by-year basis and, of course, be brought up to date periodically.

B. Another valuable planning tool is the data bank which is now in the Department. There is a need to educate businessmen on the latest marketing data, conditions, hazards, and opportunities abroad. This can be done through a continual updating of the data bank, and by making it available to regional areas. Specific reference was made to having available ultimately all the data that any small businessman might need to know about overseas markets for his product. A system such as this will depend significantly upon the sources of information abroad, and the responsiveness of the commercial attachés to the needs of the system.

C. It may be that such a program can best be researched and planned by a private foundation, or a specifically staffed group within the Department of Commerce. This approach would underline the necessity of the project and supply the requisite means for its implementation.

II. Specific objectives

A. It is the belief of the committee that there must be a program of specific targets, specific action, and specific scorekeeping, and that the whole emphasis must be on specific and not upon generalities. A task of this magnitude will deserve to have the same kind of marketing point of view that a corporation would have if it were launching a billion dollar business enterprise. In furtherance of this concept, therefore, there should be a measurement of the total potential for American exports, market by market, projected for 10 years. Market opportunity reports showing, for example, that a specified foreign country has a demand for certain kinds of equipment beyond its capacity to produce could be directed to identified U.S. firms whose products might be particularly suitable.

B. Once the total size of a market has been determined, it should be broken down by industry and, at some reasonable level, by product category. Then the specific companies which manufacture or service these product categories should be identified. The specific trade opportunities from abroad, processed through a rapid electronic-data processing system, would then be brought to the attention of appropriate companies. The entire program would be based upon meticulous, detailed market information, and not upon general promotional approaches. Modern EDP techniques make it possible to work with any number of the more than 300,000 manufacturing establishments in the United States. There are many companies in the United States which regularly, through electronic data processing, handle the billing and accounts of several million customers. There are others who handle detailed analyses and information recall on hundreds of thousands of industrial accounts, including specifications and requirements.

C. It might also be possible to ask the major exporting companies, on the basis of their annual export business forecasts, to provide figures from which a composite short-term goal could be determined. Progress against this goal—reported periodically by the companies themselves—could provide continuance position reports against short-range objectives.

III. Automation of data

A. It is the view of the Committee that all possible information should be compiled and organized for electronic data processing. This would include marketing intelligence information from abroad, market opportunities, reports from business in this country, the continuous updating of the American International Traders Index, and any other information which would be of value in measuring progress.

B. Specific illustrations follow:

1. *Market share studies.*—Periodic studies should be undertaken in major competitive markets to determine the share of market for specific products or industries held by competitive nations. Progress should be measured against targets, and a continuing surveillance should be maintained to insure the maintenance of our competitive position.

2. *Market information.*—Commercial attachés and other sources of foreign information should develop total market information based upon a standard methodology and uniform reporting. This should be organized in the United States for dissemination to interested companies and for storage and retrieval in the data bank.

3. *Trade opportunities and commercial intelligence.*—A program should be developed for the uniform recognition and reporting of trade opportunities and marketing intelligence. This material could be matched by computer against the product capability, product availability, and export activity of individual American companies. Reconciliation of this would provide an invaluable reservoir of action opportunities.

4. *Research and identification.*—The ultimate EDP program should be keyed to a systematic study of opportunities abroad and the corresponding mating of American capabilities against these opportunities.

IV. Selection and utilization of personnel

A. The commercial attachés abroad fill a tremendously important role in the expansion of our exports. No matter how good the product of our industry, nor the capital invested and the energy expended in selling abroad, serious mistakes can be made if basic intelligence on the situation abroad is faulty or missing entirely. Moderate EDP processing systems are now in being to enable business to obtain the latest, up-to-date information that it needs in order to market well. The most sensitive part of this system is the reporting element that provides the input. We have attempted, in our Committee, to contact a number of attachés in order to acquire some feel for how well they understood the problem and how able they were in carrying out this particular role. It is our impression that their performance varies extensively from being outstanding in some countries, to not very effective in others. Without, therefore, going into specific countries and personalities, our Committee would urge the Department of Commerce to develop a means of checking the performance of the commercial attachés, replacing those of demonstrated incompetence, and rewarding those who have done a good job. The entire EDP system may well depend, in the final analysis, on how well the attachés understand it and contribute to it. Aside from this role, however, they also have the very important function of meeting the needs of American businessmen traveling abroad, understanding the market in the countries to which they are assigned, being sensitive to the opportunities for American business in that country, and being energetic and imaginative in helping American businessmen exploit these markets—such assistance by commercial attachés would help assure the success of our export expansion programs.

The current study of a joint State-Commerce task force entitled, "Overseas Economic-Commercial Integration" is noted. The Committee favors the adoption of those measures which will provide more effective representation and assistance to American business abroad.

B. The field office officials of the Department provide a great deal of service to the business community. The Committee endorses the recommendations of the White House Conference of 1963, calling for additional funds for Commerce field offices to augment their export promotion staffs, and for additional travel funds to facilitate such work outside the field office cities.

C. An integrated program providing for exchange of personnel among the Foreign Service, departmental, and field office staffs would provide increased opportunities for personnel development and better service to the business community.

V. *Documentation*

A. It is noted that a National Committee on International Trade Documentation has been established. The National Export Expansion Council approves the efforts of this Committee. This problem was stressed by the President himself March 7, 1966, when he stated:

> We have mounted a sizable Government-industry program to expand exports, yet we allow a mountain of redtape paperwork to negate our efforts. Worldwide, a total of 810 forms are required to cover all types of cargo imported and exported. In this country alone, as many as 43 separate forms are used in one export shipment. Eighty separate forms may be needed to process some imports. This is paperwork run wild.
>
> I am directing the Secretaries of Treasury and Commerce and the Attorney General to attack these problems, through the use of effective systems research programs. And I have directed them to eliminate immediately unnecessary elements of redtape that inhibit our import and export programs.

B. The Committee supports the work now done by Government in identifying and correcting nontariff barriers. It suggests that the major exporters can provide important assistance to the Government's effort by the continuous import of information which can then be retrieved as needed for use at the negotiation table. Similarly, a compilation of nontariff barriers currently in effect around the world would be available to exporting or prospective exporting companies in planning their export programs. To the extent practicable, such data should be integrated to the EDP program for supplying trade information.

VI. The regional export expansion councils

A. These groups came in for considerable discussion. The Committee noted that the accomplishments of the regional export expansion councils (REEC's) varied from region to region. The Committee is of the belief that they serve an excellent purpose but that, obviously, some have done much better than others. It is felt that the role of the REEC's should be clearly defined and that an action program directed at specific activity in specific target areas should be given to those councils not now engaged in a well defined program. The Committee noted the meeting of the area conference of nine southeastern regional export expansion councils in Atlanta. The 120 attendees, including officers of the national council, as well as senior officials of the Department, developed a general unanimity that the REEC organizations are successfully functioning groups which should be continued. Their efforts should be expanded. It is the belief of the Committee that the National Export Expansion Council and the Department of Commerce should consider having additional area conferences in other parts of the country. From the discussion held within the Committee, it became clear that there were a number of things happening in some REEC's of which other groups are unaware. It is therefore recommended that the NEEC request from each REEC a summary report of the programs it has undertaken in the past, and up through the calendar year of 1966, to include a commentary on their effectiveness in terms of exports generated. They should also report a forecast of the programs and activities that each council proposes to undertake during 1967. This will permit evaluation of the work being done by the REEC's and the development of a plan for optimum use of the councils in the future.

B. It is recommended that the NEEC suggest to the U.S. Chamber of Commerce that it takes steps to acquaint American chambers of commerce overseas with the NEEC/REEC program. It would be well for overseas chambers to appoint an American businessman, from among each chamber's membership, to serve in a liaison capacity with the NEEC and REEC's in the United States. Names of Amcham members selected would then be published and made available to Commerce field officers and REEC members for contact purposes.

VII. Publicly and national publications

A. It is the belief of the Committee that the Department should take the initiative in bringing together a meeting of the editors of such publications as Time, Newsweek, Business Week, U.S. News & World Report, Barron's, Fortune, Forbes, Nation's Business, Wall Street Journal, and the Reader's Digest. The purpose of this meeting would be to outline the problem confronting the Department, in national terms, and hopefully elicit from the publishers a degree of support of the Nation's export expansion program. In this connection, the Committee noted the foreign trade page which appears in the Weekly Gazette of Phoenix, Ariz. This consists of an entire page in each issue of the newspaper devoted solely to foreign trade. It is recommended that more periodicals with national circulation be encouraged to adopt the "foreign trade page" idea.

VIII. Promotional programs

A. Present promotional programs

It is the belief of the members of the Committee that the overseas activities of the Department of Commerce are imaginative and well carried out. Great strides have been made in improving the work that has been done by the Department in recent years in helping expand our exports. The Committee commends the Department for what it has done and urges that it continue to present aggressive programs to the end that they can be significantly improved upon during the coming decade. New tools are becoming available. New markets and opportunities are in prospect with population growth, the emergence of the newly developing countries, and the abundance of new technology. It behooves us, therefore, to make an unrelenting effort to improve our present performance if we are going to achieve the high volume of exports that we require.

Present major activities involving trade fairs, trade centers, trade missions, sample display service, "America Week" promotions, and commercial intelligence activities were highly commended for producing effective results at reasonable cost. The continuing work of the field offices and the regional export expansion councils in organizing and sponsoring export workshops and seminars was recognized by the Committee as an outstanding activity, yielding long-term results. It was recommended that consideration should be given to the planned expansion of trade centers in those areas where the opportunity for export development warrants the investment.

The Committee noted that trade opportunities, as published in International Commerce, continue to be of great value as a recent survey shows. It was the one item that the largest majority of people, 43 percent, felt to be of most value. The Committee recommends that business proposals such as those now being furnished to each trade mission should be sent—or that manufacturers should be free to send them through Department of Commerce channels to any commercial officer at any time. They would be numbered and filed complete with the literature which the officer could lend to any interested party and circularize either through Embassy letter or through their own mailing list to the newspapers, to local chambers of commerce, and so forth, simply stating the reverse of a trade opportunity: "American manufacturer of such and such a product seeks distributor, proposal No. ----," to encourage people to come into the Embassy to look it over.

It was suggested that services of the Department to assist single manufacturers in putting on product demonstrations in foreign countries be expanded.

The Committee recognized the value of attempting to interest more and more manufacturers in exporting, and felt that more emphasis should be placed on their using export personnel who are professionals, either their own professionally trained export managers and assistants full time, or outside professionals part time. These include combination export managers, export merchants, and other manufacturers already active overseas, under the "piggyback" operation. Export personnel are stimulated by participation in export trade associations and professional societies.

The present "E" Award program for recognizing export achievement should be continued. It was felt by the Committee that the "E" Award program may be even more valuable after we reach down to single out smaller companies and those now achieving success, which heretofore have not been involved or interested in export expansion. Ceremonies, publicity, and a full program of their recognition should accompany every "E" Award.

Case histories of successful export promotion programs are an extremely valuable tool for involving new companies in export trade. Consideration should be given to expanded distribution of "E" Award-winning case histories in some form for use by regional councils, the National Export Expansion Council itself, and the field offices of the Department in their day-to-day work with potential exporters. In addition, these case histories could provide valuable source material in colleges and universities offering lectures and courses in foreign trade. They would have the double value of stimulating interest in the career opportunities of international trade among young men and women while at the same time serving as important lecture and reference material.

B. New promotional programs

1. *Suggested name for long-range program.*—Because of the basic objective of the Promotion Committee is a 10-year program, it is strongly recommended that this program be identified with a captivating title such as "Mission '76." It is important that the slogan selected possess strong merchandising appeal. An imaginative slogan could infuse new spirit to export expansion, and serve as a rallying point for all elements.

2. *Business associations.*—In the support of a long-range export expansion program, it is believed that more use should be made of some of the major national bodies concerned with economic affairs; for example, it was suggested that the White House request the U.S. Chamber of Commerce, National Association of Manufacturers, the State chambers of commerce of the 50 States, the Bankers Association for Foreign Trade, the American Bankers' Association, Sales & Marketing Executives-International, to embrace export expansion as one of their major projects during the coming year. They should be prevailed upon to do this in the national interest. When their response to such a request is received, they should be asked to provide information to the Secretary of Commerce, periodically, on what programs they have undertaken and the success that they have achieved. It was hoped through this device to insure an adequate degree of interest and to obtain and put to better use any ideas that might be developed by the program. Finally, it is believed that such a program might also include the American chambers of commerce overseas.

3. *Incentives.*—The Department of Commerce should give some consideration to incentives, particularly to medium and smaller sized businesses that have been demonstrably reluctant to embark upon export

programs. Apart from existing trade promotional programs, increased export sales of conventional products now on the market can only be developed beyond their present level through tax relief, a more liberalized program of export financing, and continued increase in export-stimulating investment abroad. In granting incentives, such programs must not be discriminatory, but should be available to all. However, the committee cautioned that incentives should not be permitted to take the form of price subsidy, which, if permitted to develop, could result in an international competition for such Government support and permit a continuous price war.

4. *Licensing.*—It is believed some further program to sell the advantage of licensing to foreign companies should be instituted by the Department. In recent years there seems to be a trend away from licensing. We should develop a more ambitious program than we now have. Perhaps licensing should open some different tax treatment than it has in the past. Licensing has been a large carner in the past and should be in the future.

IX. East-West trade

The committee endorses the paper of the Miller Committee, submitted to the President of the United States in April 1965, which said:

> The committee believes that peaceful trade in nonstrategic items can be an important instrument of national policy in our country's relations with individual Communist nations of Europe.

It was felt that in the competitive markets of the world, our friends and allies are aggressively selling their products and services without regard to the political philosophy of their customers. Competitive pressure alone suggests that we should, to the greatest extent compatible with national policy, give American industry the same market opportunities.

A new form of competition is appearing in world markets. The socialistic nations of the world are carefully studying and adopting our marketing practices and experiences. They are utilizing the tools of salesmanship, research, advertising, and promotion, which have given American industry its business leadership. We are now exporting our knowledge to them to be used competitively against us. We should equalize this condition by selling to them all products and services which are not in conflict with our national interest. In the development of East-West trade, consideration should be given to the protection of American manufacturers with respect to revocation of export license for commodities in transit. Credits extended under any East-West trade transaction should not exceed conventional terms now employed in trade with other markets.

X. Carnet conventions

A. A number of businessmen have reported problems with foreign customs procedures when traveling abroad with their samples. In addition, it is often stated that their foreign competitors, by using a document called a Carnet, are able to travel with their samples between countries with a minimum of border formalities. These documents, know as ECS Carnets, allow duty-free temporary importation of commercial samples without the necessity of posting a bond with each foreign customs authority. At present, Carnets for samples are available only to businessmen in those countries, primarily in Europe, who are members of an international convention establishing the ECS Carnet system. In view of the possible advantages to U.S. businessmen selling abroad, the President submitted to the Senate this convention and four other related conventions for its approval to U.S. accession. These are:

1. Customs convention regarding ECS Carnets for commercial samples.
2. Customs convention on the temporary importation of professional equipment.
3. Customs convention on the ATA Carnet for the temporary importation of goods (an extension of the convention of professional equipment).
4. Customs convention on the international transport of goods under cover of TIR Carnets (to cover goods imported in certain road vehicles and containers for transshipment without intermediate reloading en route).
5. Customs convention on containers (to provide for the temporary entry, free of duty, of containers used in international trade, wherein the container will be reexported within a period of 6 months).

B. The committee recommends the immediate ratification of these five Carnet conventions now before the Senate to assure treatment of U.S. educational and promotional materials and samples equal to that of the foreign competitor.

XI. Product innovation

A. Because of the special opportunities presented in world markets by new product development, technological and scientific research, and product engineering modification, it is strongly recommended that the Department of Commerce exercise leadership in encouraging American business to innovate, design, and modify products for the world market, rather than domestic consumption alone. Increased competitive pressure and the growing concept of a world market strongly suggest that major research, development, and product innovation should be internationally oriented for maximum export potential.

B. At the same time the corporate executive needs from Government a clear policy on that proportion of the cost of research and development which can be properly charged to the subsidiary company and, in some cases, some sort of special allocation for research and development for underdeveloped countries. In addition, the committee recommends that appropriate technical, professional, and engineering societies be encouraged to sponsor and support educational seminars on "Designing for World Markets."

* * *

In making these specific recommendations, the committee assumed that their adoption would be accompanied by the use of all suitable forms of communication, publicity, advertising, and promotion, in order to reach the largest possible number of potential exporters with the most convincing story of the profit and growth opportunities available to American business with the assistance and cooperation of the Department of Commerce and other interested elements of the U.S. Government.

In conclusion, the Export Promotion Committee, which has developed a good internal working relationship and a mutual understanding of the problems involved, would like to express to the National Export Expansion Council, its willingness to continue in being, and to offer its continued services to the Council as the needs of the export expansion program may require.

REPORT OF THE ACTION COMMITTEE ON TAXATION, NATIONAL EXPORT EXPANSION COUNCIL

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NATIONAL EXPORT EXPANSION COUNCIL ACTION COMMITTEE ON TAXATION

Members and alternates	Title	Company
Carl A. Gerstacker (chairman).	Chairman of the board.	The Dow Chemical Co.
Joel Barlow, Esq		Covington & Burling.
H. G. Bixby	President	Ex-Cell-O Corp.
Harry P. Bugeja	Manager, tax department.	Do.
John E. Carroll	President	American Hoist & Derrick Co.
George Cooper, Esq		Covington & Burling.
E. F. Curtis	President	Deere & Co.
R. J. Drews	do	Foremost Dairies, Inc.
James H. Goss	Vice president and general production executive.	General Electric Co.
Frank Harlow, Esq		The Dow Chemical Co.
Melvin C. Holm	President	Carrier Corp.
Lester S. Kellogg	Director	Deere & Co.
George H. Kitendaugh	Manager, tax accounting service.	General Electric Co.
Richard W. Lindholm	Dean	University of Oregon.
Harry H. Mitchell	Treasurer	Douglas Aircraft Co.
Harry W. Moberg	Secretary-Treasurer.	American Hoist & Derrick Co.
Walter F. O'Connor		Peat, Marwick, Mitchell & Co.
Morris L. Rhinehart	Director of taxes	Carrier Corp.
Raphael Sherfy, Esq		Turney, Major, Markham & Sherfy.
Leon O. Stock		Peat, Marwick, Mitchell & Co.
Vincent Travaglini	Liaison officer	U.S. Department of Commerce.

FEBRUARY 11, 1966.

Mr. FRED C. FOY,
Chairman, National Export Expansion Council, U.S. Department of Commerce, Washington, D.C.

DEAR MR. FOY: I am enclosing the report of the Action Committee on Taxation consisting of recommendations for administrative action, legislative action, and additional study.

Our group has approached the preparation of this report with the understanding that the United States has a very serious balance-of-payments problem, and that the administration believes that more exports by U.S. industry are the best solution to that problem. Removal of some of the disincentives to exporting which occur in the tax field will expand exports because (a) the profits on exports will be higher and business effort flows toward profits; (b) the depressing psychological influence on exports of strict administration of tax provisions relating to exports will be reduced; and (c) the inertia that many U.S. companies have in connection with exporting activities may be overcome.

We recommend three specific areas of administrative action which will help to remove tax barriers to exports:

1. The realistic administration of laws providing for reallocation of income and expenses between related companies: recent Treasury efforts to clarify practices in this area have been helpful but guidelines on the reasonableness of selling prices are needed.
2. The adoption of rules on the repatriation of funds and the use of foreign tax credits when reallocations have been made by the Internal Revenue Service between related companies, consistent with policies now governing tax years prior to 1963.
3. More liberal policies on the transfer of industrial property to foreign corporations in tax-free exchanges to permit favorable rulings in more cases.

We also recommend four specific areas for legislative changes in the tax provisions:

1. Less complicated and more liberal rules for export trade corporations under section 970 of the Internal Revenue Code.
2. An additional capital allowance for equipment producing goods for export.
3. An incentive deduction for promotion expenses in connection with export sales.
4. The extension of the investment tax credit to purchases of U.S.-produced equipment used abroad.

In addition, we recommend that studies be in initiated in two related areas:

1. A study to determine the feasibility of changing the rules on export subsidies under the General Agreement on Tariffs and Trade.
2. A thorough study of the possibility of major change in the U.S. tax system substituting a general indirect tax, such as a value-added tax, as a major source of revenue to replace part of the revenue now raised by the Federal income tax. It is the understanding of the committee that such a tax could be rebated on exports without violating the GATT rules.

We have refrained from recommending several popular proposals because of the apparent conflict with GATT rules. We have also omitted a specific recommendation on improvement of drawback procedures because we understand that the Treasury Department is working on this problem. We recognize that the Treasury is also giving attention to some of the other problem areas mentioned and where this is the case we would hope that our recommendations will be considered as pointing the way to the adoption of tax policies which will aid the export drive.

Any change in the tax laws or any more liberal and reasonable administration of present tax laws which helps to increase profit margins on exports will increase U.S. exports and will push the U.S. business decisionmakers toward more U.S.-produced goods and less foreign-produced goods for foreign markets. In fact, if the profit margins on exported goods could be raised to the same level as profit margins on domestic sales, the result would be a major jump in U.S.-produced exports and a consequent reduction in the U.S. balance-of-payments problem.

Sincerely,

CARL A. GERSTACKER,
Chairman of the Board.

INTRODUCTION

This report has been undertaken in response to the decision of the National Export Expansion Council that the effect of the present tax structure on exports should be studied. The council also urged that a complete reexamination of the Treasury Department's administrative policies in this area be made.

The report identifies tax barriers and impediments which now hamstring our export firms, and suggests measures to remove them so as to help existing firms as well as to encourage more firms to enter exporting. The approach followed is the essentially practical one of providing an answer to the question: What tax policies will make U.S. exports more competitive and bring more businessmen into foreign trade? The answers to this question in this report reflect the experience and judgment of the accountants, businessmen, tax economists, and tax lawyers who cooperated in the study.

Export expansion is one of the most promising avenues for improvement in the U.S. balance of payments. Although total exports increased slightly in 1965, the rate of growth decreased markedly compared with prior-year increases. The possibility of larger export gains in 1966 is in doubt because under today's conditions, U.S. industries generally can make higher profits selling in the United States than in exporting to other countries. Business in the United States is good, with prices generally stable or rising, and the growth and profitability of the U.S. market make export business relatively less attractive.

It costs substantially more to process orders from foreign customers and to prepare and ship goods to such customers. In the immediate postwar period when foreign competition was crippled as a result of the war, U.S. firms had a predominant position in foreign markets. Exporting was profitable as the additional cost of handling such business could easily be absorbed. Under present conditions, with heavy competition from all the industrial countries of the world, prices abroad are generally no higher than U.S. prices and in many cases are lower. The additional costs of handling foreign business and the discouraging administrative attitude of the U.S. Internal Revenue Service toward export profits tend to encourage companies already in such business to emphasize the development of U.S. markets and to discourage new companies from entering the export business.

Imports are in a strong rising trend and with our domestic economy in a stage of dynamic expansion we may be confronted with a reduced export surplus this year. This would follow a drop of $1.6 billion in our favorable trade balance in 1965 from 1964. It is, therefore, encouraging that the administration has determined that export expansion will continue to be of top priority in 1966. The President's Economic Report presented to Congress on January 27, 1966 recognized that, although decisive progress was made in 1965 toward reducing our balance-of-payments deficit, the account is not yet in balance. Significantly, he indicated that the United States would continue to work toward the reduction of trade barriers. The President then called for balancing our external accounts in 1966 and asked business "to sell even more abroad this year, in spite of full domestic order books." The committee's recommendations, if implemented, will make a substantial contribution toward this national objective.

Because there have been several previous studies of this subject and also because of the limited time and facilities available to us, we have avoided theoretical discussion of the overall economic effects of the measures recommended or their effect on the general commercial policy of the United States. However, this does not mean that such factors as tax equity and compatibility with the General Agreement on Tariffs and Trade were not considered in the formulation of our recommendations. Background discussions have been held with officials of the State, Treasury, and Commerce Departments charged with responsibility in the policy area covered by this report, and we have benefited from their counsel.

RECOMMENDATIONS

Recommendations which can be implemented by the Internal Revenue Service under existing legislation

We believe there are certain actions which can be taken by the Treasury Department and Internal Revenue Service as a matter of administrative policy which would immediately remove some of the disincentives affecting export trade.

1. *Reallocation of income and expenses between related companies.*—Regulations should be issued promptly under section 482 of the Internal Revenue Code to provide clear guidelines for determining the reasonableness of export-selling prices to related corporations, under varying economic circumstances, giving due recognition to the type of goods or products being sold, local competitive conditions, local tariffs, the extent to which such goods or products are incidental to domestic corporate operations, and other pertinent factors. The regulations should not provide fixed, rigid price formulas but should indicate a policy for handling pricing problems in relation to the facts and competitive conditions relating to particular methods of operation and pricing. In particular, the regulations should make clear that if competitive conditions cause the U.S.-manufacturing corporation to price to a foreign affiliate at a level which only recovers the incremental costs of manufacturing in the United States, this fact will not mean

that the price is unreasonable. The regulations should clearly state that they do not require the recovery of full overall costs in the United States unless the foreign competitive situation will justify prices high enough to accomplish this.

2. *Foreign tax credits and repatriation of funds where reallocations have been made.*—Consistent with the rules developed in Revenue Procedures 64–54 and 65–17, a policy for all future years should be adopted (*a*) to allow taxpayers to repatriate funds from foreign affiliates without additional U.S. taxes, and (*b*) to permit full credit against U.S. taxes for any foreign income taxes applicable to the reallocation of earnings or expenses under section 482. Tax-free repatriation with full credit for foreign taxes should be permitted in all cases unless the Internal Revenue Service can establish by a clear preponderance of the evidence that the reallocation was required because of deliberate tax avoidance and failure to make a good faith effort to abide by the U.S. rules on intercorporate pricing and accounting for other intercorporate transactions.

3. *Transfers of industrial property to foreign subsidiaries.*—A new policy should be established in connection with issuing rulings under sections 367 and 351 of the Internal Revenue Code. The concern of the Revenue Service of distinguishing between property and services should be relieved by the recognition that there are many cases where industrial secrets and know-how are valuable in themselves and that the personal efforts required to deliver such secrets and know-how can be distinguished from personal services unrelated to the transmittal of such property items. The Treasury should make clear that section 351 property does not have to be tangible property and should adopt a more liberal policy so that in more cases favorable rulings could be given to taxpayers on this point. The only effect on balance of payments must be beneficial because such rulings reduce the need for sending cash abroad.

Recommendations for legislative change

There are additional steps that could be taken to remove tax impediments to U.S. export business but which require legislation. We recommend the following specific proposals:

1. *Export trade corporation provisions.*—The complicated and restrictive rules for obtaining tax benefits as an export trade corporation under sections 970, 971, and 972 of the Internal Revenue Code should be simplified and liberalized. As a minimum step, the limitations on the profits excludable should be changed to one overall limitation of 10 percent of gross receipts each year. Furthermore, an export trade corporation should be allowed the benefits of these sections when selling to a related corporation in a foreign country provided that the related corporation resells the U.S. goods to an unrelated trade customer.

2. *Capital allowance for equipment-producing goods for export.*—Provisions should be adopted providing an additional capital allowance each year for equipment in the United States used in producing goods for export. It is suggested that a taxpayer's depreciation on productive equipment be increased each year in proportion to the ratio of its gross receipts from export business to its total gross receipts without the requirement of a reduction in the taxpayer's depreciable basis.

3. *Incentive deduction for promotion expenses.*—It is proposed that companies be allowed an incentive deduction for promotion expenses

in connection with export sales. We recommend that 150 percent of such expenses be allowed as a current deduction for U.S. taxpayers.

4. *Investment tax credit on equipment used abroad.*—The present provisions of the investment tax credit should be extended to U.S. taxpayers either using U.S. produced tangible equipment abroad or leasing it for use abroad. The balance of payments and exports will definitely be encouraged if the provision disallowing investment tax credit on property used abroad is removed in all cases where the property was produced in the United States.

Additional recommendations for administrative actions and in-depth studies by the executive branch

In addition to the foregoing proposals, we recommend that the President direct the Departments of State, Treasury, and Commerce and other interested agencies to thoroughly review the U.S. tax system in relation to exports and the rules on export subsidies contained in the General Agreement on Tariffs and Trade. Such a review should be directed toward the advisability of raising the question of tax rebates under present GATT rules during the Kennedy round negotiations, with a view to using the proposed U.S. concessions as a bargaining factor to renegotiate that part of the GATT rules which treats direct and indirect taxes differently. In our opinion the present language does not reflect the incidence of taxes properly and places the United States at a competitive disadvantage. We further recommend that a study be made of other means which might be employed to obtain a change in the GATT antisubsidy rules so as to eliminate this inequitable treatment of our tax system as compared with those of countries having more indirect taxes, particularly in the form of border taxes.

A related proposal, but one which would require a major change in U.S. tax policy, involves the possible use of general indirect taxes and particularly the value-added tax as a source of some of the revenue now raised by the Federal income tax. Because of the broad economic and political impact of this question, we recommend designation by the President of a special panel representing all segments of the economy which would be affected, to consider the matter. We recognize that this is an issue which transcends the question of export trade.

In addition, in-depth studies are needed and should be made by either the interagency group or the special panel of (1) the possibility of rebating to exporters so-called secondary excise and other taxes which are part of the cost of production, such as fuel taxes, State and local property taxes, taxes on inventory, and Federal excise and social security tax; (2) the feasibility of additional tax concessions to U.S. citizens engaged in the promotion of U.S. exports abroad: and (3) the possibility of taking into account for tax purposes fluctuations in the value of foreign investments because of local currency devaluations in the foreign countries. The inability to recognize such currency fluctuations for tax purposes until the foreign asset has been disposed of does not adequately reflect the earnings of a U.S. parent when it has foreign sales subsidiaries whose working capital is constantly declining in value because of currency problems in the foreign countries.

The Tax Action Committee of the National Export Expansion Council believes that the foregoing recommendations will remove many roadblocks now discouraging exports and will have a very beneficial effect on the rate of exports from the United States. The one factor which would do most to increase exports is the increase in profitability of export business. Changes in tax policy which will help accomplish this goal will assist a great deal in improving the competitive position of American exporters.

GENERAL DISCUSSION

Since the early 1960's when the Internal Revenue Service placed greater emphasis on auditing international business corporations, and since the heated debates over the 1962 Revenue Act, taxpayers have felt clearly that the attitude of Internal Revenue agents has been extremely harsh in this area. While top officials of the Treasury Department and Internal Revenue Service will disclaim any such administrative prejudices, actual experiences of corporate taxpayers have been very discouraging and have tended to decrease the enthusiasm of those presently engaged in foreign business for such business and definitely have discouraged others from expanding into foreign business. Most of the evidence relating to such harsh attitudes comes from cases involving proposed allocations of income and expenses under section 482. Our purpose is not to have the Service give up its right to make reallocations, but merely to have the Service adopt a policy which is more realistic in the light of the conditions under which industry operates.

There appears to be a lack of understanding on the part of the Revenue Service and Treasury Department of the nontax reasons which very frequently require U.S. corporations to use subsidiaries when actively engaged in their foreign business. These nontax reasons relate to one of the classical reasons for the use of corporations under any circumstances; namely, limited liability. U.S. corporations and their lawyers are not familiar with foreign legal systems and foreign business risks. For these reasons, most U.S. corporation lawyers and most U.S. business executives would insist on the use of subsidiaries when expanding into foreign operations regardless of the ability to save U.S. taxes. Practical business considerations, such as foreign import restrictions, often give U.S. firms no choice but to establish abroad; by doing so important markets for our products are saved which would otherwise be lost. Industry certainly cannot deny that in organizing such subsidiaries and planning their use tax considerations play a great part in determining the domicile of the corporation and the method of its operation. On the other hand, many difficulties between the Revenue Service and industry would be removed if revenue agents, in general, recognized nontax business needs for such subsidiaries, did not take the attitude that such subsidiaries were bad per se, and did not believe that all transactions between the U.S. taxpayer and its foreign affiliates were suspect.

We have had our attention called to case histories which indicate how this attitude on the part of the Revenue Service is reflected in reallocation cases involving intercorporate pricing. We present abstracts of five such cases in the appendix as representative of perhaps hundreds now consuming unreasonable amounts of time of both revenue agents and corporate officials in an atmosphere of mutual suspicion and distrust. Such an atmosphere discourages those presently engaged in foreign operations at a time when business in the United States is excellent and foreign business is relatively unprofitable. It certainly discourage any additional U.S. taxpayers from becoming involved in foreign operations to an extent which would expose them to these tax problems.

The requirement that a U.S. taxpayer must get a ruling under section 367 of the Internal Revenue Code before the taxpayer may carry out certain tax-free transactions with a foreign corporation has been particularly troublesome in connection with section 351 transfer of industrial property. Section 351 allows the tax-free transfer of property to a corporation in exchange for its shares if the transferors control the transferee. If the transferee is a foreign corporation, the section 367 ruling to the effect that the transaction is not for the purpose of avoiding income taxes is required.

The Internal Revenue Service has resisted granting rulings to the effect that secret processes and other types of intangible property are property for the purpose of section 351. Many times a U.S. taxpayer could obtain a substantial interest in a new foreign company by transferring such industrial property. This definitely assists the balance of payments because the foreign participants often put in all the cash in these situations. If the U.S. taxpayer cannot get a ruling on both the section 367 and section 351 aspects of the deal it is reluctant to risk a tax on the unrealized gain resulting from exchanging property for shares in a new venture.

The alternative in many cases is a purchase of shares for cash by the U.S. taxpayer and a transmittal of the property pursuant to a license agreement. This causes an unnecessary adverse effect on short-term balance of payments. We have recommended a more liberal attitude on the part of the Internal Revenue Service in issuing such rulings. Actually there are strong arguments for eliminating section 367 and the need for such rulings.

The specific legislative changes recommended would clearly result in the removal of certain disincentives to U.S. export business. The changes proposed in the export trade corporation provisions tread on recently adopted policies in the 1962 Revenue Act. It is not our purpose here to push the general industry feeling that most of the 1962 provisions in relation to foreign source income were ill advised, but it is our purpose to point out that one of the efforts at easing the effects of the 1962 act and retaining some tax incentives for U.S. exports is too narrow and complicated and has not had the desired effect. Taking into consideration the previous comments that U.S. corporations will not expand activities abroad without the use of subsidiaries and the desire to get more U.S. corporations actively engaged in such foreign selling efforts, it seems clear that a more liberal and simplified version of the export trade corporation rules would encourage the expansion of existing export activity and the creation of new export ventures.

The formation of a foreign subsidiary to handle a new export venture for a U.S. corporation is not only complicated by all the various commercial factors which now make exports less profitable than domestic business, but it is also faced with the complicated reporting requirements under the Internal Revenue Code. The combination of these factors certainly acts as a deterrent to the expansion of U.S. export business. Proposed rules for removal of the tax deterrent by providing export trade corporation exemptions from the subpart F tax rules will act as an immediate incentive to get new U.S. corporations involved in export activities. In view of the fact that this country has a serious balance-of-payments problem which can be favorably affected by increasing exports, and that the entire basis for the existing tax rules on foreign source income is still highly controversial, the removal of these tax deterrents to exports through the export trade corporation vehicle seems to be very desirable.

The proposal to grant additional capital allowances to corporations involved in the export business is more in the nature of an export subsidy than the other proposals. Its justification relates to the competitive situation in the world today. This country's pressing need for additional exports and improvement in its balance-of-payments position requires some action to make exports more profitable. Other countries have used similar capital allowances or accelerated depreciation for this purpose.

The results of such a provision would be direct and immediate. It would have a particular beneficial effect on U.S. businesses newly engaged in export trade, but would not be discriminatory against the U.S. businesses which have been leaders in pushing U.S. exports up to this time.

The proposal to allow extra deductions for promotion expenses will be even more an incentive to companies not now engaged in the export business. Generally speaking, the first efforts in this field are in the nature of a mail order business with an occasional foreign trip by sales personnel to encourage such mail orders. Companies which operate at this level of export activity before they feel the need for local foreign offices, which in turn require the subsidiaries described above, would get particular benefits from the ability to deduct more than their actual expenses in this promotion activity. The disincentives caused by the need for language skills, different packaging, different measurement terms, foreign documentation, and strange foreign travel would be partly offset by the ability to obtain an extra deduction for U.S. tax purposes.

The use of the additional capital allowance and additional promotion expense deductions to entice more U.S. industries into the export business would be followed in the normal course by the use of an export trade corporation to expand such tentative efforts in exports. These three provisions taken together would have a distinctly favorable effect on increasing the number of U.S. industries participating in export activities and thus in the total volume of U.S. exports.

With particular reference to the General Agreement on Tariffs and Trade, the declaration (of which the United States is a signatory) giving effect to article XVI, section B.4 of the GATT bans inter alia "the remission calculated in relation to exports of direct taxes or social welfare charges on industrial or commercial enterprises." In deference to this ban on the remission or direct taxes on exports, the recommendations do not include proposals which have been put forward by others studying this problem that an exemption or reduced rate of tax be provided domestic exporters. On the other hand, because the same GATT rule permits the remission of indirect taxes on exported goods provided the amounts remitted do not "exceed those effectively levied at one or several stages on these goods," we have recommended that a study be made of the feasibility of substituting an indirect tax in lieu of part of corporate income tax.

The committee is impressed by the number of devices utilized by various countries to reduce the tax burden for their exporters despite the inhibitions of the GATT antisubsidy rule. Types of export incentives include accelerated depreciation allowances for exports (Japan), establishment of tax-free reserves against losses from exports (Norway), overexpensing of promotion costs (Australia), rebate of certain indirect taxes, entering into production (United Kingdom, Belgium), bonuses of 2 to 5 percent of turnover of exporting marketing companies (Israel). The border tax systems of most European countries which provide rebates of turnover tax on exports and assess the tax on imports frequently contain a subsidy element and their disadvantage to U.S. producers will grow as the Common Market moves toward harmonization of national indirect taxes. In addition, the system of cash grants for manufacturers adopted on January 17, 1966, by the United Kingdom appears to have been designed to raise investments in those sectors of the economy that do most to strengthen the balance of payments.

This country, by contrast, has few excise taxes which it can and does rebate to exporters, although firms which can meet the requirements of the Western Hemisphere Trade Corporation provisions of the Internal Revenue Code may qualify for a 14-percentage-point reduction on their exports to Latin America and Canada.

What seems to be called for is a less doctrinaire aproach to the economic theory underlying the GATT rule. This would permit consideration of normal commercial practice under which a company in fixing prices takes into account the income tax it will have to pay. From a study of the forward-shifting of direct taxes a more realistic program for rebating taxes on exported products should emerge.

The proposal for studying the substitution of value-added and general excise taxes for at least part of the U.S. Federal income tax and for changes in GATT rules on export subsidies will have less immediate influence on exports and the balance-of-payments problem. This group does not make any definite recommendation on such basic changes in U.S. tax laws. It merely points out that many writers today believe such a basic tax change is desirable and that for this reason the matter should be carefully studied. This group does feel, however, that the rules under GATT on rebates of indirect taxes are discriminatory against the United States. We strongly recommend that the current negotiations in Geneva over tariff levels and other concessions be used as a means of bargaining for changes in the GATT rules. This country proposes to make some substantial concessions in the Kennedy round negotiations and we believe this is an ideal time to bargain for changes in the export rules which would be favorable to the United States.

The Committee has been especially mindful of the Government's present need for revenue. It believes that the increase in export trade from the adoption of its recommendations would go a long way toward offsetting any revenue loss. We note the President's admonition in his Economic Report to Congress, January 27, 1966. He said, "Against a background calling for fiscal restraint, I cannot this year endorse any specific legislative measure, however meritorious, involving significant net tax reduction." In view of this, we have purposely attempted to identify separately and appropriately stress those impediments whose removal would not involve new legislation. Although we have included a limited number of recommendations requiring legislative change to become effective, it is our judgment that they are essential if competitive parity for U.S. exporters is to be achieved, and that they would not result in "significant net tax reduction."

APPENDIX

Cases indicating how administrative action tends to discourage exports

(1) A U.S. manufacturing company supplies several components to its Dutch manufacturing subsidiary. The latter incorporated these components into the final product which it manufactured in Holland for Common Market distribution. An examining agent made a price redetermination which resulted in a substantial allocation of profit from the Dutch subsidiary to the U.S. parent. The agent's position was that the intercompany pricing was not arms length and that he was, therefore, authorized to redetermine the pricing on an arms-length basis and correspondingly allocate profit from the Dutch (which had been subjected to Dutch income tax) to the U.S. company.

The statutory authority for the adjustment was section 482 of the Internal Revenue Code. This section authorizes revisions in intercompany pricing where necessary to prevent avoidance of Federal income tax, or to more clearly reflect the true incomes of the related parties. To date, there are no official price guidelines, except for Puerto Rico, to which the taxpayer or the agent may refer. In this instance, as well as others, the redetermination may be arbitrarily designed to increase taxable income by a predetermined amount.

To avoid recurrence of the problem, arrangements were made to have the Dutch subsidiary purchase its components from an independent European supplier rather than from the parent company. To this extent, the U.S. export position was damaged. Management of the company, when queried, indicated concern with the following:

(*a*) The apparent impossibility of establishing an intercompany pricing policy that will not be challenged by an examining agent.

(*b*) The danger of double taxation.

(2) A domestic manufacturing company sold its products in the Latin American market through a Western Hemisphere trade corporation, a wholly owned subsidiary. The examining agent objected to the intercompany selling price, claiming that the parent was selling too cheaply to the subsidiary which as a Western Hemisphere trade corporation enjoyed a 14-percentage-point reduction in the corporate rate of tax (now 34 percent in lieu of 48 percent).

The agent proposed a selling price equal to the domestic list price less 15 percent, the price at which products were sold to domestic wholesalers. At this price, the taxpayer pointed out that the Western Hemisphere trade corporation would operate at a loss. After approximately a year and a half, a compromise agreement was reached.

During the discussion period the company gave some thought to workable alternatives which might serve to avoid a recurrence of this problem. The alternative found and adopted during the discussion period and continuing to date was to have a Canadian manufacturing affiliate provide the Western Hemisphere trade corporation with a number of products previously purchased from the domestic parent company.

(3) A domestic corporation engaged in manufacturing in the United States has several subsidiaries also engaged in manufacturing in England and West Germany. When sales offices decide which plant might supply material, the U.S. plant is in ordinary circumstances considered the least desirable because of the income tax disadvantage.

Export sales are generally made through a foreign selling affiliate located in a low tax rate country. On the basis of several statutory exceptions, the selling profit of the controlled foreign sales affiliate is not taxable on an imputable basis to the top domestic parent company.

However, management is of the opinion that the threat of price redetermination is more pronounced in the United States than it is in England or even perhaps in Germany. Accordingly, where the tax consideration is decisive the export orders are directed to England and then West Germany in preference to the United States.

The promulgation of reasonable price guidelines would doubtless result in the direction of orders to the U.S. plant which are now being filled elsewhere.

(4) Another case involving probable damage to our export position is to be found in a domestic manufacturing corporation all of whose stock is owned by a foreign parent company the outstanding stock of which is foreign owned. The domestic manufacturing corporation exports to Latin America through a Panamanian corporation all of whose stock is owned by the same foreign parent company. As the result of a tax examination in the United States, deficiencies have been proposed against the domestic corporation based on the following:

(*a*) Allocating the entire net income of the Panamanian corporation to the domestic corporation on the authority of sections 482 and 61, and

(*b*) Treating the funds in the Panamanian corporation, allegedly earned by the domestic corporation, as a dividend having been constructively received by the foreign parent company (on the theory that the parent company is alleged to have transferred the earnings and profits of its U.S. subsidiary to its Panamanian subsidiary). Withholding tax liability is being asserted against the domestic corporation on the constructive dividends.

The foreign parent company is planning to eliminate substantially all exports out of the U.S. corporation. The foreign parent company will export its products to Latin America through its Panamanian sales company. It does not anticipate any real difficulty with its own taxing authorities. Again, damage to our export position because of administrative harshness.

(5) This U.S. corporation was selling in Latin America through a Western Hemisphere trade corporation. However, because of continued uncertainty over possible reallocations by the Revenue Service, management chose to forgo the preferential Western Hemisphere trade

corporation tax rate. Instead of marketing the production of its domestic parent it set up a manufacturing subsidiary in Latin America. This has the obvious effect of substituting foreign productive effort for an expansion of U.S. export operations. The explanation of top management was that they just refused to expose themselves to second guessing on the part of examining agents several years in the future because of subsequent changes in Treasury Department policy, in the same manner as they feel that situation exists today.

Report of the Action Committee on Export Financing, National Export Expansion Council

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National Export Expansion Council Action Committee on Export Financing

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John N. Bauman	do	White Motor Co.
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NATIONAL EXPORT EXPANSION COUNCIL,
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., February 21, 1966.

Mr. CARL A. GERSTACKER,
Chairman, National Export Expansion Council, U.S. Department of Commerce, Washington, D.C.

DEAR MR. GERSTACKER: There is attached a report of our Action Committee on Export Financing. It contains recommendations that involve a positive affirmation of national policy and a reappraisal of the present-day adequacy of governmental facilities for the development of exports, all to the end of assuring a significant betterment in our balance of payments

Positive action is needed which requires the active and continuing support of our Government at the highest administration level.

The specifics are in the "Blueprint for Action" section of the report. To the extent your schedule permits we commend it to your study.

The salient points are:

1. A decision must be made. Are we to be a vigorous trading nation or not? If we are to be then those agencies charged with carrying out national policy in this respect must be instructed to utilize to the fullest the authority and resources they have to make it so.
2. The voluntary credit restraint program as related to export credit should be dropped. Domestic activity is at too high a level to make foreign business attractive to many exporters and their bankers, if they are confronted with unrealistic and unnecessary restrictions.
3. The establishment of a rediscount facility is of paramount importance to insulate export credit from the effects of domestic monetary policy, and to encourage commercial banks to promote export financing. The Export-Import Bank should use its existing authority now to rediscount export paper guaranteed or insured by a governmental agency, or for which a prime U.S. commercial bank has accepted recourse.
4. The creation of a separate fund to be operated by the Export-Import Bank for export financing on a "national interest" basis.
5. The appointment by the President of a special committee to review in the light of today's needs the structure and policies of the governmental agencies principally concerned with export credit.

The United States, to be a vigorous trading nation, must make available to its business sector credit facilities equivalent to those other industrial nations provide, in the absence of which our competitive position based on product superiority and basic price factors is nullified.

Unless we alleviate the existing export credit problem, we must expect a continued deterioration of our export surplus, thus weakening for years to come the most important source of strength to our international balance-of-payments position.

Yours sincerely,

DONALD W. DOUGLAS, Jr.,
Chairman, Action Committee on Export Financing.

REPORT

To: Carl A. Gerstacker, chairman, National Export Expansion Council.

From: Donald W. Douglas, Jr., chairman, Action Committee on Export Financing.

The great importance of the support American exporters have received from the Export-Import Bank (Eximbank) in the form of project loans and balance-of-payments loans to foreign countries should not be underestimated. These Eximbank direct loans have resulted in a multitude of export sales for American industry, since they are tied to the purchase of goods and services from the United States. In addition, they have made a significant contribution to a major U.S. foreign policy objective by assisting in the development of productive resources abroad, thus strengthening the economic ability of foreign nations to purchase U.S. products. Eximbank balance-of-payments credits have enabled foreign countries to overcome temporary balance-of-payments difficulties, and thereby avoid serious disruption in the continued flow of their purchases of American goods and services.

The many billions of dollars of such Eximbank credits alone clearly establishes the substantial contribution of this institution to American export expansion. The fact that such Eximbank direct financing—unlike the assistance normally provided by its European and Japanese counterparts—does not require that American exporters share in any of the financing or credit risks, strongly attests to the vast superiority of this type of facility over that offered anywhere else in the world.

Yet the direct loan activity of the Eximbank is no longer adequate to meet today's intensively competitive export market situation. The American exporter who has the prospect of an important order—provided the necessary financing arrangements can be made very quickly and efficiently—finds the fact that Eximbank offers the world's finest direct loan facility to be irrelevant: What this exporter requires is simply the ready availability of export credit guarantee or insurance support to capture his prospective export sale.

The American exporter who has made costly investments to establish an overseas sales force has no abstract interest in overall national considerations regarding U.S. export business as a whole. He finds that the clear superiority of a system which directly furthers national policy aims, but only indirectly furthers the individual requirements of the American exporter, simply fails to meet the challenge of today's competitive conditions.

Several of the members of our committee represent leading U.S. companies which also operate foreign subsidiaries in countries that provide government export credit guarantee and insurance facilities to their exporters. They report a firsthand knowledge of various instances in which substantial export orders have deliberately been diverted overseas, solely because of the superiority of the government-supported, commercial export credit facilities available there.

The U.S. export expansion effort urgently requires a major reorientation of the present Eximbank approach. The Eximbank must provide a new emphasis to servicing the individual needs of American exporters, which thus indirectly would also contribute substantially to the advancement of national policy aims.

The conclusion of the Action Committee on Export Financing can therefore be stated simply. At this critical time, the effort to expand our national export volume is not receiving the support of adequate, continuous, and realistically competitive financing. An immediate correction of this situation is required.

No single element of our balance of payments is more important to the national interest than the export of goods and services on commercial account. However, various restraints that were prompted by a recognition of our balance-of-payments difficulties have obscured, rather than clarified, the urgent need to revitalize our export efforts. Financial impediments to commercial exports not only have aggravated the immediate problem of correcting the payments deficit, but also have exposed American exporters to the permanent loss of market opportunities in the face of increasingly vigorous international competition.

The remarkable degree of economic stability achieved by this country in recent years has effectively recouped the competitive strength of American products that had been lost to domestic price inflation and the devaluation of foreign currencies of an earlier period. The high quality, supply, and service possibilities for American products have an appeal in overseas markets which is second to none. Yet, before our exporters can effectively pursue an increased foreign volume, with its greater risks and complexities, they must have a reasonable assurance of financing on terms that will meet those offered by their foreign competitors. Exporters must be able to obtain prompt decisions and firm commitments in advance concerning the availability of financing. This is of particular importance in negotiating the sale of capital goods on deferred payment terms.

The favorable contribution of such transactions to the balance of payments has not received adequate recognition. Instead, our efforts toward export expansion have been increasingly frustrated by short-run or shortsighted credit policies and programs. Our balance-of-payments problem is clearly more fundamental than the present temporary restraint programs can hope to resolve. By creating obstacles to export financing our policies actually prevent the proper treatment of our ills. We must adopt programs which strengthen, rather than weaken, efforts to expand exports and to develop future markets for our products. The role of export financing is vital to the success or failure of these efforts. It is therefore also crucial to the fundamental correction of our balance-of-payments problem.

Central to any program for export expansion is our commercial banking system, which does, and should, represent the normal and major source of credit for that purpose. The assistance provided through credit guarantees and insurance by the Export-Import Bank and the Foreign Credit Insurance Association (FCIA), and the activities of other agencies provide a framework which theoretically covers the range of export financing needs. Certain improvements have been made recently in the programs of these agencies which have been of considerable benefit. Nevertheless, these changes have provided neither the stimulus nor the necessary means of meeting the competition of foreign commercial export credit. What is worse, their favorable impact has been vitiated by the effect of policy restraints imposed under the voluntary balance-of-payments programs.

This committee of leading businessmen and bankers is convinced of the need for further significant improvements in our export financing facilities. As shown in the "Blueprint for Action," many unnecessary impediments exist which can and should be rectified. For practical purposes the presentation is in outline form. To insure emphasis, certain critical items are singled out; unless corrective action is taken with respect to these items, many lesser problems will persist.

Export credit transactions must be made exempt from the voluntary credit restraint program. The combined experience of our group has convinced us that this program has resulted in a definite tightening in the availability of export credit and has been a significant deterrent to the development of exports and future export markets.

Instead of adopting new measures to stimulate and encourage additional business interest in developing new foreign markets for our products—which would serve as a source of continued strength to the U.S. balance of payments for years to come—the voluntary credit restraint program has discouraged the American businessman from making the extra effort that the national export interest requires. No highly paid corporate executive who is responsible to his stockholders would choose to devote his firm's limited and costly resources to staff and equip a new or increased foreign sales effort, when he can simply meet the existing high level of more profitable home demand for his products.

What leads the Federal Reserve authorities to think that a businessman will take an unnecessary risk of being denied favorable action on an export credit application by his commercial banker? These authorities can interpret the available statistics on the export credit situation as they wish: The fact nevertheless remains that their program has unquestionably caused a serious setback to the progress of our national export expansion drive.

Many banks outside the principal money centers have had to curtail their international business development programs, while larger banks no longer actively solicit loans to finance exports. Some of the largest banks have shunned export transactions that would absorb existing loan margins under the guidelines limitation. Much nonprime business essential to continued export expansion has had to give way to the principle of selectivity, most frequently to the detriment of the developing countries—cited in guideline 4 for preferential treatment.

Our commercial banks are in a situation similar to that of American industry. Why should the chief executive officer of a commercial bank make a strong effort to promote export credits when alternative opportunities for even greater profits from domestic credit activities are more than ample? To make matters worse, if a bank should nevertheless succeed in expanding its export credit volume, it would run the future risk of either having to deny an application for credit from an important client, or having to exceed its Federal Reserve ceiling—thus placing itself in an awkward situation with the Federal Reserve authorities. The Fed is far too important to the viability of a commercial bank's total domestic and foreign operations to warrant the taking of any unnecessary action that could jeopardize the relationship between the banker and the Fed.

We know of no other trading nation which allows broad freedom of credit extension for domestic needs, but applies restraints affecting the extension of export credit.

Since credits are so essential for exports, they should not be subject to any ceiling which results in a rationing of export credit. Commercial banks have made it clear that they are willing to apply precautions to insure the bona fide nature of export credits. This should help prevent the substitution of credit for transactions normally paid for in cash, and any unreasonable lengthening of credit terms. In view of the substantial adverse effect on exports of the present system, we should be tolerant of possible minor credit substitutions that might occur under our recommended approach.

Recommendations presented in the "Blueprint for Action" are particularly concerned with the effect of general monetary stringency on our export expansion effort. The current level of domestic business activity and concomitant demands for credit point up the necessity for dealing with this problem. There are two main avenues for doing so:

(1) Establish rediscount facilities for export credit paper covered by Eximbank or FCIA guarantees, and for export paper which bear the endorsement of a commercial bank. Such a facility is now authorized in the Eximbank charter, but has not been used. The Eximbank should immediately establish a rediscount facility. Consideration should also be given to the desirability of providing for such a facility in the Federal Reserve bank statutes, so that there can be assurance that, in the future, there will be the kind of export credit which will insure the financial flexibility required to underwrite our national export needs.

(2) Extend the authority of commercial banks to accept export finance drafts beyond the present statutory limit of 6 months. This financial procedure eliminates the need for the direct employment of the accepting bank's own funds. There is also a ready market for such acceptances (bankers' bills), largely comprised of foreign and institutional investors.

The Eximbank and its associated FCIA are intended to render flexibility and support to the financing of exports as a supplement to the operations of commercial banks and other private lenders. These governmental institutions, unlike the free enterprise organizations which they serve, lack the flexibility of attitude and the speed of decision the exporter needs to be on a par with his foreign competitors. As evidenced by a retained income reserve approximating $1 billion—built up over its 32 years of operation—the Eximbank stands in contrast to its counterparts overseas, such as the Export Credit Guarantee Department (ECGD) of the United Kingdom. The ECGD operates on a break-even basis. As a result, United Kingdom exporters pay lower premium fees, and the ECGD covers a considerably higher percentage of national exports than the Eximbank/FCIA.

We believe that the Eximbank should not finance exports with public funds where private financing is available on competitive terms. It should, instead, act as an agency whose principal function is to guarantee export financing provided by the commercial banks or other private financial institutions. American exporters rely heavily upon the expertise and worldwide relationships of the commercial banks. So should the Eximbank. Not only would this role enlarge the Eximbank's contribution to export expansion, but also would assure compliance with the provision of its charter that "the Bank in the exercise of its functions should supplement and encourage and not compete with private capital."

The direct lending activity of the Eximbank should normally be restricted to long term project type loans.

The fact that the Eximbank/FCIA has been unduly restrictive in the administration of current programs may partly be attributed to the Eximbank's exceptionally conservative view of what constitutes a "reasonable assurance of repayment"—as contained in the Bank's charter. The "Blueprint for Action" therefore proposes that a special fund be created within the Eximbank, along the lines contemplated by title 2 of the proposed Magnuson-Adams Export Expansion Act of 1965. This fund would be subject to more liberal standards, but confined to certain areas where there is a need for special financing arrangements to promote the national interest. We quote from the comments of Senator Magnuson in this connection:

> Other developed countries, recognizing the potential for trade development which is involved, are hastening to fill the gap between development assistance terms and commercial terms with semicommercial concessionary financing. By so doing they establish themselves in these rapidly growing markets and assure for themselves the follow-on business which will affect the intermediate countries' trading habits for many years into the future.
>
> The British on their part have arranged to compete in this arena by making available to their exporters $2.24 billion of credit guarantees for "national interest loans" under section 2 of the British Export Guarantee Act. Such loans are made in cases where normal prudent banking standards would regard the recipient countries as poor credit risks, but where national commercial interests are at stake. Other countries have similar facilities for making national interest loans.

The uses envisioned for the special fund do not involve an unwarranted element of risk. The records of the British and Canadian "national interest" programs have been reassuring. There is no particular reason to expect that the experience of Eximbank would be unduly adverse.

The "Blueprint for Action" contains many detailed proposals that would put our financing facilities on a par with those of other major industrial nations. However, there is one need which transcends all others. It is the need for a change in the spirit in which the U.S. Government's facilities are being administered. This is particularly true if we are to be a more vigorous trading nation and to exert the leadership of which we are capable.

A BLUEPRINT FOR ACTION

I. Exempt from the voluntary restraint programs

A. *Financing of bona fide commercial exports.*—Exporters indicate that the inclusion of export loans under the ceiling applied to the total foreign asset portfolios of commercial banks has reduced the availability of export financing and made it more expensive. It is recommended that—

> Financing of all exports of goods and services (including leases, conditional sales contracts and similar arragements), where the exporter has certified to the satisfaction of the lender that a bona fide export is involved, should be exempted from the program. The test of the bona fide nature of the export should be based on the definition and procedure followed for the U.S. Treasury Department in connection with the interest equalization tax.

B. *U.S. investments abroad to the extent that they represent bona fide commercial exports.*—The use of U.S. equipment in a plant established abroad should be considered as an offset to the "outflow of direct investment" that the U.S. parent company includes in its quarterly report to the Commerce Department on the balance of payments. The export of U.S. equipment to such a plant should receive a positive inducement. Additional exports otherwise may not materialize if they can be purchased abroad.

II. Protect export financing from the effects of monetary stringency

A. A rediscount facility should immediately be established under the present Export-Import Bank rediscount authority, for export credit transactions which are guaranteed or insured by the Eximbank or Foreign Credit Insurance Association, or for which a prime U.S. commercial bank has accepted recourse. Consideration should also be given to an amendment of the Federal Reserve statutes in order to provide a future means of insuring that export credit will be insulated from the effects of monetary stringency. A rediscount facility for export credit paper would enable commercial banks to provide adequate funds for export financing on terms which allow the American exporter to meet foreign export credit competition. Such an approach to export financing would also provide a ready means for making available concessional terms to foreign buyers as is sometimes required to meet foreign export credit competition.

B. Amend Federal Reserve regulations to permit commercial banks to accept export drafts for up to 18 months (corresponding to installment payments on Eximbank/FCIA guaranteed or insured financing).

III. Improve structure of Eximbank/FCIA/AID to more adequately meet the requirements for American exports

Some 90 percent of the approximatelyy $27 billion of U.S. exports are financed without governmental assistance by the overseas buyers and the American exporters themselves, either from their own resources, or with the help of U.S. commercial banks and other private lending institutions. In the medium and longer term area, relating to the sale of capital goods which often involve high unit values, there are serious gaps in our present financing machinery, especially when financing is required without recourse to the exporter. This is an area of great potential for export expansion. However, for this category of goods, expeditious processing of export credit guarantees, insurance, and loans on more liberal terms represents a critical need.

Acceleration of the growth of our export trade is faced with substantial and effective foreign-government-supported competition, mounting pressures from overseas buyers for more liberal credit terms, problems arising from unstable foreign economies, and political hazards such as that of inconvertibility of foreign currency. These and other problems inherent in selling worldwide accentuate the need not only for more adequate assistance through the formal programs offered by the Eximbank, FCIA, and AID, but even more important, an approach is needed which is more sympathetic to the special requirements of the exporter.

A. *Improve coverage and reduce fees.*—1. Provide more flexible and internationally competitive payment terms and conditions:

(*a*) Permit lower downpayment.

(*b*) Allow financing on longer terms when exporter is willing to assume all risks beyond Eximbank's declared limit.

(c) Remove present arbitrary restrictions which limit maturities according to the dollar value of the transaction; instead permit terms customary for the particular equipment and market.

(d) Allow greater flexibility in relating repayment schedules to the buyer's cash flow and seasonal factors, where applicable.

(e) Permit use of accepted bills of exchange or other valid and legally enforcible payment instruments, without imposing restrictive conditions in the credit insurance contract.

2. Provide more comprehensive coverage:

(a) Improve coverage of equipment leasing and rentals, foreign construction contracts, engineering, and other technical services which generate dollars, and pursue this coverage aggressively.

(b) In instances in which Eximbank/FCIA require an increased exporter retention of credit and political risks, there should be greater flexibility for increasing the guarantee or insurance coverage of the political risk component.

(c) Eximbank and FCIA should allow a reasonable and necessary percentage of foreign origin content in the equipment and services financed under their programs. Vide—the practice of credit guaranteeing agencies of European Common Market countries, the United Kingdom and Canada.

3. To afford the exporter relief on his foreign credit retention and thus enable him to undertake additional export business, provide: Automatic cover for 100 percent of risks on unpaid balance for transactions guaranteed or insured after first half of the installments have been promptly paid.

4. Reduce Eximbank/FCIA credit insurance and guarantee premiums:

(a) FCIA premiums should be reduced to the minimum required to cover losses and expenses related to commercial credit risks (including reasonable provision for gradually building reserves sufficient to support commercial risk insurance with minimum aid from Eximbank).

(b) FCIA should receive maximum share of premium, leaving Eximbank's share covering only the cost of administering the political insurance program.

(c) In order to stimulate exports with "minimum cost" export credit insurance and guarantees, Eximbank should not seek to increase its reserves—which now amount to over $1 billion—and, indeed, the present policy of paying dividends to the U.S. Treasury should be reexamined.

B. *Provide new or improved services and sources of funds.*—1. Provide prompt firm and advance commitments. Under the intense competitive conditions which now prevail in the export trade, time is of the essence. Any delay in confirming an order or submitting a firm bid on prospective business may result in the loss of a sale to a foreign competitor:

(a) Exporter applicants should normally be given firm or advance commitments (or rejections) in writing within 3 business days, provided the requisite information regarding the type of goods and services, the buyer, the market area and terms, and conditions of the transaction is submitted. When the information furnished is inadequate, the exporter should be given a commitment "in principle," subject to the necessary supplementary data being favorable. This commitment, firm or in principle, should be valid for a period of 90 days.

Rejections should normally be on credit grounds alone, and whenever feasible, the exporter should be advised of what added support (in the form of guarantors, etc.) is required to justify reconsideration.

(*b*) Applications involving sales of an unusual nature, for example, construction and engineering, should be approved or rejected (firm or in principle) within a maximum of 15 days.

2. Expand authority and capability to commit Eximbank by:

(*a*) FCIA:

(i) Discretionary authority to commit Eximbank should be increased from $300,000 to $600,000 per transaction, for comprehensive medium-term insurance in all A and B markets. For selected C and D markets, which may from time to time be designated by Eximbank, FCIA should have discretionary authority up to $300,000.

(ii) Eximbank should periodically assign to FCIA overall dollar limits per country for political risk insurance, so that commitments can be made by FCIA within such established limits without referral to Eximbank.

(*b*) Commercial banks:

(i) Maximum discretionary authority should be increased from $500,000 to $1 million per transaction for comprehensive medium-term guarantees in all A and B markets. Discretionary authority for selected C and D markets, which may from time to time be designated by Eximbank, should be provided up to $300,000.

(ii) When commercial banks assume a greater share of the credit risk as a result of acting under the discretionary authority granted to them they should be allowed a proportionately higher retention of the fee charged by Eximbank.

3. Make possible maximum employment of banking and other nongovernmental funds in export financing:

To overcome some of the factors that have limited the availability of such funds, and otherwise threaten increasingly to do so, the following are suggested:

(*a*) Allow greater flexibility in Eximbank's interest rate policy to permit private lenders to earn a reasonable return consistent with individual credit risk and current money market conditions. Also allow for flexibility in guarantee and insurance fees to meet the needs of varying circumstances.

(*b*) Reaffirm Eximbank charter requirement that it not entertain applications for direct loans where private financing is available on competitive terms.

(*c*) The National Advisory Council for International Monetary and Financial Policy (NAC) should determine (on a case-by-case basis, if needed) what a reasonable return under *a* represents.

4. Provide guarantee and insurance coverage for export credits denominated in foreign convertible currency. Every other major trading country provides similar coverage to its exporters.

5. Separate loan and guarantee functions:

(*a*) Eximbank should normally limit its lending activity to "government-to-government" projects and emergency and standby credits to foreign governments.

(*b*) Eximbank emphasis should be on facilitating exports by issuance of its direct guarantees to banks and by underwriting export credit insurance or reinsurance through FCIA.

(*c*) Eximbank would reserve the right to finance private projects in those instances when:

(i) Private financing is clearly not available, or

(ii) The export sale would otherwise be lost to the United States due to the rate and terms involved in private financing.

6. Review "project" loan or guarantee procedure:

(*a*) Eximbank should limit its direct negotiations with the overseas borrower (buyer). This approach involves needless additional documentation, is more time consuming than commercial bank/exporter negotiations, and impairs seller-buyer relationships. Thus, U.S. exporter initiative in project development is seriously discouraged.

(*b*) Competitive bidding should not be required on projects developed by an American exporter.

(*c*) Provide single policy coverage to all American vendors on one project.

(*d*) Project engineering and feasibility studies prepared by reputable U.S. firms of established competence should be accepted by Eximbank without requiring further similar independent studies.

7. Create through appropriate legislation a National Interest Fund in Eximbank:

(*a*) To permit Eximbank to issue guarantees on a less stringent basis than called for by current Eximbank/FCIA standards, there should be created in Eximbank a special fund (as contemplated by the proposed Magnuson-Adams Export Expansion Act of 1965) for at least $500 million to authorize export credit guarantees to American exporters and their commercial bankers to facilitate the financing of exports of U.S. goods and services under unusual situations.

This fund would parallel the national interest funds operated by the British and Canadian Governments' export credit insurers.

(*b*) The National Interest Fund would be employed to cover the following circumstances and categories of transactions:

(i) Sales to buyers in countries recently removed from or being phased out of the U.S. economic assistance programs, but which have not yet achieved the degree of national financial viability to bear standard commercial credit terms.

(ii) The maintenance or expansion of our existing export markets against the aggressive and effective competition of other highly industrialized nations; transactions requiring the assumption of risks which neither the individual exporter nor his banker can reasonably be expected to take, or when the preservation or expansion of certain markets is vital to U.S. interests.

(iii) Where the penetration of certain markets is highly desirable and requires U.S. suppliers to match the special payment terms offered by their foreign competition, with particular reference to those foreign markets (or types of equipment) where there is a high potential for reorder, but where current political or economic conditions may be unsettled.

8. The Agency for International Development (AID) should more effectively support export expansion:

(*a*) AID should use a portion of its funds to assist the exporters where foreign competition offers a combination package; that is, a transaction partly financed on "hard" terms and partly financed on "soft" (foreign aid type) terms. AID would provide the soft part of the package as a supplement to the hard part provided by Eximbank or private lenders. Similar arrangements could apply where the local currency content of a sale is not financed by Eximbank.

(*b*) AID should finance projects which, although including elements of local content, will result in a continuing requirement for American services and materials.

(*c*) AID should provide war-risk coverage with respect to their investment guarantees without requiring approval on the part of the host country.

C. *Improve administrative procedures.*—1. The American exporter and his commercial bank should be given clear-cut guidelines and criteria concerning the terms and conditions on which foreign trade financing is currently available. To expedite Eximbank's processing of applications, procedures for obtaining credit insurance and guarantees should be spelled out in a comprehensive, clearly presented policy manual made available to exporters by Eximbank, FCIA, and commercial banks. Revised procedures or criteria should be promptly communicated to manual holders.

2. Rapid processing of applications is necessary. This could be aided by further delegation of authority:

(*a*) Increase Eximbank Loan Committee's authority from $250,000 to $1 million with a provision that rejections require confirmation by the Board of Directors.

(*b*) Give Eximbank loan officers appropriate decisionmaking authority within individual lending or guarantee limits.

3. Expansion of credit files: Lack of information to qualify a foreign buyer for a credit guarantee or insurance may cause an export order to be diverted to a better informed foreign supply source. Credit insurers in the United Kingdom and continental Europe, through their years of experience, have accumulated many times the number of foreign buyers credit files available to Eximbank and FCIA. Thus, they are better equipped to render prompt decisions on applications received from their exporters.

(*a*) The credit files on foreign buyers of the Eximbank and FCIA should be merged to broaden the base for prompt decision.

(*b*) Eximbank/FCIA should forthwith use all available means to build up current credit files on the largest possible number of customers for U.S. products.

4. Review requirements for local foreign commercial bank guarantees:

(*a*) Eximbank/FCIA generally condition approval of export credit guarantees or insurance for public buyers on the granting of payment guarantees by the Ministry of Finance, the Central Bank, or certain specified Government-controlled banks. The guarantees of sound commercial banks are sometimes more readily available and offer adequate or even equal security. Acceptance of these commercial bank guarantees would expedite sales and avoid unnecessary risks of loss of business to foreign competitors.

(*b*) If bank guarantee is accepted, then detailed financial data concerning the buyer should be waived.

(*c*) Increased weight should be given to the value of collateral as security.

5. Appointment of special committee to review structure and policies of U.S. Government export financing facilities: It is recommended that the President of the United States appoint a committee of leading citizens who are knowledgeable and experienced in international trade and financing to study the present adequacy of the structure, procedures, terms of financing, market classification, fees, et cetera; transactions and operational efficiency of Eximbank and FCIA procedures and to submit their finding and recommendations in an action report to the President within 6 months after the Committee's appointment. The Committee's report should, inter alia, cover:

(*a*) Recommendations for modernization and improvement of internal structure, loan/guarantee criteria, fees, procedures, and the decisionmaking process.

(*b*) Professional manpower requirements, and formulation of specific plans and procedures for selection and training of personnel.

(*c*) The method of selection of Eximbank's Board of Directors to insure that it consists of persons who by experience are qualified to judge large and complex international commercial credits. To attract desirable members it is presumed that they would be appointed by the President of the United States on the joint recommendation of the Secretaries of Commerce and Treasury, and the Eximbank Chairman.

(*d*) Consideration of an appeals board procedure for dealing with rejected applications.

(*e*) Adequacy of channels of cooperation between entities, both public and private, dealing with foreign loan and guarantee programs.

(*f*) Review of Eximbank's Advisory Committee to insure that Eximbank functions as a wholly effective instrument to meet today's highly competitive export market conditions. Certain requirements of membership and operation would appear to be as follows:

(i) Committee members should be appointed by the President of the United States, upon the joint recommendation of the Secretaries of Commerce and Treasury, and the Eximbank Chairman.

(ii) Committee members should be persons possessing experience and skills which qualify them to pass judgement on the complex elements involved in substantial international trade and financing transactions.

(iii) Committee should meet formally at least bimonthly. Eximbank should, as a matter of policy, consult informally with the committee chairman or with the individual members of the committee regarding transactions of unusual size or importance.

(iv) Committee should have the authority and responsibility to make recommendations which affect broad policy issues, such as the grading of and attitudes toward specific markets, the commercial viability of new forms of export credit insurance and guarantee coverage, fees and premium charges, and so forth.

(*g*) Committee should consider whether the FCIA, being a quasi-public monopoly, has an adequate management, organization, and capital structure, and whether the FCIA Advisory Council (insofar as the method of appointment, experience, and authority of its members is concerned) is adequate.

Report of the Action Committee on Ocean Transportation and Freight Rates in Relation to Export Expansion, National Export Expansion Council

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NATIONAL EXPORT EXPANSION COUNCIL ACTION COMMITTEE ON OCEAN TRANSPORTATION AND FREIGHT RATES IN RELATION TO EXPORT EXPANSION

Members	Title	Firms
Robert F. Dwyer, (chairman).	Proprietor	Dwyer Forest Products Co.
Dwayne O. Andreas	Executive vice president.	Farmers Union Grain Terminal Association.
Jack L. Camp	President	International Harvester Export Co.
Worth B. Fowler	do	American Mail Line.
Michael Fribourg	do	Continental Grain Co.
Eli Goldston	do	Eastern Gas & Fuel Association.
Werner P. Gullander	do	National Association of Manufacturers.
William B. Johnson	do	REA Express.
Mario E. Laracada	Manager	National Cash Register.
Adm. W. J. Marshall	President	Bourbon Institute.
F. A. Mechling	do	A. L. Mechling Barge Lines.
William A. Muriale	Vice president	Bank of America.
Louis C. Purdey	Executive director.	Port of Toledo.
William L. Robinson	General traffic manager.	Sears, Roebuck & Co.
Clinton L. Sanders	President	Perkins Freight Lines.
George Shimrak	Foreign traffic manager.	Pennsylvania RR.
Joseph A. Sinclair	Director	Commerce & Industry Association of New York.
Jerome A. Siegel	Chairman	Titan Industrial Corp.
Lloyd Snedeker	President	Milton Snedeker Corp.
John J. Tennant		W. R. Chamberlin & Co.
Thomas M. Torrey	President	American Institute of Marine Underwriters.
Donald Watson	Vice president and general manager.	Weyerhaeuser Line.
Robert S. Weil		Weil Bros-Cotton, Inc.
Adm. John M. Will	Chairman	American Export Isbrandtsen Lines, Inc.
William G. Smith	Liaison officer	U.S. Department of Commerce.

FEBRUARY 3, 1966.

Mr. CARL A. GERSTACKER,
Chairman, National Export Expansion Council, U.S. Department of Commerce, Washington, D.C.

DEAR MR. GERSTACKER: It gives me a great deal of pleasure to transmit to you the report of the Action Committee on Transportation and Freight Rates in Relation to Export Expansion.

Our report consists of 13 resolutions relating to U.S. transportation practices and policies which could, if implemented, help increase American exports by more than $1 billion annually within the next 5 years.

The basic problem which underlies the findings and recommendations of the Action Committee is that the transportation system of the United States generally has not been geared to the necessities of international competition. The quest for international markets has not, in the past, been as intense among American businessmen as it has among the businessmen of other countries. Foreign businessmen and their governments have developed techniques of cooperation and coordination with their transportation agencies with the result that such agencies have served as effective instrumentalities of their countries' trade policies. Understandably, our transportation industry has reflected American industry's preoccupation with the domestic market, and therefore, often has operated without special consideration for the international competitive problems of American business.

This basic situation is reflected in some of the specific problems which now confront American businessmen in competing for overseas markets.

OCEAN FREIGHT RATE DISPARITIES

There are disparities in ocean freight rates. In many instances, ocean freight rates on items outbound from the United States are two to three times as high as on the same or similiar items inbound to the United States. This in effect serves as an extra tariff or tax on our exports and a subsidy to foreign imports.

The ocean freight rate disparities also apply to third-country situations. The per ton-mile costs of shipping from the United States to third countries in Latin America, Africa, or Asia are sometimes several times higher than the per ton-mile costs of shipping from our competitor countries to those same markets. Such disparities, of course, give our foreign competitors a significant advantage on many products in competing for these markets.

Therefore, we recommend that the Federal Maritime Commission use its full authority to correct unjustified disparities and unfair discrimination in ocean freight rates; that ocean carriers and U.S. shippers be urged to cooperate in developing rate schedules conducive to increased trade; and that American-flag lines be requested to initiate within their conferences a review of import and export rates to achieve a better revenue equilibrium between the inbound and outbound rates.

INDIRECT MARITIME SUBSIDIES

A second major problem area involves the impact of indirect maritime subsidies, such as cargo preference requirements, upon the ability of the American shipper to compete in distant markets.

To the extent that American exporters are required to pay the subsidy through rates higher than those charged by foreign lines, they may be excluded from many markets, thereby defeating the objectives both of the export expansion effort and the maritime subsidy program. It is obvious that if the U.S. exporter cannot compete because of higher freight rates, his exclusion from the market also eliminates the subsidy to American shipping.

The existing requirement that 50 percent of the grain shipments to the Soviet Union and other Eastern European countries be carried in American ships illustrates this problem. As a result of this policy, the United States has been excluded from this market at a time when these countries have been buying heavily from other free world nations.

In light of these considerations, it is recommended that the requirement that 50 percent of commercial shipments of certain surplus agricultural commodities to Eastern European countries must be transported in American-flag vessels be terminated. (As vice chairman of the National Export Expansion Council, I presented to President Johnson on January 7, 1966, the Council's views on this matter.)

Additionally, cargo preference is making it more difficult for certain U.S. industries to compete with imports in the domestic market and is thereby adversely affecting our balance-of-payments position. The Pacific Northwest forest products manufacturers, for example, are required to use American-flag ships in shipping to the east coast, while their Canadian competitors enjoy the lower foreign shipping rates. The differential in shipping costs is largely responsible for the displacement of more than 1 billion board feet of American lumber on the American east coast. The loss of this market to imported lumber affects our international payments situation by about $100 million per year.

We recommend that the administration seek to improve the competitive position of our coastwise maritime service so that it can lower rates to levels which might be charged by foreign-flag ships in this trade.

COAL RAIL RATE DISPARITIES

In railroad transportation there are situations in which U.S. products destined for export pay a higher rail rate than those traveling between the same points but destined for domestic consumption. One of the commodities affected by such disparities is coal.

We recommend in this regard that the Federal Government use its good offices and authority to obtain from the coal-carrying railroads agreement to pass on to U.S. exporters in the form of lower freight rates those savings in transportation costs which are attributable to the increased efficiency of the exporters' operation so that the exporter in turn can use such lower costs to secure expanded foreign sales of coal.

The above recommendations are those which involve major issues of national policy. I have not attempted to list herein those recommendations which can and should be implemented by the national and regional export expansion councils, by private organizations, or those which involve only minor issues of departmental or agency policy. This is not to derogate the importance of these other recommendations set forth in the attached report. I believe the national and regional export expansion councils will wish to pursue these measures with all possible emphasis.

The 24 business leaders volunteering their services on the Action Committee represent exporters and most of the industries involved in transporting U.S. products to foreign markets. These include representatives from rail, truck, barge, and steamship lines, port authorities, freight forwarders, marine insurers, banks, and combination export managers.

Representatives from the Departments of Agriculture, Commerce, and Interior, and the Interstate Commerce Commission made valuable contributions to the Committee's deliberations. The Chairman of the Federal Maritime Commission, Admiral Harllee, contributed generously and substantially.

The views expressed in the report are, of course, those of the private businessmen serving on the Committee.

Twelve of the 13 resolutions were adopted at a meeting of the Action Committee on December 14, with the recommendation on containerization and through documentation being approved by mail on December 27. As Chairman, I accepted the full report on January 10.

We believe this is a propitious time to achieve solutions to these and other transportation problems which have long been hampering the growth of American exports. As a result of the positive support the President has given to the Federal Maritime Commission, the Commission is making progress in its efforts to reduce some of the more important ocean freight disparities. In addition, the American-flag lines are demonstrating a renewed interest in working with shippers in the promotion of U.S. exports.

This desire to move ahead from the arguments and discords of the past to solutions which will benefit both the exporter and the transportation industries is reflected by the agreement achieved in the Action Committee. We believe that the great majority of the American businessmen will support the administration in its effort to achieve constructive solutions to these problems. We hope that our efforts have opened the door to further industry-Government cooperation in improving the contributions which the transportation industry can make to expand exports.

ROBERT F. DWYER.

EQUALIZATION OF COAL RAILROAD FREIGHT RATES FOR EXPORT AND DOMESTIC SHIPMENTS

A. Resolution

1. Whereas coal producers, coal handling railroads, and coal exporters have a strong and mutual interest in maximizing U.S. exports of coal;

2. Whereas coal exporters currently contribute $500 million to the U.S. balance of payments and have the potential for making a substantial additional contribution to our balance of payments;

It is resolved that the Secretary of the Interior in cooperation with the Department of Commerce and other appropriate Federal agencies enter into discussions with representatives of the coal-carrying railroads with the aim of developing procedures that will assure that savings on systems costs are reflected in coal freight rate reductions when such reductions can contribute to expanded foreign sales of coal.

B. Background data

Rail rates on Appalachian coal shipped to Norfolk, the principal coal-handling port on the east coast, are higher on coal sold abroad than on intracoastal shipments to domestic industries.

For example, New York City purchaser pays $3.38 per ton for transportation from the mines to Norfolk. However, if this same coal were bound for export the rate wohld be $4.08 per ton, or 20 percent more than the domestic rate cited.

The higher rail rate levied on export-bound shipments has deterred the growth of this important trade. European coal-buying agencies have indicated a reluctance to increase their coal-purchasing commitments in the United States as long as this disparity exists.

Recognizing that this rate structure adversely affects the competitiveness of U.S. coal in markets abroad, the Action Committee is urging that the Secretary of the Interior and the officials of other concerned Federal agencies should discuss this question with the coal-hauling railroads.

If export coal can be handled in "unit trains," with a minimum of car demurrage, these economies could be shared with the coal shipper who has arranged for this more efficient use of the rail equipment.

If export coal rail rates were reduced to the rate for domestic coal shipments, it is estimated that U.S. coal exports could be increased from the current level of $500 million a year to $1 billion annually within 5 years.

FIFTY-FIFTY REQUIREMENT ON COMMERCIAL SALES TO BLOC COUNTRIES

A. Resolution

1. Whereas the requirement that 50 percent of the commercial shipments of certain agricultural commodities exported to Eastern European countries be transported in American-flag vessels constitutes a serious impediment to export expansion:

2. Whereas the long-range export potential of such agricultural products in these Eastern European countries is significant;

3. Whereas the shipping cost differential is such as to preclude these sales under the present 50-50 requirement;

It is resolved that the 50-percent American-flag shipping requirement be removed from commercial sales of surplus agricultural commodities so that American agricultural exports can be competitive in the Eastern European markets.

B. Background data

While the United States is competitive in the wheat markets of the free world, and provides some 20 to 25 percent of its requirements, it has not been competitive on commercial sales to the Soviet Union and the European bloc countries because of the U.S. export control requirement that 50 percent of the wheat be shipped in American-flag vessels.

Typically, rates on U.S.-flag ships carrying wheat to Soviet bloc ports are $6 to $8 per ton more than the world shipping rate. On a 50-50 basis this represents a surcharge of from $3 to $4 per ton, or 8 to 10 cents per bushel.

This year, the bloc countries are buying large quantities of wheat in the world market. The Soviet Union has already purchased some 9.8 million tons for shipment in the fiscal year ending July 1, 1966, and the Eastern European countries, with the exception of Poland, have contracted for 4 million tons.

In addition, leaders in the U.S. grain industry believe the bloc nations might purchase from 1¾ to 2¾ million more tons of wheat, this over and above that already contracted for.

	Tons
Soviet Union	1,000,000-2,000,000
Czechoslovakia	250,000
Hungary	250,000
East Germany	250,000
Total	1,750,000-2,750,000

Because the other major wheat-exporting nations have almost exhausted their supplies, nearly all of the bloc's unfilled requirement could represent additional sales if U.S. grain dealers were able to sell at world prices in Eastern Europe. The 50-50 requirement precludes this. It has been made clear that the bloc countries are unwilling to pay these premiums.

If the United States is to capitalize upon this market, however, it is essential that the America-flag shipping requirement be waived promptly because the bloc nations' need to buy additional grain decreases as they restrict consumption with the approach of the new crop year.

This question will also be pertinent next year. It is now estimated that in fiscal 1967 the Soviet Union will be in the market for 3 to 4 million tons of wheat and that the Eastern European countries will be buying some 4 million tons, adding up to 7 to 8 million tons.

If the United States could compete in the bloc, it could sell from 1½ to 2 million tons in this market during fiscal 1967. This projection reflecting the U.S. share of commercial sales within the free world.

COASTAL SHIPPING

A. Resolution

1. Whereas this action committee is aware of the cost differential problems pertaining to the maintenance of the coastal shipping segment of a strong American merchant marine;

2. Whereas cabotage laws can impede certain industries, such as the U.S. Northwest lumber and timber products industry, in competing with imports in the U.S. market: It is

Resolved, That the President, in formulating a revised national maritime policy, give full consideration to this problem.

B. Background data

The statutory requirement limiting commerce between U.S. ports to American-flag ships may impose an extra cost upon the shipper. In addition, this restriction can be self-defeating when the relatively high U.S. shipping rates make it impossible for American companies to compete with foreign producers having lower transportation costs.

This is illustrated by the $100 million annual loss in lumber sales to the east coast by Pacific Northwest mills because their shipping costs are substantially higher than those borne by Britih Columbia producers. The shipping lines as well as the mills are penalized in this situation.

Other examples may be provided by low-value, high tonnage commodities, such as fertilizers, where these restrictions benefit neither the shipper nor the coastal maritime industry. In addition, it should be noted that the application of these laws to Puerto Rico and Hawaii has also resulted in increased imports at the expense of the U.S. product sales.

These coastal shipping restrictions are making it more difficult for some U.S. industries to compete with imported products and are thereby reducing the U.S. trade surplus. Thus, a revised national maritime policy should aim to improve the competitive position of coastal shipping so that it can lower rates on bulk commodities to levels competitive with rates charged by foreign-flag ships servicing the U.S. market.

OCEAN FREIGHT RATE DISPARITIES

A. Resolution

1. Whereas there exist significant disparities in certain ocean freight rates both on reciprocal trades between United States and foreign ports and on commodities moving from the United States to foreign

ports in competition with similar commodities moving from other industrialized countries to those same foregn ports;

2. Whereas, insofar as has been determined to date, certain of these disparities do not appear to be justified either by the volume or value of the commodities shipped or by other transportation factors;

3. Whereas these particular disparities may constitute a serious impediment to the penetration of overseas markets by American exporters of the products or commodities involved;

4. Whereas certain analyses indicate that as a result of such disparities a disproportionately large share of the revenue of the round-trip voyages is imposed on American exports which, in effect, represents an extra charge on exports and a subsidy for foreign producers selling in the U.S. market and in third country markets: It is

Resolved, That:

(a) The Federal Maritime Commission continue to use its good offices and full authority to take steps to correct unjustified disparities and unfair discrimination in ocean freight rates;

(b) Ocean carriers and U.S. shippers cooperate to the extent possible in developing rate schedules conducive to increased trade and increased ocean cargo movement; and

(c) American-flag lines initiate within their conferences a review of general import and export rates to achieve a better revenue equilibrium between the inbound and outbound rates.

B. Background data

Comparative ocean freight rates on U.S. outbound and inbound shipments as well as rates for products moving to third countries has received considerable attention as Government and business has sought to expand exports in recent years. Inquiries have been conducted in the Congress by the Joint Economic Committee, the House Merchant Marine and Fisheries Committee and within the administration by the Federal Maritime Commission and the U.S. Department of Commerce.

These studies have illustrated how ocean freight rate disparities often tend to limit exports and subsidize imports. They have also shown that for many products the freight rate differentials are a minor factor in the final delivered cost.

As a result of this attention and the strong efforts being made by the Federal Maritime Commission to correct such disparities, considerable progress has already been made in the past 2 years.

The action committee's resolution recognizes that the primary interest of the American-flag lines lies in taking the leadership in correcting such disparities. The resolution also asks these lines to take steps within their conferences to achieve a greater equalization of freight rates both inbound and outbound as well as rates to third countries.

IRON AND STEEL SHIPPING RATE ADJUSTMENT PROCEDURES

A. Resolution

1. Whereas in many countries U.S. iron and steel products are often priced above competitive imports, partly because of high ocean transportation costs;

2. Whereas some shippers of such items have considerable difficulty negotiating shipping rate adjustments with sufficient speed to be competitive in such markets; it is

Resolved, That the shipping conferences and American-flag steamship lines—

(*a*) Review export rates for U.S. iron and steel products; and

(*b*) Establish procedures to expedite and facilitate rate adjustments which will permit the U.S. products to be competitive when it can be shown that the ocean transportation costs are controlling.

B. Background data

For several years relatively low-cost foreign iron and steel products have captured foreign markets previously served by U.S. iron and steel exports and have increasingly penetrated U.S. markets. Furthermore, U.S. export shipping rates on iron and steel products are frequently higher than import rates for the same products. Therefore, freight rate disparities are often an additional obstacle to exporting U.S. iron and steel products.

As the efficiency of the U.S. iron and steel industry increases and the quality of production improves through significant technological advances, such as that provided by improved oxygen furnaces, opportunities for exports of U.S. iron and steel products will increase. In 1964 these exports were about $600 million.

The resolution asks that the shipping conferences and the American-flag steamship lines expedite consideration of ocean freight rate adjustments where lower ocean freight rates can be instrumental in assuring export markets for U.S. iron and steel products.

The potential dollar value of increased exports of U.S. iron and steel products is difficult to estimate, but the Government and industry should support these efforts to build such exports.

PUBLIC LAW 480—AUTHORIZATIONS C.I.F. INSTEAD OF F.O.B.

A. Resolution

1. Whereas the U.S. Department of Agriculture's Public Law 480 sales agreements with foreign countries for surplus agricultural commodities and the resulting purchase authorizations provide only for the purchase of bulk grain f.o.b.-U.S. port and not c.i.f.-foreign port, as is customary for most of the export grain business;

2. Whereas the issuance of these purchase authorizations on a c.i.f. basis would permit more efficient use of grain terminal facilities and shipping, and thereby facilitate additional grain sales;

3. Whereas such issuance would also permit U.S. insurance companies to compete for this business: it is

Resolved, That the Secretary of Commerce request the Secretary of Agriculture to authorize the issuance of Public Law 480 grain purchase authorizations on a c.i.f. basis or other terms, and thereby permit the shipper to control the service aspects of the shipment when possible.

B. Background data

Public Law 480 sales of surplus agricultural commodities by the Department of Agriculture provide for f.o.b. terms so that buyers will have to pay for shipping, insurance, and other delivery services. Representatives of the grain and insurance companies contend that our grain exports and insurance sales could be increased, if the terms were on a c.i.f. basis. Agriculture officials contend the change would increase Government costs, since the present arrangement requires the buyer to pay delivery costs.

Direct marine insurance business amounting to several million dollars annually is presently lost to U.S. firms on Public Law 480 grain sales because the foreign buyers arrange for their domestic firms or other foreign firms to handle the insurance. Shipping inefficiencies resulting from loading grain at times stipulated by the buyer do not permit the most efficient grain loading operations, and result in increased shipping costs. This in turn reduces the amount of grain which can be sold under Department of Agriculture purchase authorizations.

This resolution calls attention to these problems and seeks corrective measures, which could result in greater deliveries of grain and in increased U.S. marine insurance sales which would benefit the balance of payments.

EXPORTING ON A C.I.F. BASIS

A. Resolution

1. Whereas by selling exports f.o.b.-U.S. plant or f.a.s.-U.S. port instead of c.i.f.-foreign port, U.S. producers are possibly curtailing their export markets, because the foreign buyers may have difficulties arranging for U.S. transportation and shipping;

2. Whereas the shipment of such exports on a c.i.f. basis to foreign ports will expand U.S. exports because the foreign buyer will know before purchase the delivered cost and will have no problems arranging for delivery;

3. Whereas this arrangement permits the exporter to select U.S. banking, insurance, and carrier firms;

4. Whereas exporting on a c.i.f. basis can contribute to the U.S. balance-of-payments posture:

It is resolved that all concerned private interests, with governmental assistance, develop an educational program to promote the sale of U.S. exports on a c.i.f. basis.

B. Background data

When a U.S. company sells domestically, f.o.b. terms are readily acceptable since the buyer is as knowledgeable as the seller in arranging for transportation and other aspects of delivery. When selling abroad, however, the exporter may find that foreign buyers are unfamiliar with arranging for transportation (especially in the United States) and are reluctant to take on this chore. Thus selling exports on f.o.b. basis frequently reduces the attractiveness of purchasing in the U.S. market, and therefore impedes export sales. These difficulties can be avoided by selling exports on a cost, insurance, and freight basis. In addition, exports quoted on cost, insurance, and freight terms provide the foreign purchaser with total delivered costs which f.o.b. terms fail to provide.

A balance-of-payments benefit is also derived from cost, insurance, and freight sales as U.S. exporters will tend to arrange for U.S. firms to handle transportation and insurance rather than having foreign firms provide these services.

To the extent that the resolution results in increased U.S. export sales on a cost, insurance, and freight basis, exports will be increased and our balance of payments improved.

SHIPPER-CARRIER CONSULTATIVE MACHINERY

A. Resolution

1. Whereas, if shippers can cooperate in negotiating with shipping conferences, there may be a reduction in costs and improvement in service, thus increasing exports through greater foreign market penetration;

It is resolved that the antitrust laws be reviewed and, if necessary, amendments be sought to assure shippers of their rights to negotiate collectively with the ocean carriers.

B. Background data

Antitrust laws apparently prevent shippers from acting collectively in negotiating rates with shipping conferences. However, under the supervision of the Federal Maritime Commission, shipping lines can cooperate in establishing uniform rates and practices. This resolution recommends that such differences in the bargaining positions of shippers and carriers be eliminated.

The potential increase in exports resulting from such a change cannot be estimated, as different groups of shippers face different ocean freight rate problems. However, in certain cases, shippers acting collectively in rate negotiations with shipping conferences should be able to obtain rates sufficiently favorable as to significantly lower the net sales price of U.S. exports and thus stimulate export expansion.

If exemption to existing antitrust laws is required in order to enable shippers to act collectively in rate negotiations, the Federal Maritime Commission would appear to be the logical Federal agency to administer such an exemption.

PROMOTION OF EXPORTING

A. Resolution

1. Whereas, a number of organizations are working to increase the efficiency of transportation and other organizations have the objective of increasing U.S. foreign trade;

2. Whereas, U.S. firms exporting for the first time need expert guidance and information;

3. Whereas, recent investigations of ocean freight rate questions have revealed that new exporters or firms entering a new export market need more information than is currently available;

4. Whereas, improved sources of information will help expand exports through more responsive ratemaking and shipping practices, as well as by helping to reduce delivery costs of exports;

It is resolved that—

(*a*) The Department of Commerce and the Federal Maritime Commission not only continue but expand their program of educating shippers about their rights and responsibilities in exporting, such as the distribution of privately and Government-prepared publications concerned with shipper education and export possibilities;

(*b*) Action Committee members take the leadership within their organizations, such as carrier and shipper groups, financial institutions, freight forwarders, combination export managers, insurance companies, port authorities, and other organizations involved in exporting, to expand and improve their educational programs to help new exporters, especially by preparing and distributing booklets or other information concerning their services for exporters; and

(c) The national and regional export expansion councils coordinate such educational programs and help distribute such booklets or other information.

B. Background data

Numerous organizations, such as the regional export expansion councils (REEC's), the National Association of Manufacturers, and the Committee of American Steamship Lines (CASL), are actively engaged in export promotion programs. Certain of these programs have met with only limited success, however. It is the consensus of the Action Committee that these organizations should increase their export promotion efforts and that such activities should be coordinated by the REEC's.

Potential exporters are often not aware of the contribution which the various trade associations, industries, and companies can make to their exporting. The members of the Action Committee have committed themselves to obtain agreement from their respective trade organizations to prepare pamphlets describing the assistance which those organizations can provide new or potential exporters. Such pamphlets have already been published by the insurance industry and the Committee of American Steamship Lines.

Action Committee members representing the following industries have agreed to seek preparation of the above described pamphlets from their respective industry organizations: railroads, trucks, barges, port authorities, freight forwarders, combination export managers, and banking. In addition, the Committee believes that the Commerce Department should expand its activities in the field of "export education."

USE OF AMERICAN-FLAG SHIPS

A. Resolution

1. Whereas American-flag steamship lines offer services equal or superior to those provided by foreign-flag lines in shipping conferences that serve the United States;

2. Whereas, when American exporters employ American-flag steamship lines, they may benefit from the efforts of the cargo promotion staffs of such lines to develop new export markets and deepen the penetration of existing markets;

3. Whereas the employment of American-flag ships makes an important contribution to our balance of payments;

It is resolved that the President request the national and regional export expansion councils, private organizations involved in the servicing of U.S. exports, and appropriate Government agencies to promote the greater use of American-flag ships.

B. Background data

American-flag steamship lines are aggressively promoting the use of their vessels but other industries concerned with handling and promoting exports have not been fully supporting these efforts.

In addition to recommending that the President urge private and governmental groups to promote a greater use of American-flag ships, the Action Committee also called on its members to have their trade associations and businesses support the use of American-flag ships, and thereby benefit the Nation's balance of payments.

MARITIME SUBSIDIES

A. Resolution

1. Whereas certain industries in the United States that serve international markets, such as shipping, have costs that render them noncompetitive with like industries located in foreign countries;

2. Whereas the continuance of such industries is in the public interest for reasons of national security and convenience and necessity;

3. Whereas some form of special financial arrangement must be employed to permit such industries to carry on their operations;

4. Whereas direct subsidies are preferable to indirect subsidies or hidden arrangements for the support of such industries, so that the shipper does not risk having his products eliminated from the market because of the higher freight costs he has to absorb: It is

Resolved, That the President propose legislation to pay direct maritime subsidies to American-flag steamship operators to cover wage differentials and other higher U.S. operating costs found to impair the competitive ability of American-flag shipping in lieu of some present indirect subsidies.

B. Background data

Hidden support for the maritime industry prevents the public from evaluating whether the higher costs paid by shippers are worth the benefits obtained.

Recognizing this problem, the Action Committee supports the principle of eliminating indirect or hidden financial support in the maritime industry. Specifically, an operating differential subsidy, such as that now paid to liner operators, would replace the system of differentials paid by the Department of Agriculture and other agencies for the shipment of bulk commodities on American-flag tramp ships under present cargo preference requirements.

STANDARDIZED EXPORT DOCUMENTATION

A. Resolution

1. Whereas the use of simplified and standardized documents can reduce the costs of exporting:

2. Whereas a standard export format has been developed under the auspices of the National Facilitation Committee;

3. Whereas major shipping associations have endorsed this format and are promoting its widespread use: It is

Resolved, That:

(*a*) The National Export Expansion Council endorse the standard export format, and

(*b*) The regional export expansion councils encourage all shippers and transportation industry representatives to convert their documents to that format.

B. Background data

The Government's National Facilitation Committee has worked with industry in preparing a standard export format which can be used for all of the basic export documents. The Action Committee reviewed and endorsed this format and pledges that each member will work to expedite its adoption.

Widespread use of the standard export format will result in reduced document preparation costs and handling expenses. Such savings will make it easier for U.S. exporters to be more competitive in world markets. It should also make the prospects of exporting more attractive because it eliminates many of the complications of document preparation for export shipments.

CONTAINERIZATION AND THROUGH DOCUMENTATION

A. Resolution

1. Whereas the conventional method of transporting general cargo in export trade is on a break-bulk basis;

2. Whereas certain ocean, rail, air, highway, and waterway carriers have programs and studies underway to utilize containers for the through movement of goods from American manufacturers to customers abroad;

3. Whereas the unit-load principle of transportation promises substantial benefits to American exporters and carriers by way of lowered costs of transportation, packaging, documentation, and other cost factors as well as improved outturn of goods at destination;

4. Whereas the use of through documentation from inland point of origin to inland point of destination is a desirable concomitant of unitized or containerized export shipments because it should simplify export procedures and reduce time and expense involved: It is

Resolved, That:

(*a*) The President direct those agencies involved, such as the Departments of Commerce and the Treasury, Federal Maritime Commission, the Interstate Commerce Commission as well as the National and Regional Export Expansion Councils and the National Facilitation Committee, to lend their fullest support to the further development of unitized or containerized equipment, and the use of through documentation, and

(*b*) The President request U.S. industries and all service activities involved in exporting, particularly port authorities, to assist and support the development of this program.

B. Background data

To promote economic and efficient transportation and distribution facilities, this resolution asks the Government and industry to support the development of cargo unitization and containerization and concomitantly to encourage the use of through documentation.

Through documentation from origin to destination should eliminate some of the paper work and establish the overall cost of delivering the product to the foreign customer.

With effective use of containers, it will be easier for many producers to export. Containerization should contribute materially to improving the competitive position of U.S. exports and to increasing the efficiency of the U.S. merchant marine.

ANALYSIS OF RESOLUTIONS

Resolutions regarding—	Estimated annual impact of enacted resolutions on—		Simplifying export procedure
	Exports (in millions of dollars)	Balance of payments (in millions of dollars)	
Coal [1]	500	500	(2)
Wheat [3]	100–125	100–125	(2)
Coastal shipping	(2)	100	(2)
Ocean freight rate disparities [4]	(5)	(5)	(5)
Iron and steel [6]	(5)	(5)	(2)
Public Law 480, c.i.f	(2)	(5)	(2)
Exporting, c.i.f	(5)	(5)	(2)
Shipper/carrier consultation	(5)	(5)	(2)
Export promotion	(5)	(5)	(2)
Use of American-flag ships	(2)	(5)	(2)
Maritime subsidies	(2)	(5)	(2)
Standardized export documentation	(5)	(2)	(5)
Containerization	(2)	(2)	(5)

[1] 5-year forecast.
[2] Not applicable.
[3] By August 1966—at least twice that amount estimated for future years.
[4] Cotton exports estimated to increase at half billion dollars in future years, taking into consideration recent legislative changes.
[5] Contribution to export increase cannot be estimated.
[6] Estimated increase in exports at half billion dollars in future years, provided there is continued modernization of U.S. steelmaking facilities.

REPORT OF THE ACTION COMMITTEE ON U.S. TRADE AND INVESTMENT IN DEVELOPING COUNTRIES, NATIONAL EXPORT EXPANSION COUNCIL [1]

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[1] For the purposes of this report the terms "Developing Countries" and "LDC's" are used interchangeably to refer to all countries and territories of the world except the United States, Canada, all European countries, South Africa, Japan, Australia, New Zealand, and countries such as mainland China and Cuba, with which the United States does not maintain diplomatic relations.

National Export Expansion Council Action Committee on Trade and Investment in Developing Countries

MEMBERS

Name	Title	Company
Thomas H. Miner (chairman).	President	Thomas H. Miner & Associates, Inc.
R. E. Anderson	Senior vice president.	Continental Illinois National Bank and Trust Co. of Chicago.
Russell Baker	Senior partner	Baker, McKenzie.
Dr. Jack N. Behrman	Professor of international business.	University of North Carolina.
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Paul Dietz	Vice president	Allis-Chalmers Manufacturing Co.
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Barry F. Mountain	Vice president	Daniel, Mann, Johnson & Mendenhall.
Robert R. Nathan	President	Robert R. Nathan Associates.
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NATIONAL EXPORT EXPANSION COUNCIL ACTION COMMITTEE ON TRADE AND INVESTMENT IN DEVELOPING COUNTRIES—Continued

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Charles D. Hyson	Office of Material Resources.	Do.

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Chairman: Jerome Jacobson.
Members:
George D. Cashman.
Paul C. Cohen.
Herbert J. Seakwood.

Task Force II. Appraisal of U.S. business performance in cultivating developing country markets.
Chairman: Milo J. Marsh
Members:
Paul Dietz.
John H. Martin.
Richard R. McNabb.

Task Force III. Business information and Government assistance in developing country markets.
Chairman: T. C. Keeling, Jr.
Members:
John E. Carroll
Willis G. Lipscomb

Task Force IV—AID financed procurement and its effect on U.S. business sales prospects.
Chairman: William A. W. Krebs.
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R. E. Anderson.
Barry F. Mountain.

Task Force V—AID, commerce, and other Government programs to support trade and investment.
Chairman: Charles S. Dennison.
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Russell Baker.
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Task Force VI. Interrelationship of exports and investments in developing countries.
Chairman: Judd Polk.
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(NOTE.—Copies of the individual task force reports are available upon request from the Investment Opportunities Division, 870, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C. 20230.)

NATIONAL EXPORT EXPANSION COUNCIL,
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., March 6, 1967.

Mr. CARL A. GERSTACKER,
Chairman, National Export Expansion Council, U.S. Department of Commerce, Washington, D.C.

DEAR MR. GERSTACKERS: The report of the NEEC Action Committee on U.S. Trade and Investment in Developing Countries is attached.

The area of study of this Action Committee includes over 70 per cent of the population of the free world. It accounts for roughly 30 per cent of current U.S. exports and 30 per cent of our overseas direct investments. This area is of great importance to the United States, both in terms of future business possibilities and of our broad national interests.

The primary assignment of the Action Committee was to seek ways in which current U.S. aid programs could make a greater contribution to U.S. export development objectives. The Committee concluded that this could be done without adversely affecting the basic purpose of aid, which is to assist in accelerating economic and social development in the recipient countries. Other aid-providing countries apparently have no hesitation in gearing their assistance progrems to trade development objectives.

The first requirement is that there should be wholehearted acceptance at all levels of the Agency for International Development of U.S. export expansion as a fully worthy supplementary objective of its activities. Such acceptance should, in turn, be reflected in appropriate modifications of AID's programing and implementation policies and procedures.

Further steps in this direction recommended by the Action Committee include:

1. Early completion of detailed studies of aid/trade relationships;
2. Regular discussions of these problems between AID missions and resident U.S. businessmen in the recipient countries;
3. Specific efforts by AID to involve increased numbers of U.S. private consulting and operating firms in its technical assistance activities; and to assist U.S. firms in training local sales and service personnel in aid-receiving countries;
4. New provisions for supporting U.S. technical services to nonaid and postaid developing countries; and
5. An increase in the full-time AID staff working on trade development aspects of the program.

Looking at current U.S./LDC economic relationship from a broader standpoint, the Action Committee found that neither U.S. business nor the U.S. Government are currently giving the developing countries the level of attention which their basic importance warrants. While there are good short term business reasons for this relative neglect of LDC's, substantially wider and deeper involvement of U.S. business will be essential if our national objectives are to be served. Indeed it is difficult to see how the race between population and production—with all its literally vital implications for the world of the future—can be won without increased application of the resources of U.S. industry.

To bring about significant increases in U.S. business attention to these areas, especially on the part of smaller U.S. firms, will, the Action Committee believes, require U.S. Government action to bring about substantial improvements in profit/risk ratios. Related changes in thinking and action by the business community and the LDC governments will also be needed.

To this end, the enclosed report makes 11 recommendations for U.S. business action; 22 recommendations for U.S. Government action; and several suggestions for new appraisals by LDC governments.

Among other points, these recommendations call for:

1. Major new U.S. tax incentives for American firms doing business in LDC's.

2. Significant expansion, rationalization and improvement in existing U.S. Government information, guarantee, loan, and other supporting services for such business activities.

3. Increased efforts, including consideration of preferential U.S. tariff arrangements, to help developing countries increase their own export earnings.

I. BACKGROUND

The problems of economic growth in developing countries and the role of U.S. business in these countries are receiving increasing attention in both government and business circles in the United States.

This Action Committee was set up by the National Export Expansion Council in April of 1966 to review one specific aspect of these problems—that is, ways of improving coordination between U.S. export expansion programs and U.S. aid programs, particularly in terms of maximizing long term exports to the LDC's.

As is looked into this specific question, however, the Committee became convinced that it could only be dealt with meaningfully in a considerably broader context.

This report, therefore, presents the findings and recommendations of the Action Committee on a wide range of U.S./LDC trade and investment problems.

The Action Committee was not equipped to undertake extensive research, investigation or documentation of the problems it considered. However, its findings and recommendations do reflect the thoughtful views of a group of U.S. business executives with wide experience in overseas business activities.

II. FINDINGS

1. *U.S. business activity in developing country markets, in absolute terms, is substantial and growing.*

The United States exported $8.4 billion [2] of goods and services to the less developed countries of the free world in 1965. This was 30 percent more than we exported to them in 1960 and 90 percent more than in 1950. It constituted 31 percent of our total 1965 exports, and 22.6 percent of the total imports of the LDC's.[3] In comparison, our exports to industrialized countries were 38.5 percent higher in 1965 than they were in 1960.

U.S. direct investments in developing countries totaled $15.1 billion (book value) at the end of 1965. This was 26 percent more than at the end of 1960 and 165 percent more than in 1950. The developing countries accounted for 30 percent of total U.S. direct foreign investment in 1965. About 56 percent of current U.S. direct investment in LDC's is in mining and petroleum activities, and about 22 percent each in manufacturing and other types of businesses.

Task Force VI of this Committee has developed a rough global estimate that each dollar of U.S. overseas manufacturing investment produces an average of $2 of sales revenues annually.

[2] Unless otherwise specified, all figures used in this report are drawn from official U.S. Government or U.N. statistics. Specific sources are available on request.

[3] The report of Task Force I of the Action Committee presents a detailed analysis of current and prospective LDC trade patterns.

Thus, taking exports and sales of overseas affiliates together, U.S. businessmen (and farmers) are now doing a very substantial volume of business in developing country markets.

Several hundred U.S. firms are now significantly active in these areas, and the indications are that, on the whole, these firms are being imaginative in their efforts, employing a wide variety of approaches to selling in these markets. In general they are being successful in meeting international competition.[4]

2. *Nevertheless, this activity is spotty in terms of areas and commodities.*

Over one-third of all U.S. exports to developing countries in 1965 were directly financed by U.S. AID and Public Law 480 programs on a tied-source basis. Clearly, total imports by the LDC's and U.S. shares of many of these markets would have been substantially lower in the absence of these aid programs.

In geographic terms, the U.S. share of total LDC imports in 1964 ranged from a low of 13 percent in Africa to a high of 40.4 percent in Latin America. Traditional business and political orientation and the availability of aid programs appear to be the major factors influencing these regional variations, but relative U.S. business interest is also an important factor.

Seven-eighths of the U.S. nonoil, nonmining investment in LDC's is in the Western Hemisphere, leaving a total of about $800 million of such investment in all of the developing countries of Asia, Africa, and the Middle East. This represents U.S. private direct investment of scarcely more than 60 cents per person in these areas, which contain over 60 percent of the population of the free world.

A sample study of 20 broad industry categories in 20 major developing countries shows that only 70 U.S. firms account for almost 50 percent of the U.S. investments in the industry-country situations thus defined. Less than 500 firms account for all of the identified U.S. investments in these areas.

Last year the U.S. Department of Commerce publicized over 900 specific investment proposals in which businessmen in LDC's sought joint venture or licensing arrangements with U.S. firms. Admitting the marginal quality of many of these proposals, it is still a sign of general disinterest on the part of U.S. business that only a handful of these proposals appear to have been actively followed up by responsible U.S. firms.

In stating these facts, the intent of the committee is to point up a situation, not to be critical. As is noted later in this report, there are numerous valid reasons for the current relative lack of interest in LDC's on the part of U.S. business.

3. *A substantial increase in the level of activity by U.S. firms in the LDC's could provide important benefits to the firms involved; to the national interests of the United States; and to the developing countries themselves.*

A. From the standpoint of U.S. business

It is evident that there is a great deal of additional profitable business to be done by U.S. firms in LDC markets in the years ahead.

[4] This is borne out by the report of Task Force II of the Action Committee which presents information on the practice and experience of selected U.S. firms in LDC markets.

The magnitude of this future business potential can be assessed at two different levels:

(1) There will be substantial future opportunities for additional profitable U.S. exports and investments in the LDC's, even at currently projected slow rates of economic growth and sharply limited availability of foreign exchange resources.

In terms of export potentials alone, these countries now import some $18.5 billion a year of goods and services from industrialized countries other than the United States. Their total imports are expected to increase by something like $1 to $1½ billion a year over the next 10 years.[5] This additional import demand will not be nearly as "locked up" by traditional suppliers as are present imports. Moreover a high proportion of these additional imports are expected to be in commodities like machinery and transport equipment in which the United States is highly competitive.

Even under conservative assumptions, many new enterprises involving foreign investment will inevitably be started in the LDC's in the years ahead.

(2) Much more significant business opportunities can result from successful efforts to accelerate the LDC's rate of economic growth in general, and their ability to finance imports in particular, beyond present expectations.

The import levels mentioned above visualize total 1975 annual imports of only about $20 per capita in the LDC's. This low level of imports is related to projected low average levels of less than $200 per year in per capita gross national product in these countries in 1975.

What *can* happen instead in the next 10 years—if there is more rapid growth in national output and import-financing ability—is illustrated by what *has* happened in the past 10 years in two—admittedly special—cases; Israel and Taiwan. Both of these areas were able to secure substantial development resources and used them effectively. As a result, total per capita GNP in each of them increased by more than 50 percent from 1955 to 1965. Particularly relevant to the present point is the fact that total annual imports in each of these areas were almost 2½ times as large in 1965 as they were in 1955.

It would be obviously unrealistic to project anything like these rates of growth for the less developed countries as a whole. But the special advantages they enjoyed are not necessarily limited to them. Israel has benefited from large foreign private contributions and immigration of skilled manpower; and Taiwan from extraordinarily large U.S. aid inputs. The effects of these factors—though not the specific means—could be duplicated to some degree in other developing countries by the implementation of the recommendations in this report.

It is obvious that even a partial repetition of the growth achievements of these countries on the part of any significant number of the other LDC's would mean import increases very much larger than the $1 to $1½ billion of annual increase now visualized for

[5] Based on estimates provided by task force I of the committee. These estimates reflect the increasing difficulty LDC's are expected to have in financing imports in the years ahead under present arrangements. Among other factors, servicing of existing debts are expected to demand an increasing share of total LDC foreign exchange earnings.

the IDC's as a whole between 1965 and 1975, and consequent greatly enlarged trade and investment opportunities.

B. From the standpoint of the U.S. national interest

The United States is committed to helping the developing countries of the free world to achieve better living standards. We have specific commitments to help our fellow Republics in Latin America in this regard and have recently made new commitments to the nations of Asia.

We have made these commitments both on humanitarian grounds and in terms of our own national self-interest in avoiding a future world marked by widespread starvation, epidemics, economic instability, and political desperation.

The resources and energies to achieve increased growth must, in the future as they have in the past, come primarily from the internal efforts and savings of the LDC's themselves. Multilateral and bilateral international aid programs will continue to play an essential role. However, there is much evidence that the size of these official programs has more or less reached a plateau, and that it is unlikely that they will be substantially increased. Yet most authorities agree that substantial additional inputs of resources and skills will be necessary if adequate growth rates are to be achieved in the LDC's.

The only available sources of such additional inputs are increased export earnings by the countries themselves (including tourism earnings) and foreign private investment.

Confirming this analysis, a primary conclusion of the recent authoritative report of the Advisory Committee on Private Enterprise in Foreign Aid (the Watson report) was as follows:

> First, added capital cannot be expected to come from Government sources in quantities sufficient to fill the gap. The non-Government resources of the United States and other advanced countries must, therefore, play a much greater part.
>
> Second, the skills and other human resources which the less developed countries need must also come largely from non-Government sources. Governments simply do not have command over most of the human resources that are needed.
>
> Third, the role of the non-Government groups—of business enterprises, labor unions, professional societies, and all the rest—must be greatly expanded. Otherwise the economic development we do achieve will not provide the pluralism, the democratic balance, and the diffusion of benefits which are its final purpose.

Thus, it seems clear that, if our national interest in accelerated development of the LDC's is to be achieved, substantially increased activity by U.S. business in these areas will be essential.

C. From the standpoint of the developing countries

If accelerated economic growth in the LDC's is highly important to the United States, it is literally vital to the survival of tens of millions of people in the LDC's themselves.

As has been stressed above, increased foreign private business activity is one of the major potential sources of the large additional inputs of external capital and skills the developing countries will need if they are to increase their growth rates.

Foreign business participation can also be of great assistance to these countries in increasing their own export earnings. Such firms are uniquely qualified to provide the productive efficiency, quality controls and marketing skills necessary to gain access to international markets.

While the other special factors mentioned above have been of predominant significance, it is worth noting that Israel and Taiwan, the two areas mentioned above in which economic growth has been exceptionally rapid—have been leaders among the developing countries in providing a warm welcome to foreign private investment and have, in fact, received far larger per capita inputs of foreign industrial investment than most other such areas.

4. *The U.S. business community, the U.S. Government, and the developing country governments have been making substantial and productive efforts in the LDC's. However, the current level of such efforts seems unlikely to bring about the level of increase in U.S. business activity in these areas which the situation requires.*

A. With regard to the U.S. business community

As noted earlier, to the extent that U.S. business is active in the LDC's, it has proved to be generally imaginative, energetic, and successful. However, the full range of LDC opportunities for U.S. business can clearly only be met if there is a significant increase in the total number of U.S. firms involved in such activities and even more vigorous efforts on the part of those U.S. firms which are already so engaged.

Admittedly, there are a number of roadblocks to such increased participation by U.S. business. The most important are the generally higher risks and frequently lower returns and limited markets which U.S. firms find when they look into business possibilities in most LCD's. General difficulties of doing business in many of these countries, including multiple official approval procedures, and lack of assurance of continuing availability of foreign exchange for production requisites are other significant negative factors.

Even without these important special disincentives, any major expansion in U.S. business activity in LDC's must depend on a change in the traditional domestic orientation of most U.S. firms. While this situation has changed markedly since the end of World War II, it remains true that there are still only a few dozen U.S. firms which are truly multinational, regarding the world as their market and organizing effectively to expand equally in the United States and abroad.

A considerably larger number of U.S. firms have recognized the potentials of foreign markets to the extent of forming an export department or an international division. But in many cases these firms appear to regard international activities, especially LDC's, as marginal operations, providing some supplemental income but receiving low priority when it comes to allocating financial resources and managerial time and skills. Sales and service efforts by many U.S. firms in many LDC markets are minimal. Particularly during the present period of full domestic order books, many such firms are giving low priority to foreign orders and have slackened their efforts to expand their markets and operations overseas.

Finally, there is a much larger group of U.S. firms, including some whole industries and many firms of substantial size in other industries, which have shown little or no interest in foreign market opportunities anywhere, least of all in the developing countries.

From a purely business standpoint, this lack of interest in LDC markets on the part of many U.S. firms is most unfortunate. As this report has stressed, the LDC markets are already large; they will expand substantially in the years ahead; and, with adequate internal and external efforts, could grow very rapidly indeed.

There is an understandable tendency for businessmen to think that overseas operations, especially in LDC's, are something which only very large firms can consider. However, exporting (either directly through local agency arrangements, or through combination export managers or "piggy-back" facilities) licensing and joint ventures can provide promising opportunities for many U.S. firms of modest size. As one member of the Action Committee put it: "LDC operations are not just for the big fellows. There is plenty of room for the little man who thinks big."

B. With regard to the U.S. Government

The U.S. Government operates a wide range of programs designed to encourage and assist U.S. exports to and private investments in developing countries.[6] Internal Government reviews and the recommendations of earlier business committees, including particularly the Watson report, referred to above and reports of prior NEEC Action Committees, have been instrumental in stimulating a number of improvements in these programs.

Many of these programs are individually useful and operate with reasonable effectiveness for the purposes for which they were intended. Outstanding examples are the AID investment survey and specific risk guarantee programs; many of the Department of Commerce and Foreign Service international business information and trade promotion services; Export-Import Bank export financing and insurance facilities; and Department of State business protection and trade liberalization efforts.

One of the major problems with some of these programs is simply that many of the U.S. businessmen whom they are intended to serve are still insufficiently aware of their provisions and consequently do not use them effectively.

The Committee, therefore, wishes to emphasize its feeling that the U.S. businessman interested in doing business abroad can already obtain highly valuable service and support from his Government.

At the same time, the Committee feels that the totality of present Government supports and incentives to doing business in the LDC's is inadequate to offset the prevailing disincentives. This is particularly the case with respect to the thousands of medium-sized U.S. firms whose interest in LDC's must be stimulated if overall U.S. business involvement in these areas is to be substantially increased. As long as the present situation continues, the degree to which such firms will be active in LDC's is unlikely to be commensurate with the important U.S. national interests mentioned previously in this report—and the longer term interests of U.S. business itself.

Apart from the question of the overall adequacy of the available Government programs, there are a number of anomalies in these activities. These variations arise primarily from the varying legislative histories of different programs.

From this viewpoint, the major discrepancies and gaps in existing U.S. Government programs in this area, as the Committee sees them, are:

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[6] The report of Task Force V of the Action Committee presents a list of most of these programs and the extent of their use by the business community.

(1) *U.S. corporate income tax provisions are inconsistent in their requirements on this type of business, and in total, do not provide sufficient special incentives to stimulate adequate interest in LDC's on the part of U.S. business.*

Item.—The current rate of U.S. corporate income taxes paid on profits earned from exports to or operations in an LDC is 34 percent if the business is done in the Western Hemisphere and the firm involved makes certain special organizational and accounting arrangements. It is the normal 48 percent if the business is done in any other developing country.

Item.—A U.S. firm doing business abroad can offset any losses sustained against taxable earnings of the parent company in the United States, if it organizes its overseas operation in the form of a branch. It cannot do so if it organizes its overseas operations in the alternative—and frequently preferable—forms of a locally incorporated subsidiary or a joint venture.

Item.—Conversely, a U.S. firm doing business in any LDC is not required to pay any U.S. taxes on profits from such operations until they are repatriated if it uses the subsidiary or joint-venture format, but must do so immediately if it uses the branch approach.

Item.—A number of provisions of the 1962 Revenue Act and the regulations and audit procedures established under it have the unintended effect of discouraging investment by U.S. firms in LDC's. Several major problems of this type were identified in the 1966 report of the NEEC Action Committee on Taxation and Exports.

(2) *The U.S. Government programs to help U.S. firms reduce risks in overseas business operations vary substantially in their applicability and availability.*

Item.—U.S. Government guarantees covering 90 percent of commercial and political risks are normally available through the Export-Import Bank and FCIA facilities for export transactions in most LDC's, but not in some of the most risky ones.

Item.—U.S. Government guarantees to cover 100 percent of political risks on investment transactions are available through AID for most LDC's. However, because the present rules require specific agreements with each LDC government on each type of guarantee, there are a number of significant gaps in such coverage.

Item.—Existing political risk guarantee arrangements cover a U.S. investor against losses from expropriation, war and civil disturbance, and inconvertibility of the original investment or profits. Extended risk guarantees partially cover most other factors, including adverse commercial developments, which cause the investor to lose his investment. However, no means is presently available to assure a U.S. firm against unusual difficulties in continuing business operations in an LDC because it is unable to exchange local currencies to purchase necessary imports of equipment, raw materials, intermediates, or finished products. Uncertainty as to the continuing availability of such production and marketing requisities is often a major deterrent to many potential U.S. private investments in LDC's.

Item.—Existing AID commercial risks coverage on investment transactions in LDC's is difficult to get. Only five such guarantees have been issued on industrial projects in the several years since such guarantees were authorized. AID is, however, currently taking steps to make such coverage more readily and flexibly available. Under the AID regulations the percentage of coverage available is 50 percent for equity investment in industrial and agricultural projects, 75 percent for institutional lenders making loans to such projects, and 100 percent for housing investments.

(3) *The availability of U.S. Government capital for support of U.S. business activities in LDC's is similarly varied.*

Item.—U.S. dollar loan financing of export transactions to LDC's is normally available, either through Eximbank guarantees of bank loans or, if necessary, directly from Eximbank. Again, certain high-risk LDC's are excluded. On the other hand, U.S. Government dollar loans for investment transactions in LDC's are available from the Eximbank or AID on a much more selective basis. Thus, AID issued only nine such loans in 1965. This is primarily because of the narrow range for such loans between AID's legislative direction to act as a "lender of last resort" and yet requiring it to be assured of reasonable prospects of repayment. Loans are also theoretically available to U.S.-based enterprises in LDC's from local development banks and similar institutions, a number of which have been financed by AID. However, the access of U.S. firms to these institutions appears to be quite limited in practice.

Item.—U.S. Government loans in local currencies are available to U.S. firms making investments in a limited number of LDC's where such funds have become available under the Public Law 480 program. However, such funds are not available in many of the most important developing countries.

Item.—Where U.S. Government local currency business loan funds are available, local businessmen have access to them if they intend to establish or expand facilities for the import, storage, processing, or sale of agricultural products imported from the United States. They are not available for identical purposes to local firms importing U.S. industrial products.

Item.—Most other major Western industrialized countries have some kind of public or semipublic corporation which can provide partial equity capital for industrial and agricultural investment projects in developing countries in cooperation with private investors. The United States has no such facility.

(4) *U.S. Government participation in market information, market research and market development work in support of LDC business activities of U.S. firms also leaves significant gaps.*

Item.—At the level of general economic and commercial data about foreign countries, the U.S. businessman probably has access to more information through the U.S. Government than do businessmen of any country. Yet this wide range of data is scattered among other agencies; it is uneven in its coverage; and is often outdated by the time it reaches the businessman.[7]

Item.—The U.S. businessman who wants limited special information can, for a nominal fee, get U.S. Government Foreign Service personnel to seek out the information he needs, if his interest is in credit in-

[7] The report of task force III of the Action Committee presents a detailed analysis of information needs and problems in this area.

formation on prospective export purchasers or identification of potential local agents or licensees. There is no regularized system to provide him with such service if he wants any other kind of information in relation to potential exports or investments.

Item.—If a U.S. firm is interested in setting up a manufacturing subsidiary or joint venture in a developing country, current legislation authorizes the U.S. Government to pay half the cost of a thorough feasibility and market research study made or commissioned by the firm involved, if the investment decision is negative. There is no similar cost-sharing arrangement available if the firm wishes to check out a market for direct exports of goods or services.

Item.—A trade association wishing to conduct market research or sales promotion activities abroad can get 50 percent or more of the cost paid by the U.S. Government if they are selling any kind of agricultural product. No such support is available for identical activities in relation to manufactured goods.

Item.—The United States has no current program for supplementing local salary levels for U.S. technical advisers requested by LDC's which are not AID recipients. Such advisers can often influence the source of substantial construction and procurement contracts. Other industrialized countries apparently do have facilities for such "salary topping" in situations of commercial interest.

Item.—The major special U.S. Department of Commerce trade promotion programs are largely concentrated in industrialized countries. Thus, in the past 3 years, only nine out of 54 trade fair participations were in LDC's. Only one out of six permanent trade centers maintained by Commerce is in an LDC (Thialand). This emphasis is quite understandable in terms of maximizing immediate sales results, but may be questionable in the sense that special government support in market development is relatively more needed in LDC's than in industrialized countries.

Item.—The continuing overseas business information and service activities of the U.S. Government are also concentrated in industrialized countries. Thus, there are 77 full-time commercial officers in U.S. Embassies and consulates in some 21 industrialized countries. There are 81 such officers in some 41 developing countries. Fifty-four LDC's with total populations of almost 500 million people have no such officers. Other Embassy and consular officers provide commercial services on a part-time basis in posts where there is no full-time commercial officer. Meanwhile, the U.S. Government supports almost 7,000 American officer-level personnel in developing countries working on aid programs, and some 700 USIA officers working on telling the American story to the local populace. The activities of many of these USIA and AID officers do, of course, assist U.S. business, directly and indirectly. The concentration of full-time commercial officers in countries where the bulk of current trade takes place is understandable, but the question remains whether present facilities are adequate to meet the specially difficult information and service needs of U.S. business in the LDC's.

(5). *The Agency for International Development—at the level of general policy—has recently strongly emphasized the importance of seeking to advance long-term U.S. trade development effects, within its primary objective of helping LDC's to accelerate their economic and* *social development. However, this policy is not yet fully reflected in AID's programing and implementation practices.*[9]

Item.—The Agency for International Development and its predecessors have, understandably and properly, paid primary attention to seeking to administer the funds available in such a way as to maximize their impact on the economic development of the recipient countries. Thus, tying of aid-financed procurement to U.S. sources was resisted on this ground until pressures on the U.S. balance of payments made such action inescapable in 1959–60. Now almost all of AID's procurement is so tied.

More recently, AID policy directives on project selection and programing have emphasized the importance of seeking to maximize U.S. long-term trade development effects to the extent this can be done without significant adverse effects on development objectives. An interagency study group set up by the Cabinet Balance of Payments Committee is studying detailed techniques for increasing such "export additionality" in the AID program. Despite these commendable efforts, however, there is evidence that these supplementary trade development objectives are receiving less than wholehearted support at various levels in the AID organization. Some AID officials do not appear to have fully appreciated the important positive contribution which increased U.S. business involvement in LDC's can make to AID's primary objectives, or the extent to which astute use of AID resources can encourage such involvement.

Among other aspects, it should be noted that in promoting economic development in an LDC, the expectation of a future return sufficient to justify private investment in a given project can be the best indicator of a project's economic viability. Thus, greater attention to the profit motive can, in the long term, serve to accelerate economic development of the LDC on a sound basis.

In contrast to the approach which has prevailed in U.S. aid programs, it should be noted that the "aid" programs of other industrialized countries often make no bones about giving major emphasis to short and long term trade development objectives.

Item.—For their part, many U.S. businessmen have not fully appreciated the great assistance which the AID program has been and can be to their efforts to develop immediate and longer term markets in the developing countries.

Item.—Over the years, AID has brought tens of thousands of people from the less developed countries to the United States for training. Few, if any, of these people have gone into U.S. private firms to learn the skills needed to build, sell or service U.S. products in their home countries. Yet the lack of skilled local personnel in these fields, and the expense of company-financed training of them, is often a major factor inhibiting U.S. firms from developing sales or manufacturing facilities in the LDCs. Recognizing this, some other industrialized countries have made such inplant training in industries a major element in their technical assistance programs.

Item.—AID has been making increasing use of technical service contracts with U.S. nongovernment organizations to provide technical advice and assistance to LDCs. Over $500 million of such contracts

[9] The report of task force IV of the Action Committee presents a more detailed analysis of this problem.

had been let as of September 30, 1966. For a variety of reasons, only a relatively small number of private U.S. consulting, architectural, engineering, service systems and operating firms have been brought into such activities. The involvement of a larger number of such firms would be likely to lead to significant increases in export and investment follow-ons.

Item.—Despite its significance to the future success of the aid program, it appears that only a few people among the thousands of AID employees in the United States and overseas are actively engaged on a regular basis in any aspect of the problem of maximizing trade development benefits from AID operations.

(6) *The U.S. Government has recognized—again at the high policy level—that LDCs cannot accelerate their development and cannot become better customers for U.S. goods unless they can increase their own export earnings sharply. We have, in practice, made some significant efforts to help LDC's in this matter, but these efforts have been limited in scope and effectiveness. Meanwhile some continuing U.S. policies and programs are counterproductive in this respect.*

Item.—U.S. trade liberalization programs have, for understandable reasons, been largely focused on our trade relations with other industrialized countries. LDCs can benefit from generalizations of tariff concessions negotiated between the United States and other industrialized countries. However, these generally are not too meaningful in terms of the special products and potentials of the LDCs.

Item.—For some years, the LDC's have been arguing strongly for some type of preferential treatment in terms of access to industrialized country markets. The United States has generally resisted such proposals because of our traditional opposition to discriminatory tariff arrangements and because we have been doubtful of the real benefits the LDC's would derive from such action. Meanwhile, several other industrialized countries are providing preferential treatment for some or all LDC's and have appeared to be more favorable than the United States toward some form of generalized LDC preferences.

Item.—A number of U.S. legal and administrative requirements of various types, ranging from import quotas to food and drug regulations act to restrict the ability of LDC's to export to the United States. There has, as far as the committee knows, never been a rounded study of the extent to which such restrictions might be adjusted without adverse effects to the United States but with beneficial results in terms of LDC exports. A similar study was launched with regard to Western European countries as part of the trade-not-aid program under the Marshall plan and proved to be quite fruitful.

Item.—While many of AID's programs directly or indirectly act to advance the export potential of the LDC's, relatively few projects have been aimed specifically at helping the LDC's increase their exports. Some AID and Public Law 480 regulations still inhibit the use of aid resources for development of exports to the United States.

Item.—Tourism presents unique opportunities for foreign exchange earnings by many LDC's—as well as for increased U.S. exports and investment. Relatively little AID support appears to have been devoted to this area.

(7) *Responsibilities for development of economic policies in relation to LDC's and for providing information and support to U.S. business under these policies are widely scattered throughout the Government, with resulting confusion, internal contradictions, and difficulties.*

Item.—The U.S. Government has an industrial export policy, an agricultural export policy, multiply investment policies, a balance-of-payments policy, tax policies and aid policies, all of which strongly affect our economic relations with the LDC's. Leadership responsibility in each of these areas rests in a different Federal agency. Only rarely are these pieces brought together for mutual support in terms of total U.S. objectives. Sometimes they appear to cut across and contradict each other, both within and among the various policy areas.

Item.—This profusion of policies is reflected in a proliferation of uncoordinated sources of information and assistance to businessmen interested in doing business in developing countries. Such a businessman can spend days of precious time going from office to office in the Departments of State, Commerce, Treasury and Agriculture, AID, the Export-Import Bank, the Federal Trade Commission—and sometimes the Departments of Interior, Defense, and Justice. There is no central office, organization, or individual who can coordinate all of these aspects either at the level of policy or of administration.

The committee wishes to emphasize that this catalog of the omissions and inconsistencies in present Government programs is not intended to imply any deficiency of thought or effort on the part of any of these officials or agencies of the Government responsible for these activities. What can be said is that some of these programs—like many other activities of Government (and business)—have not kept pace with recent rapid changes in the international business scene.

This persistence of ideas which have been outdated by events is particularly strongly reflected in the continuing dichotomy between exports, on the one hand, and overseas investments by U.S. firms, on the other, which apparently continues to pervade much of Government thinking in this field. This dichotomy runs from the basic semantics of Government programs—for example, the national export expansion program—through a wide range of policies and practices, some of which have been detailed above.

This duality of treatment is out of tune with the realities of current international business practices. Most internationally minded businessmen now think in terms of a total process of doing business in a particular foreign market. They seek to use a full kit of tools to maximize sales and profits in each market, ranging in an unbroken spectrum from direct exports of finished products to assembly abroad to licensing or direct investment leading to partial or full production abroad. Which approach, or combination of approaches, they use depends on their analysis of the current situation in the particular market.

The U.S. Government's enthusiasm for direct exports as compared with investment is apparently based on three ideas which have little current validity, at least with regard to developing countries. However, they seem to persist, both implicitly and explicitly, in the continued export emphasis in many Government programs. These ideas are:

1. *That U.S. firms have an open option whether to export or invest abroad.*—In fact, in almost every instance where it is done, particu-

larly in LDC's, a given degree of overseas investment is a business necessity based on the nature of the product; the competitive situation in the market; or local government regulations. On a more general level, it is clearly inconceivable that, given their limited foreign exchange resources, the developing countries could have imported any substantial additional proportion of the $61½ billion or so of manufactured goods which LDC affiliates of U.S. firms are estimated to have sold in such markets in 1965.

2. *That U.S. direct investments in LDC's act to reduce U.S. exports to the country involved.*—Available statistics show that the opposite is generally true. U.S. exports have generally increased most rapidly in countries where our investments have also been increasing most rapidly. This fact is supported by a recent study by the U.S. Council of the International Chamber of Commerce, which shows that, worldwide, increasing investments and increasing exports go hand in hand. The experiences of many individual firms confirm this analysis. Firm after firm has found that their overall exports of U.S. goods, including machinery, materials, components, and other products in their lines, are substantially greater after they begin local manufacture in a given market than they were before.

3. *That U.S. investments in LDC's have an adverse effect on the U.S. balance of payments.*—The best available evidence indicates that, with regard to developing countries, the initial outflow of U.S. investment capital for LDC investments is offset in a brief period by inflows resulting from related sales of U.S. machinery, services, components, and other products, plus, in some cases, repatriated earnings on the investment involved. After this brief initial period, the U.S. balance of payments is increasingly benefited as a result of such investments.

A more realistic appraisal of the real current relationships between exports and investments would, the Committee is convinced, lead to a number of constructive changes in government policies, practices—and semanitcs—in this field.

C. With regard to the developing countries

Nothing the U.S. business community or the U.S. Government can do is likely to stimulate a substantially increased flow of foreign private capital and know-how into a less developed country which fails to maintain an adequately attractive investment climate for such activity. Thus, the LDC's themselves have the most significant influence on whether or not there is such a flow, as well as the greatest interest in encouraging it.

The elements of a reasonable foreign investment climate are not onerous to the host country, although it is recognized that some of them are difficult, from an economic and political standpoint, in some countries. Certainly these requirements in no way imperil the sovereignty of the country involved. Basically, they include:[8]

(1) Maintaining reasonable internal security and economic and political stability;

(2) Recognizing that an energetic private sector is essential for sustained, efficient economic growth and should, therefore, be encouraged;

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[8] The report of task force III of the Action Committee presents a more detailed statements on this subject. The recent report of the Committee for Economic Development on "How Low Income Countries Can Advance Their Own Growth" is also highly relevant.

(3) Giving foreign investors equal treatment with local businesses under laws and regulations and in their administration;

(4) Permitting investors to earn and repatriate returns on capital employed commensurate with the risks involved and comparable with the likely returns from opportunities elsewhere;

(5) Permitting foreign investors to participate in equity and management control, commensurate with their contributions of capital and know-how;

(6) Recognizing the need for investment in manufacturing and/or distribution in relation to regional demand;

(7) Permitting flexible product pricing policy consistent with an acceptable return on investment;

(8) Permitting, without excessive controls, adequate staffing by foreign technical experts and managerial talent when required;

(9) Providing expeditious and honest official approval procedures;

(10) Maintaining stable, simple, and equitable tax and depreciation policies, and particularly avoiding retroactive taxes either by law or administrative action;

(11) Maintaining reasonable and stable import duties and import controls;

(12) Allowing firms reasonable freedom to select raw material sources, consistent with commercially competitive pricing; and

(13) Permitting reasonable amortization and dividend policies, with adequate freedom to foreign firms to reinvest locally for expansion and technological and quality improvements.

Countries which provide these conditions can reasonably expect reciprocal constructive behavior on the part of investing firms, and that modern foreign enterprises will conduct their affairs in a manner leading toward accelerated economic growth and social development in the host country.

In practice today, some LDC governments are openly hostile to foreign-based private business activity. On the other hand, a few LDC's are doing their best to provide a receptive climate for such activity and are reaping the rewards of such policies.

The bulk of the developing countries verbally welcome such activity—and even offer special incentives to it—but in practice, present the interested foreign firm with so many uncertainties, difficulties, restrictions and delays that only the largest and most patient firms are prepared to try to surmount them.

This contradictory attitude toward foreign business is a complex result of strong nationalism, adverse historical experience and insufficient recognition of the great differences between the policies and methods of modern foreign enterprise and some of its predecessors. Local politics and assiduous leftist propaganda massage the fears thus generated. Economic misconceptions of the relative cost of foreign private investment, compared with the benefits received, are also an important factor.

Thus, around the world, we find the incongruous position of LDC governments building barriers against the most promising source of the very inputs of capital and skills they most need—lest their independence be endangered by too great a flow. Meanwhile, businessmen in the United States and other industrialized countries are, for reasons outlined previously in this report, reluctant to get involved in these countries even in the absence of such artificial barriers.

Apart from adverse domestic policies, the developing countries have generally been extremely resistant and slow-moving in developing regional free market arrangements which, for many of them, are the best hope for assuring large enough markets to make modern industrial development feasible.

III. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

The principal conclusion of the NEEC Action Committee on Trade and Investment in Developing Countries is that the time has come for much more vigorous individual and mutual action by U.S. business, the U.S. Government, and the LDC's themselves to bring about a substantial increase in U.S. trade and investment in the developing countries.

The Committee is convinced that such an increase will be mutually beneficial to the developing countries, to the national interests of the United States, and to U.S. business.

At the same time, the Committee is convinced that the capital and skills of private industry will not move into the LDC's in an adequate way unless there are major changes in attitudes and ground rules along the lines indicated below. Exhortation and minor improvement in the practices of governments and business will not be enough.

The Committee is aware that many of the changes it recommends will necessarily take some time to put into effect. Business firms must take time and care in launching new ventures. For its part, the U.S. Government must balance the needs for action in this area against other budgetary needs, overall tax policies, immediate balance-of-payments considerations, and GATT and other existing commitments on international trade matters. In any case, time is required to formulate and enact necessary legislative and administrative changes. Similarly, LDC governments cannot be expected to move overnight in matters of such political and economic sensitivity.

Thus, the Committee's recommendations should be regarded as a suggested agenda for action, to be carried out over the next several years, as the situation permits.

B. Recommendations for action by U.S. business

The committee recommends

Recommendation No. 1.—That U.S. firms carefully reassess their present planning in relation to business possibilities in the LDC's to make sure they are giving adequate weight to the future profit potential in these areas, and are giving appropriate attention to these areas in allocating financial resources and managerial time and skills.

Recommendation No. 2.—That each U.S. firm which is already doing business with or in less developed countries review its product designs and sales and service facilities as they relate to such countries to make sure that it is giving this aspect of its business the amount and quality of attention it deserves.

Recommendation No. 3.—That, wherever feasible, U.S. firms allocate some reasonable proportion of their research and development efforts to seeking to develop products and approaches designed to fit the special needs of the less-developed countries.

Recommendation No. 4.—That each U.S. firm fully inform itself on the information, service, and supports for doing business in the developing countries which are available from the U.S. Government and elsewhere, and try to make the most effective use of these facilities.

Recommendation No. 5.—That the National Export Expansion Council and the Regional Export Expansion Councils take the leadership, in cooperation with other major U.S. business and trade organizations, in developing expanded programs to disseminate information in the business community on opportunities for and methods of doing business in the less-developed countries, and on Government programs designed to assist such operations.

Recommendation No. 6.—That U.S. firms doing business in less-developed countries make increased efforts, individually and through appropriate business organizations, to develop better understanding in the LDC's of modern private enterprise and the contributions it can make to development.

Recommendation No. 7.—That U.S. firms be flexible in the approaches to doing business in LDC's. For example, while recognizing the problems involved, there are situations in which encouraging local stock ownership or joint ventures or franchise arrangements with local businessmen may make it possible to do business in markets which would otherwise be closed or hostile.

Recommendation No. 8.—That, in view of the limitations which shortages of local managerial and technical skills place on business expansion in LDC's, U.S. firms pay special attention to providing training facilities through their local affiliates and support the general development of adequate technical and business educational facilities in these countries.

Recommendation No. 9.—That U.S. businessmen, individually and through their organizations, participate actively in the development of policies and programs like tariff reductions and aid programs which are designed to help accelerate economic growth—and consequently business opportunities—in the LCD's.

Recommendation No. 10.—That U.S. businessmen actively support private programs designed to strengthen local free enterprise in the LDC's, such as those carried on by the International Executive Service Corps and the enterprise fellowship program of the Council for International Progress in Management, which are designed to strengthen local free enterprise in the LDC's.

Recommendation No. 11.—That, to reflect more realistically the scope of current international business activities, the National Export Expansion Council and the Regional Export Expansion Councils broaden their programs to pay more balanced attention to both investment and exports.

C. Recommendations for action by the U.S. Government

The committee recommends

Recommendation No. 12.—The most immediately effective means of stimulating U.S. investment and export interest in the LDC's, is through new U.S. tax incentives, sufficiently attractive to overcome current disincentives to doing business in these areas, especially on the part of smaller U.S firms. Over the years a number of different techniques for providing such incentives have been proposed and discussed. The committee recommends that a top-level interdepartmental Government task force be established to work out, with representatives of business, an effective program for tax inducements for both exports to and investments in the LDC's, and that these be submitted to Congress at the earliest appropriate time. Measures to be considered should include those that act to reduce the capital at risk by means of investment credits or writeoff of losses, and those that increase returns through lower effective tax rates. The committee believes that, to be effective, the new incentives will have to be substantially more attractive than those currently available under the long-standing Western Hemisphere Trade Corporation legislation.

Recommendation No. 13.—The committee further recommends that current tax regulations and IRS audit practices be reexamined to remove disincentives to LDC operations along the lines indicated by the earlier NEEC Action Committee on Taxation and Exports. In particular, uncertainties as to acceptable pricing policies, caused by vague proposed section 482 regulations and current administrative practices, should be removed. In addition, the 1962 Revenue Act should be reviewed at the earliest feasible time to remove complex and ambiguous provisions which act to deter American firms from engaging in business activities in LDC's.

Recommendation No. 14.—U.S. Government guarantees against political and commercial risks should be made more widely and simply available for all types of constructive business activities by U.S. firms in LDC's. The possibility of adjusting premiums according to the locale and nature of the risks to be covered, should be explored, as should the possibilities of utilizing banks or other private facilities as agents for such guarantees. Pending such major changes, AID's current efforts to make its extended risk guarantees more readily and promptly available to U.S. firms should be commended and continued.

Recommendation No. 15.—Ways and means should be explored—through expansion of the AID or Export-Import Bank programs or other appropriate means—to permit U.S. firms conducting or proposing to conduct operations in LDC's (which are approved by the host government) to be assured of postinvestment foreign exchange availability for a reasonable time to enable them to import from the United States necessary equipment, raw materials, spare parts, and so forth. Such a program would be a significant incentive for U.S. business to make further direct investments in LDC's and would encourage long-term expansion of U.S. exports.

Recommendation No. 16.—Existing legislation and administrative regulations should be broadened to permit U.S. Government loans in dollars and local currencies to be made more simply and more generally available to credit-worthy U.S. firms for constructive business operations in LDC's. The possibility of issuing most such loans through appropriate U.S. commercial banks and their overseas branches and subsidiaries (with U.S. Government guarantees where appropriate, is now done by Eximbank for export financing) should be explored. Implementation of this recommendation may require the establishment of a special fund to take care of cases where the U.S. national interest is involved, but where, for one reasons or another, necessary financing cannot be made available from either the Export-Import Bank or AID. Creation of such a "National Interest Fund" was proposed by Senator Magnuson in 1965 and endorsed by the NEEC Action Committee on Export Financing in February 1966.

Recommendation No. 17.—The U.S. Government loan and guarantee arrangements should be adjusted—through permitting more flexibility in debt-equity ratios, subordinated loans or other means— so that specially desirable U.S. business activities in LDC's, which cannot otherwise be financed, can secure the equivalent of the partial equity participation currently available to French, German, and British investors through government-sponsored corporations in their respective countries.

Recommendation No. 18.—Existing legislation should be changed to permit U.S.-owned local currencies to be loaned to local businessmen, in LDC's where such funds are available, to help finance facilities for the import, storage, processing, or sale of any U.S. goods on the same basis as they are now available to local importers of U.S. agricultural products.

Recommendation No. 19.—Administration of the various AID private enterprise support programs should be pulled together under unified direction.

Recommendation No. 20.—The general economic and business information services provided by the U.S. Foreign Service, the Departments of Commerce and State, and other agencies should be streamlined and automated, making use of modern data-handling methods wherever possible. (The affected Departments are currently working on such a plan.) Particular attention should be given to proper and complete source identification and information retrieval and timely accessibility. The specific recommendations of Task Force III of this Action Committee should be carefully studied in this regard and the business groups affected should be closely consulted at each stage.

Recommendation No. 21.—The U.S. Government should provide preliminary business information surveys for a reasonable fee—along broader lines than those now furnished, to include preliminary market data on specific products, competition, production, and sales channels. Although the depth of such studies may vary with the subject and with the requirements of the requesting firm, this service would be expected to draw on readily available data in the country involved, as well as pertinent comments and suggestions by informed Foreign Service officers and local businessmen.

Recommendation No. 22.—Legislative authority and appropriations should be provided to permit U.S. Government cost sharing of surveys of potential LDC export markets by U.S. firms (comparable to the arrangements now available to intending direct investors) and to extend the cost-sharing arrangements now available for trade associations conducting market research and sales promotion activities in relations to U.S. agricultural exports to cover all U.S. exports to LDC's.

Recommendation No. 23.—Appropriate legislative authority and funds should be provided to permit the U.S. Government to "top-off" salaries which developing countries are able to pay to U.S. advisers and technicians, where necessary to make U.S. services of this type competitive with those offered to LDC's by other industrialized countries and where such services are likely to lead to significant follow-on exports. Similar arrangements to help cover fees of U.S. consulting, architectural, and engineering firms under such circumstances should also be considered.

Recommendation No. 24.—Current U.S. Government-supported special trade promotion programs should be supplemented by additional activities particularly designed to meet the needs of U.S. trade and investment development in LDC's. Among other measures in this area, AID should assist U.S. firms in providing training for local sales, service, technical and managerial personnel needed to support their activities in LDC's.

Recommendation No. 25.—The number of commercial officers in U.S. embassies and consulates in developing countries should be increased so that there is adequate specialized personnel to meet the information and service needs of U.S. business in every major business center in these areas. In addition, new provisions should be made for flexible recruitment and assignment of experienced U.S. businessmen, market research specialists, commodity specialists and recent business school graduates to commercial offices of U.S. embassies and consulates in LDC's for short-term market research and promotion activities.

Recommendation No. 26.—Recognizing that AID's primary objective is and should continue to be to help accelerate economic growth in the LDC's, it should nevertheless give increased attention to long-term U.S. export potentials in developing and implementing its programs. To this end, the current interagency studies which are being conducted to identify specific means of increasing export development resulting from AID programs should be expedited. These studies might well be supplemented by contract studies along the lines suggested in the report of task force IV of this Action Committee. In addition, AID should encourage its missions to discuss these problems with resident U.S. businessmen on a regular basis. Finally, AID should enlarge its full-time staff concerned with these problems to assure more adequate and continuing attention to the trade development aspects of its activities.

Recommendation No. 27.—AID should seek to have as many private U.S. consulting, architectural, engineering, service, systems, and operating firms as possible participate in its technical assistance activities, recognizing both the contributions to economic growth and the trade and investment followons which involvement of such firms can bring.

Recommendation No. 28.—The United States should make increased efforts to help the LDC's to expand their exports. Increased foreign exchange earnings will both facilitate the development of the LDC's and make possible an expansion of U.S. exports to and investments in these countries. Among other measures, the United States should examine carefully the feasibility of reducing tariffs of particular importance to the LDC's and should urge other industrialized countries to do the same. Such reductions should, wherever possible, be on an MFN basis. However, the granting of reductions on a preferential basis should not be ruled out provided (1) that other industrialized countries are likewise disposed toward such reductions, and (2) it can be reasonably shown that the benefits to both the receiving country and the granting country are such as to justify this departure from the established MFN policy of the United States.

Recommendation No. 29.—AID should expand its present programs of assistance to LDC's in specific projects designed to help them expand their exports.

Recommendation No. 30.—AID should give increased attention to helping the LDC's increase their earnings from tourism, including identification of tourism possibilities and requirements for tourist facilities; and technical and financial support for the development of such facilities.

Recommendation No. 31.—The appropriate U.S. Government agencies should carefully examine all legislation, regulations, and restrictions which act to limit the ability of LDC's to export to the United States, with a view to adjusting them, insofar as feasible, to encourage such exports.

Recommendation No. 32.—The U.S. Department of Commerce should review its export expansion program and other services to give more balanced attention to investment, as well as exports, in keeping with current international business emphasis and practice.

Recommendation No. 33.—There is a clear need for more coordinated planning and execution of U.S. Government aid, trade, taxation, investment, balance of payments and other related policies and programs affecting our economic relations with the LDC's. Suitable arrangements should be made to provide continuing attention to such coordination at the highest levels of the Government.

D. *For action by developing country governments*

It would be inappropriate for this committee, as a group of American businessmen, to make specific recommendations to the sovereign governments of other countries. Nor do we have the depth of knowledge of the complex and widely varying problems of the many different LDC's to attempt to do so.

What we can do is earnestly to recommend to each LDC government:

(1) That it make a new and objective review of:

(a) The unique contributions of capital, technology, and skills which business firms from the United States and other industrialized countries could make to its development objectives;

(b) The actual costs, policies and practices, and benefits of modern international investment; and

(c) Its own policies, rules, and practices in terms of the elements of an attractive climate for foreign investors as set forth earlier in this report.

(2) That, in the light of such a review, it seek to develop a program which, consistent with its own needs and political principles, will act to minimize barriers and maximize incentives to potential private investment.

(3) That it recognize the fact that the larger the internal market available, the more private investment will be attracted, and therefore move as rapidly as feasible toward the development of regional free trade arrangements with its neighbors.

Prospects for U.S. Trade in the Next Decade

EXECUTIVE BRANCH STATEMENT

A. SUMMARY

1. On balance a more moderate rate of expansion of U.S. trade than the rapid 1960 to 1966 pace may result in the next decade. The expected deceleration of economic growth in this country and other developed areas will tend to slow the rise in our imports and exports. Other prospective developments—relating to the Kennedy round agreements, technological advances, foreign investment, business practices and organization, and U.S. Government programs—should for the most part have expansive effects on our trade.

Stimulated by generally higher levels of economic activity here and abroad, U.S. trade moved up strongly to record levels during the sixties. Exports, excluding military grant aid, rose from $19.6 billion in 1960 to $29.4 billion in 1966 and imports from $15 to $25.5 billion during the same period.

2. The reductions in tariffs on a wide range of products and the easing of some nontariff barriers negotiated during the Kennedy round will begin to take effect in 1968 and help boost our foreign sales and purchases.

3. Further technological advances in this country and vigorous participation by industry and agriculture in U.S. Government export promotion programs should help substantially to improve the level of our exports.

4. Adoption of the latest industrial and managerial techniques by foreign firms and the creation of larger business units abroad will, on the other hand, intensify competition for American firms in the United States and other markets.

5. Higher levels of U.S. direct investment would boost shipments to our foreign affiliates. The expanding operations of these firms, however, could result in some displacement of direct U.S. exports to local and third country markets. They could also involve shipments to this country of part of their output, although this would include important industrial materials not produced in adequate quantities here. Moreover, additional earnings from affiliates would bolster the overall U.S. balance-of-payments position.

6. Government-financed export programs, if expanded to meet continuing large needs overseas, would bring an increase in U.S. deliveries of agricultural and industrial goods. Should our balance-of-payments position improve sufficiently to permit the untying of aid, shipments financed by AID would be unlikely to rise as rapidly as expenditures for economic assistance.

7. The proposed East-West Trade Relations Act, if enacted, would provide an opportunity for the expansion of trade in goods with the Eastern European nations.

B. RECENT TRENDS IN U.S. TRADE

United States trade has expanded strongly in both directions during the current decade. Exports, excluding military grant aid, climbed from $19.6 billion in 1960 to $29.4 billion in 1966. Our purchases from abroad increased by roughly the same amount during this period, from $11.5 to $25.5 billion.

U.S. EXPORTS AND IMPORTS, 1960 AND 1966

	1960	1966	Average annual rate of increase, 1960-66
U.S. exports, excluding military grant-aid	19,635	29,379	6.9
U.S. imports	15,018	25,542	9.3

Exports moved upward at an annual rate of nearly 7 percent from 1960 to 1966. This strong increase was characterized by sizable shifts in the composition of our shipments. Deliveries of finished manufactures and foods now account for a larger share, while crude materials and semimanufactured goods have declined in importance. Solid gains in sales of machinery and transport equipment helped boost finished manufactures exports to 58 percent of the total in 1966. Foods contributed nearly 17 percent, a higher share than in 1960, primarily as a result of a substantial expansion in shipments of grains and soybeans. The smaller share attributed to crude materials largely reflected sizable declines in shipments of cotton and less expansive sales of coal and tobacco.

Government assistance programs have played a relatively minor role in the nearly $10 billion growth in our exports from 1960 to 1966. Shipments of agricultural products under Public Law 480, largely wheat and other grains to various developing countries, amounted to $1.6 billion in 1966. This level of assistance was a fifth higher than in 1960. In that year these programs accounted for 27 percent of our agricultural exports; by 1966, however, they financed only 23 percent of our total exports of agricultural commodities. Disbursements for merchandise exports under AID programs last year totaled $1.1 billion, a sharp rise from the $0.4 billion of goods sent abroad in 1960. This expansion primarily represented the tying of our economic assistance to purchases in the United States. Around two-thirds of the AID-financed disbursements for merchandise exports in 1966 involved shipments of machinery, fertilizers, pharmaceuticals, and other chemical products, and transport equipment to countries in Asia and Latin America.

Exports to both the developed and developing countries rose strongly in 1960–66. The former group took two-thirds of our exports in 1966, gaining by $6.8 billion over the 6-year period. Sales were especially expansive to Canada, Japan, and Oceania. Shipments to the developing areas expanded by $3 billion, or by more than two-fifths. Increasing relatively rapidly were shipments to East and South Asia, the Near East, and Africa, while those to Latin America, our largest market among the developing areas, lagged.

Since 1960, imports have grown at an average annual rate of 9 percent. Stimulated by the expansion of the domestic economy in recent years, imports not only increased rapidly but underwent a marked change in composition. Although all major types of imports expanded in value, the faster growth in purchases of capital equipment and consumer goods increased the share of these products in our total imports. Arrivals of capital equipment, mostly machinery, accounted for 8.4 percent of our imports in 1966, or more than twice the ratio in 1960. Buoyant demand in this country for cars and a variety of other foreign consumer products raised the share of these imports from 17 to 23 percent. Industrial materials remained overwhelmingly our major import, but receded from 52 percent of the import total to only 47 percent. Purchases of foreign food and beverages also slipped, relatively, to 18 percent.

Purchases from the developed countries nearly doubled in the 6 years ending 1966, accounting for more than four-fifths of the $10.5 billion import rise during this period. The sharpest gain was in arrivals from Japan which climbed from $1.1 billion to nearly $3 billion during 1960–66. Also expanding rapidly were purchases from Canada and Western Europe which in 1966 reached levels of $6.1 and $7.7 billion, respectively. As a result of the steep rise in purchases from industrial suppliers abroad, their share of our total imports climbed from 60 to 69 percent.

Reflecting the shift in the composition of our imports to a higher proportion of finished manufactures, arrivals from the developing countries expanded by only 30 percent. The increase was $1.8 billion, less than a fifth of the overall U.S. import growth. Imports from developing Africa, East and South Asia, and Caribbean countries were the most expansive in the last 6 years. Arrivals from the 19 American Republics, our major source of developing area imports, grew relatively slowly.

C. MAJOR FACTORS AFFECTING FUTURE U.S. TRADE

1. *Developments in the U.S. economy.*—Although the U.S. economy is expected to grow rapidly in the next decade, the average annual rate of increase is likely to fall short of the high pace of recent years. From 1960 to 1966, the rise in gross national product averaged 5 percent a year in real terms. This rapid expansion was possible because extensive idle human and physical resources were available at the beginning of the period. Further increases in output will depend principally on increases in productivity and in the labor force. For the next decade, a slower, though still sizable, economic expansion is in prospect.

A study prepared for the Joint Economic Committee in 1966 [1] estimated that the U.S. economy can sustain a rate of economic growth of 4 to 4½ percent per year through 1975. This is a measure of the maximum output which the economy is believed capable of sustaining without running into serious instability in employment, output, or prices. The projection is predicated on a more rapid increase in the labor force than in the last 10 years and ~~on~~ continued gains in productivity.

Since the relationship between total economic activity and imports is a fairly close one, the rate of growth of the U.S. economy will

[1] "U.S. Economic Growth to 1975: Potentials and Problems."

largely determine the import pace in the next decade. This relationship has been relatively stable in the past. Between 1950 and 1965, imports as a percentage of GNP moved narrowly around 3 percent. In 1966, pressures on U.S. production for heavy military requirements reinforced the already high civilian demand, causing imports to climb sharply. Corresponding with smaller gains in GNP, the rate of increase in imports in the next decade may be expected to decelerate from the 9.3 percent annual pace during 1960–66. Helping to moderate the flow of imports may be continuing increases in unit costs of production abroad relative to those in this country which should reduce the price advantage of various foreign manufactures here.

Of the four major classes of U.S. imports, purchases of industrial materials are generally the most sensitive to changes in business activity. Consequently, movements in these imports are largely related to those in industrial production, but they also are affected by changes in technology. Reflecting improved use of basic materials in this country, continued releases from national stockpiles, and further advances in developing substitutes, purchases of industrial materials will decrease as a share of total imports in the next decade.

Also declining as a share of the U.S.-import total will be purchases of foods and beverages. This drop is expected to occur despite a rise in the value of these imports during the next decade. There will be a continuation of commodity shifts that have become evident in recent years with the rise in personal incomes.

Although the rapid rise in imports of consumer goods since the late 1950's may give way to a more restrained pace in the next decade, significant advances will be registered in these imports. Increasing leisure time, higher disposable incomes in the United States, and the continued cost advantage of overseas manufacturers of certain products will insure the expansion of consumer imports. The rate of advance could, however, be accelerated by the large-scale entry of new products of special appeal or cost advantage, as has been the case with small cars and motorcycles. In general, imports of consumer goods are likely to grow faster than total U.S. purchases abroad.

The huge year-to-year increases in U.S. imports of capital equipment in 1965 and 1966 are traceable to the pressure of domestic demand. Since demand is not expected to place a continuous strain on domestic capacity in the years ahead, the pace of capital equipment imports can be expected to approximate more closely the slower trend of the early sixties. This will depend, of course, on the rate of U.S. investment in new plant and equipment.

The level of domestic economic activity indirectly influences the flow of U.S. exports. In periods of sustained economic growth, rising import demand in the United States increases the sales and thus the export earnings of supplying countries, contributing to their ability to purchase our products. Increasing U.S. imports in the next decade will benefit our exports. However, when U.S. manufacturers experience extremely high rates of capacity utilization, the availability of U.S. goods for export is sometimes limited. Though such rates may be a restraining factor on exports in a year of unusually rapid economic growth, no general problem of this character is foreseen in the next decade.

2. *Foreign market developments.*—In the absence of a major war or worldwide depression, U.S. exports to both developed and developing countries should continue to expand vigorously in the next decade.

Sales to developed areas are expected to show rapid gains, although, paralleling the slower pace of economic growth expected in most large industrial countries, at least in the next few years, the rate of advance may be below that of the sixties. This need not necessarily dampen the expansion of our exports of certain manufactured products. The anticipated slow growth of the labor force in Western Europe and rapidly rising wage rates in most areas should provide a strong stimulus to sales of our technologically advanced labor-saving machinery. Moreover, programs to modernize old industries and to create new ones mean an expanding market for U.S. capital equipment. American producers should continue to benefit abroad from having a large domestic market which makes it possible for them to develop, and produce economically, special purpose machines required in increasingly complex manufacturing processes.

Greater export demand for U.S. capital equipment would reflect expanding foreign manufacturing capacity and, for this reason, U.S. producers may encounter stiffer competition in both their traditional and new markets. The adoption of the latest industrial and managerial techniques will strengthen the position of manufacturers abroad. Increased competition will also be provided by larger firms which are being created through the vigorous merger activity in Western Europe.

Should there be a broadening of the EEC through accession of other Western European countries, a new spurt to economic growth in that area would be provided. A larger grouping would create greater opportunities for U.S. exports, especially manufactures, although, of course, there would be some trade diverting effects away from this country as a source of supply.

Rising standards of living, increased leisure time, and higher disposable incomes in foreign developed countries, as in the United States, will expand sales opportunities for American manufacturers of consumer goods. The availability of a wide range of consumer products in this country which lend themselves to mass production methods should permit a greater penetration of foreign markets. When implemented, the tariff cuts recently negotiated under the Kennedy round will benefit exports of these goods, as well as sales of other manufactures.

Prospects are also favorable for U.S. exports of manufactures to the developing areas of the world. Economic development in key markets is expected to gather momentum. Regional integration of developing nations, which is already getting underway in several areas, and possibly more advantageous trading arrangements with the industrial countries, should stimulate the growth of the developing countries and increase their demand for our capital goods and industrial supplies.

The outlook for U.S. exports of food, feed, and industrial materials is mixed but generally not as favorable as that for manufactures. Food shipments will be affected by the level of agricultural production in both the developed and developing countries in the coming decade. Prospects are for a substantial expansion in food grain production in the developed countries which would mean stronger competition for U.S. farmers. Also, many of the developing countries are making a determined effort to increase output of agricultural products which, if successful and not matched by population expansion, may reduce their dependence on imports of grains.

Exports of feed grains will probably fare better than food grains in the next decade. The need for protein-rich foods in poorer nations, together with rising standards of living around the world, will lead to continued increases in demand for meat which, in turn, will expand feed requirements for livestock.

Among industrial materials, shipments of fuel are not expected to contribute relatively as much to the expansion of U.S. exports in the next 10 years. Our petroleum exports, about half of which consist of lubricating oils, face considerable price competition abroad, while nontariff trade barriers continue to hinder coal exports.

The outlook is somewhat better for cotton exports which are currently less than half their 1960 level. Competitive U.S. cotton prices should help our sales in the next decade. Lower world prices for this commodity and the need to devote resources to food production in the developing countries are expected to restrain the rate of growth in cotton production abroad.

3. *Exports under Government assistance programs.*—U.S. exports of farm commodities under Public Law 480 programs increased by nearly a third between 1960 and 1964, to a peak of $1.7 billion in the latter year: thereafter, they declined slightly. The drop in the last 2 years was principally a consequence of reduced availabilities of grain for export rather than lower import requirements in the developing countries.

The needs of these nations for imported grain will rise substantially for the foreseeable future, although the rate of increase should slow as indigenous output responds to agricultural development programs and as population control measures are expanded. The extent to which growing food imports of the developing countries will continue to be met by concessional rather than commercial sales will depend on U.S. assistance policies, contributions of other developed nations, and economic conditions in the deficit countries.

Needs of many of the developing countries for assistance are expected to continue to be large in the years ahead. Future levels of AID-financed deliveries of goods to these areas, however, will depend on U.S. assistance policy and the level of financial support provided by the Congress. Should our balance-of-payments position improve sufficiently to permit untying of aid, shipments financed by AID would be unlikely to rise as rapidly as expenditures for economic assistance. Merchandise exports financed by the Agency for International Development from the United States were valued at $1.13 billion in 1966.

4. *Trade policy.*—The Kennedy Round of trade and tariff agreements concluded in June 1967 will be an expansive influence on U.S. trade beginning in 1968. Efforts in this country or abroad to counter the impact of these changes by legislative or administrative means or similar attempts by business through private restrictive arrangements could, of course, limit the expected trade gains.

Since the lower tariffs are to be put into effect over a 4-year period beginning January 1, 1968, year-to-year changes in overall and individual commodity trade will not be distinguishable from those attributable to the many other factors affecting international commerce. Nevertheless, the gradual lowering of tariffs in the Kennedy Round on a large volume of U.S. exports and imports will lead to significantly higher levels of trade in both directions. These agreements will spur the exportation of a wide variety of U.S. manufactured goods and some agricultural commodities. Easing of nontariff barriers in some foreign markets will be an added stimulant to our sales. The impact of U.S. tariff reductions on our foreign purchases will be almost entirely in nonagricultural products.

Attainment of greater stability in sales of commodities subject to agreements depends upon such unpredictable factors as member government cooperation, policies of nonmember countries, discovery of major new sources of supply, introduction of substitutes, and changes in consumer tastes. In any event, the agreements could not be expected to cause a change in the average level of U.S. imports or exports.

The extension of tariff preferences to the developing areas by the United States and other developed countries is to be discussed at the meeting of United Nations Conference on Trade and Development II in 1968 in New Delhi. If detailed agreements are eventually reached and implemented by the governments of the developed countries, our imports and exports would be affected, probably in the latter part of the next decade. Some U.S. purchases of good governed by such arrangements would tend to shift, at least in relative terms, from industrial suppliers to the developing nations, and others would tend to be greater. Certain U.S. exports, on the other hand, might experience some displacement in other developed markets, though this would be comparatively minor considering the composition of our foreign sales. However, to the extent that the arrangements result in greater trade receipts by the developing nations, the United States, as a principal supplier, could expect to increase its exports to many of these markets.

The proposed East-West Trade Relations Act would provide opportunities for increased trade with the countries of Eastern Europe. The extension of most favored nation treatment, which would be possible under the legislation, could be expected to stimulate sales by those countries to the United States, improve their ability to purchase additional U.S. goods, and encourage our businessmen to promote exports. Trade with Eastern Europe may also be stimulated in the years ahead by the Presidential authorization of October 1966 to the Export-Import Bank to extend normal commercial credit guarantees on industrial export transactions with Poland, Czechoslovakia, Hungary, and Bulgaria, the same as were provided in July 1964 for exports to Rumania.

5. *U.S. direct investments abroad.*—Expanding operations of U.S. affiliates abroad will, as in the past, have both a positive and negative impact on our exports. New direct investment by U.S. firms involves, in varying degrees, the movement of goods, predominantly capital equipment, for the establishment or expansion of facilities in foreign countries. Moreover, a substantial followup business results from the flow of components and parts from the United States for incorporation

by the affiliates into finished products, as well as finished products made here but distributed and sold by the affiliate. In 1964, the latest year for which data are available, total U.S. exports to foreign affiliates were estimated at $6.3 billion, or one-third of our nonagricultural exports in that year.

Sales by these U.S.-owned firms will, however, involve some further displacement of products which were or might have been provided directly from the United States to local or third country markets. Political and economic conditions in many countries make their markets more accessible to our affiliates than to the parent companies. Moreover, new markets are created for the affiliates that could not be serviced directly from this country. The earnings of U.S. affiliates abroad have made a major contribution to the U.S. balance of payments over the years.

While the bulk of the output of our foreign affiliates is marketed in the host country and in third markets, a portion is also sold in the United States. Shipments to this country include important industrial materials not produced in adequate quantity here as well as some machinery and transportation equipment, component parts, and semifabricated products.

The size, direction, and composition of U.S. direct investments and their trade effects in the next decade have not been projected. These investments will be influenced not only by domestic and foreign economic considerations but, particularly in the developing areas, by political factors.

Since 1960, the value of U.S. direct investments abroad has climbed by 70 percent to a total of $54.6 billion at the end of 1966. Nearly half of the substantial growth of $22.1 billion stemmed from investments in manufacturing affiliates, a fourth went into various sectors of the petroleum industry and the remainder into mining and other operations. Western Europe absorbed about $9½ billion of the increase in our direct investments during the period and Canada about $5¾ billion.

Sales of U.S. manufacturing affiliates abroad reached $42.4 billion in 1965, the last year for which data are available. About four-fifths of this total was sold in the same country where the plants were located. Fourteen percent went to other countries and $1.9 billion, or 4 percent, was shipped to the United States. In that year, U.S. purchases from these affiliates, predominantly in Canada, accounted for about one-tenth of our total imports.

6. *Business attitudes and Government programs.*—The prospects for expanding U.S. exports are strengthened by the increase in U.S. producers' interest in foreign markets since the Government's export promotion programs for industrial and agricultural products and the Trade Expansion Act were adopted. Greater awareness of selling opportunities abroad has occurred despite the strong demand in most home markets since that time.

As American firms have become aware of the considerable profit possibilities in foreign markets, they have worked to tap this potential. This is evidenced not only by the rapid increase in our exports in recent years but also by increased activity in establishing new sales contacts overseas. The number of new nonmanufacturing establishments set up abroad by U.S. firms has almost doubled since 1962.

The heightened interest of U.S. producers in foreign markets has also been made apparent by their active participation in U.S. Department of Commerce export promotion programs. Inquiries received by the Department concerning foreign markets and requests for reports on individual foreign importers have increased substantially in recent years. Participation in Commerce's overseas trade fair program and in industry-organized Government-approved trade missions to foreign countries has expanded sharply since these programs were started in 1963 and 1964, respectively.

The foreign market development programs of the Department of Agriculture have played a significant role in the expansion of U.S. exports in the last decade. These programs have included cooperation with trade and agricultural groups, participation in trade fairs and trade center exhibits abroad, and the awarding of grants to foreign scientific institutions for research aimed at improving the marketability of U.S. farm crops and for studies designed to expand markets overseas. Outlays for and participation in these trade promotional activities have increased substantially in recent years.

With a growing interest in overseas marketing by U.S. producers of manufactured goods and agricultural commodities, and further planned Government efforts in export promotion, a strong, positive impact on U.S. foreign sales can be anticipated.

Exports of goods under Export-Import Bank financing, estimated at around $600 million in 1966, will follow the upward trend of U.S. shipments in the next decade. New U.S. aircraft such as the jumbo jets, equipment for nuclear powerplants abroad, and global communications networks under stepped up programs will be among the growing opportunities for U.S. manufacturers. The nature and degree of the Bank's participation in such transactions will depend on its authorized lending levels, developments in private capital markets, and U.S. Government export promotion policies.

7. *Technological developments.*—Developments of a technological nature will further expand the level of U.S. trade and change its commodity mix. U.S. products embodying advanced know-how, especially capital equipment, will continue to be in strong demand largely in the developed areas. Although shipments of individual products currently in demand may be dampened as productive facilities are established abroad, the introduction of new products and improvements in old ones should keep our sales buoyant.

The transfer of U.S. know-how to our foreign affiliates and, through licensing arrangements, to other firms will, of course, help speed the process of creating manufacturing plants abroad. While this flow may ultimately slow our exports of some products, technology and demand will continue to change. New know-how acquired abroad is likely to create demand for other American know-how and products. Moreover, the reverse movement of foreign know-how, earnings from sales by American-owned firms overseas, and royalties and fees from abroad will provide additional benefits to the U.S. economy.

New synthetic and substitute products will also have an impact on

U.S. trade. Marketing of such products in the next 10 years could bring major changes in the commodity mix of our exports and imports.

U.S. MERCHANDISE EXPORTS BY MAJOR COMMODITIES, 1960 AND 1966

[Values in millions of dollars]

Commodity	1960 value	1966 value	Change from 1960 to 1966	
			Value	Average annual rate of change (percent)
Total, including military grant-aid	20,584	30,320	+9,736	+6.7
Agricultural, total	4,830	6,875	+2,045	+6.1
Grains and preparations	1,761	3,189	+1,428	+10.4
Leaf tobacco	379	472	+93	+3.7
Soybeans	336	760	+424	+14.6
Cotton	980	432	-548	-12.8
Other agricultural products	1,374	2,022	+648	+6.7
Nonagricultural, total [1]	15,754	23,445	+7,691	+6.8
Coal	354	468	+114	+4.8
Petroleum and products	468	433	-35	-1.3
Chemicals	1,776	2,675	+899	+7.1
Nonelectrical machinery [2]	3,386	5,779	+2,393	+9.3
Electrical apparatus	1,090	1,899	+809	+9.7
Road motor vehicles and parts [3]	1,270	2,155	+885	+9.2
Aircraft and parts	1,024	1,101	+77	+1.2
Iron and steel mill products	635	537	-98	-2.8
Nonferrous metals	517	582	+65	+2.0
Textiles and clothing	618	718	+100	+2.5
Other nonagricultural products [1]	4,616	7,098	+2,482	+7.4

[1] Includes all reexports.
[2] Includes tractor parts.
[3] Excludes tractor parts.

U.S. MERCHANDISE IMPORTS BY MAJOR COMMODITIES, 1960 AND 1966

[Values in millions of dollars]

Commodity	1960 value	1966 value	Increase from 1960 to 1066	
			Value	Average annual rate of increase (percent)
Total	15,018	25,542	+10,524	+9.3
Industrial supplies and materials, total	7,834	12,090	+4,256	+7.5
Fuels and lubricants	1,580	2,247	+667	+6.0
Building materials, excluding metals	541	789	+248	+6.6
Iron and steel mill products	508	1,312	+804	+17.2
Metals and metal ores, other	1,666	2,912	+1,246	+9.8
Other industrial supplies	3,539	4,831	+1,292	+5.3
Foods, feeds, and beverages, total	3,286	4,499	+1,213	+5.4
Coffee, cocoa, and sugar	1,657	1,691	+34	+.4
Other foods, feeds, and beverages	1,629	2,808	+1,179	+9.5
Capital goods, including trucks and buses, total	597	2,320	+1,723	+25.4
Machinery and miscellaneous transport	540	1,939	+1,399	+23.8
Civilian aircraft	2	153	+151	+106.0
Trucks, buses, other capital goods	55	228	+173	+26.8
Consumer goods and automobiles and parts, total	2,499	5,634	+3,135	+14.5
Passenger cars, new and used	544	1,244	+700	+14.9
Automotive parts and accessories	55	478	+423	+43.4
Consumer durables	971	2,108	+1,137	+13.8
Consumer nondurables	714	1,349	+635	+11.2
Gem stones and other unmanufactured consumer goods	217	455	+238	+13.2
All other products	802	1,000	+198	+3.8

U.S. MERCHANDISE EXPORTS BY MAJOR WORLD AREAS, 1960 AND 1966

[Values in millions of dollars]

Area	1960 Value	1960 Percent of total	1966 Value	1966 Percent of total	Average annual rate of increase 1960-66 (percent)
Total, developed countries	13,257	64	20,010	66	+7.1
Canada	3,810	19	6,661	22	+9.8
Western Europe	7,211	35	9,805	32	+5.3
European Economic Community	(3,979)	(19)	(5,504)	(18)	(+5.6)
European Free Trade Association	(2,467)	(12)	(2,984)	(10)	(+3.2)
Japan	1,448	7	2,364	8	+8.5
Australia, New Zealand, and the Republic of South Africa	788	4	1,180	4	+7.0
Total, developing countries	7,132	35	10,112	33	+6.0
19 American Republics	3,351	16	4,231	14	+4.0
Other Western Hemisphere	298	1	538	2	+10.3
Near East	683	3	1,112	4	+8.5
East and South Asia	2,207	11	3,447	11	+7.7
Africa	354	2	758	2	+13.6
Other countries	239	1	26	(1)	....
Communist areas in Europe and Asia	194	1	198	1	+0.4

1 Less than 0.5 percent.

U.S. MERCHANDISE IMPORTS BY MAJOR WORLD AREAS, 1960 AND 1966

[Values in millions of dollars]

Area	1960 Value	1960 Percent of total	1966 Value	1966 Percent of total	Average annual rate of increase 1960-66 (percent)
Total, developed countries	8,950	59	17,590	69	+11.9
Canada	3,153	21	6,125	24	+11.7
Western Europe	4,187	28	7,678	30	+10.6
European Economic Community	(2,263)	(15)	(4,125)	(16)	(+10.5)
European Free Trade Association	(1,609)	(11)	(2,954)	(12)	(+10.7)
Japan	1,149	8	2,963	12	+17.1
Autralia, New Zealand, and the Republic of South Africa	461	3	824	3	+10.2
Total, developing countries	5,984	40	7,770	30	+4.5
19 American Republics	3,171	21	3,970	15	+3.8
Other Western Hemisphere	436	3	734	3	+9.1
Near East	344	2	403	2	+2.7
East and South Asia	1,257	8	1,925	7	+7.4
Africa	395	3	712	3	+10.3
Other countries	381	3	26	(1)	....
Communist areas in Europe and Asia	84	1	182	1	+13.8

1 Less than 0.5 percent.

Tariff and Nontariff Barriers

Executive Branch Statement

A. General

Tariff and nontariff barriers to trade are as old as trade itself. While tariffs are widely understood, the same is not true of nontariff restrictions.

In the broadest sense, a nontariff barrier is any government or quasi-government measure, other than an import duty, that limits trade. Many nontariff barriers, however, are imposed for such reasons as the protection of public health or safety, and the safeguarding of national security. To the extent that such nontariff measures are not excessive, they are legitimate commercial policy practices under existing international commitments. But these measures may be so drawn or administered as to have an unjustifiably restrictive impact on foreign trade and to afford inordinate protection to domestic industries. To draw the line between what is justified and what is not can only be done after analyzing the purpose and administration of each measure.

A classic example of a nontariff barrier is the quota—a direct limitation on the quantity or value of an imported product. There are a number of objections to such restrictions. First, quotas freeze trade volumes, breed further administrative controls, invite retaliation abroad, and generally provide excessive protection to domestic industry. Once imposed, they are hard to remove. By insulating domestic industry from foreign competition, they inevitably allow such industry to postpone steps toward greater efficiency. They serve, then, to foster inflation at home and retrenchment abroad. Second, it is virtually impossible to devise an equitable way of allocating import quotas among countries, particularly to take account of changed conditions of competition and to accommodate newcomers to the trade. Although global quotas are less objectionable than country quotas, they are inequitable, too, favoring nearby sources of supply over more distant ones. Third, importers who are granted import licenses frequently reap huge profits on their scarcity value.

Although a very high tariff can be as effective a deterrent to trade as a quota, it generally operates in a less harmful way. Assuming its rate is not so high as to prohibit imports, a tariff allows competitive forces to work in the exporting and the importing countries. The tariff, as a fixed element in the cost of imports, does not prevent the exporter from improving his competitive position through increased efficiency and does not completely insulate domestic producers from foreign competitors. The interaction of these competitive forces works to the advantage of domestic consumers and the economy as a whole.

The problem of coping with tariff and nontariff obstacles to trade is not a new one. The first systematic attack on them by the United States was launched under the authority of the Trade Agreements

Act of 1934. The setting for this first move toward freer trade was bleak. The world was in the throes of an economic recession. Tariffs were at their highest levels of the century. Trade between nations was marked by discriminatory bilateral agreements. A web of controls was spun around international transactions. To achieve a "favorable" balance of trade, countries coupled quantitative restrictions on imports with special incentives to exports. Some countries turned to state trading in order to bring greater bargaining power to bear on exporting and importing.

Beginning in 1934 the United States negotiated a series of bilateral trade agreements exchanging tariff concessions with our major trading partners and, through the unconditional most-favored-nation principle, extending these concessions to all our trading partners. As a result of these negotiations the U.S. tariff was gradually reduced and the tariffs of our trading partners were similarly lowered.

A dramatic step in the history of international trade negotiations took place in 1947 with the signature of the General Agreement on Tariffs and Trade (GATT) by 23 countries. The GATT not only brought about a further reduction in the height of national tariffs and provided a mechanism for continued tariff lowering, but it also established a framework of rules to minimize nontariff trade obstacles, which were so prominent a feature of prewar and postwar trading practices.

Of key importance is the GATT's general ban against quantitative import restrictions. Exceptions to this ban are specifically provided for, most notably in cases where countries face balance-of-payments difficulties. Provisions of the GATT also cover such potential nontariff barriers as antidumping and countervailing duties, fees and formalities associated with importing, marks of origin, and state trading.

By the early 1960's considerable progress in the reduction of both tariff and nontariff trade barriers had been made. As a result of the GATT tariff negotiations through the 1950's, both foreign and U.S. tariffs had been further substantially reduced. Under the aegis of the Organization for European Economic Cooperation the countries of Western Europe had removed most trade and payments restrictions on intra-European trade. By 1960–61, as the balance-of-payments positions of our trading partners improved and the dollar shortage disappeared, the vast majority of quantitative restrictions on industrial goods was removed. With the reduction of quota obstacles and exchange restrictions, the discrimination that American goods faced in European and other markets was largely eliminated. Regular consultations in the GATT Balance-of-Payments Committee and bilateral approaches in the various capitals contributed importantly to this general movement of trade liberalization.

The latest effort to reduce tariff and other impediments to international trade was successfully concluded. Using the negotiating authority granted in the Trade Expansion Act of 1962, the United States reached agreement with other participants on a package of mutual concessions in the Kennedy round incorporating the most important tariff reductions in history. Overall, some $40 billion of trade was affected.

The Kennedy round proved unique not only because of the depth and scope of tariff cuts but also because the reduction of nontariff trade barriers was a specified objective for the first time in a major GATT negotiation. It was obvious to the parties to the negotiations that, as tariffs became lower, nontariff barriers became more important trade restrictions. The most significant accomplishment was agreement on an international antidumping code in which our major trading partners agreed to common rules and open procedures to be followed in antidumping actions. This was a major goal of the United States in the negotiations.

The principal participants in the Kennedy Round also signed a separate agreement providing that, in exchange for elimination of the American selling price system of customs valuation, the European Economic Community and the United Kingdom would make additional and substantial tariff reductions on chemicals, and Belgium, France, Italy, Switzerland, and the United Kingdom would modify certain of their nontariff barriers. Specifically, upon replacement of ASP rates by rates provided for in the agreement based on normal valuation, Belgium, France, and Italy would modify their automobile road-use taxes to eliminate the present discriminatory impact on larger American-type vehicles; the United Kingdom would reduce by approximately 25 percent its Commonwealth margin of preference on unmanufactured tobacco; and Switzerland would eliminate restrictions on imports of canned fruit preserved with corn syrup.

There were also other nontariff achievements as a result of bilateral negotiations during the Kennedy round. Austria agreed to eliminate the discriminatory effect of automobile road-use taxes on larger-engined American automobiles and Canada eliminated a regulation prohibiting imports of fresh fruits and vegetables in three-quarter bushel baskets. Canada also ceased applying its sales tax to the full value of aircraft engines repaired in the United States. The tax is now applied only to the value of repairs. In addition, Canada modified restrictive standards applying to aircraft engines repaired abroad.

Although not a subject for negotiation in the sense that the United States would be required to make reciprocal concessions, quantitative restrictions were eliminated or reduced by several countries. Of particular importance to the United State were the elimination of restrictions in the United Kingdom on fresh grapefruit and the removal of restrictions in Denmark and Finland on several agricultural products. Japan eliminated or liberalized quota restrictions on a number of agricultural and industrial items. Some developing countries took action on various tariff and nontariff measures as part of their contribution to the negotiations. These included the introduction of certain tariff reforms, the liberalization of licensing systems and foreign exchange controls, and the elimination or reduction of prior-deposit requirements and other charges on imports.

The Kennedy round has demonstrated that nontariff trade restrictions can be dealt with in GATT negotiations. But much more needs to be done. The United States continues to press for the removal of foreign restrictions, both bilaterally and in the GATT and the OECD. Our major trading partners generally agree with us that nontariff barriers should be lowered.

A number of actions are planned for the months ahead. In the OECD an ad hoc group under the Trade Committee is considering compensatory border tax adjustments; it has initiated consultations on Germany's changeover to a system of value-added taxation. Also in the OECD a working party of the Trade Committee will continue its discussions of government procurement practices. An action program that relates primarily to nontariff barriers is on the agenda of the 24th session of the GATT.

The overall trade policy study being conducted by the President's special representative for trade negotiations will pursue further the study of nontariff barriers and possible future negotiations on them.

An inventory of nontariff barriers found in international trade is beyond the scope of this paper. It might be useful, however, to suggest the extent of various types of barriers by drawing on current examples.

Although both tariff and nontariff barriers to trade tend to be more prevalent in the developing than in the developed countries, the examples that follow are selected from developed countries' experience and practices. There are two reasons for this choice. First the major trade flows continue to be between the developed countries. Therefore, developed country restrictions have a greater impact on world trade. Second, the nontariff trade obstacles maintained by the developing countries are often justified on balance-of-payments, economic-development, and infant-industry grounds. Since these bases are not likely to disappear in the forseeable future, the prospect for the early reduction or removal of developing countries' tariff or nontariff barriers is not bright. The examples relate to nonagricultural products because nontariff restrictions on agricultural products are treated in part B. Further, the selection of examples is only to illustrate the kinds of obstacles foreign exporters have complained about in this market. No judgment is intended as to the importance or legal status of these measures.

Quantitative restrictions.—Quotas on imports of industrial goods have been largely removed by the developed countries of Western Europe and North America. There are a few items, however, which remain under restriction. For example, Belgium imposes a quota on coal and the United Kingdom virtually prohibits all coal imports. France maintains licensing restrictions on certain electronic equipment. In Italy, licenses are required for imports of citric acid, crude calcium citrate and essential lemon oil; quotas apply to tetraethyl lead and antiknock preparations; and imports of elemental sulfur are prohibited. Austria limits imports of penicillin and other antibiotics. Canada prohibits the importation of used aircraft and used automobles. Quantitative import restrictions in Japan cover such items as coal and petroleum and certain machinery, chemicals, and pharmaceuticals. Restraints on trade in cotton textiles are widespread under the long-term textile arrangement in which the United States participates. Quota restrictions on imports of petroleum and petroleum products are also maintained by the United States.

Fiscal practices.—Compensatory border tax adjustments are highly complex and controversial and are the subject of a separate paper. There are other fiscal practices that also can be harmful to trade. For example, in Austria products imported and resold by subsidiaries of foreign firms are subject to a turnover tax of 5 percent, whereas goods imported and resold by an independent Austrian importer are only subject to a 1.8-percent tax. Finland applies to automobiles a high excise tax, which, because of the operation of a fixed deduction, has an inordinate impact on higher priced vehicles. Japan levies a commodity tax on automobiles ranging from 15 to 40 percent according to engine capacity, wheel base, and width, subjecting large cars to the highest rate. In the United States the wine-gallon method of assessing import duties and excise taxes on bottled alcoholic beverages operates to the detriment of imported bottled spirits of less than 100 proof.

Health, sanitary, and safety restrictions.—A Canadian safety requirement, calling for a certificate of Canadian Standards Association on all electrical equipment sold and used in the Province of Ontario, works a hardship primarily on small foreign manufacturers. Many of our trading partners have adopted rigid safety standards for electrical equipment and appliances but, in general, their purpose is not to protect domestic industries. Recently 15 European countries adopted common safety standards for this kind of equipment. The Code of Federal Regulations (CFR) of the United States requires that steel cylinders used for the transport and storage of compressed gases be tested and analyzed within the United States for conformity to CFR standards.

Government procurement.—Trade problems in this area stem from Government purchasing agencies favoring domestic supplies or suppliers over their foreign counterparts. In some countries domestic suppliers are given special advantages through their governments' procurement procedures rather than through clearly established margins of price preference. Foreign suppliers are placed at a disadvantage, for example, when there is no publicity on proposed purchases, when the timespan between announcement and acceptance of bids is short, or when onerous conditions are established as a requirement for bidding. In the United States, Executive Order 10582 establishes margins of preference for domestic suppliers for Government procurement under the Buy American Act of 1933.

State trading.—State trading is often found in the agricultural sector and sometimes in the industrial sector of many of our trading partners. Japan, France, and Italy engage in state trading in cigarettes. France also has state trading in coal, petroleum, paper, and newsprint. Canadian imports of alcoholic beverages are under provincial monopolies. In Norway, state trading covers alcoholic beverages, pharmaceuticals, and fishing gear. Similarly, Sweden and Finland have state trading in alcoholic beverages.

Miscellaneous nontariff barriers.—There are a number of other governmental measures or practices that can unduly restrict trade but that defy precise classification. Examples of these are a transport subsidy on domestic coal in Canada and restrictions on the advertising of grain spirits in France. A number of foreign measures ranging from screen-time limitations to subsidization of the domestic motion picture industry affect international trade in motion picture films.

Any future negotiations on nontariff barriers will be difficult. Restrictions are sometimes subject to state or provincial jurisdictions and are not matters of negotiation between national governments. In areas such as health and sanitary restrictions or safety regulations the merits of individual cases may involve technical competence quite foreign to the negotiating table. Philosophies of Government administration, such as the amount of public disclosure and publicity in Government procurement, are not easy to bargain about. Progress in the reduction of nontariff barriers to international trade requires a mutual willingness on the part of the United States and other countries to cooperate in removing existing barriers and refraining from introducing new ones.

B. PROTECTION IN AGRICULTURAL TRADE

Nature of the problem

In most industrialized countries, including the United States, the farmers do not receive returns for their capital and labor comparable to returns in other sectors of the country's economy. Because demand for food rises less proportionately than demand for industrial products in general, agriculture does not share equally with industry in rising levels of income. In the United States farm income per capita on the average is only about two-thirds of nonfarm income; in other countries the average is only about one-half. This situation has led to strong movement off the farms, and in some areas has created fears of insufficient food production to meet national emergency situations. To deal with such problems, virtually every government has stepped in with programs designed to support farm prices and incomes. To make sure that imported farm products will not offer competition to domestic producers, most foreign governments protect their farmers with nontariff barriers which now constitute the chief access problems for U.S. agricultural exports.

For some industrialized areas of the world, the price supports extended to the farmers are sufficiently high to induce uneconomic production responses. This factor, coupled with the rapid growth in production technology, often results in surpluses that are exported under subsidized sales. Such sales also create access problems for traditional suppliers in the market, since their competitive advantage based on efficient production has been taken away by subsidies.

Many kinds of nontariff devices are used—variable import levy systems, quantitative restrictions, conditional imports, mixing regulations, state trading and monoplies, import surcharges, import discrimination, and preferential treatment. The principal nontariff barriers in terms of U.S. export interest as as follows:

Variable levies.—Among the nontariff barriers abroad, the variable levy system developed by the European Community (EC) creates a major problem of access in a market where U.S. agriculture has an important stake. About one-third of U.S. agricultural dollar sales traditionally move to the EC.

The variable levy system permits imports only when domestic producers cannot supply all the domestic needs at a predetermined price. This, in effect, restricts third country producers to the position of residual suppliers. Under this system a levy is imposed equal to the difference between an artifically supported internal price and the lowest representative world market price. The levy is variable in that it changes in response to changes in world market prices and internal price levels.

As it operates in the EC, this system insulates much of the Community's agriculture from third country competition, since the variable levy eliminates any price advantage that an efficient foreign producer might have in the Community. Third country producers can also be affected by the spillover effect of the variable levy system, which provides for export subsidies for the disposal of surplus production in third country markets, frequently at distress prices. Under the impact of artificially high price supports, protected by variable levy, Community producers respond with increased production. When surpluses develop, not only are traditional third country suppliers denied competitive market access into the Community, but they also face competition in third markets from subsidized sales. These problems are well illustrated by U.S. experience in the case of poultry.

With the imposition of the EC system of variable levies on poultry in August 1962—nearly tripling the previous level of protection—U.S. exports to the Community dropped sharply from 180 million pounds in 1962 to 95 million pounds the following year. Since then U.S. poultry exports have gradually fallen and by 1966 totaled only 84 million pounds. During the same period poultry production increased sharply in the EC, creating pressures to export. Community exports of poultry under the common agricultural policy (CAP) system—with heavy subsidies—hurt U.S. poultry trade in other countries, too. In 1961, the United States sold $9.5 million worth of poultry to Switzerland and supplied 66 percent of its poultry meat imports. In 1966, largely as a result of heavily subsidized sales by the EC, the United States sold less than $1 million worth of poultry to Switzerland, and accounted for only 7 percent of the Swiss market. Similar situations developed in Austria and Greece.

Other agricultural products of export interest to the United States which are presently subjected to variable levies by the EC include wheat and flour, feed grains, and rice.

In the case of feed grains, the EC has adopted an increase of about 4.5 percent in domestic prices for 1968. This will result in a substantial increase in the levy. This new situation could lead to loss of U.S. export opportunities both in the Community and possibly elsewhere. The EC is also considering imposition of levies on a number of products containing added sugar. This would affect a wide variety of U.S. products exported to the Community, including most canned fruits and juices and a number of sugar confectionery items.

Because of the absolute protection provided domestic producers, the variable levy concept is expanding to other countries. Sweden currently uses variable levies to regulate imports of wheat, feed grains, and meat and meat products. Austria is in the process of adopting levies on products now subject to levies in the EC.

Quantitative restrictions.—Quantitative restrictions usually take the form of import quotas and embargoes. Such restrictions limit the volume of imports and in some cases discriminate between sources of supply. They include seasonal embargoes or other seasonal quantitative controls. Quantitative restrictions may be administered in a variety of ways including discriminatory or preferential licensing of imports. In a number of developed countries, quantitative restrictions have acted to slow or exclude U.S. exports. United States exports of orange and grapefruit juice and canned grapefruit segments to the United Kingdom are presently restricted in that market by dollar area quotas. These quotas are holdovers from the post-World War II period, when the United Kingdom and a number of other European countries were attempting to conserve foreign exchange for balance-of-payments purposes. Continuance of these restrictions is not sanctioned by the GATT and the United States continues to press for their early removal. Other illustrations are quantitative restrictions applied to items of export interest to the United States by Sweden and Denmark (apples and pears), Finland (offals, dried peas, and soybeans), Norway (offals, honey, apples and pears, and certain canned fruits), Austria (poultry), Switzerland (meat and edible offals), and Japan (canned tomato products, starch and malt extract preparations, and citrus and pineapple juices).

Monopolies.—Access to foreign markets may also be restricted by trading by state agencies, or by quasi-government agencies or private institutions operating under government authority to determine whether imports are to be allowed and by conditions of entry. Among the major United States export products affected by state monopolies are tobacco (France, Italy, Austria, Sweden, and Japan), oilseeds (France), and grains (Austria, Norway, Switzerland, and Japan).

Conditional imports.—In some countries, domestic mixing regulations and other types of controls make imports of some products conditional on production, utilization, price, or other factors. For a number of years, Australia has maintained a mixing regulation on tobacco which has had the effect of forcing their domestic tobacco manufacturers to purchase Australian tobacco. As a result, tobacco production in Australia has increased sharply and U.S. sales have suffered. U.S. tobacco sales decreased from about 30 million pounds in 1954–55 to an average of 17 million pounds during the last 4 years, despite a substantial increase in overall consumption.

Switzerland maintains a mixing regulation on poultry which in effect insures disposal of domestic production at remunerative prices before imports are permitted.

Health and sanitary regulations.—While there is no question of need to safeguard health, some existing regulations appear to be unnecessarily strict. Among those that have been particularly troublesome: Italy maintains restrictions against the importation of meat from cattle treated or fed on feed containing hormones; Germany requires that only whole meat carcasses with head attached can be imported; and Switzerland prohibits imports of poultry parts on the ground that it is necessary to see the whole carcass to determine wholesomeness.

U.S. nontariff barriers

As noted earlier, the problem of liberalizing agricultural trade is a general one stemming from the disparity in income between farm and nonfarm populations in all countries. The existence of that disparity results in efforts by some governments to protect the incomes of their farmers and at the same time make sure that the needs of their people for farm products are adequately met. This sometimes results in conflicting national policies, and consequent special trade actions to preserve domestic income support programs. In the U.S. case, legislation provides mechanisms for applying quantitative controls to imports under specified conditions. The applicable measures are:

(a) *Section 22 of the Agricultural Adjustment Act of 1933.*—Under this provision, the President is empowered, after investigation by the Tariff Commission, to apply quantitative restrictions on imports of agricultural commodities when he finds that imports materially interfere with price-support programs undertaken by the Department of Agriculture. The commodities subject to section 22 import restrictions at the present time are wheat and wheat products; cotton; peanuts; butter; dried, skim, and whole milks; and certain cheeses. In some cases the quotas are allocated to individual exporting countries; in other cases the quotas are global.

(b) *U.S. Sugar Act.*—U.S. sugar needs have traditionally been met by both domestic and foreign suppliers. U.S. producers at the present time are allocated about 65 percent of the domestic market under the Sugar Act, while 35 percent goes to foreign suppliers. While the foreign share of the market in 1965 was reduced to 35 percent (from 40 percent), the United States reserves to foreign suppliers all market growth between 9.7 and 10.4 million tons during the period 1966–71. Foreign suppliers are also allocated additional quotas in case domestic producers cannot supply their quota.

(c) *Meat Import Act.*—Public Law 88–482 authorizes the President to limit imports of certain meats, primarily fresh, chilled, or frozen beef and veal, to an adjusted quota level based on imports during 1959–63. The law does not actually establish quotas for meat imports; rather, it prescribes contingency quotas to be applied only when estimated imports would otherwise exceed certain levels. When quotas are in effect, exporters are assured access to the U.S. market of at least 6.7 percent of U.S. production of beef, veal, mutton, and goat meat.

Sanitary regulations

The United States employs a number of health and sanitary regulations designed to prevent the importation of agricultural products infected with or carrying pests or diseases. Under these regulations, for example, imports of live cattle and fresh, chilled, or frozen meats from areas infected with foot and mouth disease are prohibited. Care is exercised both to assure that all sanitary regulations are adequate to protect the American public and that no unnecessary burden on trade results.

THE BROOKINGS INSTITUTION,
Washington, D.C.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: I should like to submit the enclosed short paper on nontariff barriers as part of the committee's compendium of papers on legislative oversight review of U.S. trade policies.

I am a professor of economics at the University of Wisconsin. This year I am on leave as a research professor at the Brookings Institution.

Sincerely yours,

ROBERT E. BALDWIN.

NONTARIFF BARRIERS: A BRIEF SURVEY

In recent commercial policy discussions it has been emphasized that, as tariff levels diminish, nontariff impediments to trade become more significant and therefore should receive greater attention in future trade negotiations. Nontariff barriers that were superfluous in their restrictive impact when duty levels were high have become effective deterrents to increased trade as these duties have declined. An added reason why these barriers are likely to become more significant is the probable tendency for countries to introduce new nontariff devices and to enforce old ones more vigorously in order to offset the internal adjustment burdens of tariff regulations under the Kennedy round.

Despite the general recognition of the growing importance of nontariff barriers, there are few systematic surveys of the specific barriers most frequently discussed in commercial policy negotiation or of the kinds of proposals that have been made for mitigating their trade-inhibiting impact. Little has also been written concerning the meaning and scope of nontariff barriers as well as the special problems that must be faced in negotiating their removal. It is the purpose of this paper to deal very briefly with these points.

A CLASSIFICATION OF NONTARIFF BARRIERS

Current discussions in GATT and OECD of nontariff barriers typically divide these trade obstacles into the following types of grouping:

(1) Quantitative controls and state trading;
(2) Government procurement policy;
(3) Customs valuation and practices;
(4) Antidumping legislation and practices;
(5) Border tax adjustments;
(6) Other internal measures that restrict trade.

Each of these categories is briefly considered below.

(1) *Quantitative controls and state trading.*—The most obvious nontariff trade barriers are quantitative restrictions on the volume or value of imports. Among less developed countries such restrictions are almost a standard part of their development programs. Quantitative controls were also used extensively in most nondollar developed countries in the immediate postwar period, as a means of meeting balance-of-payments problems. Since the midfifties, however, most of these controls have been eliminated. The main remaining ones cover certain agricultural products, cotton textiles, and coal.

The quantitative controls over agricultural imports are generally thought to be the most restrictive in trade terms of all nontariff barriers in existence. Most of the major trading countries use them, and they cover such important products as cereals, sugar, meat, dairy products, coffee, and cotton. (One investigator estimates that free trade in sugar alone would increase imports into the major sugar-protecting countries by $800 million annually.) These controls are not—it is interesting to note—usually included in the typical governmental meeting on nontariff barriers. The reason given for their separate treatment is that they are a byproduct of domestic legislation and thus cannot be reduced unless the supporting domestic legislation is changed.

Setting aside agricultural restrictions, those on cotton textiles and coal stand out as the most important. Under the cotton textiles arrangement, the EEC, Austria, Denmark, Norway, and Sweden impose quotas on Japanese exports of manufactured cotton textile products. In addition, "voluntary" agreements limit the exports of these products by Japan, India, Pakistan, and Hong Kong to the United States and the United Kingdom. It has been estimated that U.S restraints against Japanese textiles cut off $102 million of these products between 1957 and 1962. Japan, in turn, applies quantitative restrictions on products that in 1959 amounted to 7 percent of its imports.

The nonagricultural quantitative control curtailing U.S. exports most is the restriction on coal imports imposed by several industrial countries. The United Kingdom, for example, prohibits coal imports from nonpreferential sources; Germany has a prohibitive duty in excess of a global quota; Belgium, the Netherlands, and Japan license coal imports; and in France a trading association monopolizes all imports of coal. An estimate of the trade expanding effects of liberalizing these controls somewhat places the increase in U.S. coal exports by 1970 at between $180 million and $740 million annually.

Some progress has been made in recent years toward reducing quantitative restriction, for example, the removal of U.S. import quotas on lead and zinc, the gradual easing of restrictions against Japanese imports by European countries, and even some liberalization in certain less developed counrties, but most of the more restrictive ones still remain. With regard to temperate agricultural products, the tendency has been to seek "access" agreements which guarantee exporters a certain market share in importing countries rather than to attempt to solve the underlying domestic problem that leads to quantitative restrictions. In the manfacturing field, where the long-term textile agreement has been recently renewed, the approach has also been to stress the dangers of market disruption and thus the need for "voluntary" restraint by exporters or for quotas by importers.

Outside of the Soviet bloc, state trading is not a very important practice in international trade. In advanced, market-oriented economies it is usually confined to such commodities as tobacco, matches, alcoholic beverages, and so forth, and is designed to raise revenue or discourage consumption. However, since East-West trade is likely to increase considerably in the future, the special problems that are connected with trade between these two different types of economies should be thoroughly covered in any future trade legislation. The main problem, of course, is to insure that countries where trade is monopolized by the state do not practice extensive indirect export subsidization or import protection at the expense of the free market-oriented economies.

(2) *Government procurement policy.*—One nontariff barrier where on the surface it seems that the United States is particularly vulnerable to foreign criticism is Government procurement policy. However, on closer examination it seems evident that most foreign countries use informal administrative practices to restrict trade every bit as much as the United States does by its Buy America Act. Under this act most U.S. procurement agencies grant a price preference of 6 percent to American firms over foreign producers (an additional 6 percent is given to small firms and to those in depressed areas) in awarding contracts on products for internal use. Moreover, the Defense Department now gives a 50-percent margin of preference to domestic firms.

Most foreign governments grant preferences to their domestic firms through informal administrative practices. These take the form of giving little or no advance publicity to foreigners regarding planned government procurement, cumbersome administrative or excessive bonding requirements, regulations which preclude foreign bidding on government contracts, and so forth.

Government procurement policy seems to be one of the more promising areas for progress in reducing nontariff barriers. The basic approach that has been suggested by U.S. officials is to obtain an agreement among governments to provide foreign producers with the same opportunity to bid on Government contracts as domestic producers. This would involve such matters as establishing uniform procedures regarding the announcement of proposed purchases, publicizing required standards, and publishing the bids that are accepted. Any preference granted to domestic producers would be explicitly expressed and put in percentage terms.

(3) *Customs valuation and classification.*—Like Government procurement policy, customs valuation is another nontariff barrier on which the United States is sharply criticized. The practice of levying import duties for certain chemical products on the American selling price of these items rather than their f.o.b. price was a major source of irritation against the United States in the Kennedy round of tariff negotiations. The U.S. Tariff Commission has estimated that ASP approximately doubles the duties that would be collected if the duties on these chemicals were applied according to normal valuation procedures. However, the intensity of foreign complaints concerning ASP policy seems out of proportion to its trade-stricting impact. Imports of benzenoid chemicals, on which the policy applies, amount to 8 percent of total U.S. chemical imports, and benzenoid chemical sales by U.S. firms amount to only 10 percent of total U.S. chemical sales. To modify the ASP valuation practice requires specific action by the Congress. U.S. negotiators in the Kennedy round worked out a tentative "package" with other countries whereby, subject to congressional approval, ASP would be repealed in return for further cuts in chemical duties by the EEC and the elimination of discriminatory road-use taxes on American automobiles.

In addition to ASP policy the United States (and Canada) are often criticized for using a different classification system from the other industrial countries. All EEC and EFTA countries as well as Japan use the Brussels Tariff Nomenclature (BTN). Moreover, they are members of the Customs Cooperation Council, an organization that enables these countries to resolve valuation disputes fairly rapidly. It is alleged that the failure of the United States and Canada to be members of this organization increases the degree of uncertainty faced by foreign exporters and thereby tends to reduce the volume of imports into the United States and Canada. It would seem that the United States and Canada could eliminate any trade restricting effects arising from their customs valuation procedures either by improving their dispute procedures or perhaps adopting the BTN.

(4) *Antidumping legislation and practices.*—Dumping is the practice of selling a product abroad at a lower price than it is sold domestically. Article VI of the GATT stipulates that antidumping duties can be levied against imports if they are sold at less than the comparable internal price in foreign countries and if the sales cause or threaten to cause material injury to a domestic country. Except for the United States and Canada, antidumping measures have not been used very extensively by industrial countries. In the case of the United States and Canada, most foreign criticism has been leveled at the arbitrariness of administrative actions and the time consumed in investigations rather than the antidumping duties themselves.

Since U.S. officials were concerned about the possibility that foreign countries would enact highly restrictive antidumping legislation, they sought and obtained in the Kennedy round agreement on an international antidumping code. It includes criteria for injury determinations and for insuring that investigations will be fair and will not retard trade.

(5) *Border tax adjustments.*—Probably the most complex of all nontariff barriers currently being discussed are border tax adjustments. These are adjustments—in the form of rebates on exports and additional taxes on imports—that are made to compensate domestic producers for the indirect taxes they must bear. The main area of controversy relating to them concerns the GATT rule which permits border adjustments on indirect taxes but not on profit taxes. If indirect taxes are shifted entirely forward whereas the profits tax is not shifted in the short run, the GATT position is essentially correct and only neutralizes the trade effects of the tax structure. But, if—as many economists believe—profits taxes are also partly shifted forward, then the GATT rule is wrong in principle.

Aside from the shifting question, there is concern by U.S. officials that in Europe, where indirect taxes are relatively more important than in the United States, tax rebates are often larger than the true indirect tax cost involved. The prospective large-scale shift by the EEC to a high, common value added tax raises the possibility that excessive tax rebates will be given domestic producers and thus undermine the tariff cuts secured in the Kennedy round negotiations.

(6) *Other nontariff barriers.*—There is a long list of additional nontariff barriers on which complaints are received by government officials. The automobile road-use taxes imposed by France, Belgium, Italy, and Austria are especially irritating to U.S. automobile manufacturers. These taxes are extremely progressive as engine size increases. For example, in France a Porsche 356 c/carrera with a rating of 11 horsepower pays a road tax of 120 francs yet sells for 45,000 francs. A U.S. Chevrolet Chevelle, rated at 18 horsepower and selling for 22,490 francs, on the other hand, pays a road tax of 1,000 francs.

A favorite nontariff complaint of the United Kingdom against the United States is our internal tax on distilled spirits. U.S. excise and import taxes are assessed on a proof-gallon basis when the distilled spirits are 100 proof (50 percent alcohol). U.S. producers pay the excise tax at the 100-proof production stage prior to the dilution and bottling of the whisky. A bottle of 86 proof bourbon whisky pays an excise tax of $9.08 on a 100-proof assessment basis. However, a gallon of imported Scotch or Irish whisky in bottles of 86 proof pays $10.50 on a 100-proof assessment basis. Thus, the British complain that they are in effect paying a tax on the water in their whisky. They do have the option of exporting their whisky at the 100 proof stage and then diluting and bottling it in the United States, but contend that labeling the whisky as bottled domestically will seriously curtail their sales.

On the other hand, rules imposed by the United Kingdom concerning the proportion of non-British to British TV programs that can be shown in the United Kingdom are a trade impediment operating mainly against the United States. Rules relating to labeling, marks of origin, and to safety and health standards also can have the effect of protectionist tariffs if they discriminate against foreigners. Restrictions imposed on capital movements and on foreign traveling by tourists are two other important trade barriers that frequently are employed by countries in balance-of-payments difficulties.

A MORE GENERAL VIEW OF NONTARIFF BARRIERS

The essential point about tax and subsidies placed directly on trade flows as well as all other nontariff (or subsidy) measures affecting these flows is that they cause a malallocation of world resources. Real income in the world is decreased by these devices. Furthermore, these measures tend to discriminate against or in favor of foreign compared to domestic producers. Import duties are, of course, the best known example of such trade-disturbing devices. However, as remarked at the outset of the paper, there has been growing concern with nontax impediments to trade. Consequently, although previous GATT negotiations have by no means ignored these barriers, they have played a more prominent part of the negotiating arrangements of the Kennedy round than in any prior international tariff meetings.

The particular set of nontariff barriers discussed in these negotiations; that is, those described in the previous section, covered, however, only a portion of the laws, rules, and practices (both public and private) distorting trade in a manner that discriminates between domestic and foreign producers.[1] Trade negotiators generally are guided by shortrun pressures from those who complain as far as what nontariff barriers they discuss. This is probably a fairly good shortrun negotiating rule to follow, but it is not a good one when longer run actions—perhaps involving new forms of economic integration—are being studied.

All of the measures described in the previous section distort trade in a direct and obvious manner. However, businessmen and economists in the trade field have become increasingly concerned with trade distortions brought about indirectly by laws, practices, taxes, and subsidies aimed primarily at domestic activities. Government measures designed to redirect domestic output and income flows have simply become too important in most countries to be treated as if they had no significant effect on trade patterns. It has also become increasingly clear that a country can quite easily offset any trade-creating effects of a tariff reduction by appropriate domestic measures. Since there is no code of behavior such as the GATT that covers government behavior with respect to these internal policies and since they are not subject to international negotiation, a real danger arises that what may be gained in international trade negotiations may be lost through inwardly directed domestic policies.

(1) Domestic subsidies

Probably the best known category of domestic activities that distort trade patterns are government subsidies to particular industries or productive factors. By lowering production costs or increasing output demands compared with what they otherwise would be, these subsidies enable firms to compete more effectively both against foreign imports and in foreign export markets.

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[1] Exchange rate variations or deflation-inflation policies designed to achieve balance-of-payments equilibrium are excluded from this definition of nontariff barriers because, even though they affect foreign and domestic producers differently, they tend to improve world resource allocation. The use of quantitative measures or selective tax-subsidy policies for balance-of-payments purposes do, however, fall within the definition.

(a) *Maritime subsidies.*—Maritime subsidies are a clear example of government subsidy measures that change the pattern of trade. For example, the U.S. Government "for the national defense and development of its foreign and domestic commerce" gives domestic shipbuilders a construction-differential subsidy and domestic ship operators an operating-differential subsidy in order to compete with foreign shipbuilders and operators. In addition, a long list of other government measures such as the maintenance and improvement of harbor and waterway facilities, low-interest rate loans, special tax benefits, and research and development expenditures aid the maritime industry. Without such subsidies U.S. purchases (imports) of foreign shipping services would be much larger than they are presently.

(b) *Other transportation subsidies.*—Payments to air carriers and to the railroads represent other examples of subsidization in the transport field. In the air carrier case, these directly enable U.S. firms to compete more effectively in international markets, whereas in the railroad case they indirectly effect trade by keeping the cost of rail services to import-competing and export industries below what they otherwise would be. However, with regard to transportation subsidies—as well as to most of those discussed here—it must be emphasized that most governments (and not just the United States) undertake generous subsidization programs. Consequently, rather than giving one country a net trade advantage over the other, what tends to happen—as in the case of tariffs—is simply that total trade declines at the expense of economic efficiency.

(c) *Agricultural subsidies.*—For most high-income countries agricultural programs are the most important type of government subsidy activity. This intervention usually goes far beyond curtailing imports, since the subsidization caused by shifting demand from foreign to domestic producers is not considered to be adequate to meet "the agricultural problem." Direct income-raising and cost-reducing programs are the nub of the typical subsidy program. Price fixing measures, Public Law 480 type programs, and income-payment policies are used to increase agricultural incomes directly, while such measures as low-interest-rate loans for a variety of purposes, technical advice, and research outlays keep production costs below their free market levels. Both types of measures tend to distort trade. Price-raising policies, for example, require tight import restrictions if they are to be effective in raising agricultural incomes, whereas subsidies on the cost side enable farmers to compete more effectively against imports or in some cases to penetrate foreign export markets to a greater extent than possible otherwise. (Public Law 480 type programs also have this latter effect.)

(d) *Research and development subsidies.*—Certain parts of the general industrial sector also receive Government subsidies. One that has become increasingly important in recent years is the research and training benefits from Government programs in the space and defense fields. Firms undertaking "cost-plus" contracts in these areas are able to train at Government expense personnel who can also use their talents to give the firms a competitive advantage in commercial markets. Direct spillovers in the form of technological discoveries that can be adapted to nondefense and nonspace products are another form of Government subsidy. U.S. manufacturers, who already rely heavily on rapid technological progress and highly skilled labor in order to

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compete effectively in world markets, thus are helped to strengthen their export- and import-competing market positions. If foreign firms were able to bid for these Government contracts on an equal basis as American firms and if any technological benefits were made available to all on an equal footing, there would be no discrimination in this area. But Government procurement policies and patent restrictions generally operate to prevent such equal treatment.

Government research grants, scholarships, and fellowship programs designed to increase the supply of certain kinds of technical personnel have a somewhat similar effect. To the extent that the supply of these individuals exceeds what it would be under smoothly functioning market conditions, firms whose products tend to use large numbers of these individuals gain compared to foreign competitors.

(e) *Tax benefits.*—Special tax benefits to particular industries are another form of subsidy-like treatment that can distort trade patterns. Oil and gas producers in the United States, for example, are permitted special depletion allowances on the grounds that national defense requires continuous exploration and development. This shifts domestic capital and labor resources into these industries and enables producers in these industries to capture domestic markets which, in the absence of other restrictions against imports, would tend to be supplied from foreign sources.

(2) Domestic taxes and regulations

Although government subsidy programs are the most obvious type of domestic policies that interfere with market efficiency and distort trade, government tax and various regulatory measures also can produce the same effects. The possibilities that indirect and corporate taxes may not be neutral in their impact on domestic and foreign producers has already been mentioned. An employers' tax based on wage payments or a minimum wage law also shifts the structure of trade. Costs of production are increased and—since border tax adjustments do not apply in these cases—domestic producers tend to be put at a disadvantage in import and export markets.

(3) Monopolistic practices in the private sector

Monopolistic behavior in the private sector can produce the same effects. Strong labor unions in particular industries may, for example, raise wage costs substantially above their competitive levels and put producers in these industries at a disadvantage vis-a-vis foreign producers. Likewise, producers in countries where antimonopoly regulations are minimal usually are at an advantage in competing in third markets against producers from countries where antimonopoly rules are more vigorously enforced.

(4) Other internal policies

It is possible to cite a large number of other public and private domestic activities that have the effect of discriminating between foreign and domestic producers and that also tend to produce inefficiency in terms of the use of world resources. They range from underpriced postal services and government-sponsored insurance schemes to building a steel mill to increase a country's international prestige. Many are probably inconsequential in both their discrimination and efficiency effects. However, what is needed are careful investigations of the distorting effects of these measures as well as the others already discussed. Since both direct and indirect nontariff barriers will be the subject of increasing attention in attempts to expand world trade, we must learn more about what they can do.

SOME NEGOTIATING DIFFICULTIES

Emphasizing the trade distortions indirectly caused by many domestic policies immediately raises the question of how to deal with these policies in any further trade liberalization efforts. Actually, the difficulties involved in negotiating multilateral reductions in the trade distorting effects of these policies are already present with respect to a number of nontariff barriers currently under discussion and even with regard to certain hard-core import duties. The problem is that import protection or export promotion is not the main purpose of these trade-distorting measures. In some cases firms within a particular industry are in a depressed economic condition primarily because of an inability to adjust to competition either from other domestic firms within the same industry or from substitute products (domestic or foreign). This is characteristic of such industries as coal, textiles, and parts of agriculture. In other cases, the trade distortions are byproducts of measures designed to meet goals that may conflict with economic efficiency in a narrowly defined sense. The various nontariff measures designed to promote national defense fit this category. Similarly, policies whose objectives are to redistribute income—e.g., minimum wage legislation; or to increase national prestige—e.g., the space program, fall into this grouping.

Clearly, one cannot expect nations to abandon these goals simply for a more rational distribution of world resources devoted to foreign trade. There may be opportunities to modify some of these goals over a long-run period of time, but short-run policy usually must take them as "given." The best that can be done under these circumstances is to try to eliminate needless conflicts among policy measures. For example, the approach followed by most countries in meeting the agricultural problem needlessly sacrifices the benefits of economic efficiency. Temporary income-support payments coupled with measures to attract excess resources out of agriculture are much preferable on efficiency grounds and yet also can prevent undue distributive hardships. The same points apply in such industries as coal and textiles. Maintenance of adequate defense capacity in certain industries also can often be achieved in a manner that does not sacrifice the gains from international trade.

The changes required to obtain these trade benefits are primarily modifications in domestic policies. Easing trade restrictions will only be a byproduct of these domestic changes. This means, of course, that negotiations with the purpose of modifying simultaneously both internal and external policies are necessary. As the Kennedy round discussions of the world agricultural problem have indicated, successful negotiations of this type are, however, most difficult to achieve. Thus, we face a formidable task in any further efforts to expand significantly the benefits of trade. Some of the most serious distortions in world trade are the indirect consequence of domestic policies, yet these are are the kinds of measures that are the most difficult to modify. Only if there is a general desire among the major trading nations at the highest political levels to modify these policies will such negotiations succeed. Furthermore, it may be that the main push of any efforts to change these domestic measures must be directed initially more at harmonization than at significant liberalization. Suggestions to standardize and harmonize various trade-restricting measures on a sector approach have met with some success in the present negotiations and may be a useful approach for future negotiations. Then, as harmonization is achieved, it may be easier to reduce the trade-restrictive impact of domestic policies.

STATEMENT OF THE NATIONAL CANNERS ASSOCIATION, WASHINGTON, D.C., ON NONTARIFF BARRIERS APPLICABLE TO U.S. CANNED FOODS IN FOREIGN MARKETS

Canned foods in international trade are subject to all of the conventional trade barriers and, additionally, to many specialized requirements to which canned foods are susceptible. In this compilation are described—

(1) Nontariff barriers currently in effect, which inhibit U.S. exports of canned foods;

(2) Case histories and examples of NTB's applicable to U.S. canned foods; and

(3) EEC proposals which, if implemented, would burden U.S. exports of canned foods.

The information in this compilation updates and amplifies information contained in the NCA Brief to the Trade Information Committee, November 25, 1963, and in advice from individual canning firms. Its scope is limited, for the most part, to the countries which have indicated their participation in the Kennedy round.

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OBJECTIVES

The first objective of the United States in dealing with overseas nontariff barriers should be to obtain the elimination of all quantitative restrictions. Chief among these are the quotas in France, import tender system in Germany, currency allocations in Japan, citrus quotas in the United Kingdom, and dollar allocations in Finland. These are absolute barriers to trade.

A second objective is to obtain elimination of import licensing. It is a barrier to U.S. canned foods in Norway, Denmark, Portugal, and in other countries.

A third objective in dealing with nontariff barriers is to obtain assurance from the EEC that it will not nullify or impair the value of tariff concessions through the institution of new controls. The EEC should not permit its harmonization of food laws to become so serious a barrier as to nullify or impair tariff concessions. Food laws and food standards should not arbitrarily bar the importation of wholesome foods. To all possible extent, compliance should turn on the question of labeling.

A fourth objective should be to assure the prompt publication of trade regulations, as presently provided for in article X of the GATT, and to assure continuing consultation between countries, as provided for in article XXII of the GATT, so as to minimize the burdensome effect of customs administration and to facilitate the elimination of barriers to trade.

TRADE BARRIERS CURRENTLY IN EFFECT

TRADE BARRIER—QUOTAS IN FRANCE

France continues to limit imports of the following:

20.06BIIb	Canned fruits: Pineapple, peaches, fruit cocktail, and all other
20.02D	Canned asparagus
20.07BIIa	Orange juice
20.07BIII	Pineapple juice
20.02C	Canned tomatoes and juice

France has agreed to complete liberalization of canned asparagus and pineapple juice in 1967.

The total volume of canned fruits permitted into France under existing quotas (9,000 metric tons) is the equivalent of one can a year for each five persons in France. In contrast, annual per capita consumption of canned fruits in the United States amounts to 23 pounds, the equivalent of about 14 cans a person.

RECOMMENDATION

The existing French quotas are obviously unduly restrictive. All such barriers should be eliminated and trade liberalized.

TRADE BARRIER—GERMAN IMPORT BARRIERS

Germany continues import restrictions against a number of U.S. canned foods, including canned asparagus spears, asparagus cuts and tips, cherries, green beans, and pears.

Import restrictions are being continued on canned asparagus even though, according to Germany's admission, the import quotas were not filled during the most recent period.

Import tenders for canned green beans are generally issued at the wrong time of the year to permit trade. The German trade prefers green beans in No. 2½ cans, a size which represents only 1.5-to-2 percent of the total U.S. pack of canned green beans. When import tenders are announced after the pack has been completed, there is only a limited supply of No. 2½ cans with which to fill orders. If import tenders were announced at the beginning of the season, it would be possible for U.S. canners to obtain export orders on the basis of which to pack in No. 2½ cans.

RECOMMENDATIONS

The German import restrictions should be eliminated and trade liberalized.

TRADE BARRIER—QUOTAS IN JAPAN

Japan continues import controls on a number of agricultural products, including the following:

16.01 Meat sausages
16.02 Corned beef
20.02 Canned tomato paste and puree
20.06 Canned pineapple sweetened and unsweetened; fruit pulps
20.07 Fruit juices; tomato juice with a dry weight content of less than 7 percent

Importation of these products into Japan is permitted only upon licensing, which is administered by the Ministry of International Trade and Industry (MITI). There are no published quotas, but importers may apply for licenses.

RECOMMENDATION

These import controls should be terminated and trade liberalized.

TRADE BARRIERS—CITRUS QUOTAS IN UNITED KINGDOM

The United Kingdom continues annual import quotas on canned grapefruit at £450,000 (US$1.26 million) and on canned grapefruit juice and orange juice at £300,000 (US$840,000), both on a cost, insurance, and freight basis.

RECOMMENDATION

The citrus quotas should be terminated and trade liberalized in hot-pack citrus products.

TRADE BARRIER—DOLLAR ALLOCATIONS IN FINLAND

Finland limits imports of canned foods through a system of dollar allocations. Allocations for canned foods are small, and are issued at irregular intervals. Trade is severely restricted.

RECOMMENDATION

Finland's dollar allocations for canned foods should be eliminated and trade liberalized.

TRADE BARRIER—CANADA CAN SIZE REGULATION

A historic barrier has been Canada's container regulations which limit the can sizes which may be sold in Canada. Among the cans which are not permitted is the 303, the standard vegetable can in the United States, in which perhaps one-half of all U.S. canned foods are packed. The equivalent can in Canada is the No. 300, which holds about 1 ounce of food less than the 303.

RECOMMENDATION

On the following page is a tabulation showing the can sizes permitted in Canada by Canadian regulations and, on the right, the additional sizes which are used substantially in the United States and which should be admitted into Canada. This matter has been officially referred to the Canadian Government by the U.S. Government.

If it were possible to ship these additional sizes into Canada, it would enable more canners to participate in exports to that market, would enable U.S. canners to sell in Canada when market conditions made this desirable, and would benefit Canadian consumers. Perhaps the Canadian regulation is preventing freedom of the marketplace from providing container sizes there which would be preferable to Canadian consumers.

Regulation of container sizes has no relationship to wholesomeness or economic deception.

Trade barrier: Can sizes [1] are limited in Canada as follows	Recommendation: Additional can sizes [1] should be admissible as follows
8 ounces, 211×304 for asparagus and corn only.	8 ounces, 211×304 for general use.
	8 ounces, 211×300 for general use.
10 ounces, 211×400 for general use except asparagus.	10 ounces, 211×400 for asparagus; the U.S. pack of canned asparagus in this size is about 1,000,000 cases annually.
12 ounces, 211×409 for asparagus.....	
14 ounces, 307×306 for corn only......	
15 ounces, 300×407 (No. 300) for general use except asparagus.	15 ounces, 300×407 for asparagus; the U.S. pack of canned asparagus in the 300×407 and 303×406 sizes amounts to 4,000,000-5,000,000 cases or more than half of the pack annually.
	303×406, the standard can for vegetables in the U S., the 1962 pack including 22,000,000 cases or 75 percent of the total pack of green and wax beans; 22,000,000 cases or 67 percent of the pack of canned peas; 7,500,000 cases or 75 percent of the pack of canned beets; plus sizable volumes of canned tomatoes and canned corn for which precise data are not available; also 12,000,000 cases or 60 percent of the pack of applesauce; plus other canned fruits. The 303 contains 16 or 17 ounces, depending on the food, and would likely compete at a disadvantage with Canada's 15-ounce can. The actual difference in contents is 15 22 ounces of water in a 300×407 and 16.88 ounces of water in a 303×406 at 68° F.
20 ounces, 307×409 (No. 2) for general use.	
28 ounces, 401×411 (No. 2½) for general use.	
105 ounces, 603×700 (No. 10) for general use.	

[1] In the statement of can-size dimensions, the first digit gives the number of whole inches, and the second and third digits give the fraction expressed in 16ths of an inch. The diameter is stated first. Thus 303×406 means that the can is 3³⁄₁₆ inches in diameter and 4⁶⁄₁₆ inches in height.

TRADE BARRIER—CORN SIRUP/GLUCOSE SIRUP

Corn sirup (or glucose sirup) is a bland liquid sweetener made from shelled corn. Glucose sirup is defined (in the report of the Joint FAO/WHO Codex Alimentarius Commission Expert Committee on Sugars, London, March 3–5, 1964) as "a clarified concentrated aqueous solution of D(+) glucose, maltose, and other polymers of D(+) glucose, other than starch, obtained by controlled hydrolysis of edible starch." A wide range of glucose sirups (containing varying proportions of D(+) glucose, maltose, and other polymers) are produced according to the user's requirements.

In its various forms corn sirup is used in the manufacture of canned fruits, fruit juices, fruit sirups, jams, jellies, and preserves, and other processed foods. Corn sirup is used primarily as a sweetener. The FDA Standards of Identity authorize the use of corn sirup and/or glucose sirup in standardized canned fruits in amounts up to one-fourth of the weight of the total sweetening ingredient. In other canned fruits, fruit juice products, and vegetables, there are no limitations on the use of corn sirup. Corn sirup also has functional values, enabling canners to exercise closer control over sweetness, and contributing to such quality characteristics as texture and appearance of fruit.

Corn sirup is a pure product. However, corn sirup is not universally acceptable as an ingredient in processed foods. Two explanations are sometimes given:

(1) Historical: When many of the laws and regulations were developed, corn sirup and dextrose technology was in its infancy. Only one type of corn sirup existed as recently as 1935 and there was little industrial experience with the use of corn sirup in some foods. Thus, quantity limitations were imposed.

(2) Economic: The EEC produces large quantities of beet sugar and is a net exporter of sugar.

There is no sound technological reason for arbitrarily limiting the use of corn sweeteners. In the accompanying chart is a summary of nontariff treatment accorded canned fruits, fruit juices, and other processed foods containing corn sirup. The outstanding feature of this chart is inconsistency, with regulations varying from unrestricted usage to the strictest prohibition.

FOOD LAWS CONCERNING THE USE OF CORN SYRUP

	Austria	Belgium	Denmark	France	Great Britain	Italy	Netherlands	Spain	Sweden	Switzerland	United States	West Germany
Jams, Jellies and Preserves	Label	Label	Label	Label	YES	NO	%	?	YES	YES	%	%
Canned Fruits	NO	Label	Label	Label	YES	NO	NO	YES	YES	NO	%	Label
Chocolate	NO	NO	YES	%	YES	Label	NO	NO	YES	NO	%	NO
Ice Cream	YES	Label	YES	NO	YES	YES	YES	NO	YES	NO	YES	%
Fruit Syrups	%	Label	YES	Label	YES	Label	NO	%	YES	NO	YES	NO
Fruit Juices	NO	Label	YES	NO	YES	NO	NO	?	YES	NO	YES	NO
Soft Drinks	?	%	YES	%	YES	NO	NO	Label	YES	?	YES	%
Candy	%	YES	YES	YES	YES	%	YES	YES	YES	YES	YES	YES
Baked Goods	Label	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	%
Beer	NO	%	YES	%	YES	NO	YES	?	YES	NO	YES	NO

LEGEND: YES – corn syrup admitted; Label – admitted under label declaration; % – admitted up to a certain percentage; ? – legal situation uncertain; NO – not admitted.

RECOMMENDATION

International food standards should permit the use of all wholesome nutritional sweetners (including cane, beet sugar, and sweeteners derived from corn, potato, or other suitable starches) consistent with the physical and organoleptic characteristics desired for the food to which they are added. Arbitrary restrictions on products containing corn sirup/glucose sirup restrict technological progress and deny consumers freedom of choice.

TRADE BARRIER—FRANCE, COUNTRY OF ORIGIN

The basic French law governing country-of-origin marking requires the name of the country of origin to be embossed in can ends. This requirement is sometimes satisfied by stamping can ends with indelible ink. It is understood that the basic French law calls for the name of the country to appear in the French language; for example, "Etats Unis," but that this requirement is sometimes satisfied by the use of the letters, "U.S.A.".

It is impossible to emboss can ends after the pack is completed. Thus it is impossible to satisfy the embossing requirement except with cans that have been embossed in advance of canning, either to fill a firm order or in anticipation of an order from France. Buyers in the United States do not want canned foods with "U.S.A." embossed in can ends, as these products may appear to have been rejected by overseas customers. Although the country-of-origin requirement is sometimes satisfied by stamping can ends with indelible ink, this involves additional cost.

Knowledgeable Frenchmen have defended France's can end country-of-origin requirements on the basis that these requirements are essential to law enforcement in France. They say that if original labels (bearing country-of-origin mark) are removed from canned foods imported into France, the indication of country of origin on can ends is certain to remain on the container and the French consumer cannot be deceived as to the foreign origin of the merchandise, regardless of what may be stated on new labels. On that premise, the French requirement for country-of-origin marking on can ends transfers the burden of France's customs enforcement from their own law enforcement officers to the canner who prepares canned foods for shipment to France.

RECOMMENDATION

A country-of-origin mark on imported merchandise is a reasonable requirement and universally applicable. Section 304 of the Tariff Act of 1930, as amended, provides for country-of-origin marking in the United States to appear in any conspicuous place on the container. The French requirement should be modified so that the country-of-origin requirement may be satisfied by a suitable declaration on the label.

Article IX(3) of the GATT provides that contracting parties should permit marks of origin to be affixed at the time of importation whenever it is administratively practicable to do so. It is administratively practicable in all other countries, and should be feasible in France also.

TRADE BARRIER—COLOR REGULATION IN EEC COUNTRIES

The EEC Council of Ministers on October 23, 1962, approved a directive on harmonization of member states' regulations on coloring materials for use in foods for human consumption. Among the colors sanctioned for use for a 3-year period, pursuant to article 2 and annex II of the directive, is Erythrosine (F.D. & C. red No. 3), which is used in the United States in coloring cherries for canned fruit cocktail and fruits for salad.

Italy was reported in mid-February to have begun enforcing its regulation requiring that added coloring matter be declared on the label.

The Netherlands has issued a directive (No. 582 of December 1964) prohibiting the use of Erythrosine in foods after October 26, 1965.

Belgium was reported in mid-March to have issued a similar prohibition.

Prohibitions on Erythrosine have the effect of prohibiting the importation of canned fruit cocktail and fruits for salad or other processed foods containing artificially colored cherries.

In the United States the Food and Drug Administration has provisionally listed Erythrosine as a color additive. It had been an approved food color for many years prior to the Color Additive Amendment of 1960, and the provisional listing was made automatically and required no presentations or arguments on the part of users.

At a meeting of the FAO/WHO Expert Committee on Food Additives in Geneva in December 1964, Dr. Garth Fitzhugh of the FDA reported on the status of FDA studies on Erythrosine and other additives. The Expert Committee put a few substances on the A list, meaning that evidence of safety was considered complete. Some others, including Erythrosine, were put on the B list, meaning that experimental studies are not considered complete. In the case of Erythrosine the tests on toxicity were considered adequate but not those on its effect, if any, on metabolism.

RECOMMENDATION

As of mid-March 1965, with the assistance of the U.S. mission to the EEC (Brussels), the NCA is seeking (1) a tolerance in EEC countries on the use of Erythrosine within specified limits, and/or (2) a postponement of the prohibition on Erythrosine.

TRADE BARRIER—COLOR REGULATION IN EEC COUNTRIES

The basic principle in European food laws is that everything not expressly authorized is prohibited. Consequently, certain canned foods are not admissible into certain countries because of artificial colors which are safe but not provided for in the regulations.

The Netherlands prohibits the importation of fruit juice drinks (BTN 22.02) from the United States because of a general prohibition in its food law against the addition of artificial colors to such drinks even though such colors are harmless and are added only to maintain uniformity of color and to impart a pleasing color to the product. The addition of artificial colors to such products is presumed to deceive the consumer.

Germany does not list amaranth (E–123 and Schultz 212) which is a red used in certain fruit juice drinks.

RECOMMENDATION

It should be permissible to sell processed foods containing safe artificial colors, provided there is a suitable label declaration.

TRADE BARRIER—PROHIBITION IN GERMANY ON PICKLES CONTAINING ALUM

Germany prohibits pickles containing alum in any amount. Alum is very generally used in both processed and fresh-pack pickles. Its functional value in pickles is as a firming agent.

The term "alum" refers to either aluminum ammonium sulfate or aluminum potassium sulfate. Both of these substances were on the original GRAS (generally recognized as safe) list of food additives which was published by the U.S. Food and Drug Administration in 1959. FDA officials have been unable to furnish any precise sources upon which this GRAS determination was based. Alum has been used for so long and for so many purposes that it was undoubtedly considered as one of the small number of substances about which there was no question of safety. Alum appears to have been approved for use in pickles in the United States at least as long ago as 1914. The following statement was published in 1914 in S.R.A. Chemical 9:

The referee Board of Consulting Scientific Experts has investigated the influence of aluminum compounds on the nutrition and health of man. The results of this investigation have been published in Department Bulletin 103. The Board came to the conclusion that the amount of alum which remained in the pickles and is therefore consumed, is so small as to be negligible. From the information at hand it also appears that alum is almost universally used in the preparation of pickles, and will, therefore, be considered a common ingredient of such products. In view of these facts this bureau offers no objection to the use of a small amount of alum in the preservation of pickles.

Mr. Harold Koeller, agricultural attaché in Copenhagen, was able in mid-1964 to persuade Norwegian authorities to reverse themselves in the deletion of alum from their authorized list of food additives.

RECOMMENDATION

On the basis of its acceptability in the United States as a safe additive, and on the basis of its universal acceptability in all other countries, alum in pickles should be admissible in Germany.

TRADE BARRIER—VITAMINS

In Switzerland the addition of vitamins to food must be authorized by the Federal Service for Public Hygiene.

In Denmark, a law which has been in existence since 1936 stipulates that if a foodstuff is said to be fortified with vitamins it must be controlled by the authorities. As a result, Denmark prohibits the label declaration of added vitamins, and it is necessary to use special labels (with no mention of vitamins) or to cover existing labels with a special sticker (with no mention of vitamins). The prohibition on labeling of vitamins is known to be a barrier to U.S. exports of baby foods.

RECOMMENDATION

The prohibition on labeling of added vitamins is a requirement for deception, hiding the fact that the food product contains a useful additive. The effect of this prohibition is to require special labeling, a trade barrier.

TRADE BARRIER—LABELING REQUIREMENTS IN JAPAN

Japan requires labels of imported canned foods to declare (1) date of importation; (2) name and address of the importer; and (3) net weight only in the metric system. It is not permissible to show, in addition to the metric weight, the avoirdupois weight as is customary throughout the world.

The requirements are being met by the importer affixing a sticker to the label.

Recent information from the assistant agricultural attaché in Tokyo indicated that it is no longer necessary to erase the avoirdupois weight from the label. However, NCA is advised by one of its members that, on the basis of current information from their agent in Japan as well as domestic marketing people, there has been no change in Japan's requirements.

RECOMMENDATION

The requirement for identifying the importer as a Japanese national is of questionable value. The prohibition against a label declaration of avoirdupois weight serves no constructive purpose. The requirement for dating imports is believed to be consistent with Japan's requirements on domestic packs; however, dating of canned foods is unnecessary, inasmuch as commercially canned foods have virtually indefinite shelf life.

TRADE BARRIER—GROSS WEIGHT

Duties are assessed on a cost, insurance, and freight (ad valorem) or gross weight (specific rate) basis in Sweden and Switzerland.

A case of canned fruit (24/2½) has a gross weight of 54 pounds but a net weight of only 45 pounds or only 83 percent of the gross. A case of canned vegetables (24/303) has a gross weight of 31 pounds but a net weight of only 24 pounds or only 77 percent of the gross. The protective effect of the tariff is increased correspondingly.

RECOMMENDATION

It would be desirable to have the duty on all canned foods assessed on the basis of net weight rather than gross weight, as is the practice in all other countries, according to available information. Neither the can nor the label can be reused, nor do they have any economic value other than as an immediate container and identification. It is questionable whether used shipping cartons have any value.

TRADE BARRIER—SEASONAL DUTIES

Duties on some items vary by the month in Norway and Switzerland.

RECOMMENDATION

There is no reason to have seasonal duties on canned foods because they are nonperishables and may be stored and carried over from season to season. Any protective effect of seasonal duties may be negated by simply importing during the periods of low duty. Therefore, seasonal duties on canned foods amount to no more than a nuisance, which should be eliminated.

TRADE BARRIER—PRIOR DEPOSIT

Prior deposit or prepayment, generally on cost, insurance, and freight values, is required in the following countries:

	Percent
Chile	1,500
Ecuador	100
Indonesia	100
Japan	1, 15, 10, or 35
Pakistan	100
Paraguay	?
Philippine Republic	100
Turkey	40
Uruguay	100

TRADE BARRIER—GOVERNMENT MONOPOLIES

Canned foods are purchased in Burma and Egypt by the national governments, and in the Philippine Republic by the National Marketing Corp. (NAMARCO), which controls the importation of most items.

Gutar restricts imports to its nationals, who must register with the register of imports. Kuwait issues import licenses only to Kuwait companies.

A number of countries control imports of some U.S. canned foods through some form of quantitative restriction, licensing, exchange control, or prior deposit. Exports of U.S. canned foods are thereby inhibited at the present time, and any tariff concessions obtained by the United States would be of questionable value where such barriers are in effect. The summary on the following page identifies the countries where such controls are known to exist, in some form, on some canned foods.

	Quantitative restrictions	Licensing	Exchange control	Prior deposit
Algeria		X	X	
Austria	X			
Brazil		X	X	
British Honduras			X	
Burma		X	X	
Cambodia		X	X	
Canary Islands		X		
Ceylon		X	X	
Chad		X	X	
Chile			X	X
Colombia		X		
Congo, Brazzaville		X	X	
Congo, Leopoldville		X	X	
Costa Rica			X	
Cyprus		X	X	
Dahomey		X	X	
Denmark		X		
Dominican Republic		X	X	
Ecuador		X	X	X
Egypt		X		
El Salvador			X	
Finland	X	X	X	
France	X			
Gabon		X	X	
Germany	X	X		
Ghana		X		
Guatemala			X	
Gutar		X		
India		X	X	
Indonesia		X	X	X
Iran		X	X	
Iraq	X	X		
Ireland		X	X	
Israel		X	X	
Italy		X		
Japan	X	X	X	X
Jordan		X		
Korea		X	X	
Kuwait		X		
Malaya		X		
Morocco		X	X	
New Caledonia		X	X	
New Zealand		X		
Nicaragua		X		
Norway		X		
Pakistan		X		X
Panama	X	X		
Paraguay				X
Philippine Republic			X	X
Portugal		X		
Sierre Leone	X			
South Africa		X	X	
Spain	X	X	X	
Sweden		X		
Thailand		X		
Turkey		X		X
United Kingdom	X			
Uruguay		X	X	X

TRADE BARRIER—COST, INSURANCE, AND FREIGHT VALUATION

Assessment of duty on cost, insurance, and freight valuations is a serious barrier to exports of U.S. canned foods. The protective level of foreign tariffs is higher than the published rates in all of the important markets for U.S. canned foods because of the cost, insurance, and freight valuation of imports. For example, the ocean freight on a $5 case of canned fruit shipped from California to Europe is $1, and the 25-percent duty on a cost, insurance, and freight basis adds 4 cents per can to the landed cost.

Ocean freight on canned foods shipped to Europe is higher from the United States than from any of our competitors, South Africa, Australia, Japan, Malaya, or Argentina. The rate from the Pacific coast of the United States to Europe is one-third higher than the next highest rate (from Japan), is 1½ times the rate from Australia, and almost three times that of the lowest rate (from South Africa). The cost, insurance, and freight valuations in Europe increase the economic disadvantage of the United States on ocean freight rates.

The cost, insurance, and freight valuation is of additional disadvantage to the United States in countries having a tariff preference, and also within the EEC and other common market and free trade areas. In such countries, the cost, insurance and freight valuations add to the protective effect of the preferences.

Where surtaxes and national taxes are computed on a cost, insurance, and freight basis, a further burden is added to imports. In France, for example, where the TVA (taxe a la valeur ajoutee) is 20 percent on top of the cost, insurance, and freight value, the landed cost of canned food is increased by $1.50 a case or 6¼ cents per can, as is shown in the following table:

EXAMPLE: CALCULATION OF LANDED DUTY-PAID COST OF CANNED FOODS IN FRANCE

	C.i.f. basis	F.a.s. basis
1 case of canned fruit, f.a.s. California	$5.00	$5.00
Ocean freight to Europe	1.00	....
Valuation for customs purposes	6.00	5.00
Duty at 25 percent	1.50	1.25
Duty-paid value [1]	7.50	6.25
T.V.A. at 20 percent	1.50	1.25
Ocean freight to Europe	....	1.00
Landed cost [2]	9.00	8.50

[1] The difference in duty-paid values is $1.25 per case or 5.2 cents per can.
[2] The difference in landed costs in France is $0.50 per case or 2¼ cents per can.

RECOMMENDATION

For all of these reasons, the United States should seek an end to cost, insurance, and freight valuations, as a concession to the United States having significance in trade terms, and especially for U.S. exports which are burdened with high prices or high ocean freight rates in comparison with other countries. With the reduction and elimination of duties on trade within the EEC and EFTA, the United States will be increasingly disadvantaged in exporting in the years ahead unless the cost, insurance, and freight valuations are ended, or foreign tariff rates reduced sharply, or both.

Examples of Impediments to Trade

1. TOMATO SAUCE TO FRANCE

Two thousand cases of tomato sauce were shipped from the United States to France. In France the sauce was denied entry and placed in a bonded warehouse.

The reason for this action stems from the classification of sauce. French customs officials classified the sauce as a condiment (21.04) rather than as a tomato product (20.02) and would not permit entry.

The sauce was eventually shipped to the only available market, Puerto Rico. Upon arrival to Puerto Rico the entire shipment was rejected because of its physical condition (sweat and rust damage).

2. YELLOW CLING PEACHES TO FRANCE

A block of yellow cling peaches was shipped to France labeled "in syrup." French food regulations do not accept corn syrup as part of the total sugar content. Because of this the buyer was forced to relabel the entire shipment specifying that this was a water-pack. This caused serious inconvenience to both the exporter and the buyer.

Potential Trade Barriers

POTENTIAL TRADE BARRIER—EEC CAN SIZE REGULATION

Groups within the EEC are seeking to develop an EEC regulation that will specify and limit can sizes. If applied to imports, such a regulation would be prohibitive in effect as cans not on the approved list could not enter the EEC. Even if the regulation were not applicable to imports at the time of its issuance, it could become a convenient vehicle for amendment by consumer-protectionist groups, and made applicable to imports as well as EEC production.

One of the groups, the European Can Manufacturers Association (SEFEL), states their purpose in limiting can sizes is to curtail the number of sizes of tinplate and/or coils which they would have to order from tin-plating mills. It is their desire to limit the number of authorized can sizes to six or seven. It is their intention to regulate only the sizes of cans to be manufactured and filled within the EEC, and to establish no limit on imports. As an indication of their good faith, they have agreed to include the 303 in their proposal to the EEC; this is a can they do not manufacture and one of the most used can sizes in the U.S. canning industry.

Whether the EEC Commission has received the proposal for a can size regulation or if they would be receptive to the idea is not known at this time. It is certain, however, that such a regulation faces many hazards before it could be put in final form and made effective.

Another proposal for a can size regulation originates with the Comite International Permanent de la Conserve (C.I.P.C.), a scientific and trade group with offices in Paris. That proposal utilizes the standard European can of 1 kilo or 850 cm^3 as the basic container, and then provides for multiples and submultiples of that basic capacity, in cubic centimeters, as follows: 212, 425, 850, 1,700, 3,400, with volume tolerances of plus or minus 3 percent for the small capacities and of plus or minus 2 percent for the large capacities.

RECOMMENDATION

A can size regulation, if applicable to imports, would be prohibitive in effect. Furthermore, in addition to absolute prohibitions, can sizes are measured in Europe according to the metric system and in most other countries according to inches and sixteenths of an inch.

Regulation of container sizes or shapes has no relationship to wholesomeness or economic deception, and all can sizes should be permissible. It is in the EEC's interest, as an importer of canned foods from all parts of the world, to permit entry of all sizes, according to trade practice in supplier countries.

As is pointed out in the statement which follows, it may be possible in the future to establish "commercial equivalency" between the various container sizes. However, this issue should not be raised at this time, nor at any time until the issue is presented as an actual trade barrier. Rather, the United States should obtain assurance that exports to the EEC will not be blocked by a regulation of container sizes or measurement.

POTENTIAL TRADE BARRIER—CAN-SIZE MEASUREMENTS IN METRIC SYSTEM (EEC) AND INCHES (UNITED STATES AND ELSEWHERE)

In the event that the EEC promulgates a regulation limiting can sizes, U.S. exports of canned foods to the EEC could be curtailed not only by the prohibitive nature of the regulation but also by two important differences in methods for measuring can dimensions. These are:

(1) Weights and dimensions are generally measured in Europe according to the metric system. Can dimensions are measured in the United States in inches and sixteenths of an inch; for example, 303 means $3\frac{3}{16}$ inch. The diameter is stated first. Thus, 401 by 411 means that the can is $4\frac{1}{16}$ inches in diameter and $4\frac{11}{16}$ inches in height.

(2) All measurements of can sizes in the United States are outside measurements; for example, a 303 diameter is measured on the outside of the flange. In the EEC, however, can diameters are measured on the inside of the flange. The difference would be about one-eighth inch or 3 millimeters.

It is important to note that the can measurements in use in the United States are used also in every other country which is an important exporter of canned foods, including Canada, Australia, South Africa, the United Kingdom, Philippine Republic, Japan, Malaya, Spain, and Israel. Can measurements derive not from an arbitrary numerical system but from the design and specifications of the machinery used in can manufacturing. Most countries outside of Europe use can manufacturing equipment which is patterned on U.S. specifications.

In any effort by the EEC to regulate sizes of cans that may be imported, the EEC would in effect be dictating to the rest of the world,

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not only with respect to can measurements but also with respect to the specifications of the capital equipment with which cans are manufactured.

Conceivably it would be possible, in a can size regulation, to establish tolerances for variations above and below the specified can sizes. In this manner arrangements would be made for comparable sizes which would seem to be commercially equivalent to the EEC sizes.

RECOMMENDATIONS

A can size regulation, if applicable to imports, would be prohibitive in effect. Furthermore, in addition to absolute prohibitions, can sizes are measured in Europe according to the metric system and in most other countries according to inches and sixteenths of an inch.

It may be possible in the future to establish "commercial equivalency" between the various container sizes. However, this issue should not be raised at this time, nor at any time until the issue is presented as an actual trade barrier. Rather, the United States should obtain assurance that exports to the EEC will not be blocked by a regulation of container sizes, nor by any system relying exclusively on metric measurement.

POTENTIAL TRADE BARRIER—EEC SUGAR TARIFF

On page 38-39 of volume IV of the State Department's "Analysis of U.S. Negotiations at the 1960-61 Tariff Conference" is an "additional note" which seeks to define when a canned fruit or juice contains added sugar within the meaning of 20.06-B-II in the CXT, appearing on page 40. It appears that a canned fruit is deemed to contain added sugar (and be classifiable under 20.06-B-II) when the total amount of sugar in the product exceeds the stated limit. The EEC has reserved the right to assess additional duty on the added sugar. To our knowledge, the EEC has made no provision for doing so.

On the premise that EEC customs officers will accept label declarations of water-pack canned foods, there would be no reason for concern with their dutiable status. If customs examination does not go beyond the label declaration of no added sugar, water-pack canned fruits would be classifiable under 20.06-B-III and dutiable at the more favorable rate of 23 percent. However, if analyses were made of certain water-pack canned foods, it might be found that the natural sugar in the fruit would exceed the EEC allowances; for example, in fruit cocktail, cherries, and purple plums. It appears that such products could be classifiable under 20.06-B-II and dutiable at 25 percent, it appears permissible also for the EEC to tax the naturally occurring sugars in excess of the EEC allowances.

Moreover, the bound rate of 25 percent on fruit with added sugar (20.06-B-II) is of limited application. The rate of 25 percent will apply to canned fruit with added sugar but only if its sugar content is within maximum limits. If the canned fruit contains more sugar than is provided for in the EEC allowance, it would be subject to additional duty on the sugar content in excess of the maximum limit. The present EEC rate of duty on sugar (17.01) is 80 percent, and it is assumed that the sugar content of some canned fruit would be dutiable at that rate, or at such rates as may be prescribed in the future under a variable levy system.

This is demonstrated with canned peaches as the example. According to Agricultural Handbook No. 8 (ARS, 1963), the carbohydrate naturally occurring in canned peaches amounts to 8.1 percent. The EEC allows no more than 15 percent (9 plus 6). The FDA standard of identity for canned peaches provides that the product containing from 14 to 19 percent Brix shall be labeled in "light syrup." Thus, canned peaches in light syrup of 15 percent Brix would pass the EEC allowance of 15 percent. However, if the light syrup pack were found to exceed 15 percent Brix or on all packs of canned peaches in "heavy syrup" or "extra-heavy syrup," the EEC would be permitted to assess additional duty on sugar. On canned peaches in extra-heavy syrup of 25 percent Brix, the EEC would be permitted to tax 16 percent of that sugar, the 16-percent figure being the difference between 25 percent and the 9-percent allowance for natural sugar.

For canned fruit cocktail the situation is only a little different. According to Agricultural Handbook No. 8, the carbohydrate naturally occurring in water-pack fruit cocktail is 9.7 percent. This level of natural sugar exceeds the EEC allowance, and such a product would seem to be dutiable at the higher rate of 25 percent and subject also to duty on the excess sugar. Canned fruit cocktail in light sirup would not enter the EEC without being subject to sugar duty. Canned fruit cocktail in light sirup of 15 percent Brix would be subject to additional sugar duty on 6 percent of that sugar. Canned fruit cocktail in a heavy sirup or in extra-heavy sirup would be subject to still additional sugar duty.

To our knowledge, the EEC has made no provision for assessing duty on sugar content of canned fruits in excess of the allowances. However, in the absence of a binding on the EEC sugar tariff, the bound rate on canned fruits may be vitiated by additional duties and uncertainties. This situation appears to exist also for juices and other products covered in chapter 20 of the CXT.

The accompanying table presents pertinent information on EEC allowances for added sugar, the natural sugar content, and FDA requirements for a number of canned fruits.

RECOMMENDATION

It would be desirable if the rate of duty applicable to canned fruits were a matter of certainty on which buyer and seller might rely. In defining the canned foods which are deemed to contain added sugar, it is appropriate to establish lower limits on the proportion of sugar. However, the sugar in canned foods is not usable as a sweetener. To assess a duty on added sugar provides no protection to the EEC on sugar, and is no more than a nuisance tax and trade barrier, creating uncertainty and confusion.

One solution would be to eliminate from the EEC formula all upper limits on allowable sugar.

In the parenthetical note (pp. 38–39 of vol. IV), the meaning of the word "tolerance" is not clear. Perhaps it should be "exemption." Preferably all upper limits on sugar should be eliminated.

THE DUTIABLE STATUS OF CERTAIN CANNED FRUITS CONTAINING ADDED SUGAR (20.06 B II) IN THE EEC

[In percent]

	Peaches	Pears	Pineapple	Purple plums
EEC allowance for natural sugar [1]	9.0	9.0	13.0	9.0
EEC "tolerance" for added sugar [1]	6.0	6.0	6.0	0
EEC total allowance for sugar [1]	15.0	15.0	19.0	9.0
Naturally occurring carbohydrates [2]	8.1	8.3	10.2	11.9
FDA standards (cutout Brix):				
Light syrup	14-19	14-18	14-18	16-19
Heavy syrup	19-24	18.2	18-22	19-24
Extra heavy syrup	24-35	22-35	22-35	24-35
Subject to EEC sugar duty:				
Water pack	No	No	No	Yes
Light syrup	[3]	[3]	No	Yes
Heavy syrup	Yes	Yes	[3]	Yes
Extra heavy syrup	Yes	Yes	Yes	Yes

	Fruit cocktail	Red sour cherries	Light sweet cherries	Apricots
EEC allowance for natural sugar [1]	9.0	9.0	9.0	9.0
EEC "tolerance" for added sugar [1]	0	0	0	6.0
EEC total allowance for sugar [1]	9.0	9.0	9.0	15.0
Naturally occurring carbohydrates [2]	9.7	10.7	11.7	9.6
FDA standards (cutout Brix):				
Light syrup	14-18	18-22	16-20	16-21
Heavy syrup	18-22	22-28	20-25	21-25
Extra heavy syrup	22-35	28-45	25-35	25-40
Subject to EEC sugar duty:				
Water pack	Yes	Yes	Yes	No
Light syrup	Yes	Yes	Yes	Yes
Heavy syrup	Yes	Yes	Yes	Yes
Extra heavy syrup	Yes	Yes	Yes	Yes

	Apple slices	Boysenberries	Loganberries	Grapefruit segments
EEC allowance for natural sugar [1]	9.0	9.0	9.0	9.0
EEC "tolerance" for added sugar [1]	0	0	0	0
EEC total allowance for sugar [1]	9.0	9.0	9.0	9.0
Naturally occurring carbohydrates [2]	10.8	9.1	9.4	7.6
FDA standards (cutout Brix):				
Light syrup	[4]	[4]	[4]	–14
Heavy syrup	[4]	[4]	[4]	–18
Extra heavy syrup	....	....	....	....
Subject to EEC sugar duty:				
Water pack	Yes	[3]	[3]	No
Light syrup	Yes	Yes	Yes	Yes
Heavy syrup	Yes	Yes	Yes	Yes
Extra heavy syrup	....	Yes	Yes	....

[1] See pp. 38-39 of vol. IV of the State Department's "Analysis of U.S. Negotiations at the 1960-61 Tariff Conference."
[2] From table I, "Composition of Foods," Agricultural Handbook No. 8, ARS, USDA, rev. 1963.
[3] Not available.
[4] These are nonstandardized products.

POTENTIAL TRADE BARRIER—EEC SUGAR REGULATION

The EEC Commission published in the spring of 1964 a draft sugar regulation (VI/COM(64) 27 final) which included provision for a variable levy on imports of sugar and "transformed products" into the EEC. The annex of the draft regulation listed a number of CXT tariff positions to which it appeared that the variable levy would be applicable on the sugar content. The CXT tariff positions listed in the annex included a number of canned foods in chapter 20 of the CXT.

The EEC draft sugar regulation appeared to provide for a variable levy on the sugar content of canned foods as "transformation products." The sugar duty was to apply not only to canned foods containing added sugar but also to unsweetened canned foods which are competitive. The draft regulation contained a statement to the effect that account would be taken of "the maximum charge at importation resulting from the consolidation under the auspices of GATT." The meaning of this is not clear.

Importers of these products protested to their national governments. The objections to the EEC sugar proposal are:

(1) The added sugar duty appeared to be in violation of GATT concessions;

(2) Establishment of a variable levy on the sugar content of canned foods would lead to uncertainties as to the amount of duty to be assessed. Neither buyer nor seller would know at the time of shipment what the landed cost of the canned foods would be. Such uncertainty would be a severe burden on trade.

(3) All canned foods should be eliminated from the sugar regulation. Notwithstanding the EEC's apparent intention of taxing the sugar content of "transformation" products, canned fruits and vegetables contain such insignificant amounts of sugar, both as to quantity and value, that they cannot by any stretch of the imagination be considered "transformed" sugar products. It was recommended that a variable levy on sugar be limited in application to products containing sugar in a significant degree.

For various reasons the draft sugar regulation of early 1964 has been withdrawn. It is reported to be under study and revision.

According to information received from Brussels in early February (1965), a group of experts has submitted proposals to the EEC on the products which should be included in the EEC sugar regulation. The Italian group proposed that no variable levy on added sugar should be imposed on any product containing less than 7 percent added sugar. France and Benelux recommended no variable levy on products containing less than 10 percent added sugar. Germany recommended no variable levy on products containing less than 30 percent sugar, both natural and added.

U.S. canned foods in light sirup might enter the EEC without being subject to added sugar duty under any of these proposals (see preceding item. However, canned foods in heavy sirup or in extra heavy sirup would be subject to a variable levy on added sugar, under the Italian, French, and Benelux proposals. The implication is clear that the EEC has not abandoned the idea of including canned fruits in the sugar levy. It is not clear whether the variable levy would be made equally applicable to competitive products even though not containing sugar. Nor is it inconceivable that the variable levy would be applicable to water-pack canned fruits, containing only the natural sugars of the fruit, whenever the EEC allowances were exceeded.

RECOMMENDATION

Several of the canned food items are covered by bound rates in the CXT, and establishment of a variable levy on these products would be in violation of these concessions. A variable levy should not be applicable to products, such as canned foods, in which sugar is a relatively insignificant proportion of feight and/or value, and in which the sugar is not available as a sweetener. A variable levy on sugar content of canned foods would amount to a substantial burden on trade, without in any way protecting the EEC sugar industry.

POTENTIAL TRADE BARRIER—EEC CANNED FOOD HARMONIZATION

The EEC is working on a regulation harmonizing canned foods within the Community. Since late 1962 three proposals have come to light, two being unofficial and one being a draft issued by the EEC Commission. Each of these proposals is described briefly below for the purpose of indicating their restrictive nature:

(1) In 1962 there came to light a draft of canned fruit specifications, which had been submitted to the EEC Commission by a group of EEC canners, which would have established standards so completely at variance with the worldwide canning practice that many of the high quality U.S. canned fruits would have been prohibited in the EEC.

The EEC draft of canned fruit specifications would have established identity standards and a form of quality standards for a number of canned fruits produced in Europe and also for those, such as canned peaches, of which the United States is the dominant supplier. By its design and technical draftsmanship the proposal, among other things, would have prohibited the labeling of canned sliced peaches as either grade I or grade II peaches regardless of other factors of quality associated with the peaches. Sliced peaches could be labeled only as the third, or lowest, grade under that proposal. The Common Market canners' draft contained many other objectionable features that would have seriously burdened U.S. exports to the EEC.

Canners of the United States and of the United Kingdom protested immediately and determinedly, and the draft specifications disappeared.

(2) In midyear 1963 there was issued a "Survey on Canned Products in the Frame of the Harmonization of Legislations," by Cultrera and Jumel, both scientists. Their survey was not written as a regulation but rather to set forth an outline of a regulation and the principles to be included.

Among other things, the Cultrera and Jumel outline would have established different labeling requirements for canned foods imported from third countries than for canned foods produced within the Community. The label requirement for EEC canned foods called for the name of the packer or distributor, but the label requirement for imported canned foods appeared to call for both; this would require special labels for each importer, in Hamburg, Rotterdam, Antwerp, and so forth, even though they might purchase from the same canner in the United States. The Cultrera and Jumel document also called for can end embossing to indicate the date of pack within a 24-hour period; and a number on the can or label corresponding to a plant number where the product was manufactured, over which EEC authorities would have no effective control.

(3) The EEC Commission issued on May 2, 1964, a draft regulation on the harmonization of member states' legislation concerning canned foods (5282/VI/64–F). In many respects this draft regulation would have implemented the regulatory principles which had been recommended by Cultrera and Jumel, including the name of the EEC importer on the label, as well as can end embossing of the importer's number or symbol. The language of the draft regulation left many uncertainties as to its intent, and appeared to leave considerable latitude to the administrative authorities. This proposed regulation has been withdrawn, and the EEC Commission is reported to be working on a new proposal.

RECOMMENDATION

Assurance should be obtained that the EEC will not establish regulations for canned foods that establish requirements wholly at variance with commercial practice in all other countries.

POTENTIAL TRADE B.' RRIER—EEC REQUIREMENTS FOR DATING CANNED FOODS

Several EEC countries have requirements or are considering requirements that the date of production be embossed in a can end in language understandable to the consumer.

France has regulations, which are not being enforced at the present time, requiring a code to be embossed in a can end to indicate the date of production. The requirement may be satisfied in emergency situations by advising the French authorities of code marks used by individual canners. U.S. canners would prefer not to reveal their code marks to anyone, as the code marks are intended only for company use.

Italy has published amendments to its basic food law which provide, among other things, for the authorities to establish a list of packaged food products or drinks which shall bear the date of packaging or anticipated shelf life (see art. 8 in AGR–125 dated June 7, 1963, from American Embassy, Rome). NCA has unofficial information that Italy will not implement this provision. However, it remains in effect, and was embodied in the EEC draft canned food regulation of May 2, 1964.

Germany also had under consideration, a few years ago, a dating law that would require each can to show the date of production and/or the length of time the canned foods are fit for consumption.

Japan requires labels of imported canned foods to declare the date of importation. It is believed that Japan requires dating of canned foods packed in Japan.

Kuwait municipality ordinance 128–62, governing the importation of canned foods, was eased by an amendment effective January 20, 1963. In airgram A–248, dated February 2, 1963, the American Embassy in Kuwait advised that, as the result of numerous protests, the Kuwait Government decided that "code symbols on the tin covers are sufficient for the purpose of the packing date requirement." It would seem that Kuwait still has its basic requirement for indicating date of pack but is not enforcing it.

Lebanon requires labels of canned foods to indicate date of pack (see airgram A–94 dated July 31, 1964, from American Embassy in Beirut). According to this U.S. source, Lebanon requires the manufacturing date to appear on labels of "canned meats and soups," and on "canned milk."

Canning renders perishable foods into nonperishable form. Dating of canned foods is unnecessary, inasmuch as commercially canned foods have virtually indefinite shelf life. Dating could damage consumer confidence in canned foods because of the implication that shelf life may be limited. Also, with consumers now selecting canned foods off the shelves of self-service stores, only cans bearing the latest date would be selected, with the result that the older packs would back up on the retailer and eventually on the canner. In the long run, a requirement for dating canned foods in one country could conceivably lead to the adoption of such a requirement in other countries.

Even if consumers and the distributive trade were to accept canned foods bearing the date of production, it could be anticipated that a requirement for dating would specify embossment in a can end, rather than on the label, with the result that the canner would have to prepare custom packs for each country having such a requirement.

RECOMMENDATION

NCA does not recommend that the question of dating canned foods be raised with the EEC. However, the United States should understand the potential effect of such requirements, and should seek a commitment broad enough to obviate this trade barrier in the future.

POTENTIAL TRADE BARRIER—LABELING TO IDENTIFY CANNING FACTORY

Italy also has under consideration a requirement that each label state, in addition to the name and address of the manufacturer or distributor, the location of the plant where the product was packed. This is intended, apparently, to enable the Italian food authorities to identify the source of any food spoilage which might be encountered, immediately with no loss of time. However, aside from the fact that heat-processed canned foods are not a source of food spoilage, and inasmuch as canners generally code their products so as to indicate such information for company use, such markings on canned food labels are unnecessary. Such a requirement with respect to imported food products would serve no constructive purpose. Furthermore, the requirement for listing of individual factories would operate to the disadvantage of any canner, in the United States or elsewhere, that packs the same product in more than one establishment. To comply with such a requirement, such a canner would need separate labels for each establishment. Furthermore, in instances when one canner has purchased canned foods from another canner, or when the exporter is a person other than a canner, still additional labels would be required. Enforcement would be difficult.

RECOMMENDATION

Such a requirement (labeling to identify canning factory) with respect to imported food products would serve no constructive purpose. The United States should obtain assurance that exports of canned foods to the EEC will not be subject to such a requirement.

The Consequences for U.S. Exports of the Adoption by the European Economic Community of a Common Value Added Tax

Executive Branch Statement

I. INTRODUCTION

Pursuant to a 1962 recommendation of the Fiscal and Financial Committee of the European Economic Community, the Council of Ministers of the EEC in April 1967 agreed to harmonize turnover taxes on the basis of a value-added tax system. For all EEC countries except France, this decision will require substantial changes in internal tax structures. Only France presently employs a value-added tax. The remaining five Common Market countries presently employ a cascade turnover tax system. They are to adopt a value-added tax system no later than January 1, 1970. Germany has passed the necessary legislation which will enable it to make the change by January 1, 1968 (the rates will be lower than those of France). In the Netherlands a draft bill calling for the adoption of TVA by January 1, 1969, was recently introduced in Parliament and the Italian Government has introduced legislation which would introduce this system by 1970. Belgium and Luxembourg have not yet acted on this matter.

The Council decision did not specify an initial rate at which the tax is to be imposed, though ultimate harmonization of rates as well as structure is foreseen. The EEC Commission is to make proposals in 1968 to harmonize tax rates but implementation of such proposals is probably several years away.

Replacing the cascade turnover tax system with a unified value-added tax system will produce two basic changes for countries shifting to TVA. First, the value-added tax will establish tax neutrality among domestic competitors. Second, the new tax system will lend itself to accuracy from the accounting viewpoint in calculating export rebates and compensatory import equalization taxes.

There is no question of a country's freedom to choose an indirect tax system or to change from one indirect tax system to another. There is reason for concern, however, with the effect on international trade of both the present system of border tax adjustments for indirect taxes and the changes in these adjustments which will take place as the EEC countries harmonize their indirect tax systems and eventually their indirect tax rates.

II. PRESENT CASCADE TAX SYSTEMS IN EEC COUNTRIES

A. *Domestic trade.*—All of the Common Market countries with the exception of France presently employ a cascade type or pyramiding gross turnover tax. The basic rates range, in general, from 3 to 6 percent. The tax is, in most cases, imposed on the gross value of the product each time it changes hands in the course of the production process. Thus, the total tax paid on a highly fabricated end product will vary according to the degree of vertical integration in the process of production.

B. *International trade.*—The EEC countries currently embrace the destination principle of taxation in the application of the cascade turnover tax to goods entering international trade. Under this principle, the tax on a product is theoretically collected in the country in which it is consumed. Thus, internationally traded products are subject to the taxes of an importing country and are freed from taxes in the exporting country. This objective is achieved by means of a compensatory border tax adjustment which, in principle, frees exports from the turnover tax and subjects imports to a tax equal to that paid by domestically produced goods.

Under a cascade-type turnover tax it is exceedingly difficult to determine the amount of taxes which have actually been paid on particular goods since the amount varies with the number of sales or "turnovers" from one firm to another. For products produced by firms which are highly integrated along vertical lines, the product turns over a small number of times and taxes paid are close to the minimal rate. For products produced by firms which are not integrated, the product can turn over a large number of times and taxes paid can be relatively high. To deal with the problem of matching export rebates and import equalizing taxes against taxes paid on domestically produced goods, countries employing a cascade tax resort to the use of averages. Consequently, discrepancies may arise between the amount of export rebate or import equalizing tax levied. There is no precise way of quantifying these discrepancies. Analytical studies prepared in recent years conclude that in most cases, however, rebates are lower than the amount of taxes paid. To cite a recent work of one expert in this field:

> The question then arises whether, in countries operating a cascade tax, export rebates and import surcharges are higher or lower than would be the case if they could be calculated exactly. While the answer to this question varies from country to country, product to product, industry to industry, and enterprise to enterprise, it can be said that the border tax adjustments of countries operating cascade systems are more likely to be too low to compensate for the home tax burden than too high." (Kenneth Messere, "Border Tax Adjustments," OECD Observer, October 1967.)

III. THE VALUE-ADDED TAX

The French value-added tax is expected to serve as a general blueprint for the other EEC countries although the rates and details of the tax structure will not be the same in the initial stage of harmonization.

A. *Domestic trade.*—Like the cascade turnover tax, the value-added tax (TVA) is also levied at each stage of production. The base of the tax, however, is not the gross turnover but only the value added to the product at that stage of production. From an accounting standpoint, a firm's net tax liability is the difference between the amount it pays on its purchases. To obtain any given yield, the TVA rates must necessarily be higher than the cascade rates. In France, the TVA is applicable primarily to sales at the production and wholesale levels and does not generally extend to sales at the retail level. The effective rate on most products is 25 percent on the value of the product. After January 1, 1968, the effective rate will be reduced to 20 percent but its coverage will be extended.

B. *International trade.*—As with the cascade tax, border tax adjustments, in line with the destination principle of taxation, are made to free exports of the value-added tax paid and impose an equalizing duty on imports. Unlike the cascade tax, however, the TVA permits a precise accounting determination of the tax paid on domestic products. At any stage of production, the tax paid is equal to the tax rate times the sales price (net of taxes) at that stage. Consequently, it is easier to achieve the objective of extending rebates on exports and levying equalizing duties on imports in the same amount as the tax on domestic products. This stands in marked contrast to the cascade system which necessarily has to utilize averages and is prone to discrepancies.

IV. THE RATIONALE OF COMMON MARKET TAX HARMONIZATION

Early in the development of the Common Market it was decided that the creation of an "economic community" required the harmonization of domestic tax systems as well as the elimination of tariffs and other barriers to trade among the Inner Six. Domestic tax systems, unless harmonized, can alter the flow of goods and resources among the member countries. Harmonization of turnover taxes has a dual objective: to reduce distortions in resource allocation resulting from the use of cascade taxes which vary with the structure of the industry and to eliminate border tax adjustments for trade among the members of the EEC.

It was felt that fiscal frontiers could be dismantled in a common market free of import duties without excessive trade distortion only if the indirect tax systems and rates in the exporting and importing countries were essentially the same. In such a case, the rebate in the exporting country was considered to be roughly the same as the compensating duty in the importing country. Thus, when the indirect tax systems and rates were alike, the effect on trade of the destination principle (i.e., no export rebates and no compensating import duties). Harmonization with equality of rates, therefore, would permit the use of the origin principle for intra-EEC trade at the same time that the destination principle was retained for extra-EEC trade.

V. BORDER TAX ADJUSTMENTS AND THE GATT

The GATT treats separately the two major elements of border tax adjustments. Imports may be subjected to a compensatory equalization tax up to the amount of internal taxes and other charges which are applied to like domestic products. On exports, remission of or an exemption from indirect taxes that are levied at one or several stages on the same goods, if sold for internal consumption, is not considered to be an export subsidy. It is general practice to remit turnover taxes levied on the goods which are exported and on their component parts. Some countries also remit turnover taxes levied on other input factors such as [illegible], electricity, motor fuel, advertising, etc.

Justification for allowing full rebates of indirect taxes on exports and the levying of a compensating duty on imports must be that the result is to neutralize the effect of the tax on international trade. This, in turn, entails an implicit assumption that indirect taxes are fully shifted forward into the price of the commodity in an economic sense as well as from the accounting viewpoint. In other words, the imposition of, or increase in, an indirect tax will result in an increase in the price which the final purchaser must pay for a commodity fully equivalent to the amount of the tax. If a tax is fully reflected in the cost to the buyer of a home-produced commodity it is assumed to be justifiable to impose an equivalent tax on a similar imported commodity and to relieve the commodity of the tax when exported. This is the practical significance of the destinational principle of taxation.

If, for any reason, the indirect tax is not fully shifted forward into the price paid by the final consumer on the domestic market, an export rebate equivalent to the tax levied on the product for sale in the domestic market would produce a situation in which it would be more profitable to export than if there had been no tax or no rebate.

Similarly, an import-equalizing duty equivalent to the tax levied on domestically produced goods, would create a situation in which it would be less profitable for a foreign producer to export than in the absence of the tax. In short, if the indirect tax is not fully shifted forward, a part of the export rebate has an economic effect equivalent to a subsidy while a part of any import compensating levy has the effect of a customs duty. The overall trade effect will vary from case to case and is extremely difficult to quantify.

As the GATT rules are now being interpreted, personal and company income taxes are treated as taxes which do not increase the price of a product. Consequently, under current practice such taxes are considered ineligible for border tax adjustments.

There is, thus, a sharp, rigid disparity in the general treatment of direct and indirect taxes which is based on the assumption that there is no forward shifting of direct taxes but full forward shifting of indirect taxes. Modern theory of tax shifting does not support such a clear-cut distinction. Indeed, even the classification of "direct" and "indirect" taxes is quite tenuous. The GATT does not use this terminology, but distinguishes between a tax "on a product" and other taxes. There is expert opinion that an indirect tax levied "across the board" may only be partially shifted forward with the degree of shifting depending on variations in commodity demand and supply elasticities, the degree of market control exercised by firms, the money supply and its velocity, and governmental policies. There is also expert opinion that a "direct" tax, such as the corporate income tax, may be partially shifted forward, especially in the long run.

To the extent that there is some forward shifting of direct taxes and less than complete forward shifting of indirect taxes, full border tax adjustments for indirect taxes and no border tax adjustments for direct taxes would affect the flow of international trade.

VI. EFFECT ON U.S. TRADE

U.S. trade may be affected by the forthcoming EEC tax harmonization in the following ways:

1. In some cases a shift from the cascade-type turnover tax system to the TVA system could result in an increase in the average amount

of the rebate on exports and the equalizing levy on imports without an equivalent increase in the average tax burden on similar products produced domestically.

2. In some EEC countries the coverage of the value-added tax might be extended to include products which were previously not taxed or were subject to a tax which was not adjusted at the border when the product entered into international trade.

3. It is anticipated that in some countries the level of value-added tax will increase over the next few years. Germany has already planned an increase from 10 to 11 percent effective July 1, 1968. To the extent it may prove impossible for domestic producers to shift the full amount of any such tax increase to the domestic consumer, full export rebates and compensatory levies will improve the competitive position of these countries.

Nevertheless, a definitive assessment of the effects of the shift to TVA on U.S. trade can be determined, if at all, only when information becomes available on the extent to which rebates and import equalizing duties will rise or fall and on the extent to which changes in indirect taxes will be reflected in the price of products. In view of the many elements operating on prices in any given period of time, evidence of the precise quantitative effect of the transition will be hard to obtain.

The Federal Republic of Germany has now enacted legislation providing for a shift to the value-added tax system. The United States is seeking to obtain the information needed to assess the probable effect of this legislation on U.S. trade. Notification and consultation procedures adopted by the Organization for Economic Cooperation and Development are being used to obtain this information. An ad hoc group of the Trade Committee of the OECD has been established to conduct these consultations. Two meetings have been held and the group is currently awaiting the receipt of further information from the German delegation.

The Governments of the Netherlands and Italy have recently presented to their Parliaments draft legislation for the adoption of the value-added tax system. This development is being closely followed in order to permit an assessment of the effects on U.S. trade as soon as the precise nature of these actions is known.

Evaluating the Effects of Direct Foreign Investment on Exports

Executive Branch Statement

INTRODUCTION

Many factors have recently directed increased attention to the outflow of private capital, particularly in the form of direct investments. The balance-of-payments deficit and efforts to improve it have created demands for better information on the effects of direct investments on other international transactions, especially on our trade balance. The rapid recent growth in both volume and variety of these investments, moreover, has raised many other issues. To what extent, for example, do such investments supplant U.S. exports, or stimulate them? To what extent do they provide new sources of imports in competition with domestic industry? What are their net as well as specific effects on domestic economic growth and on employment?

Efforts to measure the purely statistical relationships between investments abroad and either U.S. exports or imports have not yet been entirely satisfactory. Part of the problem is due to the lack of data, as well as to differences of opinion on the formulation and purposes of necessary studies and the priority which should be given them.

While a new survey of American business investments abroad will soon provide new factual material in this area, the data will only cover the year 1966. An effective analysis of the effects of investment on trade would require information for a substantially longer time span. Moreover, the very nature of the many issues which are involved requires nonstatistical evidence as well, since what is basically involved is a study of competitive status in world trade and what might be required to strengthen it.

The essential purpose of this paper is to review the general problems involved in further study of these issues, including in particular (1) a brief review of the economic changes and motivations that stimulate investment abroad and alter trade patterns, together with some of their implications, (2) the rationale for future studies, and (3) a review of the types of data now available (or soon to be) for further analysis.

The setting of the problem: National and international considerations

Realistic appraisal of the effects of direct foreign investment on exports has to some extent been handicapped by the assumption that national territories constitute primary economic units. This assumption underlies the applicable theoretical formulation, which has strongly influenced empirical studies in this area. The usual analysis is geared directly to investment effects on national wealth, national employment, and national balance of payments in a static economic setting. But comparison of world economic progress since World War II with the similar time span between the two World Wars, suggests that efforts to promote general world prosperity have been the most rewarding approach to national progress as well. The prosperity of nations is most fully assured through international cooperative efforts, and national economic goals are most realistically secured within an expanding world economy. In a world where nations take their international commitments seriously, where trade is freer, and where investment capital moves somewhat more readily, there is need for a different view or perhaps a new theory of the whole process of organizing for and maintaining economic progress.

While it is generally recognized that trade restrictions and controls on capital are likely to retard world economic expansion, it is also acknowledged that the elimination of restrictions and controls is not necessarily, of itself, a sufficient guarantee of progress. World progress is possible, however, with appropriate international cooperation, and the recent agreements on trade and on monetary reform should be durable new links in a long chain of cooperative efforts to promote economic growth, worldwide.

America's postwar record of promoting foreign economic growth reflects both an interest in others' welfare and recognition that political freedom thrives best where economic conditions are favorable. From a more direct economic self-interest, Americans have been able to benefit through participation in foreign markets either by exporting U.S. goods or by investing and participating directly through producing and distribution affiliates operating abroad. From the businessman's point of view these are complementary ways of achieving the main purpose of building and supplying a wider market. While his action may, or may not, be most advantageous for his home country, it is important that the basis of judging national advantage be sound. This requires an understanding of how businessmen are motivated and an evaluation of the economic effects of their actions in the broadest possible context.

Investor reaction to general economic change

In many cases, industry spokesmen have explained their decisions to invest abroad as a response to changes in competitive conditions. Certain companies supplying foreign markets through exports have found it necessary to develop more competitive foreign production in order to establish or maintain a market position. Exports may be at a disadvantage even in the relatively protected channels of intracorporate organizations. As foreign economies have increased their productive capacity, the lower factor costs abroad have heightened their competitive vigor in many industrial categories. Threatened by a loss of export markets, and encouraged by a growth in the size of foreign markets, a frequent response is to build producing capacity in the area or in some geographically favored location with competitive access to the market. In these cases the problem for the company is to decide whether or not the foreign market is important enough to justify the investment expenditure abroad. If the investment is essential to retain or fully develop the foreign market and the venture itself offers a satisfactory return through foreign earnings, it would probably be favorable for the balance of payments, though its effects on trade may not be as certain.

Obviously, not all and probably only a minority of foreign investment decisions by U.S. companies have been to maintain an existing foreign market share. Generally the U.S. companies have wanted to open up new markets and were attracted by the growth potentials abroad. The pace of economic progress, rising standards of living, and expansion of consumer demand would not have been possible without foreign expansion in the capacity to produce and close relationships to the market itself.

For example, as European per capita income reached the levels where consumer durables—automobiles, etc.—were within reach of many families, it seemed inevitable that many of these goods would also be produced there. If production within Europe had not expanded in these fields, economic growth might have been much less rapid. In the circumstances, U.S. manufacturers sought to participate in ways open to them which included expanding foreign facilities to develop or maintain a share in those markets.

Supplying mass markets abroad with consumer goods manufactured in the United States was not a realistic alternative where foreign factors of production, including skilled labor, were available. In order to be consumers, European and Japanese workers had to be employed, and there was no alternative to employment in manufacturing if these foreign economies were to recover and progress. American industry could not develop markets abroad in stagnant economies, but expanding economies also were competitors. Part of the price of progress was to meet competitive pressure in specific market categories, but compensation was available through growing foreign demand for other U.S. goods.

The rapid economic growth in Europe, Japan, Canada, and elsewhere has allowed U.S. exports to continue growing at a brisk pace. The favorable economic changes abroad have also had favorable effects on the United States, and as long as the U.S. economy remains sufficiently competitive and adaptable in production and in developing market outlets for new products, it will continue to benefit from foreign economic expansion.

The United States has been able to maintain continued growth in exports and a surplus in merchandise trade, although foreign producers have expanded in areas formerly supplied predominantly from the United States. This clearly reflects our adaptability to changing world conditions, and our ability to adapt was, in turn, facilitated by healthy growth of the world economy. The freeing of trade and the widening of new trade opportunities has been an obvious part of this process. As the most advanced country industrially and technologically, the United States gains enormously through general expansion in new areas where its industry has a superior capacity to meet new foreign demands.

The gain is not only in terms of the initial effects on exports but also in terms of a general upgrading of U.S. production into the more advanced or sophisticated industrial lines. The concomitant effect on factors of production, especially labor, is a shift into uses of higher productivity and consequently higher worker incomes and rates of return on capital. This process of upgrading has been reflected in demand for a better educated and a more highly skilled labor force, and it clearly has raised the general U.S. standard of living. Alternatively, actions to protect less competitive industries for the purpose of conserving their wage and profit levels would retard improvement from those levels.

Investments and trade in manufacturing sectors are the most indicative of the changes in this country's competitive status and of its ability to accommodate to change through continuing progress in science and technology. It is not surprising that increases in foreign investment in manufacturing during the past decade have been in the areas most advanced industrially. At the same time, exports of manufactures have increased in a closely related pattern.

The complex relationships between investment and exports can be the subject of meaningful study only if they are analyzed in the context of basic economic forces for change. The patterns of increase in both categories, as shown in the following table, are closely parallel, and they reflect the market attractions for American business supplying directly from the United States and from plants abroad. The percentages under the following headings show the distribution of U.S. foreign investment activity in the last decade by regions and industrial sectors compared with a similar distribution of the increase in exports.

[Percent distributions]

	Value of investments,[1] Dec. 31, 1966	Cumulative plant and equipment expenditures[1] 1957-66	Increase in exports of manufacturers, 1957-66
Total, all areas	100	10J	100
Canada	35	27	33
Europe	40	46	41
Other	25	27	26
Total, manufacturing	100	100	100
Chemicals	19	20	18
Machinery and transportation equipment	41	44	57
Other manufacturing	40	36	25

[1] In manufacturing affiliates.

Evaluating investment activity

By evaluating the investment decisions of U.S. companies in the context of world economic change, their desire to hold a share in foreign markets and to participate in the production process can be better understood. While it is appropriate to ask the assistance of internationally organized companies in meeting U.S. balance-of-payments objectives, they cannot be accountable for adverse trends due to general economic change. They can be expected to exert their best efforts to improve balance-of-payments performance, but ad hoc statistical criteria that have been suggested (often by industry, itself) are of doubtful use in judging results.

Under the voluntary program with the business community, the Department of Commerce has avoided passing judgment on the investment plans of individual corporations. The goals or targets for improvement in contributions are based upon changes from results in previous periods. Participants are asked to improve upon past performance, but they are not expected to meet some criterion involving measurement of contributions relative to those of other corporations. They are being asked to reduce the adverse effects of foreign investment through foreign borrowing or other means open to them, but they have not been asked to justify foreign operations by statistical measures of balance-of-payments "payouts" as implied in some statistical studies of direct investment abroad.

Efforts directed toward restraining private capital outflows have encouraged businessmen and public administrators to take an active interest in discussions on the economic consequences of foreign investment. This, in turn, has increased the demand for empirical studies and for statistical data that might serve to demonstrate the relationships between capital outflows and other balance-of-payments transactions. Some of these statistical relationships are relatively straightforward, and generally interpreted in similar fashion by all careful investigators. But other crucial relationships are highly complex, extremely difficult to measure, and unfortunately subject to a variety of interpretations. Among these, the effects on imports and exports are easily the most important in any meaningful study of the consequences of foreign investment, and they also are the most difficult to evaluate.

By much the same token, as investments have continued to rise and as trade barriers have been steadily reduced, notably with the conclusion of the Kennedy round, competition for world markets has or soon will be entering a new and intensified phase. The growth in numbers and significance of preferential trading blocs of countries has further augmented the pace of change and affected the interrelationships of trade and investment.

A statistical analysis of these relationships would be difficult to conduct at this time since data now available would give only partial and inconclusive results. The new survey of American business investments in foreign countries now underway will include information on the extent to which exports are channeled through and promoted by foreign affiliates of U.S. firms. However, even these data will cover only the single year 1966, and will not fill all of the important informational gaps for definitive analysis of the subject.

Rationale of studies on foreign investment and exports

On the surface, it might appear relatively easy to measure the relationship between foreign investment and exports, but this link is much more tenuous and complex than mere statistical measures suggest. While investment activity has some obvious direct and indirect effects on exports, it is only one of several factors and, in many cases, has only a marginal role in determining the level of exports.

Most notably for postwar Japan but also for some European countries, foreign investments were not involved in rapid expansion of exports. In these cases the internal cost structure, the distribution of income, and the relative competitiveness of output were conducive to a rapid increase in foreign sales. In contrast, despite active sales efforts and extensive foreign investments the United States has not maintained its relative share in certain categories of world trade.

While only competitive conditions in their broadest interpretations are necessary to explain most trade results, international business concerns do have some capacity to determine or at least influence patterns of production and trade. Business decisions are, in turn, conditioned by other institutional factors including in recent years, for example, the development of regional, preferential trading groups (especially the European Economic Community), the Canadian-United States

Automotive Products Agreement, various world trade and monetary accords, and finally the U.S. balance-of-payments programs. Factors such as these have influenced both U.S. foreign investment and U.S. exports, and there is a need for further study to analyze these broad, special influences.

If a country does not have the wide competitive margins that tend to generate export expansion easily, it may gain alternative benefits through special institutional arrangements. Much of the interest of business leaders in the study of trade among units of the same corporate family is based on their conviction that the United States can, or does, obtain important benefits from these organizational ties. They have attempted, therefore, to answer questions as to the quantity and duration of benefits gained through the expansion of direct investment. The conclusions derived in such studies would seem to be that the establishment of foreign producing affiliates usually provides foreign sales outlets for U.S.-made products, as well as creating demands for U.S. equipment, parts, intermediate products, and other items which result in higher U.S. exports than could be expected in the absence of any direct investment abroad.

On the reverse side, an adverse impact through displacement of exports from domestic sources by shifting production abroad may also result. Little systematic or comprehensive knowledge exists by which it can be appraised. Such displacements may well have been the result of the original competitive forces adverse to exports which motivated companies to invest abroad in the first instance. Any analysis of the impact of investment activity on export patterns must not ignore the complexities of this mutual interrelationship.

A basic problem, therefore, is to formulate a rational set of cause and effect relationships between investment and exports. Investment abroad may encourage a variety of different types of exports—for initial construction of facilities, for processing in the completed plants, for repair and maintenance in the operation, or for resale to foreign customers. The cause-and-effect relationships may span several time periods; some exports are influenced immediately but may be affected over a number of years at the same or at varying degrees. Production abroad may create sales which could not have been made through exporting, whether because of tariff and nontariff barriers or transport costs or through marketing difficulties and other adverse considerations.

On the other hand, exports of other goods may be retarded or eliminated. Production abroad by one U.S. corporate group may displace its own or others' exports from the United States. The displacement may occur only in the country with the producing facility or it may occur in other countries that have access to the new foreign supply, as in the case of other partners of a preferential trading bloc.

In addition there may be a variety of secondary effects on U.S. exports. If U.S. investment abroad has a favorable influence on income growth, the foreign country may become a better customer for a variety of U.S. goods. New foreign sales might also be promoted through the presence of the new affiliate abroad acting as an agent for other U.S. manufacturers, or selling other products of the same firm and by establishing a market position and distribution facilities to promote other sales.

Meaningful analysis of the relevant cause and effect relationships is difficult without clear knowledge of the many, often complex motivations for investment abroad. In an earlier period, foreign investments were often made primarily to obtain raw materials for domestic markets. Imported oil from Venezuela, sugar from Cuba, fruit from Central America, and so forth, were supplied by U.S. investors.

Since World War II, investments in primary production such as oil in the Middle East and iron ore in Australia have been undertaken mainly to supply foreign countries. These supplies may have adverse effects on U.S. exports either by direct replacements in the same commodity categories or, indirectly, by giving foreign manufacturers a cheaper source of raw materials supply than that available in this country. This availability of cheaper raw materials for foreign industry may, in turn, also motivate our manufacturers to build facilities abroad.

If specific U.S. exports are becoming uncompetitive in foreign markets, a foreign producer may sometimes be able to capture the market unless the American supplier also shifts his production abroad. These protective or defensive investments can also be conditioned by the need to avoid foreign tariffs and other foreign market restrictions.

In summary, the initial problem of establishing significant effects of foreign investment on exports is complicated by their great variety—some working to benefit exports and others to restrict them, and some immediate or short lived while others extend over long periods of time. They are not readily measurable by examining commodity or country data on overall exports, or reports by individual corporations, because the ramifications can be exceedingly broad, and the indirect effects of the investments may be stronger than those which appear most closely related to them.

A second major problem, therefore, is the practical one of measurement in this complex set of influences, both statistical and qualitative. Even if we measure only those exports (or changes in exports) that are directly attributable to existing and/or to new investment abroad, it is necessary to know the alternative trade and other flows that would have occurred in the absence of the U.S. investment.

For example, if a U.S. affiliate builds a foreign plant it may purchase capital equipment in the United States. If the plant were built instead by a foreign interest, U.S. capital equipment might nevertheless have been used in its erection. Similarly, basic materials from the United States may have special preferences abroad among U.S.-owned firms, but in other cases the competition for U.S. suppliers may be from foreign sources developed by U.S. firms. Exports of semiprocessed and finished goods may be more directly determined by intercorporate relations, but the latter especially are also subject to displacement effects as investments are made abroad.

The problems of measuring displacement effects are the most troublesome aspects of an empirical investigation. Substitution of foreign for U.S. production is the seemingly apparent objective in much foreign investment, but determining what would be lost anyway, through the general processes of recent economic change, requires agreement on assumptions that would be difficult to obtain.

Availability of data for future studies

The Balance of Payments Division in the Office of Business Economics (Department of Commerce) has regularly compiled data on direct investment capital transactions and on a series of related inflows including dividends and other income, royalties and other receipts, and special financial transactions. The portions of total merchandise trade directly related to investment activity abroad have been compiled periodically, but these series are less complete and are based on voluntarily reported samples.

The Division is now gathering data for a new survey of business investment abroad based on 1966 data. It will include information on exports to foreign affiliates by type of commodity, sales of foreign affiliates including their exports to the United States and third countries, and the sources and uses of funds in U.S.-owned foreign operations. Information on exports to foreign affiliates will be more complete than any previously collected, and should provide new insights into the relationships of exports with foreign investment activity. This survey will facilitate comparative analysis among industry groups to indicate where exports have been most influenced by the existence of foreign operations.

Obviously, these data alone will not give unequivocal answers to many of the questions that have been put forward on the relationships of exports and investment. The data will, however, be helpful for studies on the extent to which U.S. exports are channeled to and promoted by foreign affiliates of U.S. firms. Problems of interpretation will still remain, and definitive calculations on all the effects of direct investment should not be expected even when these data are available.

Consequently, additional data based on actual business experience and judgment, particularly of a qualitative nature, are essential to provide a sound basis for future policies in this area. It is hoped that business firms with extensive experience, both in exporting and producing abroad, will participate in future deliberations and studies such as those now underway to review present trade policies.

Tariff Preferences for Products of Less-Developed Countries

EXECUTIVE BRANCH STATEMENT

One of the key trade policy issues currently facing the world trading community is the question of tariff preferences for developing countries. While this submission is limited to this issue, it should be clearly recognized that tariff preferences are but one aspect of trade policies relating to the special trade problems of developing countries.

Trade preferences are, of course, nothing new. We have maintained a preferential trading arrangement with the Philippines for some time though this will terminate in 1974. The members of the British Commonwealth have extended mutual tariff preferences since 1931. The French and other European countries have had similar arrangements with African countries for many years. The United States has, in the past, opposed preferences both as a matter of principle and because we were skeptical that a workable, equitable, and meaningful system could be developed. Our experience with the preferential arrangements that have existed up to now has generally been negative—while they have conferred some advantages on particular developing countries, they have had serious disadvantages.

Among these disadvantages were that vested interests were built up in maintaining margins of preference and preventing trade liberalization; preferences often stimulated inefficient production and a misallocation of resources in particular countries; the higher prices to consumers of products under such systems tended to reduce consumption of the primary products the export of which is so vital to developing countries; and, finally, reverse preferences—that is, preferences in favor of particular developed countries in developing country markets—prevented developing countries from utilizing their limited foreign resources in the most economical manner.

In April of this year, President Johnson made the following statement to the chiefs of state of the inter-American system at Punta del Este:

> We have been examining the kind of trade initiatives that the United States should propose in the years ahead. We are convinced that our future trade policy must pay special attention to the needs of the developing countries in Latin America and elsewhere in the world.
>
> We have been exploring with other major industrialized countries what practical steps can be taken to increase the export earnings of all developing countries. We recognize that comparable tariff treatment may not always permit developing countries to advance as rapidly as desired. Temporary tariff advantages for all developing countries by all industrialized countries would be one way to deal with this.
>
> We think this idea is worth pursuing. We will be discussing it further with Members of our Congress, with business and labor leaders, and we will seek the cooperation of other governments in the world trading community to see whether a broad consensus can be reached along these lines.

A number of developments led to this statement:

First, it had become increasingly clear that there was a trend toward the proliferation of preferential trading arrangements between certain developed countries and developing countries which threatens to divide the world into "north-south" trading blocs. Should this happen, we believe it would be a tragic step backward in the long struggle to promote a liberal world trading system for both developed and developing countries. Recently, the developing countries themselves have become dissatisfied with these arrangements. They have pressed for a system of generalized tariff preferences to replace existing arrangements. Neighboring countries of the developing world who frequently produce the same kinds of products face discrimination in developed country markets when one receives a preference and the other does not simply because of the historical fact of colonial relationships. The system pits the poor against the poor and has neocolonial overtones. It is made to order for creating friction and tensions among the very countries who most of all need to cooperate with each other economically and for their mutual prosperity.

Second, there was the special problem of Latin America, the one major area of the world that has historically had no trade preferences in any market; instead, it has had to cope with discrimination against its exports nearly everywhere. The Latin American governments have been urging the United States to do something about this inequitable situation.

Finally, there was the fact that the United States faced increasing discrimination in developing country markets because many of these preferential arrangements provide for the granting of preferences by developing countries to developed countries.

It might have been expected that with the growing nationalism characteristic of the newly independent countries, they would find these economic ties to their former mother countries onerous, particularly since the reciprocal provisions often oblige them to pay more for their imports than they might otherwise. Nevertheless, the apparent short-term advantages of preferred markets for their exports, and the economic assistance which usually accompanies these arrangements, have apparently clouded their view of their own long-range economic and political interests.

While the United States has strongly opposed the spread of discriminatory preferential arrangements between the developed and the developing countries in the GATT, OECD, and other organizations where trade policy is discussed, few other developed or developing countries were prepared to support us. It became increasingly clear that the issue was perhaps not so much between a most-favored-nation policy and preferences but rather between generalized and discriminatory preferences.

Our experience in the Kennedy round is also a factor in determining our approach to preferences. Considerable progress in lowering tariffs on products of interest to the developing countries on a most-favored-nation basis was, of course, achieved in the Kennedy round. However, progress was not satisfactory in some areas. The important area of tropical products, on which many developing countries heavily depend for their export earnings, was perhaps the most disappointing in this regard. The major reason for the lack of progress on tropical products is the fact that some developed countries were unwilling to grant concessions on a most-favored-nation basis on products presently imported under preferential trading systems, since a most-favored-nation reduction would reduce the margin of preference for their associated developing countries. A generalized preference scheme would eliminate this barrier to further most-favored-nation tariff reductions on tropical products.

Moreover, while the Kennedy round did succeed in reducing duties on manufactures and semimanufactures by some 35 percent, tariffs remain a significant effective barrier against imports of a number of products of key interest to developing countries. It is highly problematical whether the major developed countries will be prepared to enter into another round of MFN tariff reductions in the near future. Moreover, even if such negotiations took place, it seems questionable whether any but a few developing countries would be able to derive significant advantages from most-favored-nation duties reductions. Perhaps these countries require a "head start"—a system of temporary generalized preferences which would provide the basis for the development of sound and efficient industries.

What are the prospects for agreement among developed countries on generalized preferences, what are the problems involved, and what could we expect from such a system?

In early 1966, the United States, Germany, France, and the United Kingdom, in a special group of OECD, began to explore some of the issues involved in preferences. This group has recently reached agreement on a set of principles or guidelines which might form the basis for an internationally acceptable system of tariff preferences for developing countries. However, while this agreement is a significant breakthrough in moving toward an international consensus on this important subject, it should be noted that there are many vital elements which remain to be filled in. The matter will be discussed further in the OECD and UNCTAD.

Some of the major issues involved in implementing generalized preferences are as follows:

Which countries should receive preferences? While most countries can be clearly identified as developed or developing, there are a number of borderline cases. Objective measurement standards—per capita income, gross national product, industrial production, and so forth, all have their disadvantages. One solution which has been proposed is to extend the benefits of the scheme to any country which claimed developing country status.

What products should be included in the scheme? There seems to be general agreement that at a minimum, manufactures and semimanufactures should be included, but at what stage does a primary product become a semimanufacture? Should processed agricultural products be included? While the fact that most developing country exports are primary or agricultural goods would appear to support inclusion of these products in the scheme as well, the most important elements of protection on agricultural products are nontariff in nature, and a simple extension of tariff preferences would be inappropriate. Therefore, special treatment, product group by product group, may be necessary.

What about those products in which the developing countries are already competitive? The purpose of preferences is to give developing countries a head start where they are not able to compete on an equal basis with industrialized countries. Therefore, any preference scheme will exclude industries which do not need this kind of special tariff treatment.

A related question is that of safeguarding domestic industry in the developed countries should imports of goods included in the scheme expand too rapidly. The developed countries are not likely to be prepared to grant tariff preferences without such safeguards, any more than they are prepared to make most-favored-nation duty reductions among developed countries without an escape clause. It should be noted however, that for most manufactured and semimanufactured products, the developing countries would not be fully competitive with domestic production in the industrialized countries, even with preferential tariff treatment.

How deep should the tariff cut be? Tariffs vary widely from product to product and from country to country and it may not be possible to establish a universal rule on this. To be effective, the preference would have to be in the form of duty-free treatment or a substantial reduction below the most-favored-nation rate.

Any new plan should have such trade coverage and access provisions as are necessary to achieve the objective of eliminating the discriminatory treatment now accorded different groups of developing countries in certain markets and improving the trade opportunities of all such countries. Existing preferences should, to the largest extent possible, be subsumed in the new generalized plan. Also, in order to achieve fair "burden sharing" among the developed countries, all important industrialized trading countries should participate on a broadly equivalent basis.

Provision should be made for eventual elimination of the so-called reverse preferences—tariff or quota preferences extended to particular developed countries by developing countries. There is no justification for such arrangements, which penalize the developing countries by denying them the opportunity to buy in the most favorable market. At the same time, it is not reasonable to expect countries to grant preferential treatment to developing countries which discriminate against their trade.

Finally, what should be the long-range outlook for preferences? A preference scheme should not be allowed to create vested interests in margins of preference and impede further liberalization of trade among developed countries; such a development would not only be contrary to the interest of the developed countries in expanding world trade, but it would be contrary to the long-run interests of the developing countries themselves. Neither should preferences be interpreted by the developing countries as a permanent advantage which would obviate the necessity for developing an efficient industry eventually capable of competing on the world market on a most-favored-nation basis. Therefore, tariff advantages should be temporary and degressive.

If these and a number of other major problems can be resolved satisfactorily, generalized tariff preferences could contribute to the economic development of the developing countries by opening up opportunities for increased export earnings and by fostering the growth of new export industries. In order to obtain the capital equipment needed to sustain the economic development process, these countries must expand their exports; economic aid, as vital as it is in this process, cannot do the job alone. Other factors, such as economic and financial stability, the attraction of investment in export-oriented industries, and proficiency in marketing goods abroad will determine to large extent the ability of firms in the beneficiary countries to take advantage of any preferential tariff rates established for them. It is up to the developing countries to utilize these opportunities, for example, by rationalizing their own economic systems, encouraging private investment, and participating in regional markets which will be large enough to justify mass production and specialization.

STATEMENT OF ROBERT M. STERN, PROFESSOR OF ECONOMICS, UNIVERSITY OF MICHIGAN, ANN ARBOR, MICH., ON NEW DIRECTIONS IN U.S. TRADE POLICIES TOWARD THE LESS DEVELOPED COUNTRIES

SUMMARY

With the conclusion recently of the Kennedy round of tariff negotiations and expiration of the Trade Expansion Act of 1962, the time is opportune to seek new directions in U.S. trade policies. In this regard, movements toward increased protectionism must be vigorously resisted as being against the general interests of American consumers and business firms and because they would invite similar actions from abroad. New directions in trade policies should accordingly be framed with the end in mind of furthering the objectives of trade liberalization which are to improve economic well-being both in this country and abroad. What is important to realize, however, is that while further trade liberalization along traditional nondiscriminatory lines may be beneficial to the already industrialized countries, it may not have much to offer the less developed countries (LDC's). The LDC's are for this reason seeking to alter the world trading system to make it function explicitly in their behalf by obtaining more favorable treatment of and discriminatory preferences for their exports of primary commodities and manufactured goods to the United States and the other industrial countries.

LDC aspirations could be met in part by making the present system work more efficiently and equitably. But since this would involve many changes in existing U.S. policies and programs, it may be unrealistic to expect that much could be done in a short time and with a significant enough impact. It might be more fruitful, therefore, to change the existing framework to make possible preferential treatment for the exports of the LDC's. This should not be done by price-raising schemes for primary commodity exports because such schemes are difficult to administer and may waste resources. But a system of trade preferences for manufactured goods exported by the LDC's is well worth considering since such exports may presently be hampered significantly by high "effective" rates of tariff protection in the United States.

STATEMENT

With the conclusion recently of the "Kennedy round" of tariff reductions and the expiration of the Trade Expansion Act of 1962, the time appears opportune to seek new directions in U.S. trade policies. The choices open to this Nation range from the one extreme of unilateral removal of all barriers to imports to the other extreme of unilateral imposition of additional barriers to shut off imports completely. The first extreme of freeing all imports would improve the Nation's welfare by lowering the prices of foreign goods purchased by American consumers and business firms. It would also result in a more productive arrangement of national resources as our relatively less efficient import-substitute industries contracted and export industries expanded. The opposite extreme of shutting off all imports would make foreign goods prohibitively expensive. This would encourage resources to move from our highly productive export industries to employment in relatively less efficient industries that would be encouraged to produce goods to take the place of imports.

If we think of changes in trade policies as representing a movement along a continuum between the two extremes mentioned, it should be clear that the national objective which has been sought via the Kennedy round under the authorization of the Trade Expansion Act has been to move the United States closer to the ideal extreme of free trade. What is important to emphasize is that this does not represent a new departure in our trade policy. Rather it must be understood as a continuation of the policy of trade liberalization which was instituted more than 30 years ago in this Nation's reciprocal trade agreements legislation. To move now in the direction of outright protectionism would be contrary to our national self-interest and our role as a world leader. It would encourage other nations to take similar actions in retaliation and self-defense. Everyone would be worse off in the end.

The foregoing considerations dictate that U.S. trade policies should be formulated to continue the pursuit of trade liberalization. The question that now arises concerns the direction these policies should follow. That is, should we move along general nondiscriminatory lines as in the Trade Expansion Act or along lines that are designed to discriminate in favor of the less-developed countries (LDC's)? Since the grounds for new trade policies favoring the LDC's are not widely understood and since such policies would represent a radical departure from the past in the case of the United States, the present paper will seek to review some of the background issues which may help to shed some light on the choices the Nation has before it.

We shall begin by presenting some facts which are relevant in evaluating the relative economic position of the LDC's and the frustrations they perceive in the present-day arrangements for international trade and finance. We shall then discuss from the standpoint of the LDC's the major issues arising out of these arrangements. Some indications will be given thereafter of possible changes in policy within the existing framework of arrangements. We shall discuss, finally, the possible directions in which this framework might be altered by the United States for the explicit benefit of the LDC's.

The relative economic position and frustrations of the LDC's

We all know the old refrain that "the rich are getting richer and the poor are having children." This may remind somebody of a song. But to about two-thirds of the world's population, it sounds like real life. We can observe in this regard that although the rate of growth in gross national product (GNP) in the world's LDC's between 1957-58 and 1963-64 was about the same as in the industrial countries (4.5 percent per annum as compared to 4.4 percent), on a per capita basis GNP growth per annum in the LDC's was only 2.1 percent as compared to 3.1 percent in the industrial countries. In other words, the rate of population growth in the LDC's (2.4 percent per annum) during this period was nearly double that of the industrial countries (1.3 percent).[1] The significance of this global widening of income differences can perhaps be more readily appreciated when we note that in 1963 average per capita GNP was $1,122 (in 1962 prices) for all the industrial countries as compared to $141 for all the LDC's.[2]

Other facts worth noting are that the exports of the industrial countries increased annually by 8.6 percent during 1950-60 and 8.4 percent during 1960-65. Comparable rates for the LDC's in the two periods were 3.6 and 5.8 percent. These differences in rates of export growth were a consequence in large measure of increased trade among the industrial countries themselves rather than trade with the LDC's.[3] Note finally that the amount of foreign aid as measured by the net official disbursements of the industrial countries was practically unchanged at a nominal level of about $6 billion annually for the period. If we take into account interest payments by the LDC's and make allowance for the significant overstatement of the aforementioned nominal flow due to the overvaluation of surplus agricultural commodity aid and the excess costs imposed on the LDC's by aid tying, the foreign aid transfer of real resources to the LDC's may presently not be much greater than about $4 billion annually.[4]

The facts just recited sum up the basic frustrations of most LDC's in trying to accelerate their rates of economic growth, their belief that the present system of world trade works primarily for the enhancement of the industrial countries, and that present foreign aid levels are too small in general to have much of an impact upon LDC growth. These frustrations and beliefs were what lay behind the convening of the United Nations Conference on Trade and Development UNCTAD) in Geneva in the spring of 1964. The outcome of UNCTAD was a codification of LDC aspirations on these matters of trade and development into a series of recommendations and the creation of a new U.N. agency dedicated to carrying out these recommendations. The UNCTAD recommendations were designed to alter the world trading system to the benefit of the LDC's by more favorable treatment of and discriminatory preferences for their exports of pri-

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[1] John Pincus, "Trade, Aid and Development: The Rich and Poor Nations" (New York: McGraw-Hill Book Co., 1967), p. 72. There were of course substantial variations in per capita GNP growth rates by region. See ibid. for details.

[2] Ibid., pp. 61 and 71. The averages by region were: Latin America, $333; Middle East, $222; Asia, $92; and Africa, $105. These differences as compared to the industrial countries are somewhat overstated since the dollar exchange rates used tend to understate the LDC per capita incomes in terms of their purchasing power equivalents.

[3] Ibid., pp. 58 and 60.

[4] Ibid., p. 316.

mary commodities and manufactured goods and to seek larger amounts of foreign aid on more favorable terms. In a remarkable display of cohesion, the LDC's voted formally as a group in favor of all these recommendations. In a remarkable display of intransigence, the United States opposed or abstained on most of the recommendations. Europe and the Soviet bloc were somewhere in between.[5]

The United States apparently emerged from UNCTAD as the arch-defender of faith in the present nondiscriminatory, free-trade philosophy underlying the present international trading system, having given the impression of being unwilling or unable to see any substantive merit in the charges made by the LDC's against this philosophy and the actual operation of the system and their proposals for altering it. Since UNCTAD is scheduled to be convened again in full in New Delhi in early 1968, a reassessment of the U.S. position and policies vis-a-vis the LDC's has already been set in motion in order to forestall another debacle on the diplomatic front like the one in 1964.

The major issues in the present-day system of international trade and finance

The major issues under discussion go to the very foundation of the present world trade and financial system. The pillars of this system can be characterized in terms of nondiscrimination in trading relationships, reciprocity in tariff bargaining, orthodoxy in the reliance upon monetary policy to deal with domestic inflation and balance-of-payments difficulties, and the insistence on "credit worthiness" in the financing of long-term projects for economic development. Institutionally, these matters are the responsibility of GATT in the case of trade and tariffs, the IMF in the case of monetary stabilization, and the World Bank (IBRD) in the case of development financing. These institutions have evolved to the point where they now play major roles in the world economy. But these roles have turned out to be of much less consequence than could have been foreseen 20 years ago.

Thus, on trade matters, the industrial countries have sought waivers on their GATT obligations, violated the agreement by establishing new preference areas, and bypassed the agreement by creating new protective arrangements. We have witnessed, for example, the spectacles of the United States obtaining a GATT waiver in order to protect American agricultural producers, the formation of the European Common Market which in part is designed to discriminate against outsiders and to grant special preferences to former French colonies, the Canadian-American automobile pact, and the cotton textiles arrangements which are intended to protect the United States and the other industrial countries by restricting imports from the low-cost LDC producers. GATT has sponsored a number of large-scale rounds of reciprocal tariff reductions among its members in the postwar period, the most significant being the recently concluded Kennedy round. These tariff reductions have so far been of little benefit to the LDC's, however, since the products affected were produced and traded primarily by the industrial countries. Comparatively little progress has been made in contrast in reducing tariffs on products of interest

[5] A record of the negative votes and abstentions of the major developed countries is given in Harry G. Johnson, "Economic Policies Toward Less Developed Countries" (Washington: The Brookings Institution, 1967), pp. 251–54.

to the LDC's because of producer opposition in the industrial countries, especially in technologically less advanced industries that have long been highly protected.

The founders of the IMF did not foresee the role which the U.S. dollar was to play as a reserve currency nor did they endow the Fund with resources large enough to deal with major balance-of-payments crises and to meet increasing world liquidity needs. Thus, the gold exchange standard of today is potentially unstable due to the sizable accumulations of foreign-owned dollar balances that have resulted from the continuing deficits in the U.S. balance of payments since 1957. The industrial countries have found it convenient, moreover, to deal with international financial matters cooperatively as a group rather than individually through the IMF. In an effort to keep its balance-of-payments deficits within bounds and thus to maintain the stability of the dollar, the United States has seen fit to institute a series of ad hoc measures and controls. Most importantly from the standpoint of the LDC's, it has tied practically all of its foreign aid to domestically produced goods. The effect of these procurement restrictions is to deprive the LDC's of much-needed flexibility in their development efforts and to deny them the opportunity of seeking out the cheapest international sources of supply to meet their requirements. Pending the elimination of the U.S. balance-of-payments deficit and changes in the international monetary system which will free the United States from its special responsibilities as a supplier of reserve currency, there seems to be little prospect of doing away with aid tying. This makes it all the more essential as far as the LDC's are concerned to seek measures which will minimize the excess costs to them that arise out of aid-tying practices.

Foreign economic aid is disbursed for the most part on a bilateral basis rather than on a multilateral basis through organizations such as the World Bank, and it is looked upon by the industrial donor nations mainly in foreign policy rather than strictly in commercial terms. Thus, as Pincus has noted, foreign aid as an instrument of foreign policy may involve many different motives: "Military security, maintenance or extension of power and prestige (and its corollary, a latent fear of change), economic advantage, charity, and a sense of community." [6] Since these motives may sometimes be conflicting and since success in their achievement is often hard to measure from the standpoint not only of the donor but also of the recipient countries, it is small wonder that foreign aid has come to be looked upon with disenchantment in the industrial countries and it has proven difficult in recent years to argue persuasively in favor of larger aid commitments. Nor does it seem very hopeful in this light to expect bilateral aid programs to give way significantly to the provision of aid on a multilateral basis through the World Bank and other international development-financing agencies.

Pincus has pointed out in this regard that it is likely that additional foreign aid and concessions to the LDC's will be realized only in response to such factors as important new Communist expansion, possible reductions in military spending, a major reorientation of policy in favor of giving more aid deliberately and without strings, or as a

[6] Pincus, op. cit., p. 7.

consequence of the persistence and skillfully applied pressure of the LDC's themselves.[7] As already mentioned, UNCTAD is clearly one of the major avenues by which the LDC's will seek to make their pressure effective. The question is then how may the United States and the other industrial countries respond to this pressure. Clearly, the choice is one of responding within the existing international institutional framework or changing this framework.

Possible directions of policies within the existing framework

Johnson has made the observation that:

> Most of the serious criticisms that can be leveled against the present system of international trading relationships (the GATT system) are criticisms, not of the trade liberalizing intentions and objectives of that system, but of the ways in which its operating rules and methods have been warped to serve protectionist ends.[8]

It would thus appear in this light that actions of significant benefit to the LDC's might well be undertaken by the United States (and the other industrial countries) within the present international institutional framework.

Such actions might involve: (1) reducing the inefficiencies in aid policies which result from the emphasis upon bilateral aid, project rather than program assistance, and aid tying; (2) encouraging the primary commodity export trade of the LDC's by reducing or eliminating the barriers to this trade which exist presently in the form of tariffs, quantitative import restrictions, excise taxes, and other devices such as mixing regulations and discrimination by government trading monopolies; (3) reducing or eliminating tariff and nontariff barriers which impede existing and potential exports of manufactured goods by the LDC's; and (4) adopting a more liberal immigration policy for the less skilled and educated segments of the LDC population and a less liberal policy in order to discourage the emigration of educated and professionally trained people from the LDC's.[9]

The difficulties inherent in such actions are evident since fundamental changes would be required in many domestic policies and programs of long standing in the United States. For example, action on the aid front would require significant changes in the orientation of foreign policy, the removal of the U.S. balance-of-payments deficit, and changes in the system of creating new international monetary reserve assets to ease the pressure on the dollar. Depending upon the nature of the primary commodity, major changes might be necessitated in domestic support programs, tax systems, and the location of the processing of materials. A significant rise in imports of manufactured goods would require an effective program of adjustment assistance especially for workers that could not move or be retrained readily for other employment. Changes in immigration policy along the lines mentioned above would be diametrically different from existing policies.

The chief appeal of the actions described above is that they would result in an increase in economic efficiency and welfare in both the United States and the LDC's, particularly if it were possible by means of these actions to encourage removal in the LDC's of the various distortions in their economies caused especially by their policies of import

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[7] Ibid., p. 15.
[8] Johnson, op. cit., p. 241.
[9] Ibid., pp. 78–109.

substitution, inflation, and currency overvaluation. Strong though the appeal of efficiency may be, however, there is the question of how realistic it is to believe that much progress can be made in changing existing policies in the United States in the next 5 or 10 years. And even if certain policies are in fact changed, it is by no means clear that this will be enough to stimulate LDC growth significantly and satisfy LDC aspirations for material improvement. Doubts on these scores have led the LDC's to place great emphasis on changing the philosophy and operation of the international trading system to function explicitly in their favor. They have in particular sought two objectives: to obtain more favorable prices for their primary commodity exports and tariff preferences to encourage their industrial growth and their exports of manufactured goods to the advanced countries.

Policies designed to change the existing framework

In theory at least, schemes to raise commodity prices work best when demand for the commodity is relatively price inelastic, although as Johnson has pointed out, optimal restrictions could be devised for any specified ranges of elasticities.[10] While the implementation of price raising schemes would benefit a number of LDC's, such schemes have little to commend themselves because of their administrative difficulties and the inefficiencies in resource allocation which they entail. In certain circumstances, nevertheless, it may turn out that price raising schemes are the only way in which income transfers can in effect be made from the industrial countries to the LDC's.

The question of trade preferences for LDC-manufactured goods exports has taken on special significance and interest because of the persuasive arguments from the LDC point of view that may be found in the writings of Raul Prebisch,[11] the remarkable mentor and first Secretary-General of UNCTAD, and because of the major breakthrough which has taken place recently in tariff theory with the development, attributable in great part to Johnson, of the theory of "effective protection."[12] As the LDC's see it, tariff preferences for their manufactured goods exports would enable them to industrialize more completely and rapidly than would otherwise be possible. In particular, their rationale for preferences is framed in terms of the traditional benefits arising from the development of infant industries. But, as Johnson has noted, this is economically dubious since the industries that are most highly protected in the industrial countries and that might therefore be the subject of preferences are not necessarily the ones that would bring infant industry benefits to the LDC's.[13] Preferences must therefore be looked upon mainly as another alternative way of providing additional resources to the LDC's.

A common reaction in opposition to the use of trade preferences has been that the tariff rates on commodities imported into the industrial countries are already relatively low and will be reduced even further as a result of the Kennedy round. Thus, the margins of any preferences granted would be so small that they would have little or no effect in

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[10] Ibid., pp. 154–156.

[11] Raul Prebisch, "Towards a New Trade Policy for Development" (New York: United Nations, 1964).

[12] Harry G. Johnson, "The Theory of Tariff Structure, with Special Reference to World Trade and Development," in Trade and Development, Etudes et Travaux de l'Institut Universitaire de Hautes Etudes Internationales, No. 4 (Geneva: Librairie Droz, 1965).

[13] Johnson, "Economic Policies * * *," p. 182.

encouraging LDC-manufactured goods exports. Johnson's analysis makes it very clear that this argument is unacceptable on theoretical grounds because what matters is not the rates on individual commodities but the structure of these rates with reference to domestic value added in the process of production. This is a matter of great importance because the tariff structures in the United States and in the other industrial countries are escalated according to the stage of production. That is, the rates typically rise from raw materials to semimanufactures to finished goods, with consumer goods generally bearing much higher rates than capital goods. The successive stages of the production processes will thus be accorded greater effective protection at rates which may be substantially in excess of rates listed in the country's import tariff schedule.[14] This conclusion has been borne out in an empirical study by Balassa.[15] Using 1962 data, he found that the average effective rates of protection of value added in the United States and in the other major industrial countries were substantially higher than the average nominal rates, and that the effective rates of protection tended to be unusually high for manufactured products in which the LDC's have a special interest.[16]

A strong case can be made therefore that commercial policies in the advanced countries provide a major impediment to the industrial growth and exports of the LDC's and that accordingly these policies should be liberalized. Such liberalization could well entail the granting of trade preferences. As Johnson has noted, there is no reason why these preferences need conform to the GATT principles of reciprocity and nondiscrimination if we think of preferences as an alternative form of aid.[17] GATT members so disposed might be permitted to extend preferences to the LDC's that they wish to help in much the same way as they do now by extending other forms of aid. At the same time, the GATT machinery could be retained to deal with possible injuries to third parties.

CONCLUSION

It was mentioned earlier that the second UNCTAD is to be convened in full in early 1968. The United States in particular cannot go to this meeting empty handed because of the persistent pressures that will be exerted by the LDC's to obtain meaningful concessions above all on matters of trade. Now that the Kennedy round has been completed and the Trade Expansion Act has expired, the time appears opportune for

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[14] A simple example may help to demonstrate this point. Let us define the effective rate of protection of a production process j as $T_j = (t_j - \Sigma a_{ij} t_i)/v_j$.

Where t_j represents the actual tariff rate on the commodity at the last stage of production; t_i the tariff rate on commodity i (with $i = 1 \ldots n$) which represents inputs into the production process; a_{ij},. the cost per unit value of output of j of the input of commodity i which is used in process j; and v_j, the value added in process j per unit value of output. Suppose that for a given production process, imported materials account for half the world market price of the final product and that such materials are dutiable at 10 percent while the duty on the final product is 20 percent. The effective rate of protection on value added in the given production process will therefore by 30 percent [$T_j = (0.20 - 0.50 \times 0.10)/0.50 = 0.30$], as compared to the nominal rate of 20 percent applicable to the final product itself. To put this in another way, the domestic value of the labor and capital used in the given production process receives protection on the order of 30 percent in excess of what this value would be if the services of these factors were purchased at world market prices.

[15] Bela Balassa, "Tariff Protection in Industrial Countries; An Evaluation," Journal of Political Economy, vol. LXXIII December 1965).

[16] Balassa's results are reproduced in part in Johnson, "Economic Policies * * *", pp. 98–101 and 174–75 and in Pincus, op. cit., pp. 192–93.

[17] Johnson, "Economic Policies * * *", p. 199.

a major reevaluation of U.S. trade policies. Protectionism is not the answer; it should be discouraged in all forms because it will result in relatively higher prices for American consumers and increased costs for American business firms. At the very least we could continue to pursue our trade policies along the lines of the Trade Expansion Act. But in keeping with this Nation's long tradition of humanitarianism, we should seek a new and bold initiative to mold our trade policies in the service of more rapid and efficient growth in the LDC's where two-thirds of the world's population resides in comparative poverty.

International Commodity Agreements

Executive Branch Statement

SUMMARY

Commodity agreements are one possible approach to stabilizing commodity prices and improving other conditions of commodity trade. Despite its desire to avoid extending the scope of governmental regulation of trade, the United States is prepared to consider commodity agreements on a case-by-case basis, particularly where they might serve its own trade interests or significantly strengthen the export position of developing countries. Because of the dependence of most developing countries on exports of one or two primary products, commodity agreements can play a useful if limited role in helping these countries with their trade problems, which are at present a serious obstacle to their economic development.

Only a limited number of commodities lend themselves to such treatment; for most products, there are reasons why it is either not feasible or not economically desirable over the long term to have a formal commodity agreement (e.g., problems of substitutes, perishability, market structure). Conflicts of interests between producers and consumers or among producers may also block the negotiation of agreements. The common form of governmental cooperation on a particular commodity is not a commodity agreement, but a more modest and flexible arrangement, the commodity study group.

Thus, there has been relatively little partical experience with commodity agreements, despite the theoretical prominence of the technique as a solution for commodity problems. It is hard to generalize on the basis of the four price stabilization agreements which have been in effect in the postwar period since they are significantly different in form and scope. The wheat, sugar and tin agreements, negotiated in the early postwar period, have had limited purposes and served them reasonably well, at least for a time. The International Coffee Agreement of 1962 is the first test of the theory that an agreement can be an instrument of development, not only supporting prices and export earnings in the short run, but generating resources and buying time to correct underlying structural problems in the developing producing countries.

Conclusions to be drawn from the coffee agreement and the recently concluded grains arrangement are—

(1) A well-conceived agreement can deal constructively with more than the short-term price situation;

(2) The attempt to broaden the scope of a commodity agreement in this manner can seriously complicate the negotiations;

(3) The problems of making an agreement work as planned may be formidable when producing countries lack the institutions and disciplines to live up to their obligations; and

(4) An agreement can provide the framework, however, within which better answers to particular problems can be gradually evolved.

I. Introduction

Primary products—foodstuffs, fuels, and raw materials—make up the bulk items moving in world trade. They are of great importance in both U.S. exports and imports. In 1966, grains, soybeans, tobacco, cotton, and metal ores accounted for almost 20 percent of U.S. export earnings, while coffee, bananas, sugar, petroleum, and metal ores made up 20 percent of our imports. We are always particularly concerned with the prices and conditions of access to markets for those primary products which we export.

Important as they are to the United States, developments in primary product markets are even more crucial to the political and economic fortunes of the developing countries. Production of primary products is the base of their economic life, the source of much of their income and employment. Their receipts from exports of primary products are their main source of foreign exchange. Slight adverse changes in this area can have enormous repercussions.

We are trying to help these nations help themselves and finding ways to develop their export trade is one way to do this. We have both a political and commercial stake in this matter. The developing countries already provide an outlet for $8 billion of our commercial exports. They can become our fastest growing markets as they reach the stage of self-sustaining growth.

Unless otherwise stated, this presentation is devoted to an examination of commodity agreements in relation to the trade problems of developing countries.

II. The pressures of commodity problems on the developing countries

Background.—Economic growth in less-developed countries requires inter alia the importation of increasing amounts of capital equipment and other goods which can in general be purchased only from developed countries. While foreign aid is an essential supplement in financing imports needed for development, the great bulk of the foreign exchange resources of developing countries comes, and for the foreseeable future will continue to come, from their trade earnings.

Over 85 percent of the trade receipts of developing countries as a group is derived from exports of food, agricultural raw materials, metals, and fuels. Moreover, one or two commodities account for the bulk of the export trade of most developing countries. Some 30 of the 77 nations classed by the United Nations as developing countries depend upon a single product for at least half of their export earnings. Colombia, for example, depends on coffee for 70 percent of its export earnings. Cocoa provides Ghana with 60 percent of its earnings; and copper almost 70 percent of Chile's earnings. Malaysia depends on rubber for 53 percent of its earnings; the Sudan depends on cotton and cottonseed for 60 percent. This heavy dependence on trade in one or two commodities makes the low-income countries peculiarly vulnerable to world market developments over which they have relatively little control. Moreover, the range of products into which these countries can easily diversify is limited. In their efforts to expand and broaden their export base, they tend to move into already crowded fields and may jointly bring on an overexpansion of world capacity for particular primary products.

Short-term price fluctuations.—World market prices for most primary products fluctuate widely over short periods. For a variety of reasons, the tendency toward price instability is greater for those products exported wholly or mainly by developing countries. The wholesale price of Brazilian coffee has been as high as 90 cents a pound and as low as 32 cents in the past decade. Cocoa was 58 cents a pound in 1954, 27 cents in 1956, and 44 cents in 1958. In 1965 it dropped to 11 cents, the lowest price in two decades. It has since risen to 30 cents in 1967. There have been similar sharp and sudden variations in price for other products exported by developing countries, brought on by such recurring short-term factors as variations in weather and yields, which affect levels of output, and by variations in economic activity in the main consuming countries, which affect demand.

Instability in commodity markets has widespread repercussions throughout the fragile economies of the developing countries. In periods of high prices, serious internal inflationary pressures often develop. When prices drop, so do government revenues, investment, imports, and the level of economic activity. Development projects are interrupted, and development programs fall short of their targets. Smoothing out the effects of price fluctuations in developing countries is often not possible, because of inadequacy of administrative structures, weak political situations, or inadequate financial resources.

More importantly, instability in commodity markets feeds on itself. Producers have great difficulty responding to adverse price changes, because the economy lacks flexibility and their economic alternatives are few. Excessively high prices in periods of shortage lead to overproduction; overproduction to glut and excessively low prices; low prices to underproduction, and so on in a continuous cycle of exaggerated ups and downs. The waste and misallocations of resources are particularly significant in the case of tree crops with their long gestation period.

The longer-range problems.—More serious than short-term price instability is the fact that world demand for most traditional export products of the low-income countries is not dynamic. In many cases, supply has been expanding faster than demand and, under pressure of an emerging surplus situation, prices have been declining. In consequence, the rate of growth of the export earnings of the developing countries has not kept pace with the expansion in world trade generally or with their own rising import needs.

The growth items in world commodity trade, except for petroleum, are generally exported by the developed, not developing countries. (Examples are soybeans, meat, and aluminum.) For such products as coffee, sugar, and grains, per capita demand in the main consuming countries is generally saturated. Synthetic products have steadily eaten into the markets for natural rubber, cotton, wool, and hard fibers. Other technological developments have led to economies in the use of raw materials, as in the case of tin, or to the gradual obsolescence of certain uses, as in the case of jute as a packaging material. Finally, agricultural protection and rising productivity in developed countries have seriously eroded markets for sugar, fats and oils, and certain other agricultural products exported by developing countries.

In the 1952–61 period, the value of the developing countries' exports (excluding petroleum, which affects only a few countries) increased by only 19 percent, not even keeping pace with population growth, let alone providing resources for development at satisfactory rates. In the same period, the export receipts of the industrial countries increased by about 70 percent. The developing countries' share of world export trade dropped from 27 percent in 1953 to less than 20 percent in 1965.

Many developing countries have found the unit value of their imports rising more rapidly than their export earnings. In other words, in terms of real purchasing power, they have been losing ground.

Pressures for action.—These common characteristics of primary commodity trade—inherent price instability, slow growth in demand, a persistent tendency to oversupply—have created serious economic and political problems for developing countries, hampered development programs, and led developing countries to press for international corrective action. Particularly in recent years, with the great increase in independent national States, the developing countries have combined forces in such international forums as the United Nations, GATT and the FAO, as well as specialized commodity groups, to promote concerted action on their commodity problems. On a general plane, these efforts reached a crescendo at the first United Nations Conference on Trade and Development (UNCTAD) in 1964, when developing countries in unison called for a systematic and practical effort to improve their commodity trade through "commodity arrangements" (meaning commodity agreements or study groups as appropriate), improved access to markets, compensatory financing to offset unexpected shortfalls in export earnings, and export promotion measures. A second UNCTAD Conference is scheduled to be held in New Delhi in February–March 1968 and developing countries will continue to press forward with their efforts to secure better trading conditions for their primary products.

While recognizing that commodity agreements are not feasible or desirable in all cases and are not in any event the only answer to their problems, most developing countries want more attention paid to agreements as a vehicle for moderating their trade difficulties. They have a faith that agreements, where practicable, cannot only smooth out short term price fluctuations, but improve the level of prices and the structure of world production and trade.

III. The mechanisms of agreements

The commodity agreements of the postwar period—in wheat, sugar, tin, and coffee—differ from earlier efforts to influence world market prices in that they are joint producer-consumer undertakings. The principles for international commodity action laid down in the Havana Charter, and now generally accepted by governments, provide that such agreements shall protect consumer as well as producer interests and give consuming and producing countries equal voice in all decisions.

Commodity agreements can take various forms and are tailor made to fit the particular circumstances of the situation concerned. The principal mechanisms which have been applied in practice are the export quota system, the buffer stock and the multilateral contract. There are other possible mechanisms, at least in theory.

The sugar agreement adopted the export quota approach. Each participating exporting country had a basic quota for shipments to the world market, based on historical shares. Actual quotas were raised or lowered, proportionally, as prices aproached the top or bottom of the agreed range. As a protection for consumers, exporters were obligated to hold a specified volume of stocks. In practice, the market changes with which the agreement was faced were often beyond its power to control and prices moved outside the range from time to time. The economic provisions of the agreement became inoperative in 1962, after Cuba and other exporters failed to agree on a revision of basic quotas. Recent attempts to develop a new agreement have made little headway, again due in part to Cuba's quota demands.

The basic mechanism of the tin agreement is a buffer stock, which buys as the market price reaches the lower level of an agreed range and sells when the price moves into the upper part of the range. Export quotas may also be imposed, as required to back up the buffer stock. Present plans for a cocoa agreement also call for a buffer stock, but one that at the bottom of the range will buy cocoa in excess of sales quotas for sale as the maximum price is approached.

The International Wheat Agreement is the only example of a multilateral contract. Originally, the undertaking was that importing countries would buy from participating exporters agreed quantities at a specified minimum price when the market price slipped below that level, and exporting countries would sell to participating importers agreed quantities at a fixed maximum price when the market moved above that level. As the agreement was successively renewed, the obligations of exporting and importing countries ceased to be symmetrical. Importers agreed to buy a specified percentage of their imports from member exporters at a price within the agreement range and exporters agreed to sell to member importers within this range.

The recently negotiated International Grains Arrangement, which is to take the place of the wheat agreement, uses much the same mechanism. A new feature is a Food Aid Convention, which recognizes the necessity for a continued large-scale flow of grain to developing countries on concessional terms and obligates all developed signatory countries, both grain exporters and grain importers, to support a 4.5 million ton food aid program. Beyond its humanitarian benefits, the Food Aid Convention will benefit commercial markets, through the obligation on signatory countries to contribute either grain or cash to purchase grain.

The coffee agreement relies on export quotas as the price-stabilizing mechanisms. The basic problem in coffee is not the risk of short-term price swings but a large and persistent surplus production, which must be curbed if the quota system is to be viable for any extended period. The coffee agreement has not only worked to avert a disastrous collapse of coffee prices, by restricting the flow of supplies to the market, but also provides the framework for a joint effort to use the extra resources made available by the agreement to cut back production, reduce producers' stocks, and achieve a long-term equilibrium between world supply and demand. The agreement also contains provisions aimed at expanding consumption but demand cannot be expected to increase fast enough to produce market equilibrium; resources must be moved out of production.

The steps taken to date which indirectly serve this purpose are a selective system of adjusting export quotas in response to price changes (and market demand) for the four main types of coffee, and an enforcement system designed to halt evasion of quotas, which should help bring home to producers that production in excess of authorized exports and domestic needs has no value but become a burden. In addition, in the renegotiation of the agreement, a major effort is being directed toward the creation of a diversification fund, financed largely by producers, and the promotion, in cooperation with international financial agencies, of country diversification program tailored to the needs of the countries concerned. The coffee agreement is in a sense unique but it does illustrate the possibilities that exist, and the innovations that can be devised, to move toward market equilibrium and eventual market freedom without subjecting the developing producing countries to all the financially disruptive and politically dangerous adjustments that may result from reliance on market forces alone.

Problems of negotiation and implementation.—Not all commodities lend themselves to formal agreements. It would be difficult to develop an effective agreement of the conventional type for perishable commodities like bananas: for oils and oilseeds, because of problems of substitutability and competition from synthetics; or for those metals where scrap is a major element of supply.

In addition to these technical or economic problems, there are political difficulties in the negotiation and implementation of any agreement.

Agreement among the participants on a realistic price range within which it can be expected to stabilize prices must be obtained before negotiations have a chance for successful conclusion. Normally, agreement must also be reached among producers on relative shares of the market. This effort can penalize the most dynamic and progressive producers, because quotas tend to be set on the basis of past export performance and not with an eye to relative efficiency. As a result, low-cost producers become restive in time and are tempted to violate the agreement so as to capture a larger share of the market for themselves. New producers also seek a share of the market without regard to the requirements of the agreement.

Thus, another problem may be enforcement of the provisions of the agreement, once established. Supplying countries find it hard to limit exports to their quotas so long as additional sales offer the immediate prospect of extra earnings. Coffee-producing countries tried to regulate supplies to the coffee market in the late 1950's but failed because members were unable or unwilling to abide by their export quotas. Each sought to evade the burden of export control at his neighbor's expense. But the result of such widespread evasion was to place more coffee on the market than it could absorb at prevailing prices and to force down prices for all. Similar problems plagued the current coffee agreement in its initial years.

Clearly, an agreement that depends on supply control cannot protect producers unless they are prepared to hold back supplies when the market is weak. Nor can it protect consumers if exporting countries are not prepared to release available supplies when prices are pushing through the ceiling.

The task of setting production goals for each supplying country so as to bring world production into line with estimated world consumption is an especially delicate and difficult problem. Countries not only have to agree on which among them should expand production and which should curtail but, having agreed, must then follow through on their agreement. The curtailing of production and finding of alternative employment for displaced labor is acutely difficult. The problems which the United States would face in this regard are compounded many times in the developing countries. Yet, unless such action is taken in the case of commodities in persistent oversupply, a commodity agreement is likely to fail as stocks build up and the cost of holding them becomes intolerable. A main value of an agreement may be the leverage it provides to force governments of developing countries to take these "self-help" measures.

IV. U.S. position on commodity agreements

The United States was for many years reluctant to support international commodity agreements, although it did participate in the agreements in sugar and wheat—commodities produced at home. It has not joined the tin agreement.

A combination of factors, however, led to modification of this position a few years ago and to active U.S. participation in the development of the coffee agreement and in the current negotiations for a cocoa agreement. These factors are (1) recognition that losses in commodity export earnings can offset the resources made available through our foreign aid program and thus impair the benefits of that program; (2) recognition of the need for a special effort to help the developing countries become more self-supporting through trade in light of the lag in growth of their trade in recent years; (3) the sheer number of new, independent countries heavily dependent on commodity trade, and the growing force of the political pressure which they and other developing countries are exerting on the industrial world for assistance in overcoming their trade problems; and (4) the increasing evidence that the economic ups and downs caused by commodity problems inspire political unrest and have a serious impact on our foreign policy objectives.

The participation of consumer countries in agreements is essential. Without them, there is no satisfactory way to police an agreement or to prevent producers unwilling to accept the disciplines of an agreement from profiting from the restraint others observe. This lack of enforceable sanctions was one of the main reasons why the produecrs' coffee agreement of 1958–62 did not work. With consumers as members, the possibilities for insuring compliance with obligations under an agreement and for moderating disagreement among producer nations and in applying enforcement measures have been crucial in keeping the present coffee agreement functioning.

In addition, where it is clear that an agreement is feasible and desired by a sufficient number of countries, there is a presumption in favor of U.S. involvement to safeguard its own trade interests and the requirements of its consuming public. Not only the range of prices provided for in an agreement, but the form of controls and administrative mechanisms can have an impact on American consumers, trade, and industry. When the U.S. Government participates in negotiation of an agreement, it seeks the active advice of trade and industry on such matters and makes every effort to keep new controls to a minimum and to retain as much as possible of the normal market mechanism. It also seeks to insure that prices, while fair and remunerative to producers, are in line with the realities of the market and such as will be reasonable and acceptable to the U.S. consuming public.

Thus, the United States is prepared to consider sympathetically any reasonable proposal for alleviating the problems of commodity trade, including a commodity agreement. Despite the technical, economic, and political difficulties of devising and operating agreements, it seems clear that constructive and workable agreements are possible. Therefore, the United States should cooperate with other governments in examining all proposals on their merits and contribute a measure of leadership in clarifying what is and is not feasible and economically sound.

The United States does not, on the other hand, encourage the thought that there is much scope for new formal agreements. A more modest and flexible approach to joint action on particular commodity problems is the international commodity study group, such as now exists for rubber, cotton, wool, lead-zinc, tungsten, hard and soft fibers, fats and oils, rice, and bananas, These groups perform a variety of variable services, including the dissemination and improvement of statistics and statistical forecasts, periodic consultations on the detailed problems facing producers and consumers, and occasionally some form of voluntary arrangement designed to avert or correct a market problem. In the early postwar period, it was assumed that the main function of a study group was to carry out the preparatory work leading to a formal stabilization agreement. It is now generally recognized that a study group can be a stabilizing force in its own right and that it may be the best or only possible form of an international commodity arrangement in many cases.

There are still other, more general measures to improve conditions of commodity trade which are supported by the United States. Thus, it favors continuing efforts to reduce unnecessary barriers to trade and consumption, including the high revenue duties and preferential tariffs of some developed countries which affect the levels and patterns of trade in tropical products. Efforts to facilitate trade among the developing countries, to help them improve their production and marketing techniques, and to broaden their export base are also important in this context. The United States was also instrumental in promoting establishment of the IMF's compensatory financing facility to provide quick balance-of-payments assistance to developing countries suffering temporary shortfalls in export earnings.

To sum up, commodity agreements can play a useful though limited role in helping the developing countries with their trade problems. They are no panacea, however, and are to be considered as only one of several possible measures which may be used, or may be essential, to deal with these problems.

A Free Trade Area With U.S. Participation

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A Proposal for New Initiatives in U.S. Foreign Trade Policy

(By Ralph I. Straus)

The Trade Expansion Act of 1962 (TEA), which inspired the Kennedy round of trade negotiations, will expire on June 30, 1967. Thus, the President and the Congress are confronted with the necessity of making some basic and crucial decisions regarding future U.S. foreign trade policy. Five years ago, when the last major review of the entire U.S. trade program was carried out, President Kennedy and the Congress agreed upon substantial changes, embodied in the Trade Expansion Act. In my judgment, preparation should now be made for new trade legislation authorizing even more far-reaching initiatives. Before examining these proposals, it will be instructive to review briefly the history of U.S. trade and tariff policy since 1930, with emphasis on the TEA and the Kennedy round negotiations.

At the beginning of the great economic depression, Congress passed the Smoot-Hawley Tariff Act of 1930 establishing the highest tariff rates in U.S. history, hoping thereby to protect U.S. industries rather than to increase exports. Inevitably, this legislation set off a series of tariff retaliations abroad, and world trade declined precipitously. In effect, depressions were exported from one country to another. Disillusionment quickly followed, and there was growing awareness that an expansion in world trade must depend on reciprocal tariff reductions by all major nations. To lead the way, the Reciprocal Trade Agreements Act of 1934 authorized the President to reduce U.S. import duties by not more than 50 percent in exchange for equivalent concessions from other governments. By 1945, several bilateral trade agreements had been negotiated by the United States, thereby reversing the trend to protectionism.

In 1945, with World War II coming to a close, Congress extended the Trade Agreements Act, authorizing the President to reduce existing tariffs by an additional 50 percent. Most of the authority under the original act had been exhausted. Concern about potential injury to U.S. industries led Congress to add a "peril point clause" [1] in the Trade Agreements Extension Act of 1948 and an "escape clause" [2] in the 1951 act. In the 1955 and 1958 extensions of the act more "escape clause" restrictions were added, including safeguards dealing with national security.

By 1962 it appeared that the old form of trade legislation had become outmoded for a variety of reasons. The 1958 renewal of the Trade

[1] The "peril point clause" directs the Tariff Commission to determine—prior to negotiations—the minimum level of duties necessary to prevent injury to domestic producers.

[2] The "escape clause" authorizes the U.S. Executive to withdraw tariff concessions that result in substantial injury to domestic industries.

Agreements Act, permitting a 20-percent reduction in the U.S. tariff on an item-by-item basis, resulted in the Dillon round of 1960—the fifth series of trade negotiations since the war. This produced only marginal tariff cuts.

When President Kennedy proposed the Trade Expansion Act of 1962, he was motivated by other considerations: The potential threat of the European Common Market (EEC) to American exports and the desire to promote unity in the Atlantic alliance. The new legislation was framed, not so much to protect our import-competing industries, but to enable our export industries to keep their dominant positions in world trade, and to "bargain down" the common external tariff of the six-nation Common Market or of an enlarged Common Market. (In 1962 it was anticipated that Great Britain and possibly many other European countries would soon join the EEC.)

Moreover, the Common Market was offering a 20-percent across-the-board or "linear" reduction in its common external tariff which the United States, because of its item-by-item method of tariff reduction, was unable to match. To achieve results the President would have to be given authority to offer linear tariff cuts, unrestricted by peril points. The Congress gave him this authority. Protection to American industries was provided by the TEA's "adjustment assistance" provisions for both industry and labor in addition to tightened escape-clause criteria. Tariffs could be cut by 50 percent, reductions of tariffs to zero were permitted on certain tropical products of interest to the less developed countries, tariffs of 5 percent or less (nuisance taxes) could be reduced to zero. Under the "dominant supplier" provision the President was authorized to reduce to zero the tariff on articles in which 80 percent of free world trade was accounted for by the United States and the EEC. But this latter provision was based on the assumption that the United Kingdom would soon become an EEC member; it became virtually meaningless when President De Gaulle vetoed Britain's application in January 1963.

This brief outline of U.S. trade legislation brings us to spring 1967, when the fate of the Kennedy round hangs in the balance. The U.S. Government must now decide whether the momentum achieved in liberalizing international trade can or should be continued, or whether the frustrations that have attended tariff negotiations in the Kennedy round should be allowed to slow down or actually bring to a halt the gradual lowering of trade barriers by the nations of the free world.

THREE COURSES OF ACTION

Three possible courses of action appear to be available to the President in making recommendations for trade policy legislation to succeed the TEA. (1) The President could decide that no new trade legislation is necessary. (2) He could ask Congress to extend the Trade Expansion Act for one or more years, in its present form or with certain changes. Or (3) he could request the enactment of new legislation, either modifying the Kennedy round approach or proposing a bold new initiative in foreign trade policy.

Failure to enact new trade legislation would slow progress toward lowering trade barriers, raise doubts about the U.S. determination to continue in this effort, and sacrifice U.S. world leadership in this vital area of economic policy. Moreover, continuing participation in the General Agreement on Tariffs and Trade (GATT) requires that the President be empowered to enter into limited trade agreements from time to time. If the United States invokes the escape clause of the TEA, we must be in a position to offer compensatory concessions to the injured parties, or face retaliation in the form of countervailing barriers to U.S. exports. It would seem imperative, therefore, to enact some legislation not long after the TEA expires.

A decision to extend the Trade Expansion Act in its present form for 1 or 2 years would preserve the basic authority necessary for the President to handle routine trade problems arising from our obligations under GATT. Such a simple extension, however, would sidestep certain imperatives of the present situation both here and abroad. An evaluation of domestic and foreign political factors suggests a two-step approach: first, a request to extend the TEA, with certain additions and modifications, for a period of 2 years: and second, preparation for a major new foreign trade initiative in 1969.

In support of this two-stage approach, postponing major new legislation until 1969, it can be argued that both government and private industry want a respite from further intensive negotiations. It may be necessary, therefore, for the President to give assurances to the Congress that no major tariff negotiations are contemplated during the period of the extended legislation. Thus the residual authority would be used only for such adjustments as become necessary. Certainly it will take time to evaluate the effects of reductions negotiated in the Kennedy round.

Moreover, since 1968 will be a presidential election year, the political climate probably would make it inadvisable to introduce any strikingly new and potentially controversial trade legislation before the election. Whether or not President Johnson wins a second term in 1968, the year 1969 would appear to be an appropriate time for setting forth new and forward-looking trade proposals. Thus, it would be logical to request a 2-year extension of the present act.

Any modifications of the present TEA requiring extensive congressional hearings should probably be avoided because of the pressures for protectionist amendments that could arise from certain industries which fear the effects of the Kennedy round, as well as from those Members of Congress who think that tariff reductions will adversely affect the U.S. balance-of-payments position. There are a number of desirable changes, however, which might not require such extensive public hearings. First, a liberalization of the adjustment assistance provisions of the present act would make them more easily applicable to cases of import injury to both industry and labor. They could be patterned after the trade adjustment provisions of the Canadian-American Automobile Agreement.

Second, some of the legitimate complaints of the less-developed countries could be met in part by granting them immediate application of reductions negotiated in the Kennedy round rather than phasing these over a period of 5 years, as specified in the present Trade Expansion Act.

Third, little progress has been made in negotiating the elimination of nontariff barriers in the Kennedy round. The only possibility appears to be an agreement on a code of antidumping rules. It might be well, therefore, for the President to seek approval from Congress to conclude agreements with other countries on nontariff barriers, with the proviso that any agreements requiring new legislation or changes in present U.S. laws would be sent to the Congress for approval. Obviously, any treaties negotiated would require approval of two-thirds of the Senate.

During the 2-year extension of the present or modified TEA, the United States should explore with other nations the possibilities, advantages, and disadvantages of a bold new approach to trade problems involving Western Europe and other developed countries, the less-developed countries, and those Communist nations willing to make some adaptation of their state trading systems to the market economies of the West.

A NEW FOREIGN TRADE INITIATIVE: A WORLD FREE TRADE ASSOCIATION

The 1969 trade bill should project a bold and far-reaching new initiative in the field of foreign trade policy. Its introduction should afford the President a unique opportunity to assume world leadership in the continuing effort to expand friendly and profitable economic intercourse among all nations. Such an initiative, to be politically acceptable, should appeal not only to the pragmatic judgment of business and labor, but also to the deep feelings of idealism of the American people. It was just such a mixture of pragmatism and idealism that enabled President Kennedy to push through the TEA of 1962.

Any new initiative should, of course, be designed to provide benefits to other industrialized nations. It should offer some promise of action to meet the increasingly vehement demands of the developing countries for a more positive treatment of their problems. It should aim to reduce international political tensions. Most important, it must contribute to increased employment and profitable economic activity and a greater volume of international trade.

To achieve these objectives, this writer suggests that the United States propose to the other developed countries of the free world the establishment of a World Free Trade Association (WFTA). It would be patterned after the European Free Trade Association (EFTA) and established within the broad framework of the GATT, under whose rules the great postwar expansion of international trade has taken place. It would be open to all countries willing to charter a course toward the greatest possible elimination of trade barriers.

WFTA, GATT, AND MFN

The proposed WFTA should include in the first instance the United States, Canada, and the seven members of EFTA (Great Britain, Norway, Sweden, Denmark, Switzerland, Portugal, and Austria). It would be desirable to have Austrialia, New Zealand, and possibly Japan as founding members. The EEC should be invited to join as a unit, with the sincere hope that it would do so—but the WFTA should be formed with or without the accession of the EEC at the start.

The proposed WFTA could be patterned after EFTA with some notable exceptions, such as the inclusion of agricultural products which are left out of the EFTA agreements. The WFTA would eventually include a great many countries, both developing and developed, with economic systems, resources, and requirements of much greater variety than those of the EFTA Seven. Consequently the proposed association's charter should be less demanding than that of EFTA in terms of uniformity and timing of tariff reductions, but not so loose as to violate the basic most-favored-nation (MFN) provision of a free trade association permissible under GATT rules, or to permit members to find loopholes which could invalidate the basic purposes of the organization.

Basic to the GATT is the principle of unconditional most-favored-nation treatment, which specifies that all tariff concessions negotiated between any members shall be extended to all other GATT members on the same basis. U.S. tariff policy has been based on this principle of almost universal MFN since 1923.

The GATT has proved to be extremely adaptable to new developments.[3] Under article XXIV, free trade areas, such as EFTA and the Latin American LAFTA, and common markets, such as the EEC and the Central American CACM, have been permitted as exceptions to the most-favored-nation clause.[4] GATT's flexibility in response to changing conditions of politics and trade has been achieved both by unanimous decision of the membership to amend the agreement (a form seldom employed) and by the waiver provision of article XXV–5, which empowers the membership by a two-thirds vote to waive any obligation in the agreement and to set forth conditions of ratification for any such waiver.[5]

In proposing a World Free Trade Association the United States would be following precedent as established in EEC, EFTA, and other regional groupings, whereby departure from the unconditional most-favored-nation principle is authorized in return for achieving substantially free-trade conditions over a broad area within a designated time period. This is a compromise—a second choice to our traditional MFN policies—but one that has received GATT endorsement and now is generally accepted among free world trading nations. It should permit an important measure of progress toward a major policy goal of trade expansion.

The proposed WFTA should provide, as permitted under GATT rules, a plan whereby certain countries would be empowered to lower their tariffs according to a slower time schedule than other countries, either for all of their trade or for the trade of certain of their indus-

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[3] The GATT was founded in 1948 and its membership now includes 70 full contracting parties plus 14 other countries in some stage of accession (as of Nov. 1, 1966). GATT includes all the industrialized nations of the West except Ireland; as well as Japan, Australia, and New Zealand. Fifty-one developing countries are full or partial members, including India, nine Latin American and Caribbean nations (notably Brazil, Argentina, and Chile), and 29 African countries. Two Communist nations, Czechoslovakia and Yugoslavia, are full contracting parties, and Rumania has made special arrangements. Poland's request to become a full member has been backed by most Western trading countries. All of these 84 nations subscribe to GATT rules and regulations in their trading relations.

[4] Article XXIV recognizes that the closer integration of national economies is a desirable objective and that a customs union or free trade area may serve to facilitate trade between the participating countries while not raising barriers against the trade of others. Accordingly, the agreement permits violation of the MFN standard only when the scheme takes the form of a free trade area or customs union (or an interim arrangement leading to either) with certain characteristics: (a) complete, not partial, elimination of trade restrictions among members, and with commodity coverage accounting for "substantially all the trade" among its participants; (b) no increase in the restrictiveness of trade barriers against nonmember countries; and (c) a definite plan and schedule calling for the complete elimination of duties within a "reasonable length of time." Where a free trade project fails to meet these standards, a waiver must be granted by two-thirds of the GATT members. The difference between a free trade area and a customs union is that the countries forming a free trade area are not required to adopt a common external tariff.

[5] Such a waiver was granted when the United States and Canada concluded their bilateral agreement on free trade in automobiles and auto parts in 1965.

tries which might not be able, without causing serious eonomic hardship, to adhere to the overall WFTA uniform time schedule for the complete abolition of duties. This would seem to be consistent with policies approved in previous GATT ministerial resolutions and in particular with GATT's avowed determination to exercise a firm influence toward helping less-developed countries to expand their exports. Precedent for such exceptions is found in the rules of EFTA, which permit Portugal to apply alternative and more favorable rates of reduction of import duties on certain categories of products and according to a different time schedule than that required of the other EFTA countries.[6]

There may well be difficulties in this proposal, including the potentially divisive implications of such an arrangement. Nevertheless, the initiative should be aimed at the widest possible membership, and should always be open ended. It should not be undertaken at all unless the subscribing nations comprise a significant sector of GATT's industrialized membership. The determination of these countries to carry out such a program would present a powerful incentive for other nations to join.

The time period during which tariffs would gradually be reduced to zero should be flexible, so as to accommodate the different stages of development of the member countries and the vulnerabilities of special industries. In other to maximize the growth of world trade with a minimum of dislocation to domestic industries in each country, the schedule for the reduction of tariffs to zero might be set at 10 or 15 years or longer, with a consequent 10 percent or even lower annual reduction. Special provisions might be proposed to specify no reduction of less than 1 percentage point per year, and to encourage total removal of duties of 5 percent or less. Somewhat similar provisions are already included in the current U.S. Trade Expansion Act.

WFTA should also urge its members to adopt adequate adjustment assistance provisions to cushion the economic dislocation that might be caused by increased import competition. It is interesting to note that companies and unions in EEC and EFTA countries have made very little use of the adjustment assistance provisions embodied in their respective treaties, although tariffs on industrial goods have been almost completely eliminated on internal trade with the two groups.

The proposed WFTA should provide for continuing negotiations, after adoption of the agreement, on all nontariff barriers—for example, border taxes, domestic purchase requirements (whether official policies such as "buy American" requirements in the United States, or unofficial practice as in most other countries), customs evaluation methods, labeling requirements, technical regulations, and the like.

It is important to stress that the new Free Trade Association should be established within the framework of the GATT. Any changes in present GATT rules that may be necessary or desirable under the new initiative could be submitted to the GATT membership for approval, either through amendments to the GATT agreement, or, preferably, under the waiver procedure noted above.

[6] In general, the EFTA agreement allows Portugal to proceed to the elimination of duties on certain products at half speed until 1970, by which time these duties must be reduced by 50 percent; according to the overall EFTA timetable, virtually all other duties on industrial products among EFTA members were abolished Jan. 1, 1967.

PREFERENCES FOR THE LESS-DEVELOPED COUNTRIES

Special treatment for the less-developed countries will be a basic feature of the proposed WFTA. The GATT has already made such a provision in a protocol and a new part IV section on trade and development adopted and incorporated in its new charter of February 1965. In essence, this section states that complete reciprocity by the less-developed countries is not required when tariff and trade barriers are reduced or eliminated under MFN agreements of the other GATT members.

The U.S. Congress has also recognized the special status of the less-developed countries. The 1962 Trade Expansion Act provides for elimination of U.S. tariffs on tropical products which are of prime concern to them and which are not produced in substantial quantities in the United States. It exempts these reductions from the 5-year staging requirements so that the total agreed reduction in duties is effective immediately.

The less-developed countries, on their part, have been seeking preferential treatment for exports through the United Nations Commission on Trade and Development (UNCTAD).[7] The United States in particular has opposed such preferences as violations of traditional MFN policy. Analyses of trends in international trade during the last 30 years show that preferences are of value only when the exporting country exports goods (1) which are not produced in the importing country, or produced in quantities insufficient to meet the total demand of the importing country; or (2) which it produces more economically than the importing country can.[8]

If preferences could be granted to certain selected exports of major importance to the less-developed countries, to enable these exports to compete with similar products of industrialized nations without causing market disruption, the result would be as valuable to developing economies as granting overall preferences on all their exports. Equally important, developed countries would no doubt be more amenable to negotiating preferences under such conditions.

Since it appears that relatively few of the less-developed countries will have the confidence to forgo protectionism at their present stage of development, the staged concessions industrialized members would grant to each other under the proposed WFTA should be offered equally to all less-developed countries without demanding immediate reciprocity. This means that the latter might be granted either free or preferential access to the markets of the developed countries according to an accelerated timetable.

INTERNATIONAL TRADE REVIEW BOARD

An International Trade Review Board (ITRB) should be established to define criteria by which a nation qualifies as a less-developed

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[7] UNCTAD, which first met in 1964, has a membership of 119 nations, including 77 developing countries.

[8] For example, for many years India enjoyed substantial benefits as a result of the imperial preference system in trade with Great Britain on primary products and certain light consumer goods such as cotton and jute textiles and leather, which India could produce more efficiently than could British producers. Despite preferences, however, Indian exports to the United Kingdom of all other manufactured goods—bicycles, electric motors, electric fans, and the like—remained negligible.

country, to determine which countries and which industries are eligible for special preferences, and to conduct continuing reviews to determine at what point such countries or industries within them would be able to withstand the rigors of world competition under nonpreferential world trading rules. At this point of time in its development a former less-developed country could become a candidate for full membership in the WFTA.

Since the proposed review board would have to make judgments charged with highly explosive political implications, it should be composed of individuals meriting the confidence of the majority of nations. There are three international organizations that have existed since World War II which enjoy such international confidence. Members of the ITRB should be nominated from among their ranks:

(1) One member could be named by the World Bank, which has made detailed analyses of most less-developed countries. The Bank should be able to develop criteria determining whether a country should be considered less developed; how long it should remain in that category; and whether all or only certain of its industries should be eligible for special preferences.

(2) Because of the acute balance-of-payments problems experienced by most less-developed countries, it would be appropriate for the International Monetary Fund to furnish one ITRB member. These payments deficits are usually associated with fluctuations in prices of raw materials on which many less-developed economies depend. They also derive from the heavy burdens of principal and interest payments on development and other loans.

(3) The third member of the ITRB should be nominated by the Director General of the GATT, for it is under GATT rules and covenants that international trade has flourished in the years since World War II.

The members of the ITRB should probably be nominated for a fixed term, and should be provided with a permanent operating staff. Substantive questions could be referred for guidance to any one of the three international organizations represented on the Board. Provision should be made for appealing decisions of the Board through the type of conciliation procedure worked out by the Secretary General of the United Nations for unresolved disputes arising in UNCTAD and its committees.[9]

It is suggested that requests for tariff preferences be forwarded to the ITRB by one or more less-developed countries. The request would list the product or products involved, and would include all the necessary data concerning the supply position and the price at which the goods could be delivered. If the ITRB approved the request and if a majority of industrial countries was prepared to grant such preferences, a decision would be taken to depart from the MFN rule and preferences would be authorized, subject to the following terms and conditions:

(1) Preferences would be granted only if all or a substantial number of importing countries were prepared to open their markets to such products, so as to spread the possible adverse effects of increased import competition over the domestic industries of many countries.

[9] See Richard N. Gardner, "In Pursuit of World Order" (New York: Praeger, 1964), p. 276.

(2) Importing countries would be permitted to exclude certain less-developed countries from the benefits of preferential treatment should the ITRB determine that these countries had already reached a level of economic development and efficiency in the industries involved to permit competition on relatively equal terms with the industries of importing countries.

(3) Preferences would be granted for a limited period only—perhaps not to exceed 10 years. The decision should probably stipulate that, barring a decision to the contrary, preferences would be reduced gradually after 5 years, with a view to their elimination at the end of 10 years. The preference might be eliminated even sooner if the ITRB ascertained that preferential treatment was no longer required. All decisions would be subject to review to determine whether adjustments were necessary due to changing conditions.

If developed countries should decide not to grant preferences for unlimited quantities of goods, tariff quotas could be set for limited quantities or for a certain percentage of the domestic market. Imports in excess of these quotas would carry a higher tariff rate. All such quotas should be global, however, and should be applied in a nondiscriminatory manner to all less-developed countries accepted as eligible for such preferential treatment.

While the less-developed countries should receive the benefits of the WFTA trade liberalization program without the requirements of strict reciprocity, they too should be asked to make commitments. They should be invited, and in every appropriate way persuaded, to liberalize, the flow of goods and capital into their countries and to insure fair treatment of both. All less-developed countries receiving preferential treatment should be required to report annually to the ITRB on the steps taken to fulfill their commitments. At the same time, they should be encouraged to form regional free trade associations similar to the Latin American Free Trade Association, so as to derive the advantages of lower trade barriers.

Thus, WFTA would grant all less-developed countries the same privilege of exemption from MFN obligations, and in certain cases even preferential tariff treatment, subject to periodic review by the proposed ITRB. Special treatment of certain countries for historical, political, and geographic reasons, such as that accorded the former African colonies by the six members of the Common Market, would be barred.

TARIFF REDUCTIONS BY SECTORS

Since negotiations for establishing the proposed WFTA will be extraordinarily complex, involving many disparate countries, industries, and commodities, provision should be made for reducing duties on particular products or groups of products according to an accelerated time schedule.

It has been suggested that if a substantial proportion of any one industry in the United States and in other nations deemed it to be in its best interest to negotiate a reduction of tariffs to zero among the several countries, this industry could initiate such negotiations through the respective governments without waiting for a full-scale tariff conference such as the Kennedy round.[10] This approach to tariff reduc-

[10] Due consideration would have to be given to U.S. antitrust laws in this connection.

tion was advocated by Eric Wyndham-White, Director General of the GATT, in a speech at Bad Godesberg, Germany, on October 27, 1966. He said:

> It has become apparent in the course of the Kennedy round that there are certain sectors of industrial production—characterized by modern equipment, high technology, and large-scale production, and by the international character of their operations and markets—where there are evident gains to all in arriving, within a defined period, at free trade. As has been seen in the EEC and EFTA, a defined period is extremely important since it provides industry with a clear indication both of the need for adjustment and adaptation to conditions of free trade, and an assurance of a reasonable period in which to make these adjustments. While, initially, the period has to made sufficiently extensive to provide this assurance to industry, experience in the EEC and EFTA suggests that, in practice, it is likely to be curtailed. Industry tends to adjust more quickly than its fears suggest and once the adjustments are made, there is evident advantage in moving more rapidly to attain the benefits of freedom of trade.

Such special negotiations, of course, would have to be conducted within the broad established rules of the proposed association. They could be conducted among members of WFTA as well as with those nations that did not join WFTA but might want to join in negotiations on the particular product or group of products in question. It should be emphasized that MFN treatment would have to be extended to all WFTA member nations, regardless of whether they were parties to the special negotiations.

The principle of negotiating for complete elimination of tariffs has already been accepted as U.S. policy. The 1962 Trade Expansion Act gave the administration authority to negotiate to zero on those items for which the United States and the Common Market together accounted for at least 80 percent of world trade—the so-called dominant supplier provision. In drawing up enabling legislation for the WFTA, Congress should have less hesitation in broadening the zero tariff authority to cover items for which the United States and all other developed countries (not merely the United States and the EEC) account for at least 80 percent of free world exports.

TRADE IN AGRICULTURAL PRODUCTS

The foregoing discussion of a proposed WFTA has been concerned primarily with industrial products. The EFTA Convention specifically excludes trade in agricultural and fish products from its rules. However, the Congress specified that the United States must negotiate on both industrial and agricultural products, and the Common Market has made its common agricultural policy a keystone of its operations. Therefore, the proposed WFTA must be given authority to deal with both industrial and agricultural products.

Agriculture is clearly a most difficult issue. Practically every country in the world protects its agricultural producers and its home markets for food products in a variety of ways. Tariffs are not the major barriers to the flow of trade. Instead, such devices as import quotas, tied to internal price supports, direct payments and other controls aimed at insuring a reasonable income for the farmer and protecting the home market, are the principal restraints to international trade in agricultural products. Processed and manufactured foods, including canned foods, meats, and dairy products, are exceptions to this general rule, and tariffs do play a significant role in trade in these items. In most countries this whole complex of controls is widely regarded as coming within the realm of domestic policy; for the net importing countries, particularly, their effects on foreign trade are regarded as of secondary concern.

The problem of agricultural trade in a sense falls into two categories, whose characteristics differ considerably. There is, first, the trade in temperate products: that is, those grown or produced in the industrial nations, primarily in the north: and, second, the trade in tropical products grown primarily in the south. In the northern half the major question concerns the relationship between major exporters and major importers of foodstuffs: in the south, the chief concern is the relationship between less-developed countries and the major markets in the north.

Frequently the products of the south—coffee, cocoa, tea, fruits—are taxed by northern states both to produce revenue and to cut consumption. The less-developed countries are deeply disturbed by these measures. The solution would seem to be a concerted effort, which is now underway in the GATT, to reduce impediments against such products and to urge importing countries to find their tax revenues in other ways. There remains the continuing problem of overproduction and price instability in many products of importance to the south. Commodity agreements now in force seem to be less than adequate; unless more steps are taken in the direction of broadening their geographic coverage and increasing the discipline on the participants, both importers and exporters, it would seem that these agreements will fall short of providing a long-term solution to commodity problems.

The problem of trade in temperate agricultural products is even more difficult and complex. If production is to be maintained at lowest cost and under the most favorable circumstances, the whole question of domestic agricultural policies and farm income in each industrialized country must be the subject of intensive international consultation. There must be a willingness on the part of every government to make concessions if trade among these countries is to be freer and more economic. On the other hand, in the coming years we must expect to be in a race against famine as the world's rapidly growing population begins to outrun its food supply. It may be necessary to maintain high-cost production on a subsidized basis in order to supply the food needs of underdeveloped countries. While this may mitigate trade problems among the countries of the north, the relationship between subsidized agriculture and commercial trade and the question of how costs are to be divided among the rich countries in supplying the food needs of the poor will remain critical.

For the United States, it seems clear that the President must be in a position to negotiate with other countries on U.S. domestic agricultural policies and to revise them in the interest of an international agreement. As an exporter, the United States is interested both in its commercial exports because of their importance to its balance-of-payments position and in its role as a major provider of foreign aid to the less-developed countries. These two interests can and ought to be reconciled in the larger context of international trade and comity. The essential point is that the President, under proper congressional safeguards, should be authorized to proceed in this direction.

In the case of some agricultural products that present no serious problems, agreement might be reached to treat them as industrial goods subject to normal gradual tariff reductions. This technique was applied by the EFTA countries in 1963 for a number of items, mainly on Portugal's behalf. The special treatment of tropical products of particular interest to the less-developed countries is already under consideration by the United States and the GATT.

WFTA AND THE UNITED STATES: LEGISLATIVE PROPOSALS

The proposed World Free Trade Association offers a plan for removing tariffs and nontariff barriers over a minimum of 10 years (and more probably 20 years), at the initiative of the United States but with the initial participation of a majority of the developed nations of the world. During these 10 years there are bound to be great and rapid changes in the world economy as well as in political relations between countries and among groups of countries. To meet these contingencies, Congress should give the President broad and flexible negotiating authority, subject to broad criteria defining the national interest and emphasizing the economic, defense and other objectives of the Nation as a whole, including its formidable international political responsibilities.

A principal consideration will be the potential impact of WFTA on the U.S. domestic economy. Advantages for U.S. export trade must be carefully weighed against possible disadvantages to domestic industry and agriculture. The legislation should provide for Presidential accountability to Congress in the form of annual reports detailing (1) actual use of the authority, and (2) the effect of WFTA operations on the American economy (with recommendations for remedial legislation if necessary) and the overall objectives of the United States.

It is important that the legislation authorizing U.S. participation in a World Free Trade Association include adjustment provisions similar to those recommended above for the revision and proposed 2-year extension of the 1962 Trade Expansion Act.

Measures for the protection of countries encountering balance-of-payments difficulties are currently being applied successfully by the IMF and the GATT, and of course will be applicable to WFTA members. No special balance-of-payments problems should be anticipated for the United States as a result of its participation in this free trade association. While average U.S. tariffs have decreased substantially from the rates in force when the Reciprocal Trade Agreements Act was passed in 1934, our volume of exports has increased and we have enjoyed a favorable balance of trade on merchandise account in all of the intervening years. Our current balance-of-payments difficulties arise not from any inability to compete in world markets, but from military and foreign aid commitments, foreign investments, and tourism. Consequently there is no reason to fear that U.S. industry and agriculture will be unable to sustain in the future, as they have over the past 30-odd years, their overall predominance during the contemplated gradual reduction of tariffs. Complaints against U.S. technological superiority voiced by other countries—notably by the Common Market nations—are most reassuring on this score.

At this point a brief comment on the present TEA is necessary because of the possibility that future legislation might follow the postwar pattern of holding general trade conferences instead of seeking to form a free trade area. New legislation should delegate broad authority to the President to negotiate trade agreements without specific restrictions such as the 50 percent limit on tariff reductions under the present act. This will allay a frequent (and justifiable) criticism of our current legislation. The United States is the only country that places such restrictions on its negotiators, primarily because the fixing of tariffs is, under the Constitution, a prerogative of the Congress. Delegation of this authority has always been hedged with strict limitations, presumably because of congressional distrust of the executive branch, or congressional anxiety over import competition and possible injury to certain sectors of industry or agriculture. Government negotiators, however, backed as they are by nongovernment technical advisers from both industry and agriculture, might better serve both the national interest and various private interests if they were not hampered in their negotiations by arbitrary numerical and other limitations. There is nothing magical about a 50 percent tariff reduction, instead of a figure of 25, 75, or 100 percent, as being in the best interests of an industry or of the Nation as a whole. If our negotiators should make unwise decisions, these could normally be rectified by adjustment assistance, or in extreme cases by congressional action.

THE ATLANTIC COMMUNITY, EEC AND EFTA

Let us now examine the possible effects of a WFTA on the relations of the United States with the Common Market, the European Free Trade Association, NATO and the Atlantic Community.

The six countries of the EEC (France, Germany, Italy, Belgium, Netherlands, and Luxembourg) have enjoyed increasing economic prosperity since the signing of the Treaty of Rome in 1957. As internal tariffs have fallen, trade among Community members (1958-66) has increased by 242 percent, as compared with an increase of 89 percent in their trade with the rest of the world. As a unit, the Six has become a formidable trading bloc. Currently the fastest growing internal market in the world, the EEC commands, by virtue of its common external tariff and a volume of external trade surpassing that of the United States, greater bargaining power than the United States in trade negotiations. Primarily as a result of French pressure, the Common Market has adopted an isolationist-protectionist attitude during the tariff negotiations of the Kennedy round. The common external tariff is the principal cement now holding the Six together. Unless other sections of the Treaty of Rome are implemented over the next several years, this bond may not prove strong enough to prevent the dissolution of the Community.

The EFTA countries, often called the "Outer Seven," abolished tariffs on trade among themselves (with some exceptions) on January 1, 1967. As tariff barriers within the EEC and EFTA are removed, maintenance of the Common Market common external tariff threatens to disrupt European trade and investment patterns between the Six and the Seven as well as with other countries—unless substantial tariff reductions are negotiated in the Kennedy round.

If the Common Market continues its inward-looking policies and other European countries cannot gain admission to it, the latter may find in the proposed WFTA an alternative method of expanding their markets, as well as a potential counterbalance to the EEC in any future trade negotiations. It is also possible that an agreement by the EFTA countries to form the WFTA together with the United States, Canada, and other nations may either be so attractive to the EEC or, conversely, pose a sufficient threat to the EEC, as to cause it to consider joining the WFTA.

To cope with Great Britain's economic difficulties, Prime Minister Wilson and the Labor Party decreed a policy of drastic deflation and have determined to renew Britain's application to join the Common Market. However, in doing this the United Kingdom will face some very real problems. Acceptance of Common Market agricultural policies will inevitably result in higher food costs to the British consumer; and the delicate issue of the pound sterling is bound to complicate negotiations. If the EEC nations deem it necessary that sterling be devalued in order to make British industry more competitive and to rectify Britain's adverse balance of payments, and the British refuse to take this step, it is questionable whether France or even the other five EEC nations would vote for British membership.

It is also questionable whether sterling as a reserve currency entailing world financial obligations has a place within the EEC as presently constituted. On the other hand, the recent reorientation of the German Government toward a stronger and more independent position within the EEC may cause France to accede to the British request to join the Common Market. Britain's inclusion would create a counterbalance to a Germany that is stronger than France both economically and militarily (except for nuclear capability), and for the first time since 1945 threatens to pursue policies independent of both France and the United States.

In any case, Britain's request for membership in the EEC may not be granted for a few years—and perhaps not at all. Britain wants and needs membership for political and economic reasons. Her exclusion has eliminated her political influence in maintaining the balance of power on the Continent. Economically she needs a larger market for her industrial products as well as the tought competition that would be provided by the industries of the Common Market, and that is not afforded now by her six EFTA partners. An enlarged free trade area such as the proposed WFTA might well be an attractive solution. Conversely, an agreement by Great Britain to join the WFTA might block her way into the EEC unless the latter were to become a member also.

From the point of view of the United States, it would be to our advantage if the British were to join the Common Market and if the Six as a unit were to join the Seven in an enlarged free trade association. A united Europe, including the United Kingdom and working in cooperation with the United States and Canada, could become a major force in establishing a solid foundation for world peace and prosperity. The danger exists, however, that a united Europe might pursue protectionist trade policies, might develop antagonistic attitudes toward the United States, with the avowed purpose of becoming a political "third force," and might not assume its share of responsibilities to the less-developed countries. As such it would pose a serious threat to the United States and to the security of the Western world. By proposing a WFTA the United States could help to reduce these dangers and retard the threat to established patterns of trade resulting from tariffs and other barriers erected by the two rival European trading blocs.

In proposing a WFTA, the United States would be laying the foundation for an economic structure compatible with its commitments to GATT and the IMF and yet broad enough to include dissimilar economic groups. Because the WFTA would seek to include all developed nations, Washington would be able to counteract the probable accusation that it was trying to undermine the EEC or to dominate the nations of Europe. Indeed, a WFTA proposal might result in giving new expression and meaning to the concept of an Atlantic Community, both militarily and economically. Constructive economic cooperation in a WFTA might counteract the disintegration of NATO, a symptom of the changing political attitudes and increasing economic strength of Europe during the last decade. It might encourage the EEC to divert some of its attention from internal concerns to those of the Atlantic Community and the world as a whole.

A NEW LOOK AT EAST-WEST TRADE

A review of U.S. East-West trade policy should be undertaken in developing a U.S. foreign trade policy for the coming decade and in planning for the proposed WFTA. In the first instance, it will be necessary to formulate polices and procedures for trading with countries maintaining collectivist economies. This includes all the Communist countries of Eastern Europe and Asia, except Yugoslavia.[11] Second, when any Communist country adopts sufficient features of a free economy, similar to Yugoslavia's, it should become eligible for membership in the WFTA. In other words, the development of East-West trade could proceed side by side with the development of WFTA. As the Eastern bloc acquires trade and payments procedures similar to those of the market economies of the industrialized West, steps could and should be taken to explore mechanisms to enable the collectivist nations to become partial or full members of the WFTA.

On February 16, 1965, President Johnson appointed a special committee, with J. Irwin Miller of the Cummins Engine Co. as chairman, to "explore all aspects of expanding peaceful trade in support of the President's policy of widening constructive relations with the countries of Eastern Europe and the U.S.S.R." In its report of April 29, 1965, the Miller Committee recommended that the United States use trade negotiations with individual Communist countries more actively, aggressively, and confidently in the pursuit of our national welfare and world peace. The committee emphasized, however, that political, and not commercial or economic, considerations should determine the formulation and execution of our trade policies with Communist nations.

Several of the Miller Committee's recommendations (notably proposals to expand credit guarantees and to extend MFN treatment to Communist nations other than Poland and Yugoslavia) were embodied in the administration's East-West trade bill of 1966. But Congress took no action on this measure, and the President has not yet submitted a new East-West trade bill to the 90th Congress.

The United States will undoubtedly liberalize its policy in the direction of expanding East-West trade in the years ahead. Such liberaliza-

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[11] Modifications in its economic and monetary system have allowed Yugoslavia to adhere to the GATT and conduct trade in a manner not greatly different from that practiced between nations with free economies.

tion, however, should be judged against the political reality of Soviet statements and actions antagonistic to U.S. interests. Despite recent steps which suggest that there may be areas in which American and Soviet interests coincide—the recent treaty (still to be ratified by the U.S. Senate) to outlaw the use of outer space for military purposes, the agreement to open a direct Moscow-New York air service, the consular treaty, and the continuing negotiations on a nuclear non-proliferation treaty—we must not forget that it is scarcely 6 years since the Berlin wall was built, and not yet 5 years since the Cuban nuclear confrontation. In addition, the Soviets currently are providing large-scale military assistance to North Vietnam, thus prolonging the Vietnamese war. On the other hand, the Communist countries no longer constitute a monolithic bloc. The apparently irrevocable split between China and the Soviet Union and the efforts of certain East European countries to assert increasing independence of the U.S.S.R. afford opportunities for the United States to use its dominant position in world trade in furtherance of its policies.

Until very recently, it has been U.S. policy to limit trade with most Communist countries to minimum levels. This policy has been based largely on the theory (or the fear) that such trade would be of greater benefit to the Communists than to ourselves. During periods of acute crisis or war, many Americans have felt moral compunctions about trading with the enemy. Most West European countries and Japan, however, have deliberately and steadily increased their trade with Communist nations. They have acted jointly with the United States only in embargoing trade in certain strategic military harware and goods having direct military application, the so-called COCOM list, which has been steadily shrinking in length over the years. The U.S. list of embargoed items is considerably more extensive than the COCOM list.

Because of our more rigid and uncompromising attitude—official or popular—toward expanding trade with Communist nations, many U.S. firms have either been prohibited from competing for such business or inhibited from bidding because of fear of adverse publicity in this country. In many cases they have been unable to match the more liberal credit terms offered by competitors in other industrialized countries.

While the Communist states have generally been punctilious in the prompt repayment of commercial credits in convertible currencies, private firms are nevertheless reluctant to extend such credits without guarantees. The Export-Import Bank has been cautious in extending such guarantees to American traders, adhering to the rules of the Berne Convention in limiting guarantees to 5 years, and then only for major capital exports.[12] Our Government has taken the view that guarantees are in effect a form of foreign aid, and can be equated with the transfer of capital, releasing scarce foreign exchange which Communist governments might use for purposes hostile to U.S. interests. Other Western countries have been more liberal in guaranteeing commercial

[12] The President can authorize the Export-Import Bank to guarantee commercial credits to a Communist country when he determines that guarantees to such a country are in the national interest. The terms of such credits must be within the range of common commercial practices, but in any event it is U.S. Governmen policy to limit such credits to 5 years. This limit is also consistent with the Berne Union—a longstanding, though informal, agreement reached by leading insuring and guaranteeing institutions in the field of international credit.

credits, and efforts to hammer out agreements on credit terms with our NATO allies and Japan have so far been unsuccessful.

The first recommendation for future U.S. East-West trade policy is procedural in nature: The President should be granted sufficient authority to determine a course of action without the burden of congressional prohibitions. Since Communist trade policies are rarely established without regard to their political implications, the President should have the freedom to determine U.S. measures of economic intercourse so as to achieve the greatest political and security, as well as economic, advantage for the United States. He should be accountable to Congress for his actions, of course, and should be required to present an annual report on steps taken to expand or contract trade with Communist nations.

Specifically, the President should be authorized to extend or withdraw MFN treatment in trade relations with selected Communist countries when he finds this to be in the national interest of the United States. (At present, this authority exists only for trade with Poland and Yugoslavia.) He should also be given authority to permit appropriate Government agencies to extend credits or to guarantee private credit for nonstrategic trade with Communist countries up to a maximum of 5 years, or, if forced by competition from other non-Communist countries, for an even longer period.

Finally, our policy of a complete embargo on trade with Communist China should be reviewed. Despite that country's intransigent and aggressive posture, there is always the possibility that limited trade with China could be of distinct advantage to us. For example, the United States might have been able to bid successfully against Canada for its recent huge sales of wheat to China, and this would have enabled us to reduce our balance-of-payments deficit. In sum, the Congress should not make it impossible for the President to take action in regard to trade with Communist China when he deems this to be in our national interest.

SUMMARY

This paper has proposed a new approach for an international trade policy to meet the complex political and economic issues that will confront the United States over the coming decade. It would appear to be impolitic to introduce major new legislative proposals involving controversial foreign trade policy initiatives in 1967 or 1968. During these 2 years, the President should explore with all other countries (with a view to introducing the necessary legislative proposals to the U.S. Congress in 1969) the possibility of establishing a World Free Trade Association patterned after the European Free Trade Association.

Congress should give the President broad and flexible negotiating authority, permitting such initiatives. The legislation should set forth broad criteria defining the national interest, emphasizing the economic, defense, and other international objectives of the Nation. Congress should also delegate to the President certain powers in connection with East-West trade designed (1) to open the proposed WFTA to Communist countries under certain conditions; (2) to extend or withdraw MFN treatment consonant with the national interest; (3) to extend credits or guarantee private credits for nonstrategic trade; and (4) to consider limited trade with China.

The WFTA, established within the framework of the General Agreement on Tariffs and Trade, would be open to all nations at any time. It should be established at the outset, however, only if a substantial number of the developed countries became founding members. This initial group should include the United States, Canada, the seven EFTA nations (Great Britain, Norway, Sweden, Denmark, Switzerland, Portugal, and Austria), and, hopefully, Australia, New Zealand, and Japan. The EEC should be urged to join as a unit, but WFTA should be formed regardless of whether EEC acceded at the start.

In proposing WFTA, the United States would be following the precedent, established in the formation of EEC, EFTA, and other regional groupings, of departing from the unconditional MFN principle—a cornerstone of U.S. tariff policy since 1923—in return for achieving substantially free-trade conditions over a broad area within a designated time period. Such conditional (as opposed to unconditional) free trade arrangements are permitted under the rules of GATT.

An International Trade Review Board should be established to define the criteria by which a nation qualifies as a less-developed country; to determine which countries and which industries are eligible for special tariff preferences; and to conduct continuing reviews to ascertain at what point special preferences should be withdrawn from such countries or industries within those countries. The ITRB would be composed of three individuals, one from each of three organizations enjoying great international confidence: the World Bank, the International Monetary Fund and the GATT.

The ITRB should be empowered to grant special tariff preferences subject to certain limitations: (1) preferences should be granted only if all or a substantial number of importing countries are prepared to open their markets to selected products; (2) importing countries should be permitted to exclude certain less-developed countries from the benefits of preferential treatment if the ITRB should determine that such countries were able to compete on relatively equal economic terms with the industries of importing countries; and (3) preferences should be granted for a limited period—perhaps not to exceed 10 years and with gradual reductions—and should be subject to review and termination by the ITRB.

It is important that the less-developed countries, for their part, commit themselves to liberalize the flow of goods and capital into their countries and to assure fair treatment for both. Those receiving preferential treatment should be requided to report annually to the ITRB on steps taken to fulfill these commitments.

The WFTA, combining the advantages of both multilateralism and regionalism, should have a salutary effect on political, economic and military developments in Western Europe and on relationships among the nations of the Atlantic community. It could reduce current threats to established patterns of trade resulting from tariff and other trade barriers erected by the two rival European trade blocs. If the Common Market should decide against joining WFTA, the other European countries may find in the WFTA an alternative method of expanding their markets. If Great Britain is unsuccessful in winning entrance into the European Common Market, she may find an enlarged free trade area an attractive alternative.

From the American point of view, it would be most advantageous if the British were to join the Common Market, and the EEC and EFTA were to come to an agreement which, with United States and Canadian participation, would be the basis of an Atlantic community. There is a danger to the United States and to the security of the Western World in an inward-looking united Europe pursuing protectionist trade policies with little regard for its relationships with the United States and its responsibilities to the less-developed countries, and bent on becoming a political "third force" between the United States and the Soviet Union.

This two-step policy should help to sustain the continuing expansion of commerce among nations, strengthen U.S. leadership in the international trade field, and contribute to the lowering of international tensions.

GATT as an Instrument for Assuring Expanded World Trade on a Reciprocal, Nondiscriminatory Basis

EXECUTIVE BRANCH STATEMENT

The GATT is both (*a*) an instrument that incorporates those rules of fair play concerning international trade by which the contracting parties have agreed to be bound, and (*b*) a forum in which intergovernmental trade problems can be discussed and resolved.

The United States took the lead in its creation in 1947, when it met with 22 other countries, including all of the more important wartime Allies, and negotiated the first multilateral tariff agreement in the history of the U.S. reciprocal trade agreements program. That negotiation not only resulted in the substantial reduction and binding of many tariffs by all the participants but in the acceptance of a basic set of obligations governing their trade relations and the creation of procedures designed to reinforce those commitments. In the course of its 20 years of operation, the GATT has been modified and amended as necessary to adapt it to new developments in international trading relations.

While one function of these mutually accepted rules was to protect the value of those tariff concessions that had been obtained by negotiation, an equally important one was to dismantle the system of discriminatory bilateral quota agreements that had grown up during the depression of the early 1930's and had become part of the economic system of most countries during the war. Both the principles underlying these rules and most of the provisions designed to give them meaning were patterned on the agreements the United States had earlier negotiated under the Trade Agreements Act, and most of them closely followed existing U.S. law.

The four most basic principles in the GATT are:

The protection of tariff concessions.

Where a concession must be withdrawn, restoration of the balance of advantages obtained through negotiation.

Nondiscrimination; that is, the right of each GATT country to receive unconditional most-favored-nation treatment from all other GATT countries, and

Abolition of quantitative restrictions as a means of protection.

All of these principles are, of course, subject to exceptions in special circumstances. For example, the sanctity of tariff concessions is qualified by an escape clause, closely patterned on U.S. law, to cover cases in which tariff concessions result in increased imports that cause or threatent serious injury to a domestic industry. The rules against discrimination do not apply to existing preferential systems, but margins of preference may not be increased. Another important qualification to the rule of nondiscrimination is the traditional excep-

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tion for customs unions which, in the GATT, is broadened to include free trade areas. The rule against the use of quantitative restrictions (quotas) is suspended when the International Monetary Fund finds that a country is in such balace-of-payments difficulty as to need to apply import restrictions. In addition to these and other specific exceptions, the GATT contains a blanket exception to all the rules in order to permit a country to protect its national security.

Accomplishments and deficiencies

The GATT has, so far, accomplished a large part of the objectives that led to its creation. It has increased its membership from the original 23 countries to 74 and now covers most of the important trading countries of the world. The GATT membership also includes a large number of developing countries in Latin America, Africa, and Asia.

Under the GATT, by far the larger part of the quotas that were in existence at the end of the war have been dismantled. Tariffs have been reduced substantially in a series of negotiations. Especially noteworthy is the vastly increased scope of tariff negotiations conducted under GATT as compared with the prewar bilateral negotiations.

In the Kennedy round, latest and most important of GATT negotiations, the previous method of negotiating item by item was largely abandoned, again on U.S. initiative, in favor of across-the-board tariff cuts, and resulted in the broadest reductions ever achieved, with concessions affecting $40 billion of world trade. Also, for the first time, the reduction of nontariff barriers was made a specific objective of the negotiation. In one field—that of antidumping practices—an international code of behavior was accepted. In a supplementary agreement subject to congressional approval, the United States agreed to eliminate the American selling price method of valuation now applied to certain chemicals in return for further concessions affecting tariffs and certain nontariff barriers of other countries.

One of the more important achievements of the GATT has been the prevention of trade wars. By providing standards and procedures for dealing with cases in which one country takes action adversely affecting the trade of another, it has been able to limit the provocations to trade warfare and to prevent such retaliation as does take place from setting off a chain reaction.

An area in which the GATT has not been able fully to live up to its original ambitious objectives is the field of agricultural trade. The practice of most countries in using extraordinary means to protect their agricultural producers has handicapped the GATT in moving toward a world market economy in that field. The latest manifestation of agricultural protectionism which creates problems for us is that embodied in the common agricultural policy of the EEC and the use by the Community of variable import levies.

Developing countries

An area of GATT activity that has greatly intensified in the past decade relates to the special trade problems of developing countries. The original text of the GATT contained certain exceptions and procedures that recognized the inability of these countries to conform to the kind of trade discipline that it was reasonable to expect of the developed countries. However, a more positive approach was launched in the GATT program for expansion of international trade following a ministerial meeting in 1958. One major part of this program dealt with developing countries. Subsequently an action program covering specific measures of value to developing countries was adopted and various committees focused special attention on the removal of barriers affecting export products of particular interest to less-developed countries. An International Trade Center was set up to provide information, training, and technical assistance in promoting exports. The GATT has also been amended to include a part IV on trade and development which provides a legal basis for commitments aimed at helping developing countries to accelerate their economic growth through increased trade and higher export earnings.

Within the GATT, considerable progress has been achieved in reducing barriers to imports of tropical products and other export items of particular interest to developing countries. However, the developing countries need to accelerate the expansion of their exports and have been pressing in the GATT and other forums for the establishment by developed countries of tariff preferences in their favor. President Johnson at the OAS meeting at Punta del Este announced that the United States would consider the possibility of obtaining international agreement on a plan of temporary preferences, generalized to all developing countries.

The special trade problems of the developing countries are also to be explored further in the United Nations Conference on Trade and Development which will meet early in 1968 at New Delhi, but any resolutions of that Conference will not involve legal rights and obligations in the trade field as is the case with commitments negotiated under the GATT.

Plans for the future

While there is no present plan for the early initiation of another round of negotiations in the GATT, a special meeting of GATT countries in November 1967 is expected to launch a series of international studies and consultations designed to identify the areas where intensive international collaboration could pave the way for further negotiations. These studies will largely parallel and support the studies of future commercial policy that the President has directed the executive branch to conduct under the leadership of the Special Representative for Trade Negotiations. They will be especially helpful in determining the international acceptability of new approaches to tariff reductions, to the modification of nontariff barriers, and to the liberalization of agricultural trade. These interrelated studies could also lead to a reexamination of those GATT provisions that are no longer adequate to deal with the trade problems that have emerged since the GATT was drawn up.

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THE PUZZLE OF GATT

LEGAL ASPECTS OF A SURPRISING INSTITUTION

John H. Jackson*

Nineteen years ago last October delegates of 22 nations signed a temporary agreement involving tariffs and international trade.[1] Today, two decades later, this "temporary agreement" is one of the principal regulating institutions for the international trade of over 70 nations.[2]

If one were asked in the early years of the General Agreement on Tariffs and Trade (GATT) whether or not it would survive long, his answer no doubt would have been very pessimistic. With scarcely any institutional framework, with no provision for a secretariat,[3] and with legal ties to an organization that failed to materialize,[4] the GATT would hardly have qualified as "most likely to succeed" among the international organizations set up in the years immediately following World War II. Indeed, in theory at least, GATT was not an "international organization" at all—merely an "agreement."[5] Despite the lack of an institutional framework, despite lack of financial support

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[1] October 30, 1947. 55 U.N. Treaty Series 194. General Agreement on Tariffs and Trade. (Hereinafter the U.N. Treaty Series will be cited as "UNTS".)

[2] The latest status of the GATT membership is set forth in GATT Press Release 973 of Nov. 1, 1966. There are 70 contracting parties to the GATT, plus four countries which have acceded provisionally, two countries which participate in GATT under special arrangements, and eight countries which apply GATT de facto pending final decision as to future commercial policy.

GATT documentation is extensive. Letter and number document designations in this article are GATT documents unless otherwise specified. Citations to GATT documentation in this article will utilize the following abbreviations and symbols: "PR" for press release: "L/" followed by a number, indicates the "L" series of documents; "BISD" indicates "Basic Instruments and Selected Documents" which are a series of volumes, usually one per year, containing selected documents from GATT. The BISD series consists of vols. 1, 2, and 3, and supps. 1 through 14. This series will be cited using abbreviations exemplified by the following: II/120=vol. 2, BISD, p. 120; 3S/135B=BISD, third supplement, p. 135. Recently GATT has completely revised its policy of derestricting documents, so as of Dec. 8, 1966, a large number of GATT documents have become available to the public for the first time. (See INF/121, L/2647 and INF/122.)

[3] The general agreement itself contains no mention of a Secretariat. The original idea was that the Secretariat of the International Trade Organization (ITO) would service GATT and at the beginning of GATT the "Interim Commission for the International Trade Organization (ICITO)" performed the services of the Secretariat. To this day, the legal structure when it is not blurred, consists of this relationship. Rule 15 of the Rules of Procedure for the Contracting Parties of GATT provides "the usual duties of a Secretariat shall, by agreement with the Interim Commission for the International Trade Organization, be performed by the Executive Secretary of the International Commission on a reimbursable basis." Further discussion of the many interesting legal problems of the Secretariat of GATT had to be omitted from this article due to space limitations.

[4] The International Trade Organization (ITO) Charter was drafted at the Havana Conference 1947–48, but when the U.S. President finally decided in 1950 not to submit the ITO Charter to Congress for ratification, the ITO died. See Diebold, "The End of the ITO * * *," (Princeton Essays in International Finance No. 16, 1952), and Gardner, "Sterling-Dollar Diplomacy" (Clarendon Press, Oxford, 1956)., p. 378.

[5] The General Agreement refers to "contracting parties" and to "contracting parties." The latter, according to art. XXV par. 1, means the contracting parties, "acting jointly." At one of the preparatory sessions for GATT it was decided to use the term "contracting parties" instead of committee or other reference, in order to remove any connotation of formal organization. "GATT, Analytical Index" second revision), p. 133. See U.N. document EPCT/TAC/PV/12, p. 8.

except of the most meager sort,[6] and despite powerful forces for trade protectionism which killed the International Trade Organization (ITO)[7] and tried to kill GATT,[8] GATT survived. The fact that the GATT did survive, and that it has become a major force in international relations today is not only surprising but instructive.

It is instructive because it tends to indicate that legal structures or institutions have less to do with the development of affairs than dimly understood political or economic forces, aided by the efforts of dedicated men. One could argue, despite the apparent obstacles, GATT survived and developed because history "required" it to do so. These explanations, more appropriate for the historian, the political scientist, or the economist than for the lawyer, suggest that constitutional form may not be as significant in international institutions, as it seems.

These reflections suggest the danger of a "legal approach" to the GATT. This is reinforced when one observes GATT work at close hand. Lawyers' considerations seem to play a small part. The secretariat which serves GATT presently has no position for a lawyer. Delegates and secretariat members often express an attitude such as, "Let's not be concerned with legal technicalities." The GATT has consciously abandoned an attempt to solve some legal problems which seemed perplexing and irreconcilable, proceeding on to other business.[9]

Yet legal problems there are. The GATT is being invoked before national courts.[10] Certain provisions of GATT have proved very confining and yet have been respected.[11] Some delegates to GATT have expressed a plea to "know where we stand, to know our rights," and others have been pushing for greater sanctions in the event of breach.[12]

The purpose and commission of this article is to survey the legal aspects of the GATT. It is not an easy assignment because any selection of problems is certain to leave out interesting and important topics, and because most of the problems selected for treatment here can each form the focus of a lengthier work. Nevertheless, this discussion

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[6] The total GATT budget today is about $3 million (L/2694), as compared to about $18 million for the International Monetary Fund, $19 million for the International Labor Organization, $21 million for the Food and Agriculture Organization.

[7] See Diebold, op. cit., *supra* note 4 and Gardner op. cit., *supra* note 4.

[8] There is a history of hostility in the U.S. Congress against GATT. One example of this is still in 19 U.S.C. 1351 where Congress states "* * * the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive argeement known as the General Agreement on Tariffs and Trade."

[9] See, for example, "GATT, Report of the Working Party on the Association of Overseas Territories with the European Economic Community" including commodity trade studies, 1958 (GATT Document L/805/Rev. 1), p. 5. See also GATT, Report by the Intersessional Committee, "The Treaty Establishing European Economic Community", par. 8, reprinted at 7S/69, 70.

[10] See, for example, U.S. Amicus Curiae brief in the case of *Tupman Thurlow Company Inc.*, v. *W. F. Moss, Commissioner*, 252 F. Supp. 641 (1966), 5 International Legal Materials (American Journal of International Law) 483; *Baldwin-Lima-Hamilton Corp.*, v. *Superior Court*, 208 Cal. App. 2d 803, 25 Cal. Reptr. 798 (1962) (hearing denied December 19, 1962). See also Comment, "GATT, The California Buy American Act, and the Continuing Struggle Between Free Trade and Protectionism", 52 Cal. L.R. 335 (1964); Comment, "National Power to Control State Discrimination Against Foreign Goods and Persons: A Study in Federalism", (12 Stanford L. R. 355 (1960); Comment, "California's Buy-American Policy: Conflict with GATT and the Constitution", 17 Stanford L.R. 119 (1964).

[11] See the discussion of art. XXX of GATT concerning amendments, subpt. C of pt. I, below.

[12] For proposals to amend art. XXIII of GATT to establish rules increasing sanctions for breach of GATT, see GATT Document COM.TD/F/1-4.

may serve as a starting point for those who wish to study GATT law.[13]

This article will discuss legal aspects of GATT under five major headings as follows:

I. The Fundamental Treaty Law of GATT.
II. Tariff Negotiations and Tariff Bindings.
III. Protecting the Value of Tariff Concessions.
IV. Exceptions and Escape Clauses: Continuous Negotiation in GATT.
V. Dispute Resolution in GATT.

I. THE FUNDAMENTAL TREATY LAW OF GATT

The basic treaty, the "general agreement" itself, was completed in October 1947. It has technically never come into force,[14] being applied by a "protocol of provisional application" described below.[15] The GATT has been amended a number of times,[16] and affected by other protocols, including some not technically "in force" themselves,[17] so that even the basic treaty is a complex set of instruments, applying with different rigor to different countries. For the lawyer to ascertain at any given time, the precise legal commitments between any two nations, is no easy task.[18] This part will outline the steps necessary to make such a determination, in four sub-topics: First, a brief survey of the preparatory work for GATT with an analysis of its relevance to GATT and its relation to the ITO which was drafted at the same time. Second, the protocol of provisional application and its relation to GATT, to introduce the problem, what is the legal force of GATT?

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[13] See, in addition, Seyid Muhammad, "The Legal Framework of World Trade," Praeger, New York, 1958; Note, United States Participation in the General Agreement on Tariffs and Trade, 61 Columbia Law Review 505 (1961). For a more general treatment from an economist's viewpoint, see Curzon, "Multilateral Commercial Diplomacy," Michael Joseph, London, 1965.

[14] Art. XXVI of GATT governs how governments may accept the agreement itself, and provides a formula for ascertaining when a sufficient number of governments have accepted the agreement so that it enters into force. From the GATT documentation it appears that only one country, Haiti, has accepted the general agreement itself. See L/2375/Add. 1, p. 20 (Mar. 5, 1965, document reprinting a document of Sept. 25, 1958).

[15] See subpt. B below.

[16] Lists of protocols and treaties affecting the GATT may be found in U.N. Document ST/LEG/3, Status of Multilateral Conventions, for instruments drawn prior to Feb. 1, 1955, and deposited with the Secretary General; and GATT Document PROT/2 (as revised through August 1966) for instruments drawn subsequent to February 1955. Some of these instruments actually amend the text of GATT, while others simply affect the rigor or force, or the parties involved, of various clauses in GATT. There are 36 treaty instruments including the general agreement itself listed in the U.N. Document ST/LEG/3. GATT document PROT/2 lists 67 instruments through July 1966. For protocols subsequent to July 1966 see L/2714 Dec. 2, 1966). It should be noted that in addition to the instruments listed in the two official lists as relating to GATT, there are certain other instruments with treaty force or treaty-like characteristics which also relate to GATT. Some are in force and some not. Among these are, of course, the Havana charter itself (see U.N. Document ICITO/1/4 and U.N. Document E/CONF.2/78), two GATT "Certifications of Rectifications and Modifications"; Long-term arrangement regarding international trade and cotton textiles (GATT 1963). There are others also, including a number of bilateral agreements between parties to GATT which relate to their GATT obligations. See note 137 infra.

[17] GATT document PROT/2 indicates which of the instruments listed therein are in force or not, and to which countries they apply.

[18] For instance, obligations relating to subsidies found in art. XVI of GATT, par. 4, are affected by a series of declarations and "procès-verbaux." Since some newly independent countries became members of GATT under sponsorship procedures outlined in this article below at subpt. D of this part, and since independent countries are deemed to have the same position in GATT as the sponsoring country at the time of sponsorship, such new GATT parties might be considered to have the same position with respect to art. XVI par. 4 as the sponsoring country at the time of the sponsorship. Yet an examination of PROT/2, p. 42 regarding the declaration giving effect to the provisions of art. XVI:4 indicates that no new independent less-developed country which entered GATT under sponsorship is deemed to be applying this clause of the GATT. It is not clear why this is the case, although added information from specific governments concerned might enable one to rationalize this position. See note 84 infra.

Third, the amending process of GATT. Fourth, a short introduction to the complex "membership" law of GATT, suggesting an approach to the question, which nations are legally bound by portions of the general agreement?

A. *Preparatory work*

The collapse of international trade in the 1930's and its effects on peace and war led some world leaders to conclude that new international economic institutions were essential.[19] The goals invisaged for such institutions were as much political as economic, that is—the prevention of war and the establishment of a just system of economic relations were as important as the economic benefits that might derive from international trade and economic stability.[20] During World War II preparations were made for developing such institutions.[21] The Bretton Woods Conference and the resulting agreements were the early result of these preparations.[22] But even at that conference it was recognized that an international organization to regulate trade was a necessary complement to the IMF and the IBRD.[23]

The U.S. State Department had prepared a draft charter of an International Trade Organization.[24] At the first session of the United Nations, the Economic and Social Council resolved[25] that a conference to draft a charter for an ITO should be called, and that a preparatory committee for this conference be established.

In all, four international conferences were held to draft an ITO charter, three of which were "preparatory".[26] The first was a meeting of the "Preparatory Committee" in London from October 15, to November 26, 1946.[27] The second was a meeting of the "Drafting Committee" of the Preparatory Committee, held at Lake Success, N.Y. from January 20, to February 25, 1947,[28] to edit and draft a charter in light of the London meeting, with alternatives for provisions on which the London session could not agree. The third was the Geneva Conference, officially the second session of the Preparatory Committee, which was held from April 10, 1947, to October 30, 1947.[29] This conference had a dual function. On the one hand the Committee continued its drafting of an ITO charter, preparing for the Havana Conference. On the other hand, 22 nations undertook negotiations

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[19] See Gardner, op. cit., supra note 4; U.S. State Department, Commercial Policy Series, numbers 71 (Sumner Welles Speech 1941), 74 (Harry Hawkins Speech 1944).

[20] In addition to the speeches and materials referenced in the previous footnote, see the general policy speeches made by delegates at the opening of the Second Session of the Preparatory Committee at the Geneva Conference in 1947, U.N. document EPCT/PV2 1 4.

[21] See Gardner, op. cit., supra note 4; note 19 supra.

[22] See Bretton Woods Proceedings, the Articles of Agreement of the International Monetary Fund, and of the International Bank for Reconstruction and Development.

[23] Bretton Woods Proceeding, vol. 1, p. 941. The conference resolved "complete attainment of * * * purposes and objectives [of the IMF] * * * cannot be achieved through the instrumentality of the fund alone; * * *" and recommended that the governments seek agreement "to reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations * * *."

[24] U.S. State Department Document 2411, December 1945.

[25] U.S. Economic and Social Council resolution 1/13, Feb. 18, 1946, U.N. document E 22.

[26] The documents of all conferences are officially United Nations documents. The first three bear the document numbers E/PC/T (herein shortened to EPCT) plus other letters and numbers designating subbodies of the Preparatory Committee. The fourth, the Havana Conference, bears the document numbers E/CONF.2/. . See GATT, Analytical Index (second revision), pp. ii and iii.

[27] Report on the first session of the Preparatory Committee for the United Nations Conference on Trade and Employment, London, October 1946.

[28] Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, Lake Success, N.Y., EPCT/34, Mar. 5, 1947.

[29] Report of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Geneva, August 1947 EPCT/186; final act adopted at the conclusion of the second session, etc., 55 UNTS 188 (Oct. 30, 1947).

with a view to reducing tariffs and embodied the results of these negotiations in the General Agreement on Tariffs and Trade.[30]

Fourthly, the Havana Conference itself was held from November 21, 1947, to March 24, 1948, for the purpose of finally drafting on ITO charter.[31]

Clearly from the point of view of GATT problems, the Geneva Conference was the most important. The GATT was finally drafted there (a previous draft had been prepared at Lake Success)[32] and transmitted to governments.[33] But in an important sense all preparatory work for the ITO charter is relevant to GATT. Much of the GATT was taken verbatim from the draft of the ITO charter as it stood at the end of the Geneva Confernce deliberations on ITO.[34] The general agreement was expressly tied to the prospective ITO.[35] For example, certain clauses resulting from the Havana Conference were to be substituted in the general agreement, absent objection, if the ITO came into effect, and later amendments to GATT reflected Havana Conference work on the ITO.[36] Finally, when the ITO failed to come into being, the GATT had to fill the gap in international relations.[37] However, persons dealing with the GATT were often those who had drafted the ITO and their attitudes toward GATT were undoubtedly colored by their experiences in the ITO negotiations.[38]

The function of the preparatory work for ITO in the interpretation of the GATT is thus complex. Although a broad brush generalization would state that all ITO preparatory work is relevant to GATT, a stricter view would conclude that the ITO preparations must be specifically traced as a source of language in the GATT, to be relevant.

Even when the ITO preparatory work relates to a clause of the ITO charter which was selected for inclusion in GATT, there is arguably a difference in the effect of that preparatory work on interpretation of GATT. The GATT was drafted as a "trade agreement," including only those clauses which the draftsmen felt were normally found in trade agreements,[39] and which were considered essential to protect the value of tariff concessions.[40] Consequently the preparatory work

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[30] The documents of the Geneva Conference most relating to GATT were in a series EPCT/TAC/– (the Trade Agreement Committee).

[31] Final act and related documents, United Nations Conference on Trade and Employment, April 1948, U.N. document ICITO/1/4 and E/CONF.2/78. See also ICITO, September 1948, "Reports of Committees and Principal Subcommittees" [of United Nations Conference on Trade and Employment held at Havana, Cuba] U.N. document ICITO/1/8.

[32] Report of the Drafting Committee of the Preparatory Committee, EPCT/34, op. cit., supra note 28, at p. 65. See also "Resolution regarding the negotiation of a multilateral trade argeement embodying tariff concessions," p. 47 of "Report of the First Session of the Preparatory Committee," EPCT/33.

[33] Final act adopted at the conclusion of the second session etc., op. cit., supra note 29.

[34] See EPCT/189, Aug. 30, 1947, the draft of the General Agreement on Tariffs and Trade taken from the Preparatory Committee's text of corresponding articles in the draft Havana Charter as embodied in EPCT/180.

[35] Article XXIX of GATT is entitled "The Relation of the Agreement to the Havana Charter."

[36] Paragraph 2 of art. XXIX of GATT as it was originally worded stated "On the day on which the charter of the International Trade Organisation enters into force, art. I and pt. II of this agreement shall be suspended and superceded by the corresponding provisions of the charter; provided that * * * any contracting party may lodge * * * an objection * * *." See GATT, Analytical Index (second revision), p. 125 (re: art. XXIV).

[37] Official death for the ITO is considered to be the press release for the President of the United States announcing that he would not submit the ITO Charter to the Congress, Gardner, op. cit., supra note 4, at p. 378.

[38] For instance L. D. Wilgress of Canada was a signatory of the final act of the Geneva Conference in 1947 and the Havana Conference in 1948, and was Chairman of the Contracting Parties of GATT from their first through the fifth and their ninth through 11th sessions (spanning the first 9 years of GATT existence).

[39] U.N. document EPCT/TAC/PV/11, 34–35 (Sept. 5, 1947, discussion at Geneva Conference).

[40] U.N. document EPCT/TAC/PV/1, p. 24 (Aug. 5, 1947), Geneva Conference discussion).

pointed to interpretations of GATT which would fulfill these two criteria. GATT was not considered an "organization,"[41] it was merely a contract with specific limited purposes. It is fair to state that the subsequent development of GATT has pushed it far beyond this initial image.[42] The extension of GATT's role can be justified not only on the basis of its practice and custom (if one is prepared to accept this as a basis) but also on the basis of continued participation, policy statements, and utilization of GATT institutions by many of the governments concerned.[43] Coupled with a right to withdraw on relatively short notice,[44] this continued participation suggests an ongoing basic consensus that one can use to rationalize the flexible and pragmatic approach that has characterized GATT during its existence. In any event it is clear that in practice GATT will continue to be treated as a major international organization.

B. The legal force of GATT and the protocol of provisional application

In August 1947 at Geneva, the parties to the GATT negotiations were faced with a dilemma. There was the desire to put the tariff concessions into effect as soon as possible in order to prevent market disruption and speculation as well as political opposition that could ensue if details of the concessions leaked or became public information before the agreement became effective. Against this was the legal necessity for some nations to obtain legislative changes in laws inconsistent with parts of the GATT.[45] The solution chosen was "provisional application," by a protocol which stated that eight named governments undertake—

> provided that this protocol shall have been signed on behalf of all the foregoing governments not later than November 15, 1947, to apply provisionally on and after January 1, 1948:
>
> (*a*) Part I and III of the General Agreement on Tariffs and Trade, and
>
> (*b*) Part II of that agreement to the fullest extent not inconsistent with existing legislation.[46]

The protocol allowed other Geneva participants to sign, and stated that any nation could withdraw on 60 days' notice (compared to the 6 months' notice required in the general agreement).[47]

This protocol became effective when the eight named countries signed before November 15, 1947,[48] and is still effective. The general

[41] See note 5 supra, and discussion in the preparatory work at Geneva, 1947, U.N. document EPCT/TAC/PV/12 (Sept. 16, 1947).

[42] This is evidenced by the continual development of committee structure in GATT including the early Balance-of-Payments Committee and the Intersessional Committee, culminating in the development of the "Council" (see 9S/7, 1961). Another action reflecting the attitude of the Contracting Parties toward the GATT is a decision of Mar. 23, 1965, changing the title of the "Executive Secretary" to "Director General," thus conforming the title of the chief executive to that of a number of other international organizations. 13S/19.

[43] For instance, the Council of GATT has no authorisation in the general agreement itself, but is set up by decision of the Contracting Parties. Yet a considerable number of the contracting parties participate in the work of the Council. Any contracting party who desires can become a member of the Council if it is willing to assume the responsibilities.

[44] See subpart B below.

[45] See the preparatory discussion, Geneva, 1947, U.N. document EPCT/TAC/PV 1–5.

[46] 55 UNTS 308.

[47] Ibid., cf. GATT, art. XXXI.

[48] The signatures, including some with reservations, are set out at 55 UNTS 312–316. The 8 named countries, essential for the protocol to come into force, were Australia, Belgium, Canada, France, Luxembourg, Netherlands, United Kingdom, and the United Sates. These eight signatures were completed before Nov. 15, 1947. Subsequently 14 other governments signed the protocol, but four (China, Syria, Lebanon, and Liberia) after that withdrew. Curzon, op. cit., supra note 13.

agreement is applied through this protocol or similar protocols signed by governments which later became contracting parties to GATT.[49]

What is the effect of this on GATT? There are two major effects. First, the withdrawal period is shorter, as stated above. Second, a large portion of GATT obligations are effective only to "the extent not inconsistent with existing legislation." The first effect needs no additional explanation, except to note that it reinforces the "continuing consensus" interpretation of GATT mentioned above. The second effect needs some elaboration below. It might also be argued that the word "provisional" affects the interpretation of the whole GATT agreement because the protocol applies the entire GATT "provisionally." No instance where the term "provisional" has resulted in any noticeable difference in the approach or application of GATT has been found except as just stated above. "Provisional" seems to be defined by the remainder of the protocol, and apparently that means only "fullest extent not inconsistent with existing legislation" (for Pt. II).

The concept "not inconsistent with existing legislation" needs elaboration. There are three problems that merit discussion. First, "existing" at what point of time? Second, whose legislation, that of local subdivisions as well as that of the nation? Third, what does "inconsistent" mean, especially in the context of legislation that is not mandatory but permissive, i.e. which authorizes (but does not require) executive action or regulation which would be inconsistent with GATT part II.

First, What point of time? At the third session of the GATT Contracting Parties, an issue was raised whether "existing legislation" in the Protocol of Provisional Application meant that which existed at the date a nation signed the protocol, or the date in the last paragraph of the protocol (October 30, 1947). After consideration the then Chairman of the Contracting Parties ruled that it refers to the latter.[50] The procedure is perhaps more intriguing than the substantive result of this ruling, i.e. the apparent acceptance by states of a ruling of a chairman of a group of government representatives as a definitive interpretation of treaty language.

Second, Whose legislation? In a federal nation, does "existing legislation" also include legislation of the federal subdivisions? Although this issue has arisen in litigation,[51] it is not easy to answer. The preparatory work for GATT does not completely settle it.[52] In the subsequent practice of GATT only one reference to this issue can be found. (India in reporting on "existing legislation" expressly excepted State subdivision legislation from its report because it had not had the time to study it).[53] Article XXIV, paragraph 12, relates to this problem also and leads one to an analysis that depends heavily on the constitutional law of the nation concerned, both as to (1) the supremacy or nonsupremacy of the federal treaties: and (2) the effect

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[49] The protocols of accession are listed in GATT, Analytical Index (second revision), p. 153-7.

[50] II/35, ruling on Aug. 11, 1949.

[51] *Baldwin-Lima-Hamilton Corp.* v. *Superior Court, supra* note 10.

[52] Mention of the problem is located at U.N. document EPCT/TAC/PV/11, p. 44; and U.N. document EPCT/TAC/PV/19, p. 83.

[53] L/2375/Add. 1. p. 11.

of GATT and the protocol of provisional application as municipal law (without additional implementing legislation).[53a]

The third problem concerning the protocol of provisional application that must be discussed is the question of what is the "fullest extent not inconsistent with existing legislation"? This issue is best posed by a hypothetical.

Legislation of nation A (signatory in 1947 of the protocol) existing on October 30, 1947, "authorizes the President to limit imports by quota whenever they injure a domestic producer, for such time as the President shall determine." Such quotas would be inconsistent with article XI of the GATT.

Case 1: Prior to October 30, 1947, the President of A had limited imports of perfume to 1 million units per year, effective indefinitely.

Case 2: In 1948 the President proclaims a quota on wheat of 1 million units per year.

In either case is A violating its international obligations? If the key word in A's legislation were "requires" instead of "authorizes," one would probably conclude that neither case 1 nor case 2 were a violation of the protocol of provisional application. But what about "authorizing" legislation? This issue has generated some controversy in GATT resulting in practice which suggests a conclusion that both cases are a violation of GATT.

When the issue was initially raised in GATT, a working party report adopted by the GATT concluded that measures are within the "exist-legislation" exception of the protocol, "provided that the legislation on which it is based is by its terms or expressed intent of a mandatory character—that is, it imposes on the Executive authority requirements which cannot be modified by Executive action." [54]

This ruling was reaffirmed in 1955, at a time when the GATT members considered and accepted a proposal that would allow members to accept the GATT "definitely" (i.e. directly, without application through the appropriate protocol), while expressing a reservation as to that legislation "existing" within the protocol's meaning.[55]

Several cases have arisen testing this concept of "not inconsistent with existing legislation." In each case the GATT official position was in accord with the discussion above.[56] However, in at least one case a waiver was issued by GATT to the nation concerned, in a sense "legitimizing" its action which that nation claimed was allowed in any case under the protocol of provisional application.[57]

C. Amending the GATT

Article XXX provides the basic framework for amending GATT, requiring unanimous consent to change part I (i.e. art. I and II and the schedules incorporated by reference), article XXIX and article XXX itself. Other amendments become effective "in respect of those

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[53a] Art. XXIV, par. 12 of GATT reads: "Each contracting party shall take such reasonable measures as may be available to it to insure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories."

[54] II/62.

[55] 3S/249.

[56] 1S/61, 6S/60–61, 7S/104–107.

[57] Waiver to West Germany for its marketing laws which apply quantitative restrictions to certain agricultural products, decision of May 30, 1959, 8S/31. This waiver has apparently expired.

contracting parties which accept them" upon acceptance of two-thirds of the members.

Article XXX has proven one of the most troublesome and restricting in GATT. The unanimity requirement has engendered an almost hopelessly confusing situation regarding the schedules (the author has been told that some nations do not even know the true status of their own tariff concessions in GATT). In addition, the provision that amendments which are authorized by two-thirds vote apply only to those governments who accept them, has the potential of needless procedural confusion. Three problems in particular will be discussed (1) the unanimity requirement and schedule adjustments; (2) the relation of waivers under article XXV to amendments; (3) procedural difficulties caused by article XXX.

The schedules of tariff concessions are, by article II "hereby made an integral part of Part I of this Agreement." A schedule is a detailed list of products for a specific GATT party, which states for each product that party's maximum allowable tariff. Thus a schedule for the United Kingdom might list "Widgets—10 percent," meaning that the United Kingdom has promised or "bound" itself to impose a tariff on widgets that will never exceed 10 percent ad valorem. The schedules fill many volumes and altogether contain some 65,000 items. Because errors are found, and because the GATT contains procedures for modifying or renegotiating items on the schedule (see pt. II below), the schedules are constantly being changed. Since its inception there have been 26 protocols of "rectification, modification, or supplementary concessions" amending the schedules, of which six are technically not in force.[58] Protocols completed for signature as long ago as 1955 are still not in force.[59] However, oddly enough, and again illustrative of the pragmatic approach of the GATT, these schedule changes are treated by GATT parties as if they were in force.[60]

In 1955 an attempt was made, at the major review session of GATT, to amend article XXX to provide, "any amendment to the schedules * * * which records rectifications of a purely formal character or modifications resulting from action taken under paragraph 6 of Article II, Article XVIII, Article XXIV, Article XXVII or Article XXVIII, shall become effective on the thirtieth day following certification to this effect by the CONTRACTING PARTIES: *Provided* that prior to such certification, all contracting parties have been notified of the proposed amendment and no objection has been raised, within thirty days of such notification by any contracting party, on the ground that the proposed amendments are not within the terms of this paragraph."[61]

Because one nation still has not accepted this amendment, it remains technically not in effect.[62] Yet subsequent changes to the schedules have been embodied in a series of "certifications" which state,

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[58] PROT/2, revised to August 1966.

[59] *Ibid.*

[60] This was stated to be the case in discussions which the author had with various government and secretariat personnel, and is illustrated by the fact that no complaints of breach of GATT obligations have been brought when nations institute the tariff changes resulting from the changes to the GATT schedule.

[61] GATT, final act adopted at the ninth session of the contracting parties and protocol amending pt. I and arts. XXIX and XXX of the general agreement, etc., Mar. 10, 1955, Geneva, p. 28.

[62] PROT/2, p. 5. L/2575 (Mar. 10, 1966).

"on the date of the entry into force of paragraph 3 of Article XXX this decision shall constitute a certification by the CONTRACTING PARTIES on that date * * *" [63]

These certifications are also treated by GATT parties as if they were in effect.[64]

The relation of article XXV to article XXX has posed an intriguing legal problem. Article XXV, paragraph 5, provides that by two-thirds votes including half of the members, GATT contracting parties may "In exceptional circumstances not elsewhere provided for in this Agreement * * * waive an obligation imposed upon a contracting party by this Agreement * * *." Often waivers are granted to obligations under part I of GATT (including schedules), so as, for instance to allow a party to change tariff concessions pursuant to a revision of its customs tariff.[65] Article XXX, however, requires unanimity to amend part I. Therefore, it has been argued, waivers should not be granted to part I if they amount in effect to an amendment, unless the vote is unanimous. This argument has been rejected by the GATT contracting parties, partly because of the opening clause of article XXX which states, "Except where provision for modification is made elsewhere in this Agreement * * *", arguing that article XXV is just such other provision for modification excepted from article XXX.[66] The problem is, of course, that if the waiver power is unlimited [67] it could be used to produce an effect substantially the same as an amendment. In fact, at least two waivers [68] have been framed in general terms to apply to any contracting party who fulfilled the criteria, just as an amendment would be. Most waivers apply to just one named contracting party, and often for a limited time.[69] At their 11th session the contracting parties formulated a series of guidelines for the issuance of waivers, partly as a response to the amendment problem.[70]

The procedural difficulties that can result from article XXX can be illustrated by the following hypothetical. Article XXV provides that most actions of the contracting parties be by majority vote. Suppose an amendment were adopted by two-thirds under article XXX which changed article XXV to require a majority of GATT members (not just those present and voting), and suppose nation A voted for the amendment but B did not. Article XXX provides that such amendment is effective "in respect of those contracting parties which accept it." Thus the amended article XXV applies to A but not to B. B is governed by the prior article XXV. Now consider a vote at a meeting of the contracting parties. How is it to be evaluated? [71]

Article XXX phrasing reflects ideas stemming from days when trade relations were primarily bilateral, and no obligations could be

[63] GATT, certification relating to rectifications and modifications of schedules to the General Agreement on Tariffs and Trade, Jan. 15, 1963, Geneva; GATT, second certification relating to, etc., Apr. 29, 1964, Geneva.

[64] Supra note 60.

[65] Waiver to Brazil of Nov. 16, 1956, 5S/36. Recent waivers to obligations under pt. I of GATT include a waiver to the United States of Dec. 20, 1965 (automotive products), 14S/37; and to Australia (preferences for less developed countries) Mar. 28, 1966, 14S/23.

[66] L/403 (Sept. 7, 1955).

[67] Working party report adopted by contracting parties on Nov. 10, 1952, 1S/86.

[68] Decision of Oct. 22, 1951, extending the time limit in art. XX, pt. II, BISD, II/28; decision of Mar. 5, 1955 (hard-core decision relating to import restrictions), 3S/38.

[69] See list of waivers at 14S/224–228.

[70] Procedures adopted Nov. 1, 1956, 5S/25.

[71] 13S/108.

imposed on a nation without its consent.[72] In addition it fails to distinguish between the rules which are procedural in nature and those which are substantive. It is submitted that the idea that no international trade obligations should be imposed on a nation without its consent no longer deserves unwavering recognition. Such idea was truly effective, if at all, for only a few large, powerful nations. For most countries, dependance on international trade is a fact of life and leaves them vulnerable to forces beyond their control including sometimes selfish and irresponsible actions of trading parties.[73] The very purpose of international organization of trading relationship is to reduce the chance of such actions hurting other nations and to thereby increase the stability of international trading relations. A change in the amending article of GATT seems in order. Even the 1955 amendment (not yet in effect) is probably inadequate for the fuutre of GATT.

D. Membership and participation in GATT

There are basically four ways to become a "contracting party" (loosely referred to as a "member") of GATT. Three involve accession by a government: by the Protocol of Provisional Application,[74] subsequent protocol and agreement under article XXXIII of GATT,[75] and by directly accepting the GATT itself under article XXVI:2 (only one nation has accepted GATT in this manner and then only after acceding to GATT through a protocol).[76] These methods of accession are preceded by tariff negotiations, the "ticket of admission," [77] and often these negotiations extend for several years, during which time, by special declaration (protocol) the applicant government is given "provisional accession" [78] to GATT, or relations with GATT are established by other special arrangements.[79]

The fourth "route" to membership is open to "customs territories, in respect of which a contracting party has accepted this agreement" when such territory "possesses or acquires full autonomy in the conduct of its external commercial relations * * *." [80] In 1957 GATT set forth a series of recommended procedures to guide this sponsorship route to membership,[81] which enabled a newly independent government to have "de facto" participation in GATT pending a final deci-

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[72] See, for example, discussion at EPTC/TAC/PV/15, as excerpted in GATT, Analytical Index (2d revision), p. 150.

[73] An analysis of the percentage that exports is to total GNP is one measure of dependence on international trade. For example, such percentage for Netherlands is 48 percent, for Switzerland 31 percent, for Canada 21 percent, whereas for the United States only 5.7 percent (based on IMF, "International Financial Statistics," October 1960).

[74] 55 UNTS 308, Oct. 30, 1947.

[75] A list can be found at GATT, Analytical Index (second revision), p. 155–156. This includes the so-called Annecy Protocol and the Torquay Protocol.

[76] The sole nation accepting the agreement pursuant to article XXVI is Haiti, L/2375/Add. 1, p. 20.

[77] The second and third "rounds" of tariff negotiations, at Annecy in 1949 and Torquay in 1951, were in substantial part negotiations for the accession of groups of governments. Ten new contracting parties entered GATT by the Annecy Protocol, and 6 by the Torquay Protocol. See II/33–35, and 62 UNTS 121, 142 UNTS 34.

[78] PROT/2, Rev. 2. For example, Declaration on Provisional Accession of Yugoslavia, Nov. 13, 1962, 11S/50.

[79] PROT/2/Rev. 2. For example, Declaration on Relations between Contracting Parties and the Government of Poland (Nov. 9, 1959) 8S/12. See also L/2595.

[80] Article XXVI:5 (c) "If any of the customs territories, in respect of which a contracting party has accepted this agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this agreement, such territories shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party." See Kunugi, "State Succession in the Framework of GATT," 59 American Journal of International Law 268 (1965).

[81] 6S/11.

sion as to entry into GATT.[82] Since 1960 a large group of new members have entered GATT in this manner.[83] The "sponsored" government is deemed to step into the GATT legal relations and obligations of the sponsoring parent just as they were when sponsorship occurred.[84]

II. Tariff Negotiations and Tariff Bindings

The central feature of GATT is the commitment to limit tariffs that will be applied to imports of specific goods,[85] and the generalization of these commitments to all GATT parties through the most-favored-nation clause ("MFN").[86] All else in GATT was originally subsidiary to this central feature.[87] The scheme of GATT from its origin is for each party to have a "schedule" of tariff concessions.[88] Article II of GATT, which incorporates the schedules into GATT, states:

> Each contracting party shall accord to the commerce of the other contracting parties treatment no less favorable than that provided for in the appropriate part of the appropriate Schedule annexed to the agreement.

and further states:

> The products described * * * shall, on their importation into the territory * * * be exempt from ordinary customs duties in excess of those set forth and provided for therein.

Multilateral trade has benefits over bilateral trade which the economists can describe.[89] Multilateral trade negotiations have advantages over bilateral negotiations which are illustrated by the following example. If a most-favored-nation clause is generally inserted in bilateral trade treaties, then when nation A agrees with nation B to reduce

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[82] Ibid., par. 2 "At their next ordinary session, the contracting parties, after consultation with the representatives of the responsible contracting party and of the territory in question, should set a reasonable period during which the contracting party should continue to apply de facto the agreement in their relations with that territory, provided that that territory also continues to apply de facto the agreement to them; . . ." The latest report on GATT membership, contained in GATT press release 973 of November 1, 1966 indicates that 8 countries are now applying GATT de facto pending a decision as to their future commercial policy. These countries are Algeria, Botswana, Congo Democratic Republic of Lesotho, Maldive Islands, Mali, Singapore, and Zambia.

[83] A list is found at GATT, Analytical Index (second revision), page 140.

[84] Report adopted on December 7, 1961 by the contracting parties, 10S/73. "The working party . . . wishes to point out that there can be no doubt that a government becoming a contracting party under art. XXVI:5 (c) does so on the terms and conditions previously accepted by the metropolitan government on behalf of the territory in question." The report in which this paragraph is contained concerns the application by a country of art. XXXV against Japan so that the GATT would not apply between that country and Japan. Newly sponsored states were deemed to inherit the same position vis-à-vis Japan under art. XXV as the sponsoring contracting party. It is not entirely clear how far this principle will extend however, particularly with reference to protocols and treaties relating to GATT. See note 19 supra.

In a number of cases, these new governments have no tariff schedule (and thus no obligations to limit tariffs), because the schedule of tariff concessions of the sponsoring parent did not by its terms embrace that customs territory prior to independence.

[85] GATT art. II and the schedules. See annexure 10, "Multilateral Trade-Agreement Negotiations" in the Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, London, October 1946.

[86] GATT, art. I.

[87] Annexure 10 of the Report of the First Session of the Preparatory Committee, op. cit., supra note 85.

[88] The original schedules of the general agreement occupy 6 volumes of the U.N. treaties series, vols. 56–61. Subsequent schedules can be found in the Annecy protocol, op. cit., supra note 77, and the Torquay Protocol, op. cit., supra note 77 as well as a number of other protocols. In addition, there have been a large number of renegotiations as indicated below. The GATT has never satisfactorily been able to produce a series of "consolidated schedules", giving the schedule for each country as it would be if all tariff concessions which it has made within the framework of GATT were included in the schedule. However, GATT did attempt to publish consolidated schedules in 1952 in 5 volumes. Document GATT/CP/133, sales number GATT/1952–1. See also supra note 84.

[89] Kindleberger, International Economics, third edition, 1963, Richard D. Erwin Inc., p. 318, et seq.

tariffs on widgets, A may have to grant the same reduction to C under a prior treaty which has MFN. But A will be able to extract from B only such reciprocal tariff reductions that compensate for B's advantage received from A. C will get a windfall. This knowledge will inhibit A from offering very much to B in their negotiations, at least as to goods which are traded with nations other than B. The only way out of this dilemma is for A, B, and C to negotiate "together." This GATT attempts to allow.

At the first GATT tariff conference, in Geneva in 1947 (while GATT was being prepared), the procedural outlines were as follows.[90] As many pairs of participating countries as possible began bilateral negotiations, but all participants were kept informed of the progress of negotiations so when A offered a concession to B, A could at its next meeting with C urge C to counter with concessions that would reciprocate for the benefits C would get from A's concession originally made to B.[91] No concessions were final until the end of the conference when each participant could appraise the totality of his concessions with the totality of concessions of all the other parties (each concession, of course, being subject to MFN when it came into force). Thus a conference of basically bilateral negotiations occurred with some multilateral features and results.

This was substantially the pattern of negotiation at the subsequent "tariff rounds" held at Annecy in 1948, Torquay in 1951, Geneva in 1956, and Geneva in 1960.[92] There were two significant limitations on this procedure. First, negotiations were on a product-by-product basis, a laborious process especially after the European Common Market began negotiating as a unit and the six member nations had first to bargain among themselves on each product so as to agree on a common bargaining position at GATT.[93] Second, the negotiations were almost entirely confined to tariffs. The general agreement banned (with exceptions) most other types of trade barriers, in theory leaving only tariffs as the legitimate type of trade barrier.[94]

In the sixth major "round" of negotiations, the "Kennedy round" now in progress, these two limitations were abandoned.[95] The United States obtained authority from Congress to bargain on an "across the board" or "linear" cut in tariffs,[96] and most other nations having this authority, joined with the United States in formulating new negotiating rules largely based on this "linear" approach. Secondly, the participants in this round decided that the negotiations would concern nontariff barriers to trade also, so the negotiations are termed "trade negotiations," rather than tariff negotiations.[97]

The details of these negotiations cannot be set forth here, but a few legal implications of the new negotiating techniques may be highlighted.

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[90] Annexure 10 of the Report of the First Session of the Preparatory Committee of the U.N. Conference on Trade and Employment, op. cit., supra note 85.
[91] U.N. document EPCT/DEL/21-23 (April 1947).
[92] II/166, 4S/74.
[93] 12S/47.
[94] General agreement, part II (art. III-XVII).
[95] Resolution adopted on May 6, 1964, by a meeting of the Trade Negotiations Committee at the Ministerial Level, 13S/109.
[96] Trade Expansion Act of 1962 enacted Oct. 11, 1962, 76 Stat. 372, 19 U.S.C. sec. 1861.
[97] Note 95 supra.

First, there are provisions in the GATT which give special rights concerning a tariff concession to the contracting party with which it was negotiated. Article XXVIII allows withdrawal of a concession after negotiation with such party "with which" it was negotiated.[98] But under a linear approach each participant has declared a percentage cut in tariffs on all products as a contribution to the conference generally. Consequently this special right becomes a dead letter.

Second, as to non-tariff-barrier negotiations, several questions can be posed: How are the results of such negotiations to be embodied in an agreement? Is there to be a separate treaty or convention on each particular barrier, such as antidumping duties?[99] Or an amendment to GATT? Will the obligations be designed to apply to everyone or merely negotiation participants, or just those participants who agree to limit their nontariff barriers as a "concession" in the bargaining? Some of these questions relate to and pose a more fundamental question about the structure of GATT, namely, why should there be only one "legitimate" trade barrier (the tariff) and not a whole series of flexibly used barriers including quotas and subsidies? Could not negotiation on trade barriers encompass these other barriers also? Does this make the negotiation too complex? Or too difficult to evaluate? Or could the prohibition of quotas and other barriers be the "presumption" so that only exceptions need be expressed in the schedules? Another suggestion for a way to handle nontariff barriers in the "code of trade conduct" will be made in the discussion below in the next part.

Third, how are the linear cuts to be reflected in treaty obligations? Presumably the cuts will apply to all existing items subject to tariffs. Could not items at present free of tariffs be "bound" free, i.e., obligating that nation to continue tariff-free treatment of any item not presently subject to tariffs? This would achieve greater free trade for the future. The language of the statute appears to authorize U.S. negotiators to agree to such action.[100] The GATT Director General recommends this under a separate agreement after the Kennedy round.[101]

The most-favored-nation principle is itself under constant and increasing attack. Both legal and economic works have treated this principle in depth,[102] and more undoubtedly will be said in the next few years. The MFN principle is particularly under attack at the moment from two forces, (*a*) the development of regional trade

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[98] Article XXVIII:1. "On the first day of each 3-year period, * * * a contracting party * * * may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the contracting parties to have a principal supplying interest * * * and subject to consultation with any other contracting party determined by the contracting parties to have a substantial interest * * * modify or withdraw a concession * * *."

[99] "International antidumping pact urged by trade committee report to White House Conference on International Cooperation," New York Times, Dec. 1, 1965, p. 18.

[100] U.S. Trade Expansion Act of 1962, op. cit., supra note 96, sec. 1821(d)(2) authorizes the President to "proclaim such modifications or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions as he determines to be required or appropriate to carry out any such trade agreement."

[101] "International Trade Policy—The Kennedy Round and Beyond" address given by Eric Wyndham White, Director General of GATT, to the Deutsche Gesellschaft für Auswärtige Politik at Bad Godesberg on Oct. 27, 1966, GATT document INT (66) 567, p. 8.

[102] Ito, La Clause de la Nation la Plus Favorisée, Paris, 1930: Riedl, Richard, La Clause de la Nation la Plus Favorisée, Vienna 1928, Austrian National Committee of the International Chamber of Commerce, subtitle "Documentation Presented to the Economic Committee of the League of Nations and to the Chamber of Commerce International"; Patterson, Discrimination in International Trade: The policy issues 1945–65, Princeton University Press, Princeton, N.J., 1966: Zinser, Das GATT und die Meistbegünstigung, Verlag August Lutzeyer, Baden-Baden, 1962.

blocs;[103] and (*b*) the urge by less-developed countries for trade preferences.[104] Both of these factors will be briefly discussed below. (See part IV.)

III. PROTECTING THE VALUE OF TARIFF CONCESSIONS

It has already been stated that central to GATT are the tariff concessions. But if the agreement only obligated parties to tariff limitations, the value of the tariff concessions could be easily lost. For instance, what good is a concession by another nation to limit its tariffs on an item to 10 percent if imports into that nation are totally banned? Recognition of this and experience with previous bilateral trade agreements led the draftsmen of the ITO Charter and of GATT to formulate elaborate provisions regarding nontariff barriers.[105] Indeed, among the most hotly contested negotiations for GATT were those centering on the drafting of clauses respecting import quotas (articles XI, XII, XIII, XIV, and XV).[106]

These provisions cover internal taxes,[107] antidumping and countervailing duties,[108] paperwork and administrative costs,[109] valuation of goods for customs purposes,[110] quotas,[111] freedom of transit,[112] marks of origin,[113] export subsidies,[114] government monopolies,[115] and other barriers.[116] No list, however, can be certain to cover all the possible restrictive measures that the human mind can invent. Furthermore, apart from a general ambiguous admonition against "discrimination between countries" and "disguised restriction on international trade"[117] the GATT does not govern barriers that could result from food and drug requirements, fair packaging requirements, taxes which differ as to classes of goods which "coincidentally" fall heaviest on imported goods, unfair trade and monopoly regulations. Restrictions pursuant to an "intergovernmental commodity agreement which conforms to criteria submitted to the contracting parties and not disapproved" are excepted from the GATT,[118] a loophole which understandably is causing controversy, especially in connection with the Cotton Textile Arrangements.[119]

Historically the most significant nontariff barrier was the import quota (quantitative restriction).[120] Even after the complex compromise

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[103] See discussion in part IV below.
[104] See discussion at note 162 below. See also United Nations Conference on Trade and Development, final act. E/Conf. 46/L.28, General Principle 8, "New preferential concessions, both tariff and nontariff, should be made to developing countries as a whole and such preferences should not be extended to developed countries. Developing countries need not extend to developed countries preferential treatment in operation amongst them."
[105] See discussion at notes 39 and 40 above.
[106] Gardner, op. cit., supra note 4, at p. 148. See also the preparatory work for GATT, at notes 26 through 30 above. Discussions with some individuals who lived through these negotiations also confirms this statement.
[107] Art. III.
[108] Art. VI.
[109] Art. VIII.
[110] Art. VII.
[111] Arts. XI through XIV.
[112] Art. V.
[113] Art. IX.
[114] Art. XVI.
[115] Art. XVII.
[116] Arts. XX, XXI.
[117] Art. XX.
[118] Art. XX par. (h).
[119] Long Term Arrangement Regarding International Trade in Cotton Textiles, entered into force Oct. 1, 1962, GATT, Geneva 1963. See reviews of the operation of this agreement at 12S/66, 13S/55, and 14S/65.
[120] Kindleberger op. cit., supra note 89, ch. 13; Patterson, op. cit., supra note 102.

expressed in GATT articles XI through XV was made, quotas proved the most troublesome trade barrier until the late 1950's.[121] Much of early GATT history, and perhaps its greatest achievement after tariff reductions, was the part it played (along with the IMF and the OEEC) in getting quotas reduced or dismantled.[122] The Balance of Payments Committee in GATT was the platform for constant pressure against quotas. However, there are still many quotas, some consistent with GATT, and some in violation of GATT.[123]

One potentially troublesome nontariff barrier is the practice of state trading enterprises.[124] Suppose all imports of an item are bought through a Government agency or authorized monopoly largely controlled by Government decisions. Then even though a tariff concession may limit the tariff to be applied on that item, only that amount can be imported which is purchased by the exclusive importer, and the decision to lower the amount of purchases, or to purchase from one country or another can be made on political or other noneconomical grounds. Article XVII of GATT requires that in this case the importing country shall "act in a manner consistent with the general principles of nondiscriminatory treatment prescribed in this arrangement," and establishes consultation and reporting procedures to try to reduce the obstacles to international trade that could result from State trading.

The problem of State trading arises to some extent with almost every GATT member,[125] but it obviously is most serious in connection with Socialist economies. For many years the only member of GATT in this category was Czechoslovakia, but Yugoslavia has joined GATT,[126] negotiations have been underway for Poland to join,[127] and Hungary has recently been admitted to observer status.[128] While the volume of trade involved when only Czechoslovakia was a GATT member was small, little concern was evidenced about the problem.[129] As this trade becomes (at least potentially) more significant, new ways to insure fair reciprocal relations among trading nations, consistent with general GATT objectives, will be needed.

The various nontariff barrier provisions of GATT are gathered primarily in part II of the agreement, and are drawn from the ITO Charter.[130] They form a "code of conduct" for international trade. Many provisions, of course, have been "honored in the breach" and the

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[121] GATT, "Review of Import Restrictions Under Art. XII:4(b) and XVII:12(b), Geneva 1959 (reprinting GATT document MGT/59(76) and L/1005). Annual reports of the GATT Balance of Payments Committee regarding consultations on restrictions (see list of reports at 14S/211).

[122] Patterson, op. cit., supra note 102, at p. 53. The United Kingdom announcement in October 1964 that it was imposing surcharges on all imports for balance of payments reasons recognized that the general agreement (art. XII) assumes that restraints for balance of payments reasons will be by means of quantitative restrictions, but the United Kingdom noted that urgent action was needed which "could only have been delayed while the elaborate administrative machinery of import licensing was re-established." This was a tacit recognition of the achievement in dismantling quotas that had occurred during the previous two decades. L/2285.

[123] 14 S/160–161.

[124] GATT, art. XVII.

[125] The GATT Secretariat from time to time surveys the subsidies and state trading of the contracting parties. See L/2284 and documents cited therein.

[126] A list of the contracting parties to GATT as of July 1966 is located at 14S/1. Subsequently Yugoslavia became a contracting party, PR/973.

[127] Declaration on relations between contracting parties and the Government of Poland, Nov. 9. 1959. PROT/2/Rev.2: PR/973.

[128] See "Hungary Asks Observer Status." New York Times. Nov. 12, 1966, p. 45.

[129] See waiver granted to Czechoslovakia from the provisions of art. XV:6 regarding a special exchange agreement. 8S/48.

[130] See discussion at subpt. I.B. above.

extent of violation is impossible to fully ascertain.[131] Perhaps one of the lessons of the GATT experience is the need for constant reappraisal, interpretation, and change in the context of this "code." There have been many textual changes in part II of the GATT. Since not all the changes have been accepted by every GATT party, the "code" is really many codes.[132] Sometimes failure to accept an amendment is due less to a disagreement with the value of the change, than to inertia in getting the requisite governmental approval. Since it is likely that the "code of conduct" will continue to need amendment so as to meet the needs of international trade as it changes from year to year, a different legal structure should be formulated for application of the code of conduct. Such a new structure should enable change to occur somewhat more easily and should permit the degree of flexibility and nonuniformity that individual nations need and can often be granted without serious consequences to the whole international trade regulatory scheme. Such a code might be removed as an integral part of a treaty, and be instead authorized by a treaty provision and "annexed" or incorporated by reference. Change perhaps could be affected by a certain type of vote at a GATT meeting (rather than by the laborious process of protocol), with provision that it becomes effective upon such adoption for all GATT members who voted for it and all others unless an "exception" were filed by a member. Then a complementary principle could be recognized that whenever a nation did not subscribe to all parts of the code, its tariff concessions were thereby presumptively impaired or lessened in value, suggesting that at the next regular negotiation or renegotiation of trade matters, such lessening in value should be compensated unless that nation could rebut the presumption. These preliminary thoughts need refinement but are put forward to suggest a way out of the tangle of protocols and treaty obligations that now exist and will probably be accentuated in the future unless better arrangements are developed to enable this international trade regulatory institution to keep abreast of the times and capitalize on the experience it obtains as it operates in a very complex and rapidly changing world.

IV. EXCEPTIONS AND ESCAPE CLAUSES: CONTINUOUS NEGOTIATION IN GATT

It has been said that the GATT is "riddled with exceptions." It is true that there are a number of provisions in GATT which relax the GATT obligations under various circumstances. But arguably these provisions are essential to an institution as new (and therefore experimental) as GATT, which purports to regulate the complex and politically sensitive subject of international trade. The escape clauses and exceptions provide the necessary flexibility, without which the general agreement might never have been concluded, or might never have endured in the face of pressures that have buffeted it. However, one needs to understand these exceptions in order to evaluate the degree of stability and predictability which the GATT can bring to international trade relations.

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[131] Various GATT documents have reports of certain practices, some of which may be violations of GATT. See, for example, L/2149, L/2336 and addenda, L/2375 and addenda. Also business reports which detail the import restrictions of various countries can sometimes be used to detect violations of GATT.

[132] See PROT/2; and L/2575 (status of protocols, listing governments which have not accepted each protocol, as of Mar. 10, 1966).

These exceptions fall into several classes. The first of these classes includes the "renegotiation" provisions of articles XXVIII and XVIII. Under article XXVIII every 3 years a party may negotiate to withdraw any concession of its schedule, and, failing agreement, may unilaterally withdraw concessions subject to the right of other interested parties to withdraw "substantially equivalent concessions." Also, at any time in "special circumstances" the contracting parties may authorize negotiation and withdrawal of concessions under procedures much the same as just outlined above. A third "renegotiation" procedure is found in article XVIII. This entitles a less-developed country at any time to renegotiate a concession when it deems it desirable to do so "in order to promote the establishment of a particular industry * * *." The procedure followed is very similar to that of article XXVIII. These three renegotiation provisions, when added to the major trade negotiation "rounds" (discussed in pt. II above), constitute the four major negotiations under GATT which result in permanent changes in the schedules.[133] The "special circumstances" modifications occur constantly, although they are usually kept confidential and little appears about them in the press or in GATT published documents.[134] Periodically the results of these modifications were gathered together and embodied in a "Protocol of Rectifications and Modifications." [135] Since 1963 they have been embodied in a "Certification Relating to Rectifications and Modifications." [136] Results of specific bilateral renegotiations can sometimes also be found in bilateral agreements between the negotiating parties.[137]

A second class of exceptions found in GATT includes a diverse group which have in common the requirement that to exercise the exception a government must either (1) get prior approval from GATT, or (2) report its action to GATT. Among these are the balance of payments exceptions to the prohibitions on quantitative restrictions,[138] the "escape clause" exception allowing suspension, withdrawal, or modification of a concession when "unforeseen developments" result in imports which "causes or threaten serious injury to domestic producers * * *," [139] and the provisions of article XXIV regarding free trade areas and customs unions.[140]

A third class of exception includes those which are "self-executing" and require no reports. Most of these can be found in articles XX "General Exceptions" and XXI "Security Exceptions." Since GATT documents only infrequently reflect government practices under these exceptions,[141] it is most difficult to appraise the extent and nature of the use of these.

A final exception in GATT is the general waiver power of article XXV:5. Under this article, "in exceptional circumstances not else-

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[133] See discussion supra at note 58.

[134] Many references to the renegotiations are contained in the GATT document series "SECRET/–", the first 152 of which have just recently been derestricted. (See INF/121, Dec. 8, 1966.) A number of other references to the renegotiations will be found in the council documents, C/M/– series (many of which were just derestricted also).

[135] PROT/2.

[136] GATT, Certification Relating to Rectifications and Modifications of Schedules to the General Agreement on Tariffs and Trade, Geneva, Jan. 15, 1963; GATT, Second Certification, etc., Geneva, Apr. 29, 1964.

[137] For example, agreement between the U.S. and the EEC * * *, 436 UNTS 50 (1962); interim agreement between the United States and Canada * * * 436 UNTS 4 (1962).

[138] Arts. XII, XIV, and XVIII, pt. B.

[139] Art. XIX.

[140] Art. XXIV:4–10.

[141] See, for example, L/1771 (May 21, 1962).

where provided for in this agreement," a "waiver" may be granted (upon two-thirds vote including a majority of the contracting parties approving). The relationship of this "waiver" power to the amending power in GATT has already been discussed,[142] but it remains to analyze briefly the use of this power.

From 40 to 50 waivers have been granted by the GATT contracting parties during the course of its history (not counting amendments or extensions).[143] Most of the waivers fall into several categories:

(1) Waivers granted to a contracting party and a newly independent nation formerly governed by that party to allow the special preferred treatment that occurred before independence to continue;[144]

(2) Waivers granted for a period of time to allow a nation to institute a new tariff nomenclature or fiscal reform, pending renegotiation of its schedule to reflect the new system;[145]

(3) Waivers granted for associations of two or more states into preferential regional areas, when such associations do not technically qualify for exception under the criteria of article XXIV;[146]

(4) Waivers granted a few GATT parties which are not IMF parties to enable them to escape the obligation of entering into a "special exchange agreement" under article XV of GATT;[147]

(5) Waivers granted to allow a member to impose special tariff "surcharges" because of balance-of-payments difficulties;[148]

(6) Waivers granted for import quotas on agriculture goods (primarily to "legitimize" prior action otherwise in violation of GATT).[149]

(7) Various "decisions" of the contracting parties have been made which extend time limits set in certain parts of the general agreement. For instance, the 90-day period set in article XIX:3 for withdrawing substantially equivalent concessions under the escape clause, has often been extended. These decisions do not always expressly refer to article XXV:5, but this article appears to be the only one authorizing this action.[150]

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[142] See discussion above at note 65.

[143] No thoroughly complete list of waivers in GATT has been compiled, but there are lists at 14S/224 and GATT, Analytical Index (2d revision), p. 135 and pages referred there. See also Curzon, op. cit., supra note 13, p. 46.

[144] For example, waiver to the United States re: Trust Territory of Pacific Islands, II/9; waiver to Italy regarding products of Libya, II/10.

[145] For example, waiver to the United States regarding tariff classification, 12S/57; waiver to Peru re: reform of its customs tariff involving the adoption of the Brussels nomenclature, 13S/27.

[146] Art. XXIV, par. 10, provides an alternative for a waiver under art. XXV:5. This alternative reads, "The contracting parties may by a two-thirds majority approve proposals which do not fully comply with requirements of paragraphs 5–9 inclusive, provided that such proposals lead to the formation of a customs union or a free trade area in the sense of this article." This paragraph is more stringent in its requirement that proposals lead to the formation of a customs union or a free trade area in the "sense of this article," but less stringent in that merely a two-thirds majority is required (cf. two-thirds of the votes cast comprising more than half of the contracting parties, required by XXV:5). There have been both "waivers" under art. XXV:5 (see waiver to the European Coal and Steel Community, 1S/17, and "approvals" under art. XXIV:10 (see the decision regarding the free trade area between Nicaragua and El Salvador, II/30.)

[147] For example, waiver to Czechoslovakia regarding the provision of art. XV:6, 3S/43.

[148] For example, waiver to Peru for import surcharges for balance of payments reasons, 7S/37. See list of surcharges at COM.TD/F/W/3, p. 4–5.

[149] For example, waiver to the United States regarding the restrictions under the Agricultural Adjustment Act, 3S/32; waiver to Germany regarding import restrictions, BISD, 8S/31 (expired).

[150] See the decision extending the time limit in paragraph 3 of art. XIX, L/1638; decision extending the time specified for pt. II of the original art. XX of GATT, L/571.

Finally under the terms of article XVIII there have been a series of "releases" similar to but legally different from waivers under article XXV.[151]

In addition there have been several waivers, each of which is sui generis, as follows: (1) the waiver concerning certain "hard-core" quantitative restrictions; [152] (2) an action in 1951 that may have been a waiver, which "took note" of U.S. suspension of GATT treatment towards Czechoslovakia; [153] (3) a 1965 waiver to the United States in connection with the United States-Canadian agreement on automotive products;[154] (4) a 1966 waiver to Australia enabling it to grant special preferential customs treatment to less developed countries.[155]

Of these, the three most important waivers are the waiver to the United States on agriculture import quotas, the waiver to the United States regarding imports of automotive products, and the waiver to Australia for preferences to less developed countries.

The U.S. agriculture waiver followed some years of breach of GATT by the United States through its agriculture import restrictions.[156] These restrictions were designed to protect the U.S. price support program. This waiver was granted (in the opinion of some) with the belief that failure to grant the waiver could result in U.S. withdrawal from GATT, or at least a substantial weakening of GATT. It has evoked considerable criticism.[157]

The waiver to the United States to enable it to grant preferential treatment to Canadian auto products under an agreement with Canada is a particularly interesting waiver, because (*a*) the U.S. position has long been and still is opposed to special preferences among other GATT parties; [158] (*b*) less developed countries are viewing this waiver as a precedent for further preferential arrangements for them, and they used this argument to support the Australian waiver; [159] and (*c*) the United States forthrightly admitted its Canadian agreement was a "technical" violation of GATT requiring a waiver, but argued that it did not in fact hurt any GATT party.[160]

The United States should perhaps have been more cognizant of the history of GATT waivers—where novel U.S. waivers have several times furnished precedent for similar type waivers to follow for other GATT members.[161] Not many GATT members seem impressed by the U.S. "pragmatic" argument made in connection with its agreement

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[151] A list of these releases can be found at 14S/216–217 and L/478 (1956).

[152] 3S/38.

[153] II/36.

[154] 14S/37. For details of this agreement, see Stanley D. Metzger, "The United States-Canadian Automotive Products agreement of 1965," ante, p. 103.

[155] 14S/23.

[156] See GATT resolution of October 26, 1951, regarding U.S. import restrictions on dairy products, II/16; report on U.S. restrictions at 3S/141; waiver granted to the United States, decision of March 5, 1955, 3S/32.

[157] Report of working party adopted on April 6, 1966, regarding U.S. import restriction on agricultural products, 14S/195.

[158] U.S. Conference on Trade Development, Final Act, E/Conf. 46/L.28, "General Principle 8," supra note 104. (United States voted against the measure which was adopted 78 to 11 with 23 abstentions; the measure advocated preferences for less developed countries.)

[159] Bulletin of the EEC, Brussels, January 1966, No. 1, p. 27.

[160] Report of working party adopted on March 25, 1965, Canada-United States Agreement on Automotive Products, BISD, 13S/112 at 116.

[161] The U.S. waiver for agricultural products, 3S/32, was followed by other agricultural waivers, that for Germany, 8S/31, for Belgium, 4S/22.

The U.S. waiver for Trade with Trust Territory Pacific Islands, II/9 was followed by a number of others such as the waiver to Italy for Products of Libya, II/10; waiver to Italy for products of Somalia, 9S/40, p. 40, etc.

with Canada, that a breach of principle is all right if it does not in fact "hurt" anyone. Whether it does presently hurt anyone will be interesting to observe. The potential harm caused by its inhibiting effect on new foreign industry in future years is more difficult to appraise.

The Australian waiver could be the opening wedge for a system of general preferences for less developed countries. The trade relations of these countries are posing the greatest challenge to GATT. In the last 6 years GATT has changed from an institution of primarily industralized nations, to one of which over 40 of its 70 contracting parties are less developed countries.[162] This, plus the potential competition of the United Nations Trade and Development Board (which developed from the United Nations Conference on Trade and Development known as "UNCTAD") has already led the GATT to adopt part IV of the general agreement relating to developing countries.[163] It is clear that the impact of this political development will be even more profound in the future.

Regional preferential trading blocs have been mentioned twice above.[164] Perhaps no problem of GATT has as extensive a legal literature as the relation of such blocs to GATT.[165] GATT article XXIV authorizes a departure from the most-favored-nation clause (and certain other obligations) in the case of a free trade area, a customs union, or an interim arrangement that has a "plan and schedule" for the formation of a free trade area or customs union "within a reasonable length of time." [166] There have been about a dozen requests to GATT for approval or waiver for a regional trading group.[167] Although a few of these may fulfill article XXIV criteria, most of them admittedly have not (and usually waivers or approvals have been requested and granted).[168] Two problems juxtapose themselves. On the one hand, as the preparatory work reflects,[169] is the realization that the very preference schemes that the most-favored-nation clause is designed to outlaw could be instituted under the guise of a free trade area or customs union unless rather stringent attributes were required for a scheme to qualify. On the other hand, no members of a potential regional trading group are prepared to jump into a free trade area or

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[162] See discussion supra at note 83. PR/973.

[163] Part IV of the GATT which was completed on February 8, 1965, entered into force on June 27, 1966, for those contracting parties that accepted it, GATT, PR/962.

[164] See discussion supra at notes 140 and 146.

[165] Allen, "The European Common Market and the GATT" (1960); Dam, Kenneth, "Regional Economic Arrangements in the GATT: The Legacy of a Misconception," 30 University of Chicago Law Review, 619 (1963); Steinberger, "Gatt und Regionale Wirtschaftzusammenschlüsse," Karl Heymanns, Köln (1963).

[166] Art. XXIV, paragraph 5.

[167] Lists exist in Dam, op. cit., supra note 165; GATT, Analytical Index (2d Rev.) p. 126–8; 14S/214–215.

[168] Dam, op. cit., supra note 165. Writing in 1963, Dam concludes, "On first impression the historical record is a sorry one indeed. Not a single customs union or free trade area agreement which has been submitted to the contracting parties has conformed fully to the requirements of art. XXIV. Yet the contracting parties have felt compelled to grant waivers of one kind or another for every one of the proposed agreements." Dam, however, cites no waiver as such for the EEC, for instance. Interestingly the last session of GATT contracting parties (March 1966) adopted "conclusions" respecting customs unions or free trade arrangements and in no case did it approve any of these arrangements or waive the GATT with respect to them. Instead it noted certain apparent inconsistencies with GATT and urged further reporting and consideration at future sessions. 14S/20–23. Although predictions are hazardous, probably no serious student of GATT could conclude that the GATT will ultimately "turn down" the regional plans presented, since the political pressures involved are such that it would probably be impossible to do so. As has been pointed out, over two-thirds of the contracting parties of GATT now belong to one or the other of the dozen or so regional trading blocs. A waiver requires a two-thirds vote.

[169] U.N. document EPCT/C.6/84.

customs union overnight. A gradual approach is needed to allow economic adjustment to cushion the dislocations that would be caused by sudden change in the trading rules. And if gradualism is required, why not leave details of the developing free trade area or customs union to be filled in later, as experience sheds light on what is desirable? Thus the attributes required by article XXIV appear to ask too much and too fast.

It seems clear that article XXIV has not worked as it was intended. It is not clear whether this could be corrected by some tinkering with article XXIV, maintaining its basic concept, or whether on the other hand the two objectives involved (most-favored-nation treatment and regional preferences) are irreconcilable.[170] A general world-movement toward free trade, would, of course, reduce the significance of regional preferences and thus escape the "dilemma". Unfortunately, as trade statistics suggest, the degree of worldwide free-trade required to forestall injury or complaint by the regional preferences is not likely to occur soon.[171] Indeed, regionalism may itself cause a counter trend toward greater protectionism.

Finally, this discussion of exceptions and escape clauses must include some further thoughts on surcharges.[172] The relation of balance-of-payments difficulties to the GATT obligations has always been a troublesome one. This trouble is reflected in the articles concerning quantitative restrictions.[173] But as pressure against such quotas continued, or the apparatus for administering them was cut down or eliminated, alternative ways to reduce imports in a balance-of-payments crisis were sought. One such way is the surcharge.

This refers to the imposition of a temporary tariff on all or a majority of goods imported. A GATT secretariate paper[174] records that there have been nine cases of surcharges notified to the GATT, seven for balance-of-payments reasons. In five of these cases waivers were granted. In the others, presumably the action violated GATT but was "tolerated" while considerable diplomatic and moral pressure was used to get the surcharge dismantled. The oddity of the present GATT structure is that quantitative restrictions are allowed for balance-of-payments reasons, whereas raised tariffs (surcharges) are not. Yet as a matter of policy economists and the GATT itself reflect the view that tariffs (even surcharges) are much preferred to quantitative restrictions.[175] For these reasons there has been some attempt to amend the GATT to allow surcharges in those cases where quantitative restrictions would be authorized.[176] The problem intimately relates to the reforms suggested in the international monetary system and therefore cannot be solved within GATT alone.[177]

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170 Compare Dam, op. cit., supra note 165. See Viner, "The Customs Union Issue," Carnegie Endowment for International Peace (1950), and Patterson, op. cit., supra note 102.

171 The shift of trade growth rates in Europe caused by the two major trading blocs, the EEC and EFTA, supports this conclusion. "International Financial News Survey," vol. 18, No. 4, p. 26 (Jan. 28, 1966).

172 See mention above at note 148.

173 See discussion supra at note 121.

174 COM.TD/F/W/8 (May 25, 1965).

175 See supra notes 120 and 121.

176 See COM.TD/F/W/1.

177 See, for example, International Monetary Fund, "Enlargement of Fund Resources Through Increases in Quotas," a report by the Executive Director to the Board of Governors, December 1958; "International Reserves and Liquidity"—a study by the staff of the International Monetary Fund, August 1958; "International Liquidity and Reserve Creation," Schweitzer, Managing Director of the International Monetary Fund, at the 1966 annual meeting of the Fund, reprinted in International Financial News Survey, vol. 18, No. 39, Sept. 30, 1966, at p. 320.

V. DISPUTE RESOLUTION IN GATT

Throughout the general agreement are sprinkled clauses which obligate parties to consult with another party,[178] and which allow an injured party to GATT to withdraw traff concessions affecting an injuring party in certain circumstances so as to "compensate" for the injury.[179] These are in addition to the clauses which authorize negotiated withdrawals or substitutions of concessions.[180]

The two central articles of GATT concerning consultation and compensatory withdrawal of concessions are articles XXII and XXIII. Article XXII imposes an obligation to consult "with respect to any matter affecting the operation of this agreement," and provides that where individual consultation has not been successful in finding a "satisfactory solution," the matter may be brought to the attention of the contracting parties generally.

Article XXIII goes further. Where any party claims his benefits under the agreement are being "nullified or impaired" he can make written representations to another, which must be given "sympathetic consideration." If this does not result in a "satisfactory adjustment * * * within a reasonable time" then the matter is referred to the contracting parties. If the contracting parties consider that the "circumstances are serious enough" they may authorize "a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this agreement as they determine appropriate * * *."

Several aspects of this "suspension" power should be noted. First, it does not depend on a violation of GATT. Nullification or impairment, whether from measures inconsistent with GATT obligations (inconsistent measures have ben termed a "prime facie" nullification and impairment) [181] can engender the suspension. Thus the term "sanction" is usually avoided. Suspension is thought of as "compensating" redress for harm rather than a "penalty" for breach of obligations. Consequently if exercise of any of the "exceptions" or "escape clauses" of GATT cause "nullification or impairment," recourse to article XXIII is available also. This opportuntiy for a rebalancing has been advantageously used as a way out of a stalemate in various negotiations, especially when the stalemate is partly caused by a fear of what unkown future circumstances may bring. Drawing the attention of the disputants to the fact that should events occur in such a way that benefits are "nullified or impaired" the injured will have redress through article XXIII, sometimes helps to break the stalemate and bring about agreement.

Second, the "suspension" remedy is basically self-defeating and in some instances totally ineffective. It is self-defeating for two reasons: (*a*) for the country that suspends concessions it may mean, insofar as the economists' theories of comparative advantage are valid, more costly purchases from the world market; and (*b*) obviously if very wide spread, a number of such suspensions could trigger a "chain

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[178] See articles and paragraph numbers as follows: II:5, VI:7, VII:1, VIII:3, IX:6, XII:4, XIII:4, XVI:1, XVII:4, XVIII:7, XVIII:12, XVIII:16 XVIII:21, XVIII:22, XIX:2, XXII, XXIII, XXIV:7, XXV:1, XXVII, XXVIII:1, XXVIII:4, XXXVII:2.

[179] See article and paragraph numbers as follows: 11:5, XII:4, XVIII:7, XVIII:21, XIX:3, XXIII, XXVII, XXVIII:3, XXVIII:4.

[180] See discussion supra note 133.

[181] Report adopted on Nov. 16, 1962, Uruguayan recourse to art. 23, 11S/95 at 100.

reaction" resulting ultimately in a substantial reduction in the free trade effect of GATT.[182] The "suspension" is ineffective when a small nation attempts to suspend a concession against a large nation—the impact on the large nation may be negligible.[183] Thus individual suspension is a threat that may inhibit a small country's action but can often be ignored with impunity by a large nation.[184]

For these reasons the GATT generally tries to use all other means to pursuade an "offending" nation to cease the practice which is hurting a complainant, and after these persuasions are successful.[185]

Third, however, it should be noted that the language of article XXIII is broad and sweeping. It is not limited just to "compensating" redress, but is broad enough to be used as the basis for serious sanctions. For instance all concessions of all other contracting parties could be suspended vis-a-vis a notoriously offending contracting party (in effect driving it out of GATT, although no procedure for expulsion exists in GATT) if the contracting parties determined this to be "appropriate".[186] Likewise lesser penalties, but still stronger than compensating redress, could be imposed by groups of contracting parties. None of these stringent uses for article XXIII have occurred, but there has been a movement during the last year to tighten the redress process, even to the point of suggesting cash damage payments as a remedy for injury.[187] Only one instance of actual suspension of concessions under article XXIII has occurred [188] (although withdrawal of concessions in compensation for harm has occurred under the authority of other parts of the general agreement).[189]

The general procedure followed in GATT to process complaints is very informal. There is no special complaint form. Often a "process" has been initiated by a request for an agenda item concerning the dispute, in advance of an impending meeting of the contracting parties.[190] If not resolved by informal negotiation, the complaint is usually referred to a "panel" on complaints appointed by the contracting parties.[191] The panel is composed of individual persons (invariably drawn from national delegations to GATT) in their own capacity and not as representatives of nations. The panel continues the process of trying to get a settlement or compromise, but hears arguments and evidence on both sides. It will then report to the contracting parties, who almost invariably approve the report. The report may ask for

[182] See 3S/250.

[183] The suspension by the Netherlands of concessions made to the United States, after nullification from U.S. import restrictions on dairy products, was apparenlty ineffective. The Netherladns was authorized to suspend its concessions by imposing a limit of 60,000 metric tons on imports of wheat and flour from the U.S. per year. This suspension was authorized for a number of years. See 1S/31, 2S/28, 3S/46, 4S/31, 5S/28, 6S/14, 7S/23.

[184] COM.TD/F/2, p. 5.

[185] 3S/250. For example, see the recommendation to the United States with respect to its complaint against French import restrictions, 11S/55. See list of the outcome of earlier complaints in a note by the Secretariat, 7S/68.

[186] The full text of the relevant sentence of art. XXIII:2 is "If the contracting parties consider that the circumstances are serious enough to justify such action, they may authorize the contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this agreement as they determine to be appropriate in the circumstance."

[187] L/2195/Rev. 1, p. 20 (annex IV).

[188] The Netherlands suspension, see supra note 183.

[189] For example, see suspensions under art. XIX:3, listed in GATT, Analytical Index (second revision), p. 107.

[190] For example L/234, Italian complaint against Greece, Oct. 5, 1954; L/242, U.S. complaint against West Germany, Oct. 11, 1954; L/245, U.S. complaint against France, Oct. 18, 1954; L/235, Czechoslovakia complaint against Peru, Oct. 4, 1954; L/258, U.S. complaint against Belgium, Oct. 26, 1954.

[191] For example L/1739, Mar. 7, 1962, panel on recourse to art. XXIII by Uruguay.

more information; it may find that one nation is actually in violation of GATT obligations, or the contrary.[192] If in addition it finds nullification and impairment (not well defined, but related to the expectation of the injured party at the time of negotiation with the injuring party)[193] it will make recommendations. Usually it recommends that the offending practice be ceased, and often this recommendation is taken.[194] When not taken, the matter is usually put on the agenda of subsequent sessions of the contracting parties, for some collective "finger pointing" at each session until the offense is rectified.

The procedure appears to have been often successful when invoked, but this may be due to the reluctance to invoke the procedure when success is not fairly probable. A small nation, for instance, though aggrieved by actions of a big nation may prefer not to invoke this procedure because (*a*) it knows that the end result will be futile; and (*b*) it feels it can as a practical matter effectuate its purposes better by direct negotiations and agreements with the offender even though the offender will only agree to partial measures, not giving full redress. A large nation may decide not to invoke the procedure against an offending small nation that is less developed, because to do so would be "unpopular" in the camp of the less developed countries. In sum, the present procedures seem most effective when viewed as a conciliation process, and least effective if viewed as a sanction or compensation process.

CONCLUSION

GATT has clearly worked better during the two decades of its existence than anyone had the right to expect at the time the ITO died. Despite an inadequate constitutional base, the GATT has pragmatically picked its way from obstacle to obstacle to the point where its achievements are generally recognized.

But the future is always uncertain, and the GATT as it presently exists has defects which could prove troublesome if not disastrous. The complex tangle of treaties and protocols that have resulted from cumbersome amending processes and 19 years of groping have several inherent dangers: (1) it makes it more difficult for the public to understand GATT and therefore more difficult to build the base of popular support that is probably essential for such an international institution to survive the onslaught of local or narrow protectionist interests; (2) it is potential of unnecessary misunderstandings among nations concerning their obligations; (3) it makes it more difficult to flexibility adjust to new circumstances and adapt to new needs.

This inflexibility may prove particularly troublesome now that the homogeneity of GATT membership has been destroyed by the accession of a large number of less-developed countries. The added diversity of interest and viewpoint introduced by this phenomenon, plus the greater diversity that may be introduced as more state trading countries (especially those of Eastern Europe) become interested and join, will impose greater needs for flexibility and change upon GATT.

On the other hand GATT has strong points worth preserving. The specific trade conduct rules have been tested and are beginning to have

[192] For example, II/88; L/328; L/833; L/1927.
[193] See the panel report on the complaint of Chile against Australia, II/188–193 (1950).
[194] The results of eight earlier complaints are outlined at 7S/68.

a context of experience that is invaluable for interpretation and appraisal. There is a basic core of delicately balanced obligations recognized as desirable by most nations, including the tariff bindings and concessions which few governments would want to lose. There is a procedure for almost daily consultation and study about international trade problems, that, however, probably needs strengthening by (*a*) more secretariat and staff resources, and (*b*) a procedure for speedy confidential consultation and decision in those cases where speed and secrecy are essential to forestall a trade or payments crisis.

Thus, it would seem that soon after the Kennedy round, careful attention should be given to a new or revised legal structure for GATT. As indicated early in this article, at balance may not only be economic and material benefits, but the fabric and essential conditions of peace itself.

The fact that GATT has survived and actually achieved much in the course of its history to date should not lead to the conclusion that the same will occur in the future. The fact that GATT has developed in spite of legal and constitutional defects does not automatically mean that legal and constitutional institutions are unnecessary for the future. The forces now coming to bear on GATT are very different from those of much of its experience. The participation of less developed countries and of socialist state trading countries has been mentioned. Indeed some observers already note in GATT a more strident tone of debate, and increasing degree of procedural maneuvering, centering on bloc politics, and a tendency to ignore or overlook GATT obligations whenever they get "in the way." These tactics are justified on the ground that without them some GATT members seem to overlook legitimate aspirations of less powerful nations. But these tactics can destroy whatever values that presently exist in the GATT unless the various conflicting aspirations are reconciled or compromised by formal (i.e., legal) undertakings, both procedural and substantive.

A further factor suggests the need for greater attention to the "law" of GATT. So far GATT has existed in a period of overall growth and growing prosperity. In such a period nations as well as individuals become confident and sometimes lax. Failure to develop legal institutions can come back to haunt the world, however, if a real crisis occurs and the structure begins to break apart. It may break apart anyway, of course, but it would be tragic if the destruction were aided by misunderstandings engendered by a lack of adequate legal craftsmanship, or by the absence of appropriate institutions worked out in advance and impossible to develop during the heat of a crisis.

The pieces of the GATT puzzle now need to be fitted together.

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PART II

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STATEMENT OF THE COMMITTEE ON COMMERCIAL POLICY, U.S. COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE, INC.

U.S. FOREIGN TRADE POLICY*

The results of the past 20 years

It is now almost 20 years since the GATT was founded. These 20 years have seen remarkable progress in the lowering of barriers to trade, most dramatically among the more developed countries. Similarly, there has been a parallel development of freer financial practices, especially those which have been encouraged under the aegis of various international agencies. The results in terms of expanded international trade and investment have far exceeded even the hope-filled expectations of the most optimistic at the close of World War II.

Recently, too, new flexibility has been introduced into negotiations among nations to take account of both the broad and the special needs of individual countries. During the Kennedy round the world for the first time began to move away from narrow item-by-item negotiations. Countries began to meet the breadth of the problems with appropriately broad negotiating concepts—approaching industries sector-by-sector, across-the-board tariff reductions, an overall balancing of benefits, and, most importantly, special measures to encourage the exports of the less-developed countries. Agriculture and nontariff barriers were dealt with, if only hesitantly.

The stubbornness of the problems arising under the Kennedy round of negotiations brought to light the compelling need for more adequate means to deal with this far more complex world of international trade and production in which we find ourselves today. Hopefully history will record these often frustrating and discouraging years as a transitional period, one in which slowly and sometimes painfully the groundwork was laid for a more effectively integrated world. The need is to provide for innovation, technical advance, and freer movement of goods and capital to encourage a greater development of resources everywhere—in short, economic growth on an unprecedented scale. The penalty for failure to move forward from this transitional period would be high in terms of sacrificed trade, production, and economic betterment.

The setting today

The danger is that both the cumulative frustrations of the Kennedy round negotiations and the fears aroused in some industries by the

*The numbers refer to specific issues raised in the September 27 press release of the Committee on Finance.

unprecedented sweep of the achievements will foster a negative atmosphere encouraging again unilateralism and economic nationalism.

If the United States pauses or, even more seriously, backtracks from this effort, our trading partners are bound to retaliate. As we have led the world in the postwar movement toward freer movement of goods and capital, so the world will follow us were we to take off in the opposite direction.

A series of proposals are now under consideration within Congress, including a number of quota bills before the Committee on Finance, which show that this danger is real. Such proposals, although aimed at undoing some tariff agreements on a few specific products, would, if acted upon, negate the whole Kennedy round since they would bring about across-the-board retaliation from other countries.

This trend is by no means confined to the United States. Other developed countries continue to show tendencies toward economic nationalism. Every country has its protectionist forces consistently opposing liberalization of commercial policy. The proliferation of regional trading blocs raises a serious concern, in addition, that national protectionism will be replaced by even more serious regional protectionism with its inherent tendency to favor members and exclude nonmembers.

Worldwide, we are at a point where the whole structure of the liberalization of trade and the strengthening of international monetary policy is in danger.

The immediate need is to hold together this structure, based somewhat fragilely on international cooperation. The grim international experience of the 1930's is an abundant reminder of the traumatic consequences on production of competitive economic nationalism.

The steady postwar expansion of international trade has provided the United States with a highly stable and buoyant factor in its economy. Since World War II our exports have expanded at the average rate of 7 percent a year, while GNP has risen by 4 to 5 percent annually. We have consistently run an export surplus which has provided a valuable cushion to our balance of payments during a period of heavy expenditures connected with Vietnam.

The shortrun needs

5. A policy change which has more political than economic significance is to get rid of the anomalous American selling price system of valuation which, in principle, we agreed to remove, subject to legislation, in the Kennedy round in exchange for specific reciprocal benefits. The American selling price system can operate as an absolute prohibition to competition and, as such, is at fundamental variance with the concept of competition for which the United States stands and for which we have pressed so consistently.

7. To assist firms and workers in adjusting to changing competitive conditions, the Adjustment Assistance Act should be broadened so that its provisions are more readily applicable in cases of real injury. It is just to assist individuals injured by new competition, at the same time it is economically sound to accept this competition as an increment to national well-being rather than to curtail it to everyone's loss.

The President must have housekeeping authority to adjust tariffs when, for instance, an escape clause action is warranted. We recommend that the unused authority of the Trade Expansion Act to reduce some remaining tariffs be restored for a 2-year period for use in such housekeeping adjustments.

During these 2 years a thorough study should be undertaken to ascertain the requirements of trade in an increasingly internationalized world and the best means of making sure that these requirements are satisfied. The experience of business, labor, and agriculture should be brought together with that of Congress and the administration in this study.

It is vital that no shortrun measures should be enacted during this period that might thwart our longrun objectives and make the policies needed for future economic growth unattainable.

The longer term imperatives

The freer movement of goods among countries has taken on a new urgency in today's world of increasingly internationalized production. The ready movement of producers' and consumers' goods and services has now become a structural necessity of a system of production with which American industry is increasingly involved. Imports and exports are no longer just the means to incidental trade gains. As we see the increasing amount of production that stems from the investment of enterprises of one country in the production of another, it is clear that trade barriers which yesterday appeared as limitations to the gains of trade, would—if continued tomorrow—hobble production itself. Accordingly, the key problem in commercial policy is how to accommodate, not negate, the worldwide enjoyment of the fruits of accelerated worldwide production. It is no accident that the U.S. economy, enjoying the free interstate movements assured by constitutional guarantee, has achieved dramatically high levels of production. Similar assurance for internation movements is the real task for world policymakers.

2. To assure this ready movement of goods and services internationally, tariffs must be even further reduced. This is particularly urgent for those products in which the less-developed countries have or can become competitive in the markets of the more-developed countries. Perhaps one thing that can be learned from the exhausting negotiations of the Kennedy round is that the need for progress has outrun the techniques for achieving it. The periodic rounds of negotiations that countries have entered into to lower trade barriers have, by the nature of the bargaining procedure, resulted in substantially less than each country had hoped to achieve. It is time that some better method is found by which countries can move together toward freer trade. A number of plans have been put forward to this end. All, in varying degrees, would bring progress toward an unhindered interchange of goods and services on which future worldwide economic growth depends. Intensive study needs to be given to these proposals to determine which lend themselves best to implementation and which will most quickly produce maximum results.

6. As tariffs have been progressively lowered, nontariff barriers stand forth as major deterrents to expanded international trade and production. A first step was taken during the Kennedy round to negotiate internationally in this broad field. It is often an elusive area, by its nature less definite than the tariff question and therefore less amenable to multilateral remedy. The antidumping agreement rep-

resents a real achievement and is of particular benefit to the United States since it provides for the use by other countries of essentially the same standards that apply in this country. U.S. industries have sometimes, and with some reason, felt in the past they were asked to bear the main brunt of lower cost foreign competition because other major countries did not permit access. Again, with some reason, industries have felt that existing U.S. laws were not always administered as effectively as they might have been to prevent clear cases of dumping. The antidumping agreement, effectively administered by all major trading nations, will not only assure fair treatment for U.S. exports but also equal access under standardized conditions to the markets of all the industrialized countries of the products of one another.

10. A number of groups, including the U.S. Council, are currently working to identify those nontariff barriers both here and abroad that are most commonly considered to inhibit normal commerce. It should be emphasized, however, that the most troublesome nontariff barriers go far beyond national buying policies, customs and administrative procedures, and the indirect subsidization of exports. The nontariff barriers we will have to deal with in the future have to do, for example, with the conflicts, assymetries and disharmonies of national fiscal policies, the conditions under which companies are permitted to do business within the territories of one another, the availability of sufficient credit to finance international trade and production and national competition in the terms of such credit, the extraterritorial effect of national laws, barriers to the free movement of capital, and obstacles to international investment.

The stake of the United States in the world economy is enormous. Our exports today amount to some $30 billion annually. Even more impressive, total product delivery to foreign markets associated with U.S. direct investment abroad is estimated to be in the neighborhood of $110 billion a year. When product associated with U.S. investment other than direct is included, the figure grows to $150 billion. These figures give some idea of the extent of U.S. commercial and financial involvement in the rest of the world—and of the critical need to protect this involvement.

8 While so far the United States imports relatively little from foreign affiliates, its exports to them are substantial—about 25 percent of total U.S. exports—and growing. Our own foreign affiliates are already one of our major customers abroad. On present evidence the future will probably find us trading increasingly with ourselves throughout the world. The increase in U.S. exports as a result of income gains abroad associated with U.S. local (foreign) production, while less measurable, is also significant.

12 It is evident that any curtailment of our participation in international production and trade would do incalculable harm to the world economy and to our own, and yet we are slipping even more deeply into restrictionist patterns of thought. The present restrictions on bank lending inhibit exports. The voluntary restraint program inhibits production. These measures, adopted for short-run balance-of-payments reasons, have already become self-defeating even in balance-of-payments terms. In terms of unrealized production in a world where basic human needs are by no means satisfied, the effects are far more serious.

To go further down the road of restrictions is clearly inconsistent with both the short-term and long-term economic interests of the United States. Given the enormous influence of the United States on the policies of other countries, we have here a problem that goes beyond the sound of disposition of the American economy and involves the whole world's economic structure. In this context the United States must keep undeviatingly to its sound established policy of encouraging world commerce and production.

U.S. COUNCIL, COMMITTEE ON COMMERCIAL POLICY

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STATEMENT BY THE PROGRAM COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT—INTERIM STEPS TO MAINTAIN LIBERAL TRADE

FOREWORD

This is a statement by the Program Committee of the Research and Policy Committee of CED. It is issued under the rule of the resents a real achievement and is of particular benefit to the United States since it provides for the use by other countries of essentially the same standards that apply in this country. U.S. industries have sometimes, and with some reason, felt in the past they were asked to bear the main brunt of lower cost foreign competition because other major countries did not permit access. Again, with some reason, industries have felt that existing U.S. laws were not always administered as effectively as they might have been to prevent clear cases of dumping. The antidumping agreement, effectively administered by all major trading nations, will not only assure fair treatment for U.S. exports but also equal access under standardized conditions to the markets of all the industrialized countries of the products of one another.

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The stake of the United States in the world economy is enormous. Our exports today amount to some $30 billion annually. Even more impressive, total product delivery to foreign markets associated with U.S. direct investment abroad is estimated to be in the neighborhood of $110 billion a year. When product associated with U.S. investment other than direct is included, the figure grows to $150 billion. These figures give some idea of the extent of U.S. commercial and financial involvement in the rest of the world—and of the critical need to protect this involvement.

8 While so far the United States imports relatively little from foreign affiliates, its exports to them are substantial—about 25 percent of total U.S. exports—and growing. Our own foreign affiliates are already one of our major customers abroad. On present evidence the future will probably find us trading increasingly with ourselves throughout the world. The increase in U.S. exports as a result of income gains abroad associated with U.S. local (foreign) production, while less measurable, is also significant.

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To go further down the road of restrictions is clearly inconsistent with both the short-term and long-term economic interests of the United States. Given the enormous influence of the United States on the policies of other countries, we have here a problem that goes beyond the sound of disposition of the American economy and involves the whole world's economic structure. In this context the United States must keep undeviatingly to its sound established policy of encouraging world commerce and production.

U.S. Council, Committee on Commercial Policy

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Statement by the Program Committee of the Committee for Economic Development—Interim Steps To Maintain Liberal Trade

Foreword

This is a statement by the Program Committee of the Research and Policy Committee of CED. It is issued under the rule of the

Research and Policy Committee which authorizes the Program Committee to issue statements within the framework of policy previously stated by the Research and Policy Committee. This statement is based on a series of statements, beginning in 1945, on U.S. trade policy by the Research and Policy Committee.

Except for the members of the Program Committee, and the chairmen of subcommittees of the Research and Policy Committee whose names appear below, the recommendations presented in this program committee statement are not necessarily endorsed by other trustees or by the advisers, contributors, staff members, or others associated with CED.

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The United States has played a major role in the progressive liberalization of international trade for more than a quarter of a century. The agreements reached in the sixth or Kennedy round of GATT trade negotiations will bring down the tariff barriers of the major trading nations to relatively low levels. Especially important for the continued expansion of world trade is the reduction achieved in the common external tariff of the six-nation European Economic Community (EEC). We welcome this latest step toward a better integrated world economy, recognizing that the adjustments which some interests in each country will have to make are required in gaining the widespread benefits of trade liberalization.

CED from its beginning has favored trade liberalization on the ground that the expansion of international commerce promotes the most effective use of the world's human and material resources and thus increases the economic welfare of the United States along with that of other nations. Our view is that the United States gains by the stimulus to its economic efficiency and growth that comes from removing restraints on the growth of its international trade. The fact that the export-import trade of the United States passed $55 billion in 1966 can be attributed in no small part to the persistent and successful efforts this country has made over the years to remove these obstacles to trade in return for similar action by other countries. World trade has expanded by more than 80 percent in the past decade, with total world exports amounting to over $200 billion in 1966.

*Chairmen of subcommittees of Research and Policy Committee.

Successful though the recent tariff negotiations have been, the United States is left with a number of important trade policy problems. Some call for immediate attention.

The President needs a measure of negotiating authority to protect American interests as the agreements reached in the negotiations are put into effect and their impact is felt.

The problem inherent in the large number of nontariff barriers and subsidies to trade that result from governmental action in various countries was barely touched in the negotiations, while their relative significance and the need to deal with them were increased by the tariff cuts.

The special trade problems of the low-income countries could not be dealt with adequately in the Kennedy round and will need to be faced.

For the present, another major initiative to reduce tariffs among the industrial countries is neither feasible nor necessary. Looking somewhat further ahead, however, efforts should be made to identify additional opportunities for mutually profitable liberalization of trade among the industrial countries through tariff reduction, as well as for improved techniques for future negotiations.

In calling attention to these problems we do not intend to be critical of the recent trade negotiations, which were crowded enough with difficult issues. Negotiations on the whole were very successful and constitute a major achievement. We believe, however, that this is an appropriate time to bring up the problems that remain and to discuss them in the light of the positions on trade policy taken by the CED in previously issued policy statements.

Negotiating authority

With the expiration of the negotiating authority of the Trade Expansion Act of 1962 (TEA) the United States is left without the means to conduct its normal international trade relations within the General Agreement on Tariffs and Trade (GATT) framework. To comply with our GATT obligations and at the same time with unexpired provisions of the Trade Expansion Act, the President needs some kind of authority to negotiate routine or "housekeeping" adjustments in commitments made by the United States. Especially important is the authority to negotiate compensatory tariff settlements.

The need for this authority would arise if under the escape-clause provisions of the TEA the President were to increase the duty or impose a quota to prevent or remedy serious injury to a domestic industry arising from increased imports that have resulted from tariff concessions granted by the United States. Such an increase in protection is permitted under GATT rules on condition that compensation is made to the supplying countries, and normally it is made by the reduction of one or more tariffs on other goods we import. Thus, the interests of the United States require that the President should be in a position to make such compensation. Failure on our part to do so could be expected to lead to retaliatory withdrawal of tariff concessions granted by the supplying countries on goods exported to them by this country.

Authority to negotiate compensatory tariff reductions would also be needed if legislation were enacted by Congress, for example to change tariff classifications, with the incidental effect of increasing duties. In this case again the President would have to choose between increasing the scope of tariff concessions already made to other nations or accepting retaliatory tariff increases against our exports.

So that the United States may be able to meet its GATT obligations in cases such as those described, and also to remove any doubt about the future direction of American trade policy, this Committee believes that Congress should provide the President with the necessary negotiating authority.

Adjustment assistance

The Trade Expansion Act of 1962 was the first reciprocal trade agreements legislation to recognize explicitly two points: first, that tariff concessions resulting in increased imports may cause serious injury to some workers and firms within an industry even where the domestic industry as a whole is not seriously injured; and second, that in such cases the appropriate relief is through adjustment assistance to workers and firms, a form of relief that would also be available, however, to an entire industry as an alternative to the reimposition of import restrictions.

Thus far in no case presented to the Tariff Commission has any petitioner been able to qualify for assistance, for the reason that it has proved impossible to identify increased imports as the major cause of injury, and seldom possible to prove that tariff concessions were the major cause of increased imports. This does not necessarily mean that there has been no injury from tariff concessions but rather that a large number of factors affect the competitiveness of American producers and that tariff concessions have not been judged to be the major one. In a dynamic economy a frequent side effect of technical progress is injury to or difficulty for some workers, business firms, and even regions. Often a number of factors are at work, so that the causes of injury are so complex that to sort out the effects of any specific factor frequently is not possible, while to make an attribution of cause would be arbitrary.

It has been our position that for reasons of equity, sound economics, and administrative feasibility, adjustment assistance for import competition should be provided under current general programs for coping with distressed areas and sectors rather than through a special program related to the expansion of imports. While it continues to be our view that changes which call for adjustment are usually so complex that the needs can be met better by general programs than by those specifically directed to injury from import competition, some liberalization of TEA requirements may be appropriate to reflect the intentions of Congress.

The CED has frequently pointed out that the primary requirement for a smooth adjustment process in the economy, whether the need for adjustment is due to imports or to domestic factors, is the maintenance of a high level of general economic activity and employment with stable price levels. Appropriate fiscal and monetary policies combined with well-designed general adjustment programs constitute in our opinion the best hope for reducing injury and improving the rate of adjustment in the economy, whatever the source of the need for adjustment.

Nontariff barriers and subsidies to trade

The flow of international trade is distorted not only by tariffs but also by a wide variety of governmental actions which fall under the general heading of nontariff barriers and subsidies. These are usually referred to simply as nontariff barriers, but the export subsidy aspect should not be overlooked.

As the Kennedy round tariff cuts go into effect, governments may be tempted to make further use of nontariff devices to reduce the impact of the cuts. At the same time, the impact on trade of existing measures will increase as the rates of duty decline. Yet it will not be easy to deal with this problem. Many existing nontariff barriers originated in the fiscal, social, and economic policies of each nation and their primary purpose has not been import protection, which makes it hard to separate out the incidental protective effects from their legitimate public purposes. Thus it will be a long and complicated process to remove some of the more important nontariff barriers through international negotiations.

The major governmental actions involving practices constituting nontariff barriers include quantitative restrictions; state trading and government procurement; customs classification and valuation; antidumping legislation and procedures; border tax adjustments; and various internal measures having a discriminatory impact on imports, including domestic subsidies, government pricing practices, and taxes. However, the whole complex of nontariff barriers and their competitive impact internationally still needs detailed study before the reciprocal reduction, dismantling, or harmonizing of the barriers can get underway. Looking toward such negotiations, a study of these barriers is being undertaken as part of the general review of American trade policy called for by President Johnson. The Organization for Economic Cooperation and Development (OECD) and the EEC also are devoting considerable time and effort to similar studies. The CED is studying the subject in collaboration with counterpart organizations in other industrial countries.

All countries impose some nontariff barriers, but businessmen and Government officials alike tend to be conscious only of those imposed by other governments. For example, U.S. businessmen are considerably, and we think justifiably, concerned over the border tax adjustment system used by the EEC countries as well as others. Under this system, indirect domestic taxes—excise, turnover, and value-added taxes—which are major revenue sources in these countries have for many years been refunded for exports and levied on imports, on the theory that indirect taxes are in reality taxes on consumption that should be imposed by the consumers' country. The practice is permitted under GATT rules, whereas direct taxes such as the personal and corporate income taxes may neither be rebated on exports nor added to imports. The United States rebates its excise taxes on exports of tobacco and liquor, but since it makes little use of indirect taxation of business in general it is not in a position to make much use of border tax adjustments. The amount of net disadvantage to outside competitors resulting from longstanding border tax adjustments is a matter for debate on economic grounds, and the EEC countries generally deny that there is any such disadvantage. But there can be no question that the recent and expected adoption by other EEC countries of high-rate value-added taxes comparable to those of France will create a substantial disadvantage to U.S. producers.

The Kennedy round negotiators, as noted above, were so deeply involved in difficult tariff problems that they were unable to pay much attention to nontariff barriers. Moreover, President Johnson and his negotiators had no special legislative authority to reach binding executive agreements outside the tariff field and so would have been obliged to refer any nontariff agreements to Congress for legislative action. In one area it did prove possible to reach agreement within existing legislative authority: the United States and a number of other countries had reciprocal complaints about the administration of antidumping legislation, and an agreement altering administrative procedures was reached that should help to meet these complaints.

An area in which feeling abroad is particularly critical of the United States concerns customs valuation of certain products and uncertainties in customs procedures. The complaints regarding customs valuation are directed toward the so-called American selling price (ASP) system, which applies to relatively few product groups but notably to benzenoid chemicals. Under this valuation method the tariff rate is applied to what is determined to be the domestic selling price set by American producers of the product rather than on the selling price of the foreign producer in his own country, which is the normal system applied to the great majority of products in this country and in other countries. Tariff rates on imports that are valued by the ASP system are not comparable with other tariff rates, since ASP values often are far higher than normal customs values would be. The use of the ASP system tends to conceal the actual level of protection from public awareness, and consequently may result in higher duties than would otherwise be imposed.

Our principal concern, however, is with other problems that are created by the use of the ASP valuation system. The American producer of chemicals subject to ASP treatment can influence the level of protection by deciding at what price he will sell, and when he changes his price he changes the amount of the duty. The foreign producer and the American importer often do not know when the merchandise is shipped to the United States what the tariff rate will be; the customs administration must make a study to find out, frequently with long delays.

In the Kennedy round negotiations a conditional agreement was reached that if the United States changes the law so that the normal and conventional valuation procedures are applied to benzenoid chemicals, the United States will receive in exchange chemical tariff concessions going well beyond those agreed upon in the main chemical "package," and other concessions as well, including the elimination of the discriminatory aspects of automobile road-use taxes in France, Italy, and Belgium. This agreement of course depends on favorable congressional action.

In a 1964 policy statement dealing with the Kennedy round negotiations,[1] CED took a stand against such protective devices as customs

[1] "Trade Negotiations for a Better Free World Economy," a statement on national policy by the Research and Policy Committee of the Committee for Economic Development, New York, May 1964.

valuations not reflecting actual prices, maintaining that such devices "have no place in a free world economy accepting competition as a necessity of economic health." We believe that Congress should follow this principle and extend the valuation system that applies to other products generally to those products now valued for customs purposes at their American selling price. This action would confirm the general commitment of the United States to trade expansion and provide specific evidence of its intentions with respect to the reduction of nontariff barriers to trade. By demonstrating its readiness to act on one of its own nontariff barriers, the United States would put itself in a stronger position to take the initiative in future negotiations for a general reduction of such barriers.

Trade problems of the developing countries

Another major trade policy issue that soon will confront the United States is the need for the industrialized nations to help the low-income countries expand their export earnings, and thus to increase their capacity to finance imports required for economic development. Since our Government aid programs as well as those of other high-income countries are subject to quite strict limits, the low-income countries must increasingly depend for much needed outside development resources on private foreign investment and on their export earnings.

Export markets for the low-income countries can be opened up significantly only if the United States and other high-income countries join in a special program of further trade liberalization. The basic elements of such a program should be agreed upon as soon as possible by the OECD countries after discussion with representatives of the low-income countries in the GATT and the United Nations Trade and Development Board.

In a recent policy statement on "Trade Policy Toward Low-Income Countries," CED proposed the following:

That in the area of primary products, which account for more than four-fifths of the export earnings of low-income countries, the high-income countries should progressively eliminate their import and consumption taxes on tropical products which they do not produce themselves; reduce domestic subsidies and price supports for agricultural products imported from low-income countries; eliminate their tariffs and quotas over a transitional period on those raw materials and foodstuffs that are not subject to domestic market management.

That barriers to the export of manufacturers from low-income countries be reduced, with emphasis on products resulting from the early stages of processing raw materials and from labor-intensive industry, including assembly processes and the manufacture of parts.

That immediate reciprocity on the part of the low-income countries should not be expected in the proposed trade liberalization.

With respect to the pressure from low-income countries for the industrial nations to extend to them generalized preferences on manufactured exports, this committee has some reservations. We believe that the high-income countries should consider whether a common move in this direction would be desirable and feasible. To help in this consideration, advice should be sought from a special GATT committee set up to study the issues involved. In any event, if such preferences are to be extended, they should be limited in scope and duration.

One step that could readily be taken would be to grant immediately to the less-developed countries the tariff reductions of the Kennedy round that will only gradually become available to the industrial countries. To accomplish this result would require agreement among the industrial countries, and a congressional grant of authority to the President to make such an agreement.

It must be recognized, of course, that the benefits which will accrue to low-income countries from any of the special trade liberalization steps taken by the industrial countries ultimately depend on the domestic policy actions taken by the low-income countries themselves to become internationally competitive.

Further tariff negotiations among industrial countries

Industrial countries will be reluctant to follow the Kennedy round with new tariff negotiations of the same sweeping character until the reductions already agreed upon have become fully effective and an assessment can be made of their impact on production, competitiveness, and the volume of trade. In some sectors the amounts of tariff that will then remain will be largely nominal. Other sectors posed such difficulties in the Kennedy round negotiations that passage of time will be required before they can profitably be taken up again.

Accordingly, a further major initiative to reduce tariffs among the industrial countries is neither feasible nor necessary in the immediate future. However, there undoubtedly are substantial areas in which further liberalization will in time come to be recognized by industrial countries as mutually desirable. The possibilities for such liberalization should be under continuing study. In methods, too, new approaches may be found. The across-the-board reduction method introduced by the Trade Expansion Act is credited by some with being a crucial factor in the success of the negotiations. Other innovations in negotiating procedure perhaps can be devised for future negotiations.

The legislation needed to make the Kennedy round agreements fully effective should be promptly enacted. Preparations should be made for international negotiations regarding nontariff barriers and subsidies and regarding trade policy toward the low-income countries. The momentum of trade liberalization should not be allowed to falter or be pushed back by protectionist reaction to liberalization already achieved.

Statement of the Manufacturing Chemists' Association, Inc., Washington, D.C.

SUMMARY

This statement reflects the views of the Manufacturing Chemists Association on U.S. trade policy and practices and on emerging problems in foreign trade affecting the chemical industry and its nearly 1 million workers. It proposes a course of action for maintaining and improving the balance of trade and balance of payments.

It recommends:

Continued support of GATT as an institution for expanding world trade.

Rejection of proposals to eliminate the American selling price.

Extension of Executive authority relating to "housekeeping" activities but opposes extension of authority to reduce tariffs to zero where United States and EEC together account for 80 percent of trade or U.S. duties are less than 5 percent.

Enlarged participation of industry advisers, certified in the formulation of U.S. trade policy and negotiations.

Full exercise of investigative power by Tariff Commission in matters pertaining to foreign trade and their effect upon industry and labor.

Liberalization and use of same criteria for escape clause, and eligibility for adjustment assistance for firms and workers.

Support of international dumping code adopted and required use of special customs invoice form 5515.

Steps be taken to have Europeans honor commitments to adhere to the most-favored-nation principle, especially in respect to Japan.

Consideration of export incentives to increase the Nation's trade balance.

Review of U.S. policy relating to direct foreign investment with the object of terminating the voluntary program.

Effort to adjust application of patent laws with respect to compulsory licensing on failure to work.

This statement also identifies a variety of nontariff barriers that restrict and impede trade and deny U.S. companies fair and equal access to foreign markets.

STATEMENT

This statement is submitted on behalf of the Manufacturing Chemists Association, a nonprofit trade association of 185 U.S. company members representing more than 90 percent of the basic chemical manufacturing capacity in the United States. Fourteen Canadian firms are also members of the association.

The U.S. chemical industry

The U.S. chemical industry is of vital importance to the national economy and to the Nation's defense effort. In 1966 the chemical industry in the United States employed more than 965,000 persons, operated over 14,000 plants, and spent nearly $3 billion for new construction. In the 10-year period ending in 1966 the industry invested $18 billion in new plants. In 1966 chemical industry wages and salaries totaled $7.6 billion, approximately 6 percent of the $128 billion paid to all employees of manufacturing industries. Chemical industry shipments in 1966 were estimated at $38.7 billion, up 67 percent over 1957, reflecting an average annual growth of 6 percent. At the end of 1966, the industry's assets were 9.7 percent of the assets of all U.S. manufacturing operations.

The chemical industry is a prime innovative force in the American economy. For 1966 the industry's research and development expenditures approximated $1.3 billion. Of the industry's more than 10,000 products, nearly half were unknown 20 years ago. The ability to create new products through research and produce them at a profit is one of the motivating forces in the chemical industry.

The foreign chemical industry

During World War II much of the foreign chemical industry, particularly in Germany where a large part of it was located, was destroyed. Thus, the U.S. chemical industry had a broad market for its products with little or no competition. But this advantage is being rapidly eroded by the advances made by foreign producers. Several factors have contributed to this progress: Chemicals is an industry in which national levels of technology are substantially equal. New foreign plants are automated, embody the latest processes and techniques, and increasingly enjoy the advantages of high volume production. Antitrust laws and practices in other countries permit rationalization of production and other actions favoring their domestic industry. Wages in Europe and Japan are well below those in the United States. Productivity of workers has increased rapidly until the former U.S. advantages have been substantially neutralized.

The magnitude and growth of the foreign chemical industry as compared to that in the United States is indicated in the following table:

	Persons employed		Turnover, sales or shipments (millions)	
	1957	1965	1957	1965
European Economic Community	900,000	1,059,145	$10,000	$19,990
Japan	377,428	409,000	2,504	[1] 7,792
United Kingdom	357,000	408,000	3,668	6,360
United States	810,000	906,400	23,206	36,030

Based on sales (shipments) during the period 1957–65 the average annual growth rate in Japan was 23 percent; in the EEC, 11 percent; in the United Kingdom, 8 percent; and in the United States, 6 percent.

Of the first 50 chemical companies in the free world ranked according to 1966 sales, 29 are foreign while 21 are United States based. Sales of the 29 foreign companies were $20 billion as compared with $19 billion for the 21 U.S. firms.*

Indicative of the growth of the foreign chemical industry and its effect on U.S. exports is the fact that in 1958 the United States had 59.2 percent of the market for chemicals in the OECD countries, whereas by 1965 the U.S. share had been reduced to 49 percent.

Possible shortcomings in the applicable statutes

The U.S. chemical industry has made in the past, and will continue to make in the future, specific recommendations concerning legislation affecting U.S. trade policy. Past suggestions pertained particularly to safeguards on executive authority and import relief measures in trade agreement legislation. The most important shortcomings in existing and proposed trade policy statutes will be detailed in this statement along with constructive recommendations. Among the more important of these are measures to increase exports and to lessen the impact of imports on the U.S. economy.

*Compiled from Fortune, July 15 and Sept. 15, 1967, issues.

The GATT as an instrument for assuring expanded world trade on a reciprocal, nondiscriminatory basis

The General Agreement on Tariffs and Trade (GATT) has been in existence since 1947. At the conclusion of the "Kennedy round" in Geneva in May 1967 the GATT had 71 nations committed to its articles, four applicants and two nations, including Poland, with special associate membership.

Member nations are contractually obligated to abide by GATT rules. Thus, by design and intent the nations of the world have a forum in which to propose tariff and trade matters, a place to negotiate, and a permanent secretariat to implement and administer its deliberations. The GATT has some solid accomplishments in expanding world trade and does provide a mechanism to initiate means for further expansion. Although agreements reached in GATT have, in some cases, been considered by segments of U.S. industry to be unfavorable it is believed that the mechanism should be maintained.

Despite the availability of the GATT as an international organization there are some real and growing difficulties that pertain to U.S. participation. The original 23 members are mature industrialized nations whose delegations maintain close liaison with industrial groups in their respective nations and are thus very responsive to industry needs. Growth of the GATT has drawn in an ever-increasing number of less-developed countries whose demands are being voiced effectively. These two situations have tended to alter the atmosphere of the GATT from one of simple negotiation into an arena of international politics.

Effects of the Kennedy round

The Kennedy round of tariff negotiations is now history. While we are well aware of the agreements reached, their effect can only be anticipated at this time. It is the view of MCA that concessions made by our trading partners will not result in a significant increase in U.S. chemical exports. On the other hand we are convinced that concessions made by the United States will result in an increase in chemical imports which will be further augmented if legislation to abolish the ASP method of customs valuation is enacted by the Congress. It should be noted that the average annual growth rate of U.S. chemical exports since 1957 has been 7.5 percent compared to 14.6 percent for chemical imports. In 1966 the excess of chemical exports over imports was $1.7 billion which accounted for about 50 percent of the U.S. trade surplus. It is expected that maintenance of this contribution to the U.S. balance of trade when new tariff rates become effective will be jeopardized.

During the Kennedy round the European industrialized nations made such an issue of the American selling price method of tariff assessment that negotiations very nearly ground to a halt. To remove the impasse the Director General proposed a 50-percent average tariff cut on chemicals by the United States for a 20-percent cut by European Economic Community and United Kingdom, the remaining 30 percent to be granted contingent upon elimination of ASP. The U.S. negotiators acquiesced and negotiated a two-package deal, one of which was strictly contingent and actually not within their authority to bargain.

There has been a marked increase in the balance-of-trade deficit of some segments of the chemical industry in the last 10 years. For example, in 1957 imports of chromium and manganese in the form of metals and ferroalloys were $8.4 million; in 1966, imports of these products were $64 million. In contrast, exports in 1957 were $4.4 million as compared to $2.2 million in 1966. In the first half of 1967, imports of manganese had increased to over 50 percent of the noncaptive domestic consumption as compared with 33.7 percent in 1966. The increase of productive facilities for other chemicals abroad and the lowering of U.S. tariffs will have a further adverse impact upon the balance of trade and balance of payments. At any rate, our foreign trade policy must envision the situation in 1972 when the Kennedy round schedules have been fully implemented.

Use of industry advisers

It has been the stated belief of the chemical industry for many years that U.S. trade negotiators have not made full use of the knowledge of international competitive factors which are available from the industry itself. Other major chemical-producing nations have in past years of trade-agreement negotiations regularly had such advice from their industry representatives, which was used to good advantage. The result, we believe, has been that the U.S. negotiators have been at a disadvantage vis-a-vis their foreign counterparts.

During the Kennedy round negotiations, the Office of the Special Representative for Trade Negotiations (STR) appointed knowledgeable industry representatives who could be called upon for information and technical advice. This innovation was an encouraging start, but the outcome would seem to indicate that little credence was given to the advice received from industry.

The use of industry advisers, the representations by industry to the Tariff Commission and to the Trade Information Committee, some of which have been provided for by the Trade Expansion Act, are all a part of the process of insuring that the STR and our negotiators are adequately informed of the impact of foreign and domestic concessions on the industry. Some method should be found in legislation to insure that the intent of Congress in establishing these safeguards for industry in these negotiations is followed in spirit and in actual operation during the bargaining session. In many aspects, this has not been the case; and the Kennedy round negotiations provide a prime example of how representations by industry concerning chemicals were apparently disregarded. It is hard to rationalize the action of the U.S. negotiators with the intent of Congress when the STR was established and the advisory procedures provided for in law.

We believe that the United States in its legislation and trade agreements bargaining must greatly enlarge the participation of industry through the technical advisory system. In future negotiations, whether related to tariffs, nontariff barriers, or other matters affecting the U.S. chemical industry, the advice of the industry through its advisers must be sought and carefully considered.

The problem of security of confidential information must, of course, be dealt with. We believe that, through some method of certification of individuals from industries, this problem can be solved. The chemical industry stands ready to cooperate in any realistic, new approach to U.S. trade agreements bargaining.

Extension of executive authority granted in the Trade Expansion Act

It is understood that the administration will ask for an extension of certain provisions of the Trade Expansion Act relating to housekeeping activities in connection with GATT and bilateral trade agreements. We favor retention of the Office of the Special Representative for Trade Negotiations. We do not favor an open-end extension of some of the other provisions of the TEA. For example, it is believed that the authority to reduce duties to zero where the United States and the European Economic Community together account for 80 percent of world trade or where U.S. duties are less than 5 percent should be terminated.

Role of the Tariff Commission

The U.S. Tariff Commission was created by the Congress to assist it in the exercise of Congress' power to regulate commerce with foreign nations. The Tariff Commission is an arm of the Congress, and one of its major functions is to investigate matters pertaining to foreign trade and their effect upon industry and labor and to submit reports of its investigations. The Tariff Commission has power to investigate such matters as tariff relations between the United States and foreign countries, commercial treaties, economic alliances, the volume of importation compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

MCA believes that the Tariff Commission should exercise to the fullest possible extent its investigative power. In this way the Congress can be assured of having accurate information concerning foreign trade matters, and this is an indispensable prerequisite to the development of U.S. foreign trade policy. Of course, it follows that MCA believes adequate funds should be appropriated so as to enable the Tariff Commission to carry out this important function efficiently and with dispatch.

Procedures for aiding workers and industries harmed by excessive imports

The MCA has steadfastly maintained for many years that appropriate relief should be provided domestic industry when it has been injured by reason of imports. Currently the Trade Expansion Act provides that an industry must prove (1) that tariff concessions were the "major cause" of increased imports and (2) that such increased imports were the "major cause" of injury to the industry. In practice this has turned out to be an impossible burden of proof. The President's special representative for trade negotiations, Ambassador William M. Roth, summed up the problem succinctly in his statement before the Subcommittee on Foreign Economic Policy (July 11, 1967) when he said:

> In the complex environment of our modern economy, a great variety of factors affect the productive capacity and competitiveness of American producers, making it virtually impossible to single out increased imports as the major cause of injury. In fact, it has usually been impossible to prove that tariff concessions were the major cause of increased imports.

For these reasons MCA believes the eligibility criteria for escape clause relief for industry should be liberalized. MCA does not object to similar liberalization of the criteria for eligibility for adjustment assistance for firms and workers since the adjustment assistance concept is now a part of U.S. foreign trade policy. MCA favors a policy which will prevent injury rather than one that provides for correction after injury has occurred.

Antidumping, customs administration, and valuation of imported goods

In the competitive world of today, it is inevitable that producers with any idle capacity will seek to sell in foreign markets, at dumping prices if necessary. The producer can justify this by incremental costing of his extra production, assuming that dumping overseas will not affect his home market price. Elimination of dumping is essential to growth of international trade on a sound basis.

With the recent tariff reductions, the proper administration of dumping laws becomes of increasing importance. The international dumping code adopted during the course of the Kennedy round trade negotiations assures some international uniformity of dumping policies. An integral part of the administration of the dumping law, as well as of customs valuation matters, is the problem of obtaining value information concerning the value of goods in the home market. This problem was recently brought into focus by a notice published in the Federal Register for September 27, 1967, in respect to imports from Japan. This document frankly states that considerable difficulty has been experienced in obtaining home market value information for customs purposes. We suggest that the Japanese import problem, as well as the problem of determining the appropriate home market value for dumping purposes, could be cured by requiring use of special customs invoice form 5515 together with a strict requirement that all pertinent value data called for by that form be supplied.

Incentives that could lead to an increase in U.S. exports

One of the most positive ways to alleviate our persistent balance-of-payments problem is through an increase in exports. For a number of years Government and industry have cooperated in this effort through vehicles such as the National Export Expansion Council. Despite a number of positive steps such as improvement of export credit facilities and greater emphasis on commercial functions in U.S. embassies, the goal of a quantum increase in the trade balance has eluded us. This is all the more frustrating because of the relatively minor increase in exports—in terms of our vast production—needed to solve the problem.

The Government is now exploring the incentives that might be used to bring about this desired result. From a chemical industry point of view we tend to agree that some system of export incentives is necessary to favorably modify the economics of exporting many of our products.

Many of our members are convinced that to remain competitive in exports to overseas markets, the chemical industry must have access to competively priced raw materials—which in the case of foreign feedstocks is now substantially denied under the oil import program. They believe that if these low-cost foreign raw materials continue to be unavailable to the domestic chemical industry, it faces potentially destructive competition in its export markets now and in domestic markets as tariffs come down over the next 5 years. They feel that some method should be devised to permit adequate imports of foreign feedstocks for chemical production.

Several studies have been made by the National Export Expansion Council dealing with incentives that could increase exports. It is suggested that the recommendations contained in these studies should be considered during the oversight review of U.S. trade policy.

Foreign investment as force for growth

The rapid growth of international investment has been one of the most dynamic forces at work in developing the world's economy in the two decades following World War II. It has opened up new fields of production, employment, and income. It has increased the flow of technology and trade. It has enhanced the wealth of nations and the prospects for a more durable peace. The United States has been the leader in international investment—particularly the chemical industry.

Due to the persistent balance-of-payments deficit and the resultant drain on the Nation's gold reserves, American companies were asked in 1965 to cooperate in a voluntary program of restraint in direct foreign investment. Nearly 600 companies, including chemical companies, voluntarily acted to curb the dollar outflow, modifying or postponing overseas projects, financing through foreign borrowing, and taking other measures to meet the short-term need of the United States in its efforts to balance its international accounts. At the outset, the voluntary program was recognized and described as a stopgap measure which would only temporarily interrupt the process of direct foreign investments which so successfully served the economic interests of the United States and its free world friends and trading partners. This beneficial force for international development has now been encumbered with restraints for nearly 3 years. We urge a review of U.S. policy in this field with a view to ending the voluntary program as soon as abatement of the Vietnam war pressures on the balance of payments permits.

About 25 percent of all U.S.-manufactured exports are shipped to overseas subsidiaries. The level of U.S. merchandise exports has closely followed the flow of direct foreign investments, conclusively indicating the relationship between export growth and capital investment abroad.

Curtailment of overseas expansion thus adversely affects our trade surplus as well as our competitive position in world markets. For competitive reasons or for reason of restrictive sovereign policies, it is necessary to operate production facilities within the borders of certain countries in order to gain or maintain access to markets. These plants are America's best overseas customer. Direct foreign investment benefits our exports through (1) shipment of capital goods, supplies, and components and (2) opening the door to other product lines.

The flowback in income of U.S. subsidiaries and affiliates abroad exceeded $4 billion, not including more than $1 billion in royalties and fees, last year while the outflow, after deductions for foreign borrowing, amounted to $2.9 billion. The positive contribution of direct foreign investment and the export growth it generates is one of the more significant factors in our international transactions.

American international investment exerts a powerful influence on the level and structure of world trade. Continued curtailment of foreign investment will tend to retard world growth and diminish our own prosperity and economic progress at home. U.S. foreign trade policy should therefore encourage direct foreign investment both as an instrument of world economic development and a positive long-term factor in the balance of payments.

Development of foreign markets

While private enterprise and private initiative remain the central thrust in developing international markets, cognizance should be given the energetic and productive efforts of the U.S. Department of Commerce in widening opportunities for U.S. business abroad.

It is with much pride that we point to the fact that chief executives of two MCA member companies have provided the leadership for the Government's export expansion programs—Carl Gerstacker of the Dow Chemical Co. as Chairman of the National Export Expansion Council and Fred Foy of Koppers Co., Inc., who preceded him as head of the nationwide voluntary organization.

Economic assistance to developing countries

We recognize that economic assistance to the developing countries is cardinal to the endeavors of the United States to achieve a rational, progressive, and peaceful world order. We support the administration policy in emphasizing the private role in the economic development of those free world countries who are our friends and future trading partners. This policy recognizes that private initiative, resources, capital, management know-how, and experience provide the most effective means of improving production, employment, and income in developing countries.

Disregard of most-favored-nation principle by European countries

It is well known that many European countries, while granting trade concessions to the United States, by various devices such as import licenses or informal quotas, have succeeded in not according other nations, principally Japan, the full benefit of these concessions. This has resulted in undue pressure on the economy of the United States. Our trade concessions are extended automatically to all nations, including Japan. Thus, domestic industries are subject to import competition from both European countries and Japan. However, the European countries refuse to extend the same concessions to Japan and thus Japan can market its products only in the United States. It is reported that informal quotas are often agreed upon by the private industry of a European nation and the Japanese industry. Obviously, it is impossible for U.S. domestic industry to enter into agreements of this kind because of the antitrust laws.

MCA urges that the U.S. Government take steps to assure that European nations honor their GATT commitment to adhere to the most-favored-nation principle and accord imports from Japan the same treatment as imports from other nations.

Tariff and nontariff barriers that limit U.S. exports

While some of those listed are possibly not major factors, they are barriers to expanding U.S. foreign trade in varying degrees.

Tariff barriers

A. Regional trade blocs present increasing tariff obstacles to U.S. exports because of the relatively favored position of bloc members to compete in the domestic markets of other members. Such trade expansion and diversion is an objective of regional trade blocs and has been successful as illustrated by the following data:

Country	Trade bloc	Imports from bloc countries as percent of total imports		
		1960	1963	1966
Germany	EEC	29.8	33.2	8.2
France	EEC	29.4	35.8	40.9
United Kingdom	EFTA	9.4	10.5	12.1
Argentina	LAFTA	8.5	10.4	20.2
El Salvador	CACM	11.0	16.0	24.0

B. The effect of the Common Market External Tariff (CET) rates gives a competitive advantage within the bloc and against U.S. exports by raising tariff rates in formerly low tariff countries that are or were major export markets. Even with the full imposition of the Kennedy round agreement on chemicals (and including the separate package with CET 50 percent reductions), many German and Benelux chemical tariffs would be higher than their pre-EEC national rates.

C. Tariff preferences extended to specific countries such as the commonwealth preferences in the United Kingdom operate to limit exports of otherwise competitive U.S. products.

D. The valuation base as well as the rate affects cost of entry and must be considered along with the tariff rate in determining the significance of tariffs as barriers to trade. U.S. tariff rates are based on export value in country of origin, whereas foreign tariff rates are based on cost including freight and insurance which add 8 to 10 percent to export value. This must be taken into account when comparing cost of entry.

Nontariff barriers

A. Taxation systems and particularly border tax adjustments are important cost considerations affecting trade. A special report on comparative cost of entry into United States and European chemical markets of February 1966 (copy attached) may be helpful for information on such taxes currently in force in the EEC countries and their effect on costs of entry. This report analyzes the issue of the incidence of direct taxes and indirect taxes and shows how the border tax can have the effect of placing U.S. chemicals in a relative cost disadvantage with respect to the corresponding EEC product, and further that the rebate of tax allowed by some EEC countries on their exports can give a competitive advantage on such shipments to the United States and/or third country markets. The intended harmonization of border taxes along the lines of a value added tax system used by France at a figure of 10 to 15 percent has raised many questions regarding the additional effect on imports into and exports from the EEC and its compliance with the GATT rules. Accordingly, it is pertinent and of major importance to consider the effect which taxes can have in enabling the American exporter to compete in world markets and particularly in the EEC. Because of the fact that European countries rely heavily on turnover, value added and other indirect taxes, whereas the United States derives the greatest proportion of its revenue from direct taxes, the matter of border taxes on imports must be carefully and continuously studied to detect and, if possible, prevent discrimination. Since such indirect taxes are collected on imports, American manufacturers will be at a cost disadvantage, especially if similar taxes are not imposed on competitive manufacturers within the country of destination.

Congressman Thomas B. Curtis, a congressional member of the U.S. Negotiating Team, in his report (Congressional Record, July 10, 1967, p. H 8393) had this to say:

> The border tax problem will not just go away. Particularly now that tariffs will be reduced by stages to quite low levels as a result of the Kennedy round, the border tax will constitute an increased proportion of the "cost of entry" of U.S. exports to border tax countries' markets, even though finance costs are borne by European industries. Thus there is a need for immediate action on the part of the United States. This action should be both domestic and international. First, the U.S. Special Representative for Trade negotiations should immediately institute studies in conjunction with industry by examining companies' records on export sales, that would show the exact commercial effect of the border tax system. At the same time, there should be an effort to determine the actual economic effects of the direct tax as opposed to the indirect tax on domestic producer and consumer.

Ambassador Roth, in testifying before the Senate Finance Committee, while replying to a question from the chairman, made this statement:

> This is the question, Mr. Chairman, of border taxes which is one of the most difficult issues that we are going to face, not in the Kennedy round but looking to the future.

A most important point with respect to the interrelation of taxes and exports derives from the distinction which is made in the GATT rules between direct and indirect taxes so far as export tax incentives are concerned. It is difficult, if not impossible, to justify such distinctions, since in either case the incidence of tax is substantially the same. To limit the permissive incentives for exports to relief from indirect taxes which are of relative unimportance in the U.S. tax system is to practically eliminate any use by the United States of export tax incentives as a means of enabling U.S. companies to more effectively compete in world markets. It is essential that the United States urge renegotiating that part of the GATT rules which forms the basis for treating direct and indirect taxes differently so that an effective export incentive can be accorded to U.S. manufacturers and to insure that tax systems do not discriminate against U.S. exports.

B. The patent laws of many important industrialized nations provide for compulsory licensing of a patent if the patent is not worked within a prescribed period. This policy necessarily encourages local manufacture rather than serving the needs of the market involved by exports from the United States. The patent laws of Belgium, France, Holland, Great Britain, Italy, and Japan provide that a patent must be worked within a specified period after the grant of the patent. In all of these countries, with the possible exception of Japan, working means local manufacture, which must be on a substantial scale although not necessarily the entire needs of the country. Failure to work can be excused only if working the patent was not reasonably possible. Effort should be made to prevent this system from restricting U.S. exports.

C. Surtaxes or surcharges, counselor fees, and prior deposits in some countries add significantly to the tariff cost barrier, and depending on demand elasticity and/or domestic competitive price structure act to limit U.S. exports.

D. National preference purchasing. Preferences for domestic manufacturers--whether originating in law or in policy--are a hidden barrier that limits the export of many industrial products to the more industrialized nations.

E. Loan or trade agreements. Bilateral loan or trade agreements such as now exist between Korea and Japan, Germany and Pakistan, and Russia and Japan, operate to limit exports from the United States to those countries of products imported under the terms of the agreements.

F. Differentially high shipping costs. Much work is now being done to identify and correct inequities. This effort should be continued.

G. Export licenses The East-West trade question should be kept under review to assure that controls appropriately implement Government policy with respect to trade in nonstrategic items with Eastern European countries so that export licensing policies are in tune with the national objective.

H. Antitrust and trade discrimination laws. The differences in the concept and in the administration of these laws often operate to limit exports by making the U.S. product less competitive or less salable. Briefly, these laws as part of the Rome Treaty in effect in the EEC are more directed to the prohibition of such trade practices unless they benefit the production or distribution of goods, and a discriminatory act may be liable to harm one kind of trade while benefiting another even more. The result may be judged to be good on the balance of trade by the member states, a point of view different from that taken by U.S. laws.

I. Government ownership production facilities and resources in significant segments of industry in other countries can operate to limit U.S. exports to those countries of products produced by these industries.

J. Special legal requirements, subsidies, export rebates, and credit guarantees having the objective of providing relatively favorable cost or other benefits to domestic producers have the corresponding effect of limiting U.S. exports both to those countries and to third countries.

K. The following nontariff barriers are important in respect to individual countries and products but, in general, are not presently major barriers to U.S. chemical exports:

1. Exchange restrictions.
2. Import licenses.
3. Excessive or unreasonable documentation requirements.
4. Procedural changes without notice.
5. Labeling and packaging regulations.
6. Price controls.
7. Arbitrary technical standards.

Study by public commission

At the time Ambassador William M. Roth was installed as the Special Representative for Trade Negotiations, the President directed him to undertake a study directed toward developing a new trade policy for the United States. The chemical industry strongly endorses such a study, believing that a new approach to bargaining on trade barriers is essential. We further believe that the ultimate enabling legislation must specify details of the new U.S. trade policy.

The proposed study and eventual recommendations must be commercially oriented. Our knowledge of the trade policy of other major industrial countries and conduct of GATT bargaining shows the United States to have been comparatively weak in obtaining commercial reciprocity measured in new export opportunities. To correct this shortcoming, the U.S. Government should provide for use of the extensive expertise in American industries in its legislative proposals and in its later bargaining procedures.

Accordingly, the chemical industry proposes that the President appoint a special group to aid the Special Representative for Trade Negotiations in this study. This group should include knowledgeable, high-level representatives of the major U.S. industries. It should be supported by technical representation also from the industries directly affected by international trade negotiations.

SYNTHETIC ORGANIC CHEMICAL
MANUFACTURERS ASSOCIATION,
New York, N.Y.

THOMAS VAIL, Esq.,
Chief Counsel, Senate Finance Committee,
Washington, D.C.

DEAR MR. VAIL: I am enclosing herewith a statement setting forth the views of the Synthetic Organic Chemical Manufacturers Association (SOCMA) in response to the committee's invitation to interested parties to submit statements on U.S. practices for incorporation in a compendium of papers which will form the basis for hearings at a later date. SOCMA is a trade association representing 76 manufacturers of synthetic organic chemicals. Our member companies produce benzenoid chemicals at over 135 plant locations in 49 States. Over 115,000 persons are employed in the production and sales of benzenoid chemicals.

Because of the space limitations we have concentrated on those areas in which we have had the most experience and which have the most effect upon our industry. There are, of course, other areas upon which we may wish to comment in the course of any hearings held by the committee.

As the committee is undoubtedly aware, our industry will be very much affected by the so-called ASP separate package agreement negotiated on chemicals in connection with the recent negotiations in Geneva. This so-called separate package agreement was negotiated outside the authority granted by the Trade Expansion Act of 1962 and must be ratified by the Congress before it can become effective. While a number of aspects of this agreement have a bearing on the points covered in our memorandum, and therefore are discussed therein, we have felt it neither necessary nor desirable for our memorandum to document the undesirability of that agreement. We have therefore reserved that material for another day when the agreement has been presented to the committee for its considerations.

I am also enclosing a one-page summary of the points raised in our memorandum.

Very truly yours,

JAMES D. MAHONEY,
President.

STATEMENT OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

SUMMARY

1. *Import penetration.*—As a result of the substantial tariff reductions agreed to in Geneva, increasing levels of import penetration will pose serious problems for broad sectors of U.S. industry. Congress has the authority to establish reasonable limits upon the level of impart penetration to which our industries and workers will be subjected. Any such limits should at the same time permit a healthy and reciprocal expansion of world trade.

2. *Border taxes.*—Increased border taxes in most Common Market countries will substantially offset the tariff reductions made in the Kennedy round. The imposition of these taxes on imports and the rebate of turnover taxes on exports provides these countries with an unfair competitive advantage over the United States and other income tax base countries which are not permitted by the GATT to collect such taxes or provide such rebates. The U.S. countervailing duty statute should be enforced until our trading partners agree to an acceptable revision of the GATT to provide fair and equitable treatment which does not discriminate against countries with an income tax system.

3. *Valuation.*—The "export value" method of valuation applied by the United States is especially vulnerable to undervaluation. The United States should develop on the basis of objective standards a more appropriate method of valuation which will avoid the possibility of either under or over valuation to the fullest extent possible.

4. *Increased import penetration.*—At their current rate of growth under existing duties, the share of the U.S. market supplied by imported benzenoid chemicals will rise from the 4 percent in 1966 to 12 percent in 1975. As a result of the reductions agreed to in Geneva, imports could capture 20 to 35 percent of the market by 1975.

5. *Ad hoc agreements.*—Agreements in excess of the broad authority specifically delegated by the Congress are ill advised. As the so-called "separate package" agreement on chemicals clearly demonstrates such agreements present the Congress with a fait accompli which limits it to one of only two alternative courses of action, neither of which may be acceptable. This undermines congressional authority over the formulation of our trade policy and effectively denies the right of the public to be heard while the full range of choices are still freely open to the Congress.

STATEMENT

Introduction

This statement is submitted on behalf of the Synthetic Organic Chemical Manufacturers Associtiou in response to the committee's invitation for interested parties to submit written statements on U.S. foreign trade policies and practices for incorporation in a compendium which will form the basis for hearings at a later date. As suggested by the committee, we have concentrated on those areas with which we have had the most direct experience and which have the greatest effect upon our industry.

I. Possible shortcomings in applicable statutes

While shortcomings in the laws relating to foreign trade policy are dealt with elsewhere in this paper, we wish to deal here with what we believe to be the principal problem that will be facing U.S. industry in the future—that of import penetration. We believe that as a matter of national policy it would be generally agreed that there is a practical limit to the extent the United States will permit import penetraion in major industrial sectors. While there may be disagreement as to what this maximum level of import penetration for major U.S. industrial sectors should be, there obviously is a practical limit beyond which imports would be curtailed. Obviously, no one would maintain that imports should be allowed to rise to a level that would permit them to destroy or dominate a substantial sector of industry.

The problem of import penetration has been increasing substantially in a number of industrial sectors in recent years and is expected to increase even more as a result of the Kennedy round tariff reductions. We therefore believe that the time has come for the Congress to consider establishing limits upon the degree of import penetration which will be permitted in broad sectors of U.S. industry.

The principle underlying the present U.S. tariff is to attempt to offset the differences in production costs here and abroad and thereby prevent unfair and ruinous competition from low-cost imports. Hopes that time would cure the wide disparities in the costs of production here and abroad have not been realized. While there was some narrowing of the wide differences in foreign and domestic costs in the 1950's and early 1960's, this trend has stopped. Indeed, in the past couple of years the evidence suggests that the gap has begun to widen again. Meanwhile, via our trade agreements program, we have all but abandoned the "scientific" tariff theory under which the tariffs were to reflect the difference between foreign and domestic costs of production.

The tariff reductions entered into during the first 10 years following World War II did not cause a serious rise in the overall level of import penetration. This was because of the large demands which reconstruction after World War II was placing upon the productive capacity of our principal trading partners. During this period, we exported to them all they could afford to buy. We provided reconstruction loans and grants and encouraged foreign investment by U.S. industry in order that they could afford to buy from us. The hope was that eventually our trading partners would be able to redevelop their productive capacity and trade with us on a mutually beneficial basis.

However, by 1956, with reconstruction well on its way to completion, our trading partners were once again in a position to begin to trade with us on an equal basis. Because of the disparities in production costs here and abroad, and the abandonment of the scientific tariff theory as a means of equalizing these differences, the future well-being of our foreign trade became largely dependent upon our ability to obtain reciprocal concessions for any tariff reductions that we made. Had we been successful, the proportionate increase in imports as a result of our tariff concessions should have been offset by a proportionate increase in exports resulting from foreign tariff concessions. Unfortunately, this has not been the case.

In the period 1956–66, encompassing the 1956 and 1962 trade negotiations, our imports rose at twice the rate of our exports. Perhaps more significant was the fact that our tariffs were beginning to be reduced to levels which would no longer offset the production cost disparity. On the other hand, the disparity in production costs made foreign tariff reductions less significant as a means of expanding our exports. The obstacles to exports were the low foreign costs. In order to maintain their foreign markets, U.S. companies found it necessary to develop production facilities abroad, where the lower cost base would permit them to compete in foreign markets on an equal basis.

During this period, the increases in imports in the various sectors of the economy were not uniform. In general, those sectors of industry in which the level of import penetration was the greatest were those where (1) the disparity in costs of production here and abroad was considerably greater than the amount of duty imposed, and (2) where production capacity abroad had become sufficiently developed to permit substantial exports.

In the 1950's the cotton textile industry and the petroleum industry experienced an injurious level of import penetration. The same factors which generated high levels of import penetration in these industries also precluded them from receiving the benefits which were to flow from the reduction of foreign tariffs; for them there was no reciprocity. As might be expected, exports declined, and the trade balance in these sectors continued to worsen. The level of import penetration became so high that the Government had to take action limiting imports. In the case of petroleum, increased imports also raised a question of national security. Tariffs simply no longer offset, to any significant extent, the disparity between production costs here and abroad.

The import penetration problems suffered in the 1950's and early 1960's began to have a serious effect upon other industries following the Dillon round negotiations in 1962. In a number of other sectors, the level of import penetration reached the point of causing serious hardship for industries and workers, and the Congress is now considering measures designed to limit the level of import penetration.

All of this has occurred prior to the completion of the Kennedy round negotiations in which we have now agreed to what is certainly the largest and broadest range of tariff reductions in the history of our trade agreements program. These reductions, on top of the other reductions made since the end of World War II, will subject a wide range of domestic industries to injurious levels of import penetration and numerous industries are currently petitioning Congress for relief. The cause will be the same; tariffs will have been reduced to levels at which they are no longer a significant factor in offsetting the disparity in production costs.

The degree of import penetration in any given sector of the economy will be largely a function of the willingness of foreign producers to develop the capacity necessary to supply large portions of the U.S.

market. No one can doubt the ability of the foreign producers in chemicals and in other industries to develop this capacity. Both the capital and the technology for developing it are readily available to them, especially where their significant cost advantage will yield high profits in the high-cost U.S. market.

The cost disparity and expansion of capacity abroad will prevent us from obtaining any meaningful degree of reciprocity for the tariff reductions we have made. Foreign tariff reductions simply do not open export markets when foreign costs are already substantially lower than ours. In the administration of our trade agreements program, we have proved unable adequately to take these factors into account in our attempts to negotiate reciprocal tariff reductions with other countries.

It is, of course, no easy job to attain reciprocity. The basic difficulty is that of determining the amount of increased imports that will result from a given amount of tariff reduction taking into account the existing and future status of production cost disparities, foreign capacity, technological developments and a multitude of other factors which bear upon the issue. To date, we have not developed a means of adequately taking these factors into account in trade negotiations. Consequently, in the end, the currency of trade negotiations has generally been the swapping of equivalent percentage tariff reductions on equivalent amounts of past trade without any meaningful consideration of the level of the tariff relative to the production cost disparity and other factors which will determine whether the resulting future trade flows will be reciprocal.

Our past failure to obtain reciprocity in trade negotiations and the resulting increase in the levels of import penetration present this country with the twofold issue: (1) how to provide reasonable limits on the increasing levels of import penetration to which our industries and workers will be subjected, and (2) at the same time provide for the future expansion of international trade on a truly reciprocal basis.

It is clear that there must be a fair and practical limit to the degree of import penetration which broad sectors of U.S. industry will have to bear. While there may be room for disagreement as to what these limits should be—5, 10, 15, or 20 percent, for example—or how the limit should be established, there should be no question as to the need for facing up to the problem of establishing such a limit.

The Congress is the appropriate arm of Government to deal with the problem of balancing the national interests involved and establishing a limit for broad sectors of industry which will provide an appropriate safeguard for U.S. industry and workers and at the same time permit a healthy and reciprocal expansion of world trade.

The time to consider setting an acceptable limit on import penetration is now, before the damage is done, not after. By acting now to establish these limits, we will be able, in large part, to avoid the international problems which would result from later having to cut back a then unacceptably high level of import penetration.

Action now would also avoid the necessity of piecemeal treatment of industrial sectors after they have already been injured. It would also remove an important element of uncertainty from investment decisions here and abroad by assuring that a certain portion of this market would be available to each. It would reassure the industrial sectors which have yet to experience a harmful level of import penetration that there would be a limit to the price they would have to pay in the likely event an acceptable level of reciprocity has not been obtained for the tariff reductions we have made.

Unfortunately, the administratiors of our foreign trade policy have failed to come to grips with the problem of import penetration in any meaningful way. They have followed the policy of dealing with import penetration problems piecemeal as they arise and then only to the extent to which they are forced to do so by the Congress. Even then, they resist vigorously claiming that retaliatory action by our trading partners will seriously impair our exports. They ignore the fact that we have, in the past, for one reason or another, imposed reasonable limits upon imports of a number of products without suffering retaliation. They ignore the fact, as documented by the Joint Economic Committee in 1963, that our trading partners have literally hundreds of quota restrictions on imports.

Moreover, they adopt the position that a system of limiting import penetration must be unreasonably restrictive and is therefore a fortiori bad. This attitude is indeed unfortunate and hopefully will be changed.

One should begin by recognizing that a system of limits upon the level of import penetration does not have to be restrictive, especially if established in advance. Past history has repeatedly demonstrated that no country will permit an intolerable level of import penetration in any of its important industrial sectors. The issue, therefore, should not be whether to establish such limits, but rather how to develop such limits in a manner which will be fair to us and to our trading partners and which will provide for a continuous and healthy expansion of world trade.

The time has come to develop, both here and abroad, new techniques to assist in regulating foreign trade which will avoid the historic swings in the tariff pendulum and assure the benefits of expanded world trade without anyone's having to bear an unreasonable share of its burdens. This is true reciprocity. If because of the uncertainties involved, it cannot be obtained indirectly by adjusting tariff levels, then we should develop new and more direct means to assist in achieving this goal.

The development of a system to achieve the purposes which we have outlined is not an easy task, but instead of fighting it, we urge the administrators of our foreign trade policy to join with the Congress, labor, and industry in formulating a system to achieve these important objectives.

Their failure to join in such an effort will undoubtedly result in either a serious worsening of our balance of trade or the enactment of restrictive measures which will adversely affect the healthy expansion of world trade. No one should realize more than they the uncertainties involved in the application of the indirect tariff reduction approach. Realizing these uncertainties, they above all, should be interested in the development of a safety valve to prevent the dire economic consequences which can befall us if, once again, we have failed to achieve an acceptable degree of reciprocity in our trade negotiations.

In order to begin what we hope will be a useful dialog on this subject, we have outlined below some of the features which we believe might well be considered for incorporation into such a system in order to achieve the twofold purpose of providing for a healthy, reciprocal expansion of world trade while minimizing the harmful effects of import penetration.

1. A maximum permissible level of import penetration could be established for import-sensitive industries. This limit could be expressed as a percent of domestic consumption. Within each industrial sector, broad product categories could be established, basically in line with the product groupings set forth in the existing tariff schedules. In order to avoid gerrymandering, these product categories should be established according to appropriate standards. Such categories should not be overly refined or narrow, but rather should cover broad groups of similar products involving similar manufacturing processes. In no case, however, should such a category be so narrowly defined as to currently have a level of import penetration in excess of the maximum permissible level of import penetration.

2. For each broad category, an import limit could be initially established at the percent of domestic consumption supplied by imports in the preceding calendar year, rounded to the next higher whole percent, but in no event higher than the maximum limit established for all industry. In order to provide for orderly adjustment to increased import competition, the limit established for each category could then be gradually increased each year until the uniform maximum permissible limit is reached.

3. In order to encourage a reciprocal expansion of trade, once the maximum permissible limit is attained in a category, the limit applicable to that category might be increased by the amount by which U.S. exports of such category increased in the preceding calendar year.

4. In order to encourage exports an attempt should be made to develop a system which could provide for further increases in the applicable import limit to reflect the amount of such imports that have been incorporated into products subsequently exported by the United States.

5. Provision could be made for periodic review of any such system in order to assure that it is adequately fulfilling the purposes for which it was created.

This is a general outline of one means of limiting import penetration which would provide for a healthy expansion of world trade without forcing a given sector of our economy to bear the burdens of an unreasonable degree of import penetration. A system could be developed along these lines which would not reduce the existing quantity of imports or level of import penetration. Indeed, even in the few categories where the maximum permissible level of import penetration might have already been reached, imports would continue to share in all increases in domestic consumption, and receive in addition an increased allowance based upon increases in U.S. exports.

With respect to most categories of products, the import limitations would act merely as a standby safety device in the event imports increase substantially more than is presently contemplated by our trade negotiators. The industries involved would, of course, compete vigorously to prevent imports from ever reaching the maximum permissible level, but at least they would have the assurance that there would be some limit upon the price which they would have to pay in the event we have failed to obtain a reasonable degree of reciprocity in international trade negotiations.

While we have outlined one approach, there are, of course, other means which could offer a solution to this problem. For example, consideration could also be given to establishing tariff limits under which a higher rate of duty would be imposed after the limits have been exceeded. There is undoubtedly more than one way of resolving the serious threat posed by the rising level of import penetration. The important thing is to face up to the problem now. It is useless to try (as our trade administrators have) to pretend it doesn't exist in the hope that it will eventually go away—it won't.

In short, we do not believe that past history justifies placing all of our eggs in one basket—that of attempting to obtain reciprocity indirectly via traiff reductions. There has to be a limit upon how much industry, or any given sector thereof, will have to pay in the event reciprocity is not attained, and this limit has to be a reasonable one which will permit a healthy reciprocal expansion of world trade. We will be pleased to work with the Congress, the executive, labor, and other industries in developing a system which will meet these goals.

II. Valuation of imported goods

Over the years the valuation of imported goods has proved to be a recurring tariff problem for the United States. Since our import duties are made up in major part of ad valorem duties, the effectiveness of our tariffs is largely a function of the reliability of our methods of valuation.

At the present time, our valuation system is based principally upon export value, pursuant to which imports are valued at wholesale price at which they are freely sold or offered for sale for export to the United States in the principal markets of the country of exportation. It is usually difficult, if not impossible, for Customs to ascertain with any reasonable degree of certainly the price at which any given product is being sold for export to the United States in the principal markets of any given country. Customs must therefore rely to a very considerable extent upon the prices listed in the invoices submitted by the importer. Consequently, a clear opportunity exists for the foreign producer and the importer to avoid the payment of duty by submitting fictitious invoice values. Moreover, even where the invoice value does reflect the actual price being charged in the transaction, the price itself may also reflect other relevant considerations, such as tied purchases, which result in an understatement of the export value.

Not only does the opportunity and a clear incentive for undervaluation exist, but the ability of Customs to check on the value claimed by the importer, increases the potential for undervaluation. Customs simply cannot readily ascertain what the export value should be without making inquiries abroad, which may or may not assist in establishing the export value. Even where foreign inquiry is made, there still exists the possibility of claiming and supporting an artificial price as the export value.

That this is not only possible, but indeed likely, is evident from a recent report prepared by the Customs Bureau[1] which discussed the problem of determining whether or not to apply the export value on the basis of the price of the goods free on board foreign port or on the basis of an ex-factory price. The elimination of inland freight charges usually results in an export value 3 to 5 percent less than the free on board price.

Under existing practice, the merchandise is appraised at the free on board price unless the manufacturer furnishes an affidavit that he sells, or offers to sell, at an ex-factory price. The Bureau of Customs report points out:

> That this can lead to fraudulent practices is obvious; to prove it is in most cases difficult, if not impossible. In Japan alone approximately 4,000 manufacturers have submitted affidavits that they sell at an ex-factory price. Because of this most of the merchandise coming out of Japan is appraised on an ex-factory basis. Yet those who profess to know claim that 95% of the merchandise imported from Japan is sold on an f.o.b. basis.

Because of this problem, the Bureau of Customs has recently announced its intent to value all goods coming from Japan on an free on board basis unless an affidavit is submitted and Customs has been able to confirm the fact that the goods are actually sold on an ex-factory basis. The actual implication of this proposed regulation is that the Bureau of Customs is unable to rely upon the sworn affidavits of foreign manufacturers that sell on an ex-factory basis. If we are unable to rely upon the sworn affidavits of foreign producers, at least as to the basis upon which they sell their goods where only 3 to 5 percent of the export value is involved and where Customs should be able to check, then one can only imagine the amount of undervaluation involved in the export values submitted to Customs where there is usually much more at stake and where Customs is in even less of a position to check the accuracy of the prices submitted.

While the export value method used by the United States is subject to undervaluation, the Brussels definition of value applied by most of our principal trading partners often results in overvaluation. Brussels valuation is based upon "the price which [the imported goods] would fetch * * * on a sale in the open market between buyer and seller independent of each other." Although this avoids the necessity of having to determine dutiable value on the basis of prices prevailing in foreign countries, it also gives customs officials considerable discretion in establishing the dutiable value, especially where the buyer and seller are not completely independently of one another. The International Chamber of Commerce has severely criticized Brussels valuation because of its uncertainty and tendency toward overvaluation.[2] This criticism coincides with the export experiences of some of our member companies, for whom the resulting overvaluation has become known as the "uplift" or "Maidenform" tax.

In order to avoid the problems of undervaluation inherent in our existing system of import valuation, and the overvaluation problems

[1] Bureau of Customs, "Evaluation of: Mission Organization Management" (December 1964).

[2] International Chamber of Commerce, "The Brussels Definition of Value—The Case of the 'Sole Buyer'" (February 1968); International Chamber of Commerce, "Customs Valuation of Imported Goods—A Review of the Brussels Definition and of its Application" (February 1959).

of Brussels valuation, it is clearly necessary to develop a new and more appropriate method of valuation based upon objective standards which will minimize the possibilities of either undervaluation or overvaluation. An appropriate standard would be that the method of valuation selected be (1) certain, (2) readily ascertainable by importers, domestic industry, and Customs, (3) not subject to manipulation, and (4) not inconsistent with the purpose of our tariff. We believe that the American selling price system currently applicable to benzenoid chemicals and a few other products meets these objective standards far better than either the "export value" method currently applied by the United States or the so-called Brussels method of valuation applied by many of our principal trading partners.

Unfortunately, American selling price valuation has been much maligned both by our trading partners and by our own Government on the grounds that it provides for a higher basis of valuation and consequently higher amounts of duty than the other methods currently applied. This criticism is completely unjustified and is certainly not a consideration in the determination of which is the most appropriate method of valuation. It should be recognized by all concerned that the fact that one method of valuation results in a higher value than another is completely irrelevant, since, consistent with international obligations, the rate of duty may be adjusted in such a manner as to assure that any change in valuation base does not result in a change in the amount of duty collected. The fact that American selling price valuation usually results in a higher valuation base than the "export value" system is no more of an argument against American selling price than the fact that the Brussels valuation (based on landed value including insurance and freight) results in a higher basis of valuation than "export value" is an argument against the Brussels method.

We outline below the reasons why we believe the American selling price is a more appropriate basis of valuation than either export value or the Brussels method. For these reasons, we believe that American selling price valuation should be retained for benzenoid chemicals.

1. American selling price valuation is certain. It is based upon the price for which the product is sold or offered for sale in the United States in the ordinary course of trade and in the usual wholesale quantities at the time of exportation. Where the product is being sold at more than one price, Customs uses the price at which the greatest quantity was being sold as of the time in question.

American selling price valuation has been criticized for being uncertain, not as to the value itself, but as to whether or not there is an American selling price in instances where the product is not produced in the United States. If the product is not produced in the United States, the U.S. value or the so-called export value is applied. It is of course possible that U.S. production and sales of a given product may commence between the time an order is placed for import and the time the goods are actually exported to the United States. To the extent that this is a problem, it may readily be cured by providing that the American selling price will only be applicable to products which were produced and sold in the United States for a period at least, for example, 6 months, before the goods are exported. We have recommended such a procedure both to the Bureau of Customs and to the office of the special representative for trade negotiations on several occasions over the past 8 years.

2. The American selling price of the product is readily ascertainable to importers, Customs, and domestic industries. In addition to having the benefit of prices filed by domestic manufacturers and weekly price information from trade publications, Customs can quickly and easily confirm the American selling price through direct inquiries to domestic manufacturers and their customers. Likewise, an importer would undoubtedly know the ASP before he places an order. He has to in order to determine whether or not it would be profitable to import. Because of the availability of information concerning the American selling price to all concerned, the chances of undervaluation or overvaluation are virtually nonexistent. Both importers and domestic manufacturers are in a position to challenge any appraisement which may be out of line. Similarly, Customs is not in a position of having to accept the word of an interested party as to what the proper appraisement should be, since it is in a position to quickly confirm the ASP with U.S. consumers, and in the case of any dispute is able to subpena the records of domestic manufacturers.

3. ASP valuation is not subject to manipulation. Importers are unable to establish an artificial price where the exporter and importer are not dealing at arms' length, such as an intracorporate transaction or any other situation where the price of the goods is not the sole consideration of the transaction. Nor is ASP subject to manipulation by domestic producers. Competitive factors at work in the U.S. market, and certainly the U.S. antitrust laws, are a powerful deterrent to any manipulation by domestic producers.

More important, however, is the fact that there is no competitive advantage to be gained over imports by raising the American selling price. For example, assume the American selling price of the product is $1 per pound and imports of the same product can be sold in this country at 99 cents per pound. Even at 40 percent, the highest ASP rate currently applicable, only 40 percent of any raise in the American selling price would be offset by increased duty. If the domestic manufacturer raised his price to $1.10, it would result in 4 cents additional duty, which would raise the price of the import to $1.03. Although the American manufacturer could by raising the ASP have increased the amount of duty the importer would have to pay by 4 cents, this would make little sense because he would actually be increasing the competitive advantage of the imported product from 1 to 7 cents.

4. ASP valuation is consistent with the purpose of our tariff. The principal purpose of our tariff is to offset some of the disparity in costs of production here and abroad. Also a guiding principle is that of equal treatment to all of our trading partners. Yet the use of export value violates both of these principles by providing a tariff advantage to the lowest cost foreign producer on top of the significant cost advantages they already enjoy. Thus, where low production costs permit a low-cost country to undercut the U.S. price of a product or the prices of other higher cost producers selling in this market, the application of a duty based upon export value actually increases rather than decreases the existing cost disparity.

By providing a tariff advantage on top of the substantial cost advantage already enjoyed, the use of export value actually subsidizes a widening of the cost disparity. Where a 30-percent duty is involved, the U.S. Government actually bears 30 percent of any reduction in the export value. This is, of course, clearly inconsistent with the theory of attempting to offset the production cost disparity. It does just the opposite.

ASP valuation, on the other hand, is consistent with the purpose of our tariff. Although it does not in any way diminish any existing cost advantage an import may have, unlike export value, it does not accentuate the cost advantage by providing additional tariff advantage on top of it. It treats all imports equally by levying the same amount of duty on imports irrespective of whether it is a high- or low-wage country. Moreover, unlke Brussels valuation (c.i.f.), it does not discriminate against foreign producers who, because of the distance involved or discriminatory freight rates, have to pay higher shipping charges in order to land their goods here. Finally, ASP valuation reflects the cost of producing goods in the United States and the competitive factors prevailing in U.S. markets, instead of those prevailing abroad. This at least serves to diminish the extent to which changes in existing differences in production costs and market conditions will result in more favorable tariffs for foreign producers.

III. Ad hoc trade agreements and the negotiating process

A. Ad hoc trade agreements

Article I, section 10 of the Constitution gives the Congress, and only the Congress, the power to set tariffs. Since the Trade Agreements Act of 1934, the Congress has followed the policy of delegating to the Executive, within carefully defined limits, the power to raise and lower tariffs pursuant to trade agreements. Pursuant to this authority and within the limits of the authority delegated, the Executive has entered into a series of agreements with foreign countries pursuant to which tariffs have been lowered considerably.

In the recent Kennedy round negotiations, the U.S. trade negotiators were no longer content to act within the authority delegated by the Congress. Despite the clear and emphatic warning from the Senate in Senate Concurrent Resolution 100, they negotiated a separate agreement on benzenoid chemicals in excess of their delegated authority, which they are now in the process of bringing back to the Congress for approval.

Pursuant to their delegated authority, our negotiators agreed to a patently unreciprocal deal with the United Kingdom and Common Market under which we would reduce our chemical tariffs by almost 50 percent in return for reductions of approximately 20 percent by these countries. They then entered into an ad hoc agreement—the so-called separate package agreement—pursuant to which they would obtain for us the remaining 30 percent of the reduction we had bought and paid for in the Kennedy round, in return for the elimination of American selling price valuation and further reduction of many of our chemical tariffs.

The negotiators permitted our trading partners to withhold the other 30 percent of their reduction as a "hostage" in an attempt to coerce congressional approval of the so-called separate package agreement. In so doing they presented the Congress and our industry with a fait accompli and the Hobson's choice of electing between the adverse effects of the unreciprocal deal made pursuant to their delegated authority and the even more injurious "separate package." We believe that this "separate package" agreement provides a practical example of why such "ad hoc" trade agreements are inadvisable.

B. The negotiating process and reciprocity

1. Office of Special Representative for Trade Negotiations

In the Trade Expansion Act of 1962, the Congress created the Office of the Special Representative for Trade Negotiations as an independent governmental office charged with handling U.S. trade negotiations. The establishment of this office was largely the result of the desire to provide business and labor with more of a role in our trade negotiations, as well as to meet the criticism that, when handled by the Department of State, our trade negotiations had become dominated by political, rather than by economic considerations.

The creation of this office was generally considered by all concerned to be a step forward. The special representatives appointed over 200 advisers and technical specialists from labor and industry to assist the negotiators. However, the hope that greater participation by industry via this new office would result in more reciprocal negotiations based upon purely economic considerations was left unfulfilled.

While the framework for greater industry-government cooperation in the negotiations was established and industry was kept better informed of negotiating developments than in the past, the deal negotiated was little different from those negotiated in the past. While industry had been represented and had submitted numerous memorandums to assist the negotiators in evaluating proposed concessions, most of the information submitted by industry appears to have been disregarded.

This was not the case with foreign countries. In some instances industry representatives actually served on the negotiating teams. They not only had access to all of the confidential negotiating documents which were denied to U.S. industry advisers, but were actually in a position to and did influence the negotiating positions of their respective governments. We believe that in large measure this is one of the reasons why our trading partners were able to obtain such a favorable deal.

We commend the establishment of the Office of the Special Representative for Trade Negotiations, as well as the broad framework for industry contact established by that office. However, we believe that the time has come to give substance to the forms that have been established by not only giving business a forum for presenting its views, but by providing some measure of assurance that those views will be taken into consideration in the negotiations.

2. Reciprocity

The principal failure in our existing trade agreements program has been our inability to obtain reciprocity. This is due in part to our failure to define clearly what we mean by reciprocity. Although the trade negotiators take the position that a reciprocal deal is one which will have a neutral effect upon our balance of trade, the actual measures of reciprocity used by them in the negotiating process are ill suited to achieve this goal.

Currently negotiations are generally carried on on the basis of trading equal percentage tariff reductions on equivalent amounts of past trade. No real attempt is made to take into account the height of the tariff relative to production cost disparities and other factors which will determine the amount of trade which will flow in the future as a result of the tariff reduction. While we recognize that it is extremely difficult to estimate with any high degree of accuracy how much new trade will flow as the result of a given tariff reduction, there can be no justification for not making an effort to take these factors into account to the extent possible.

We believe it clear that it is not the height of the tariff or the percentage reduction therein which determines the amount of future trade flow, but rather the height of the tariff relative to the differences in production costs and other factors which will actually determine the amount of future trade that will flow from a given tariff reduction. As long as we continue to talk in terms of comparative tariff levels and reciprocal amounts of reduction rather than in terms of reciprocal amounts of future trade which will flow from tariff reductions, the United States will continue to fail to obtain any meaningful degree of reciprocal trade as a result of its trade agreements program.

We therefore strongly urge that the Congress make a point of clearly defining reciprocity in terms of resulting future trade flows and direct our negotiators to avoid dealing with this problem in terms of reciprocal percentage tariff reductions on equivalent amounts of past trade. Unless reciprocity is clearly and emphatically defined in such terms and our past trade negotiation procedures abandoned, we will not obtain truly reciprocal concessions from our trading partners. This will cause an even more rapid deterioration in both our balance of trade and our balance of payments.

IV. Future of benzenoid chemical imports and the effect of the Kennedy round upon U.S. balance of payments

A. Rising level of import penetration under existing duties

Over the past 10 years domestic imports of benzenoid chemicals, while relatively low, have been rising at a rapid rate. During this period domestic consumption of benzenoid chemicals has grown in value at a compounded annual growth rate of approximately 5 percent. During this same period the average annual compounded growth rate of benzenoid imports has been almost 20 percent. By 1966 imports, by value, amounted to almost 4 percent of domestic consumption. There is every indication that even under pre-Kennedy round duties, benzenoid imports would continue to increase by considerably more than the 20 percent compounded annual growth experienced in the past decade. Indeed, last year alone benzenoid imports increased 35 percent by value over 1965. However, assuming that they continue to increase at an average annual growth rate of only 20 percent, by 1975 they will account for over 12 percent of the value of domestic consumption, even if domestic consumption continues to increase at the 5 percent growth rate experienced over the past 10 years. This of course is under pre-Kennedy round duties, without any tariff reduction at all.

B. Further import penetration resulting from tariff reductions

In view of the extremely large tariff reductions made in the Kennedy round negotiations, U.S. imports of benzenoid chemicals will continue to increase at an even more rapid rate. Indeed, the reductions made have been so great, that the amount of benzenoid chemical imports in the future will largely be a function of foreign producers' ability to develop the capacity to supply them. As a result of the 50-percent tariff reduction in the Kennedy round, it is not only possible, but indeed likely, that imports of benzenoid chemicals will capture 20 to 30 percent of the domestic consumption by 1975.

This significant increase in the level of import penetration would be still further increased if the separate package agreement were approved. The possibility of imports accounting for anywhere from 25 to 35 percent of domestic consumption of benzenoid chemicals is extremely likely. In some sectors of the benzenoid chemical industry, the degree of import penetration would be even greater.

On the other hand, the cost disparity which permitted a significant degree of import penetration of our domestic market for benzenoid chemicals, would also reduce greatly the prospects for any significant increase in exports as a result of tariff reductions made by our trading partners. We will in fact continue to lose our export markets. Since 1959 the U.S. share of world chemical exports to countries other than the United States has decreased from approximately 34 percent in 1959 to a little more than 20 percent today.

Because of cost disparities the U.S. chemical industry (including the benzenoid sector) has been forced to develop production facilities abroad in order to be able to compete on an equal basis with foreign producers and thereby retain their foreign markets. This trend will undoubtedly continue, and at an ever-increasing rate. But perhaps more significant is the fact that our industry will be forced to develop production facilities abroad, not only to maintain our foreign markets, but in order to be able to compete on an equal basis with imports in our own domestic market.

Thus, the tariff reductions will not only result in a deterioration of our balance of trade, as the result of the increase in imports relative to our exports, but it will result in a further deterioration of our balance of payments as a result of the capital investments abroad which we will be forced to make in order to be able to compete both in world markets and our own domestic market on a more equal basis. We do not wish to invest abroad any more than is necessary in order to remain competitive with foreign producers and thereby maintain our share of world consumption of benzenoid chemicals. We do, however, believe it far better, both for our industry and for the country as a whole, that U.S. companies continue to retain their share of both foreign markets and of the domestic market, rather than let foreign producers take them over by default.

We believe that there is a far better solution. We believe that it is in the interest not only of this industry and its workers but of the United States as well, that steps be taken to avoid the necessity for having to invest abroad, by assuring producers that they will not have to suffer an intolerable level of import penetration. We are willing to work with this committee, the Congress, labor, and other industry representatives to find a means of resolving this important problem.

V. European border taxes and turnover tax rebates

Many European countries derive a large portion of their tax revenue from a turnover tax system under which a tax is applied to goods each time they change hands. In the Common Market countries it is estimated that over 50 percent of all tax revenue is derived from the turnover tax. The turnover tax only applies to goods sold within the country. Consequently, all imports are required to pay a turnover equalization tax, more commonly known as the border tax, and products exported are entitled to receive a rebate of the amount of turnover tax previously paid.

The General Agreement on Tariffs and Trade distinguishes between turnover taxes and income taxes on the grounds that the turnover tax is passed forward to the customer while the income tax is borne by the producer. On the theory that the turnover tax is really a tax on the consumer, article III of GATT permits the application of turnover taxes to imports, while article VI permits the rebate of such taxes on exports.

The validity of the distinction made in the GATT is subject to considerable question. Economists both here and abroad have taken the position that the turnover tax is not wholly passed on to the consumer any more than the income tax is wholly borne by the producer. We believe that the consensus of economic opinion today is that both forms of taxes are passed forward to the consumer as much as the laws of supply and demand will permit. Although it may be easier procedurally to pass the turnover tax forward, there is not sufficient distinction between the forward or backward incidence of these two forms of taxation to justify the distinction which is made in the GATT.

Consequently, the GATT discriminates against the United States and other countries which derive their tax revenue principally from income taxes, as opposed to those countries which derive a major part of their revenue from turnover taxes. Moreover, this distinction discriminates against both the exports and imports of income tax countries such as the United States. The border tax forces U.S. exports to bear not only the entire tax burden placed upon business in the United States, but over 50 percent of the tax burden placed upon business in the Common Market. On the other hand, the turnover tax rebates given by the Common Market countries, subject U.S. industries to unfair competition from products which bear less than 50 percent of the tax burden imposed upon business in their own country, and none of the tax burden imposed upon U.S. business.

Thus, under the GATT, our exports are required to bear an unreasonable share of the overall tax burden, while exports from the Common Market countries to the United States do not bear enough of the overall tax burden. This not only permits unfair competition from imports in the U.S. market, but discriminates against our exports, both in the Common Market and in third country markets.

We have now arrived at the point where the actual incidence of the border tax in most Common Market countries is now, or soon will be, higher than the tariff itself. Even now there is no question but that the

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combination of tariffs and border taxes in the Common Market countries result in a cost of entry into those markets considerably higher than the cost of entering the same goods into the U.S. market. A recent survey of 14 important chemicals involved in world trade showed that the average cost of entry (insurance, freight, duty, border tax less any turnover tax rebates) into the United States and the EEC under existing turnover tax levels amounted to the following percentages of the selling price in the country of export:

TABLE 1.—TOTAL COST OF ENTRY AS A PERCENT OF SELLING PRICE COUNTRY OF EXPORT, UNDER CURRENT TURNOVER TAX LEVELS

[Average for 14 important chemicals]

	Average cost of entering Common Market exports into the United States	Average cost of entering U.S. exports into the Common Market countries
Pre-Kennedy round duties	36	56
After Kennedy round reductions	28	56
After separate package reductions	27	51

The above table shows that the average cost of entry into the EEC of U.S. exports of these important chemicals is substantially higher than the cost of entering EEC exports of these same products into the United States. The difference in entry costs will be even greater under the duty reductions agreed to in Geneva.

Unfortunately, however, this is not the whole story. The EEC countries have recently agreed to harmonize their turnover taxes. The first step is to harmonize the methods applied to the value-added method (TVA) used by France. Thus, on January 1, 1968, Germany is changing from a 4-percent "cascade tax" applied to the entire value of the goods each time they change hands, to a 10-percent tax on the value added at each step in the manufacturing process. The German border tax will rise from approximately 4 to 6 percent to 10 percent.

The switch from the "cascade" type of turnover tax to the value-added turnover tax will require an upward revision in the border taxes of all of the European countries except France, which already has the value-added turnover tax system. Once their tax systems have been harmonized the Common Market countries will agree to a common turnover tax rate, which it is estimated will be approximately 14.7 percent. This will constitute a further rise in the border taxes of all of the EEC countries except France and perhaps Italy. It is contemplated that the finally harmonized rates will be in effect some time in the early 1970's.

Thus, while tariffs are being reduced, the border taxes are actually being raised. Indeed, as a result of these border tax increases the average cost of entry into the EEC for U.S. goods will be higher after the Kennedy round reductions than before. Applying a harmonized tax of 14.7 percent, and a similar tax rebate, the difference in average cost of entry here and abroad for the 14 chemicals previously discussed would be further increased, as indicated by the following table.

TABLE 2.—TOTAL COST OF ENTRY AS A PERCENT OF SELLING PRICE COUNTRY OF EXPORT, UNDER HARMONIZED TURNOVER TAX RATE OF 14.7 PERCENT

[Average for 14 important chemicals]

	rage cost of entering Common Market exports into the United States	Average cost of entering U.S. export into the Common Market countries
Pre-Kennedy round duties	28	64
After Kennedy round reductions	18	63
After separate package reductions	12	57

The harmonization of border taxes reflected in the above table further increases the disparity between United States and EEC costs of entry. As a result of harmonization, the average cost of entry into the EEC is actually higher after the Kennedy round and separate package tariff reductions than it is now under the present tariff and turnover tax levels shown in table 1.

We believe that the inequities resulting from the distinction made by article VI of the GATT between direct-indirect methods of taxation can and must be cured if we are to obtain any benefit at all from our past tariff reductions. We simply cannot permit our trading partners to offset even in part via border taxes whatever benefits we might otherwise have obtained from the tariff reductions they have made or to expand the value of our tariff reductions by increasing border tax rebates. In order to prevent this we believe that article VI of the GATT can and must be renegotiated in such a manner as to either do away with border taxes and turnover tax rebates, or else permit the United States to impose a similar portion of its taxes upon imported products and rebate a similar portion of U.S. taxes on exports.

It will undoubtedly be urged by our foreign trading partners that inasmuch as we agreed to the GATT as the basic ground rule upon which negotiations were to be conducted, we are obligated to pay compensation for any change therein. It is, of course, obvious to all concerned that we hardly have enough tariffs left to be able to compensate our foreign trading partners for the large inequitable advantage which the border tax-turnover tax rebate mechanism provides them. Moreover, we do not believe it is legally necessary to pay compensation for this much needed revision.

Section 303 of the Tariff Act of 1930 provides for the imposition of countervailing duties to offset any direct or indirect bounty or grant accorded by a foreign country upon the export of a product. Both the clear language of the statute and its legislative history make it clearly applicable to the rebate of turnover taxes. In spite of clear and explicit Supreme Court decisions [3] interpreting this statute as applying to these types of tax rebates, the Bureau of Customs has administratively taken the position of not applying the countervailing duty statute to such rebates. Following entry into GATT, the Treasury Department sought legislation to change the statute in order to bring it in line with the

[3] *Nicholas & Co.* v. *United States*, 249 U.S. 34 (1919); *Downs* v. *United States*, 187 U.S. 496 (1903); Cf. *United States* v. *Passavant*, 169 U.S. 16 (1898).

manner in which they had administered it, but the legislation was not passed.[4]

Consequently we had on our books at the time we entered into GATT a statute whose clear language and legislative history, supported by Supreme Court interpretations, clearly requires the imposition of countervailing duties to turnover tax rebates. Paragraph 1(b) of the GATT Protocol of Provisional Application reserves the right of the parties to apply previously existing statutes which are not in harmony with the GATT. We have the right to apply the countervailing duties provided for by section 303 without any violation of the GATT. We should, and indeed a domestic law paramount to the GATT (which is only an executive agreement never ratified by the Congress), requires that we apply countervailing duties to these turnover tax rebates. These countervailing duties should be applied until such time as our European trading partners agree to an acceptable revision of the GATT to provide for fair and equitable treatment in a manner which does not discriminate against countries with an income tax system. Until this basic inequity in the GATT is removed, the United States will continue to suffer from unfair competition as a result of turnover tax rebates, and will continue to see border taxes offset such foreign concessions as we have been able to obtain from tariff negotiations.

STATEMENT OF THE AMERICAN INSTITUTE FOR IMPORTED STEEL, INC.

Gentlemen, the American Institute for Imported Steel, Inc. (institute) is pleased to respond to the invitation of Hon. Russell B. Long, contained in the committee's release on September 27, 1967, to interested parties to submit written statements on U.S. foreign trade policies and practices in aid of the committee's legislative oversight review.

The institute is a nonprofit trade association, incorporated under the laws of the State of New York in 1950. It has a present membership of approximately 55 U.S. firms with offices located throughout the United States. Among these firms are the major U.S. importers of steel primarily from the steel producers of the European Economic Community, whose trade associations are contributing correspondents to the institute. The institute members also import steel from producers located in the other major steel-producing nations of the world.

Although a principal part of members' businesses is steel importing, they also engage in the export trade, selling throughout the world a range of American-produced products, including steel. Thus, the institute's members have a strong interest in U.S. two-way trade. As American citizens, the officers and employees of the institute's member firms, of course, are primarily concerned with the vigor of the U.S. economy, a major factor in which is the continued expansion of international trade and its concomitant increased domestic economic activity.

The institute wishes to commend the committee for its deep interest in all of the economic and political aspects of this vital area of U.S.

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[4] Hearings Before the House Committee on Ways and Means on Simplification of Customs Administration (H.R. 1535), 82d Cong., first sess., p. 15 (1951).

policy as reflected in the present legislative oversight study. With the cooperation of the American business community, including both the exporting and importing trades, it should be possible to develop a record in the form of written statements and oral testimony at the committee's forthcoming hearings which will illuminate those areas of international trade policy which may need revision and updating for the years to come. We believe that the result of the committee's study will be to reaffirm a policy looking toward a further expansion of beneficial trade in the free world by the reduction and eventual elimination of both tariff and of nontariff barriers to that trade.

The areas which the committee plans to explore, contained in its September 27 release, are comprehensive. A number of the subjects on that list are of direct interest and concern to the institute. However, it is possible only to comment on some of these topics within the purview of a short statement.

VALUATION OF IMPORTED GOODS

In the fall of 1966, the institute submitted a comprehensive statement on valuation of imported goods to the U.S. Tariff Commission. The statement was submitted in connection with the Commission's study of valuation laws of the United States and of the principal trading partners of the United States made by the Commission pursuant to this committee's request. This November 23, 1966, memorandum, a copy of which is annexed to this statement, analyzed the so-called Brussels definition and demonstrated why such a standard would neither be feasible nor appropriate for adoption by the United States. The institute views the present U.S. usual standard of "export value," with certain modifications, as an excellent valuation standard which might well be emulated by other countries throughout the world. These modifications, as discussed in detail in the annexed memorandum, would be to make the date of the contract the date for valuation purposes, rather than the shipment date of the imported merchandise, and to make the invoice price prima facie the value for customs purposes. As the institute pointed out to the Tariff Commission, these changes in U.S. customs valuation practice and procedure would bring the United States into fullest compliance with the "actual value" standard set forth in the General Agreement on Tariffs and Trade (GATT) and, even more importantly, would further streamline the appraisement process, making it essentially a self-policing procedure similar to that used in the collection of Federal income taxes.

DUMPING AND UNFAIR METHODS OF COMPETITION IN IMPORT TRADE

Another subject on the committee's list, dumping and unfair methods of competition in import trade, has also been the subject of a detailed analysis by the institute. Last year, at the invitation of the Trade Information Committee (TIC) of the Office of the Special Representative for Trade Negotiations, the institute submitted a brief in connection with TIC's consideration of an international agreement on antidumping. This memorandum set forth recommendations on what should be covered in such an international compact with regard to both substance (definition of "normal value," "industry," and "injury") and the procedural requirements of an antidumping proceeding. A copy, dated August 30, 1966, is annexed hereto.[1] Because of recent controversy concerning the International Antidumping Code drafted this year in Geneva, the institute's brief may be of particular interest.

It is the institute's view that an international antidumping code containing appropriate procedural provisions will be of considerable value and importance particularly to American exporters. In the past, various countries who are signatories to GATT have taken rather arbitrary administrative action against American exports accused of having been dumped. As the institute recommended to the TIC, the International Antidumping Code negotiated at Geneva contains provisions requiring in effect. Anglo-American type "due process" in a dumping proceeding. Because the present American procedure embodies a requirement of notice to the accused parties and an opportunity to examine and answer the charges made against them, these provisions of the International Antidumping Code will not require any substantial change in American antidumping procedures. On the other hand, Great Britain and certain members of the EEC are, for the first time, binding themselves to give American exporters a fair hearing and an opportunity to defend themselves before imposing antidumping penalties on American merchandise shipped abroad. Because of actions in the last few years by the British and the French against American chemical exports, the new International Antidumping Code should be of particular benefit to the U.S. chemical industry.

NONTARIFF BARRIERS TO FREE WORLD TRADE

At this committee's recent hearings on import quota bills, Profs. Walter Adams of Michigan State University and Joel Dirlam of Rhode Island University gave this committee a critique of the alleged need for and justification of import quotas for steel to protect the domestic steel industry. Their study, which was undertaken under a grant from the institute to Michigan State University, shows that the domestic steel industry neither needs nor is entitled to such special protection from Congress. As their testimony is part of the record before this committee, we will not burden the committee with a reiteration of their findings. Suffice to say that it is apparent that, not only should the steel industry not be singled out for special favor at the expense of the small American fabricator and the consumer, but also such a quota arrangement would be a clear violation of the prohibition of quota limitations contained in the GATT.

In the final analysis, the institute believes, the steel import trade is part and parcel of the overall two-way trade of the United States. It should not be singled out for special treatment because it does not present any special problems. In the institute's view, quota arrangements either by statute or by administrative provision, to whatever product or group of products they may be sought to be applied, are wrong in principle.

The whole underpinning of the U.S. trade policy for the more than 30 years of the reciprocal trade agreements program has been a pro-

[1] The brief referred to appears at p. 191.

gressive elimination of tariff barriers throughout the free world so as to stimulate expanded trade. That this consistent, bipartisan U.S. policy has been a successful one is attested to by the consistently expanding volume of international trade and the resulting economic prosperity of the United States and its trading partners. The Kennedy round has been a fitting climax to this policy. After the Kennedy round tariff cuts have become fully effective, tariff barriers will have dwindled to the point where they will constitute little or no impediment to international trade.

However, in another area the Kennedy round results are only a beginning. As has been observed by the learned chairman of this committee and by Representative Thomas Curtis, one of the congressional delegates to the Geneva negotiations, nontariff trade barriers—such as quotas, disguised import taxes, governmental discriminations in the purchase of imported goods, and so forth—can constitute more substantial barriers to trade than high duties. The GATT signatories, who condemned these nontariff trade barriers in principle in 1947, have only started in removing them as a practical problem. Thus, in the Kennedy round such areas as antidumping, American selling price valuation, European road taxes, and Swiss discrimination against American canned fruits were among the first nontariff trade barriers to be dealt with in an international trade negotiation. It is important that the momentum generated by the Kennedy round not be lost by the United States as the principal trading nation in the world. Rather, it must furnish the leadership in the elimination of nontariff trade barriers, as it has so successfully in the elimination of tariff barriers.

Viewing American trade policy in a factual and objective manner, the conclusion is inevitable that our Nation must forge ahead toward greater international exchange of goods and services. The economic activity generated by such expanded trade is the essential ingredient of our continuing prosperity. The great depression of the early 1930's brought on and accentuated by the protectionism embodied in the high tariffs of the time, stands as an object lesson that a retreat from a liberal trade policy can only spell economic and political ruin for the United States.

It cannot be gainsaid that international trade, like all forms of competition arising out of our free enterprise economic system, will cause some dislocation to firms and workers. The institute is by no means blind to the problems that such dislocation may cause. It fully supports the principle of governmental economic assistance to such affected workers and firms to ease the pains of transition into more profitable and economically justified fields. However, we believe this committee will agree that the long-term interest of the United States cannot be sacrificed to special parochial interests. The free enterprise system, to which we adhere on a national level, is just as important on an international level to continue to generate the efficiencies which lead to better goods for lower prices to the consumer and prosperity for the Nation.

The institute wishes to extend its thanks to the committee for giving it the opportunity briefly to state its views on various areas of U.S. trade policy. If this committee should find it useful, the institute is prepared to appear at the forthcoming legislative oversight hearings in order to elaborate upon the points that it has covered here.

AMERICAN IRON & STEEL INSTITUTE,
Washington, D.C.

TOM VAIL, Esq.,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. VAIL: I enclose three copies of a paper prepared by the American Iron & Steel Institute in response to the invitation of Chairman Long to submit to the committee statements on U.S. foreign trade policies and practices. I also enclose three copies of a one-page summary of that paper.

As stated in the paper, it is based on the institute publication entitled "The Steel Import Problem" which I presented to the committee during the recent hearings on import quotas. A much more detailed treatment of the import problems faced by the steel industry may be obtained from a review of that publication.

Very truly yours,

JOHN P. ROCHE, *President.*

THE STEEL IMPORT PROBLEM AND SHORTCOMINGS OF THE EXISTING APPLICABLE STATUTES

SUMMARY

The domestic steel industry is now facing a volume of increasing imports that threaten it with serious injury. The United States since 1958 has lost most of its export markets to foreign producers who are now endeavoring to take over its domestic markets as well. Steel imports have increased nearly tenfold in the last decade. The possibility that that trend will continue is very real since world steel capacity today exceeds demand by more than 50 million tons and European countries and Japan are proceeding to expand their capacity. The continued unchecked growth of steel imports would present a direct threat to our national security.

While there are some 12 existing statutory possibilities for relief from such imports, plus the provisions of the antitrust laws, the statutes as currently administered are unlikely to afford any protection to the domestic steel industry. Many of them have been so little used in recent years that they are virtually unknown today. A review, statute by statute, of the action taken in proceedings brought under them demonstrates that it is difficult indeed to produce evidence acceptable to the administering agencies and that it is even more difficult to convince them that a domestic industry has been injured or the national security threatened. A new approach is clearly needed and is needed promptly. The Iron and Steel Orderly Trade Act of 1967, S. 2537, provides the required approach. It affords a moderate and realistic answer to the steel import problem and AISI urges its enactment.

STATEMENT

This paper is submitted by the American Iron & Steel Institute (AISI) in response to the invitation of Senator Long to submit to the Senate Finance Committee statements on U.S. foreign trade policies and practices. AISI is a nonprofit trade association, the membership of which includes 70 companies, both large and small, which have operations in 37 States. That membership together produces 95 percent of all the steel made in the United States and in all of their operations employ approximately 750,000 people.

At the recent hearings on import quotas the president of AISI presented a statement and, in addition, submitted for the record a book entitled "The Steel Import Problem." This paper is based on that book and the committee is referred to it for a much more detailed treatment of that problem. This paper is devoted primarily to the shortcomings of the existing applicable statutes affecting imports.

A. Introduction

As the president of AISI stated at the recent hearings, the domestic steel industry is now facing a volume of increasing imports that threaten it with severe injury. The United States, since 1958, has lost most of its export markets to foreign producers who are now endeavoring to take over its domestic markets as well. From a major net exporter of steel up to 1958 the United States has become the world's largest net importer. Steel imports, which amounted to 10.8 million tons during 1966, were nearly 3½ times as great as they were in 1961 and nearly 10 times as great as in 1957.

Imports are today taking a vital fraction of the sustained growth and demand for steel in the United States and if recent trends continue, imports will not only be taking all of such growth but will eat into the present level of domestic supply as well.

The possibility that the recent trend will continue is a real one. In the world steel market today production capacity already exceeds demand by more than 50 million tons. We can expect this imbalance to increase since European countries are proceeding to expand their total steel capacity and the Japanese, alone, are planning to increase their capacity by over 50 million tons over the next 8 years. There is also no reason to believe that the other additional basic factors which, coupled with excess capacity, have brought the above-described developments about will disappear through the operation of economic forces. The other basic factors are (1) labor costs in other countries which are far less than those in the United States and which are not offset by comparable differences in labor productivity; (2) the resulting prices of some steel products in world markets at levels below the domestic prices of many producers; and (3) the measures taken by other governments to protect and strengthen their own steel industries and to encourage exports.

The unchecked growth of steel imports would present a direct threat to our national security. Since imports have been growing and would continue to grow at a much faster rate than domestic requirements, the United States would become increasingly dependent on foreign sources for steel which might be cut off in a time of national crisis. Not only would the quantity of steel produced here be cut back but the domestic steel industry would no longer be able to produce the full range of steel products necessary for national security. Under crisis conditions, the product gap could not be overcome in time to prevent serious shortages.

If we are to be able to meet out international responsibilities in the future, we must have a healthy and expanding economy within our borders. This requires a healthy and expanding steel industry.

B. *Shortcomings of existing statutes*

1. General

While there are some 12 statutory possibilities for relief from steel imports plus seven provisions of the Federal antitrust laws, these statutes and provisions have not been assembled in any systematic or logical order. In fact, many of them have been so little used that they are virtually unknown today.

In order to secure relief under any of such laws, a domestic industry is required to establish the specified factual elements requisite for relief, and in most cases must also establish that it has been injured as a result of increased imports or that competition has been destroyed or damaged as a result of the alleged conduct. As the statistical material presented below demonstrates, domestic industries have found it difficult indeed to produce evidence acceptable to the administering agencies, particularly since much of such evidence is only available to foreign producers. They have found it even more difficult to convince such agencies that a domestic industry or a regional part thereof has been injured or the national security threatened.

2. Antidumping remedies

(*a*) *Antidumping Act of 1921*

The Antidumping Act of 1921 (19 U.S.C. 160) provides that whenever a class or kind of foreign merchandise is being sold, or is likely to be sold, in the United States at less than its fair value and an industry in the United States is being, or is likely to be, injured as a result of such sales, the Secretary of the Treasury is required to assess a special dumping duty equal in amount to the difference between the selling price to the U.S. importer and the selling price of that merchandise in the manufacturer's home market.

While it seems to be almost universally recognized that foreign steel producers (or applicable trading companies in the case of Japan) are selling their products in the United States at prices lower than the prices at which those products are sold in the home market, the steel industry's efforts to obtain relief under this statute have met with meager success. The Treasury Department under the statute and its regulations makes its own findings of foreign market price based, in part at least, on unverified assertions by foreign producers and then makes varying adjustments for questionable differences in circumstances of sale and differences in quality of product which tend to erode alleged dumping margins. The Treasury furnishes domestic producers with very little of the information supplied by the importers and thus the domestic producers are not in a position to rebut effectively the allegations of the foreign producers.

As a result, in the 14 cases which were initiated by the domestic steel industry only six resulted in findings by the Treasury Department of sales at less than fair market value and in those cases the dumping margins found by the Department were considerably below the dumping margins alleged in the complaints and believed to exist by the domestic industry. Of the six cases in which the Treasury found sales below fair value, the Tariff Commission disposed of four of them on the grounds that the sales below fair value were not causing material injury to the domestic steel industry.

The domestic industry feels that it was particularly whipsawed in the wire rod proceeding. The domestic industry remains convinced that the Japanese export price for wire rod is not a fair value price and that it is one below the home market price. The Treasury Department, however, found that the Japanese price was a fair market price and, therefore, the case involving Japanese rods did not reach the Tariff Commission. The Tariff Commission then found that the low-priced European sales, which the Treasury found had been made below fair value, were not injuring the U.S. industry as the Europeans were merely meeting the fair value Japanese price.

Since September 1, 1954, when the Andtidumping Act was amended to give the Tariff Commission jurisdiction over injury determinations, 368 complaints of dumping have been processed and there have been only 12 findings of dumping. Of the aforementioned 368 complaints, 316 resulted in findings by the Treasury Department of no sales below fair value, which means that only 52 cases were sent to the Tariff Commission for an injury determination. The Tariff Commission made findings of no injury in 40 of such proceedings which, as stated above, means that only 12 findings of dumping have been made.

The record,[1] year by year, after 1954 is as follows:

Year	Complaints on which action completed	Treasury		Tariff Commission	
		No sales below fair value	Sales below fair value	No injury	Injury, thus a finding of dumping
1955	51	45	6	5	1
1956	22	20	2	2	0
1957	27	25	2	2	0
1958	27	25	2	2	0
1959	37	36	1	1	0
1960	29	26	3	2	1
1961	38	30	8	5	3
1962	23	21	2	2	0
1963	30	23	7	6	1
1964	38	26	12	9	3
1965	23	21	2	1	1
1966	11	7	4	3	1
1967 (1st 10 months)	12	11	1	0	1
Total	368	316	52	40	12

A batting average of 3 percent by domestic industry demonstrates that the act and its administration does not afford any substantial degree of protection to U.S. industry.

Moreover, the coming into force on July 1, 1968, of the International Antidumping Code, which was adopted on June 30, 1967, by GATT will make it even less likely that domestic industry can obtain relief from sales in this market at prices less than home market prices. The administration has shown by the proposed rules issued by the Bureau of Customs and published in the Federal Register of October 28, 1967, that in many respects the Antidumping Act of 1921 is to be disregarded and the provisions of the code substituted. The code and

[1] Based on information obtained from the Treasury Department and the Federal Register.

the proposed regulations place additional procedural and substantive burdens on domestic industry.

Senator Hartke and 40 other Senators have introduced S. 1726 to amend the Antidumping Act. While enactment of S. 1726 would afford domestic industry some opportunity for meaningful relief from sales in this market at sales below home market prices, even its enactment would not regain the market for domestic steel producers since the margins of dumping would not be sufficient to reduce the marked differences in the selling prices of the domestic and foreign steel products. Under present conditions, therefore, the Antidumping Act offers little possibility of effective relief for the domestic steel industry.

(b) Section 801 of the Revenue Act of 1916

Section 801 of the Revenue Act of 1916 (15 U.S.C. 72) makes it unlawful to commonly and systematically sell foreign articles in the United States at prices substantially less than actual market value thereof in the principal markets of the country of their production, plus the cost of transportation to the United States, if done with the intent of destroying or injuring an industry in the United States. The section also gives rise to a treble-damage action by the injured person. The statute, however, is a criminal statute and it has been so difficult to prove that sales are being made in the United States at less than actual foreign market value with the specific intent to injure that no action under the provision has ever resulted in success. In fact, its lack of enforceability was recognized soon after its enactment in 1916 and led to the passage of the Antidumping Act of 1921. It is apparent that the steel industry cannot expect any help from this criminal statute.

3. Countervailing duties

Under existing law, the Treasury is directed to impose a special countervailing duty upon any imported merchandise equal to the net amount of any bounty paid the manufacturer by his government or a cartel. The purpose of this section is to prevent foreign governments from subsidizing the exports of their manufacturing industries so that their products can be sold in the United States at abnormally low prices.

Proof of unlawful bounties or grants is exceedingly difficult since foreign governments obscure the financial help they give to their steel industries. In addition, even if a domestic industry should be successful in having countervailing duties applied, they affect only the manufacturers in the country making the refund which means that remedies must be pursued on a product-by-product, nation-by-nation basis.

We are not able to set forth any statistical information since until this year the Bureau of Customs did not issue a notice at the time a countervailing duty investigation was instituted. We do know that since 1954 only three orders imposing countervailing duties have been issued. Those orders are as follows:

T.D.	Year	Product	Country
54582	1958	Sugar	Australia.
54792	1959	Almonds	Spain.
67-102	1967	Steel transmissiont owers	Italy.

4. National security clause

The national security clause is presently embodied in section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862). The immediate predecessor to the current section was section 8 of the Trade Agreements Extension Act of 1958 which provided the same authority to be exercised under the same criteria.

The aforementioned section 232 provides that, upon the request of the head of any government department or agency, upon application of an interested party, or upon his own motion, the Director of the Office of Emergency Planning shall immediately make an investigation to determine the effects on the national security of imports of any article.

In determining the effects on the national security of such imports, the Director is required to take into consideration the following factors:

(1) Domestic production needed for projected national defense requirements including restoration and rehabilitation.

(2) The capacity of domestic industry to meet such projected requirements including existing and anticipated availabilities of human resources, products, raw materials and other supplies and services essential to the United States.

(3) The requirement of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure capacity to meet projected defense requirements.

(4) The effect which the quantities, availabilities, character and uses of imported goods has or will have on such industries and the capacity of the United States to meet national security requirements.

(5) The economic welfare of the United States as it is related to our national security, including the impact of foreign competition on the economic welfare of individual domestic industries. In this regard, he is to take into consideration the close relationship of the economic welfare of our Nation to our national security and the impact on same of any substantial unemployment, decreases in revenue of government, loss of skills or investment or other serious effects resulting from the displacement of any domestic product by excessive imports.

If the Director is of the opinion that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he is directed to promptly so advise the President. Unless the President determines that the article is not being so imported, he is to take such action and for such time as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.

The Office of Emergency Planning and its predecessors have, since the National Security Clause came into being, considered 29 applications. The only applications which resulted in Presidential action establishing quotas were those for oil which demonstrates that it is, indeed, difficult, if not almost impossible, for domestic industry to convince the Office of Emergency Planning or the President that imports of any given article threaten to impair the national security.

Moreover, the investigations have almost invariably taken several years which means that, even if relief might ultimately be forthcoming from this source, it might come too late.

5. Tariff adjustment and other adjustment assistance

Sections 301 and 302 of the Trade Expansion Act of 1962 (19 U.S.C. 1901 and 1902) provide that a domestic industry, or group of workers, which believes that, due to increased quantities of imports of a given article, it is suffering serious injury or faces a threat of such injury as a result in major part of concessions granted under trade agreements, may file a petition for trade adjustment or adjustment assistance. If, after investigation, including a public hearing, the Tariff Commission determines that serious injury or the threat thereof has resulted from trade concessions it may recommend to the President an increase in duty or other import restrictions necessary to prevent or remedy the injury. The principal remedy is for the President to proclaim an increase in the applicable duty (a remedy formerly afforded under the "escape clause" provisions). The President may also permit the company or worker concerned to apply for adjustment assistance. Since 1962 the Tariff Commission has undertaken 23 investigations pursuant to section 301. Of those 23 investigations 21 were terminated with negative findings and two are pending. Thus, to date, neither domestic industry or workers have received any help from these provisions.

Moreover, the sections offer very little practical benefit to the domestic steel industry. Foreign steel producers are presently underselling domestic companies by significant margins on many products. It is, therefore, extremely doubtful that the Tariff Commission would determine that such injury as has resulted was occasioned by trade concessions. In addition, in any such proceeding the domestic industry must not only establish that it is being injured but it must establish that the injury is serious. The administration seems to have recognized the weakness of these provisions and has stated that it will ask Congress to liberalize them.

6. Adjustment for cost differences

Section 336 of the Tariff Act of 1930 (19 U.S.C. 1336) when enacted was to afford relief to domestic industries faced with low-priced foreign imports when those low prices were primarily the result of differences in the cost of production. However, the provisions of such section 336 do not apply to any article, the importation of which is covered by a foreign trade agreement. Since such an agreement has been concluded with respect to all steel products of importance, this section, therefore, is of no assistance to the domestic steel industry.

Between 1946 and the present there have been 19 applications for relief submitted under this provision. The Tariff Commission has not granted relief in any of the proceedings.

7. Orderly marketing agreements

Section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) authorizes the President to proclaim an increase in any duty or to impose any other import restriction on any article imported into the United States, found by the Tariff Commission to be causing or threatening to cause serious injury to an industry in the United States. Investigation is made by the Tariff Commission which reports, if it finds injury, to the President. This is the equivalent to the escape clause provision contained in prior statutes. The President has not invoked any new increases in duties or imposed any import restrictions under this provision since it was enacted.

Moreover, at the time of its enactment, there were eight escape clause duties in effect. Under the provisions of this section the President has eliminated all but two of them. His latest action in that regard was on October 12, 1967, when he permitted the escape cause tariffs on typewriter ribbon cloth and stainless steel flatware to terminate and continued higher tariffs on certain types of sheet glass and certain types of carpets. The statement which he made at the time he allowed the last two escape clause tariffs to remain in being for a temporary period indicates how unlikely it is that he will use his authority under this section to give relief to domestic industry in the future. He stated, in part, as follows:

> I have reluctantly concluded that a temporary extension of these cases is warranted. The evidence shows that a substantial increase in imports of these products would result in the absence of this action. This would cause severe job dislocation in the domestic industry. Many of the plants are located in regions of large unemployment with limited opportunities for reemployment in other industries. In the opinion of the Departments of Labor and Commerce, the adjustment assistance provisions of the Trade Expansion Act are at this time not an adequate remedy for these dislocations.

In lieu of increasing the duty and imposing import restrictions under section 351, the President under section 352 of the Trade Expansion Act may negotiate international agreements with foreign countries limiting the export of the article in question from such countries to the United States. This authority has yet to be exercised.

As with the adjustment assistance remedies, it is doubtful in any event that the domestic steel industry would benefit under the orderly marketing agreements provisions. The increased imports which cause or threaten to cause injury must result "in major part" from concessions granted under trade agreements and, as stated above, it would be difficult, if not impossible, to establish that the injury suffered by the industry was due to such concessions.

8. Unfair practices in import trade

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) authorizes the Tariff Commission to investigate alleged unfair methods of competition and unfair acts in the importation of articles or in the sale of imported articles in the United States. When the effect or tendency of such methods or acts is to destroy or substantially injure a domestic industry, efficiently and economically operated, or to prevent the establishment of an industry, or to restrain or monopolize trade or commerce in the United States, the article involved may, by Executive order, be excluded from entry into the United States.

Between 1949 and the present there have been 29 complaints and investigations pursuant to section 337. In no case has there been a Presidential exclusion from entry. In one instance the Tariff Commission recommended exclusion but the President rejected the recommendation. Another case became moot before the President had acted upon a recommendation for exclusion. The two cases in which the Tariff Commission recommended exclusion both involved instances of patent infringement or palming off.

The domestic steel industry could bring an action under this section only if it had acceptable proof that foreign steel producers were engaged in cartel-like activities to restrict trade to the United States, to price fix or to allocate markets or that similar activities had been adopted by importers. Such evidence is extremely difficult to secure.

9. Section 73 of the Wilson Tariff Act

This criminal statute (15 U.S.C. 8) was enacted 4 years after the Sherman Act and makes applicable to foreign commerce the general antitrust provisions of the Sherman Act. Section 73 makes illegal every combination, conspiracy, trust, agreement, or contract intended to operate in restraint of lawful trade. In order to establish the offense, one of the parties (as agent or principal) must be engaged in importing the article from a foreign country into the United States.

Since section 73 is one of the antitrust laws, it is subject to enforcement by the Department of Justice and by injured parties who may seek to recover treble damages. Section 73 also permits seizure and forfeiture of any property involved in any illegal contract, combination or conspiracy.

This section has been only infrequently used. In addition, in those instances when it has been used, it has normally been cited as a secondary count in an indictment primarily charging violations of other antitrust laws.

The major obstacle to effective relief under this section is the difficulty of establishing the fact of an agreement and of its terms. Since it is a criminal statute, efforts to secure criminal penalties would require that the violation be proved beyond a reasonable doubt, a very difficult standard to meet where information must be obtained from abroad.

There is also some doubt whether cartels which operate solely abroad and with the blessing of a foreign government would be unlawful under section 73 if the trading companies selling in the United States were not parties to the agreement. This provision, therefore, also affords very little hope for relief to domestic industry.

10. Section 802 of the Revenue Act of 1916

Section 802 (15 U.S.C. 773) provides that, if any article produced in a foreign country is imported into the United States under agreement or upon condition that the importer shall not use, purchase, or deal in the articles of any other person, there shall be levied in addition to the duty otherwise imposed by law a special duty equal to double the amount of such duty. There is an exception to permit a foreign producer to establish an exclusive sales agency in the United States.

Section 803 of the same act (15 U.S.C. 74) provides that the Secretary shall make such rules and regulations as are necessary to carry out the provisions of section 802. The customs regulations contain a very brief provision devoted to section 802. Section 16.25 of such regulations (19 CFR 16.25) provides that whenever it appears that articles may be subject to the special duties provided by section 802 the collector shall report the matter to the Commissioner of Customs and await instructions as to the imposition of duties. We have been advised by officials of the Bureau of Customs that no such report has been made to the Commissioner or his subordinates in Washington for many years, if ever. It appears that this section has become virtually inoperable and that it, therefore, is not apt to afford any relief to the domestic steel industry.

11. Section 252 of the Trade Expansion Act of 1962

Section 252 (19 U.S.C. 1882) has been in being since the first Reciprocal Trade Agreement Act of 1934. Its purpose was twofold: (1) to limit concessions granted by the United States under trade agreements to those countries which do not discriminate against American-made goods, and (2) to curb the activities of international cartels.

When a foreign government which has made trade concessions to the United States attempts to impair the value of those concessions by way of direct or indirect import restrictions, the President is authorized to impose duties or other import restrictions against the products of such foreign governments. The President has delegated the powers granted to him under this section to the Office of the Special Representative for Trade Negotiations.

We know of only one instance when section 252 has been invoked. That was in 1963 when the Common Market acted to reduce imports of U.S. poultry. The President issued Presidential Proclamation 3564, which placed increased duties on certain other types of products entering the United States from the Common Market. The action taken in that instance indicates that section 252 would be of little worth to the domestic steel industry. Even if the steel industry were able to demonstrate foreign discrimination, the President would not necessarily increase duties on steel imports as opposed to duties on other products to offset that discrimination.

Section 252, as stated above, is also directed against cartels unjustifiably restricting U.S. commerce. To receive any relief, the domestic industry must establish not only the existence of the cartel, but also its restrictive character. While the operations of cartels have been widely discussed, little evidence is available on the details of their operations.

When a foreign government maintains non-tariff-trade restrictions against U.S. products or otherwise acts to restrict U.S. commerce, the President is limited in granting relief to the suspension or withdrawal of concessions granted under trade agreements or to refrain from making future trade concessions applicable to the products of that country. Withdrawing concessions granted under the Trade Expansion Act would have comparatively little effect on the domestic steel industry's competitive position vis-a-vis foreign producers.

12. 1890 Anti-Discrimination Act

This little known and apparently overlooked statute, which is set forth in 19 U.S.C. 181, provides that whenever the President is satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to and sale in such foreign state of any products of the United States, he may direct that such products as he may deem proper shall be excluded from importation into the United States. We have not been able to find any instance in which this broad power, requiring a finding against a foreign state itself, has ever been used and it seems to us that it is highly unlikely that it would be used today, particularly against any GATT participant.

13. Federal antitrust laws

Since the antitrust laws apply to all persons engaged in commerce in the United States, they are applicable to foreign producers who are engaged in such commerce (either directly or indirectly through domestic subsidiary companies), to importers and to foreign trading companies selling in the United States. The problems of proof of violation, however, would indeed be formidable even for the Department of Justice and certainly for any domestic company seeking treble damages. Such a domestic company would also have to establish injury. In the light of present foreign trade policies, action by the Department of Justice to investigate possible violations by foreign importers is unlikely. We believe, therefore, that the antitrust laws do not provide a practicable means of preventing further increases in steel imports at this time.

C. Conclusion

The above review shows the shortcomings of the existing applicable statutes and demonstrates that such statutes as currently administered are very unlikely to afford any protection to the domestic steel industry. A new approach is clearly needed and it is needed promptly. Conditions of trade in the United States must be such as to enable the domestic steel industry to continue its expenditures for research, development, and plant improvement in order to provide the indispensable base for the Nation's economy and military strength and thus for the national security. Immediate action to arrest the growing penetration of U.S. markets by foreign steel imports is required.

The Iron and Steel Orderly Trade Act of 1967, S. 2537, introduced on October 16 by Senator Hartke for himself and 35 other Senators, provides the required approach. It affords a moderate and realistic answer to the steel import problem and we, therefore, urge its enactment.

AMERICAN IMPORTERS ASSOCIATION, INC.,
New York, N.Y.

Hon. RUSSELL B. LONG,
Chairman, Senate Committee on Finance,
Washington, D.C.

DEAR SENATOR LONG: The American Importers Association, the only trade organization representing importers of all items and importers throughout the United States, commends you and the Senate Committee on Finance for holding this legislative review and welcomes this opportunity to comment. The "compendium" being compiled by the committee should prove to be a very valuable source of information to all concerned with the foreign trade of the United States. When hearings are held AIA will be very glad to provide expert witnesses to the extent time can be made available.

Taking your press release with its 16 items as our guide, AIA presents its comments on the following pages.

Sincerely,

GERALD O'BRIEN,
Executive Vice President.

SUMMARY

(Related to numbered items in statement)

2. AIA believes the negotiating process set forth in the Trade Expansion Act of 1962 is fair for all concerned, and that Congress should give to the President standby authority to negotiate ad hoc trade agreements.

3. AIA supports existing structure and functions of the Tariff Commission and believes that the Commission is fulfilling the role for which Congress established it.

4. AIA supported reorganization of the Customs Service in 1966, and has submitted to the Bureau of Customs suggestions for further improvements in the service. Some of these suggestions will require enactment of legislation by Congress.

5. AIA respectfully urges Congress to complete the simplification of customs valuation procedures begun in 1956 by deleting from the Tariff Act of 1930: (1) Section 402a and the final list; and (2) the American selling price. In addition, AIA urges Congress not to adopt the Brussels definition of value which would require appraisement of imports on the basis of the c.i.f. value.

6. AIA opposes very strongly proposals now pending in Congress to amend the Antidumping Act for the purpose of harassing importers rather than truly seeking to prevent predatory dumping. Our organization supports the International Dumping Code recently negotiated under the GATT.

7. AIA supports the President's proposal to liberalize adjustment assistance provisions in the Trade Expansion Act provided that it is shown beyond doubt that injury to domestic industry or workers is due to imports, not to the incompetence of the complaining industry, changing patterns in consumer demand, or other factors.

8. The best way to expand exports is to maintain our longstanding policy of freer world trade.

9. AIA holds that the prospects for expanding exports and imports in the next decade are excellent, provided the liberal trade policy set forth in the Trade Expansion Act and the hope and enthusiasm engendered by the Kennedy round are allowed to prevail. However, if the protectionist spirit rampant in Congress just now is crystallized into laws imposing quotas and other restrictions, then these prospects are very bleak.

10. AIA affirms that as tariffs are lowered, nontariff barriers to international trade grow in significance. Elimination of nontariff barriers has to be reciprocal among the trading countries and the United States should take the lead.

13. AIA feels that granting preferential tariff treatment to products of less developed countries is a drastic departure from our most-favored-nation tariff policy.

14. AIA believes that commodity agreements are of value to less developed countries, but American importers do not want to see trade in commodities covered by agreements settle into rigid patterns requiring imposition of quotas and allocation of markets.

15. Any participation by the United States in a free trade area, whether by geography (United States-Latin America) or by industry

(United States-Canada automotive agreement) should be avoided if it detracts from the long-range objective of freer multilateral trade among all nations.

16. AIA believes that through the GATT member nations have carried out their goal of an expanded international trade and now GATT should be used to negotiate the nontariff barriers nearly all nations still maintain.

STATEMENT

1. Possible shortcomings in the applicable statutes

Specific points which AIA believes to be shortcomings in the statutes relate directly to items discussed below (i.e., valuation, adjustment assistance) so will not be cited here.

As a general observation, AIA believes it would be helpful to all concerned with foreign trade if U.S. statutes could be compiled into a single United States Code.

2. The negotiating process and ad hoc trade agreements

AIA believes the negotiating process set forth in the Trade Expansion Act is very fair to those interested in the importation of goods from abroad and to the domestic interests that might be affected thereby. Because of the complexity of modern trading and changing circumstances, we believe the President must have authority to negotiate or renegotiate trade agreements to correct any situations that might result from the operation of across-the-board agreements, such as the Kennedy round. For this reason, AIA urges that the President's authority under section 201 of the TEA should be extended.

3. Role of the Tariff Commission

AIA supports the structure and functions of the U.S. Tariff Commission as presently constituted, and its basic mission—to collect facts on which the Congress and the President may take the actions prescribed by the Tariff Act and the Trade Expansion Act. AIA wants to go on record as stating that the Tariff Commission has and is fulfilling the role for which it has been created.

We do recommend a change in the law which compels the Tariff Commission to depart from its regular procedure and constitutes a discrimination against American importers. In 1958, Public Law 85-630 added section 201(a) to the Antidumping Act. AIA, however, hopes that this amendment will be deleted. This amendment provides that the Tariff Commission shall be deemed to have made an affirmative determination of injury to a domestic industry if the Commissioners voting are evenly divided as to whether the determination of the Commission should be in the affirmative or in the negative. Prior to 1958, when the Commissioners voting were evenly divided, the Commission was deemed to have made a negative finding.

4. Customs administration

AIA strongly supported the reorganization of the customs service in 1966, and believes that in spite of some "bugs" that have developed, this reorganization will benefit importers and the Government in the long run. To complete this reorganization, legislation is necessary so in 1966 the administration introduced H.R. 18533. So far, hearings have not been held on this bill. AIA's detailed comments have been sent to the Commissioner of Customs and we hope the points to which we object will be eliminated before the legislation is finally presented for consideration by the congressional committees. Since AIA's objections are rather technical, have not been rejected by Customs, and do not seem quite germane to the committee's inquiry they will not be presented here.

5. Valuation of imported goods

Although some progress was made in this field when Congress enacted the Customs Simplification Act of 1956, more simplification may be effected without injury to domestic industry and with great benefit to the U.S. customs service and to American importers. The purpose of that act was to eliminate foreign market value as a basis for valuation. By the time it was enacted into law, however, that act established two sets of bases for appraising imported merchandise: one set for all articles on what is known as the final list issued under that act; and another set for all other articles not on the final list. The irony is that now the United States has a confusing variety of methods for determining value: (1) foreign market value, (2) two types of export value, (3) two types of U.S. value, (4) cost of production, (5) constructed value, and (6) two types of American selling price, one for articles on the final list, and another for those not on that list. Congress can rectify this by eliminating the final list and section 402a of the Tariff Act from the statutes. Then we will get the simplification the 1956 act sought to achieve.

American selling price.—Much has been said and written as to whether or not American selling price should be used as a basis of valuation. Our organization grew out of a group of importers who got together in 1921 to oppose a proposal before the Congress at that time to assess duty on all imports on the basis of their American selling price. Fortunately, this unwise proposal was defeated. Instead, ASP was confined to the appraisement of what are now called benzenoid chemicals. Ever since that time, we have advocated elimination of ASP from the Tariff Act. Once more, we urge the Congress to delete this discriminatory and unfair provision.

AIA urges that Congress approve the special agreement negotiated in Geneva in which the United States would eliminate ASP and replace rates currently calculated on ASP with converted rates proposed by the Tariff Commission in its report "Products Subject to Duty on the American Selling Price Basis of Valuation; Conversion of Rates of Duty on Such Products to Rates Based on Values Determined by Conventional Valuation Methods" (TC Publication 181, Washington, D.C., July 1966).

ASP is clearly special-interest legislation, and a form of trade restriction prohibited by the GATT of which the United States is a member. It is a tricky device designed to hide the fact that rates of duty in excess of 100 percent appear on our tariff schedules—a device which results in duties of over 100 percent in the case of competitive benzenoid products, and of 200 percent or higher in the case of rubber-soled footwear—the two principal commodities subject to ASP valuation. Under ASP, a domestic industry may manipulate its wholesale prices to produce a high dutiable base requiring a large amount of duty. This is done by issuing price lists quoting prices which are very seldom the basis of actual transactions because they do not take into account quantity discounts or other special arrangements affecting the actual price the producer receives. Under the law, however, the list price is the basis for the ASP valuation. Eliminating ASP, therefore, would eliminate exorbitant and discriminatory rates of duty imposed as a special favor to two industries: contribute to the simplification of customs procedures begun in 1953; and improve the international relations of the United States.

Brussels definition of value

It has been proposed that the United States adopt the Brussels definition of value as a basis for the appraisement of imported articles. In effect, the Brussels definition requires that imports be appraised on their c.i.f. (cost insurance, freight) value. At the request of the Committee on Finance, in 1966 the Tariff Commission conducted an investigation on the valuation laws of the United States and of its principal trading partners.

AIA strongly opposes the Brussels definition of "value" for the following reasons:

(1) It discriminates against small importers in favor of those who pay lower prices because they can buy large quantities.

(2) It applies only to transactions between unrelated persons, and provides no alternative for assessing duty on trasactions between related companies. In such cases, it is feared that the appraiser might determine value on the basis of arbitrary figures, usually higher.

(3) The definition would discriminate against distant countries, as it would result in higher amounts of duty because of higher charges on freight, e.g., Japan versus Canada. Those who drafted the definition suggested that it might not be applicable to the United States because of its geographic position.

(4) It would result in different entered values at different ports, and even at the same port, depending on the transportation used—steamer, rail, or air—and on whether conference or independent freight rates were charged. C.i.f. valuation would discriminate unduly against air transport.

(5) Problems would also arise from variable insurance rates, and might result in American insurance companies losing business.

(6) It might cause change in patterns of distribution; i.e., for the sake of paying smaller amounts of duty, goods from Europe might only go to east coast ports.

(7) The increase in the amount of duty on goods of high value and small bulk would be tolerable: but it would be onerous on bulky and heavy items of low value: e.g., plywood, steel products. etc.

(8) If the definition is adopted, rates must be reduced to compensate countries with which we have trade agreements for the increase in the amount of duty. An equitable adjustment of such rates would be virtually impossible.

(9) The ostensible objective is "uniformity" with the customs valuation practices of the principal trading partners of the United States who appraise imports on their c.i.f. value. It is feared, however, that too high a price will be paid to achieve such a uni-

formity because it would be necessary to violate commercial realities and long-existing commercial practices. Canada, Japan, and Mexico, by far our biggest trading partners, do not use the Brussels definition.

(10) U.S. Customs officials must spend considerably more time in the appraisement of each entry because they would have to compute variable insurance and freight costs which must be included in the dutiable value.

6. Dumping and unfair methods of competition in import trade

Our association supports the International Antidumping Code recently negotiated under the auspices of GATT. This agreement is a significant achievement for the United States because the other trading nations have in effect accepted U.S. law and regulations. While the new code will benefit importers it will be of even greater benefit to American exporters.

We very strongly oppose the proposals now pending in Congress to amend the Antidumping Act for the purpose of harassing importers rather than truly seeking to prevent illegal dumping. The existing U.S. law and the new International Code are quite adequate to protect domestic interests.

As to unfair methods of competition we point out that the existing law is sufficient. Section 337 of the Tariff Act prescribes drastic penalties against those who engage in such methods. This section authorizes the President to require a bond for the entry of goods suspected of violation, and to exclude them from entry into the United States whenever the existence of unfair methods of competition is established. In addition, section 238 of the Tariff Act prescribes additional duties up to 50 percent ad valorem, or exclusion from entry of imports from any country found to discriminate against American goods.

7. Procedures for aiding workers and industries harmed by excessive imports

AIA demurs at the term "excessive" imports. Would the committee be willing to have other countries commence referring to "excessive American exports"?

Our association favored inclusion of adjustment assistance provisions in the legislation which became the Trade Expansion Act of 1962; and in a position statement issued in 1966, AIA supported the President's proposal for liberalization of the existing program of adjustment assistance.

We believe, however, that before an industry is found eligible for tariff adjustment, or before any firm or group of workers are found eligible for adjustment assistance it should be proven beyond doubt that injury was due to imports, and to imports only, not to the incompetence of the complaining industry, changing patterns in consumer demand or other factors. All decisions as to whether or not tariff adjustment or adjustment assistance is to be granted should be based on clear-cut economic considerations, and not on political expediency dictated by particular groups or geographical areas.

8. Policies needed to expand U.S. exports

The best way to expand exports is for Congress to maintain our country's long-standing policy of freer world trade. How can the

United States expand exports when the files of the House Committee on Ways and Means and the Senate Committee on Finance are bulging with bills proposing quotas on so many individual commodities, other bills proposing "orderly marketing," other bills insulting the prospective buyers of our exports by proposing all kinds of schemes to impede imports made by so-called cheap foreign labor.

9. The prospects for exports and imports over the next decade and how the Kennedy round negotiations will affect these trends

There is no doubt that the prospects for both exports and imports over the next decade are excellent, provided the liberal trade policy set forth in the Trade Expansion Act, and the hope and enthusiasm engendered by the Kennedy round are allowed to prevail. On the other hand, if the protectionist spirit rampant in Washington today is crystallized into laws imposing quotas and other restrictions on imports, then these prospects are very bleak. Japanese industry and labor have emphasized that Japan will retaliate if Congress heeds the unreasonable demands of the domestic industry for rigid quotas on textiles. Undoubtedly, other countries will retaliate when restrictions are prescribed for their exports. The Kennedy round achieved the objective set by Congress in the Trade Expansion Act of 1962—reduce tariffs by all nations and expand international trade. If the United States should now repudiate the Kennedy round by turning to protectionism the nations of the world may break into antagonistic trading blocs—a far cry from the hopes set forth in the statement of purposes of the TEA.

10. Major tariff and nontariff barriers which must be faced in exporting

As an organization of importers, AIA does not claim to be conversant with the problems American exporters encounter abroad. But we would like to call attention to the growing significance of nontariff barriers as tariffs are lowered to the point of posing no obstacle. The elimination of nontariff barriers has to be reciprocal among the trading countries and the United States should take the lead.

11. Consequences for U.S. exports of the EEC value added tax

No comment.

12. Effect of U.S. foreign investment on U.S. exports

(No comment.)

13. Tariff preferences for products of less-developed countries

A preferential tariff would be a departure from the U.S. most-favored-nation policy which has prevailed since 1934. Such a departure cannot be taken without great study of the economic and political consequences.

Any preferential tariff will affect importers. AIA has just begun to investigate this rather new proposal and is not prepared to comment at this time.

14. Commodity agreements

In 1963, the Senate ratified the International Coffee Agreement, and in 1965 the Congress authorized the President to carry out the obligations of the United States under that agreement. By these actions, both the administration and the Congress accept the idea of commodity agreements for the stabilization of prices of basic raw materials. There is no doubt that such agreements are of paramount importance for the economic and political stability of producing countries. However, to achieve this stability, consuming countries must agree to pay higher prices and agree that producing countries may impose restrictions on production or quotas.

American importers see the virtue of creating conditions which result in the stability of the less-developed countries involved in the negotiation of commodity agreements. At the same time, however, American importers do not want to see the trade in these commodities settle into rigid patterns requiring the imposition of quotas, allocation of markets, or other restrictive devices.

15. Free trade area with U.S. participation

The history of international trade indicates that completely free trade among all nations (even though it has never existed in modern times) would be to the benefit of mankind in that the greatest amount of goods would be available to the most people at the lowest prices.

The United States achieved this goal at the beginning of its history with the constitutional prohibition against interstate barriers to trade. The European Free Trade Association has already achieved this goal and the European Economic Community is scheduled for free trade within several years.

The economic virtues of freer trade are becoming obvious to most nations. Within the framework of the General Agreement on Tariffs and Trade (GATT) the trading countries have reduced tariffs and are working toward free trade for the world.

It would appear that any participation by the United States in a free trade area, whether by geography (United States-Latin America) or by industry (United States-Canada automotive agreement) should be avoided if it detracts from the long-range objective of freer multilateral trade among all nations.

16. The GATT as an instrument for assuring expanded world trade on a reciprocal, nondiscriminatory basis

GATT has proved to be an effective instrument for member nations to use in pursuing the goal of expanded international trade. The Kennedy round tariff reductions (at completion of the 5-year staging) have nearly eliminated tariffs as a major obstacle to trade. Now, GATT should be used to negotiate away the nontariff barriers nearly all nations still maintain.

Statement of O. R. Strackbein, Chairman, the Nation-Wide Committee on Import-Export Policy

Summary

Our foreign trade policy will stray wide of the mark of both national and international interest if we continue to be guided by the fallacies described in this statement.

We will do much better if we face the fact that our economy does not operate in a free market and that the cost of domestic policies, borne by our industries has placed us on a high-cost plateau in relation to the rest of the world. The freeing of foreign trade from tariff and other barriers will not resurrect the free internal market. Therefore, the higher cost plateau will continue. The competitive disadvantage of this country will persist because international competition is irrelevant to the preponderant cost factors that determine our production costs. These arise from our domestic policies, and because free market forces are not allowed to operate, competitive equilibrium will not result from imports. We cannot reduce costs without creating a variety of Appalachias of different magnitude, and if we do not reduce costs radically, as for example, in the steel industry, we will see imports absorb a rising share of the market, to the distress of the domestic industry.

Also, we must discard the fallacious notion that foreign competition is the same as domestic competition and that since domestic competition is good, foreign competition enjoys the same virtue. The cardinal principle prescribed for domestic competition is that it must be fair. We cannot extend this principle to foreign competition because our wage and hour and antimonopoly legislation stops at the water's edge. We have sought specifically to remove wages from domestic competition, both to protect our wage standard and to bolster consumer purchasing power, but we cannot reach our foreign competitors with such legislation.

Lastly, we must face realistically what it costs in terms of job displacement when we seek to reduce production costs so that we may extend our productivity lead sufficiently over other countries to offset their lower wage cost. Labor displacement is a radical approach and yet represents the only means of becoming or remaining competitive with imports. That way lies the creation of structural unemployment.

As a defense against being outflanked by imports we need a substitute for the tariff, and the earmarking of a liberal share of the market for imports, with participation in the market's growth, represents the happiest measure of control that looms on the horizon.

STATEMENT

U.S. trade policy

Three intractable fallacies or errors have bedeviled the foreign trade policy of this country in recent years. Clear thought has been impeded by unquestioning subscriptions to these fallacies without re-examination of long-accepted premises that have lost such link to reality as they may have enjoyed once upon a time.

The first fallacy is that our economy is impelled and guided by free market forces. The second lies in looking upon domestic and foreign competition as arising from the same economic bases and producing equally beneficial effects; and the third, which is an outgrowth of the first, is the assumption that unit-cost differences cannot persist among the trading nations because competition will eliminate such differentials.

These fallacies will be examined in sequence in this paper.

First fallacy

The first of these fallacies arose from the persistent teachings in this country of economics based on a sublime faith in the benevolent operation of market forces as if these forces had not in recent decades been systematically unhitched from the underlying doctrine by legislation. We have been left with the spectacle of teams of harnessed intellectual horses running at high gallop over the roads under the conceit that they were pulling a load of reality while, in fact, they were only dragging a pair of wildly swinging singletrees behind them, pulling nothing.

The deeply embedded notion was that international competitive forces would bring costs and prices onto an even competitive level among the nations, reflecting relative wage levels and productivity just as they would do within a country where market forces are free. The principal obstacle preventing the international operation of these forces was held to be trade barriers in the form of tariffs, quotas, and the like. Remove these and the competitive forces would do the rest. The only competitive advantages that would endure would be those based on genuine economic superiority, such as may be embodied in richer resources, in terms of land fertility or mineral deposits: or in better rivers and natural harbors, more suitable climate, labor skills, and so forth.

Inability to compete would of itself then reflect some real economic deficiency, uncovered by competitive forces, and the producer in whatever country should not be helped artificially to remain in business by government because he was devoting capital, labor, and land to relatively unproductive pursuits. He should relinquish such pursuits, leave them to areas of the world where they could be done better, and divert his capital and energies to economically more profitable investments. No one asked whether or how soon these could be found.

It was thought that tariffs and other trade barriers erected by countries against each other were the culprits that prevented competitive forces from operating equally and conferring their benefits universally.

A greater error could hardly have been contrived as justification for drastic tariff reductions, for during the very period when we reduced the tariff we walked away from the free market on the domestic front. We enacted a program of controls and regulations over business that far surpassed the trade barriers in their interference with and hobbling of the free market forces. These legislative enactments, generally supported by heavy popular mandates in this country, blocked one area of the free market forces after another. The blockages were in the form of farm price supports, minimum wage and maximum hour laws, obligatory collective bargaining, social security, restriction of immigration, bank deposit insurance, governmental control of interest rates, social taxation, and other like measures. Whatever their justification, which is not in question here, these laws interfered more effectively with free market forces, even internationally, than the tariff, which came under such severe attack. The country demanded these measures and they were adopted.

While controls over domestic economy were thus multiplied in all directions, interfering with and regulating economic forces, the tariff was to be dismantled. In other words, while some 92 percent of our economy was brought under more rigid controls, at the expense of free market forces, the remaining 8 percent (imports and exports) was opened progressively to the operation of free international market forces, so far as the United States was concerned.

Somehow it was thought that freeing of 8 percent of our economy which was turned outward to the rest of the world, while the remaining nine-tenths was being trussed in domestic legislation, would redeem the free market. This notion not only bordered on the ridiculous; it animated the political emotions of the times against the tariff.

We evidently felt guilty about putting aside the free market at home and took our vengeance out on the tariff.

The effect of this contradictory process was quite the opposite of what was intended. It was destroying the flexibility of many domestic industries toward meeting import competition which, ever more liberated from restrictions, could work its havoc on these industries while they could not respond in kind. They could not, for example, lower their wages as the free market doctrine would have suggested; nor employ workers longer hours without paying a penalty. They had been put into a veritable competitive straitjacket and alienated from the sympathy of the electorate. Their only hope lay in widening their existing productivity lead over their foreign competitors by increasing their output per man-hour as a means of overcoming the foreign wage-cost advantage.

The international measures (tariff reductions) hand in hand with the domestic measures which greatly increased the cost burdens on industry and agriculture pitched our high-wage system and its sensitive counterpart, the high consumer purchasing power, which is the prop of mass production, against the low-wage patterns of the world. The low-wage countries were not gaged, with some recent reluctant exceptions, to the creation of high national income and high consumer purchasing power (arising from high wages) as is the American system, which in this respect was the world pioneer and continues to stand virtually alone.

By discarding our outward controls while imposing cost-raising burdens on the domestic economy, in the conceit that in so doing free market forces would be restored throughout the world, we unceremoniously exposed our high-wage, high-consumer income system to countervailing and eroding forces from abroad exactly as if we did not know what we were doing.

If this punitive exposure is to be perpetuated we are now on the right track in resisting the use of regulatory import quotas to control the competitive impact of low-cost foreign goods. As a parallel measure we should undo the controls and regulations that interfere with the free market forces on the 90 percent of our economy that falls under the sway of our domestic operations. So long as we maintain these and perhaps extend them, it will, of course, be oddly reflective on our economic logic to look to the removal of trade barriers as the savior of the free market.

It is precisely the domestic interferences with the domestic market forces, inhibiting greatly their operations, that creates the need for the outer controls, lest the unhampered competitive forces from abroad topple our unique high-wage, high-consumer income economy upon which our mass production depends for its sustenance.

It was, as we can see, a national sequence of the prevailing thought to say that any domestic industry that found itself unable to compete with imports was uttering a confession of inefficiency. This indictment was forthcoming as surely as the sunrise even if it could be demonstrated that the output of the domestic industry per man-hour was double or more than of its foreign competitor. We sewed on the scarlet letter in any event. That it was natural to place the blame on industry followed from failure to see the results in cost burdens of the domestic legislation (plus war and defense outlays) on domestic industry, not shared overseas.

It need not be surprising then that while the ostensible purpose under the escape clause of the trade legislation was to provide industries that had been seriously injured by imports with a remedy, the official attitude, nurtured on the prevailing misconception, including the White House, should have been highly negative toward the remedies recommended by the Tariff Commission over a 10-year period (1951–62). The phiolosphical justification for the negative attitude at the White House was that the noncompetitive industries were inefficient and not entitled to encouragement even though their application for a remedy had been approved by the Tariff Commission. While the Commission itself, operating principally under the same concept, rejected nearly two-thirds of the pleas from industry, the President in turn rejected over 60 percent of the Commission's favorable recommendations for relief, with the result that only a little over 10 percent of the cases resulted in an actual remedy in the form of a tariff increase.

In 1962 a yet more restrictive attitude surfaced in the Trade Expansion Act. In effect, it said "we expect industries to be injured, but it will be in the national interest to afford no protection for the inefficient. Let them find some other employment for their capital and let their workers be retrained for something more suitable at public expense." This attitude continued to reflect the view that domestic industry that could not compete with imports was ipso facto inefficient and should find some other use for its capital.

Compensation was to be provided to tide over industries and their workers as they shifted to other endeavors. The law's strictures, however, were so tight that the Tariff Commission failed to find a single case in which the necessary degree of injury had occurred. Eighteen cases were heard, but since they were all rejected they did not even reach the White House and the Commission's docket soon became empty. In all cases but one, that body's decisions were unanimous.

The Trade Expansion Act represented the final flowering of the economic fallacy that inability to compete with imports was the result of inefficiency.

The second fallacy

This fallacy, the second one, mentioned at the outset, arose from failure to distinguish between the ground rules of our domestic competition and that embodied in import competition. Yet, the distinction is dramatic and deep.

In this country competition is supported by the Sherman and Clayton Acts, the Robinson-Patman Act and by the active surveillance of the Department of Justice and the Federal Trade Commission. The purpose is to assure not only competition but fairness of competition. In order to prevent price competition among domestic companies from depressing labor standards, Federal minimum wage laws, moreover, were enacted, together with limitations on maximum hours and abolition of child labor. Individual States have laws of their own on wages and hours.

The purpose of this second type of legislation was to remove wages as a source of competitive advantage. Wage cutting was thus thoroughly discouraged. By maintaining minimum wage levels two objectives were served. The "fair" employer would not be driven to wage cutting or shrinking of the payroll, by "cutthroat" competition, and consumer purchasing power would be preserved.

Beyond this the Federal guarantee of obligatory collective bargaining bolstered the power of labor unions to obtain their share of the growing production pie.

The upshot is that domestic competition has been controlled and regulated with the twin objective of assuring its fairness among business enterprises while preventing the undermining of wages and consumer purchasing power. However, in doing this and in adopting measures to counteract and prevent cyclical depressions, we concurrently clipped the wings of the free market forces that we professed to revere.

That American industry enjoys a considerable but variable lead in productivity over foreign industry is generally affirmed. That this productivity lead does not at all assure a competitive lead is, however, too readily overlooked. That the difference in wage cost per unit of production may be higher in this country despite our higher productivity is nevertheless demonstrable.

If our wage is $3 per hour and that of our competitor is $0.75 or a quarter as high, we will have a higher unit cost even if the American worker produces two units of output per hour against his foreign counterpart's production of only one. Only if he produced four units while his 75-cent-an-hour competitor produced only one, would he be at par with him so far as direct labor costs go. Merely being twice as productive would not close the gap. Higher productivity of itself does not assure a lower cost.

With respect to our European competitors, our wages range from about 2½ to four or five times as high as their rates. This disparity would call for a productivity rate from 2½ to five times that of our European competitors if competitive equality were to be achieved. This lead we do not always enjoy. Perhaps in a few products we may have such an advantage; but productivity has been rising very rapidly abroad in recent years because of the reequipment of plants with modern machinery and the building of new plants also equipped in that fashion. Therefore many of our industries could be expected to suffer from a competitive handicap. Indeed, the opposite would be surprising.

With respect to Japan, the disparity would be yet wider in many products.

Meaning of cost reduction in job elimination

The demand that any domestic industry that is at a competitive disadvantage with imports should exert itself toward cost reduction through greater efficiency is an outgrowth of the fallacy under examination. The demand for higher efficiency seems to assume that no more is involved than dusting off and oiling the machinery, putting everything in order and prodding the workers to greater energy and speed.

Unfortunately, much more is at stake than such a simplistic judgment indicates. Industrial efficiency today is usually a question of degree of mechanization and the productivity level of the machinery. A large steam shovel can outdo a dozen men no matter how hard and fast they might work with a hand shovel. Handicraft work is a modern-day rarity in this country and is being discarded or supplemented in other industrial countries. Comparative productivity is therefore principally a question of comparative machine output per worker; not of speed of muscular movement in workers.

Employee compensation the heaviest cost factor

In the United States an average of a share below 80 percent of the total income from corporate business takes the form of employee compensation. (Statistical Abstract of the United States, 1966, table 459, p. 325.)

It is clear that no material reduction can be achieved in production costs without a substantial shrinkage in the man-hours of labor per unit of production. This shrinkage regularly takes the form, not of reduction of the workweek, but of displacement of workers by more productive machinery.

We quickly come to see that the preponderant burden of cost reduction must fall on the workers. Assuming that wage reductions are out of the question, as they are in this country because of labor power, there remains only worker displacement as the source of any material cost reduction. Even drastic corporate tax reductions would not provide a really meaningful source of cost reduction—no more so than reduction in the margin of profit. The two combined, together with interest payments, average only some 20 percent of the total income of corporate business. Taxes, we may be sure, are here to stay. Profits have some flexibility but cannot be cut too deeply without courting unwanted consequences. Moreover, they serve as the source of tax revenue, as do wages.

Competition from abroad meantime is of a different breed from the domestic. It is, of course, not subject to our domestic legislation. Where minimum wages exist they are far below those of this country (Canada excepted). Wages are not treated as the principal source of fairness of competition, nor have they been looked upon, until possibly in recent times, as the support of a vast and growing consumer purchasing power. It is safe to say that foreign industry is not under the same type of requirements, inhibitions and restraints that produce rising costs; or at least not to the same degree. Labor power, notably is less robust.

Therefore to persist in equating foreign competition with the domestic, including that arising from technological advancement, represents a failure to recognize the profound differences that separate the two. It further represents an insistence that domestic industry and agriculture be exposed to economic practices from abroad that are outlawed in this country. In many instances this outlawing, however justified, represents a cost item of no small magnitude.

To ignore these facts is to be essentially unfair to the domestic side of the competitive equation, callous to the effects provided by legislation that, while perhaps justified on other grounds, detracts from competitive capacity vis-a-vis those who are not similarly burdened. It represents a disowning of the economic offspring of our own siring. It flouts one of the most characteristic elements of the American heart and mind; namely, fairness of treatment.

The third fallacy

This fallacy is an offspring of the first one; namely, that we operate a free-market economy. It holds that unit-cost differentials between this country and its competitors cannot persist if liberal trade policies are adhered to.

Unfortunately for the theory, a liberal foreign trade policy does not restore a free domestic market. Rather, it increases the need to extend the domestic controls seaward to protect our vulnerable, exposed competitive flank.

Now that the tariff is on its way out we are faced with the fact that the problem to which it was addressed has not been overcome. The logical consequence is then that a substitute instrument must be found for the tariff.

The view that insulation or cushioning is necessary for support of the American standard of living, dependent as this standard is on a high level of real wages, runs counter, of course, to the deeply revered principles of economics.

The classical economist is aghast at the thought that a trading nation such as the United States could stand on a cost plateau in relation to the numerous other countries with which it carries on its trade.

Yet, the point is of critical importance in the weighing of alternate possible trade policies. If competitively significant cost differences between the United States and its foreign competitors do persist over the years, as established by indisputable facts, notwithstanding deeply entrenched theory, the bearing on trade policy would be direct, radical, and far reaching. If international competition is prevented from establishing cost equilibrium between this and other countries, or a balance in cost elements in relation to different levels of productivity, measures that would bridge the cost gap or insulate its effect would be justified. Failure to close the gap or to render it innocuous would place the country of the high-cost level, which is to say this country, in most instances, at the competitive mercy of the countries in which lower levels prevail. Unless the higher cost level prevailing here were the result of relative inefficiency, any domestic industry suffering from a competitive disadvantage would be unjustly treated if it were not given a remedy, and would face lingering destruction in the home market from imports.

The indictment of inefficiency, however, is a necessary defense of the current free-trade position. The remedy then peremptorily prescribed by the economist is one of modernization, technological upgrading and aggressive selling of the domestic industry as a means of becoming competitive. The demand, oddly enough, is not that the foreign competitor come up to our level of wage cost, but that we outstrip his efficiency sufficiently to overcome his wage advantage.

Experience in coal

It seems safe to assume that few economists are fully aware of the meaning of cost reduction as a means of becoming competitive. One of the most memorable examples of sharp cost reduction in recent history was recorded in the coal industry from 1950 to 1965. The industry was beset by seemingly insuperable competition from diesel oil, natural gas, and imported residual fuel oil. It faced certain extinction unless it accomplished a substantial cost reduction. This it did over a period of some 15 years by introduction of mammoth coal digging machines and some other "improvements." The industry, thanks to radical modernization, achieved competitiveness both with rival fuels at home and with coal abroad.

What was the price of this achievement?

The cost reduction was met, not by wage cutting, but by displacing miners. The extent of this displacement is not a matter of general public knowledge, although it is recorded in official statistics. (See Statistical Abstract of the United States, 1966, table 1047; Survey of Current Business, U.S. Department of Commerce, June 1967, p. S. 15.) The public knows of it only indirectly through the poverty and distress that goes under the name of Appalachia. Some 340,000 out of 480,000 miners were displaced in the 15 years of escalating productivity. This was the cost of becoming competitive. Two miners out of every three were evicted from their jobs and thrown on the ash heap of obsolete humanity.

In terms of lost purchasing power, the shrinkage was of a startling magnitude. Had the full complement of 483,000 miners of 1950 worked in 1966, when average weekly wages were $135.86 per man, the payroll for the year would have been $2.563 billion higher than it was. The loss of 340,000 miners from the payroll left a gap that came to spell Appalachia. Losses suffered by community business and profesisonal activities, of course, swelled the loss in all directions.

The purpose of this recitation is to place a social and economic price tag on the greater efficiency that is so readily demanded of industries that face competition in the form of appreciably lower costs from abroad.

Not all industries face the difficult competition that faced the coal mines; but it is a matter of degree. The mathematics of labor displacement necessary to reduce costs significantly is nevertheless appalling.

Moreover, the number displaced by one industry increases the burden of other industries and economic activities—not only by the number displaced, but by the share of the new workers supplied by population increase who were not hired, as in the case of the coal miners. They must be hired elsewhere or add to the unemployment burdens and the poverty rolls.

Serious students of industrial efficiency know that no magic comes forward to absorb the unemployed. Numerous factors inhibit the absorption. Therefore to dismiss labor displacement with the ready answer that American business genius and know-how will take care of the uprooted workers, represents a shrugging gesture of the highest irresponsibility (Stat. Ab., 1953, p. 216, table 233; p. 728, table 857; idem, 1967, p. 266, table 323; p. 690, table 1026; Survey of Current Business, Aug. 1967, p. S–15, S–13.)

Steel industry facing import problem

Today the steel industry is among many domestic industries facing distress from import competition. From a position of a net steel exporter, this country now imports four or five times as much steel as it exports. Imports have captured over 10 percent of the U.S. market. While in the output per man-hour this industry leads the world, it cannot compete successfully with imports because of lower foreign costs. The price of becoming competitive appears to be in the magnitude of some 200,000 jobs of steelworkers. Already, in 1964, 75,000 workers had been displaced since 1950, while output per man-year had increased from 165 tons of steel to 248 tons per year, and total tonnage increased by 32 percent. Obviously this was not enough—not nearly enough. Much more drastic surgery must be performed if unaccountably the industry is given no alternative to this method of defense.

Economists who prescribe higher efficiency as a means of becoming competitive with imports seem to be blissfully unaware of the cost of their prescription. They simply harken back to the textbooks that served as their source of indoctrination.

The thought of these economists has been impeded by entrapment in their own doctrines. They substitute doctrine for reality as the matrix of their thinking processes. They cannot believe, as stated above, that American industry can and does operate on a higher plane of costs, surrounded by other countries operating on lower costs levels. According to untouchable economic theory competition would soon bring all the unit costs to a nearly equal level, except as one or another country might enjoy some special advantage.

Interferences with free market forces

Verifiable facts demonstrate that because of multiform interventions by the Federal Goverment in the economic processes, touching all factors of production, free market reactions are modified, distorted, or even buried and thus prevented from expressing themselves. When either national or international political considerations, or both, determine legislation, the laws of economics often take a back seat.

The interventions, controls, and interferences with the economic forces, which have proliferated so profusely and most of which are applicable only to the domestic economy, have insulated numerous economic activities against the equilibrating force of international competition.

Experience of the maritime industry

The persistence of unequal costs between this country and its competitors abroad, which is the ghost of Banquo to the free market adherents, is unmistakably illustrated by the maritime industry. Comparative cost studies of ship construction and operation between this country and its foreign competitors are made periodically by the Federal Government under the Merchant Marine Act of 1936, as a means of measuring the cost differential for subsidy purposes. The disparity or differential has not merely persisted but has actually widened about 10 percent since 1957. It is now slightly over 100 percent. The subsidy to the domestic industry which bridges this gap has prevented the disappearance of American-flag ships from the high seas.

A disparity of 100 percent in costs would not yield to the most advanced cost-shrinking technology in shipbuilding anywhere available. A ship built in an American yard could come into a position of competition only if the ship could be put together without the use of manpower, since the cost of materials and equipment to be incorporated into the ship is of itself equal to the cost of the finished ship built in a foreign yard using foreign materials. Even then the ship if put into service could compete only if the operator hired a foreign crew. Should he hire an American crew as he must do if he is to fly the American flag, he would again be out of competition, even, to repeat, if his ship were built in a foreign yard.

Here is a clear example of the gaping disparity confronted by any domestic shipbuilding entrepreneur who would pitch the American wage level competitively against the foreign. He would enjoy no tariff protection since the merchant marine produces a service instead of goods that, coming from abroad, must pass through the customs house where the duty is levied. The competitive confrontation is net, and if free international competitive forces had free reign the U.S.-flag merchant marine would quickly be annihilated.

The subsidy, like restrictive immigration, is an interference with the free market forces. As in other segments of the economy the free market forces are not permitted to operate.

The same is true of our aircraft industry. It is not only subsidized heavily but, unlike the merchant marine, enjoys a virtual monopoly of the home market. Otherwise foreign airlines might soon drive us out of the skies. Several subsidized agricultural commodities also enjoy a virtual monopoly of the domestic market. Wheat, cotton, and dairy products are examples. Their costs, too, are too high in relation to the foreign and would for the same reason as in the cases of the merchant marine and coal, put farm products out of competition and drive their producers to the borders of extinction. The urban disturbances of today, with the eviction of yet more millions of farmworkers for descent on the city, would soon intensify.

It will perhaps be said that all subsidies are economically bad; that they should be abolished for the good of all. This is a pipedream in a democracy where votes achieve a higher virtue than the orthodoxy of economics. Moreover, the free-market, free-trade economists have generally given full support to the legislation that has paralyzed the free-market forces. Therefore in blaming the economists we should blame them for ignoring this extremely fertile fact: They proceed as if free-market forces were not shackled while they subscribe to the very shackles that bind the economy.

Subsidization, of course, extends far beyond the instances mentioned here. It has become a way of life, like it or like it not; inextricably interwoven with important productive and trade operations, no less than with the universal consumer who as a citizen is the beneficiary of many subsidies that in turn help create the need for other subsidies. Postal subsidies, and, more recently, educational subsidies, rent, health and various urban subsidies, and a variety of others have accumulated. In addition to the high taxes resulting from the exigencies of world leadership, military and economic, as interpreted by the Government, all these charges come to rest on production; but yet not as heavily as labor costs. No other country has burdens comparable to the American, most of which have been self-imposed in reaction to circumstances and developments in response to popular demand as reflected by the electorate.

Abandonment of the tariff

The tariff was long marked as a bete noir by the honorable economists who had the good of the Nation at heart. Oddly enough, as these economists aided and greeted with perfervid applause the proliferation of domestic economic controls and interferences, they were loud in decrying the tariff as an interference with the free market. More naturally they should have embraced the tariff as blood brother. It represented regulation of market forces of foreign origin even as the new domestic legislation regulated domestic market forces. It could have operated as a counterforce against the destructive effects on competitiveness embodied in the other measures.

It is indeed doubtful that the American system of mass production, dependent as it was and is on mass consumption; that is, high and absorptive wage earnings, could have made its way had it not been for the tariff and restrictive immigration. It might not have got itself off the ground.

Be that as it may, the tariff came under the curse of the economic thinkers armed with their immutable doctrines; and its was marked for mayhem and eventual slaughter. This eventuality is almost upon us and the abattoir will soon have seen its best days.

As the tariff fades from the scene, what is the outlook of domestic industry, agriculture and labor? A few industries enjoy direct subsidies, as already noted. A few more enjoy restrictive limitations on imports, such as cotton textiles, petroleum, sugar, dairy and meat products. A handful, as also already noted, enjoy a virtual monopoly of the domestic market, in some cases in addition to a subsidy, the merchant marine representing the extreme exception.

With few other exceptions the remaining industries and agricultural crops are dependent for insulation against low foreign costs upon what is left or will be left of the tariff. The average level is now some 11 percent against 50 percent 35 years ago. After the Kennedy round has taken full effect it will decline to some 7 percent. Compare this with the 100-percent differential found in labor costs in the domestic and foreign maritime industries. Approximately 38 percent of our total imports are free of any duty. Some of the latter items are now encountering rising import competition, but are virtually defenseless under present circumstances.

The greater part of our industries are without a defense against import competition other than what is offered by the low tariff rates. The Trade Expansion Act of 1962 provided for adjustment assistance but, as already noted, exacted conditions that turned it into a sterile gesture.

Yet, as previously noted, the competitive disparity between this country and foreign countries has not disappeared and may be expected to endure indefinitely. (1) Our wage levels move constantly upward, and (2) while foreign wages have been rising proportionately more rapidly, a lower percentage increase here costs more in dollars and cents than a higher percentage increase abroad. An increase of 5 percent here will equal one of 25 to 30 percent in Japan and one of 12½ to 20 percent in most European countries. The free play of economic forces that would make a realistic objective of free trade has been dissipated or suppressed by countervailing measures more restrictive than the tariff ever aspired to be. The wage-cost gap may therefore be expected to endure.

What, then, is the outlook?

The supporters of yet freer trade may be expected to persist in prescribing for the economy as if it were what they think it should be, not what it is and undoubtedly will continue to be. They will be driven by their irremissible umbilical attachment to a free market that is as irrecoverable as the vanishing prairie.

The outlook is unobstructed so far as continuance of governmental controls, interferences and regulation of the domestic economy is concerned. Domestic industries will continue to be burdened by cost-increasing effects produced by legislative enactments, which is to say, burdens imposed by the public for ends that under the flammable solicitude of the politicians for votes will come to be regarded as worthy of support by the majority of the electorate; or vice versa, where the initiative lies with the voters themselves. There will therefore be no remission of the handicap under which many industries will labor in competition with imports.

The problem will present itself in starker and more stern outlines than in the past because of the rapid technological advancement of other countries and the relentless tariff reductions in the offing under the Kennedy round. The competitive handicap will no doubt continue as now to be hidden by official statistical reports that will conceal the unwelcome reality of trade deficits.

Tariff substitute

Since the problem will remain and may be expected to intensify, it follows that regulation of imports must become a pressing concern to those who prescribe for the national economy. If a reversal of the low-tariff policy is not realistically expectable, as it is not because of the visceral attachment to it, a palatable substitute must be found.

Beside the debilitating effect of the successive tariff reductions on the usefulness of the tariff as an offset against lower foreign costs, the tariff at best has come in recent years to suffer from a structural limitation or defect as imports have come in rising volume from Far Eastern sources. Because of the most-favored-nation clause, tariff rates must be the same toward all countries not especially excepted (such as the Communist countries). A tariff high enough to brake imports from Japan or Hong Kong, for example, would, in many instances, exclude imports from European countries, which in many instances have higher costs. On the other hand tariff rates custom made to fit the European competitive level would award a competitive advantage to the Far Eastern countries, possibly delivering the predominant share of our import market to them.

Market sharing as a substitute for the tariff

The economic interdependence of the world, and especially the plea of the developing nations for markets abroad, has accentuated the concept of market sharing as a substitute device for the tariff. The United Nations Conference on Trade and Development (UNCTAD) has brought the plight of the less developed countries (LDC's) to the attention of the leading industrial countries of the world. The United States is in the forefront of the latter group, and as such will be eyed with special solicitude by the less developed countries.

This country is the largest single market in the world and no doubt one of the most attractive to foreign exporters. It would be possible to assure not only the LCD countries but all other countries a reasonable share of our market under conditions that would not expose our industries to the irremediable competitive defeat that inheres in our higher costs in the absence of the insulation that was previously provided by the tariff. To be most equitable and to avoid delivery of the market into the hands of the lowest wage countries, a percentage share of the market would be opened to imports. To prevent freezing the import volume at the level of the time of instituting the sharing accommodation, imports could be assured proportionate participation in the domestic market's expansion.

The virtues of such a disposition of the import problem have already impressed themselves upon the competitive scene in a variety of ways. In contrast with absolute import quotas which may be oppressive to trade expansion, especially if they are highly restrictive and absolute, the market sharing principle represents a liberal approach without courting the defects of the tariff, which is, of course, at its worst when the rates have been reduced to the level of sproutless stumpage, as they soon will be.

What share of the market should be allotted to imports would depend on the attained level of imports, the rapidity of the rising level, the prospective trend, and the injury already caused or threatened by them. Usually a historic or representative level is proposed, such as the average of the 3 or 5 preceding years. If imports have risen rapidly and must be contained lest they do irreparable damage the attained level might be rolled back. This would ordinarily be accomplished by setting the limit at the average level of the 3 preceding years.

Provision would then be made for the participation of imports in the rising consumption of the product in this country. The volume so determined would then simply be added to the total allowable imports during the following year.

If a given industry should produce a diversity of closely related products, some of which might be imported in greater volume than others, as is often the case, it might be necessary to place a limit on imports by categories. Again, if a number of countries have competed in the market, country shares might be allotted among the different countries. This would ordinarily be accomplished by calculating the historical share supplied by each country.

The tariff quota

In place of market sharing as here described a percentage share of the market or a specified volume of imports would be permitted at a low rate of duty or duty free, while a duty high enough to produce a braking effect would be applied to imports above that level. The low-duty or duty-free volume might be made flexible, again by relating total imports as a percentage to domestic consumption year after year.

This device would, however, suffer from the same defect as the tariff itself. Low-cost countries might be able to scale the higher tariff barrier while the higher cost countries would find themselves limited to the low-tariff or duty-free quota. The advantage of the device would lie in the relative freedom from control. The principle of first-come, first-in would reduce the administrative burden. To reduce the rush that would result from efforts to come in under the low-level, or duty-free quota, the year might be divided into quarterly periods, and, unless the product were seasonal, the annual quota would be divided into four equal parts, not to be exceeded in any one quarter.

The trigger quota

A device that holds some promise of relative administrative simplicity is the trigger quota. It provides a ceiling for imports by quantity or value or both without interference. Only if the ceiling is breached would the restriction on further imports be invoked.

In many instances the existence of the ceiling, subject to an annual adjustment to market consumption, might of itself act as a limitation.

Foreign exporters, not wishing to have the quota come into effect might maintain their exports below the trigger point. This possibility would depend on the nature of the product and the source of supply. A relatively homogeneous product exported by a relatively small number of countries would offer the most probable inducement to avoid triggering the quota.

Experience with the meat quota indicates that it may not be necessary to invoke a quota based on a trigger point. The product (meat) lends itself as an export to more ready control than some other products which may be much more varied and which may be supplied by a greater number of countries.

Conclusion

The notion that adjustment assistance can be relied upon to tide American industry over the competitive gulf that divides many American industries from their foreign counterparts borders on the naive. The coal miners' experience should provide a clearer view of the magnitude of the problem. While not all instances of competitive incapacity in facing imports are of a comparable magnitude, it is only necessary to take note of the serious labor displacement involved in nothing more than a 10-percent cost reduction.

Concealed in the premises is the fact that many more workers than those employed in the last stage of manufacture are involved. What ordinarily goes by the name of an "industry" is really only a part of the whole production process. We see only a part of the iceberg. For example, what is called the steel industry employs slightly less than 25 percent of all the workers occupied at one stage or another in the processes that end in finished steel. This includes iron ore and coal mining, transportation, warehousing, production of the many materials used in the processes, a part of the builders of the plant and equipment, etc. In 1963 the payroll of the steel rolling and finishing plants was 22.1 percent of the value of the final product. Employment of 570,000 in the industry (Department of Commerce statistics) may therefore be regarded as in the magnitude of something less than 25 percent of the total employment dedicated to the production of steel. This grand total would therefore be in the magnitude of something over 2 million workers.

Thus a 10-percent cost reduction would call for displacement of about 200,000 workers. Should this reduction be accomplished in what is called the steel industry the number of workers would be cut by about 40 percent. This would still fall far below the decimation of coal miners, which was over 70 percent. On the other hand, the reduction of 10 percent in cost might fall short of the reduction needed to become competitive. For each further percentage point reduction in the cost, dismissal of some 20,000 additional steelworkers would be required.

It must be clear that the proposal to accomplish the retraining and relocation of these displaced workers through adjustment assistance would be very costly and extremely slow. If only $2,000 per year had been spent in readjusting the displaced coal miners a bill of some $680 million would have been incurred. At the same rate 200,000 displaced steelworkers would add another $400 million. That the shift could not be accomplished within 1 year goes without saying.

Only if it should be thought that the reduction in cost of the product would lead to higher consumption and therefore a reabsorption of the displaced workers could an approach such as the adjustment assistance provisions of the Trade Expansion Act of 1962 be regarded as a satisfactory remedy. Only a quite elastic consumer demand for the product would bring about such a result. It would not be true of the necessities because of the inelasticity of the demand for them. A cost reduction would not swell consumption significantly. Also, if the cost reduction were in response to the lower price of imports the reduction would do well if it succeeded in holding the current share of the market even if the demand for the product were elastic. It would merely prevent imports from capturing an ever-increasing share.

Aside from actual market penetration the damage caused by low-cost imports resides in the resulting uncertainty and loss of confidence induced and the consequent inability to plan far into the future. Such a blighting effect is particularly pernicious if the domestic industry is a producer of consumer goods for which the demand is elastic. A growth industry may be prevented from creating a great market, such as in a field of new consumer products. The great employment potential may not be realized because imports skim the cream and destroy the incentive.

Allotment of a share of the market to imports eliminates this facet of import blight or damage. Forward planning of domestic production could proceed with confidence that the market would not be swamped by imports. In some instances total removal of the duty might be countenanced without producing the misgivings that dampen plans to expand.

Statement of John W. Hight, Executive Director, Committee for a National Trade Policy

U.S. foreign trade policy since 1934 has on the whole served the Nation well. It has been the basis for U.S. initiatives toward lowering barriers to trade on a broad multilateral basis. The lowering of trade barriers has not only contributed greatly to trade expansion; it has also stimulated a more efficient utilization of our resources at home and greater efforts to expand markets for American goods abroad. There is one basic fault in U.S. trade legislation and in the trade policy based on this legislation; namely, the legislation and the policy, in some years more than others, lack a coherent, dependable consistency. Such coherence and consistency would more accurately reflect the impressive capabilities of the American economy than the backing and filling, and the recurrent threats of protectionism, which remain a major characteristic of U.S. performance in this policy area.

Future trade policy

The major point our committee wishes to make in its contribution to this compendium is to emphasize the need, the economic advantages, and both the economic and political feasibility, of a U.S. commitment to the principles of freer trade and to a program designed to achieve complete freedom of international trade as soon as possible on the part of the world's economically advanced countries and regional instrumentalities. This trade policy goal should be sought within the terms of a negotiated timetable, providing for appropriate differences in phasing to reflect the capabilities of specific countries and specific types of production.

Setting our sights on this objective and identifying ourselves unmistakably with its implementation is the route of maximum effectiveness in overcoming the many obstacles that made the achievements of the Kennedy round considerably less than the goals considered a few short years ago to be essential (and which are still essential) to our national interest. A clear national commitment to this long-term objective stands the best chance of overcoming the short-term impediments to continuing, genuine progress in liberalizing world trade.

Pointing the way to this long-range goal in this vital area of both foreign and domestic policy is of great importance to all sectors of our highly productive economy, and not just in terms of their stake in export expansion. As entrepreneurs in manufacturing, mining, and agriculture make decisions that must continually be made with respect to investment, pricing, sales promotion, design, and all the other decisions so essential to effective business planning, it is important that they take appropriate account of their government's long-term policy with respect to trade with the rest of the world. A policy tending toward trade restriction, or indicating a posture of even temporary uncertainty regarding future policy, will tend to encourage efforts to seek restrictions on trade and to rely on such restrictions, present or hoped for, instead of pursuing efforts to generate the best kinds of job opportunities and the highest levels of economic performance of which a free enterprise economy is capable. Those who do not seek trade restrictions will themselves lack a clear, dependable trade-policy premise to which to adapt their operations. Unsound use of resources would in many cases follow.

Pointing the way dependably to these new goals of freer world trade is also essential at this time to the scores of countries with which we trade, and whose economic strength and cooperation are essential to the achievement of our highest international objectives. The message from America to nations at all levels of economic development should not reflect uncertainty regarding the future course of American policy, and it should certainly not indicate any possibility of this country returning to points of no return we wisely decided to pass so long ago.

The economically advanced countries should know where we stand and the direction we intend to take, as they proceed with their own policy planning, in some cases as part of regional free trade communities. The clear determination of the United States to continue to progress toward freer trade, and even to accelerate progress in this direction, will tend to influence private and governmental decisions in those countries in ways that accelerate sound economic growth, raise living standards, and expand markets for producers everywhere, including our own. Convincing evidence of our own determination to cooperate in reducing artificial barriers to world trade is the policy stance best calculated to stimulate other economically advanced nations and regional instrumentalities to liberalize foreign access to their own internal markets. And, working together in this way, the economically advanced economies can proceed most effectively to carry their full and fair share of the needed efforts to speed development in the developing countries—both through foreign aid programs and through expanding the access of goods of all kinds from the less developed countries to the world's best markets.

In declaring our readiness to pursue such a policy without delay in the years to come, we shall be reaffirming, in convincing action, to the world's less developed countries and the millions of people who live there that there is a meaningful place for them in the world economy currently dominated by advanced nations of the northern hemisphere. By doing so, we shall also be serving our own enlightened self-interest.

It should be emphasized that trade policy initiatives are not the sole responsibility of the United States. We should, of course, seek the cooperation of other governments in implementing initiatives in which we have played a leadership role. We should also invite other governments to step forward with their own trade policy initiatives and to seek the cooperation of the United States in exploring new frontiers of freer world trade. Inviting other governments to assert themselves in this way, we should promise them the earnest participation of the U.S. Government in exploring ways and means for successful international cooperation in this vital field.

The Federal Government should pledge to the country its earnest efforts to help in the most constructive way to prepare the American economy both to adjust successfully to the higher degrees of international competition that lie just ahead and to capitalize fully on the higher degrees of export opportunity which are the other side of the same coin. The Federal Government should work closely with State and local governments to insure a domestic policy framework within which the American economy may achieve the pace of economic growth and adjustment to change so necessary to backstop the proposed initiatives to remove artificial restraints on world commerce.

The private sectors of the American economy should reassess their operations across the board to make sure that everything possible is being done to secure for themselves a durable and highly productive place in an increasingly interdependent world economy—one that is moving resolutely toward freedom of international trade. All State and local governments should also undertake a fresh look at their own policies and practices affecting the prospects for durable competitive strength in this kind of world. The Federal Government should reassess its own policies with this objective in mind, and this includes devising ways in which the Federal Government can be helpful to State and local governments, and to the private sectors of the economy, as they prepare for the part they must play in building a brighter future for the American people, and in insuring the successful participation of their country in helping to build a brighter future for peoples throughout the world.

Trade policy should thus be calculated in both foreign economic and domestic economic policy terms. Such a multidimensional trade policy consequently transcends the responsibilities of the Senate Finance Committee and House Ways and Means Committee. It involves not only trade negotiation, escape-clauses, adjustment assistance provisions, antidumping regulations, and other aspects of foreign-trade policy in the usual sense. It also involves adequate government programs (at Federal, State, and local government levels) dealing with effective adjustment to the challenges of change from any quarter. And it also involves government articulation of these new trade-policy objectives, and of how the American economy can most successfully capitalize on the trade opportunities to which such a policy contributes, and most successfully adapt itself to the problems of foreign competition that are certain to follow.

Thus, in our view, the Congress would be acting most constructively in this field if it assumed sustained and accelerated progress toward free trade and devoted its efforts to ways and means of preparing this country to maximize its net gains from this kind of trade policy.

Comments on specific issues

The President today lacks adequate negotiating authority with which to cope effectively with the vast array of tariffs and nontariff barriers that still clutter the channels of world trade. He lacked that authority even after enactment of the Trade Expansion Act of 1962. The major deficiency in the authority delegated to him at that time was the lack of clear authority to negotiate in the field of nontariff barriers. Since the most effective way to negotiate regarding nontariff barriers is to deal with these barriers across the board and in conjunction with negotiations on tariffs as such—searching for a fair and far-reaching balance of concessions—it is essential that congressional delegation of authority to the President should be in the broadest possible terms, designed to give him maximum flexibility. On the other hand, it is essential that the President provide Congress with an annual assessment of the Nation's foreign-trade position. Hearings might be held on this report.

We believe a sound escape clause is an essential part of our trade legislation. We regard the existing escape clause as adequate. The adjustment assistance criteria, however, should be liberalized, and attention should be given, in this regard, to the possible removal of the role of the trade concession as one of the criteria. This criterion might be replaced by an assumption that U.S. foreign economic policy in one way or another has contributed significantly to the export capabilities of foreign countries and consequently to any U.S. import expansion that may occur.

A sound national-security provision is also necessary. However, we do not regard the present provision as sound; in fact, the national-security clause of U.S. trade legislation has never been soundly conceived. Its basic defect is its prescription of import controls as the only congressional mandate to the Executive when imports are found to impair the mobilization base. A sound national-security clause should include a congressional mandate that the President find sound, constructive answers to whatever problems are revealed and authorizing him to resort to such import restrictions as may be necessary in the national interest to supplement such remedies. Import restrictions should be a last resort and such Government costs as are incurred in the domestic efforts should be clearly recognized as a form of subsidization which, as adjustment proceeds, could be phased out.

The Tariff Commission's role in escape-clause and adjustment assistance proceedings should be retained in its present form. We recommend, however, that the Commission be required to probe more deeply into the steps which the petitioning industry, firm, or workers have taken to improve their positions. Such inquiry is essential to determining whether and to what extent Government assistance is warranted in a free enterprise system. The Tariff Commission should also inquire into the adequacy of Government policies affecting the ability of the petitioners to adjust to the rising competition which sparked the particular proceeding.

Customs administration should be made as simple as possible and should in no way impose unreasonable and inequitable burdens on U.S. importers. U.S. imports should continue to be recorded on an f.o.b. basis. We have no objection to the calculation of U.S. imports on a c.i.f. basis, but the data for this purpose should not be acquired in a way which imposes unreasonable burdens (for results not worth the cost) on those engaged in international trade. Ad valorem import duties should be entirely on foreign f.o.b. valuations; the "American selling price" method should be discontinued and the final list established by the customs reform legislation of 1956 should be eliminated.

Sound and effective antidumping regulations are essential, but these should in no way impose unfair penalties on those engaged in international trade. A negotiated antidumping code is of basic importance. We support the code negotiated in the Kennedy round. Attention should be given to the negotiation of codes dealing with other business practices.

We believe in the freest possible movement of capital in international transactions and as an integral part of a free-trade policy. To the extent that the United States departs from progress toward free trade, to that extent there will be an even greater incentive for U.S. capital to go abroad in order to win or retain foreign markets. Inevitably such a turn of events would lead to strong pressures for Government regulation of U.S. capital outflow. This would, if successful, be most unfortunate for the growth of the U.S. economy.

Every effort should be made by the United States, in cooperation with other industrialized countries, to liberalize access to these markets for goods of all kinds from the less developed countries. Tariff preferences as such are a doubtful method of achieving this goal. They are in economic terms a misguided and misleading device, and in political terms impractical unless an interim part of a broadly based program aimed at complete free trade by the industrialized countries. In our view, such a broadly based initiative, with all the domestic economic concomitants, is much better calculated to facilitate and stimulate the exports of developing countries than any such gimmick as tariff preferences.

Commodity agreements are acceptable as a device for helping to stabilize the export earnings of the developing countries, but they should be regarded as only a measure of last resort—a temporary instrument that may be needed in certain emergency situations, to be used in conjunction with other, more constructive programs dealing with the problems besetting the producing countries.

In this statement, we have proposed a free-trade initiative. The technical form this should take under the rules of the General Agreement on Tariffs and Trade is a free-trade area. U.S. efforts toward negotiation of free trade should be from the very outset on the broadest possible multilateral basis—directed at all the industrialized areas of the free world and providing special prerogatives and responsibilities for the less-developed countries. It is conceivable that circumstances may require a more restricted free-trade area than one embracing all of the industralized areas of the free world—for example, the North Atlantic area or a free-trade area involving only North America. But such truncated free-trade areas should be seen as inferior alternatives of only last resort.

We strongly endorse the need for strengthening the General Agreement on Tariffs and Trade, and for pursuing the objectives enunciated in this paper in accordance with the basic principles of that covenant.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance, New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: This is in response to your letter of September 27 and Senator Long's invitation to submit written statements on the legislative oversight in the trade agreements structure.

Enclosed are: (1) The national chamber's most recent statement on aspects of U.S. foreign trade policy, approved by the board of directors in June 1967. A one-page summary is contained in the press release cover to the recommendations. (2) The published study of the national chamber on "The Most-Favored-Nation Principle—An Appraisal of Its Current Validity in World Trade." A summary of findings of this study is contained on pages 33–36 of this booklet. (3) "Policy Declarations on World Affairs." The chamber's foreign trade policies begin on page 8. We submit these documents because they relate especially to items 10, 13, and 15 of Senator Long's press release of September 27.

We hope that these chamber documents will be useful additions to the study being undertaken by the Senate Finance Committee.

With kind regards,

Sincerely,

DON A. GOODALL,
General Manager Legislative Action.

NATIONAL CHAMBER CALLS FOR NEW FLEXIBILITY TO "MOST-FAVORED-NATION" WORLD TRADE PRINCIPLE

WASHINGTON, July 9.—The Chamber of Commerce of the United States today called for continued adherence to the "most-favored-nation" principle in world trade, but said there should be added the element of flexibility to permit limited departures from the principle "in the interest of developing more world trade."

The position was outlined in a major statement on post-Kennedy round U.S. foreign trade policy approved by the national chamber board of directors.

Specifically, the chamber statement said that "in certain circumstances trade may be promoted more effectively through limited departures such as temporary tariff preferences sanctioned in connection with the establishment of common markets . . . or extended by industrialized nations to the exports of developing countries."

The statement endorsed expansion of developing countries' exports, careful consideration of qualified extension of trade preferences by the industrialized countries to the exports of developing nations, and the integration of national economies into nonprotectionist regional markets.

At the same time, the chamber called for increased protection and stability for private foreign investment in the less-developed countries.

The statement urged a 2-year extension of the unused "residual" (post-Kennedy round) authority of the 1962 Trade Expansion Act, without additional authority to further reduce tariffs. It endorsed continuation of the escape clause provision of the present law, and liberalization of trade adjustment assistance to firms injured by imports. The statement recommended a high-level joint business-government study of long-range U.S. foreign trade policy.

The chamber board also approved a study to identify and propose ways to eliminate nontariff barriers to trade (special taxes, quotas, licenses, and other restrictions on imports).

Foreign Trade Policy Statement, Chamber of Commerce of the United States

1. PROSPECTIVE FOREIGN TRADE POLICY LEGISLATION

Principles

That adherence to the most-favored-nation principle continue to be the basic tenet of international trading relationships, allowing support of the concept of regional economic integration, consistent with continued efforts to develop and expand the world economy; but that adherence to the most-favored-nation principle of nondiscrimination be flexible to the extent that departures from the principle may be permitted in the interest of developing more world trade.

Proposals

1. That residual authority of the Trade Expansion Act be extended for a period of 2 years with the extension to include the following essential provisions:

(*a*) That no major round of tariff negotiations be undertaken during this period and that prior to additional negotiating authority there shall occur an interim study of the results of the Kennedy round negotiations, an examination of appropriate negotiating techniques, and an assessment of remaining trade barriers—both tariff and nontariff.

(*b*) That Congress authorize appointment of a high-level joint U.S. Government-Business Commission to study long-range U.S. foreign trade policy in an international context.

(*c*) Continue the trade adjustment assistance and escape clause provisions of the Trade Expansion Act, liberalizing the criteria for trade adjustment assistance to firms and workers to make them consistent with similar authority under the Canada-United States. Automotive Products Trade Act of 1965.

2. That these recommendations be adopted with the greatest urgency possible so that work may go forward by all appropriate bodies in ascertaining the most desirable foreign trade policy for the United States in an ever-increasingly interdependent world economy.

2. TRADE WITH LESS DEVELOPED COUNTRIES

While it continues to be advisable to advance most-favored-nation tariff treatment as a general principle of U.S. foreign trade policy, in certain circumstances trade may be promoted more effectively through limited departures such as temporary tariff preferences sanctioned in connection with the establishment of common markets or other economic grouping of states or extended by industrialized nations to the exports of developing countries.

As a means of advancing trade with the developing countries and thereby promoting their economic development, the national chamber favors:

1. The encouragement, by all reasonable means, of the expansion of developing countries' exports to enable them to take their place among the trading nations of the world.

2. The integration of national economies, through arrangements which will promote trade both among the participating nations and with other nations as it becomes economically advantageous. These arrangements should avoid perpetuating protection of noncompetitive enterprises and should seek the maximum degree of unrestricted trade.

3. Careful consideration and analysis of proposals for the extension of temporary tariff preferences to exports of developing countries. Such extension by the United States should be in concert with other industrialized nations, whereby such nations would share in granting preferences on a basis of equality to developing countries. Such preferences should be periodically reviewed to determine their continuance. These preferences would be most effective in collaboration with increased foreign private investment. The preferences should be in connection with understandings and agreements, participated in by the developing countries to provide protection and stability for such investment under principles of international law. These understandings and agreements should include the usual stipulations as to performance of contractual obligations relating to foreign investment.

3. NONTARIFF BARRIERS

Calls for the "greatest possible relaxation of discriminatory and restrictive trade and investment practices which reduce the flow of goods and services and the volume of international payments, and which obstruct production, distribution, and economic growth, such as: exchange controls, quotas, preferential or discriminatory treatment, monopolies, subsidies, bilateral trade and exchange agreements, or other devices. . . ." This policy also states that the chamber "supports a trade agreements program which provides the Government with adequate authority exercised through the proper agencies for negotiation and administration to make effective agreements for the selective adjustment of tariffs and the orderly and gradual reduction of other barriers to world trade. Such adjustments should be accompanied by comparable or appropriate tariff reductions and the elimination of trade restrictions, whether in the form of quotas, exchange controls, or otherwise, on the part of foreign nations. . . ."

Nontariff barriers are frequently more significant impediments to trade than are tariffs; and as tariffs become less restrictive, nontariff barriers tend to be greater restraints on trade. These restraints are thorny and difficult to negotiate.

Nontariff barriers, for the most part, were left intact at the conclusion of the Kennedy round. They must not be long neglected.

No meaningful or definitive effort appears to have been made in or out of Government to develop the required information.

It is recommended, therefore, that the national chamber, in cooperation with its organization and business members, undertake immediately a study to identify catalogue, and propose effective ways to eliminate nontariff barriers which inhibit the access of goods to foreign markets and which significantly otherwise impair the healthy expansion of trade.

[Excerpts from the Chamber of Commerce booklet Policy Declarations on World Affairs]

International Commercial Policy—Foreign Trade and Investment Principles and Objectives

A sound and expanding international commerce is essential to the continued expansion of the economy of the United States and to the achievement of greater prosperity and strength of all nations. Mutually beneficial trade raises standards of living by providing people with more goods at less real cost, by raising productivity, and by increasing economic efficiency through competition.

The United States has a vital stake in promoting measures to achieve the greatest possible relaxation of discriminatory and restrictive trade and investment practices which reduce the flow of goods and services and the volume of international payments, and which obstruct production, distribution, and economic growth, such as: exchange controls, quotas, preferential or discriminatory treatment, monopolies, subsidies, bilateral trade and exchange agreements, or other devices.

The U.S. Government should promote these goals, consistent with the national interest which requires the maintenance of a healthy, competitive enterprise economy at home.

FOREIGN TRADE POLICY

The United States should pursue a constructive and realistic tariff policy which seeks to encourage a high level of international trade and investment, while affording reasonable protection for U.S. industry and agriculture against destructive or unfair competition from abroad.

To this end, the chamber supports a trade agreements program which provides the Government with adequate authority, exercised through the proper agencies for negotiation and administration, to make effective agreements for the selective adjustment of tariffs and the orderly and gradual reduction of other barriers to world trade. Such adjustments should be accompanied by comparable or appropriate tariff reductions and the elimination of trade restrictions, whether in the form of quotas, exchange controls, or otherwise, on the part of foreign nations. There should be general agreement among nations on acceptable and binding definitions of unfair practices in international trade.

Such trade agreements legislation should provide adequate safeguards for interested parties to be heard promptly on contemplated and publicly announced negotiations. Moverover, this legislation should provide an escape clause, effectively administered, permitting timely modification or withdrawal of concessions in order to deal with unforeseen developments seriously injurious to domestic producers. The determination of injury due to imports should be judged in the light of the national interest.

TRADE ADJUSTMENT ASSISTANCE

The authority to negotiate tariff concessions to meet the problems of maintaining U.S. export markets in the face of growing international competition may result in injury to domestic industries, firms, and workers from the reduction or elimination of duties.

Any steps, taken in the public interest, to expand escape clause and related provisions for assistance to such industries and firms should not take the form of cash subsidies, should be subject to specified terminal dates, and the eligibility criteria therefor should be carefully defined.

Any aid to displaced workers should be administered and financed by the States through their State unemployment compensation systems, with eligibility and the benefit amounts and durations being provided in the State system.

RELATIONSHIP OF DOMESTIC AND FOREIGN ECONOMIC POLICIES

To assure maximum economic health and growth, the United States requires a growing export and import trade. This trade depends, among other things, upon strengthening the competitive position of U.S. products.

Domestic matters—Government fiscal and farm price policies and other policies and decisions by Government, business, and labor affecting prices, taxes, wages, costs, and productive efficiency, for example—have a strong influence on the competitive position of U.S. products in foreign markets. The cost-increasing effects of price supports and high taxes limit growth potential and affect competitive pricing in world markets. It is essential that in formulating domestic policy the ultimate impact on the U.S. trade and payments position be considered.

REGIONAL TRADE AREAS

The chamber welcomes the avowed intent of regional trade groupings in furthering the integration of economies and the expansion of world trade.

It recommends, however, effort to prevent divisive regional groupings, and emphasizes that regional arrangements entered into should be consistent with continued efforts to develop and expand the world economy, and should not preclude broader multilateral arrangements.

To these ends, the harmonizing role of the General Agreement on Tariffs and Trade should be strengthened to prevent harmful restrictions on trade and investment involving "outside" countries, which includes the United States.

COMMUNIST BLOC TRADE

The United States should take all suitable measures, including contingency planning, through its own foreign economic policy and in concert with other free world nations, to minimize disruption by the Communist bloc of the normal flow of trade and its use of trade as a political weapon, particularly with respect to the developing free world economies.

TRADE WITH THE U.S.S.R. AND ITS EUROPEAN SATELLITES

With respect to export trade with the U.S.S.R. and its European satellites, the U.S. Government should adopt programs, consistent with the national interest, which have the following objectives:

1. In coordination with other free world countries, to improve agreed and enforceable trade policies and measures which will effectively inhibit and prevent the buildup of Communist warmaking potential. These policies and measures should prevent sales that increase the capacity of the Soviet bloc to disrupt free world economic and military security, or provide long-term credits.
2. To undertake a prompt reexamination and reevaluation of the present system of export controls with the objective of strengthening some controls and of eliminating others which are not necessary for the security of the United States and which result in discriminations harmful to its competitive position.

CUSTOMS ADMINISTRATION

The chamber urges that continued attention be given by the responsible agencies of the Government to the further simplification and modernization of the administrative provisions of U.S. tariff laws.

Beyond the domestic revision that may be necessary, the chamber recommends such international action as is required to modernize, simplify, and standardize customs, consular, and other trade documentation and formalities.

ANTIDUMPING MEASURES

The Antidumping Act is intended to curb the injurious dumping of foreign goods in U.S. markets. There is need for more clearly defining the term "dumping" as an unfair trading practice, and in this context the meaning of "fair value" and "injury." Every effort should be made to establish uniform antidumping laws and regulations among trading nations. Care should be taken, however, not to amend the U.S. law in a manner which would subject it to unduly protectionist interpretation or implementation which would impair the healthy expansion of trade or invite damaging retaliation by other countries.

EXPORT TRADE ACT

The Export Trade Act of 1918 permitting American exporters to form export associations in order to assure them of an adequate competitive status in the markets of the world with combinations of foreign competitors should be kept in effect.

FOREIGN TRADE ZONES

The chamber approves of the purpose of the Foreign Trade Zones Act, which is to promote the foreign commerce, shipping, and related activities of the United States, while fully safeguarding the enforcement of our customs and other laws.

The laws and regulations under which the customs bonded warehouse system and the foreign trade zones are being administered should be reviewed to determine if foreign trade zones and existing suitably located and designated customs bonded warehouses may be enabled to further expand foreign commerce. The Tariff Act and the Foreign Trade Zones Act should be amended to extend the benefits of foreign trade zones to suitably located and designated customs bonded warehouses.

[Excerpts from the Chamber of Commerce booklet, "The Most-Favored-Nation Principle"]

POLICY FOR THE FUTURE

The United States finds itself (as do certain other countries) at a relative disadvantage in many important export markets of the world because its competitors enjoy new (and increasing until the schedule is accomplished) preferences that have been conceded as exceptions to application of most-favored-nation treatment. The immediate benefits of these exceptions (which consist of lower tariff rates than must be paid by others) accrue to the preferred countries and do not become avialable unconditionally to those outside the preference areas. They must be sought by some other means, if they can be obtained at all. Hence the question is basically whether the unconditional form of the MFN clause may be expected to be as beneficial to the United States in the future as would be conditional form, which provides more of a direct bargaining mechanism for obtaining nondiscriminatory treatment in various world markets or for minimizing the extent of discrimination that exists and may expand.

One should certainly consider that the benefit from exceptions to the principle of nondiscrimination should be such as to bring about possibly a greater overall good than would be available without the exceptions. For example, the politico-military advantages of economic growth and closer interdependence, devolving from the expanded markets of customs unions and free trade areas, have a price, that being enough advantage to those participating in the preferred area (and thereby surrendering to some degree control over their own policies) to make it worthwhile to them. There is also a price to those outside the preference units, that being the surrender of competitive equality in several areas. Offsetting this "price" is the advantage, to those inside and outside the preference area, of the economic growth effects of integration. To those outside, the result can be a smaller share of a foreign market, but a larger absolute market (see sec. VII and chart VI).

Customs unions and free trade areas have received general approbation through the GATT; and they have received solid support from the U.S. public and the U.S. Government. What would it mean to the whole fabric of economic relations if the United States, the world's largest trading nation, were now to say that it is no longer willing to give up competitive equality in certain areas in order to encourage, and perhaps even make possible, international integration and cooperation on a wider scale? What would it mean if the United States were now to insist on competitive equality in geographic markets as they existed at some prior date, and were to grant or withhold advantages in the home market in order to achieve such competitive equality abroad? Is there some other way by which the net "price" to the United States and to other countries of lost relative competitive opportunities can be minimized? Is there any basis for concluding that a return to the conditional method of achieving nondiscrimination would in fact do so, and would it be worth the price of other changes that would entrain from such a move? Is there some possibility that the United States, itself, may use the MFN exception feature to its own advantage by joining a free trade area or customs union?

So far, the unconditional principle has withstood a number of economic and political changes but there is opposition to, or at least question in several quarters as to, its continued validity. This is evidenced by the following:

If it should turn out that some major trading unit of the free world should be unwilling or unable to undertake trade liberalization that is substantially equal to what is generally desired, the rest of the free world nations should consider how they could nevertheless enhance their continued economic progress through the benefits of expanded trade, not excluding from consideration a departure from the unconditional most-favored-nation principle, valuable as that principle is. (CED, "Trade Negotiations for a Better Free World Economy," May 1964, p. 41.)

If the Kennedy round does not come out reasonably well for the Americans, the long period of U.S. adherence to the principle of nondiscrimination as the basis of trade policy, and with it the GATT system, is likely to come to a perhaps rather abrupt end. ("Can the G.A.T.T. System Survive?" by Michael L. Hoffman, Lloyd's Bank Review, London, July 1964, p. 5.)

Obviously, if the other countries are willing to make considerable concessions and the Common Market is not, this country cannot be expected to treat both groups alike, as it now undertakes to do under the unconditional MFN principle * * * (Editorial in New York Journal of Commerce, New York, June 8, 1964.)

Some observers feel that the MFN has outlived its usefulness and should be superseded by a multicolumn tariff based squarely on country of origin. While enforcement could create problems, such a tariff structure would allow more control over which country would benefit from U.S. tariff concessions granted during the Kennedy round and future international trade negotiations. (Commerce and Industry Association of New York World Trade Bulletin, vol. XIX, No. 25, p. 5, June 21, 1965.)

Our present unconditional most-favored-nation policy needs to be studied thoroughly in view of the movement in various parts of the world toward regional common markets or free trade areas, a movement we consider desirable. It may be found that the generalization of U.S. tariff concessions to all countries should not be automatic, particularly in such situations as that existing between the European Common Market and the associated African countries, or in other relationships of this kind, as they affect producers of similar commodities such as those in Latin America. (View of Senator Jacob K. Javits, in Report of the Joint Economic Committee No. 965, 88th Cong., second sess., p. 24.)

Alternative opportunities

In view of recent developments in the international economy, some of which could not be anticipated when the United States adopted an unconditional MFN policy; and in view of the widespread erosion in the competitive economic benefits that were expected under a general policy of nondiscrimination, what may the United States do to improve its situation in the international trading world? Four choices suggest themselves:

1. Continue the present unconditional MFN policy because of its economic benefits and its contribution to more harmonious international relations but match it with a vigorous effort to reduce the economic cost of discriminatory preferences. This, in fact, is the rationale of the Kennedy round of GATT negotiations.
2. Withdraw unconditional MFN treatment as now employed and revert to a policy of conditional applicability.
3. Make use of exceptions permitted by GATT and negotiate toward a free trade area with one or more of our major trading partners.
4. Attempt to amend the GATT definition of a "free trade area" in such a way as to permit new preferences intended to serve as a lever to force further negotiation toward reduction of the level of discrimination by customs unions or other free trade areas.

1. CONTINUE THE PRESENT POLICY

The present system of nondiscrimination, widely accepted in principle through the GATT, has definite advantages for harmonious international relations and would, in the absence of widespread exceptions, yield equality of opportunity with competitors for foreign import markets. Its alternative is a policy of discrimination, which entrains certain undersirable effects, the difficulties of which contributed to the adoption of the unconditional principle by the United States.

In contrast to the disadvantages of the conditional clause, listed below, the unconditional clause offers certain advantages. First, as stated by the Acting Chairman of the Tariff Commission (Culbertson), in a letter to the Secretary of State (Hughes) on December 14, 1922:

> No really satisfactory state of international relationships, no assured peace, can be established until all countries feel secure in a guarantee of equality of treatment in all the markets of importance throughout the world * * * The unconditional form of the most-favored-nation clause is the simplest application to commercial intercourse between nations of the equality-of-treatment principle and tends powerfully to prevent discriminations against third countries and all the ill-feeling, distrust, retaliation, and international friction incident thereto.[1]

Finally, he states:

> Thus, when all countries follow the unconditional most-favored-nation practice, equality of treatment is guaranteed generally and tendencies are set in motion

[1] Papers Relating to Foreign Relations of the United States (Washington: Government Printing Office, 1938), p. 124.

contributing to commercial stability, simplicity, and uniformity of tariff rates, mutual confidence, and international good will.[2]

The unconditional principle does, however, have drawbacks, such as recognized exceptions to the area of its application and the widespread employment of nontariff trade barriers which may negate the benefits anticipated under a nondiscriminatory tariff. Many nations were forced during the depression, the war, and postwar periods to engage in barter and payments agreements and in quantitative restrictions on trade that are not consistent with the unconditional MFN priciple. However, nondiscriminatory tariff bargaining still remains the most widely accepted basis for tariff negotiations. Indeed, in GATT the nations have accepted the principle (in some ways the obligation) to negotiate reductions in duty and to do so on a nondiscriminatory basis.

The tariff, itself, evolved as the dominant instrument of commercial policy and this factor, along with the appearance of additional trading nations on the scene, caused equality of treatment concerning tariffs and interest in reducing the level of duties to become matters of prime interest. These are, in the words of Professor Hawkins, the two basic aims of commercial policy.[3] He further observes:

> To employ discrimination against high tariffs may at times seem logical and just, but it leads almost inevitably to a quagmire of reciprocal discriminations, ill feeling, and trade loss during protracted negotiations that may only lead back to the status quo ante.[4]

Despite these advantages in principle and the fact that the United States adopted the formal unconditional approach to make more positive our new policy of nondiscrimination and to gain similar treatment from others, its continuation must always be subject to justification on the ground that it has yielded the best benefit or that it promises to do so in the future. But the policy, to be effective in accomplishing this goal, must be supported with a several-pronged attack on the impact of commercial preferences and discrimination and of other policies and practices that work against open international markets, a minimum being to—

(*a*) Continue a deliberate effort to negotiate for further tariff reductions. Such a policy is consistent with economic theory which argues for the most efficient allocation of resources, as determined by the competitive market, but to many countries with nationalistic aspirations and with hopes for rapid economic development, this may not be acceptable. This particular alternative calls for an extension of the Trade Expansion Act of 1962, possibly amended by authority to place more items on the free list so that whatever progress is made in the Kennedy round can be continued.

(*b*) Work via GATT and international agencies to reduce further the use of nontariff trade barriers which negate the intended benefit of the MFN clause as it relates to tariff rates. This goal has already been accepted by GATT but its accomplishment depends on the willingness and ability of contracting parties to adhere strictly to GATT rules. It is to this extent a political and economic rather than a legal problem. However, some narrowing of the basis for exceptions to the

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[2] Ibid., p. 125.
[3] Harry C. Hawkins, "Commercial Treaties and Agreements" (New York: Rinehart & Co., Inc., 1951), p. 71.
[4] Ibid.

GATT rules may have to be negotiated, if possible, to eliminate the use of certain nontariff trade barriers.

Such a negotiation may be difficult on two counts. On the one hand, 26 countries (these include all the major trading nations) other than the United States had accepted the discipline of article VIII of the IMF by mid-1965.[5] On the other, the United States, itself, employs nontariff trade barriers, such as on lead, zinc, petroleum, beef and veal, wheat, and textiles. Other countries may properly object to reducing theirs unless we reduce ours.

(*c*) Take a firm position against exceptions to MFN on the grounds of special arrangements with customs unions or free trade areas. This question arises currently in relation to association with the EEC, whereby its members may obtain preferences in countries that are not full members of the Community.

(*d*) Expand our series of treaties to take in countries not now covered by treaty or agreement.

As shown on table II, the United States does not have commercial treaties or agreements, and therefore does not enjoy as a matter of right equality of treatment in opportunities to trade, with at least 30 countries. Most of these are small and relatively unimportant in world trade, but together they take about 7 percent of total U.S. exports. The most important in our trading picture is Mexico, which takes almost 4 percent of our total exports. Even without guaranteed equality of treatment, however, the United States is in many cases a principal supplier of the other country's imports.

Most of these countries are members of customs unions, or of free trade areas or have other commitments that justify discriminatory treatment under GATT rules; several are countries in the Soviet bloc; and most of them employ quantitative controls on imports from the United States, so the immediate practical benefit that might be anticipated is slight.

2. WITHDRAW UNCONDITIONAL MFN POLICY AS NOW EMPLOYED AND REVERT TO A POLICY OF CONDITIONAL APPLICABILITY

This would put us in the position of opting for discrimination in trade relations, a primary objective of which is substantially to force equality of treatment in international commercial opportunities. There have also been instances in which a discriminatory policy was employed, or threatened, in order to gain an advantage or to assure that a position would not be lost. Such was the Tariff Act of 1890, which placed sugar, molasses, coffee, tea, and hides on the free list but gave the President the power to proclaim specified penalty duties on these products when imported from any country imposing unreasonable duties on the products of the United States. Similar authority is still available to the President under section 338 of the Tariff Act of 1930. This section also empowers the President to impose new or additional duties on products of countries discriminating unreasonably against the commerce of the United States. The fact that this authority has never been used suggests that there were and will continue to be policy objections to doing so; that in the long run, the advantage to be gained by direct and harsh action may not be as great as it would be by working out a more diplomatic resolution

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[5] See footnote 18.

of the complaint: that political considerations outweigh the economic advantage to be gained; that if the authority were to be used, there may be legal obstacles to overcome on an international scale. William B. Kelly suggests that one reason why the authority has not been used is that the United States adopted another method of obtaining nondiscriminatory treatment—inclusion of the unconditional MFN clause in commercial treaties.[6] One may note also, that the authority calls for its use when the President finds that the public interest will be served thereby. Apparently this has not been found to be the case.

Another complication that would be posed by such a move would be the necessity of abandoning our present single-column tariff[7] and of adopting one with a double column—one level of duties applying to countries from which we receive adequate compensation to justify the lower rate, and the other to apply to all other countries—being, in effect, a penalty rate. There are still other aspects to be considered in connection with such a major policy change, depending on where and how leverage is to be exerted. One is whether the withdrawal of unconditional MFN should apply only to those countries that receive the favor from us on a unilateral basis, without having entered into a reciprocal arrangement, on whether a rescission of nondiscrimination could also be made applicable to those countries receiving the benefit via treaty or agreement.

The former would appear to have no legal grounds on which to object to our cancellation of a "free" favor. But the latter include our most important trading partners and they would certainly demand immediate compensation for loss of assurance against being disfavored. If satisfaction were not possible here, the next step to be expected would be retaliation by others through withdrawing concessions given us in negotiations or otherwise—including assurance against inequality of treatment in the future.

A further consideration here is that withdrawal of the unconditional principle as it applies to present treaties and agreements would mean abandoning the principle postulate of GATT—that of nondiscrimination. It would mean the abandonment of GATT, itself, as an institution in international economic relations and as an instrument to rationalize commercial policies between nations.

There is also the question of whether the unconditional concept could be withdrawn from the strictly commercial sections of treaties and still be retained in application to investment or to other aspect sof economic relations.

In respect to practice with this arrangement, the Acting Chairman of the Tariff Commission reported in 1923:

> Most of the European powers have two-column tariffs and except in a few cases tariff negotiations have developed into statistical controversies over the relative value of the concessions to be made * * * In practice, therefore, the conditional interpretation of the MFN clause has broken down * * * Instead of contributing to equality of commercial opportunity among nations, it has become the support of discriminatory reciprocity treaties.[8]

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[6] William B. Kelly, "Studies in United States Commercial Policy" (Chapel Hill: The University of North Carolina Press, 1963), p. 38.

[7] Our tariff is called single column, since it applies to all countries except those denied it for cause. But it is in fact more than single column implies. One rate applies to all friendly countries. A higher rate applies to Communist-bloc countries. And a lower, preferential, rate applies to the Philippines and to Canadian automobiles and automotive parts.

[8] Papers Relating to Foreign Relationships of the United States, 1923, p. 122.

In considering a return to a policy once used and then abandoned, it behooves the advocates thereof to examine past experience with the policy. In his letter to the Secretary of State of December 14, 1922, which appears to have had significant effect on Senator Lodge, Secretary of State Hughes, and President Harding, and which in content is also applicable today, Mr. Culbertson listed the following as serious disadvantages to the conditional concept.[9]

1. It implies an active policy of tariff bargaining * * * "Tariff bargaining with other nations for concessions is at best complicated and dilatory and seldom, if ever, produces results which are commensurate with the irritation which it engenders among excluded nations." (For an indication of the complexity of bilateral bargaining of tariff concessions, see sec. I, p. 4.)

2. The practically certain results is a series of rates of duty upon the same article differing with the country of origin * * * "This is expensive to administer and lends itself to fraud." Moreover it means discrimination against certain countries in favor of others, "and the present is certainly no time to increase the prejudice of foreigners against the United States."

In summary, on the disadvantages of the conditional clause, Mr. Culbertson states:

> The result under this practice is that no nation on earth can ever be certain that its commerce with any third nation will not be placed at a disadvantage as compared with competing countries. The tendency is toward inequality of treatment, complexity of tariff rates, commercial insecurity, perpetual suspicion and mutual distrust with the consequent international ill will and more or less a consistent attempt at retaliation by injured countries.[10]

3. MAKE USE OF EXCEPTIONS PERMITTED BY GATT AND NEGOTIATE TOWARD A FREE TRADE AREA WITH ONE OR MORE OF OUR MAJOR TRADING PARTNERS

There is no doubt that the depression, World War II, and its aftermath left scars on the system of international commerce, such that the trading world today is not that contemplated a generation ago. The disintegration of empire; the rise of new nations, which do no find policies that are suitable to major trading nations suitable for their own needs and desires; the formation of preference areas which are certain to have a diversionary effect on the pattern and flow of trade—all affect the type of trading world in which the United States must play its role and guard its interests.

Moreover, the difficulties of negotiating a widely acceptable set of rules of commercial policy and of putting teeth into them are demonstrated by the GATT. It concedes numerous exceptions to the immediate application of accepted principles, and provides for an expansion of exceptions to the principle of nondiscrimination through the formation of customs unions and free trade areas. Some of the exceptions allow for preferences in favor of members that place outsiders at a significant competitive disadvantage.

Since the United States cannot object to the development of customs unions and free trade areas because of its commitment to GATT and, aside from that, may not wish to do so because of the political advan-

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[9] Ibid., pp. 121 126.
[10] Ibid., p. 125.

tages to be gained from closer regional economic arrangements and the economic benefit to be gained from faster growth and better allocation of world resources, its most effective attitude may be to attempt to minimize the trade-diverting effects of preferences by negotiating down the rates of duty. In addition, it might consider entering into preferential arrangements, itself, that would not violate GATT. This could be by participation in a customs union or a free trade area.

Such a step could be taken without violating our widespread MFN commitments. As indicated earlier, article XXIV of the GATT provides that the agreement shall not prevent the formation of a customs union of free trade area between contracting parties as long as the rates against outsiders are no more burdensome than they were before the preference existed.

If such a step were to be taken, two advantages would be possible from it: (1) A preferred position (relative to nonmembers) in the import market of the other member(s) of the free trade area, and (2) the influence such another free trade area could bring to bear on those now existing to negotiate further reductions in trade barriers as a means of minimizing the effect of preferences on a discriminatory basis. In fact, one may observe that preferences and discrimination can thus be powerful influences for moving toward regional free trade and global freer trade. Wider use of preferences within regional areas should induce nonmembers to be more willing to negotiate downward in order to preserve a more competitive position in the preference area, especially if it is an important market. This is what happened to the United States, whose Trade Expansion Act of 1962 has as its prime objective an improved access to the EEC, internal preferences of which would be much less bearable if rates of duty of the common external tariff remain high.

What, then, are countries or areas that appear likely candidates for a free trade area partnership with the United States? One measure is that they should be significant as markets for each other—they for our exports and we for theirs, otherwise gaining improved access would not mean much. The following table shows some comparisons along this line:

CROSS-DEPENDENCE ON EXPORT MARKETS, 1963

Country or region	Percent of U.S. exports going to other areas	Percent of exports of other areas going to United States
Canada	20	56
19 American Republics	15	36
LAFTA	(10)	(36)
CACM	(1)	(43)
EEC	19	7
EFTA	10	8
Japan	8	28

Source: Derived from direction of Trade (International Monetary Fund), various monthly issues, 1964-65.

From the viewpoint of importance in each other's trade, the most logical candidate would seem to be Canada, which takes about 20 percent of our total exports and sends some 56 percent of its exports to us. Statistically and overall, so would the Latin American Republics as a group and Japan. However, the overall statistic is not adequate as an indication of the potential attractiveness of a free trade partner. Much of the trade between two or a group of countries may already be free or subject to very low tariffs. Moreover, the composition of trade and of national production will influence the extent to which each major economic segment within each country will be affected by a lowering of tariffs. Many American industries can already stand up against foreign competition, even without a tariff, while others cannot do it, even with the help of a tariff on imports.

A considerable amount of work has already been done on some of the problems of a Canada-United States Free Trade Area. One such study [11] lists a number of operational and institutional problems the solution of which depends on choices made between alternative options. A very important one of these is commodity coverage, inasmuch as by GATT definition a free trade area is understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce * * * are eliminated on substantially all the trade between the constituent territories on products originating in such territories.

The two key clauses here are elimination of duties and other restrictive regulations, and substantially all the trade. The first means eventual free trade in all the products covered. The fact is, however, that exceptions in commodity coverage are not new to post-GATT free trade arrangements between developed countries. The EFTA, for example, excludes most basic agricultural and fishery products; its eventual free trade arrangement pertains substantially to industrial goods. An extreme is the United States-Canadian limited free trade agreement on automobiles and automotive parts, accorded GATT waiver.

While this alternative could yield some advantages, as just mentioned, there are also important objection to it. One is the adverse effect that would befall nonmember countries, particularly those unaffiliated with any discriminatory regional trading arrangement: they would find some competitors favored in entering the United States and the other member markets and may be in a weak bargaining position to do anything about it. Another is the possible unwillingness of most other countries to enter into such an arrangement with the United States. There is widespread fear of U.S. competitive srength and there could be expected to be opposition on the part of many foreign leaders to submitting their economies to open competition with it in their home markets.

4. ATTEMPT TO ATTEND GATT TO PERMIT THE FORMATION OF PARTIAL FREE TRADE AREAS

The rationale for this alternative is to create additional preferences (or the threat thereof) that could be used as a bargaining device to reduce the burden of other discriminatory arrangements.

If one of the obstacles to the formation of more free trade area arrangements is unwillingness or inability on the part of some countries to abolish duties on substantially all their trade with other designated countries, then the second best arrangement may be the

[11] Canadian-American Committee. "A Possible Plan for a Canada-United States Free Trade Area" (Washington: National Planning Association, U.S.A., and Private Planning Association of Canada, 1965).

partial elimination of duties, mutually agreed but also accessible to others on a conditional, negotiated basis. This could be accomplished by going all the way to zero on a limited group of products, or by going part way in tariff reductions on all products, and having either arrangement qualify, by amended GATT definition, as a limited or partial trade area.

In the case of reducing tariffs to zero on only a limited number of products, the free trade area exception to unconditional MFN application could hold by blanket GATT authority if the products covering, say, 50 percent of the dutiable import trade of the contracting members during a representative period were incorporated into a free trade area arrangement and the eventual abolition of duties and other restrictions pertaining thereto were definitely scheduled; or the amount of dutiable trade sufficient to qualify could be 40 percent, or 75 percent (perhaps of nonagricultural trade), or any given percentage less than substantially all, as desirable as some may find the latter.

Leaving it to the discretion of each country as to products to be included in its "freed" list presents a complex problem of detailed negotiation in order to yield satisfaction to other countries in any proposed less-than-across-the-board free trade area. The very products one may desire to have freed because of its export interest, another may wish to protect from import competition. The difficulty in either case is in arriving at mutually agreed and worthwhile concessions. Perhaps a compromise, to preclude the pressure for numerous individual product exceptions, could be effected by having any arrangement cover no less than large segments or groups of products, such as sections of the Standard International Trade Classification (revised) of the International Standard Industrial Classification.

Another variation of a limited free trade area would call for reducing tariffs in favor of the members across the board, on all products, but by, say, 50 percent rather than down to zero. This proposal was suggested by the London Economist (p. 618) of February 1963, subject to three conditions:

(*a*) The preferences must be established by reductions in tariffs within the group and not (as with the Ottawa preferences in 1932) by increases for outsiders;

(*b*) tariff reductions between member countries of the group must apply uniformly to all their mutual tariffs, and not selectively on chosen products; and

(*c*) comparable facilities must be offered to any outsiders prepared to comply.

In this fourth alternative (all the way to zero on a limited number of products, or part way in tariff reductions on all products), one is faced with "legalizing" partial as well as complete discrimination. The reason for doing so, as stated above, would be to permit the development of additional preferences, conditionally open to all as a bargaining device to stimulate negotiation toward reducing the level of discriminatory preferences in general.

There are, on the other hand, arguments against such a proposal. One is that a narrowing of the preference area, on product coverage, reduces the stimulus to trade creation and economic growth within the area: that is, the more economic allocation of resources through the shifting of production from higher cost sources within the preference area to lower. However, partial progress may be better than none and, since the objective is not so much to gain preferences for their own sake as to gain greater equality in world trading opportunities, the means may stand to be justified by the end. The means is substantially the same as if a country were to design a high tariff not in the expectation of its wide use, but as a bargaining weapon to gain concessions from others.

Another criticism of such a proposal is that trade diversion (from those formerly enjoying MFN treatment to those now preferred) may be greater than trade creation possibilities, which are more economic.

Still another objection to partial reductions in the tariff may be that when tariffs are reduced to zero rather than, say, by 50 percent, it signifies a more serious step by government, and this may mean more assurance for long-term investment. Partial reduction does not provide the same assurance.[12]

Aside from any economic or legal argument, such a proposal might also have hard sledding on political grounds, and there is always the danger that continued easements in discipline may erode the foundations of the GATT.

It is apparent that alternative 4 is not the most desirable one. However, it should be considered as a possibility if it becomes necessary to serve notice that the United States is unable to tolerate the blocking of further progress toward a freer trading world by regional groups enjoying substantial discriminatory preferences. Its employment would require a waiver from the provisions of the General Agreement on Tariffs and Trade.

In fact, alternatives 3 and 4 are similar in intent, the main difference being their degree of conformity with present GATT provisions.

SUMMARY

1. Through its commercial policy, each nation is concerned with (1) the protection it wishes to accord to its own industries or to its economy, (2) the conditions of its access to foreign markets as compared to other outside suppliers, and (3) the protective obstacles it must overcome in obtaining access to foreign markets, even though these impediments apply to all outsiders and are therefore nondiscriminatory.

2. The basis on which the concessions granted by one nation to another become available to more than the one recipient is a fundamental aspect of commercial policy. Should they be given only in exchange for concessions identical or equal to those offered by the first recipient? This is called "conditional" most-favored-nation treatment. Or should they be offered to others without requiring a measurable and directly related quid pro quo. This is called "unconditional" most-favored-nation treatment, but there may be a condition: that each country receiving the concession(s) itself pass along to the country granting the concession(s) and to all others following similar liberal policies the same benefits as it grants to its own most-favored-trading partner(s).

[12] For a discussion of partial versus complete discrimination, see Isaiah Frank, "The European Common Market" (New York: Frederick A. Praeger, Inc., 1961), pp. 133-137.

3. In its first commercial treaty, with France in 1778, the United States sought to be assured of nondiscrimination at that time and in the future. In this treaty, the "conditional" interpretation of MFN was specified; it became, and remained, U.S. policy for over 140 years.

4. The United States abandoned its conditional policy and adopted the unconditional application of most-favored-nation treatment in 1923. By virtue of its single-column tariff, and with the exception of preferences accorded to the Philippines and the special duty-free arrangement pertaining to automobiles and automotive parts imported from Canada, all countries outside the Soviet bloc (excluding Yugoslavia and Poland) receive equal opportunity for access to the U.S. market.

5. A number of nontariff barriers appeared following the economic and social pressures of World War I, the depression and World War II. These tended effectively to relegate the tariff to an inferior position as an instrument of commercial policy.

6. Anticipating the formation of a generally nondiscriminatory postwar trading world, the General Agreement on Tariffs and Trade, which became effective in 1947, provided in principle for the nondiscriminatory application of all trade barriers, for the gradual elimination of nontariff trade barriers, and for the restoration of the tariff as the principal policy regulator of trade patterns.

7. To accommodate the demand for increased economic interdependence and wider marketing opportunities, the GATT provides that preferences arising from customs unions and free trade areas are acceptable as derogations from the unconditional MFN principle. However, these preferences, which arose through the elimination of duties on a geographic basis, were not necessarily directed against outsiders; they were necessary to bring about free trade and increased marketing opportunities within regions. The GATT provides for their possible minimization by the process of negotiated reduction of rates of duty applicable against nonmembers.

8. In the 1920's when the United States adopted its policy of unconditional MFN, territorial exceptions to the principal of equality of treatment were of relatively minor importance. They generally involved smaller economies or contiguous territories that were not important markets for U.S. products and, in some cases, did not bid fair to be so. In the postwar period, however, preferences based on membership in customs unions and free trade areas have involved many of the major markets of the world and, indeed, some of the United States' most important export markets. Furthermore, the preferences given have favored some of our strongest competitors.

9. It is not possible to measure satistically the impact on U.S. exports of preferences based on customs union and free trade area obligations. However, it is in the U.S. interest to reduce the level of discrimination against it.

10. Alternative choices open to the United States are:

(*a*) Continue present policy, but support it with a vigorous program to reduce the burden of accepted discrimination.

(*b*) Abolish the unconditional concept and return to a policy of conditional most-favored-nation treatment.

(*c*) Make use of GATT exceptions to MFN treatment to gain prefered positions which can then be negotiated away for the price of equality or something close to it.

(*d*) Attempt to amend the GATT definition of a free trade area to make their formation easier, enter into one, and use the preferences arising therefrom as a lever to encourage further negotiation toward reduction of the level of discrimination by other free trade areas or by customs unions.

11. The present unconditional MFN policy was adopted because of changed competitive and trading positions following World War I and in order to obviate some of the inconsistencies and disadvantages relating to employment of a conditional MFN policy.

12. Withdrawal of the unconditional principle as it applies in our present treaties and agreements would mean abandoning the principal postulate of GATT—that of nondiscrimination. It would mean the abandonment of GATT, itself, as an institution in international economic relations and as an instrument to rationalize commercial policies between nations. It would definitely set in motion a series of demands by many countries for "compensation" to offset any loss in opportunity they may feel they will suffer. A practically certain result would be the withdrawal by some of concessions they have given us over the past few decades.

13. The United States can hardly object to customs unions and free trade areas because of our commitment to GATT and aside from that may not wish to do so because of the political advantages to be gained from closer regional economic arrangements and because of the economic benefit to be gained from faster growth and better allocation of world resources. Our most effective attitude may be to attempt to minimize the effects of preferences by negotiating down their tariffs. An alternative would be to strive for some meaningful preferences, ourselves, that would not violate GATT. This could be by participation in a customs union or a free trade area.

14. If such a step as participation in a free trade area were to be taken, two direct advantages would accrue: (1) a preferred position (relative to nonmembers) in the import market of the other member(s) of the free trade area, and (2) the influence such another free trade area might bring to bear on those now existing to negotiate further reductions in trade barriers as a means of minimizing the effect of preferences on a discriminatory basis. In fact, one may observe that preferences and discrimination can be powerful influences for moving toward regional free trade and global freer trade. In addition to direct economic advantages, certain arrangements could also yield indirect political advantages.

15. Because it would involve discrimination on the part of the United States, the largest trading nation in the world, recourse to alternatives c and d would appear desirable only if it becomes necessary to serve notice that the United States is unable to tolerate the blocking of further progress toward a freer trading world, which is the most satisfactory way of offsetting the effects of discriminatory preferences by regional trading groups.

Statement of Information Submitted by the Service Tools Institute and Related Industries, by George P. Byrne, Jr., Secretary and Legal Counsel

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Statement

SHORTCOMINGS IN APPLICABLE STATUTES

A serious legislative oversight in the Trade Expansion Act of 1962 is the omission of a provision for practical aid in the form of an import quota for industries like the service tools industry which have been seriously injured by imports and in which a substantial number of American jobs have been lost. Applications for escape and relief from serious damage under various laws have been filed by numerous injured industries, but only a negligible number have brought any results.

Accordingly, quotas based on reasonable U.S. market participation are the only practical remedy to be applied in such cases. We, therefore, respectfully suggest and urge that the Committee on Finance of the U.S. Senate make every effort to see that such a quota provision be included in any new version of the Trade Expansion Act which may be presented to Congress at any time in the future. We recommend that such a quota provision require that an embargo be placed on imports of products manufactured by an injured industry when imports have exceeded certain reasonable percentages based upon past years experience of the consumption of the product in the United States.

THE NEGOTIATING PROCESS AND AD HOC TRADE AGREEMENTS

We respectfully submit that the manner in which tariff negotiations and trade agreements has been carried on by GATT under the Trade Expansion Act have been unfair to domestic producers. Both negotiations and trade agreements have been reached in an atmosphere of secrecy. Representatives of industries affected have not been permitted to participate in the negotiating or agreement sessions and have had no voice in the proceedings. We respectfully recommend and urge that the Finance Committee of the U.S. Senate make every effort to include a provision in any new version of the Trade Expansion Act introduced in Congress which would require adequate representation of domestic industries on all negotiating panels acting for the United States at international trade negotiations and trade agreement sessions.

Safeguards should include a provision in the law for Congress to reverse the agreements negotiated by the U.S. negotiators when the agreements are clearly contrary to the intent of Congress in granting the power to negotiate tariff reductions. For example, we do not believe it was the intent of Congress in the Kennedy round that almost all U.S. duties should have been cut the full 50 percent while reductions of other countries did not equal U.S. reductions within any reasonable interpretation of the word "reciprocal" reductions. Nontariff barriers continue. In the case of handtools, while our tariffs were reduced the full 50 percent on all items except slip joint pliers for imports from all countries, reciprocal reductions of less than 50 percent on handtools were obtained only from Iceland, New Zealand, and Canada.

ROLE OF THE TARIFF COMMISSION

While appeals for escape and relief filed with the U.S. Tariff Commission on behalf of industries injured by imports have been handled efficiently by U.S. Tariff Commission personnel, it has become evident that the Tariff Commission operates more like an arm of the White House than as an independent agency. As mentioned above, an almost negligible number of industries for which appeals for relief have been filed have received any relief. In the case of the domestic wood screw industry, which has lost more than 54 percent of the U.S. market to imports, three such appeals were filed. None of them brought any relief whatsoever. We, therefore, respectfully recommend and urge that steps be taken to amend governing laws to provide for the operation of the U.S. Tariff Commission as a more independent nonpolitical agency of the Government and administered by Commissioners appointed by Congress.

CUSTOMS ADMINISTRATION

While, in general, the administration of customs regulations is handled efficiently, we respectfully submit that there are two areas in which investigating and policing could be handled more speedily and effectively:

(1) Violations of customs marking regulations.

(2) Dumping of foreign products in the United States.

Regarding the first, current customs regulations require that all imported products susceptible of marking must be plainly and conspicuously marked with the country of origin. These regulations also provide that containers of imported products which reach the ultimate consumer must be marked with the country of origin of contents.

However, upon the basis of information received from reliable sources, handtools, including socket wrenches and components, are being shipped from Puerto Rico to Philadelphia, Pa., in bulk packed in cardboard cartons 2 by 2 feet. The outside of each carton is stamped "Made in Japan." In the cartons are socket wrenches and other tools packed six to a plastic bag. On none of the tools is the marking "Made in Japan" as required by customs marking regulations. It is also reported by reliable sources that these tools in plastic bags unmarked with the country of origin are transferred [1] to small plastic toolboxes

[1] By the importer in the United States.

which are resold in the United States with no marking whatever on the box to indicate the country of origin. Reports persist that this apparent violation of customs regulations is continuing despite the fact that the matter has been investigated by the U.S. Customs Bureau.

We respectfully submit that in fairness to U.S. producers who are observing all ethical marking requirements, customs procedures should be revamped immediately to provide for prompt corrective action in cases involving violations of this kind.

Regarding the second item referred to above, it is obvious that no effective administration to curtail antidumping of foreign products on the U.S. market can be carried on unless the present antidumping law is completely revamped to provide for the immediate elimination of dumping practices in all cases where dumping actually exists, even when such dumping applies to one or only a few items in a product line. To the best of our knowledge, only an almost negligible percentage of dumping complaints filed with the Customs Bureau to date have resulted in any corrective action by U.S. customs authorities.

According to the Anti-Dumping Act of 1921, dumping exists when foreign merchandise is considered to be sold at less than fair value, for example, when the net f.o.b. factory price for exportation to the United States is less than the net f.o.b. factory price to purchasers in the home market, or where appropriate, to purchasers in other countries, after due allowance is made for differences in quantity and circumstances of sale. We respectfully urge, therefore, that the Committee on Finance of the U.S. Senate sponsor and support such legislation as would insure prompt corrective action where dumping actually and literally occurs within the meaning of the above definition.

THE PROSPECTS FOR EXPORTS AND IMPORTS OVER THE NEXT DECADE

Unfortunately, due to the substantially higher labor costs paid by domestic producers of service tools and many threaded metal products running in the neighborhood of $2.91 average hourly earnings as compared to 54 cents per hour for wages and fringe benefits paid in Japan, (the principal exporter of hand tools to the United States) and appreciably lower wages paid in other foreign countries, our domestic tool and threaded products producers have been unable successfully to export any appreciable quantities of such products to foreign countries. The prospects, therefore, are for virtually no rise in exports of the above products by U.S. producers in the future, but a continued increase in imports of the same into the United States.

THE GATT AS AN INSTRUMENT FOR ASSURING EXPANDED WORLD TRADE ON A RECIPROCAL NONDISCRIMINATING BASIS

To date the GATT has done nothing but increase injury to many small domestic industries producing service tools, threaded fastening products, such as screws, bolts, nuts, rivets, bright wire goods, including gate hooks and eyes, screw eyes, etc.; also power-actuated tools and many other products on which U.S. import duties have been lowered. As indicated above, due to the higher wage costs and fringe benefits to employees of American plants, it is virtually impossible for domestic producers of service tools and numerous threaded products to export to other countries. To date, reciprocal trade agreements with foreign countries have only had the effect of increasing imports of such products into the United States and compounding injury already sustained by such small producing domestic industries.

VALUATION OF IMPORTED GOODS

When import values are based on foreign value without insurance and ocean freight, such values do not accurately reflect the value of merchandise being shipped into the United States in competition with domestic products. It has been estimated that ocean freight and insurance amount to from 10 to 15 percent of the total cost of shipping products from abroad to the United States of America. Therefore, if the total imports were, say, in 1965, $20 billion, 15 percent of this amount, including ocean freight and insurance, would be $3 billion, or a total of $23 billion imports instead of $20 billion. Accordingly, in order to give a true and just picture of the import situation, we respectfully suggest and urge that the Financing Committee of the U.S. Senate give full support to Senate Joint Resolution 115 introduced by Senator Everett M. Dirksen and make every possible effort to have legislation enacted which would require that all Government import statistics be based on cost, insurance, and freight of imports entering this country.

This statement is respectfully submitted on behalf of the domestic manufacturers whose names and addresses appear on the list attached to this statement.

LIST OF SERVICE TOOLS MANUFACTURERS

A. & E. Manufacturing Co., Racine, Wis.
Advertising Metal Display Co., Rem Line Division, Chicago, Ill.
Apco Mossberg Co., Attleboro, Mass.
Apex Machine & Tool Co., Dayton, Ohio
Armstrong Bros. Tool Co., Chicago, Ill.
Baltimore Tool Works, Baltimore, Md.
Bergman Tool Manufacturing Co., Inc., Buffalo, N.Y.
Boker Manufacturing Co., Subsidiary of New Britain Machine Co., Maplewood, N.J.
The Bridgeport Hardware Manufacturing Division, Crescent Niagara Corp., Bridgeport, Conn.
C. & G. Wheel Puller Co., Inc., Scio, N.Y.
Cameron Manufacturing Corp., Emporium, Pa.
Channellock, Inc., Meadville, Pa.
Cleco Division, Reed International, Inc., Houston, Tex.
Cornwell Quality Tools Co., Mogadore, Ohio
Crescent Niagara Corp., Buffalo, N.Y.
Crescent Tool Division, Crescent Niagara Corp., Jamestown, N.Y.
Diamond Tool & Horseshoe Co., Duluth, Minn.
Dowley Manufacturing, Inc., Spring Harbor, Mich.
C. Drew & Co., Inc., Kingston, Mass.
Duplex Manufacturing Corp., Fort Smith, Ark.
Duro Metal Products Co., Chicago, Ill.

Fairmount Tool & Forging. Division of Houdaille Industries, Inc., Cleveland, Ohio
Fleet Tool Corp., Schiller Park, Ill.
The Forsberg Manufacturing Co., Bridgeport, Conn.
Jo-Line Tools, Inc., South Gate, Calif.
Ken Tool Manufacturing Co., Akron, Ohio
Kennedy Manufacturing Co., Van Wert, Ohio
Mathias Klein & Sons, Chicago, Ill.
McKaig-Hatch, Division of Tasa Coal Co., Buffalo, N.Y.
Metal Box & Cabinet Corp., Chicago, Ill.
Midwest Tool & Cutlery Co., Inc., Sturgis, Mich.
Milbar Corp., Cleveland, Ohio
Millers Falls Co., Greenfield, Mass.
Moore Drop Forging Co., Springfield, Mass.
New Britain Machine Co., New Britain, Conn.
Nupla Manufacturing Co., Los Angeles, Calif.
C. S. Osborne Co., Harrison, N.J.
Owatonna Tool Co., Owatonna, Minn.
P & C Tool Co., Portland, Oreg.
Park Manufacturing Co., Grant Park, Ill.
Parker Manufacturing Co., Worcester, Mass.
Petersen Manufacturing Co., Inc., DeWitt, Nebr.
H. K. Porter, Inc., Somerville, Mass.
Proto Tool Co., Los Angeles, Calif.
The Quality Tools Corp., New Wilmington, Pa.
Reed & Prince Manufacturing Co., Worcester, Mass.
S-K Wayne Tool Co., Subsidiary of Symington-Wayne Corp., Chicago, Ill.
Snap-On Tools Corp., Kenosha, Wis.
Stanley Tools, Division of the Stanley Works, New Britain, Conn.
Stevens Walden, Inc., Worcester, Mass.
Stream Line Tools, Inc., Conover, N.C.
P. A. Sturtevant Co., Addison, Ill.
Superior Tool Co., Cleveland, Ohio
Thorsen Manufacturing Co., Oakland, Calif.
Torque Controls, Inc., South El Monte, Calif.
Union Steel Chest Corp., LeRoy, N.Y.
Upson Bros., Inc., Rochester, N.Y.
Utica Tool Co., Inc., Orangeburg, S.C.
Vaco Products Co., Chicago, Ill.
Vaughan & Bushnell Manufacturing Co., Hebron, Ill.
Vlchek Tool Co., Cleveland, Ohio
Waterloo Industries, Inc., Waterloo, Iowa
Wilde Tool Co., Inc., Hiawatha, Kans.
J. H. Williams & Co., Buffalo, N.Y.
J. Wiss & Sons Co., Newark, N.J.
Wright Tool & Forge Co., Barberton, Ohio
Xcelite, Inc., Orchard Park, N.Y.

LIST OF VISE MANUFACTURERS

Columbian Vise & Manufacturing Co., Cleveland, Ohio
The Erie Tool Works, Erie, Pa.

Milwaukee Tool & Equipment Co., Milwaukee, Wis.
Morgan Vise Co., Chicago, Ill.
Parker Vise Division, Union Manufacturing Co., New Britain, Conn.
Reed Manufacturing Co., Erie, Pa.
The Ridge Tool Co., Elyria, Ohio
The L. S. Starrett Co., Athol, Mass.
Wilton Tool Division, Wilton Corp., Schiller Park, Ill.

LIST OF PIPE TOOL MANUFACTURERS

Armstrong Bros. Tool Co., Chicago, Ill.
Collins Machinery Corp., Monterey Park, Calif.
The Erie Tool Works, Erie, Pa.
The Oster Manufacturing Co., Wickliffe, Ohio
Reed Manufacturing Co., Erie, Pa.
The Ridge Tool Co., Erie, Pa.
Nye Tool Division, Symington-Wayne Corp., Chicago, Ill.
Toledo-Beaver Tools, Inc., Toledo, Ohio

LIST OF LEVEL MANUFACTURERS

Columbian Vise & Manufacturing Co., Cleveland, Ohio.
Exact Level & Tool Manufacturing Co., Inc., High Bridge, N.J.
Mayes Bros. Tool Manufacturing Co., Inc., Johnson City, Tenn.
Port Austin Level & Tool Manufacturing Co., Port Austin, Mich.
Stanley Tools, Division of the Stanley Works, New Britain, Conn.

LIST OF POWDER-ACTUATED TOOL MANUFACTURERS

AMMO-USM Fastener Co., Division of United Shoe Machinery Corp., Shelton, Conn.
Omark Industries, Inc., Portland, Oreg.
Ramset Operations, Winchester-Western Division, Olin Mathieson Chemical Corp., New Haven, Conn.
Olin Mathieson Chemical Corp., New Haven, Conn.
Remington Arms Co., Inc., Bridgeport, Conn.
Speed Fastener, Inc., St. Louis, Mo.
Star Expansion Industries Corp., Mountainville, N.Y.

LIST OF SCREW AND NUT MANUFACTURERS

American Screw Co., Wytheville, Va.
Anchor Fasteners, Division of Buell Industries, Inc., Waterbury, Conn.
Atlantic Screw Works, Inc., Hartford, Conn.
The Blake & Johnson Co., Waterville, Conn.
Camcar Screw & Manufacturing Co., a Textron Division, Rockford, Ill.
Central Screw Co., Chicago, Ill.
Continental Screw Co., New Bedford, Mass.
Eaton Yale & Towne, Inc., Reliance Division, Massillon, Ohio
Elco Tool & Screw Corp., Rockford, Ill.
Everlock Chicago, Inc., Lathrup Village, Detroit, Mich.
Great Lakes Screw Corp., Chicago, Ill.

H. M. Harper Co., Morton Grove, Ill.
Harvey Hubbell, Inc., Bridgeport, Conn.
Illinois Tool Works, Inc., Chicago, Ill.
International Screw Co., Detroit, Mich.
Midland Screw Corp., Chicago, Ill.
National Lock Co., Rockford, Ill.
Pawtucket Screw Co., Pawtucket, R.I.
Allied Products Corp., Pheoll Manufacturing Co. Division, Chicago, Ill.
Pioneer Screw & Nut Co., Elkgrove, Ill.
Reed & Prince Manufacturing Co., Worcester, Mass.
Screw & Bolt Corp. of America, Southington Plant, Southington, Conn.
Southern Screw Co., Statesville, N.C.
United Screw & Bolt Corp., Chicago, Ill.
Universal Screw Co., MSL Industries-Fastener Group, Franklin Park, Ill.
Whitney Screw Co., Nashua, N.H.

LIST OF CAP SCREW MANUFACTURERS

The American Screw Products Co., Cleveland, Ohio.
E. W. Ferry Screw Products Co., Inc., Cleveland, Ohio.
Ferry Cap & Set Screw Co., Cleveland, Ohio.
The H. M. Harper Co., Morton Grove, Ill.
Kerr-Lakeside Industries, Inc., Cleveland, Ohio.
Lake Erie Screw Corp., Cleveland, Ohio.
National Lock Co., Rockford, Ill.
The Wm. H. Ottemiller Co., York, Pa.
Allied Products Corp., Pheoll Manufacturing Co. Division, Chicago, Ill.
Reed & Prince Manufacturing Co., Worcester, Mass.
United Screw & Bolt Corp., Cleveland, Ohio.

LIST OF SOCKET SCREW PRODUCTS MANUFACTURERS

Allen Manufacturing Co., Hartford, Conn.
American Chain & Cable Co., Inc., Bristol Socket Screw Division, Waterbury, Conn.
Holo-Krome Co., Hartford, Conn.
Mac-it Parts Co., Lancaster, Pa.
George W. Moore, Inc., Waltham, Mass.
Safety Socket Screw Corp., Chicago, Ill.
Set Screw & Manufacturing Co., Bartlett, Ill.
Standard Pressed Steel Co., Jenkintown, Pa.
The Standard Screw Co., Bellwood, Ill.

LIST OF AIRCRAFT LOCKNUT MANUFACTURERS

Boots Aircraft Nut Division, Townsend Co., Norwalk, Conn.
Elastic Stop Nut Corp. of America, Union, N.J.
Kaynar Manufacturing Co., Inc., Fullerton, Calif.
VSI Corp., Pasadena, Calif.

LIST OF TUBULAR AND SPLIT RIVET MANUFACTURERS

Aluminum Co. of America, Lancaster, Pa.
American Rivet Co., Inc., Franklin Park, Ill.
Chicago Rivet & Machine Co., Bellwood, Ill.
Miami Rivet Co., Miami, Fla.
Milford Rivet & Machine Co., Milford, Conn.
National Rivet & Manufacturing Co., Waupun, Wis.
J. L. Thomson Rivet & Machine Co., Waltham, Mass.
Townsend Co., Beaver Falls, Pa.
Tubular Rivet & Stud Division of Townsend Co., Braintree, Mass.

LIST OF BRIGHT WIRE GOODS MANUFACTURERS

M. S. Brooks & Sons, Inc., Chester, Conn.
The Gerwin Corp., Michigan City, Ind.
Hindley Manufacturing Co., Cumberland, R.I.
Chas. O. Larson Co., Sterling, Ill.
Lawrence Bros., Sterling, Ill.
Merrill Manufacturing Corp., Merrill, Wis.
The Washburn Co., Worcester, Mass.

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.,
Washington, D.C.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: This letter is in response to the invitation extended to interested parties on September 27, 1967, to submit written statements to the Senate Finance Committee on U.S. foreign trade policies.

The American automobile manufacturing industry has, as a matter of general policy, consistently supported efforts to lower barriers to international trade on the basis of reciprocity. This policy rests fundamentally on our belief that the principles of competition are as valid in world markets as in our domestic market.

We believe that the agreement reached during the Kennedy round negotiations for the reciprocal reduction of tariffs on passenger cars is another step in the right direction. It can be fully effective, however, only when the many nontariff barriers to the export of automobiles from the United States are removed. The industry has repeatedly called attention to this need. To this end, the "supplemental agreement" includes a proposal for the reduction of road taxes in Belgium, France, and Italy which discriminate against U.S. cars. This has the full support of our industry.

In the past, trade restrictionism did not work to the advantage of the American people. The old restrictionist policies encouraged protectionist retaliation and economic nationalism in other countries. On the other hand, the trade policies which have been in effect since the mid-1930's have significantly contributed to the growth of the American economy and the economies of other nations of the free world.

Trade must, of course, be a two-way street. More determined efforts are necessary to remove restrictive policies and practices affecting U.S. exports to and investments in other countries. Similarly, problems of particular American industries should, we believe, be dealt with in a way compatible with the continued expansion of world trade.

We are bringing up to date an industry policy statement on trade matters which describes in greater detail the industry's position on particular subjects.

Sincerely yours,

THOMAS C. MANN.

STATEMENT OF THE NATIONAL LIVESTOCK FEEDERS ASSOCIATION, SUBMITTED BY DON F. MAGDANZ, EXECUTIVE SECRETARY-TREASURER

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PREFACE

In response to the chairman's announcement on September 27, 1967, we are pleased to submit this statement as the contribution of the National Livestock Feeders Association to the compendium of papers on the legislative oversight review of U.S. trade policies. We understand the compendium is to form the basis for a public hearing at a later date at which time it will be possible to make oral presentation.

No attempt has been made to comment on all of the areas which were indicated as possible guidelines in the preparation of statements. Instead, we have confined the views and comments of this association to the several particular subjects listed in the accompanying index.

It is our firm belief that a thorough review of the U.S. trade policies and practices is of the utmost importance to domestic industry. Furthermore, it is our sincere conviction that the United States must alter its course with respect to foreign trade and take a far more firm position for the benefit of U.S. industry, its citizens, and taxpayers.

We compliment the chairman and the Committee on Finance for this step toward a more realistic approach to foreign trade policies and practices.

Respectfully submitted.

DON F. MAGDANZ,
Executive Secretary-Treasurer.

Review of Trade Policies of the United States

A NEED FOR REVIEW

One of the grave injustices of the day is the derogatory labeling as "protectionists" all who raise their voices in opposition to any part of current U.S. foreign trade policy and/or methods of trade negotiation. Such persons, firms, and groups have been castigated by officials in the executive branch of our Federal Government and by many at our academic institutions, and have been accused of being "isolationists."

Any spokesman who urges, or even suggests, that the interest of U.S. agriculture and business should be given top priority in foreign trade negotiations is scorned by "trade theorists" and cast into the "fiery furnace of protectionism."

The true facts of the case are that many who are labeled as being "protectionists," because of their support of domestic interests, are not "isolationists" in any sense of the word; but rather, are dedicated to expandiing world trade. They have not abandoned free trade as a goal in a fair and truly competitive world marketplace; but they realize that such marketplace conditions do not exist and, therefore, today's foreign trade negotiations and agreements must be subject to the overriding criteria of assuring true reciprocity and adequate protection for U.S. industries.

The almost complete disregard of American business interests by administrative officials of the U.S. Government responsible for trade negotiations is a mystery in the eyes of other nations of the world. They view as unbelievable, and certainly unexplainable, the willingness of U.S. officials to place American agriculture and business on the "trading block."

Most other nations in the world diligently watch over the welfare of their domestic industries at the bargaining table. Failure of U.S. officials to do likewise erodes respect for our country and its representatives.

In a recent speech, Hon. William M. Roth, Special Presidential Representative for Trade Negotiations, likened the foreign arena to that of domestic trade among the States.[1] Such naivete is unbecoming an official in this high position and, in fact, is downright alarming.

Reciprocity, and similar trade and operating conditions that go with it, are everyday facts among the States: Federal law demands and assures said conditions for each individual State. No such statutory umbrella, and environmental circumstances, govern the arena of international trade. In fact, as far as U.S. industries are concerned, negotiating officials have made a shambles of congressional intent to establish reciprocity as a requirement of every trade agreement by inactivating the protective effects of trade legislation for domestic industries and exaggerating those provisions which benefit importers of goods produced in foreign nations.

Why should anyone—and above all, our own Government—be apologetic or neglectful in working for the good of U.S. agriculture and business? This is the unmitigated responsibility of our Government and, in our opinion, to do otherwise is a dereliction of duty.

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[1] October 5, 1967, before the World Affairs Committee, Export-Import Committee of the Greater Detroit Board of Commerce.

The National Livestock Feeders Association, irrespective of the severe criticism leveled at it by high Government officials and others, makes no apology for working in the best interest of its members and will continue to do so.

The asosciation is encouraged by the move on the part of the Senate Finance Committee to question the claim of the executive branch, via administrative fiat, to eminent domain in the area of foreign trade, and to open the door undauntedly to this highly charged arena in an attempt to ferret out "the legislative oversight of the administration of U.S. customs, tariff, and trade legislation."

We highly commend the committee for this undertaking.

THE NEGOTIATING PROCESS AND AD HOC TRADE AGREEMENTS

National Livestock Feeders Association members are gravely concerned over the general policy which has guided U.S. trade negotiations during recent years and, particularly, with the employment of trade concessions as an international relations tool. This use of trade agreements, in our opinion, has led to an utter disregard for the health and well-being of domestic industries and has divorced trade negotiations from a sound basis in economics.

Government officials who participate in trade negotiations do, in effect, represent American agriculture and business. This rightfully should be a partisan representation, rather than for its primary base to one of international relations.

The Congress recognized this problem when it created the Office of the Special Representative for Trade Negotiations, at the Cabinet level, in the 1962 Trade Expansion Act. Unfortunately, however, the necessity to rely upon State Department personnel in the actual negotiating process, plus the overriding influence of State Department orientation and international relations philosophy, has resulted in the Office becoming, for all practical purposes, merely an extension of the State Department.

International relations and economics often do not mix with any more compatibility than do oil and water, and as long as the State Department is intimately involved in trade negotiations, international relations will be given overriding consideration.

A businessman does not send his public relations director out to negotiate purchase or sales contracts. Likewise, a nation should not put the responsibility for trade negotiations in the hands of its public relations department. Trade negotiation responsibilities should be taken completely out of the hands of the U.S. Department of State.

We recommend that the Office of the Special Representative for Trade Negotiations be given overall coordination responsibility in this important area, as per congressional intent in the 1962 act; and that the negotiating teams be made up of the Foreign Agricultural Service of the U.S. Department of Agriculture and the Department of Commerce, backed up by representatives of agriculture and industry.

U.S. industries should be extended the privilege of contributing to the process of negotation, which privilege is extended to domestic industries in other countries. During the negotiations on meat agreements with Australia and New Zealand during early 1964, representatives of this association tried in vain to obtain permission to sit in on at least the preliminary rounds. This was flatly denied; yet, industry representatives of the other nations were present and assisted their official negotiators.

Trade agreements negotiated in recent years have failed miserably in their reciprocal arrangements for U.S. industries. Most industries in this country have been forced to compete with whatever products, and in whatever volume, any other country of the world decided to send here; whereas, the firms in these same industries have been, and still are, faced with insurmountable obstacles in the form of tariff and non-tariff barriers in trying to sell their products abroad.

We respectfully suggest that the Congress should proceed to initiate and pass legislation with sufficiently strict reciprocity provisions to make it impossible for the executive to negotiate other than truly reciprocal agreements.

SHORTCOMINGS IN APPLICABLE STATUTES

The attention of Congress in recent years has focused primarily on the delegation of much more authority to the President in the negotiation of agreements. In addition to the expansive authority granted by Congress, the executive branch, by administrative fiat, has extended its actions far beyond the limits intended by Congress.

An example of the latter was the agreement to a GATT resolution providing for an across-the-board reduction in duty of 50 percent on industrial products. Contrary to the provisions of the Trade Expansion Act, the executive agreed to the resolution in May of 1963, about a year before the Tariff Commission even submitted its report on the probable economic effect of reductions in duty.

Congressional intent in setting down the policy of careful evaluation and selectivity in the determination of articles to be placed in negotiations, as a prerequisite to negotiations, was thereby completely ignored.

TRADE EXPANSION ACT OF 1962

To guard against the usurping of congressional authority, the National Livestock Feeders Association recommends that Congress withhold the added negotiation authority delegated in the 1962 act. Said authority, including that to reduce tariffs by 50 percent, has now lapsed and should not be reconferred on the executive branch. The "peril point" concept, as a prerequisite to trade agreement negotiations, should be reinstated.

Under the 1962 act, "adjustment assistance" was substituted for the former escape clause provisions. Executive branch urging that provision be made for adjustment assistance was, in itself, an admission of the expectation of harm to American firms and labor from contemplated negotiations.

Administrators now admit, in the face of Tariff Commission refusal to make necessary findings, the act imposes too severe a standard. But the important fact to consider, in making legislative changes, is that adjustment assistance is nothing more or less than a welfare concept and, therefore, is not a sound approach to solving problems brought on by unwise trade concessions by this country.

The only wise course of action is to prevent undue hardship to domestic firms and labor by following a trade negotiations course of careful analysis and seasoned judgment based on the sound principle of reciprocity.

The "adjustment assistance" provisions of the TEA should be repealed and the escape clause procedure reinstated, with modifications to make it a less cumbersome and more practical safety valve for domestic industries and/or firms.

TRADE AGREEMENTS EXTENSION ACT

In passing the National Security Amendment (Trade Agreements Extension Act of 1955 and carried forward in the act of 1958), the Congress intended to provide ready relief for basic industries, in the interest of maintaining the security of the United States. However, here again, the dominant concern for international relations on the part of the State Department has had an overriding influence on the decisions of the Office of Emergency Planning (and its predecessors) to the extent that such provisions are, in effect, disregarded.

Of the over 20 cases which have been brought before the Office of Emergency Planning, relief has been granted in only one. In other words, the remedy provided by Congress has been cast aside by the Executive through its usurping of policy authority.

We believe said provisions should be revived by the Congress through amendments to the present law spelling out in more specific terms the criteria to be used and the steps which must be taken to protect basic industries in the interest of national security.

A wise investor does not put a major part of his finances in high risk investments. Likewise, it is not prudent for this Nation to allow its basic industries to be damaged to the extent of running the risk of becoming dependent upon other countries for products that are basic to its economy, and thus, to its survival.

ANTIDUMPING ACT

If this act is to function effectively as a deterent against unfair practices in connection with imports, there must be substantial amendments to its provisions, including those setting down administrative procedures. The Senate is well aware of the need for legislative changes in this area, as evidenced by the moves during recent years on the part of a large number of Senators to bring about statutory and administrative revisions.

S. 2045, introduced by Senator Hartke in the 89th Congress, and carrying the names of 31 other Senators as cosponsors, is indicative of senatorial effort. In our judgment, the Congress should follow through with such legislation.

COUNTERVAILING DUTIES LAW

The practice of foreign countries to subsidize exports, or the production for export, to the United States raises havoc with the establishment of reciprocity. The most common way in which bounties or grants are bestowed for the production or export of products shipped to the United States is through the remitting of value added or turnover taxes.

U.S. negotiators and customs officials have not so much as scratched the polished surface of this nonequalizing gimmick. In fact, by interpretation, the U.S. Treasury does not impose countervailing duties on such imports, an action which is contrary to the ruling of the highest court in our land. The U.S. Supreme Court held (*Downs v. United States*, 187 U.S. 496) that remitting a tax imposed on the production of a commodity upon the exportation of that commodity is tantamount to a bounty for exportation, regardless of the name by which the practice may be disguised, and is subject to the imposition of countervailing duties.

Therefore, we feel it is necessary for Congress, through legislative direction, to overrule the interpretation of the Treasury Department and to restore the act as a check against the subsidization of exports to the United States by foreign countries.

CUSTOMS VALUATION—CUSTOM SIMPLIFICATION ACT OF 1956

The enactment of the 1956 act has brought about a serious situation with respect to both the collapse of Antidumping Act for administration and enforcement and the valuation of imports for duties and trade balance accounting purposes.

The record shows there have been less than a dozen cases in which antidumping duties have been imposed since 1956; yet, several hundred complaints have been filed since that date. Also, we believe that domestic industries have been further injured through a reduction in the amounts of duties collected because of the acceptance of deflated prices used as the base for customs valuation.

Of equal seriousness, too, is the misleading information, being furnished to Congress and executive branch officials, who are responsible for establishing trade policy and making administrative decisions, in connection with the position of the United States in foreign trade. Since we rely on customs for import statistics, deflated valuation results in a distorted picture of the U.S. trade balance, deemphasizing the import component and, conversely, exaggerating the relative value of exports. Such distortion makes the U.S. position appear much better than is the actual case and, in addition, makes it more difficult for domestic industries to establish the degree of injury which is actually taking place.

The 1956 act has made it easier for foreign exporters to manipulate both the home market and the export price in order to predetermine collections of U.S. duties based on ad valorem. Prior to the passage of the act, the primary basis for valuation was the higher of the foreign (home market) value or the export value; enactment made export value the principal base. The latter has allowed exporters to have some control over the amount of duties collected in the United States since the price they charge for exports becomes the principal basis for customs purposes.

It is not difficult to realize a natural inclination on the part of those working in U.S. customs to follow the practice of taking the price carried on a commercial invoice as that representing export value and to use this price for customs valuation. It is our understanding that such value is often considerably lower than foreign value. The latter, under statutory provisions, formed the basis for our customs valuation prior to 1956.

It is the recommendation of this association that the Congress make the necessary legislative changes to provide that all duties be levied on an ad valorem basis; and for customs valuation to be based on the higher of foreign (home value) or export value, plus cost, insurance, and freight to the U.S. port.

EXPORT CONTROL ACT OF 1950

Misuse of the provisions of the act by the Department of Commerce to restrict exports of hides and skins—action contrary to the intent of the Congress—is fresh in the minds of the members of the Senate Finance Committee, and the livestock and meat industry.

The association recommends that section 3 be amended to clarify the intent of Congress to preclude export controls being instituted against agricultural commodities, the production of which is in excess of domestic needs.

IMPROPER REPORTING OF TRADE STATISTICS

The misleading manner in which trade statistics are reported and emphasized is not a new subject for this committee. When it took on the job over 3 years ago of determining the true situation with respect to meat and meat product imports, a sea of frustration existed. There were at least four or five official sources of published data, which were impossible to reconcile, and from which it was difficult, if not impossible, to make meaningful breakdowns.

The committee's work at that time contributed to the solution of the problem of several different sources of trade statistics. Then, again, in 1966, the committee addressed itself to a complete airing of the compilation and reporting of trade data and statistics.

It was our understanding that the committee was given certain assurances, at the time of the 1966 hearings, by the executive departments. Said assurances were that these agencies would come up with non-burdensome procedure of compiling and reporting trade information and statistics which would provide Congress and others with a true picture of foreign trade in clearly understandable terms—information that would provide the answer to the minority leader's simple request to know "what we get for what we sell abroad, and what we pay for what we buy from other countries."

It is now obvious that administrative officials are still traveling the familiar route of misleading the Congress and the people, rather than fulfilling their pledge to this committee. Therefore, this leaves the Congress no alternative but to resort to specific legislative direction in this important area.

On October 18, 1967, before this very committee, the Secretary of Agriculture reiterated the same trite and misleading statements, with respect to agricultural trade, that have been coming forth from his Department since early days of discussion about meat imports. In support of arguments that American farmers enjoy a highly favorable balance of trade he said:

> One out of every 4 cropland acres harvested is produced for export; exports provide employment for one out of every eight farmworkers; exports account for 17 cents out of the farmers' market dollar; against well over $5 billion of

commercial export sales we have around $2.5 billion of more or less directly competitive imports; for every $2.50 imported we export $5 commercially.

These statements in themselves are grossly misleading.

The position of U.S. agriculture has been seriously distorted by comparing directly the figure designated as total exports with the reported value of imports to determine the competitive position of the American farmer in foreign trade. When a businessman donates to a charitable cause, he does not credit the amount to the income side of his ledger; yet, this is exactly what is done in the case of certain agricultural shipments abroad. We give away a boatload of wheat, for example, ship it to a foreign country, and then enter its value on the credit side of the U.S. balance for agriculture. The error here is actually twice the value of the product shipped.

A second cause of distortion is the failure of the United States to report imports on the same basis as other major trading nations; namely, f.o.b. our shores. Most other major trading nations include cost, insurance, and freight (c.i.f.) in their import value figures.

A third source of distortion results from our use of export value as the primary base for import valuation, as explained in the previous section on customs valuation.

Let us examine the import-export figures carefully to determine more accurately the position of U.S. agriculture. The data for fiscal 1965–66 is used in the following calculations because complete detailed breakdowns are not yet available in published form for fiscal 1966–67.

First, the completely distorted picture commonly portrayed by the Department of Agriculture:

Fiscal 1965–66[1]

[In millions of dollars]

Total agriculture "exports"	6,681
Total agricultural "imports"	4,454
Claimed favorable balance	2,227

[1] Source: Foreign Agricultural Trade of the United States, ERS, USDA.

Now, a more careful look at the makeup of the figures, labeled for what they are. (Figures again in millions of dollars):

Total agricultural shipments abroad	6,681
Less shipments under Government-financed programs	1,615
Commercial sales for dollars (including those subsidized by Government)	5,066
Imports (export value basis—point of origin)	4,454
Plus 8 percent c.i.f.[1]	356
Imports (export value basis—our shores)	4,810
Apparent favorable balance	256
Influence of deflated customs valuation	(?)
Actual balance of agricultural trade	(?)

[1] Cost, insurance, and freight for agricultural products imported is estimated at 8 percent of valuation. "CIF Value of U.S. Imports," U.S. Tariff Commission, February 1967.

You'll notice that the above listed commercial sales for dollars includes sales subsidized by the U.S. Government. Let's take a look at the "real world" of competitive trade—how much did we actually sell abroad during fiscal 1935–66 without Government subsidization? Bear in mind that we pay out hard cash dollars for all imports.

[Figures again in millions of dollars]

Commercial sales for dollars	5,066
Less Government subsidized sales	1,219
Commercial exports without Government subsidy	3,847
Imports (export value basis—our shores)	4,810
Deficit (nonsubsidized sales less dollar imports)	-963
Influence of deflated customs valuations	(?)
Actual deficit, this basis	(?)

It can be argued, of course, that at least some of the so-called commercial sales which moved with the help of export payments would have been consummated in the absence of Government subsidization. We readily concede this; all we are saying is that this volume, in fact, did not move without export help and this should be made clear in any reference to agricultural exports.

CASE FOR RETALIATIONS BY OTHER COUNTRIES

Cabinet officers, in their recent testimony before this committee, attempted to make a strong case for the harm which can come from retaliation on the part of other nations, as a consequence of attempts to give domestic agriculture and industries a fair shake in foreign trade.

Again, impressive, logical cliches are utilized to make the points: "If we are going to sell, we must also buy."

Contrary to the impressions left of automatic mass retaliation, any move to retaliate must come on an individual country-by-country basis (except for group action by the EEC, for example). Furthermore, other countries are already providing a very high and effective degree of protection for their domestic agriculture and industries; and they most certainly do not give a second thought to retaliation on the part of the United States when putting their protective measures into practice or in maintaining them.

U.S. officials fail again to paint the true picture for the Congress and the public. Nearly every other country in the world, through some kind of control on imports, takes only those products, and in the volume, that they want and/or need. They do not feel any obligation to throw their borders open to take any product in whatever volume some other country wishes to ship to its ports of entry. The United States is practically the only country which guilds and carries out its trade policy on such an "ivory tower," impractical foundation. Other nations handle foreign trade on a strictly businesslike basis, not in the framework of goodwill gestures.

Actual cases do not bear out retaliation warnings. Witness the absence of such action with the passage of the 1964 meat import law, and the action to curtail dairy imports under Presidential Proclamation 3790, issued on June 30 of this year.

Retaliation warnings on the part of our executive branch officials are like ghosts in haunted houses—used only in an attempt to scare the Congress and domestic agriculture and business into meekly following the course of basing trade policy and negotiations on international relations considerations and the "free trade" philosophy of the trade theorists.

KENNEDY ROUND NEGOTIATIONS GAIN NOTHING FOR U.S. AGRICULTURE

Administrative officials have looked long and hard at the results of the recent Kennedy round in the GATT negotiations to try and carve out some "paper" gains for U.S. agriculture, rather than to flatly admit that the American farmer will still not be accorded reciprocal treatment, to any greater degree than in the past, as a result of said negotiations.

Even before the Kennedy round results could be analyzed, the EEC established an export subsidy on canned hams amounting to about 25 cents per pound, in face of the U.S. agreement not to increase the minimal import duty of 3 cents per pound. This is a concrete example of how much stock can be put in the dollar value placed on claimed concessions to U.S. agricultural products, from the standpoint of "real world" results.

It is claimed that "the United States received concessions on items of interest to agriculture valued at $866 million, c.i.f. basis, and gave concessions valued at $860 million, c.i.f. basis." [2]

In three of the five agricultural sectors in which negotiations were conducted, tariffs were not the only major impediment to world trade; these include (1) grains, (2) red meats, and (3) dairy products.

In the words of Hon. William M. Roth, Special Representative for Trade Negotiations, "there were nontariff barriers that were not touched in the Kennedy round." Mr. Roth included such devices as state trading, border taxes, arbitrary customs valuation, "Buy National" laws and practices, and discriminatory internal taxes, and remarked that there were a host of others.[3] And, indeed, there are a host of other nontariff barriers utilized by other nations against exports from the United States. In addition to the ones listed by Mr. Roth, there are quotas, import licenses, import certificates, gate price systems, health restrictions, outright import prohibitions, minimum price controls, and others.

These barriers have been a major cause of discrimination against our exports, resulting in nonreciprocal treatment for U.S. farmers (and industry), regardless of paper concessions spelled out in officially negotiated agreements.

Can the EEC still utilize its system of variable levies? The answer is "Yes." Can foreign nations still impede, or completely wall out, U.S. exports by using a multitude of nontariff barriers? The answer is obviously "Yes," again.

Another factor which distorts the picture of U.S. concessions and gains is the failure of this country to change to an ad valorem basis in assessing duties during these past years of growing inflation. Many other nations have gone to an ad valorem basis, in addition to complex systems of high tariffs, flexible tariffs, and the like.

A study of the reports setting forth the results of the Kennedy round, with respect to agriculture, bears out the fact that other coun-

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[2] "Report on Agricultural Trade Negotiations of Kennedy Round," FAS-M-193, FAS USDA, September 1967.
[3] Ibid. Footnote 1.

tries are still free to exercise all of the above-named trade restrictions against U.S. agricultural exports.

How can there be any realistic conclusions drawn on the value of concessions when foreign nations are still in a position to change their "ground rules" of trade whenever it suits their interests? The United States is simply not guaranteed access to many markets, regardless of "paper" tariff concessions.

The high degree of nontariff protection afforded livestock and meat producers in other countries is dramatically illustrated in the table below. The information in the table is the most nearly current available to us. We understand there have been some changes made, but they appear to be minor.

LIVESTOCK AND MEAT: PROPORTION OF THE VALUE OF DOMESTIC PRODUCTION PROTECTED AGAINST IMPORTS BY NONTARIFF TRADE BARRIERS, SELECTED COUNTRIES

[Dollar amounts in millions]

Country	Total value	Protected value	Percent
France	$2,479	$2,355	95.0
West Germany	2,349	2,231	95.0
Netherlands	475	452	95.2
Italy	1,136	1,136	100.0
Belgium	341	156	45.7
Greece	109	109	100.0
Austria	310	310	100.0
Denmark	560	560	100.0
Norway	112	106	94.6
Portugal	102	102	100.0
Switzerland	242	232	95.9
United Kingdom	1,355	456	33.7
Japan	618	355	57.4
United States	9,255	0	0

Source: Agricultural Protection by Nontariff Trade Barriers. ERS—Foreign—60, September 1963, U.S. Department of Agriculture.

We understand a complete current listing of nontariff barriers employed by other countries is in preparation. Upon its completion, we will be glad to make it available to the committee.

EFFECT OF KENNEDY ROUND ON LIVESTOCK AND MEAT

Of special concern to this association is the additional pressure on domestic producers which will result from the tariff concessions granted by the United States on canned beef, fresh pork, lamb, certain prepared meat products and meat extract, wool, hides and skins, and the binding of duties on canned hams at 3 cents per pound.

In most cases, the United States cut tariffs on these meat and other animal product items in half; and these are for real since the United States has no other barriers on them.

On paper, we did receive some minimal concessions, but what these will amount to in actual practice remains to be seen since the countries involved, with the possible exception of Canada, can still restrict said exports from this country by means other than duties.

It is plainly clear that the United States definitely came out on the "short end of the stick" in the negotiations involving livestock and meat products, and U.S. feeders, ranchers, and related industries will suffer the consequences, in the form of increased imports with no assurance of reciprocal treatment.

TARIFF COMMISSION—TARIFF ACT OF 1930

The Tariff Commission was established by the Congress as a quasi-legislative body. Its purpose was to inform and assist the Congress in tariff and trade legislation. Section 332 of the 1930 act directed the Commission to carry out continuing investigations on a variety of factors and topics and to report the findings thereon to the Congress. Subject areas included those factors and practices affecting competition between U.S. and foreign industries and those having a bearing on competition in U.S. markets between articles of the United States and of foreign origins.

Investigation and reporting responsibilities were to cover such competitive industry considerations as the effect of customs laws on U.S. industry and labor, trade practices of foreign countries, preferential provisions of treaties, and dumping. Also, among the factors having a bearing on competition between U.S. and foreign articles in the U.S. markets, to be investigated on a continuing basis, were costs of production of U.S. versus foreign-produced articles, import costs of articles competitive with U.S. production, and the like.

How far afield the Commission has strayed from the original congressional intent and legislative direction.

To say that the Commission has failed to carry out its duties, as spelled out by Congress, is to put the situation in mild terms, indeed. Representatives of this association who have taken the livestock feeders' problems to the Commission, and have appeared before it in recent years, would not recognize it at all in the terms used by the Congress to set down its functions, and certainly not as a quasi-legislative body.

The Commission operates more as if it were linked with the executive branch, and more specifically, as an extension of the State Department. It has been our observation that foreigners and representatives of foreign interests feel more at home in its hallowed chambers than do representatives of U.S. industries. International relations considerations seem to dominate its work and its decisions.

Petitioning the Tariff Commission in connection with injury to a domestic industry is both time consuming and expensive, beyond reasonableness; furthermore, this has proved to be an impossible route to obtain import relief for agriculture.

The requirement of proving injury under the provisions of the Trade Expansion Act of 1962 is an insurmountable obstacle to agriculture. It is impossible to obtain thousands of financial statements from individual producers in support of the injury claim; and, also, it is an impossible task, with general farm units, to separate out the particular enterprise involved in the production of the specific product(s) or commodity(s) in question. Yet, this is what the Commission has told us would be necessary to substantiate a claim of import injury.

Filing an appeal to the Office of Emergency Planning under the national security amendment presents similar impossible obstacles in proving injury, in addition to the Office's reliance on the State Department's assessment of international relations considerations, in making its decisions.

The Congress badly needs to set up a practical avenue for domestic industries and agriculture to present their problems involving import injury. Surely, U.S. agriculture and business firms are entitled to the privilege of presenting their cases to their own Government without becoming involved in what amounts to international court cases. Also, we should be able to depend on our own Government being sympathetic and even partisan to U.S. interests.

As it is now, the injured domestic industry, or party, winds up having to defend its position against the exporting foreign countries and a proimport U.S. Government body. The resulting maneuver simulates an international court battle with all the guns pointed at the petitioning domestic party, including those of the "judge and jury" (Tariff Commission or other U.S. Government body).

CONCLUSION

In these chapters and paragraphs we have attempted to explain numerous situations and circumstances supporting an introductory statement that the United States must alter its course with respect to foreign trade and trade policies. On behalf of the National Livestock Feeders Association, we express gratitude for the opportunity of contributing our views, comments, and recommendations to the Committee on Finance, U.S. Senate.

AFTER THE KENNEDY ROUND—ALTERNATIVES FOR U.S. TRADE POLICY

(By Edward G. Posniak, chief economist, United States-Japan Trade Council)[1]

SUMMARY

Following the successful conclusion of the Kennedy round there appear to be three basic alternatives for U.S. foreign trade policy:

(1) Forward to freer trade on a multilateral and nondiscriminatory basis—a direct continuation of the U.S. trade policy since 1934.

(2) Sideways toward regionalism and the "sphere of influence" concept—a radical departure from established trade policy.

(3) Backward toward protectionism—a reversion to the Smoot-Hawley era of trade contraction and economic nationalism.

The first course means concentrating on nontariff trade barriers, where a bare beginning was made in the Kennedy round; on agricultural trade; on greater access to industrialized markets for the underdeveloped countries; and perhaps on freer trade in sections dominated by multinational corporations. These are more in the national interest of the United States than of any other country.

Regionalism ignores the United States interest in Asia and Africa and is incompatible with the position of the United States as a world power.

A return to protectionism would invite retaliation and trade war; would promote domestic inflation and discourage economic growth; and would adversely affect the U.S. balance of payments.

[1] Mr. Posniak passed away on Jan. 20, 1968.

The only trade policy that makes sense for the United States is a multilateral and nondiscriminatory policy under the auspices of GATT.

STATEMENT

A negotiation as complex and protracted as the Kennedy round, involving so many different commercial, economic, and political facets, is obviously difficult to evaluate in simple terms. Yet the sixth round of tariff negotiations under the General Agreement on Tariffs and Trade (GATT) was a very significant achievement from several points of view.

The fact that, contrary to earlier pessimistic expectations, an average tariff cut of 35 percent was achieved with respect to some $40 billion of world trade is certainly an impressive accomplishment. Tariffs will be reduced, over a 5-year period, on a much larger proportion of the world's dutiable trade than in any of the five previous GATT rounds of tariff negotiations. Particularly important is the fact that the tariff cuts of the Kennedy round will minimize the discrimination against U.S. exports involved in the common external tariff of the European Economic Community (EEC).

In contrast to earlier GATT negotiations, the Kennedy round was conducted on a "linear" or across-the-board basis, rather than on an item-by-item basis. This was the breakthrough in negotiating technique that was largely responsible for achieving as high an average tariff cut as 35 percent. Had it not been for the many exceptions made for so-called sensitive import items (like textiles, for example), an even higher average tariff cut would have been possible, approximating the 50-percent reduction authorized in the Trade Expansion Act of 1962.

Again in contrast to the previous GATT negotiations, which were confined to tariffs, the Kennedy round took at least the first steps in dealing with the problem of nontariff trade barriers. In this context the International Antidumping Code and the abolition of the American selling price and of the European road taxes are of particular significance. In tackling nontariff barriers for the first time, the Kennedy round pointed the way to what is clearly the main task of trade liberalization in the years to come. For as tariff levels are progressively lowered and reduced in significance, nontariff barriers become proportionately more important. And, it might be added, interest groups increasingly tend to seek protection in the form of import quotas and other nontariff devices.

It is true that, except for the International Grains Agreement, the Kennedy round's results in liberalizing trade in agricultural products were somewhat less than had been hoped for. This was a direct result of the fact that agriculture in virtually ever country of the world is a highly protected and fairly rigidly controlled sector of the economy, more for social and political reasons than for purely economic ones. In particular, the common agricultural policy painfully hammered out by the six EEC countries is an inward-looking and restrictive kind of policy. Its variable import levy on agricultural imports from outside the EEC is an essentially protectionist device, aimed at maintaining domestic production regardless of world market patterns.

This shortcoming of the Kennedy round with respect to liberalizing agricultural trade, however, only increases the importance, from the standpoint of the U.S. national interest, of proceeding on the road to further trade liberalization. As in the case of nontariff trade barriers, it is clearly not an argument for standing still or going back but, on the contrary, for pressing ahead. This is equally true with regard to trade with the less developed countries, which view the results of the Kennedy round as falling short of their expectations.

The most widespread criticism of the Kennedy round in this country has come from import-sensitive industries—largely those labor-intensive industries which are least efficient and thus least competitive in world trade, in terms of comparative advantage. The criticism, largely emanating from sources claiming increased import competition, is that the United States has failed to obtain full reciprocity in the negotiation; that is, that it has actually been the loser in terms of tariff concessions granted and received.

It is interesting to note that the same criticism of alleged lack of reciprocity and potential damage has been heard with equal vigor in other countries that were our negotiating partners in the Kennedy round. Surely, if the United States had struck as bad a bargain as some critics maintain, our trading partners should have been unanimously delighted by the results. In point of fact, a reading of the foreign press (notably the European press) indicates that they have not.

As the Morgan Guaranty Trust Co.'s survey for September 1967 concludes:

> The Kennedy Round's true claim to success is not expressible in quantitative terms. The essence of the achievement rather is that the Geneva negotiators succeeded in restoring forward momentum to the international march toward freer world trading conditions that began three decades ago. And multilateralism was urgently in need of just such a boost, since for more than a decade the most dramatic innovations in trading arrangements have all been bloc-oriented.

ALTERNATIVES FOR U.S. TRADE POLICY

Following the successful conclusion of the Kennedy round there appear to be three basic alternatives for U.S. foreign trade policy. Reduced to their simplest terms, they may be summed up as follows: The first is, in effect, forward to freer trade, on a multilateral and nondiscriminatory basis, under GATT, the General Agreement on Tariffs and Trade. This is a direct continuation of the established policy pursued by the United States since the first Reciprocal Trade Agreements Act of 1934, associated with the name of Cordell Hull.

The second alternative—in effect, sideways toward regionalism and the "sphere of influence" concept—would represent a radical departure from established trade policy. Presumably, it would have to be adopted only if circumstances have changed so drastically as to make our longstanding policy of multilateralism and nondiscrimination unworkable or no longer in the national interest.

The final alternative—in effect, backward toward protectionism—obviously represents a complete reversal of everything this country has stood for in the last 33 years. Its adoption would signify a reversion to the Smoot-Hawley era of trade contraction and economic nationalism, if not isolationism. It would be a clear signal to the rest of the world that the United States has gone back, at least in economic terms, to the concept of a "fortress America."

These three basic alternatives for U.S. trade policy are examined in sequence below.

Since this is the traditional U.S. foreign trade policy, pursued since 1934 and culminating in the Kennedy round, it can be stated in a few words. This policy implies continued multilateral trade negotiations under GATT auspices, involving perhaps a new round of tariff negotiations in 5 years or so, once the tariff cuts of the Kennedy round—to become effective over a 5-year period—have been absorbed and digested. And it is suggested that they will be absorbed and digested with far less of a traumatic impact on domestic industries than the present hue and cry would lead one to believe. This prediction is based on recent experience in both the EEC and EFTA (European Free Trade Association), where the reduction of internal tariffs to zero—as distinct from an average 35-percent tariff reduction over a 5-year period, as in the Kennedy round—has been accompanied by very little dislocation of domestic industries, certainly far less than had been anticipated.

In the immediate future, this "forward policy" would mean concentrating on (1) nontariff barriers, where a bare beginning has been made in the Kennedy round, especially in the International Antidumping Code; (2) trade in agricultural commodities, where the Kennedy round has made only small progress, largely because of the inflexible and restrictive Common Agricultural Policy of the EEC; (3) arrangements with the less-developed countries designed to facilitate their access to the markets of industrial countries, notably in manufactured products; and (4) perhaps moving toward free trade in certain industrial sectors characterized by multinational corporations, large-scale exports, and a high rate of technology in capital-intensive industries.

It should be emphasized that all of these approaches toward freer world trade are more in the national interest of the United States than that of any other country. This is true because this country is the most powerful and most productive economy in the world, because its interests in foreign trade and foreign investments are worldwide, because it has the largest volume of trade and the biggest export surplus of any country in the world, and because, as a result, it has more to gain and less to lose from freer trade than anyone else.

Points (1) and (2) above—the reduction of nontariff barriers and the freeing of world trade in agricultural commodities—are most particularly in the clear national interest of the United States because (*a*) this country has relatively fewer nontariff barriers than other countries, notably in Europe, and (*b*) the United States is by far the largest exporter of agricultural commodities in the world. All of the foregoing would seem to be self-evident and would hardly deserve emphasis, except that the current protectionist offensive has tended to obfuscate these basic truths. This may be a time therefore when, in the words of Oliver Wendell Holmes, "the vindication of the obvious is more important than the elucidation of the obscure."

Sideways toward regionalism

Some students of trade policy believe that in today's world of regional trade blocs, such as the EEC and EFTA as well as the Latin American Free Trade Association (LAFTA) and the Central American Common Market (CACM), multilateralism is obsolete and the

United States should take the lead in forming a free trade area or common market of its own, to be joined by one or another set of countries. Four or five main variants of this idea may be distinguished, although there are others.

Perhaps the most influential school of thought argues for concentration on Latin America, that is, for a modified free trade area of the United States, and the Central and South American Republics. This idea was initially proposed by the late Will Clayton, Under Secretary of State in the Truman administration, who argued for one-way abolition of U.S. tariffs vis-a-vis our Latin American neighbors, at least with respect to agricultural products, on the ground that elimination of Latin American tariffs on U.S. products would expose these countries to intolerable competition. The general proposition of an American free trade area has many proponents, notably among U.S. corporations with extensive investment and trade interests in Latin America. It suffers from at least one serious defect: most Latin Americans themselves do not want it, fearing domination by the "colossus of the North." Another drawback is that a free trade area confined to certain products (in this instance agricultural products) would not be compatible with the provisions of GATT with respect to customs unions.

Another influential school of thought looks north rather than south and favors a free trade area between the United States and Canada. It points to the recent United States-Canadian Auto Agreement as a step in the right direction and recommends its extension to other industries. The foremost proponent of this idea today is David Rockefeller of the Chase Manhattan Bank, as well as the American-Canadian Committee of the National Planning Association. The notion suffers from the same defect as the proposed free trade area with Latin America: few influential Canadians will really want complete free trade between the United States and Canada, fearing domination by the "colossus of the South." Again, to be compatible with GATT, the customs union would have to cover trade in all products and could not be confined to certain industries, as advocated by most of its proponents.

A somewhat broader version involves, in addition to the United States and Canada, the United Kingdom and perhaps the rest of the EFTA countries (Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and perhaps Finland, which is an associate member of EFAT). This idea was propounded at a recent United States-United Kingdom-Canadian meeting at Ditchley (England). One of the weaknesses of this proposal is that the British circles favoring it are not influential. More important British elements see it not even as a second-best solution in the event their current attempt to join the EEC fails. The Government of the United Kingdom as well as its leading economic interest groups, as represented in the Confederation of British Industries, are clearly committeed to this latter course, come hell or high water or General de Gaulle.[1] The proposal of the United States-

[1] This statement of fact does not imply that the author views Britain's entry into the EEC as being necessarily in the U.S. national interest. For one thing, Britain's entry into the EEC—followed presumably by Ireland, Denmark, Norway, and Austria, if not other EFTA members as well—would clearly extend the area of trade discrimination against U.S. exports by an enlarged EEC. Even the assumed political benefits of such a fusion of EEC and EFTA, in terms of a stronger, united Europe linked with the United States in an "Atlantic partnership," seem at best debatable. If such benefits were realized, France under de Gaulle would clearly never stand for it. If unrealized, the trend may well be away from the United States, toward Europe as a "third force."

United Kingdom-Canada free trade area under present circumstances is, therefore, totally unrealistic.

Finally, some would broaden the free trade area concept still further, to include the United States, United Kingdom, EFTA, Canada, and perhaps Japan. What this amounts to, of course, is an anti-EEC trade area, involving more or less open trade warfare against the European Community. What such a rift between "the Anglo-Saxons"—to use General de Gaulle's favorite term—and the heartland of Western Europe would do to the U.S. foreign policy of NATO and the Atlantic Alliance can be left to the reader's imagination. But in addition such a free trade area would clearly be regarded by the developing countries as a "rich man's club," thus accentuating still further the rift between the industrial north and the underdeveloped south of the world and negating U.S. influence in the "third world."

All of the above alternatives, except perhaps one version of the last one, have one thing in common: they ignore Asia. They also appear to ignore Africa, presumably leaving it to become the private preserve of the EEC. In his recent testimony before the Subcommittee on Foreign Economic Policy of the Joint Economic Committee, former Under Secretary of State George Ball implicitly favored this "sphere of influence" approach as the most realistic course of action, suggesting that the United States should treat Latin America as its area of major interest, while leaving Africa to the EEC.

It is not necessary to argue the merits of a sphere-of-influence policy versus a global policy to demonstrate the incontrovertible fact that the United States is not a power whose interests are confined to Latin America or Canada or even Europe. It is also a Pacific power, and it has definite economic and political interests in Africa. Again, one need not get involved in the current debate over "overcommitment" to agree that none of the free trade area proposals discussed fit the reality of America's role in world affairs. Only a multilateral trade policy fits the requirements of U.S. foreign policy, with its many interests in all parts of the globe. There are sound foreign policy reasons why the United States has pursued this multilateral policy for the last 33 years. There appear to be no cogent reasons why it should depart from it now.

Perhaps a word should be said at this point about one other alternative approach, although it has received far less consideration than the ones discussed and is not a free trade area or customs union, as are the others. This is the idea of an Asian-Pacific Community, advanced by Japanese Foreign Minister Miki and advocated in this country by Representative Richard Hanna of California, among others. The salient fact about this proposal is that its proponents do not regard it as another trade bloc, either in the form of a common market or of a free trade area.[2] Instead, they view it as a community for the economic development of the underdeveloped countries of Southeast Asia, using the capital and technology of the area's advanced countries; namely, the United States, Canada, Japan, Australia, and New Zealand. As a

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[2] This was made quite clear in the address by the Chairman of the Japanese Economic Mission to the Midwest, Mr. Kikawada, delivered in Washington on June 30, 1967: "When we speak of a Pacific Community, we emphatically do not mean an inward-looking and restrictive trading area, tending to divide the world still further into rival trade blocs. Regional cooperation through trade and aid, mutual assistance and self-help, joint investments, and other forms of economic cooperation—this is what I have in mind when I speak of a Pacific Community."

result, this proposal does not suffer from the inherent vice of all the others; that is, that of being an exclusive, divisive, and discriminatory trade bloc.

The discussion so far has been centered primarily on the foreign policy aspects of the various free trade areas proposed. What about their economic impact on the trade of the United States? A recent study at Michigan State University [3] sheds some light on this subject, though the projections are necessarily highly conjectural. Comparing the effect of alternative trade arrangements on U.S. external trade, the study arrives at the following summary table:

[In millions of dollars]

Trade arrangement	Change in United States		
	Imports	Exports	Trade balance
Atlantic free trade area (AFTA)	+2,183	+2,488	+300
European integration	....	−450	−450
AFTA without the EEC	+1,500	+1,900	+400
50 percent MFN tariff reduction	+1,150	+1,300	+150

The Atlantic free trade area, as visualized in this study, comprises the United States, Canada, the EEC, EFTA, and Japan. "European integration" is defined as a merger of the EEC and EFTA. The difference between this alternative and the next (an Atlantic free trade area without the EEC) is that the latter contemplates a free trade area between the United States, Canada, EFTA, and Japan, whereas the former does not. As to "50 percent MFN tariff reduction," it means the kind of multilateral negotiation concluded in the Kennedy round, except that its average tariff cut was only about 35 percent.

These calculations indicate that an Atlantic free trade area, with or without the EEC, would tend to have the most favorable impact on the U.S. trade balance, while European integration as such would probably exert the most unfavorable effect. While the gain to the U.S. trade balance from a 50-percent tariff reduction under the most-favored-nation clause would be more modest, it should be noted that the increase in U.S. imports under this alternative would also be far smaller than in an Atlantic free trade area, especially one that includes the EEC. Thus, a 50-percent MFN tariff reduction would presumably require far less domestic adjustments and encounter less protectionist resistance than an Atlantic free trade area.

As the author of the MSU study is at pains to note, "the effect of a certain policy on the U.S. external trade position is not the paramount factor in determining its desirability." He correctly emphasizes that "the choice among available alternatives will probably rest mainly on political considerations."

As the previous discussion indicates, none of the free trade area proposals advocated in recent years meets the requirements of U.S. foreign policy; that is, the imperatives of avoiding a split between America and Europe, of taking into account U.S. national interests in Asia, Latin America, and Africa, and of preventing a still larger gap between the advanced industrial countries and the third world.

[3] "Alternative Commercial Policies—Their Effect on the American Economy," by Mordechai E. Kreinin, MSU International Business and Economic Studies, 1967, especially p. 74.

Backward toward protectionism

Back to protectionism after 33 years of successful efforts at trade expansion through a liberal trade policy, culminating in the success of the Kennedy round, seems on the face of it like an inconceivable if not an irrational alternative from the standpoint of the U.S. national interest. And yet it is frighteningly clear today that it might be adopted by default unless the current protectionist onslaught against freer trade is decisively defeated.

To be sure, virtually no one explicitly advocates a return to the Smoot-Hawley era. Proponents of restrictive legislation merely seek to "help" the particular segment of industry or agriculture in which they are interested against import injury, real or imagined. They generally profess merely to seek an "exception" for their particular industry, leaving trade policy in general otherwise unchanged. But the number of commodities involved in the pending quota bills (which have been estimated by the President's special representative for trade negotiations to affect some $12 billion worth of imports, or almost half the U.S. total) makes it quite clear that these "exceptions" would become the new policy.

It is true that these bills generally seek import quotas rather than high tariffs. But most economists agree that quotas are far worse than tariffs because they distort the normal patterns of trade and do not permit market forces to operate freely. As Prof. Gottfried Haberler, of Harvard, has said, "Anyone who asks for * * * quotas * * * in effect asks for Government handouts and, whether he knows it or not, demands the replacement of the businessman and market forces by public officials and Government fiat." [4]

In fairness to the proponents of import quota legislation is should be noted that some of them explain it in terms of reaction against damage suffered by American exporters at the hands of the EEC, notably on account of its variable levy on agricultural imports. To this extent one should perhaps refer to them as "neoprotectionists" as distinguished from the old-fashioned variety.

But how realistic is this neoprotectionist school of thought? Do they really believe that the enactment of massive quota legislation by this country would show the EEC the error of its ways and convert it to a more liberal trade policy? Clearly, the likely outcome instead is a wave of retaliation by the EEC, as indicated by the notes of protest already lodged by all six EEC countries with the State Department. This, surely, is a prescription for an all-out trade war between America and Europe, which would make the famous "chicken war" of a few years ago seem like an insignificant trifle.

If the neoprotectionists are in earnest about wanting to achieve a more liberal trade policy abroad, and especially on the part of the EEC, the way to go about it is surely by embarking on a new round of negotiations aimed at nontariff barriers. If the neoprotectionists prefer retaliation to negotiation, one must ask whether their references to the iniquities of the EEC are a rationalization for protectionism of the old-fashioned variety.

That this reactionary trend back to Smoot-Hawley should emerge in the wake of the most far-reaching and successful round of GATT

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[4] Meeting Foreign Competition at Home and Abroad, Proceedings of the First 1961 Economic Institute, Feb. 15, 1961, Chamber of Commerce of the United States, p. 18.

negotiations ever conducted may seem, at first sight, paradoxical. But it is precisely the fact that these negotiations are concluded, together with the fact that the negotiating authority of the Trade Expansion Act has expired, which gives the opponents of freer trade a field day. Protectionist lobbies appear to have labored long and hard to nullify the tariff reductions achieved in the Kennedy round by means of import quotas. On the sound strategic principle that one should yell before one is bitten, they have been pushing restrictive proposals long before they are feeling any damage from tariff reductions—much less before they can document such damage.

So much for the origins of the current protectionist counteroffensive. What about its probable consequences? The most obvious and likely result of a U.S. relapse into protectionism is the prospect of retaliation from abroad. In recent weeks every one of our major trading partners—the EEC, the United Kingdom, Canada, the Scandanavian countries, Japan, Latin America, and so forth—has explicitly warned the United States that if the import quota bills were to become law, they would have no alternative except to retaliate against us. And under GATT, they would have a perfect right to retaliate (or seek compensation) for injuries suffered, just as the United States retaliated against the EEC in the "chicken war" by raising tariffs on French brandy and German Volkswagen buses. As the President's Special Representative for Trade Negotiations has pointed out repeatedly, such retaliation would not be necessarily directed against the industries affected by import quotas—such as steel, textiles and so forth—but rather against those American industries most vulnerable because they are most dependent on exports, which cover a wide range of products from agriculture to machinery.

This process of retaliation would almost inevitably escalate into a trade war—a trade war incompatible with either our alliances or our prosperity. In the thirties this kind of economic nationalism and trade contraction was accompanied by a worldwide depression. Such a depression would be even more likely today, simply because the world economy has grown far more interdependent, as shown by the expansion of world trade, the growth of American investments abroad, and the rise of multinational corporations.

In terms of foreign policy, retaliation and trade war between this country and the rest of the world would inevitably result in the isolation of the United States and the abdication of its world role. It is quite clear that protectionism in economic affairs has as its logical counterpart isolationism in foreign policy. It would be almost impossible to pursue one without achieving the other. Thus, the choice between alternative trade policies is in actuality a choice between conflicting foreign policies. And yet this inevitable correlation has not been clearly recognized and faced thus far; there are many—far too many—voices clamoring for protection but very few, if any, advocating a return to isolationism.

The domestic economic implications of a return to protectionism are equally serious. For one thing, protection breeds inflation because, by impeding imports, it restricts competition, favors monopoly and oligopoly, and drives the price level upward. This is of special importance at a time like the present, when inflationary forces in the domestic economy are again on the upswing. It is of particular significance when basic industries like steel and textiles clamor for protection, since their price levels tend to affect the rest of the economy and since imports thus far have been one of the few restraining factors in their price behavior.

Protection, in addition to raising prices, restricts the free choice of the consumer by limiting the range of imported goods available. Thus, the consumer becomes more than ever the forgotten man—and woman—of the American economy. If the legislative voice of the American consumers were proportionate to their numbers, we would hear less about protectionism and more about the need to keep prices down.

In essence, of course, protection means sacrificing the most efficient American industries—those best able to compete in foreign markets and thus vulnerable to foreign retaliation—in favor of the least efficient, which are to be shielded from competition by import quotas. Such a policy is clearly to the detriment of the Nation's welfare as a whole and of its rate of economic growth in particular. To sacrifice the most dynamic sectors of the American economy for the benefit of the stagnant ones is a recipe for disaster.

Finally, a most important aspect of protectionism is its impact on the U.S. balance of payments. In his letter to the Senate Finance Committee, of October 18, 1967, the Secretary of the Treasury has pointed out that "a country with a large trade surplus is uniquely vulnerable to the adverse effects of a quota war." This is true because of three side effects of import quotas: the feedback effect, the retaliation effect, and the competitive loss effect. As to the first, experience suggests that for each $1 billion reduction in our imports, the United States loses more than $500 million of exports—even in the absence of retaliatory action, simply for lack of dollars abroad with which to buy in this country. The retaliation effect has been discussed above, and the Secretary estimates that "loss of U.S. exports for these two reasons alone might well exceed any reduction in our imports resulting from the proposed quotas." As to the competitive loss effect, imposition of the quotas would encourage higher domestic prices and tend to make U.S. products less competitive in foreign markets. The combined impact of these three side effects cannot be predicted exactly, but the Treasury's judgment is that "the ratio would be considerably greater than one for one." The Secretary concludes: "In summary, the proposed quotas would hurt our trade balance and, therefore, our balance of payments."

In conclusion, the Secretary's letter emphasizes the importance for the United States of "maintaining an open economy—that is, one free from widespread quotas and other barriers to trade." He points out that "we cannot hope to produce in a highly protected domestic market and sell successfully in highly competitive international markets." Herein perhaps lies the crux of the difference between the proponents of a liberal trade policy and the advocates of protectionism: Do we believe in an open competitive economy or do we go back to mercantilism, that is, an economy sheltered, protected, subsidized, and supervised by an omnipotent government?

CONCLUSION

If it is agreed that U.S. trade policy cannot be evaluated except in the context of U.S. foreign policy and the national interest of the United States, then it is suggested that the only trade policy that makes sense is a multilateral and nondiscriminatory liberal trade policy under the auspices of GATT. It is no accident that this is exactly the trade policy that the United States has successfully pursued for the last 33 years—a period in which U.S. exports have risen from less than $3 billion to more than $30 billion a year, and the U.S. trade surplus from zero to almost $5 billion.

It is evident that the various regional free trade areas proposed—whether oriented south toward Latin America, north toward Canada, east toward Europe, or west toward Asia—fail to take into account the imperative of universality imposed by the requirements of U.S. foreign policy. They all ignore the fact that the United States is both an Atlantic and a Pacific power, a good neighbor to the South and to the North, and that it has a vast stake in the economic stability and political orientation of the third world. For this reason the United States should be the last country in the world to contemplate an exclusive trade bloc with one set of countries or another. Regionalism, if it ever comes to that, would only be a last resort for the United States and it would clearly entail a radical reorientation of U.S. foreign policy.

As to the final alternative—back to protectionism—it is difficult to regard such a trade policy as a serious proposal worthy of earnest consideration. This is implicitly admitted by the proponents of import quotas themselves, because they insist on presenting their proposals in terms of exceptions from a liberal trade policy—exceptions, to be sure, which would become the new policy if even a few of their proposals were to be enacted into law. Protectionism, it would seem, is not so much a reasoned and deliberate policy as simply an accidental end result—the cumulative product of a little protection here and a little protection there. Unfortunately, as experience shows, a little protection is like a little pregnancy.

Since the case for a return to Smoot-Hawley is so weak, it may seem odd that the voices speaking out for protection are so numerous. It is well to remember that in this particular instance the whole is much less than the sum of its parts. What does seem strange indeed is the psychology of protectionism, which combines a queer sense of omnipotence with an even odder feeling of impotence. The sense of omnipotence is evident in the illusion that this country can unilaterally impose quotas on virtually half of its imports and the rest of the world will not dare to retaliate. The feeling of impotence is inherent in the delusion that this country—the most dynamic and productive economy in the world—cannot compete with foreign imports. It is hard to tell which assumption is more quixotic.

Unfinished Business in the Field of Customs Administration

(By Noel Hemmendinger, Counsel, United States-Japan Trade Council)

SUMMARY

There has been inadequate attention to the interests of the United States in eliminating trade barriers for the sake of its own import trade.

The customs reorganization should be completed by merging the procedures for protests and appeals.

Section 336 of the Tariff Act, relating to equalization of cost of production, and section 337, relating to unfair acts in the importation of goods, are obsolete and should be repealed.

The Tariff Schedules should be further simplified by greatly reducing the number of different rates of duty.

The valuation of imported merchandise should be brought closer to the actual transaction value. In particular, valuation at date of exportation should be abolished.

The "final list" should be abolished.

American selling price valuation should be abolished, and conversion to rates affording equal protection should not be confused with reciprocal tariff reduction.

STATEMENT

This paper is submitted to the Senate Finance Committee in response to its announcement of September 27, 1967, inviting written statements by interested parties on U.S. foreign trade policies and practices for inclusion in a compendium to be published by the committee as the basis for hearings at a later date.

Introduction

The facilitation of importation into the United States is a stepchild of U.S. foreign economic policy. Much has been done in this field through the Customs Simplification Acts of 1938, 1953, 1954, and 1956, through the reorganization plans adopted by the Treasury Department, and through other internal procedural changes within the Customs Service. At the same time, because of actual or anticipated resistance, there are many obviously desirable and appropriate changes that have not been made. None of the points raised in this paper are new. It is an unfortunate fact that most of the problems that exist today have existed for a long time and have not been resolved despite a widespread knowledge of them.

We suggest that the reason for this is that, since the inception of trade agreement legislation, the praiseworthy aim of lowering trade barriers has been promoted by undue emphasis upon reciprocity of concessions, while inadequate attention has been given to the interest of the United States itself in facilitating the importation of goods. A neomercantilism has developed around the doctrine of reciprocity to the point where it often sounds as if importing goods was a regrettable necessity and not an end in itself. It is accepted as a matter of U.S. national policy that a high level of international trade in both exports and imports is desirable. Every academic economics course in the land teaches that the free flow of goods between nations is valuable for the American economy in the same way that the free flow of goods among the various regions of the United States is desirable. Nevertheless, the technicalities attendant upon the importation of goods are tremendous when compared with the technicalities which commerce has to face domestically, burdensome as they are often thought to be.

In consequence, we submit, many measures designed to facilitate the importation of goods have been considered, over the last several decades, from a protectionist bias. Measures designed to rationalize, clarify, and simplify U.S. customs procedures have been examined largely in terms of whether they would add to or subtract from the protection afforded by present tariffs to the American industries concerned. This has not been in the broad context of whether the measures would deprive the industry of a protection which is truly justified by some accepted standard, but rather simply by whether they would alter the existing level of protection. That protection has often been the result of ancient and accidental factors, and not of a considered current judgment that such protection is called for. This is especially the case in the areas of American selling price valuation and of the exceptions set forth in the "Final List" to the scope of the Customs Simplification Act of 1956.

These are by no means academic issues in the fall of 1967. There is, we suggest, a conceptual error in the usual approach to this subject. For instance, American selling price valuation is looked upon as a kind of asset in the nontariff trade barriers market which should be eliminated only on the basis of a hard bargain. Yet if other nations had no abusive trade practices which the United States would like to see removed, it would still be in the interest of the United States to eliminate this anomalous and inequitable system.

Revision of U.S. laws

This general heading includes a number of different matters which involve both procedures and trade policy. We omit, however, from the present discussion problems relating to tariff adjustment and adjustment assistance under the Trade Expansion Act of 1962. These are not primarily questions of clarification or of removing technical problems; they are major issues of policy. We assume, however, that there will be some changes in this area since it is the stated intention of the administration to propose them and there appears to be considerable support in the Congress for some changes.

Legislation to implement customs reorganization plans

Late in the 89th Congress in 1966 a trial balloon prepared in the Treasury Department was introduced—H.R. 18533. The bill would have formally merged the appraisement and classification procedures to conform to changes already effected in practice in the reorganization plans. It would also have made language changes such as substituting the words "appraising officer" for "collector" and "appraiser" where they appear in the customs laws.

The bill was designed essentially to provide a single method of review of a challenged customs ruling, to make reconsideration within the service more practical, and to narrow the cases actually taken to the Customs Court to those involving a definite issue on which adjudication was definitely desired. The bill did not provide the amendments to the Judicial Code which are necessary to merge the procedures for review of appraisements and classification decisions. Such legislation was in preparation, however, as a companion measure.

Contrary to expectation, no legislation along these lines has yet been proposed to the 90th Congress, probably because of opposition by the customs bench and bar to the proposals that the Customs Court review be initiated by a separate complaint in that court, rather than automatic transmittal by customs as at present. Without taking a position on the specifics of such legislation, we regard the delay as unfortunate, because the procedures for reviews and protests are presently unduly time consuming and unsatisfactory. Most needed is a method for obtaining expeditious consideration of serious issues, first administratively, and then if necessary, in court. Such decisions will then control the disposition of many other cases.

Section 336 of the Tariff Act of 1930

This section contains the equalization of costs of production provision, the so-called scientific tariff, first enacted in the Fordney-McCumber tariff of 1922. The theory was that the rate of duty should be adjusted from time to time in order that the cost of production of the import plus the tariff should equal the cost of production in the United States. If this doctrine had ever been consistently applied, it would have stifled all trade in articles competitive with articles produced in the United States, except where the import enjoyed a prestige value that would permit it to sell at a premium. This antitrade doctrine has been rejected since the inception of the trade agreements program in 1934, and by law since then has been inapplicable to articles that are the subject of trade agreement concessions. Since most of the items in the Tariff Schedules have now been the subject of trade agreement concessions, the continued existence of section 336 is rather like the human appendix—it doesn't do any good, it doesn't do any harm most of the time, but every once in a while it flares up.

This was illustrated in 1962 by the case of *Brooms Made of Broomcorn*, Tariff Commission investigation No. 336–121. Section 336 provides that if an increase of duty to 150 percent of the original statutory rate does not suffice to equalize the costs, then the statutory rate shall be applied to the selling price of U.S. made articles. The Tariff Commission found that to equalize the cost of production at home and in Mexico, it was necessary to apply the duty to the price of American-made brooms. Section 336 is in mandatory terms, unlike the escape clause provisions of the Trade Expansion Act of 1962. Nevertheless, the President refused to act on the report, on the ground that it did not show the need for the duty to be so applied. (White House announcement, Feb. 15, 1963.)

Section 337 of the Tariff Act of 1930

Another obsolete provision that should be repealed is section 337 of the Tariff Act, which provides for Tariff Commission investigation and the embargo of articles imported into the United States by unfair methods of competition or unfair acts. There are other provisions of law which are more effective and fair for dealings with abuses that it may embrace. Paradoxically, this section, aimed at unfair competition, is itself the basis for unfair competition aimed at imports. The fundamental vice of section 337 is that it provides an omnibus treatment, aimed at a whole sector of trade for remedying commercial disputes between particular parties.

Unfair acts can mean a wide variety of things. To the extent that section 337 was designed to strike at selling in the United States at unduly low prices in order to capture a market unfairly, the abuses are dealt with by the Antidumping Act of 1921, which is frequently invoked. It is an effective deterrent to predatory price-cutting activities, which are in any case rare.

So far as concerns unfair acts in the antitrust sense, the Federal Trade Commission Act, the Sherman Act, the Clayton Acts, and the Wilson Tariff Act give ample powers to the Federal Trade Commission and the Justice Department to act with respect to imports as they do with respect to domestically produced goods. This includes the power to act against the goods, as does section 337. The only serious attempt to invoke section 337 in the antitrust field was in the complaint against Swiss watches, Tariff Commission investigation No. 337–19, June 1966, where the Commission found that the activities complained of had been adequately restrained through action of the Federal courts at the instance of the Department of Justice.

The only field in which section 337 has been used extensively has been that of alleged patent infringement. Practically every case in which relief has been granted under section 337 involved such a charge. Section 337 is a peculiarly unsuitable vehicle for determination of such questions. Two essential issues in any patent case are, first, whether the patent is valid; and second, whether it is actually infringed. The courts have held that the Tariff Commission has no power to adjudicate the validity of the patent, and the Tariff Commission accordingly refuses to hear evidence on this point. The court also held that the Tariff Commission has no power to adjudicate the issue of infringement.[1] Accordingly, the Commission engages in a kind of shadow proceeding, frequently as costly and elaborate as a trial in the Federal court, to determine whether the import complained of falls within the terms of the patent.

There is no need whatever for this Tariff Commission activity in patent cases since in a proper case the aggrieved party can obtain an injunction against an infringing article in a Federal district court. In the Federal courts, however, such an injunction is not granted unless the patent has been adjudicated. The Tariff Commission has granted relief by assuming the patent to be prima facie valid. This is discrimination against imports, since a different standard is applied than is applied domestically.

Section 337 itself recognizes that the adjudication of private rights is involved and that some sort of legal determinations are required, by providing for an appeal to the Court of Customs and Patent Appeals before the Tariff Commission's report goes to the President. This provision is unique among proceedings of the Tariff Commission which are for the rest of a purely administrative character. It has been undermined by a 1962 decision of the Supreme Court, *Glidden* v. *Zdanok*, 370 U.S. 530, indicating that the Court of Customs and Patent Appeals may not constitutionally render an advisory opinion. Such an opinion is advisory because after decision of the court, the matter goes to the President for final action. Hence it is unlikely that section 337 could be enforced today against a party who insisted on his statutory right of appeal.

Simplification of the Tariff Schedules

Problems of tariff classification have been somewhat eased by the entry into force on August 30, 1963, of the revised Tariff Schedules of the United States, prepared by the Tariff Commission pursuant to the mandates of the Customs Simplification Act of 1954. The new schedules eliminated many anomalies (such as the charging of duty on synthetic rubber automobile tires as articles in part of carbon because they contain more than 2 percent carbon) and introduced some greater certainty and ease in the determination of the applicable rates.

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[1] *In re Von Clemm*, 43 C.C.P.A. (Customs) 56, 229 F. 2d 441 (1955).

While the new schedules represent a big accomplishment, they have only scratched the surface of simplification of the U.S. tariffs, which remain an incredible thicket. There is still no sense whatever to the proliferation of commodity descriptions and rates. There are reasons, of course, how they got the way they are, but few if any of those reasons are valid reasons today, if they ever were. Protectionists and liberal traders alike have to take responsibility for the present maze—almost every item and rate represents a victory for one or the other in some historic battle or forgotten skirmish. The tariff paragraphs as enacted (most recently in 1930) reflect the notorious logrolling of the tariff acts, creating a hodgepodge of product descriptions and rates. The 1930 act is simplicity itself, however, compared with the descriptions and rates that result from a series of Presidential proclamations—some under the flexible tariff, escape clause, et cetera, but mostly implementing duty reductions on specific commodities under the trade agreements acts.

In the 1963 revision the Tariff Commission was greatly limited by the congressional injunction not to change rates of duty. What is needed is a thorough revision that does change rates of duty where this is necessary to drastically reduce the number of categories. To take just a few examples, there should be one rate for footwear instead of the 20 items found in the new schedules, which is a reduction of only four from the old; and one rate for toys instead of 13. For "woven fabrics, wholly of cotton, not fancy or figured, not bleached and not colored," there are 88 separate rates depending on the yarn count. Some other areas of incredible complexity are watches, stainless steel flatware, and ceramic tableware.

The Trade Expansion Act of 1962 represented an important break away from product-by-product negotiations of tariff reductions, but it did not establish the means for further simplification of the schedules. The tariff changes in the Kennedy round were for the most part on the basis of the existing item numbers of the tariff schedules of the United States and did not do much further damage. On the other hand, they did not do anything to simplify the schedules.

The proliferation of tariff rates is particularly unfortunate in a number of situations where the rate changes with the value of the goods, for instance, wire rods imported under items Nos. 608.70, 608–71, 608.73, and 608.75 of the TSUS. When the value breakpoint is close to the actual value, the existence of such a rate structure becomes a serious harassment to the trade, since the importer cannot be sure at what rate the goods will be charged with duty.

As a result of the Kennedy round and previous tariff concessions, a great many American customs duties will be at the point where protective effect is no longer a major consideration. Obviously, the simplest way to eliminate problems of tariff classification is to reduce tariffs for whole categories of goods to zero. To the extent that this is not feasible, a major objective of the next round of international negotiations on trade should be the merger of existing items into broad categories carrying a single rate. A new legislative approach is required in which simplification will be no less an objective than reduction of rates.

Problems of customs valuation

In general

There is only one possible touchstone for valuation if the customs laws are to be realistically administered; namely, the use of actual transaction value. An old conception lingers on, that monetary value is an inherent and constant quality of a particular object. Of course, economists and businessmen alike recognize that value is a subjective matter that varies according to the circumstances.

In principle, therefore, and also as a practical matter, ad valorem valuation must be based on the price in the actual import transaction. This principle is stated as the norm in the Brussels definition of value and, day in and day out, it is the actual method applied with respect to most of the goods entering the United States. It is not the exclusive method under the laws of any country because the authorities must have some basis on which to determine whether the invoice value accurately reflects the actual transaction, and also whether the actual transaction departs from the realistic commercial value for some special reason of the parties. The valuation laws and practices of the United States require reconsideration not merely to eliminate arbitrary valuation (discussed below), but also to permit the customs officials to use the invoice values more freely where there is no reason to suspect a manipulation of the transaction itself to avoid the payments of duties.

There is one provision of the customs laws in particular which necessitates frequent departure from the principle of applying the invoice value and which should be eliminated. This is the provision of sections 402 and 402a of the Tariff Act of 1930 which provides for valuation as of the time of exportation. The value in fact is fixed by the contract which the parties entered into, which, of course, is normally before exportation. In result, either this provision is ignored, which is often true, or if conscientiously applied, it greatly increases the work of the Customs Service and the burdens upon the shippers who prepare the import documents. Over a period, there should be no significant consequences for the revenue, since prices fluctuate up and down. (It would be hard to convince importers, however, that duty adjustments were not much more common when the price at date of exportation is higher than at date of contract, than when it is lower.)

A small step which requires no legislation would take much of the mystery out of the valuation process. This is the publication of the rulings and instructions that issue through the Customs Information Exchange, known as CIE's. It is said that these relate to particular situations which are unsuitable for publication, but every customs lawyer knows of the existence of rulings having general importance which become known only when a specific inquiry is made. It should be possible to prepare abstracts or summaries of such rulings which would disclose no confidential information nor impair the free exchange of information within the Customs Service.

The "final list"

The "final list" remains in the customs valuation laws of the United States like a wrecked vessel recalling an ancient storm but continuing to interfere with commerce.

The Customs Simplification Act finally passed in 1956 was conceived at least a decade earlier and was first proposed to Congress in 1950.

The cardinal point was the abolition of foreign value to make export value the first and principal basis for valuation. This reform was made at the initiative of the Treasury Department, since the necessity of investigating foreign value greatly complicated the process of appraisement and led to unnecessary disputes with foreign governments. The same statute made important changes in the definitions of the terms "freely offered for sale," "all purchasers," "usual wholesale quantities," and "ordinary course of trade."

The purpose of these changes was to permit customs officers to select realistic prices at which most goods were really moving in commerce. The previous definitions had been interpreted so restrictively by the courts as to introduce considerable artificiality, and to invite the deliberate use of particular terms of transactions to determine the customs duty.

By reason of the opposition of a few American industries, these reforms became a hot political issue and it was impossible to obtain Senate enactment without a compromise. Opponents claimed that it would lead to significant duty reductions on some products. The complaint mistook the nature of the problem, which was essentially that there were products on which exceptionally high duties resulted from unforeseen applications of the law. The Treasury Department suggested that a list be made up of products on which the duty would be affected to the extent of 5 percent or more, and that this list be temporarily excepted from the new law. Somehow, in the legislative shuffle, this list, intended as temporary, was adopted without any machinery for change other than new legislation; and the bill aimed at customs simplification ended up by producing two parallel systems: sections 402 and 402a of the Tariff Act of 1930 as amended.

There is no need at this point in history for a justification of the new law as against the old. The new law is today the accepted method of customs valuation for most of the articles in the tariff list. It makes no sense whatever to have two parallel methods of valuation.

One of the objects of simplification was to make the processes of valuation reasonably comprehensible to the importers, brokers, and lawyers that have to work with them, to say nothing of the Customs Service itself. A set of doctrines had developed through judicial interpretations of the old law. Today the customs expert must be a master not only of that body of doctrine, but of the different judicial doctrine and practice that have arisen around the new law. The chart set out by the Tariff Commission at page 11 of its Preliminary Report on Valuation (T.C. Publication 180, July 1966) illustrates the intellectual legerdemain involved in choosing one of nine different legal bases for valuation.

It is surely time to recognize that the "final list" has long since served whatever valid purpose it may have had. Even a modest analysis would demonstrate, we believe, that the "final list" no longer operates as it did when originally adopted. It is inevitable that shifts in world trade have made the "final list" an arbitrary discrimination against the products there enumerated—or indeed, perhaps in some cases in their favor, for there are situations in which the importer finds a lower duty under section 402a than under section 402.

The theory of the old law in assessing on the basis of foreign value or export value, whichever is higher, is itself incompatible with the principle of the General Agreement on Tariffs and Trade, which provides (art. VII, par. 5):

> The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate with a reasonable degree of certainty, the value for customs purposes.

The interpretations given the old law, which led to assessments on the basis of infrequent and atypical transactions, are also contrary to the principle of article VII, paragraph 2, of the GATT, which provides that the value for customs purposes shall be based on the actual value of the imported merchandise and not on arbitrary or fictitious values. Arbitrary or fictitious valuations also result from the fact that section 402a provides arbitrary percentages for commissions and profits in determining U.S. value, and for general expenses in determining cost of production.

The vexation caused by complexity of administration is not easily measured, but it is not necessary to look far for concrete evidences of the unfairness caused by the "final list." The most horrible recent example is the treatment of vacuum tubes from Japan. The marketing system in Japan is such that the Customs Bureau found no freely offered articles that could be taken as the basis for foreign value at the same level of trade as the exports, that is large-scale sales by the factory. However, Customs did find sales, supposedly at wholesale level, that were at a price much higher than those the factory sold for the domestic market, on the part of one wholesale house in Tokyo, many of whose sales were closer to retail than to a normal wholesale price. The use of such values were sustained by the Court of Customs and Patent Appeals in *Daystrom, Inc.* v. *United States* C.A.D. 920 (1967). Many importers are faced with the payment of large additional duties on values considerably higher than the prices which they actually paid.

The furor over American selling price valuation results not only from the arbitrariness and unfairness that are inherent in this method of valuation, but also from the fact that rubber footwear and many benzenoid chemicals are on the "final list." This is no coincidence, nor is it a coincidence that these industries actively opposed the Customs Simplification Act of 1956. For most imports, the definitions of "freely offered," "all purchasers," "ordinary course of trade," "usual wholesale quantities," related to foreign or export value, which, if controllable at all, could be affected by the terms of transactions between exporters and importers. In the case of ASP, it is offers by the American producers—the competitors of the importers—that can be arbitrarily controlled to affect the import duty. In consequence, appraisers may be compelled to disregard terms of transactions at which 90 percent of U.S. products are sold, to find a price that meets the statutory standards. This is the actual situation at present with respect to the American selling prices on rubber-soled footwear.

American selling price valuation

The objections to American selling price valuation have been widely discussed in connection with the Kennedy round and are well understood. In brief, American selling price valuation means valuation upon the value of like or similar American-made goods rather than on the value of the imports themselves. This so-called arbitrary valuation is a complete departure from principles of valuation followed by the United States for all other products, and is contrary to the principles of article VII, section 2a of the GATT. American selling price valuation is inherently arbitrary and uncertain since it requires a determination of "similarity" or "competitiveness," and since the value can easily change through action of competitors in the United States after orders have been placed abroad. Duties thus vary with the price structure of the United States, as well as with arbitrary actions of the U.S. producers, all of which are subject to control by the domestic industry. American selling price valuation leads to a vastly disproportionate number of problems in customs administration.

For purposes of this paper we would like to stress three points.

First, the legislative history of the 1922 Tariff Act shows clearly that the purpose of American selling price valuation was to apply very high protective rates without appearing to exceed the normal range of ad valorem rates. American selling price valuation got into the U.S. law as a consequence of a major campaign in American tariff history for something that was called American valuation. After exhaustive study, the Senate rejected as entirely unworkable the Fordney bill, embodying the concept of ASP value which had passed the House of Representatives. Senator Smoot, hardly known to history as an apostle of low tariffs, summarized the situation on the Senate floor, referring to the Treasury investigation conducted with an appropriation of $100,000 to assist the Senate Finance Committee to determine its position on American value. Senator Smoot said:

> The advocates of American valuation expected this investigation to demonstrate beyond doubt the desirability of their proposal. On the contrary, the facts brought up by this investigation demonstrate conclusively the inadvisability of breaking completely with the valuation in our customs service (62 Congressional Record, pt. 6, p. 5878, Apr. 24, 1922).

A further colloquy on the Senate floor is illuminating:

> Senator JONES. The objection to making a rate upon the foreign valuation was based solely on the argument that the rate would have to be so high that it would shock the public conscience * * *.
>
> Senator SMOOT. I recognize, I think, what the Senator is getting at * * * no one is trying to deny it (62 Congressional Record, pt. 6, p. 5883, Apr. 24, 1922).

Nevertheless, American selling price valuation was adopted for benzenoid chemicals and the possibility of applying American selling price valuation was provided for in the equalization of cost of production section, now section 336 of the 1930 act. All of this was at the instance of the American chemical industry, whose dyestuffs production was then in its infancy and which feared the revival of the German industry.

The second point we should like to make is that there is a highly capricious element in the use of American selling price through the application of section 336 of the Tariff Act. This was done five times under the Tariff Act of 1922; all of these changes were abolished when the Tariff Act of 1930 was adopted. There have been only three cases under section 336 of the Tariff Act of 1930—these remain in effect, but agreements were entered into with Japan, subject to congressional action, for the abolition of the rates on canned clams and certain wool-knit gloves. These are not controversial. There was no agreement on the abolition of American selling price valuation on rubber-soled footwear imported under item 700.60 of the tariff schedules—valued in 1966 at $16.5 million—largely because the United States, in negotiating with Japan, started from a conversion rate that represented a substantial increase in duties. The reason for this was the political strength of the American rubber footwear industry. The ludicrous claim is made by the American rubber footwear industry that continued protection at levels over 50 percent ad valorem is necessary, at the same time that duties of 10 percent on leather footwear have been reduced still lower.

As indicated above, section 336 is obsolete and ought to be repealed. Most of the tariff increases effected through it have been subject to reductions in the various trade negotiations and the rates have long since been absorbed in the tariff structure. The few cases in which American selling price was applied remain, however, because there has been no legal machinery short of legislation to get rid of them.

The third point we should like to make, as suggested in the introduction, is that an undue emphasis on reciprocity has obscured the interest of the United States in abolishing ASP for the sake of its own import trade. It is desirable to persuade other countries to reduce their barriers and if the reduction of those of the United States can be instrumental to that end, it is a good idea to kill two birds with one stone. However, the result cannot be scrutinized with mathematical accuracy, and the business of removing ASP and converting to the equivalent rate of duty on the usual valuation basis should not be confused with the business of reducing duties. The latter lends itself to formulas that can and have been successfully applied for the necessary comparisons; but there are no tested formulas for comparing nontariff trade barriers.

STATEMENT OF THE BRITISH-AMERICAN CHAMBER OF COMMERCE, NEW YORK, N.Y.*

THE BRITISH-AMERICAN CHAMBER OF COMMERCE,
New York, N.Y.

Hon. RUSSELL B. LONG,
Chairman, Senate Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: The British-American Chamber of Commerce (hereinafter referred to as the "chamber") has for its basic purpose the encouragement of commerce and reciprocal trade between the United States of America and the United Kingdom. More than 80 percent of its members are American citizens, American firms, or American corporations having a principal office and place of business within the United States of America.

The members of the chamber regard as fundamental that the influence which the United States possesses as leader of the Western

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* This material has been filed with the Department of Justice, Washington, D.C., where there is available for inspection the registration statement of the British-American Chamber of Commerce under 22 U.S.C., secs. 611–621, as agent of British National Export Council and Confederation of British Industry, in London, The Scottish Council, Development and Industry, in Edinburgh, and the Development Corp. for Wales, in Cardiff. Registration does not imply approval of this material by the U.S. Government.

World is inextricably bound up with its position as the world's greatest trading nation. The prestige of the United States and the degree to which it can influence world affairs will increase in proportion to the growth of U.S. external trade.

The members of the chamber hold the opinion that unnecessarily protective legislation, by reducing the flow of trade and weakening the bonds which unite the Western World, would not only be harmful to the economy of the United States and other friendly countries as a whole but would bring comfort to those nations whose basic beliefs are ideologically opposed to those of the United States.

In the case of the United Kingdom the effects of such protective legislation could be very grave. If the United Kingdom is denied the opportunity of expanding the volume of its exports to the United States it clearly will not be able to support the importation of a growing volume of American-manufactured goods, farm products, and raw materials. The balance of trade between the United States and the United Kingdom has for many years with few exceptions been in favor of the United States. For the years 1960 to 1966 U.S. exports to the United Kingdom exceeded imports from the United Kingdom by an average of approximately $230 million per annum. The imbalance in overall trade is even more marked when the disparity in the populations of the two countries is taken into account. On a per capita basis each U.S. citizen buys about $9 worth of goods from the United Kingdom a year and each United Kingdom citizen buys about $32 worth per year from the United States.

Measures whereby imports into the United States are to be restricted to present or recent levels or are limited by reference to the size or competitiveness of the U.S. industries could well reproduce trading conditions similar to those of the early 1930's. The results will, for the United States as well as for all of those nations who look to this country for leadership in international affairs, be as tragic as they were 30 years ago.

In recent years American exports to the United Kingdom have provided employment in every State in the United States with the possible exception of Alaska.

As an example of the way in which the benefit of British purchases are spread throughout the United States there is attached a schedule (A) showing how the separate elements of four defense contracts have provided or are providing employment in 36 States.

British imports of American tobacco and tobacco manufactures in 1966 were $137,800,000 and American cotton and cotton fabrics $24 million.

But imports and exports bring advantages not only to manufacturing companies but also to many in the ports through which they pass. It is understood that the U.S. Government has estimated that approximately 3½ million U.S. residents earned their livelihood directly from international trade.

Each country enjoys peculiar advantages and specialized skills which enable it to produce certain goods more economically or in greater variety. That such advantages can be made available to others without impediment provides an element of healthy competition in the trading community of nations and can well result in an important check upon the price inflation which can occur when domestic industries are secure from competition.

Finally that the American people can enjoy the choice to purchase goods of the widest possible variety is one aspect of the freedom which we enjoy which is denied to those who live in Communist countries. We believe that rather than inhibiting such choice every effort should be made to increase it by simplifying all barriers to the free movement of goods between the trading partners of the free world.

The chamber's customs and tariff committee has examined in close detail the statement to the Senate Committee on Finance for its "Compendium on Legislative Oversight Review of U.S. Trade Policies" prepared by the American Importers Association and fully endorses the positions taken by the AIA which if adopted it believes would be in the best interest of the American people.

Respectfully yours,

R. L. EVANS.
Manager and Secretary.

SCHEDULE A.—DISTRIBUTION OF UNITED KINGDOM ARMS PURCHASE LISTS IN UNITED STATES

[The following figures show the distribution by States of the United Kingdom expenditures on 4 main weapons system contracts]

[In millions of dollars]

State	Polaris	F-4	C-130	F-111	Total
Alabama	0.5				0.5
Arizona		31.8	5.4		37.2
Arkansas		.3			.3
California	198.2	164.7	15.0	85.0	462.9
Colorado	.7		1.8	.6	3.1
Connecticut	2.2	3.0	11.7	14.3	91.2
Florida		.7	.2		.9
Georgia		1.7	105.0		106.7
Illinois	.3	12.2	1.1	8.9	22.5
Indiana	1.2	14.6	39.5	.9	56.2
Iowa		10.0	4.2	3.9	18.1
Kansas		24.3	1.1	.1	25.5
Maryland	1.7	62.7		1.9	66.3
Massachusetts	1.9	15.2	1.1	3.9	22.1
Michigan		20.4	2.2	3.0	25.6
Minnesota	1.9	3.0	1.1	2.6	8.6
Missouri	.8	274.4		50.3	325.5
Nebraska	.7	.3			1.0
New Jersey	4.9	20.7		14.6	40.2
New Hampshire	.5				.5
New Mexico	1.4				1.4
New York	7.4	87.6	4.2	206.0	305.2
North Carolina	4.1	.5			4.6
Ohio	2.2	24.0	1.5	18.2	45.9
Oklahoma	1.6	2.7		.3	4.6
Oregon		1.8		.3	2.1
Pennsylvania	1.0	7.6	1.1	14.5	24.2
South Carolina	1.6		2.2		3.8
Tennessee		3.6	5.4		9.0
Texas	1.2	24.7	4.2	280.0	310.1
Utah	51.9	.9			52.8
Virginia	2.7	4.3	1.1	3.2	11.3
Vermont		.3			.3
Washington	1.6	3.4		.3	5.3
West Virginia			4.2		4.2
Wisconsin		1.0		1.7	2.7
36 States	638	821	220	725	2,404

Note: The totals are correct as some $320 millions in minor contracts are not detailed. In addition to these figures there is an annual United Kingdom Government expenditure in the United States of America of about $60 million for military purchases.

AIR TRANSPORT ASSOCIATION,
Washington, D.C.

Senator RUSSELL LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your press release, dated September 27, 1967, invited interested parties to submit written statements on U.S. foreign trade policies and practices. The Air Transport Association of America, whose membership is composed of virtually all of the scheduled airlines of the United States, has a direct and vital interest in our foreign trade policy. We, therefore, appreciate this opportunity to reaffirm the basic philosophy which the airlines believe is so important to U.S. trade policy.

The scheduled airlines of the United States link hundreds of American cities with hundreds of other cities throughout the world in friendship and commerce. These airlines devote considerable effort and financial resources to the promotion of international commerce and represent an extensive and highly developed transportation network which is essential to the conduct and expansion of our foreign trade. By the very nature of their service, and the congressional mandate under which it is performed, it is the policy of the airlines to advocate and promote the freer flow of persons and goods in international commerce on a reciprocal basis.

We are, accordingly, extremely concerned over recent indications of a possible change toward a more restrictive trade policy for this country. We can anticipate that adoption of new trade barriers by the United States will inevitably result in the adoption of new trade barriers by other countries.

The U.S. air transport industry is one of many which would be directly affected by a slowing down of international commerce. The airlines will soon be introducing new equipment capable of transporting 400 or more passengers or over 100 tons of cargo. Our ability to utilize that capacity will be impaired if the pace of international commerce slackens. The level of our public service, our employment rate, our financial strength—in short, this industry's commitment to our Nation's economic growth—would be jeopardized by unilateral action of our Government which would attract retaliatory action by other governments.

Such retaliatory steps need not be confined to measures specifically in kind. The price for attempts to protect specific U.S. producers of a given commodity is not likely to be paid by just those producers. Here too, the U.S.-flag airlines stand to suffer. For many years we have been engaged in an effort to persuade foreign governments and their airlines that their best interests lie in a policy permitting the relatively free play of economic forces in international airline competition. Through the determined support and advocacy of our Government, great strides have been made in recent years in turning the tide against foreign restrictionism. Trade measures which hurt not only our business but that of our foreign competitors as well invite a reversal of that trend.

The Kennedy round dealt primarily with the removal of tariff rather than nontariff barriers to international trade. Nontariff barriers are, of course, similarly critical to U.S. trade. In the air transport field, efforts of foreign governments to place restrictions on the volume of U.S.-flag service are being fought with substantial success in the diplomatic arena. We urge that the Finance Committee's review of our trade policy focus on legislation looking to the reciprocal removal of nontariff barriers. It will be through such positive action that the United States will realize the further expansion of exports we all seek.

We also believe much remains to be done to remove statutory inhibitions to the facilitation of trade and travel, particularly those dealing with certain customs laws and other statutory formalities of an administrative nature.

To cite but one example, customs informal entry valuation limits are held at $250 pursuant to section 498(a)(1) of the Tariff Act of 1930, as amended in 1953. If these limits were raised to $500 or more, a larger number of shipments could enter the United States under the simple informal entry procedure, particularly in view of the fact that merchandise valued at $250 in terms of 1953 dollars is now valued at more than $300 in terms of 1967 dollars. Raising the valuation limits for such informal entries would in no way alter any duty or value for customs tariff purposes, since only the method of preparing entry documentation would be affected. An informal entry is much easier to prepare and process than a formal entry.

There are several other burdensome techniques and statutory requirements which unnecessarily impede the movement of goods and travelers to and from the United States. We would appreciate the opportunity to present testimony in this connection when hearings are held in the Finance Committee.

Cordially,

S. G. TIPTON.

STATEMENT ON BEHALF OF MURPHY OIL CORP.

This brief statement is submitted for inclusion within the compendium which will form the basis for the public hearings which are proposed to be held at a later date. The scope of these remarks is addressed generally to the consequences of the adoption of restrictive quotas on commodity imports and specifically to the imposition of more stringent restrictions on the importation of crude oil and petroleum products.

Murphy Oil Corp. believes restraints on trade are fundamentally unsound and that in the end they usually harm even those who have sought protection. Conversely, we believe free flow of commerce and capital results in a more efficient allocation of resources than possibly can be done by any program of controls, however enlightened. We believe these views are consistent with our Nation's dedication to free enterprise. If, however, imports are to be relegated to control by the legislative return to the era of severe trade restraints of the 1930's, then we strongly urge that such protection, if any, as is deemed necessary to protect domestic industry rather be provided through a system of tariffs. Tariffs, unlike quantitative controls, would permit equitable participation by all domestic companies on a purely competitive basis. The rates established within such tariff system could be varied in favor of critical items within the present and any future period of national emergency. Such tariff system could prevent the disruption of established international trade agreements and possibly market retaliation against American products which such disruption might otherwise cause.

In our view, it is impractical to adopt a rigid system which would limit imports to an arbitrary percentage of the total domestic consumption for such restricted commodity. We strongly submit that this approach would protect neither the domestic industry nor the domestic consumer but would rather create greater burdens than benefits for both. The concept of a tariff system should not be charged with those problems, if any, which domestic industries anticipate they will encounter upon the effective date of pending reductions in international tariffs. Historically there have been many sharp conflicts and encounters between those who support the adoption of trade quota barriers to curb foreign imports and those who advocate a tariff system to impose trade restraints. We submit that the political and commercial realities of the present-day world should be accepted in order that natural economic and competitive forces might be exerted in the absence of artificial restraint in the form of quantitative controls. Those who truly believe in competitive private enterprise can advocate no other philosophy.

Equally evident is the fact that it seems inevitable for control programs to involve problems in administration. Equity is difficult if not impossible to maintain under a quantitative quota system, which tends to shackle competitive forces and creates special privileges for a favored few irrespective of whatever method of allotment is utilized.

The oil import program has been no exception. Unfortunately however, most of its problems have sprung from the unwarranted regulatory exceptions which have been created and by stretching the program to include unrelated matters. Illustrative of such exceptions are the special treatment accorded Puerto Rico, petrochemical participation within the oil program and credit allowed for low-sulfur crude to combat air pollution. Even so, we nevertheless recognize the need to preserve flexibility of administration in order for the oil import program to accomplish its stated purpose. The volume of foreign oil required to supply the shortage between domestic production and demand will necessarily fluctuate. Consequently, the adoption of legislative proposals which prescribe the maximum level of permissible oil imports is contrary to this concept and disregards this fact.

The rigid limitation of petroleum imports into districts I–IV to a quantity not exceeding 12.2 percent of production of crude petroleum and natural gas liquids in those districts is impractical. Available data indicate no increase in productive capacity within these districts in the foreseeable future. On the other hand, demand within these districts is expected to increase at the rate of approximately 3 percent per year. Any oil program must therefore allow for the importation of that varying quantity of foreign oil required to supplement domestic supply. Further, it must also recognize the necessity of importing crude oil in sufficient volume to allow the domestic producing industry to maintain adequate reserve capacity for use in any emergency.

The United States not only needs but requires increasing quantities of foreign oil. We therefore urge that the Secretary of Interior be permitted to retain the authority to establish the maximum level of oil imports in order to maintain a healthy relationship between supply and demand, capable of meeting any national emergency which might arise. We further urge that no legislative restraints be adopted which would lead to the imposition of either direct or implied quota control on oil imports from Canada. Canadian oil is equally secure from the perils of war, readily available by pipeline in quantities required to augment domestic production and competes fairly with domestic crude.

It is clear that congressional attention is presently being directed toward the establishment of controls on the importation of many different commodities. Justification for the imposition of such restraints is grounded upon the alleged need to protect American markets from cheap competitive imports. If political judgments, however, must be injected into economic processes, then an increased tariff would be far preferable to a more restrictive quota. Such a tariff would have equal application and provide an enlarged source of needed revenue.

In conclusion, we therefore recommend that—

(1) Congress not adopt any legislation which would unnecessarily impede free enterprise and restrict foreign trade;

(2) Such restraints, if any, as are actually required to protect domestic industry be provided through a system of tariffs rather than import restrictions;

(3) Rigid limitations not be prescribed for crude petroleum and natural gas liquids and that the oil import program be permitted to retain the flexibility to establish the quantity of foreign oil which may from time to time be imported to supplement domestic supply; and

(4) No legislative restraints be adopted which would impose either direct or implied quota control on crude petroleum and natural gas liquid imports from Canada.

We request that this narrative statement be included within the publication which will be prepared of the written statements and views which are submitted. We further request that we be extended the opportunity to amplify on the views herein briefly expressed by the presentation of an oral statement when the proposed hearings are scheduled.

Respectfully submitted.

CHARLES E. COWGER,
Senior Vice President.

STATEMENT OF R. G. WINGERTER, PRESIDENT, LIBBY-OWENS-FORD GLASS CO.

SUMMARY

1. The Kennedy round negotiations—success or failure?
   (a) Only incomplete data available even now on the tariff concessions other nations granted.
   (b) United States places principal reliance on tariffs to control imports while other nations rely on the more positive nontariff barriers to trade which were left virtually untouched.

2. In the context of the balance-of-payments problem, misleading official statistics are used to indicate a favorable balance of trade.
   (*a*) Exports are overvalued due to the inclusion of goods paid for by United States.
   (*b*) Imports are undervalued because all moneys paid by importers for foreign goods—including insurance and ocean freight—leaves the country and contributes to the balance-of-payments deficit.
3. Proponents of free trade fail to recognize necessary prerequisites in order for goods to be made where the natural resources and aptitudes of the people are most favorable to their production.
   (*a*) There must be no Government subsidies.
   (*b*) There must be no major variation in taxes on business.
   (*c*) There must be uniform business laws, uniformly enforced.
   (*d*) There must be no Government enterprises.
   (*e*) There must be free movement of labor.
4. Criticism of business proponents of quota bills as being self-serving is unwarranted.
   (*a*) The proposed bills are much less stringent than the nontariff barriers which U.S. exports face abroad.
   (*b*) The impact of unrealistic foreign trade policy falls heaviest, not on the enterpreneur, but on labor which cannot seek a more favorable foreign business climate.
   (*c*) The U.S. economic structure is predicated on the high wages paid U.S. production workers, and on the full employment of those workers.

STATEMENT

Mr. Chairman and members of the committee, my name is Robert G. Wingerter. I am president of the Libbey-Owens-Ford Glass Co. Our plants are located in Louisiana, West Virginia, Pennsylvania, Ohio, Illinois, Iowa, and California. We manufacture plate glass, float glass, sheet and window glass, and patterned glass. We supply those products to the architectural construction and homebuilding markets. We further fabricate those products into Thermopane insulating glass, safety glass for automobiles and trucks, heat-strengthened glass for use where breakage constitutes a hazard, high-performance glasses for air, space, and military vehicles, and so forth.

We now employ 11,080 men and women, down from 13,391 10 years ago. We have faced and are facing unfair and crippling competition as a result of the foreign trade policies of the United States as they have been executed by the administrative branch of our Government.

In reviewing the legislative record of the various extensions of the Trade Agreements Act and the Trade Expansion Act, I am convinced that it was not the intent of the Congress to hurt American industry. If the safeguards to domestic industry and employment have been regarded with tongue in cheek, those who framed those safeguards and voted for their inclusion in the acts did not so regard them. The fact that your committee is now engaged in so thorough an inquiry into the results of U.S. foreign trade policy is evidence of your concern.

Many Members of the Congress have referred to this legislation as "the Reciprocal Trade Agreements Acts," although the word "reciprocal" does not appear in the actual titles. The use of that word clearly indicates what results were expected

If reciprocity in trade agreements means anything, it means that, in the negotiations of each agreement, the trading partners swap equal access to their markets for goods of equivalent value. But the concessions received in past trade agreements have not honored this principle. Other nations have diluted the face value of their tariff concessions by a host of nontariff measures. The United States places principal reliance on tariffs to control the flow of imports. Other countries rely on embargoes, quotas, import licenses, border taxes, exchange restrictions, and prior exchange deposits, as well as tariffs, to control imports. It is remotely possible for an unusually efficient U.S. producer to pay even a high foreign duty and still compete. It is not possible to sell any goods whatsoever in a country which refuses to issue an import license.

Yet in all the explanatory words spoken by Ambassador Roth and his associates following the recent Kennedy round agreements at Geneva, no substantial progress was reported in negotiating away those real obstacles to our export trade. All we hear are a few wistful words about their hopes of doing something about nontariff barriers at some time in the future and that hopefully the rest of the world will assume as sterile a position as has the United States on such matters as dumping and proof of injury.

But if we were to ignore the very vital question of nontariff barriers, can we be assured that, in the area of tariffs by themselves, other countries conceded as much as the United States?

The office of the special representative for trade negotiations, soon after the conclusion of the Geneva conference, published a list of tariff concessions granted by the United States. The detail of our concessions throughout the entire range of all products and commodities is carefully listed in two volumes that run to 632 pages. We can estimate what those negotiations cost U.S. manufacturing, mining, and agriculture. But what did we receive in exchange?

Where is the companion volume, setting forth the concessions made by other countries? True, a volume of 184 pages, listing selected European Economic Community concessions, selected United Kingdom concessions, and selected concessions by others has more recently been published. Why is this only a partial list? Why is this information being dribbled out piecemeal? Must we in business and you in Congress rely on Ambassador Roth's assertion that we got as good as we gave? Is there some reason why complete information is being withheld? Surely our negotiators must know the foreign quid pro quo. Must Congress act on new trade legislation without such information at hand?

The basis for our negotiations was stated to be the value of 1964 and 1965 imports and exports. If we really did get as good as we gave, the dollar value and extent of tariff reduction of our concessions should balance with the dollar value and extent of the tariff reductions of other countries' concessions on their imports from this country during the same base period.

From the Department of Commerce we know, commodity by commodity, exactly what our exports to and imports from each other country amounted to in those years. We know what concessions the United States gave at Geneva. We can calculate the dollar value of those concessions in the 1964–65 base period. But without knowing, commodity by commodity, all of the concessions other countries gave, it is impossible to calculate the 1964–65 value of foreign concessions.

As a conscientious citizen and a businessman, I should like to compare all the tariff concessions we received with those we gave. I should like to have at least this measure of the stewardship of those entrusted with a matter vital to the economy of our country. It would be reassuring to find that the tariff concessions by others actually did match our own, even though, as in football, it is the final score that counts, not the game statistics. As I said before, the game was lost when nothing was done about foreign nontariff barriers. The relative weight of tariff concessions given and received is hardly more than a matter of academic interest. Whatever the balance of tariff bargaining, in many cases, we gave real concessions for paper ones—rice paper, made in Japan.

It is no wonder that our foreign competitors regard us as naive beyond belief and laughably ineffectual. We gave them the golden eggs to rebuild their industrial plants and now present them with an ax to kill the goose that laid those golden eggs.

Since hearings were held by this committee in October on a number of bills to establish quotas on the importation of oil, textiles, steel, footwear, meat, dairy products, and flat glass, a frantic hue and cry has been raised by administration officials and by the free trade press. I charge that they come to this debate with incorrect and misleading statistics. I challenge their understanding of the free trade theory. And I criticize their assigning shortsighted, evil and selfish motives to the Senators who sponsored these bills and to the businessmen and labor leaders who testified on behalf of these bills. I propose to discuss these points in order.

First, the proposition that opposition to these bills is based upon deceptive and misleading statistics. It is dinned into our ears with insistent repetitiveness that the United States enjoys a favorable balance of trade; that we must protect this favorable balance of trade; that the surplus of our exports over imports helps our balance-of-payments problem; that any move to defend our domestic markets will result in "massive retaliation" at great cost to this Nation.

Thanks to the hearings held by this committee, and to the probing questions of the chairman and his fellow committee members, all who have the ears to hear and the wit to understand know that our presumed favorable balance of trade is a myth. It is a myth being repeated over and over again by officials of this Government, despite the evidence of its basic error which this committee has documented.

The Department of Commerce "official" figures continue to inflate the value of our exports. When we export grain under Public Law 480, we are paid in currency which is not convertible. We are paid in "wooden nickels" which cannot be turned into real money and returned to this country. Yet these exports are counted as bona fide sales and are included in our export totals. Even the charitable gifts of private American citizens—CARE packages and the like—have been used to swell the total of our presumed "export sales."

In my opinion, it is misleading and inaccurate to include the value of goods for which we Americans pay in our export totals, particularly when those totals are used to prove the importance of our export trade to the United States economy. It might be excusable if the "official" figures told the whole story. But when "exports" paid for by Americans, or paid for in currency of dubious value and severely restricted use, inflate by 10 percent the true exports actually bought and paid for by foreign nations, there is reason to question the statistics. The Department of Commerce export figures are unrealistic and deceptive and those using them are, in my opinion, misleading the American public.

On the other side of the coin, our imports are "officially" undervalued. Department of Commerce figures value imports free on board a ship in a foreign port. Other nations realistically value imports on a landed cost basis including transportation insurance and ocean freight. The importer pays those costs, and the number of dollars that leave the country as a result of his purchase of foreign goods include the costs of insurance and freight. Again, if the difference were of small consequence, the exclusion of these costs might be excused as sloppy bookkeeping. But according to the Department of Commerce itself, these omissions understate the value of imports by 8.9 percent. According to the Tariff Commission, the understatement is of the order of 10 percent.

According to "official" figures, we sold $3,770 million more than we bought in 1966. But when goods paid for by U.S. citizens, or paid for in nonconvertible foreign currencies, are deducted from our export totals, and when all the money U.S. citizens pay for foreign goods is added to our import totals, we find that our "official" favorable balance of trade of $3,770 million becomes a deficit of $1,800 million. And all the arguments which are based on our "favorable" balance of trade vanish.

Nor is this the only figure that is being "officially" warped. In a speech before the National Foreign Trade Association in New York on October 30, 1967, Nicholas Katzenbach, Under Secretary of State, asserted that "Last year our exports provided 3,000,000 jobs in various industries." He cited no source of that figure. He simply asserted it. It's a good round number, and the free trade press printed it as a fact. If it is a fact, let's examine what it means.

That same press, commenting on the inability of the domestic flat glass industry to meet foreign prices based on low wage rates, characterized our industry as "obviously inefficient." If that means anything, it must mean that we produce less dollars of product per employee than the average American manufacturing industry.

In 1966, Libbey-Owens-Ford produced and sold $265,368,000 worth of products. Our average total employment in 1966 was 11,080 men and women. Therefore, the average employee produced $23,950 worth of products. But according to Mr. Katzenbach, workers whose jobs depend on U.S. exports each produce only $9,853 worth of products ($29.5 billion divided by 3 million jobs). The conclusion is inescapable. If Mr. Katzenbach's figure for export-oriented employment is correct, the average job afforded by U.S. exports isn't as productive as the experience of a company finding it very hard indeed to compete with imports. Is it consistent with the national interest to sacrifice highly productive, highly paid manufacturing jobs in order to promote lower productive, low pay jobs?

Next, the proposition that American proponents of free trade do not understand the conditions under which free trade must work.

Most of us, when we studied economics in college, were taught that free trade between nations is the logical extension of Adam Smith's concepts of division of labor and the regulatory force of free competition. It is hard to argue against the proposition that goods should be made where natural resources and aptitudes of the people are most favorable to their production. Obviously, it would be stupid to raise barriers against the importation of coffee from tropical Brazil in order to "protect" an inefficient hothouse culture of coffee in a temperate climate. Furthermore, the benefits of unrestricted commerce between the States of the United States can be, and often are, cited as an example of the validity of the free trade concept.

But for free trade to work as it does in the United States, even the theoretical economist acknowledges that manmade regulations affecting the production and sales of goods must be relatively uniform. Otherwise, the verdict which would be returned by natural resources and aptitudes is thwarted. As a minimum, the following conditions must be met:

1. There must be no government subsidies

International trade based on Government subsidies—for example, the forgiveness of turnover or value added taxes (the principal tax on business in some countries) on goods to be exported—subverts the price mechanism of economic allocation.

The unfairness of such subsidies is recognized in the Tariff Act of 1930, which provides that such subsidies be offset by a countervailing duty equal to the amount of the subsidy. That provision is still the law of the land, but as far as I know, has been applied only once in recent years when a countervailing duty was imposed to offset an Italian export subsidy on steel. I was therefore deeply disturbed to read the following in a letter dated September 25, 1967, addressed to Libbey-Owens-Ford's Washington office, and signed by Alexander J. Davitt, counselor for commercial affairs, Embassy of the United States in Paris. I quote:

> Our understanding is that exporters of flat glass are not given any particular special tax relief by the French Government. All exports, including those of flat glass, are exempt for the tax for value added (TVA). This tax is paid on products sold domestically; French exports are exempt. The Department of Commerce can provide you with detailed information on the tax for value added. We understand that the situation is the same in other countries of the European Economic Community; however, we here in Paris have not been able to check this out thoroughly.

That is the end of the quotation from Mr. Davit's letter.

Gentlemen, does this mean that the Department of Commerce has the facts necessary to determine what the level of countervailing duties should be to offset these export subsidies? If so, why has the Treasury Department not been advised? Is the provision in U.S. law requiring the imposition of countervailing duties being deliberately ignored?

Whatever the reason for this inaction, it is obvious from Mr. Davit's remarkably candid letter that the payment of government subsidies on exports is common practice in Europe. Their payment contravenes the verdict of the market place and violates the fundamental free trade premise that "goods should be made where the natural resources and aptitudes of the people are most favorable to their production." The existence of government subsidies violates the first of the conditions prerequisite to free trade.

2. There must be no major variation in taxes on business

Taxes on business are an important part of the costs of production. Goods will not be produced where resources and aptitudes are favorable if a tax differential outweighs those natural advantages.

In your own experience, gentlemen, you have seen industry locate in Ohio rather than Michigan, or in Iowa rather than Minnesota, because the State tax advantage tips the balance of decision. And I remind you that State taxes are the small part of the tax burden business shoulders. By far the greater share of that burden is imposed by our Federal Government. It is obvious that the total tax burden between one country and another varies more widely if only because a difference in tax rates applies to the whole tax burden instead of to only a small part. Thus the natural advantages one country may enjoy are being offset. Important tax differentials do exist, and they violate the second of the conditions prerequisite to free trade.

3. There must be uniform business laws, uniformly enforced

Laws regulating business activity, hours in the work week, overtime payments, minimum wage rates, safety standards, vacations, and holidays all affect costs of production and may determine where goods can be made to sell at the lowest price. Take the matter of minimum wage rates. If Pennsylvania established a minimum wage rate of $1.75 while Ohio had a rate of $1.25, how long do you think it would be before there would be a mass migration of industry from Pennsylvania? Fortunately, our minimum wage rates are Federal laws and apply uniformly to all States. In this frame of reference, goods can be made where the resources and aptitudes of the people are most favorable to production, and free trade is viable within our borders.

It is superfluous to point out that neither minimum wage laws, nor any of the other business laws mentioned above, are uniform as between this Nation and any other nation in the world. I simply call your attention to the fact that the overwhelming vote in the House of Represenatives in favor of the Dent bill indicates that, however much adminisration officials would like to pretend that minimum wage laws are not related to international commerce, the Congress knows better. The wide variation in business laws between nations violates the third prerequisite to free trade.

4. There must be no government enterprises

In State trading, prices are based on political considerations rather than costs. International trade involving government enterprise will not lead to international division of labor based purely on economic efficiency. During the last few years, Russian window glass has been imported into this country at prices not only far below domestic prices but below the prices of Japanese and other low-wage producers. This has been true despite the fact that the Russians pay the full 1930 rates of duty while the Japanese pay the much lower most-favored-nation rates.

In a capitalist economy, each producer, to survive, must sell his goods for more than they cost. This is not true in a state enterprise. If the object is to acquire foreign exchange, or simply to disrupt the economy of another nation, Russia can and does sell at whatever price level it takes to get the business, regardless of cost. Such pricing has nothing to do with natural advantages or aptitudes of the people and violates the fourth prerequisite to free trade.

5. There must be free movement of labor

Artificial restrictions on the movement of labor result inevitably in the imbalance of labor supply and therefore an imbalance of wage rates. When differences in wage rates become so great that they cannot be offset by superior productivity, the presumption, basic to the free-trade theory, that goods will be made where natural advantages are most favorable to production, no longer is true. Mr. Katzenbach stated on October 30, 1967, that, "Our high wage rates reflect the high productivity of our labor force and our economy." High productivity is partly responsible for our high wage rates. But I would remind Mr. Katzenbach that the administration itself determined that our productivity was increasing at a rate of 3.2 percent per year. Guidelines were suggested, indicating that wage increases should likewise be held to 3.2 percent per year to keep pace with productivity increases. What happened to those guidelines? Did the administration suddenly find that our productivity was increasing by 5 percent or 6 percent or 7 percent per year? Or did the unions tell the administration to go jump in the lake?

The unqualified statement that "our high wages reflect the high productivity of our labor force" reflects a surprising unawareness of the world about us.

The years between 1867 and 1914 brought an average of 556,000 immigrants to this country per year, beginning with 316,000 in 1867 and ending with 1,218,000 in 1914. If Mr. Katzenbach does not understand the impact of the addition of this number of people to the work force of the less populous, pre-World War I America, he has not read about the early frustrations of the AFL and the predecessor Knights of Labor.

In 1915 immigration dropped from 1914's 1,218,000 to 326,000 because of the Kaiser's U boats. After World War I, immigration laws were passed, and immigration has never again approached the million mark. Would Mr. Katzenbach assert that the addition of a smaller and smaller number of immigrants hungry for jobs did not strengthen labor's position in demanding and getting higher wages? Would he still claim that high productivity is the sole reason for high wages?

The diplomats and economists who put the EEC together understood that the free movement of labor within the borders of that trading bloc was necessary before free trade between the EEC's member nations would be possible. As a consequence, we saw Greek and Italian workmen leave an area where there was a surplus of labor and move to Germany where they were needed.

But as between the EEC and the United States, or between Japan and Australia, or between any of the negotiating countries and trading blocs which participated in the recent Geneva conference, migration of labor is not free. And the fact that there is no free movement of labor between these various economic units violates the fifth prerequisite to free trade.

Gentlemen, that is why I assert that American proponents of free trade do not understand the conditions under which free trade must work. They pretend unawareness of these conditions, as if their failure to recognize them would lessen their overriding importance. In the absence of a supranational world government, the conditions prerequisite to free trade cannot be present. It is shoveling smoke to talk about free trade unless and until these basic imbalances are solved. In the real world, each nation must offset by import controls the unnatural handicaps that prevent them from realizing the natural advantages each has. As long as these handicaps exist, the nation that fails to offset them will watch important industrial segments bleed to death on the commercial battlefield.

Last, I address myself to the irresponsible charge that the Senators who introduced quota bills, and the businessmen and labor leaders who testified on their behalf, are shortsighted, evil, and self-seeking.

Mr. Katzenbach notes in his October speech that, "The United States has already been formally put on notice by some 40 countries that they strongly oppose the proposed legislation."

Reports of plans to increase European nontariff barriers to offset tariff concessions granted by the EEC in the Kennedy round have been widely discussed in the press. As a citizen, I should like to know if our State Department has been as diligent in the protection of our export interests as the EEC, United Kingdom, and Japanese foreign offices have been in the protection of theirs. I have heard of no American protest being filed regarding the contemplated expansion of any foreign nation's nontariff barriers. Is it really true, as Senator Harris suggested on October 20 during hearings of this committee, that there is no "U.S. Desk" in our State Department?

Mr. Katzenbach notes that, "President Diaz Ordaz of Mexico last Friday eloquently reminded a joint session of Congress of the consequences for the world of a resurgence of American protectionism."

I do not question the eloquence of President Ordaz, but I do assert that he assumed a posture completely at odds with his own policies. We are unable to sell one square foot of window glass in Mexico. Flat glass is one of many products which must have a Mexican license to be imported. Before a license is issued by the Government, the request is studied by a board of review. Can you guess who sits on the board which reviews applications to import flat glass? Representatives of Vidrio Plano, the company manufacturing window glass in Mexico.

Not one of the quota bills which this committee studied last month approaches the harshness of this Mexican prohibition of imports. By contrast, the flat-glass quota bill, S. 2554, introduced by Senator Randolph and cosponsored by Senator Robert Byrd, Senator Lausche, Senator Scott, Senator Harris, and Senator Dirksen, seeks no rollback of flat-glass imports from their present high level. The quota is established as the average of imports during the years 1965, 1966, and 1967.

Further, provision is made for the quota to be increased by a percentage equal to the increase in U.S. consumption of flat glass in each prior year. And last, the President would be empowered, without regard to the other provisions of the bill, to negotiate agreements which would raise or lower the quantity of flat glass which may be imported from foreign countries in accordance with the Nation's obligations under GATT.

The essential fairness of this bill has been recognized in the House of Representatives, where an identical bill, H.R. 13845, has been introduced by Congressman Edmondson of Oklahoma with 16 cosponsors.

Is it just or reasonable that the Members of Congress who sponsored these bills to arrest the frightening erosion of jobs in this industry be rebuked by President Diaz Ordaz, a man who enforces an embargo-in-fact in his own country? Mr. Katzenbach would do well to quote some statesman who practices what he preaches, if such there be in any of the trading nations of the world. Whose ox is being gored?

I see no need to apologize for the wealth we citizens of the United States share. Our position was achieved by hard and intelligent work. I am more than a little tired of the pseudointellectuals who suffer a guilt complex because we have realized the opportunities our natural resources gave us. I am not opposed to charity toward those less fortunate than we, but I am opposed to destroying the industrial might that has brought us to this favored position.

In 1914, Henry Ford stratled the world by this announcement of a then unheard of $5 per day minimum wage. When asked his reasons for this astonishing announcement, Mr. Ford said, "If I pay my people at least $5 per day, they can buy my Fords."

This rationale might not have proved sound if all wages had not risen dramatically as a result of World War I. But the point is that men who, prior to 1914, walked or rode bicycles to work, were able to buy automobiles and refrigerators, and furniture, and homes. It is this broad base of highly paid wage earners which makes the U.S. market the prime target for all types of products and for all manufacturers everywhere.

The jobs and the pay of people who make things set the pattern of pay of all wage earners. No economy can survive where everybody takes in each other's laundry. Wages in service industries cannot be high if production wages are low. If we give away a job in the flat-glass industry, where the average pay, with fringes, is $5.05 per hour, in order to preserve U.S. jobs in the rice paddies or the soybean fields, as Mr. Katzenbach suggests, the base on which this economy rests will be eroded.

We have heard it argued that the American "consumer" benefits from low prices made possible by low foreign wages. Since when has the American consumer not been one and the same as the American wage earner? With the exception of drones who live on inherited wealth, the incapacitated, welfare recipients, and retirees who live on past earnings, people's ability to buy depends on what they earn. And the American who loses his job because a Japanese works for wages which would be illegal here, is not going to buy even a very low cost Japanese radio.

Industries which seek even the modest approach to orderly marketing proposed in the quota bills studied by this committee are castigated as self-serving. I suggest that it is not the entrepreneur who suffers the ultimate impact of inadequate import controls here and the stringent import controls abroad. Capital is resilient and flexible. Factories can, with some sacrifice, be closed down where the business climate is hostile and the prospect for relief negligible. Actually, the abandonment of a plant sometimes is an advantage to the entrepreneur since bad labor practices which prejudice production are likewise left behind.

At some point, the advantages of low labor cost, export subsidies, favorable tax treatment, and other foreign inducements will outweigh the natural wish of American businessmen to produce and invest in America. If the manufacturer sees no prospect of relief from intolerable low wage, low price competition, he must seek a foreign base for those operations which are being disadvantaged here. Responsibility to shareholders will admit of no other course. As long as American import controls fail to offset foreign cost advantages, the American corporation can reach this American market more profitably from a foreign-based factory. The road is already well trod, and I make no secret of the fact that Libbey-Owens-Ford may be forced to adopt the course that many other American companies have already taken.

The ultimate impact of unrealistic foreign trade policy thus falls on labor, because labor must stand on the ground where men live. In a larger sense, however, it falls on all Americans. When production workers lose their jobs, the commercial and tax base of the economy crumbles and the country suffers. Over the course of a decade or so, an American company may find an advantage in transferring to a foreign base. But if a great consuming market, predicated on high-wage employment, is lost, the total market for all producers is withered.

That is why I am deeply thankful that the Founding Fathers, in their wisdom, assigned to the Congress the responsibility for regulating foreign commerce. The acceptance of that responsibility, as evidenced by the proceedings of this committee, is heartening to all thoughtful Americans.

TRENTON TRUST CO.,
Trenton, N.J.

MR. TOM VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building,
Washington, D.C.

DEAR MR. VAIL: In response to the press release of September 27, 1967, of the Senate Committee on Finance, I am enclosing my endorsement of the statement submitted to the committee by the United States Council of the International Chamber of Commerce.

Very truly yours,

MARY G. ROEBLING.

STATEMENT FROM MRS. MARY G. ROEBLING, CHAIRMAN OF THE BOARD

As a member of the Committee on Commercial Policy of the United States Council of the International Chamber of Commerce, I would like to underscore my endorsement of the statement on U.S. trade structure and policy submitted by the United States Council of the International Chamber of Commerce to your committee.

It seems to me most unfortunate that the United States should even appear to be giving serious consideration to proposed legsilation which would reverse our long-standing policy of wider and more liberal international trade.

The pending legislation seeking to impose import quotas on a whole host of imported commodities is shortsighted and, in my judgment, inevitably would prove self-defeating.

I share the concern of the many Senators and Congressmen who are troubled by the possibility of economic harm to American companies and workers threatened by rising imports. But the potential harm must be balanced by the potential benefits that can accrue and are accruing to the American people as a whole from lower commodity prices and greater range of choices, and from the positive effects to still other American companies and workers of expanded opportunities for increased exports. The sizable surpluses on commodity trade account which we have consistently enjoyed and which have contributed so much to the amelioration of overall balance-of-payments deficits would be seriously jeopardized by a return to protectionism.

The Senate and the House have an obligation to help mitigate the difficulties certain American companies and workers would experience as a consequence of sharply increased import competition. But this obligation can and must be fulfilled on a case-by-case basis and legitimate claims—following confrontation and justification—should be satisfied by operating within the framework of an improved trade adjustment assistance program.

The present proposals to forestall any competitive import injury by imposing blanket quotas quite properly are being viewed with much alarm and apprehension by our allies and trading partners all over the world. Such legislation would undermine all the hard-won gains painfully accumulated over the past 30 years in the area of trade liberalization, and strike a devastating blow at our international prestige. It would also give comfort and effective propaganda weapons to the Communist nations. It would open the floodgates to a torrent of economic reprisals which would inflict much damage to U.S. industry and employment, considerably more than that allegedly threatened by Kennedy round tariff concessions.

The overall economic and political interests of the United States, both at home and abroad, require that the U.S. Congress reject summarily this latest blatant appeal to protectionism and get on with the necessary task of strengthening and improving our trade policy.

DEL MONTE CORP.,
OFFICE OF THE PRESIDENT,
San Francisco, Calif.

Mr. THOMAS VAIL,
Chief Counsel, Senate Finance Committee,
Senate Office Building, Washington, D.C.

DEAR MR. VAIL: It is our understanding that the Senate Finance Committee, preparatory to a full review of U.S. foreign trade, is inviting papers from interested parties dealing with American "trade structure and administration". Del Monte Corp., the world's largest processor of fruit, vegetable, and seafood products, has a deep interest in trade and we are anxious to improve export prospects. We are convinced of the importance of world trade to our company, our industry, and the U.S. balance-of-payments position.

There are numerous considerations that should be examined in formulating a trade posture but it appears to us that the most important starting point is to carefully assess the results of the recently concluded Kennedy round of GATT negotiations. The major reason for the passage of the Trade Expansion Act of 1962 was, of course, to expand world trade and to achieve reciprocity in whatever concessions that were made whether they be agricultural or industrial. It is our belief that the Kennedy round achieved very few of its goals insofar as agriculture is concerned.

EXTENT OF TARIFF CONCESSION

The principal export items of the U.S. fruit and vegetable processing industry are canned fruit cocktail, peaches, pineapple, and asparagus. In a brief submitted to the Trade Information Committee on November 25, 1963, the National Canners Association stated that these items had an extraordinary export potential. The value of exports of these items to the European Economic Community in 1966 is shown below. The industry's principal market for these items is the European Economic Community (EEC) yet the concessions received by the United States from the EEC were negligible.

	Tariffs (percent)		1966 value of U.S. industry exports (thousands of U.S. dollars)	
	Existing	Concessional	To EEC	To world
Canned fruit cocktail	25	22	7,005	24,418
Canned peaches	25	24	11,543	21,834
Canned pineapple	25	24	7,476	14,712
Canned asparagus	22	22	3,695	9,227

It is clear that the tariff concessions the canning industry received are at best insignificant. To add to the insignificance, these minor concessions are to be staged over a 5-year period. To make matters even more difficult, the EEC is currently in the process of implementing a levy on added sugars in canned fruits. In the case of canned peaches packed in heavy syrup, the new sugar levy could add 15 to 20 percent to the total paid duty. It is therefore very likely that when all is said and done American exports of canned fruits such as fruit cocktail and peaches will be subject to a higher overall duty than existed prior to the Kennedy round.

A REVIEW IS NEEDED

Because of the insignificant concessions granted to the industry by our major market, we are apprehensive about granting additional tariff-cutting authority to the President. We feel that although the last 5 years have not been a complete failure, something more should have been effected. It is therefore suggested that the Congress and the administration not rush into any new trade act but carefully review the results that were accomplished by the Trade Expansion Act.

After these results have been thoroughly assessed and their effect on world trade crystallized, then new trade legislation should be considered.

BETTER COMMUNICATIONS

The recently concluded round of trade negotiations had an air of secrecy surrounding it. It was impossible for interested parties to ascertain how the negotiations were going. Consequently, much of the help that could have been granted to negotiators from industry was not forthcoming. Communications between negotiators and interested parties should be improved and the communications should be two-sided.

NONTARIFF BARRIERS

The food-processing industry today continues to face a great many nontariff barriers such as quotas, labeling requirements, food additive control, and container control. Few, if any, of these barriers were resolved in the Kennedy round. Industry's exports are still subject to quotas in France, currency allocations in Japan, dollar allocations in Finland, and many additional licensing-type controls in many foreign countries. Food laws in many countries are arbitrary and some bar importation of wholesome food products that are acceptable in the United States. Nontariff barriers are of such importance today that any significant increase in trade in processed foods must wait until these barriers are liberalized. There is a further threat that some countries may institute new nontariff barriers. The EEC currently is considering limiting importation of certain can sizes, prohibiting certain food and color additives, and possibly instituting a variable levy system on canned products. Implementation of these barriers could be a serious impediment to future trade. In any future trade negotiations utmost importance should be given to the problems of eliminating nontariff barriers.

In 1965 the National Canners Association, representing over 85 percent of this large industry, compiled a list of nontariff barriers facing canned food exports. Most of these barriers are still in effect. We are enclosing a copy of this report to indicate just how serious these barriers are to any expansion of canned food exports.

TRADE PREFERENCES

It has recently been brought to our attention that the United States, France, Britain, and Germany are very close to an agreement declaring their support for a system of generalized tariff preferences to less-developed countries. Reportedly, a paper on the subject is to be presented at the November 30 ministerial meetings of the OECD in Paris. Developing countries are primarily exporters of agricultural products, consequently any tariff preference that is granted to these countries must be in the area of agriculture. Yet the United States is a large exporter of agricultural products. If there were to be a general agreement on granting preferences to less-delevoped countries, it would be U.S. agriculture that would be most vulnerable to the increased competition. On the other hand, temporary tariff preference might be necessary to enable less-developed countries to achieve export earnings to finance future development. The canning industry is currently attempting to ascertain what its position on preferences to LDC's should be. This is not an easy decision to make and it is hoped that before Congress makes any move to step away from our unconditional most-favored-nation policy, careful consideration should be given to the many ramifications of such a move.

SUMMARY

It is therefore respectfully suggested that

1. The results of the recently concluded Kennedy round of tariff negotiations should be carefully reviewed before serious consideration of a new trade policy is undertaken.
2. Better communication between industry and Government and the negotiating team and Congress should be instituted. Only by improving these communications can industry be assured of satisfactory trade negotiations.
3. In any new round of negotiations nontariff barriers should be given more serious consideration. These barriers are a serious impediment to increased trade in canned fruits and vegetables.
4. The question of granting trade preferences to developing countries has many sides. It will take some time to ascertain the potential effect of such trade preferences and an extensive study of the possible effects of trade preferences to developing countries should be undertaken.

Sincerely yours,

J. E. COUNTRYMAN.

STATEMENT OF THE COPPER & BRASS FABRICATORS COUNCIL, INC.

(By T. E. Veltfort, managing director)

SUMMARY

Scope of statement.—The statement is submitted on behalf of the domestic brass mill industry, based on its experience under U.S. foreign trade policies since 1934.

The domestic brass mill industry.—Characteristics of the domestic industry are given and the importance of its brass mill products for defense and for industrial purposes, particularly building, automotive, and electrical.

Government's use of incorrect statistics in support of U.S. trade policies.—The statistics used by the Government in support of its trade policy are incomplete and when correct data are employed the support for the policy fails.

Disparity in labor and related costs.—Substantially lower foreign labor and related costs continue to severely handicap competition with imports, and limit exports.

Reduction of tariffs on brass mill products unwarranted.—A comparison of pertinent facts applicable to domestic and principal foreign brass mill production emphasizes the inequity of the tariff reductions of the Kennedy round.

Dumping.—The Antidumping Act of 1921 should be strengthened by enacting S. 1726 and the International Antidumping Code should be rejected.

Negotiation procedures.—Informed business representatives during the Kennedy round negotiations were not effectively utilized.

Conclusions and recommendations.—Steps are suggested to remedy the faults indicated in our present foreign trade policy.

Scope of statement

The domestic brass mill industry submits this statement based on its experience under the U.S. foreign trade policy in the hope that it will be of service to the committee in the very important task it has undertaken. The industry has been directly involved in important aspects of this policy since the enactment of the Reciprocal Trade Agreements Act of 1934. Heretofore it has advised appropriate Government agencies of the adverse effects of certain features of this policy, beginning with the British-American Trade Agreement in 1938. Subsequently, as the multilateral trade agreements under the General Agreement on Tariffs and Trade (GATT) were made, it continued to amplify and update these statements.

The domestic brass mill industry

The brass mill industry uses copper in its unwrought form, together with quantities of zinc, tin, nickel, and other metals, to roll, draw, extrude and otherwise form such basic products as plates, sheets, rod, wire, tube, and pipe of copper and its various alloys. It is distinct in its operations and markets from the copper mining and refining segments of the copper industry as a whole, as well as from the electrical wire and cable foundry and other particular components of the overall industry. Its problems with respect to foreign trade may be quite different. Its products are essential, constituting the raw materials in such important industries as building, automotive, electrical, and mechanical parts, as well as being vital in the national defense. From 5 to 30 percent of its productive capacity for various of its products have been set aside for defense orders during the first three quarters of 1967. In 1966, 9.8 percent of its shipments, or 326 million pounds, were for military purposes. During World War II, essentially all of its production was preempted for military and related purposes, and during the Korean episode up to a quarter of its output was similarly applied.

The production capacity of the domestic brass mills is quite ample for both commercial and defense requirements. Its total shipments in 1966 were 3.33 billion pounds. The value of its output in 1966 is estimated at over $2.5 billion. It employs about 40,000. Brass mills are located in 20 States.

The industry has steadily increased its efficiency, with substantial investment in new plant and equipment, average output per man-hour having increased from 30 to 45 pounds in the last decade. Its workers are highly training and well paid, the average wage being $2.98 per hour, not including 78 cents per hour in supplementary compensation (fringe benefits).

The industry's products are in direct competition with similar products of aluminum, stainless steel, and plastics, and the industry is under constant challenge in its production and marketing procedures to meet this competition.

Besides its severe domestic competition, the industry has had to meet aggressive competition from abroad. Because brass mill products, to be marketable, must conform with widely accepted standards of physical and chemical characteristics and performance, they have to be essentially identical. There are, of course, no variations of style or appearance, on which a competitive choice may be made. Price is a dominant factor. Under these circumstances, the much lower labor and related costs abroad give imports a substantial price advantage. This advantage is enhanced by the availability in this country of large markets for certain widely used brass mill products, established as a result of comprehensive research and promotion by the domestic industry.

On the other hand, because of the disparity between foreign labor and related costs and ours, which will be discussed later on, our exports are now inconsequential and largely dependent on American manufacturers abroad and others who require certain of our products for their particular uses. Thus our exports have declined from 50 million pounds annually in the period immediately preceding the agreements under GATT, to between 15 and 20 million pounds now. Imports, however, have increased from negligible quantities to over 200 million pounds. Imports, overall, now amount to 7 or 8 percent of the domestic nonmilitary market. They represent for higher percentages of the nonmilitary markets for particular products which have been developed here by the domestic industry. Thus imports of copper alloy tube in 1966 amounted to 25.6 percent of the domestic nonmilitary market for that product as a whole, and even higher percentages for specific types of such tube, as for example thin wall tube for plumbers brass goods for which only a very small percentage of the market remains for the domestic mills. The impact on the brass mill industry of 248 million pounds of imports in 1966 would have been disastrous had it not been for the 326 million pounds it was producing that year for military purposes. It is clear that the foreign trade policy of the United States has a direct bearing upon this industry and for the most part to its detriment as that policy has been developed and as it is today administered. The industry is well qualified, therefore, to speak on the subject.

Validity of Government statistics pertaining to U.S. trade policy

First of all, certain Government statistics on foreign trade, widely used publicly to support our foreign trade policy, are misleading and give an erroneous picture of what has happened. The purported substantial surpluses in our international merchandise trade during the years in which the international trade agreements have been in effect, have been offered as an important reason for promoting the further development of our trade agreements program by further reduction of our tariffs. Thus, Ambassador Roth has stated: "Similarly on the international scene, the United States with by far the highest wage rate in the world, exports more than it imports." Our export surplus, it has been claimed also contributes favorably and substantially to our international balance of payments. But if correct statistics are used, there is no surplus.

Of prime importance to our business community is the actual economic results of our commercial foreign trade. What is really important in this frame of reference, is how the statistics are used to determine whether our foreign trade has been favorable on balance and whether it shows a tenable competitive position for us. In order intelligently to understand what is happening we must know to what extent the landed cost of our imports has balanced the payments for exports which our industries received from their foreign customers. But the cost of imports as given in the commonly published Government statistics is not the landed cost on our shores but the value in the principle markets abroad. Thus it does not include the cost of freight and insurance and whatever additional cost may be involved in bringing them from the markets in which the prices have been derived, to the ports of entry. The Bureau of the Census, late in 1966, estimated the overall cost of insurance and freight to be of the order of 9 percent of the reported import value. This does not include whatever additional cost may be incurred in bringing the products from their f.o.b. points to the ports of shipment.

Our merchandise trade surplus is further overstated by the fact that our export figures, as given in the ordinary public press releases, include exports resulting from Government grants. These, of course, are financed by the taxpayers and should not be included in our commercial transactions. The significance of this should be clear if we realize that under our present system of publicizing our export volume, we could readily increase our ostensible merchandise trade surplus by raising another billion dollars or two in taxes and using the proceeds to buy goods to be exported to our friends abroad as a gift.

Below are the foreign merchandise trade data for 1965 and 1966, as released by the Department of Commerce, to demonstrate how profitable our foreign trade is:

	1965	1966
Merchandise exports (excluding military)	26,244	29,168
Merchandise imports	21,472	25,510
Surplus of exports	4,772	3,658

If, however, these data are adjusted to properly reflect available information (which may not be complete), we have:

[In millions of dollars]

	1965	1966
Merchandise exports, as reported	26,244	29,168
Less Government grants, as reported	2,758	3,012
Commercial exports	23,486	26,156
Merchandise imports, as reported	21,472	25,510
Plus ocean freight, insurance and other costs, 10 percent	2,147	2,551
Landed cost of imports	23,619	28,061
Surplus of imports (or deficit)	133	1,905

Source: Department of Commerce, Survey of Current Business, June 1967.

Thus, the actual commercial picture is quite different from the presentation regularly publicized and presumably to be understood as reflecting the favorable position which we have reached as a result of our foreign trade policy.

It has been suggested by some that the omission of ocean freight costs from our imports is not serious, as some of this freight is paid to U.S. interests. This, waiving the fact that it suggests bad accounting, provides small comfort, however, because our international transportation balance also shows a deficit.

The common assumption that our foreign trade policy has been outstandingly successful, is subject to further question. Thus, even if we use our foreign trade statistics as commonly publicized, we find that the percentage of our foreign trade to our gross national product from 1948, the start of the multilateral agreements, to 1966, has varied from year to year between 6.6 and 7.8 percent, with no particular trend. But the proportion of imports included has steadily increased from about 33 percent of the total to 46 percent of the total. Even during the last 10 years or so, this situation has remained essentially the same. Our total foreign merchandise trade still varied between 6.7 and 7.5 percent of our gross national product and imports rose from 43 to 46 percent of the total. It is evident that imports have been an increasingly large part of our foreign trade.

The lack of any consistency in the relation between our foreign merchandise trade and our gross national product, raises the question whether the relative course of economic progress here and abroad has not controlled this situation more than the tariff adjustments which have been made under the trade agreements. At the same time, the greater increase in imports, to the extent that these have merely displaced production in this country, has not been constructive since it has seriously hurt certain of our industries and their employees.

The stock argument currently used against any attempt to limit our imports, even where necessary to maintain an important domestic industry, is that foreign nations will retaliate by instituting immediate restrictions on our exports and taking other drastic steps. Foreign nations are now featuring this ploy, even where it is only proposed that our imports be kept in reasonable balance with our actual needs to avoid stunting the growth of some of our industries. Except under special circumstances, foreign nations only buy from us what they absolutely need, such as food and machinery, and this they will continue to do even if they object to certain steps we may take to protect one or more of our industries. Similarly, it is questionable whether we would actually stop importing commodities we really need or find desirable, because of action taken abroad to mitigate some economic trouble. For instance, when Germany limited the quantity of coal which she would buy from us, even though it was considerably cheaper than her domestic coal, in order to keep her miners employed, we scolded, of course, but we are not aware that we retaliated by eliminating an equivalent value of imports from that country. Moreover, if German policy in this respect changes, it probably will be primarily on the basis of the economic situation she faces and not specifically to induce us to increase our imports from her. If our foreign trade is to be based on sound economic principles, and not on the ephemeral support of favors given and granted, we should not be talking in terms of reprisals, but of orderly adjustments which even the GATT agreement makes feasible.

It is often proclaimed by those who stress the benefits of increasing our foreign trade in toto, that more imports are desirable because they make available to the domestic consumer a greater variety of products in larger volume at lower prices. While this claim may be true for certain products, it is typical of the unreliability of such broad statements. The benefits cited are certainly not applicable to any such highly standardized products as those of the brass mills. As to the assertion that greater variety is provided by imports, the contrary is here the case. Our imports of brass mill products consist almost exclusively of common items readily available from the domestic mills. To the extent, then, that these products are imported at prices lower than the domestic mills have to charge, to that extent foreign cheap labor has been used to reduce the earnings of the domestic worker, with a corresponding reduction in his purchasing power. There is thus an economic loss that at the very least offsets any gain to the buyer in lower prices. The reduction in the business of the domestic mill compounds the economic loss.

This all leads to the key question whether a truly realistic appraisal has been made of the overall economic effects of our foreign trade policy and what the impact has been and will be on the industries adversely affected. Do the actual results, evaluated on accurate and correctly used statistics, justify this policy where the health and welfare of important domestic industries are put in jeopardy? If the policy is defended on the ground of political expediency a more convincing story must be told than has been given us heretofore, before it can be accepted as good for our country, when it carries with it damage to some important domestic industries.

Disparity in labor and related costs

Little consideration appears to have been given to the substantial disparity in labor and related costs among the various countries, particularly between the United States and other countries. Generally these have been dismissed with the implicit or explicit assumption that our superior productivity offsets the difference between our high labor rates and the typically much lower rates abroad. Here again a number of important considerations have been overlooked. First, these differences quite generally apply not only to the direct labor rates, but also to the indirect labor costs. Moreover, they often quite extensively influence other costs, such as plant, equipment, and supplies. Further, while the assumption that productivity is roughly proportional to those labor rates may be valid with respect to some products, it most certainly is not true for others, for instance, brass mill products. Even if foreign mills may not be quite up to the efficiency of domestic mills, they do have up-to-date plant and equipment, and use modern production methods. In many of the countries most of the plants are new—often financed by this country—and the management is generally well informed on the latest procedures used by our mills. Therefore, their costs, except for copper an other metal components, may be assumed to be substantially less than ours. Insofar as copper and the other metals used are involved, these are in international trade and prices usually do not differ materially. Such variations as do occur from time to time, generally do not subject mills abroad to increases in cost not comfortably within the margin provided by their lower labor and related costs. The really significant fact is that foreign brass mills quite generally price their exports to this country at substantially lower levels than even our most efficient producers can afford.

In recent years much has been made of the fact that wage rates abroad generally have increased in percentages more than labor rates in the United States. So they have. A completely different picture, however, is presented when the changes in the rates themselves are compared. This is made clear in exhibit A, which shows comparative wages in the manufacturing industries in the United States and principal foreign countries shipping brass mill products to the United States. Thus, while the United States shows the least percentage increase in wage rates between 1955 and 1966, except for Canada, its increase in cents per hour, which is the true determinant of labor costs, is higher than that of any other country. How misleading dependence on percentage increase alone can be, is graphically indicated in the case of Yugoslavia. That country has had the highest percentage increase, 200 percent, and yet its rate in 1966 was only 27 cents per hour, or 10 percent of the average rate in the United States.

This wide disparity in manufacturing labor and related costs has had a most profound effect on the foreign trade situation of the brass mills. Exhibit B shows that between 1949 and 1966 annual imports of brass mill products have increased from 21 million pounds to 248 million pounds, whereas exports have varied between about 10 and 20 million pounds—they averaged about 50 million pounds in the period before the trade agreements. Even this relatively small quantity of exports undoubtedly is influenced by the need in American owned or managed manufacturing plants abroad for our mill products to meet their particular requirements.

Tariffs on brass mill products should not have been reduced

This industry needs more protection—not less. A simple statistical summary will indicate how inequitable and unrealistic the reduction of the brass mill tariffs under the philosophy of the Kennedy round has been. Exhibit C gives a series of significant comparisons which are pertinent. The countries included account for 87 percent of our imports of brass mill products in 1960 and 92 percent in 1966. It shows that labor rates in cents per hour in these countries, except for Sweden, have increased from 1960 to 1966 less than those in the United States, and in all cases their rates are still only a fraction of ours. Their imports to us, except for the United Kingdom, in the same period have increased substantially. Nevertheless, their tariffs, except those of Canada, have been reduced by varying percentages generally substantially less than 50 percent, whereas ours have been reduced the full 50 percent. In the case of Canada, as is to be expected because of its close commercial relationships with the United States, our imports and exports have increased about proportionately between 1960 and 1966, and because the wage rates there are still nearly 25 percent lower than ours, the equal reduction in their tariffs and ours will merely serve to increase our imports more rapidly than our exports.

It is particularly difficult to understand why tariffs in Japan were reduced only 20 to 25 percent and those in the Common Market only 20 percent, when they continue to increase their exports of brass mill products to us—from 45 percent of our exports in 1960 to 56 percent in 1966; their wages are far lower than ours and at the same time our exports to them are negligible. Their tariffs, after the reductions, will still remain higher than ours. As a matter of fact, it is quite doubtful that our exports to those countries could increase to any substantial extent, even if their tariffs were eliminated entirely. The full reduction in our tariffs was thus entirely in their favor with no benefit to us.

It may be that the limited reductions in the brass mill tariffs of these countries were predicated on factors which are not applicable to our domestic industry, such as competition among the affected countries outside of the United States. If this is so, then the full reduction of 50 percent in the U.S. tariffs means that a serious sacrifice has been imposed on the domestic brass mill industry to serve some other purpose. It is hard to believe that if consultation had been had with experienced men in our industry, familiar with the practical economic factors involved, such an inequitable treatment of our industry would even have been considered.

Secretary Dean Rusk stated to the Senate Finance Committee on October 18: "For 33 years it has been the policy of the United States to lower, on the basis of reciprocity, barriers to international trade." Does this treatment of tariffs on brass mill products in the Kennedy round conform with the principle of reciprocity? Or does it merely indicate that our negotiators were satisfied with overall numbers, that is, reduction of *x* percent on the tariffs applicable to *y* dollars of our total exports warranted a reduction of *w* percent in the tariffs applicable to *z* dollars of our imports, so that the overall results were in approximate balance? On this basis industries could be lumped together to produce this balance, particularly under last minute pressure, without too much attention to the specific effects. Ambassador Roth's statement in Detroit on October 5, that "Some of the most serious of these [crises that threatened to destroy the 4 years of bargaining] occurred during the final days of negotiations in Geneva and, as you know, were overcome only after the negotiators realized that they were on the brink of failure," at least adds to the conviction that across-the-board bargaining under such pressure cannot be accepted as bringing the most enlightened solution to difficult economic problems.

Dumping

The Antidumping Act of 1921 is basically a part of our unfair trade laws governing the sale of products in our domestic markets. Critical provisions of the act have not been updated since 1921 with the result that the act as administered is not serving the purpose for which it was enacted; namely, protecting domestic industries from unfair competition from abroad. It is for this reason that the copper and brass industry publicly supports S. 1726 which has been introduced in the Senate by Senator Hartke, of Indiana, and 40 cosponsors. This bill is designed to strengthen the Antidumping Act so that it will provide meaningful relief to industries injured by the unfair trade practice of dumping. It is not a protectionist tariff measure in any sense but is directed solely at the elimination of dumping, a form of unfair competition which is universally condemned.

It is quite important to prevent foreign merchandise from invading our markets through unfair and often predatory pricing practices. It is often difficult to prove that this takes place under the procedures followed in our present Antidumping Act. This is so, not because dumping is not taking place, but because of the difficulty of getting the facts. A good example is what happened several years ago in connection with sheet copper used for roofing. Sheet copper from Belgium forced the domestic price down from 46 to 42 cents a pound at which price the product could no longer be profitably sold by our domestic mills. The Belgium price, however, continued down to 39.75 cents. Yugoslavia during this entire period consistently offered its copper in selected markets here at up to 10 percent below the domestic price even though there was evidence that this price was far lower than its domestic price for similar material. Because of various technicalities in the interpretation of the act and the regulations under it, remedial action was denied.

The Antidumping Act of 1921 is badly in need of amendment so that the criteria for injury are more definitely established and judicial review made possible as would be provided under S. 1726.

The International Antidumping Code which was negotiated in Geneva and is scheduled to become effective July 1, 1968, would substantially amend and indeed completely emasculate the present Antidumping Act. While the copper and brass industry has been convinced through experience that the present act as administered has not provided the relief against dumping which it was designed to give—the International Antidumping Code would so weaken the act as to effectively remove it from the statute books. If this code becomes law industry may as well forget about dumping.

We therefore urge the Congress to hold hearings on S. 1726, as well as on Senate Concurrent Resolution 38, because we think that both bills should be adopted by the Senate. And as a part of this move we urge that the International Antidumping Code be rejected.

Negotiation procedures

Whatever steps may have been taken in the Kennedy round negotiations to keep in touch with various industries, in order to establish that the proposed tariff modifications would not be unduly injurious, it is apparent to us that the procedure was not effective. There was no justification for appointing industrial representatives or "technical specialists" in certain industries for consultation during the negotiation, if they were not to be kept apprised of proposals applying to their respective industries. If an industrial representative is not to be trusted with supposedly confidential information, his usefulness is largely negated. Rather than merely serving as a standby for special information, in most cases not consulted at all, it is certainly more desirable that he be at least an observer in the negotiations affecting his industry. Without direct knowledge of the balancing of proposals in the course of the negotiations, he can hardly be of real service in pointing out the practical business implications involved. There should be very much closer coordination between our negotiators and our business representatives. Actually, some degree of actual participation by such representatives should receive serious consideration.

Much of the clamor against the Kennedy round agreements which is now arising from many industries, could have been prevented, if representatives of these industries had been consulted and their advice adequately weighed. Many of these industries for the first time, ours among them, have now had the opportunity to appraise the effects of the agreements, and what they find alarms them. We do not believe that foreign business representatives have been kept in the dark. Ours should have been treated with equal trust.

Conclusions and recommendations

As we have seen, the conclusions drawn from the statistics used by the Department of Commerce are seriously in error because the statistics used were not the ones that should have been used. The Government should use statistics applicable to foreign trade so as to present accurately what is taking place. Furthermore, in order that international statistical comparisons may be more accurately drawn, including tariff comparisons, a real effort should be made toward the adoption of an international uniform tariff classification.

The Antidumping Act of 1921 should be amended to accomplish the purposes for which it was originally enacted; namely, to protect our domestic industries from the unfair trade practice of dumping. To that end S. 1726 should be enacted and the International Antidumping Code should be rejected.

A whole new approach is required so that we may stop the dumping of imports by certain foreign exporters that attempt to gain a foothold in our markets by unfair and demoralizing pricing practices.

In view of the fact that a number of our industries have been, and will be unnecessarily injured by the reduction in our tariffs under the trade agreements, the remedial procedure under the Trade Expansion Act should be substantially strengthened. When an established, essential industry in this country is injured by unneeded imports, it is of little benefit to train and relocate its disemployed workers and to offer loans which could not possibly save the industry. Similarly, to extend to injured businesses tax relief to offset losses due to imports, as has been proposed, would be difficult to administer in fairness to an entire industry and would be an inequitable burden on the taxpayers to support unneeded imports induced by the cost advantages of low-wage foreign labor. It is also shortsighted to encourage foreign industries to displace domestic industries to a material extent, when they cannot be counted on to serve our requirements in times of national emergencies.

Procedures under the escape clauses of the trade agreements have been very unsatisfactory. Of 113 investigations completed by the Tariff Commission through October 11, 1962, less than one-third (33) received a favorable determination reported to the President. The President invoked the escape clause in only 15. The adjustment assistance of the Trade Expansion Act of 1962 (to which nearly one-half the text of the act is devoted), in spite of its limited efficacy, has not even been granted in any case. Section 301 (a) and (b) (industry petitions for relief), section 352 (tariff adjustment), and section 352 (orderly marketing agreements) should be modified so as to be effective in stopping actual and potential injury to industry by providing reasonably definite criteria which would serve as presumptive evidence of injury. These and other changes should be made to insure that relief to industries injured by imports is tailored to fit the specific situation involved.

During negotiations between the United States and foreign countries involving changes in tariffs and other import and export restrictions, appropriately selected representatives from our industries should be kept informed and their counsel considered. Some secrecy may be required in the course of international negotiations of this kind, but our bargaining team has kept industries such as ours completely in the dark. The shock wave of revelation following secret deals may be so great as to threaten the durability of the structure painstakingly built.

Finally, it should be emphasized that those who plead for the prevention of damage to U.S. industry because of excessive imports induced by the cost advantages of low-wage foreign labor, are certainly not generally opposed to foreign trade as such. But in the course of increasing such trade, any adverse effects on American business should not be left unrelieved because of the enthusiastic espousal by exporters, importers, and financial interests who are in a position to profit by it and who may insist that any limitation whatsoever on imports must be avoided in the quest for freer trade. But it is usually their free trade that they espouse.

Free international trade is a wonderful ideal, but until the various nations adopt similar labor and business standards, free interchange of money and labor, and other economic equalities which have made free trade among the States in this country practicable, there will remain the need for some protection. In the meanwhile, the brass mill industry for one should not become a present casualty on the way to this distant goal.

EXHIBIT A

COMPARATIVE WAGES IN MANUFACTURING INDUSTRIES IN THE UNITED STATES, AND IN PRINCIPAL FOREIGN COUNTRIES SHIPPING BRASS MILL PRODUCTS TO THE UNITED STATES

[M—male only; MF—male and female]

Country	Sex	Amount per hour 1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	Percent increase, 1955–66	Percent of United States 1955	Percent of United States 1966	Increase, (cents per hour) 1955–66
United States	MF	$1.86	$1.95	$2.05	$2.11	$2.19	$2.26	$2.32	$2.39	$2.46	$2.53	$2.61	$2.71	46	100	100	85
Canada	MF	1.45	1.58	1.63	1.72	1.80	1.79	1.75	1.74	1.81	1.88	1.97	2.08	43	78	77	63
United Kingdom	M [1]	.66	.71	.76	.78	.82	.90	.95	.99	1.03	1.11	1.23	1.29	95	36	48	63
European Common Market:																	
West Germany	MF	.41	.45	.50	.53	.57	.63	.73	.81	.87	.94	1.03	1.10	168	22	41	69
France	MF [1]	.41	.43	.39	.38	.40	.43	.46	.50	.54	.58	.61	.65	59	22	24	24
Netherlands	MF [1]	.32	.35	.39	.39	.40	.44	.48	.53	.58	.66	.73	.81	153	17	30	49
Belgium	M	.51	.54	.57	.59	.61	.63	.65	.69	.74	.83	.91	(2)	[3] 78	27	[4] 35	[3] 40
Italy	MF	.30	.32	.33	.35	.36	.37	.40	.46	.54	.59	.62	.64	113	16	24	34
Sweden	MF	.82	.89	.95	1.01	1.05	1.11	1.20	1.31	1.40	1.54	1.69	[5] 1.64	100	44	61	82
Switzerland	M [1]	.65	.67	.72	.75	.77	.81	.85	.91	.98	1.06	1.14	1.22	88	35	45	57
Yugoslavia	MF [6]	(2)	.09	.10	.11	.12	.15	.15	.15	.19	.24	[7] .20	[7] .27	[8] 200	[9] 5	10	[8] 18
Japan	MF [6]	.23	.24	.26	.27	.27	.31	.34	.38	.42	.46	.50	.56	143	12	21	33

[1] Adults only.
[2] Not available.
[3] 1955–65.
[4] 1965.
[5] Excluding payments in kind and holiday and sick leave payments; this apparently amounted to 17 cents in 1965.
[6] Based on 200 hours worked per month.
[7] The dinars per U.S. dollar were changed July 26, 1965, from 750 to 1,250; based on the old rate of 750 dinars per U.S. dollar the 1965 and 1966 figure would be 33 cents and 46 cents respectively.
[8] 1956–65.
[9] 1956.

Source: International Labor Office from United Nations monthly bulletin of statistics, June 1967.

EXHIBIT B

IMPORTS OF COPPER AND BRASS MILL PRODUCTS

[In thousands of pounds, metal weight]

Period	Copper: Plate, sheet, roll, and strip	Copper: Foil	Copper: Seamless tube	Copper: Total copper	Copper alloys: Plate, sheet, and strip	Copper alloys: Foil	Copper alloys: Rod	Copper alloys: Angles, shapes, and sections	Copper alloys: Seamless tube	Copper alloys: Wire	Copper alloys: Total copper alloys	Grand total, copper plus copper alloys	Monthly average
1949	(1)	(2)	20	20,640	(2)	(2)	(3)	(4)	310	20	445	21,085	1,757
1950			350	18,329					1,650	492	12,356	30,685	2,557
1951	(1)	(2)	948	14,973	(2)	(2)	(3)	(4)	1,882	447	14,026	28,999	2,417
1952	(1)	(2)	5,146	22,180	(2)	(2)	(3)	(4)	882	368	33,936	56,116	4,676
1953	(1)	(2)	1,166	12,342	(2)	(2)	(3)	(4)	7,277	326	33,773	46,115	3,843
1954	(1)	(2)	5,268	17,924	5,103	(2)	12,219	(4)	15,154	565	32,981	50,965	4,242
1955	18,289	(2)	11,595	29,884	6,251	(2)	11,644	(4)	20,708	382	38,985	68,869	5,739
1956	16,592	(2)	23,198	39,790	7,454	(2)	15,111	(4)	23,881	802	47,248	87,038	7,253
1957	22,337	(2)	31,396	53,733	6,770	(2)	16,819	(4)	28,431	2,895	54,915	108,648	9,054
[illegible]	37,924	(2)	46,430	84,354	13,708	(2)	19,095	(4)	33,510	2,991	69,304	153,658	12,805
1959	42,490	(2)	51,857	94,347	26,119	(2)	23,985	(4)	38,500	5,992	94,596	188,943	15,745
1960	25,919	(2)	45,121	71,040	26,214	(2)	22,327	(4)	28,148	5,352	82,041	153,081	12,757
1961	14,532	(2)	20,343	34,875	25,335	(2)	17,244	(4)	24,319	3,602	70,500	105,375	8,781
1962	17,509	(2)	13,585	3,1094	28,712	(2)	17,887	(4)	29,355	2,713	78,667	109,761	9,417
1963	16,787	5,661	12,169	34,617	30,094	(2)	18,976	262	32,706	3,407	85,445	120,062	10,005
1964	18,685	21,983	13,743	54,411	29,612	(2)	15,782	1,228	40,383	3,831	90,836	145,247	12,104
1965	21,988	25,227	19,550	66,765	29,987	(2)	9,944	791	41,113	1,944	83,779	150,544	12,545
1966	20,788	18,915	51,116	90,819	50,509	13,133	42,953	1,034	46,753	2,321	156,703	247,522	20,627
1967 (8 months)	11,726	12,092	20,115	43,933	33,608	6,725	22,518	617	23,027	1,329	87,824	131,757	16,470
1967:													
January	1,918	1,873	3,282	7,023	6,021	1,123	4,900	100	3,704	175	16,023	23,096	
February	1,125	1,831	2,942	5,898	4,211	599	4,920	23	2,340	188	12,281	17,179	
March	1,753	1,474	3,323	6,550	5,492	1,050	3,312	70	3,317	243	13,484	20,034	
April	760	916	2,696	4,372	4,137	595	2,727	76	2,372	131	10,038	14,410	
May	1,622	992	2,327	4,941	3,807	784	2,243	43	3,272	116	10,265	15,206	
June	1,522	1,551	2,137	5,210	3,381	775	1,490	64	2,632	177	8,519	13,729	
July	1,529	1,529	1,795	4,853	3,380	1,024	1,348	97	2,642	202	8,693	13,546	
August	1,497	1,926	1,613	5,036	3,179	775	1,578	144	2,748	97	8,521	13,557	

Country	Copper: Plate sheet roll and strip	Copper: Foil	Copper: Seamless tube	Copper: Total copper	Copper alloys: Plate sheet and strip	Copper alloys: Foil	Copper alloys: Rod	Copper alloys: Angles, shapes, and sections	Copper alloys: Seamless tube	Copper alloys: Wire	Total copper alloys	Grand total
August 1967:												
Canada	292	255	339	886	815	65	41	84	249	18	1,272	2,158
United Kingdom	570	230	....	800	359	347	42	11	56	1	816	1,616
European Common Market:												
West Germany	11	30	355	396	724	....	692	4	2,014	11	3,445	3,841
France	167	194	39	400	441	23	527	24	18	10	1,043	1,443
Netherlands	....	117	....	117	230	196	53	....	107	....	586	703
Belgium and Luxembourg	239	....	....	239	300	....	14	....	....	1	315	554
Italy	16	....	8	24	39	....	....	10	31	....	80	104
Total EEC	433	341	402	1,176	1,734	219	1,286	38	2,170	22	5,469	6,645
Sweden	24	1,061	20	1,105	....	140	....	....	....	16	156	1,261
Switzerland	....	....	....	....	157	....	189	....	....	....	346	346
Yugoslavia	178	....	11	189	70	....	20	....	22	....	112	301
Japan	....	39	704	743	38	4	....	....	210	10	262	1,005
All others	....	....	137	137	6	....	....	11	41	30	88	225
Grand total	1,497	1,926	1,613	5,036	3,179	775	1,578	144	2,748	97	8,521	13,557

[1] Prior to 1955 census data included copper rod. Subsequently rod was separately reported, but is excluded from this tabulation because predominantly used for electrical wire.

[2] Foil not segregated prior to September 1963; 1963 includes 4 months only; alloy foil is included through December 1965, segregated beginning January 1966.

[3] Not segregated prior to 1954.

[4] Not segregated prior to September 1963; 1963 covers 4 months only; includes copper angles, shapes, and sections which are infrequently reported in relatively small quantities.

IMPORTS OF COPPER AND BRASS MILL PRODUCTS FOR 8 MONTHS ENDED AUG. 31, 1967

[In thousands of pounds, metal weight]

Country	Copper				Copper alloys							Grand total
	Plate, sheet, roll, and strip	Foil	Seamless tube	Total copper	Plate, sheet, and strip	Foil	Rod	Angles, shapes, and sections	Seamless tube	Wire	Total copper alloys	
Canada	4,282	1,819	5,078	11,179	6,832	947	1,322	157	2,072	150	11,480	22,659
United Kingdom	1,715	2,319	255	4,289	4,750	2,055	1,151	176	469	73	8,674	12,963
European Common Market:												
West Germany	682	40	4,148	4,870	6,559	66	9,307	44	16,987	345	33,308	38,178
France	845	631	72	1,548	3,348	580	3,374	174	368	102	7,946	9,494
Netherlands		639		639	1,979	1,534	525	5	166		4,209	4,848
Belgium and Luxembourg	2,472		10	2,482	3,623	4	1,148	2	23	11	4,811	7,293
Italy	82	5	332	419	884		396	10	412	1	1,712	2,131
Total EEC	4,081	1,315	4,562	9,958	16,393	2,184	14,750	235	17,965	459	51,986	61,944
Sweden	563	5,873	299	6,735	427	1,430	35		21	226	2,139	8,874
Switzerland			20	20	1,146		3,615	28	69	208	5,066	5,086
Yugoslavia	839		390	1,229	863		976		438		2,277	3,506
Japan	53	766	8,615	9,434	2,844	109	392		1,473	125	4,943	14,377
All others	193		896	1,089	353		277	21	520	88	1,259	2,348
Grand total	11,726	12,092	20,115	43,933	33,608	6,725	22,518	617	23,027	1,329	87,824	131,757

EXPORTS OF COPPER AND BRASS MILL PRODUCTS

[In thousands of pounds, metal weight]

Period	Copper					Copper alloy					Total, copper and copper alloy
	Plate, sheet and strip	Foil	Bars, straight rods, and shapes	Pipe and tube	Total copper	Plate, sheet and strip	Bar, rod, and shapes	Wire	Pipe and tube	Total, alloy	
1949	2,177	(1)	(2)	6,689	8,866	3,859	3,126	2,894	3,148	13,027	21,893
1950	1,163	(1)	(2)	3,976	5,139	1,874	1,731	2,306	2,058	7,969	13,108
1951	1,145	(1)	(2)	4,319	5,464	1,657	1,827	2,892	2,915	9,291	14,755
1952	1,106	(1)	(2)	5,182	6,288	1,851	4,423	1,339	2,801	10,414	16,702
1953	734	(1)	(2)	3,244	3,978	1,283	2,517	559	5,716	10,075	14,053
1954	600	(1)	(2)	2,397	2,997	872	910	753	1,731	4,266	7,263
1955	1,083	(1)	(2)	2,583	3,666	1,434	1,296	724	2,314	5,768	9,434
1956	674	(1)	(2)	3,101	3,775	1,674	1,468	813	2,839	6,794	10,569
1957	529	(1)	(2)	2,708	3,237	1,578	1,170	906	2,923	6,577	9,814
1958	334	(1)	(2)	3,216	3,550	1,109	1,130	655	2,395	5,289	8,839
1959	627	(1)	(2)	1,598	2,225	1,146	1,030	693	2,547	5,416	7,641
1960	1,001	(1)	(2)	1,449	2,450	1,300	1,143	647	2,070	5,160	7,610
1961	710	(1)	(2)	1,897	2,607	1,155	1,315	450	2,687	5,607	8,214
1962	697	(1)	(2)	1,728	2,425	2,274	1,820	665	3,528	8,287	10,712
1963	675	(1)	(2)	2,315	2,990	1,335	1,573	1,123	4,238	8,269	11,259
1964	796	(1)	(2)	2,866	3,662	2,228	2,082	680	2,732	7,722	11,384
1965	1,860	432	2,705	1,789	6,786	6,869	4,146	1,632	3,759	16,406	23,192
1966	621	979	2,121	1,039	4,760	2,387	3,457	2,233	3,863	11,940	16,700
1967: 8 months	419	706	599	1,079	2,803	1,723	2,672	973	2,968	8,336	11,139
January	52	50	47	122	271	142	314	95	381	932	1,203
February	28	48	117	71	264	262	279	47	142	730	994
March	41	169	101	89	400	229	215	144	372	960	1,360
April	66	103	30	117	316	128	337	88	150	703	1,019
May	50	92	45	121	308	301	308	186	493	1,288	1,596
June	57	85	35	331	508	271	814	102	763	1,950	2,458
July	97	81	215	113	506	200	193	170	324	887	1,393
August	28	78	9	115	230	190	212	141	343	886	1,116

[1] Not segregated prior to January 1965; alloy foil is included.
[2] Segregation available only back to January 1, 1965.

Note: Figures for 1965, 1966 and 1967 revised to incorporate exports of copper bars, straight rods and shapes, now available back to January 1, 1965.

Source: Bureau of the Census of the United States.

EXHIBIT C

SOME SIGNIFICANT COMPARISONS [1] 1960 AND 1966

	United States			United Kingdom [2]			Japan [3]			European Common Market (EEC) [4]			Sweden [5]			Canada [6]		
	1960	1966	Increase	1960	1966	Increase	1960	1966	Increase	1960	1966	Increase	1960	1966	Increase	1960	1966	Increase
Average labor rates in manufacturing (dollars per hour)	2.26	2.71	0.45	0.90	1.29	0.39	0.31	0.56	0.25	0.50	0.80	0.30	1.11	1.64	0.53	1.79	2.08	0.29
Percent of U.S. rates				40	48		14	21		22	30		49	61		79	77	
Foreign trade, brass mill products (millions of pounds):																		
U.S. exports to				.18	.39	.21	.14	.79	.65	.88	1.62	.74	.09	.02	-.07	2	5	3
U.S. exports from				34	26	-8	6	30	24	63	109	46	14	17	3	16	46	30
Tariffs:																		
Present tariffs (percent)		[7] 6.1																
Reduction in Kennedy round in percent:																		
Sheet and strip		50			47			25			None			None			50	
Foil		50			50			25			20			40				
Rod, bar, and shapes		50			20			25			20			None			50	
Wire		50			20			25			20			None			None	
Pipe and tube		50			50			20–25			20			None			50	

[1] Applicable to countries from whom about 90 percent of U.S. imports of brass mill products come.
[2] Present tariffs 10, 15, and 20 percent.
[3] Present tariffs 20 and 25 percent.
[4] Present tariffs 8 and 10 percent.
[5] Present tariffs 3 and 5 percent.
[6] Present tariffs 10 and 15 percent.
[7] Equivalent of average duty applied on dutiable value of brass mill products imported during 1966.

B. Submissions by Individuals

FOREIGN TRADE REVISITED

(By J. W. Culliton)[1]

SUMMARY OF HIGHLIGHTS

The evidence is overwhelming that international trade, of which the foreign trade of the United States is a part, is not now and will not in the future be the same as it has in the past. The very nature of international trade is changing. As a result of both the changes and of inadequate attention to them a large portion of the current discussion of U.S. foreign trade policy runs the risk of being based on obsolete facts and hypotheses.

The article covers some 19 areas of changing facts and suggests that there are others, all of which should be considered in arriving at an integrated foreign trade policy, especially when there are reminders that the main characteristics of the country's present policy were established more than 30 years ago.

It deals with such things as "tariffs and revenues," "the mix of imports," "implicit hypotheses and labelized thinking," "national goals and foreign trade," "sovereign right to set ground rules on imports," "international trade and world markets," and "the concepts of industry, injury, and like and competitive products."

Recognizing that there is much special interest pleading involved, the author observes: I feel that many falacious and irrelevant arguments are made not so much out of malice of self-interest as because of the continued used of a conventional wisdom that is outdated. Another way of saying the same thing is that some of our notions of the relevance of things (and therefore our resulting value judgments) are not in tune with the current facts of life.

STATEMENT

There is currently a great amount of discussion, much of it just below the surface, about the need of a thorough review of the foreign trade policy of the United States. The President's power to negotiate

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[1] The following comments are included as part of my submission:

1. My statement is submitted by me, as a private citizen. I do not, and cannot, speak for the Tariff Commission, any of its members, or its staff.

2. The statement was not prepared specifically for submission to your committee. Rather it represents an attempt on my part 8 months ago to try to pull together, in a preliminary way, some of the thoughts which I had been accumulating over the years.

3. By its very nature and intent, this is not the type of position paper which will ever be or ever should be considered "finished." I am submitting it as it was prepared for my own use and have not attempted to rewrite it.

4. Because of the nature of the submission and the fact that it exceeds the suggested length, I am perfectly willing to have the committee keep this paper in its files and to waive its commitment that "these papers will be published."

tariff reductions under the Trade Expansion Act of 1962 expired on June 30, 1967; the Kennedy round of negotiations, in which the United States participated under the authority of that act, has been completed there is a growing interest in the question of East-West trade; there are charges that protectionist sentiment is growing bolder; the President has instructed his special trade representative to make a broadranging study of our foreign trade policy; and there are reminders that the main characteristics of the country's present policy were established more than 30 years ago.

The purpose of this article is not to get involved in the major question of whether review is necessary, and it certainly is not to get mixed up in some of the subquestions concerning the need for this or that particular reform. Rather, I presume that national policy is always subject to review and would like to suggest some things which ought to be taken into consideration. My concern is that many people urging review give evidence of basing their arguments on questionable hypotheses (which are usually implied rather than explicit) and upon a less-than-full appreciation of the current realities of international trade.

The evidence is overwhelming that international trade, of which the foreign trade of the United States is a part, is not now and will not in the future be the same as it has been in the past. I am not referring to the normal aspects of international trade—such as the development of new products or a changing pattern of countries exporting to particular countries such as the United States. The very nature of international trade is changing. As a result of both the changes and of inadequate attention to them a large portion of the current discussion of U.S. foreign trade policy runs the risk of being based on obsolete facts and hypotheses.

One of the most obvious things about international trade, as is characteristic of every important phenomenon in modern society, is that it is complex and dynamic and that each of the several parts of the situation is interconnected, not only with other parts but also with issues that lie outside a narrow definition of the phenomenon. Without careful restraints, therefore, a discussion of U.S. foreign trade policy can easily slip into the whole issue of international relations or even broad philosophical questions like the functions of Government and the rights of man.

Even on a narrow front—trying to stay on the subject of foreign trade—the truism of interrelationships produces a dilemma in the organization of pertinent observations: no one element of the situation can be fully understood apart from all the others, while understanding of the whole is impossible without rather accurate understanding of its parts. In this short article I do not intend to try to solve this dilemma. Rather, I propose to live with it or, if you prefer, to ignore it. I shall, therefore, make a few observations on some of the facts and developments in international and foreign trade which I think have a bearing on the situation without going very far in trying to evaluate their significance or to weave them into an overall pattern. The article is little more than a catalog.

In view of this decision to produce a catalog, there is no particular significance to the order in which individual observations are presented except that I have tended to take an historical point of view, to start with the United States, and to group together observations that have some relationship to each other.

1. Tariffs and revenue

The United States of America is an old, large, successful common market established long before that term was thought of. The Constitution, adopted 178 years ago, in very few words, in a few related provisions, established the groundwork. Section 8 (powers granted to Congress) provides, among other things:

> The Congress shall have the power—
>
> "To lay and collect taxes, duties, imposts and excises * * * but all duties, imposts and excises shall be uniform throughout the United States" [now known as a common external tariff or, in our alphabetical jargon, CXT].
>
> To regulate commerce with foreign nations, and among the several states * * *.

Section 9 (powers denied to Federal Government) provides that "No tax or duty shall be laid on articles exported from any state"; while section 10 (powers denied to State governments) says: "No states shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws * * *." Two simple, yet powerful provisions are added to make sure that the exception cannot be used as a ruse: "and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of Congress."

Without exploring all the disputes, variations, and decisions that have defined and refined these provisions more precisely in action, it is still true that these concepts have remained the law and practice of the United States. There is free flow of trade among the States with almost no "duties or imposts"—a trade restrained only in small part by annoying restrictions in the name of "inspection." Some may claim, and with apparent justification, that tax and corporate State laws interfere with interstate trade but the fact remains that the United States has a national economy relatively unfettered by State-imposed restrictions.

I find it of more than passing interest to note, too, that there is strong evidence that these same provisions furnished two of the main reasons for the success of the U.S. constitutional government as compared with the failure of the Articles of Confederation which the Constitution replaced. The Federal Government under the articles had two serious drawbacks: (1) The absence of revenue to sustain itself, and (2) the absence of any uniformity in trade relations with foreign nations (with the difficulty compounded by the trade jealousies and barriers among its member States). Both these difficulties were corrected by the provisions cited above and, at the same time, the practical effect was to make import duties the prime source of revenue of the Federal Government.

Some incidental reminders of this fact remain today. The committees of the Congress which are responsible for tariff matters are the Ways and Means Committee in the House (which is also responsible for revenue bills which, according to another provision of the Constitution, "shall originate in the House of Representatives") and, in the Senate, by the Finance Committee. In legislative form, tariff matters are dealt with as revenue matters.

A study of the relationship of customs revenues to the total revenue of the U.S. Government, expressing the percentage of Federal Government revenue furnished by customs from 1790 through 1962 shows that:

(1) There are three noticeably different normal patterns over the years, roughly 1790 through 1860; 1867 through 1914; 1918 to date.

(2) From 1790 through 1860, in all but 7 years the percentage was above 70 percent and in all but 13 years it was above 80 percent. An "observable normal" was around 90 percent, and well above 80 percent.

(3) From 1867 to 1914 every year ranged between 35 percent and 60 percent, and an "observable normal" was about 45 percent.

(4) The 1918-to-date period was all less than 17 percent, but there are two subperiods noticeable: 1922–40, between 5 percent and 12 percent; 1940 to date, between 1 percent and 2 percent.

Meanwhile there has been a great upsurge in the total dollar amount of customs collection since 1950—from $529 million in 1950 to $1,623 million in 1965. But other revenues grew apace to keep the percentage almost constant.

A footnote in history: In 1790, when customs revenues were 98 percent of total Federal revenues, they amounted to $4 million. While they have increased absolutely, by 40,574 percent, the percentage to total revenue has declined from 98 to 2.

2. Tariffs and protection

It was pointed out in the previous section that at the very beginning of the country's history, and with very few exceptions for the next 70 years, customs revenues were the dominant financial mainstay of the Federal Government. (There is even one instance when tariffs were reduced because of an embarrassing surplus of Federal funds.)

This does not mean that tariffs were never looked upon as a mechanism for regulating trade or even, more bluntly, as an instrument of protection for American industry. As a matter of fact, one of the strongest cases for protectionism was Alexander Hamilton's paper "Report on Manufactures," a report of the Secretary of the Treasury issued in 1791 and widely referred to over the years.

In its early days the United States was what would now be known as an "underdeveloped country" or "less developed country" (LDC). While it may not have been as less developed then—because of the scarcity of highly developed countries—it certainly was less developed by the subsequent standards it did so much to produce. Over the years then, both infant country and infant industries arguments were well suited to the conditions which existed. It is commonly agreed that the Civil War gave great impetus to the industrialization of the United States, the development of its extensive resources, and a degree of self-sufficiency never before achieved by a major nation.

It is also generally accurate to say that the so-called tariff issue was a major political issue in the United States from around 1870 until, say, the 1930's. At times the position on tariffs was one of the main distinguishing features between the two major political parties. A book reviewer recently observed that until the middle thirties a politician seeking public notice could achieve success by making some comment about tariffs, but that this is no longer true. In his opinion, comments on taxes are more successful today.

Just as, in the early days, the predominant role of customs as revenue did not rule out consideration of free trade versus protectionism, the current deemphasis of tariffs as a dominant political issue does not rule it out as a matter of grave concern or political importance. The causes of this change in the relative position of tariffs and of protectionism or free trade as a dominant, central national issue are as varied and complex as the several topics dealt with in several sections of this paper

3. The mix of imports

One fact of life which is all pervasive, and yet sometimes soft pedaled, is that foreign trade has always been a part of the economic and political activities of a modern nation. The question would seem to be, therefore, not whether foreign trade should exist but what kind and how much. For reasons which will be touched upon again later the myth seems to be almost universally accepted that exports are good and imports are bad.

At the same time there are two other realities which are also acceptable provided they are not brought into too close contact with the idea of the goodness of exports. These are that some imports are necessary (e.g., raw materials which a country does not have) and that, despite the goodness of an excess of (desirable) exports over (necessary) imports and the resulting favorable balance of trade, somehow or other in the long run imports and exports must be equal. These and other types of conventional wisdom generalizations are touched on in several other places. Here, I merely wish to give two illustrations of the kind of analyses which might be made of the real goodness of imports.

For sake of argument, let us assume that by and large the United States has put on the free list (i.e., assesses no duty on) those commodities which it needs or wants and that it assesses some duty against those whose free flow it would like to slow down. (In view of the changing position of duties as an important source of revenue this assumption, while obviously not wholly accurate, might be used as a first approximation for an analytical experiment, say from 1930 on.)

It is generally agreed that the Tariff Act of 1930 was "the height of protectionism" and that the general movement since then has been toward freer trade.

A study of the years 1930 through 1965 leads to the following observations:[1]

(1) Percentage of total imports which entered free of duty declined from the 60- to 70-percent range to 35 to 40 percent.

(2) Dollar volume of duty-free imports increased from around $1 billion to around $7 billion.

(3) Dollar volume of dutiable imports increased from around $1 billion, but less than the free goods, to close to $14 billion.

At the same time the ad valorem equivalent of duties assessed as a percentage of dutiable imports decreased from a high of near 60 percent to the 11- to 12-percent range. This suggests a relationship between volume of (dutiable) imports and average rate of duties assessed. At this point the information is presented merely as an indication of one

[1] These observations are based on a table prepared by the U.S. Tariff Commission showing free and dutiable imports, duties collected, and ad valorem equivalents under the Tariff Act of 1930, from 1930 through 1966. See table 1.

view of actual event; the causal relationships are so complicated and involved that any jumping to conclusions would be dangerous. The information is best used as a clue to the kind of analysis that might be productive of understanding.

Examination of imports from 1821 through 1965 by major types, i.e., crude materials, crude foodstuffs, manufactured foodstuffs, semi-manufactures, and finished manufactures—all as percentage of total imports suggests the following:

TABLE 1.—AVERAGE AD VALOREM RATES OF DUTY ON IMPORTS INTO THE UNITED STATES BY YEARS UNDER THE TARIFF ACT OF 1930

Note: There are two fundamental difficulties in measuring average rates of duty under different tariff acts by the use of statistics of imports: (a) The change in the character and quantity of the articles imported from year to year and still more from decade to decade; (b) the change in the general price level and even in the prices of single major commodities. Unless due regard is given to these changes comparisons between different years are likely to be misleading.

[Value in thousands of dollars]

Year	Imports for consumption						Equivalent ad valorem rates percent	
	Free	Percent free	Dutiable	Percent dutiable	Total	Duties collected	Dutiable	Free and dutiable
HAWLEY-SMOOT LAW (Effective June 18, 1930)								
1930 (June 18–Dec. 31)	979,016	69.5	429,063	30.5	1,408,079	192,528	44.9	13.7
1931	1,391,693	66.6	696,762	33.4	2,088,455	370,771	53.2	17.8
1932 [1]	885,536	66.8	439,557	33.2	1,325,093	259,600	59.1	19.6
1933	903,547	63.1	529,466	36.9	1,433,013	283,681	53.6	19.8
1934 [2]	991,161	60.6	644,842	39.4	1,636,003	301,168	46.7	18.4
1935	1,205,987	59.1	832,918	40.9	2,038,905	357,241	42.9	17.5
1936	1,384,937	57.1	1,039,040	42.9	2,423,977	408,127	39.3	16.8
1937	1,765,248	58.6	1,244,604	41.4	3,009,852	470,509	37.8	15.6
1938	1,182,696	60.7	766,928	39.3	1,949,624	301,375	39.3	15.5
1939	1,397,280	61.4	878,819	38.6	2,276,099	328,034	37.3	14.4
1940	1,648,965	64.9	891,691	35.1	2,540,656	317,711	35.6	12.5
1941	2,030,919	63.0	1,191,035	37.0	3,221,954	437,751	36.8	13.6
1942	1,767,592	63.8	1,001,693	36.2	2,769,285	320,117	32.1	11.6
1943	2,192,702	64.7	1,197,249	35.3	3,389,951	392,294	32.8	11.6
1944	2,717,986	69.9	1,169,504	30.1	3,887,409	382,109	32.7	9.8
1945	2,749,345	67.1	1,348,756	32.9	4,098,101	391,476	29.0	9.6
1946	2,934,955	60.8	1,889,946	39.2	4,824,902	498,001	26.4	10.3
1947	3,454,647	61.0	2,211,674	39.0	5,666,321	445,355	20.1	7.9
1948	4,174,523	58.9	2,917,509	41.1	7,092,032	417,401	14.3	5.9
1949	3,883,186	58.9	2,708,454	41.1	6,591,640	374,291	13.8	5.7
1950	4,766,778	54.5	3,976,304	45.5	8,743,082	529,621	13.3	6.1
1951	5,993,442	55.4	4,823,900	44.6	10,817,341	603,468	12.5	5.6
1952	6,256,950	58.2	4,490,546	41.8	10,747,497	574,733	12.8	5.3
1953	5,919,501	54.9	4,859,403	45.1	10,778,905	597,760	12.3	5.5
1954	5,667,904	55.4	4,571,613	44.6	10,239,517	556,939	12.2	5.4
1955	6,036,634	53.2	5,300,153	46.8	11,336,787	669,579	12.6	5.9
1956	6,234,514	49.8	6,281,233	50.2	12,515,747	739,228	11.8	5.9
1957	6,036,400	46.6	6,914,206	53.4	12,950,606	776,884	11.2	6.0
1958	5,341,561	41.9	7,397,868	58.1	12,739,429	832,155	11.2	6.5
1959	5,821,729	38.8	9,165,346	61.2	14,987,075	1,066,536	11.6	7.1
1960	6,142,076	40.9	8,871,834	59.1	15,013,910	1,085,115	12.2	7.2
1961	5,922,298	40.4	8,734,599	59.6	14,656,897	1,052,702	12.1	7.2
1962 [3]	6,224,850	38.3	10,026,213	61.7	16,251,063	1,234,921	12.3	7.6
1963	6,265,096	36.8	10,739,791	63.2	17,004,887	1,262,156	11.8	7.4
1964	7,045,056	37.8	11,568,138	62.2	18,613,193	1,371,265	11.9	7.4
1965	7,434,414	34.9	13,847,409	65.1	21,281,823	1,622,920	11.7	7.6
1966	9,343,859	36.8	16,022,695	63.2	25,366,594	1,716,882	10.7	6.8

[1] Subsequent to June 21, 1932, certain commodities which had previously been on the free list were made taxable, and since that date have been reported as dutiable commodities. The principal commodities affected were petroleum, copper, lumber, and coal.

[2] Trade Agreements Act passed as amendment to Hawley-Smoot law June 12, 1934. Under it many rates of duty have been decreased from time to time. First agreement effective Sept. 12, 1934, with Cuba.

[3] Includes imports of uranium ore and concentrates previously withheld from publication for security reasons. Does not include certain low-value shipments amounting to approximately $10,000,000.

(1) Finished manufactured declined from a high in the 40- to 55-percent range (1821 to 1860) to a low in the 10- to 25-percent range in the between World Wars period, and since 1950 has moved upward again to over 40 percent.

(2) Crude materials had a rather regular rise from a low of less than 5 percent in 1821 to near 45 percent during World War I. Then, except for an artificial peak in 1941, there is a downward trend to about 23 percent in 1965.

(3) These shifts in crude materials and finished manufactures are the most pronounced—most other series are relatively steady. Given the substantially different conditions in the two periods when imports of finished manufactures were larger than crude materials (i.e., 1821–95 and 1955 to date) there is strong likelihood that the competitive impact was also substantially different. Preliminary evidence suggests that the imports in the early period were of a kind not generally available domestically in adequate quantities (including capital goods), whereas in recent years they are more directly competitive with consumer products regularly produced in the United States).

4. *Foreign trade and gross national product*

A quick review of the available statistics indicates that—

There have not been any spectacular changes over the years since the Civil War as there have been in the data reviewed in the previous sections. Foreign trade has never been a dominant portion of our activities (the range of imports as a percentage of GNP, for instance, is from about 4 to 11 percent). This is not to say that exports and imports have not been important—merely that they have not been dominant.

The importance of exports and imports is hidden in such overall figures as cited above. In some categories they may have been dominant, in others insignificant. Reexamination of work already done and further analytical research seems necessary.

Quite apart from the statistics there are rather widely accepted hypotheses about the business world that support the view that, in total, foreign trade has not been dominant but in segments of the business world it has been important. The U.S. Government has, on many occasions, launched drives and programs to interest American business in exports. The facts indicate that large numbers of American businesses have never even looked at export markets but have kept busy with home markets; that, in many companies which did engage in export trade, it has been a kind of stepchild from the point of view of managerial attention and a kind of marginal market to which American business' usual market-minded approach to product design and selling campaigns has not been applied. Once again, these facts are not universal—there are exceptions. But, by and large, such campaigns have been bucking a lethargy and have been only moderately successful.

The figures seem to indicate that in almost every year, and over the years, the United States has, to coin a phrase, "enjoyed a favorable balance of trade." But, in view of the fact that this is impossible it would appear that the figures on exports and imports need some further explanation and analyses with respect to other factors such as capital movements, credit programs, foreign aid, and debt default or forgiveness.

5. Extremes of theoretical "policies"

Apparently no discussion of a foreign trade policy can be conducted for very long without the ideas of "free trade" and "protectionism" being brought up. Not infrequently they appear to be mutually exclusive. Whoever is in favor of one is against the other.

In reality, as trade policies affect actual actions, the mutual exclusivity of the two ideas is a myth. The reasons for this are explored in somewhat more detail in several other sections throughout these observations. The main reason for raising the question here is to suggest that explicit attention should be given to the meaning and practical operation of "policy."

To some theorists "policy" is a statement of principle. Hopefully, such a statement would be arrived at after a discussion and examination of the issues and rational determination by appropriate authorities. It could, however, be determined irrationally and by selfish power or pressure groups. In any case, from this point of view, policy is determined on high, promulgated, and used as the norm against which specific action is then determined.

To others, policy is the net result of what is done in any number of specific cases—the net result of specific decisions, projected into the future with appropriate modifications.

These extremes might be likened to codified law established after deliberation, and to common law, which is the cumulative result of experience.

In my view, neither extreme is realistic. Policy, in a real world, cannot be made in a vacuum—apart from reality; nor can individual decisions leading to policy be made in complete disregard of some overriding thoughts, objectives, or value systems.

In top-level, abstract policy parlance the free trade philosophy would have the amount and kind of trade determined in a free market, unrestricted by artificial controls (especially tariffs). At the same time, the protectionists would take a case-by-case approach to the right of a country's citizens to engage in business of their choice unhampered by competition from outside the country's borders.

To my mind, the only realistic answer to this problem is to recognize that policy has an element of both high-level deliberative thinking and low-level practicality. The two elements interact and the interaction is more or less controlled by policy-kind of ideas which are more like goals or ideals than like controlling principles. In this context the opposing objectives can be dealt with: free traders would like as few restrictions as possible (ideally none?); protectionists are not afraid of controls and would like those which produce an immediate good, as they see it. At any one time and facing any given problem, two opposing theorists might, as a matter of fact, end up with the same practical answer but with widely different views of the reasons and of what they would like the answer to be tomorrow.

I find it much more useful to think of policies in terms of goals and tendencies—concerning a world in motion—than either as a set of controlling principles or as case-by-case chaos.

6. Transition problems

One of the facts of life is that at any given time you have to start from where you are. If one looks upon policy as goals and objectives rather than as principles and determinants the tactics of getting from where you are to where you want to be show up in a different light.

I suspect that there is some circular reasoning involved in many of the statements made by proponents of various policies. Just to express the positions in extremes let me cite two different types of attitudes:

(1) You can't get there from here. This is the favorite argument of the status quo advocates who emphasize the difficulties that any change will make. At their best, such people can demonstrate that going back where we came from—because where we are is too far already—isn't really change.

(2) The advocates of change, on the other hand, when faced with a "you-can't-get-there-from-here" situation may respond with the advice "let's go somewhere else" so we can start from there.

The first school of thought tends to overemphasize transition problems, the second, to underemphasize or ignore them.

7. Implicit hypotheses and labelized thinking

The claim has been implied in the foregoing comments that the extremes of theories, whether they be "free trade" or "protectionism," are unreal. In many cases they take on the character of labelized thinking, which is useful for either of two tactics: (1) If anyone disagrees with the specific action which you propose, you label them with the opposite tag. Any advocate of an increased duty is, thereby, automatically "a protectionist," and vice versa. Whatever you call the other guy is, quite clearly, bad. (2) At the same time, using a label to categorize a particular proposal also tends to relieve the proposal from the need of rigorous analysis of its particular merit.

Lest anyone think I am being overly cynical, I should like to report the following statements, which are typical of the kind made before the Tariff Commission in its public hearings. As quotes they are fictional, but only to the extent that they are not taken from specific transcripts:

(*a*) Domestic manufacturer: "I favor an increased duty because I cannot compete with the flood of low-priced imports made by slave labor and dumped in my market."

(*b*) Importer: "I favor a decreased duty because the present rate is unfair and discriminatory; costs in the exporting country are rising; I furnish necessary goods to small businessmen; and I, too, am an American taxpayer."

(*c*) The front man for a committee: "This is an unnecessary barrier to foreign trade, is resented by our allies, and hinders the development of the LDC's."

(*d*) Front man for another committee: "How long can we go on exporting jobs? We don't want subsidies, all we ask is the oportunity to compete on fair terms."

For the purpose at hand, let us suspend any value judgment about the merits of the positions espoused by each of the above hypothetical witnesses. The only point here is that each of them—for reasons which, on the surface at least, are obvious—has elected to cite certain facts which, within his frame of reference, argue in favor of his conclusion. In many, perhaps most, cases there really is not too much argument about the general accuracy of the "facts."

The point I am trying to make is that the facts recited by each were selected on the basis of certain hypotheses which, all too frequently, have never been examined or made explicit. This, of course, is not a unique human phenomenon. If, as is sometimes done, it is attributed to the natural tendency to "make the best case" and to the organizational requirements of seeking truth via testimony, a "correction factor" can be applied with fairly high accuracy.

I suspect, however, that in many instances, especially in the present stage of the development of the world, the problem is more fundamental. My suspicion may best be expressed in the hypothesis that many current arguments are made within the context of a point of view or conceptual scheme which at some time in the past was substantially accurate but is no longer in tune with the facts. Two quick examples will suffice: "One of the main functions of import duties is the generation of revenue," and "The volume of exports and imports is the result of market interchange carried on in arm's-length bargaining by independent profit seekers."

I feel, therefore, that many fallacious and irrelevant arguments are made not so much out of malice or self-interest as because of the continued use of a conventional wisdom that is outdated. Another way of saying the same thing is that some of our notions of the relevance of things (and therefore our resulting value judgments) are not in tune with the current facts of life.

Another aspect of labelized thinking and unstated hypotheses is extremely subtle and yet of great significance. Note, for instance, in the hypothetical quotes from witnesses before the Tariff Commission the way in which the "protectionists" tuck in such words as "flood," "slave labor," "dumped," "exporting of jobs," and "unfair competition." Who can favor these things? The protectionist does not want special privilege, all he wants is a fair chance to compete on equal terms.

Note, too, that the free traders have, first of all, latched onto the word "free." But they also use "small business," "American," "allies," "LDC's." Who can oppose these?

It might appear from the above that the protectionists are against evil while the freetraders are for good. But life is not that simple because freetraders are against barriers to trade. There is some evidence that the whole free trade movement has, as a matter of fact, been based on essentially negative tactics such as the reduction in tariffs and the removal of barriers rather than on programs to find the most effective types and combinations of controls which would foster the right kind and type of foreign trade in the light of all the desirata.

By the same token, protectionists are not totally against. They are in favor of America, equal opportunity, fair competition, and domestic employment.

8. Degrees of freedom

In my opinion, it is logically impossible to argue against the basic thesis of the freetraders: Trade, carried on in completet freedom, will produce the greatest amount of goods and services, at the lowest prices, and by means of the most economical allocations of resources.

As an ideal, in an ideal world, I see no possible objection to this and, in the context of the previous argument (viewing policies as goals or ideals (sec. 5)), it appears to me that both the so-called freetraders and the protectionist agree.

The trouble arises when such a policy goal is looked upon as an immediately useful determinant-type policy. And the trouble arises because of the facts of life which are mainly of two different types:

(1) Even in the realm of economic theory, unhampered by political reality, full working of the free trade theory would depend upon the complete and instantaneous mobility of the factors of production. Labor should be mobile; capital should be mobile; marketing and management systems should be mobile (and then managers should be all knowing and all wise). The nonexistence of these conditions (which for the purpose of logical analysis may be assumed) makes it immediately necessary to modify the theory if it is to be used even mildly as an action determinant.

(2) In addition to the absence of economic mobility which is essential to freedom there are further actual restraints imposed by people, governments, and noneconomic considerations. For instance, monopoly imposes restrictions on the freedom of some participants in the market process (while antimonopoly governmental actions also impose restrictions on the freedom of the would-be monopolists). In addition, all the items discussed in the following section also impose restrictions on the degree of freedom which actually exists at any one time and is achievable in a real world.

In the light of these observations I would suggest that any review of national trade policy would have to take into account the degrees of freedom which actually do exist, and the degrees which might be desirable and attainable in view of the conflicting demands for freedom and in view of the absolute necessity of some restraints on some freedoms.

9. National goals and foreign trade

For more than three-quarters of a century the people of the United States, especially through their Federal Government, have had the policy of promoting the healthy development of private enterprise and of the free worker by promoting competition which is free and fair and, conversely, by outlawing competition which is artifically restricted and unfair.

From the Interstate Commerce Act (1887) and the Sherman Act (1890) through the Clayton and Federal Trade Commission Acts (1914) the emphasis was primarily on establishing ground rules for the conduct of business in the marketplace for the products of industry. In 1938, through the Fair Employment Practices Act, further ground rules for free and fair dealings with labor were begun to be laid down. In 1946 still another step was taken when the Federal Government established that its policy was to take the steps necessary to promote full employment. The language of the act made it clear, however, that the necessary governmental action was to be taken "in a manner calculated to foster and promote free competitive enterprise and the general welfare."

Other legislation during the same period can also be interpreted as having the same goals. These include the Securities and Exchange Act, Social Security, and even the creation of the Federal Deposit Insurance Corporation. The purpose of this section, however, is not to prepare a complete list of governmental actions which affect the operations of the competitive system. Rather it is to sketch, in broad outline, the fact that such actions were taken and to highlight the basic commitments to national ideals which were involved. From this point of view it is sufficient to stress principally the actions against monopoly, unfair trade practices, price discrimination, and unfair labor practices, and for free competitive enterprise and the public welfare.

From the opposite side of the coin the governmental action can be looked upon as placing restrictions upon American citizens (both corporate and individual) in the exercise of their own judgment in either adapting to or taking advantage of a licentiously free competitive system. No one has seriously disputed the right of the Government to impose such restrictions, although the debates upon the wisdom of its doing so, especially in a particular way at a particular time, have been vigorous, loud, and unceasing.

Despite the bitter, prolonged, and sincere disputes about specific applications of the policies (and about the continuing need of updating them as conditions change) it can be rather accurately observed that discriminatory pricing, monopoly, restraint of trade, blue-sky financing, unemployment, loss of bank deposits, discriminatory labor practices, and wages and conditions of employment which are below standards of human dignity are against national policy; but, at the same time, that national policy is committed to competitive enterprise.

In typical American fashion there is continuing debate and differing opinion about whether too much or too little is being attempted too early or too late. But even those segments of society (e.g., those vague generalities known as the conservatives and the businessmen) which violently opposed each new move toward restraints find that their successors accept them as part and parcel of the ongoing competitive system. While some would like modifications, few argue that the once revolutionary Government ground rules and systems be removed entirely. For instance, unemployment compensation is now built into the economic as well as the social system. By the same token, few argue that the basic commitment to free enterprise (with restraints and ground rules) should be abandoned in favor of a completely Government-run system of enterprise.

Nationally, therefore, the debate has centered on the question of what restraints are desirable, with a great deal of emphasis on the problems of establishing workable machinery for attaining desirable goals. Central to an understanding of this development in the United States is a view of business that, for appraisal of its significance, must be made explicit. The hypothesis is that being in business is a privilege. In the American sense business is ultimately rooted in the right to own private property, to use it as the owner sees fit except for necessary restraints. These restraints fall into two broad categories.

1. *Government imposed.*—The measures already discussed illustrate some Government-imposed restraints on the free use of property. By and large, these apply to business in general. More specific ones are also imposed, such as public utility regulation, the reservation of postal service to the Government, the regulation of narcotic sales, and, during the noble experiment, the prohibition of the manufacture and sale of alcoholic beverages.

These types of restraints, which are of the "ground rule" variety, should not be confused with Government enterprises which perform services private property owners shy away from (such as harbors, roads, airports, defense); nor with those where Government enterprise competes with private enterprise (such as TVA, schools, employment agencies); nor with some borderline cases between these two (urban transportation, water systems, theater).

But, no matter how government activities are looked upon—establishing ground rules, competing with business, or performing services business is not interested in—the fact remains that even in a society committed to private property and private enterprise, the people, through the machinery of government, have the right to define the conditions under which the privilege of being in business can be exercised.

2. *Consumer imposed.*—So far in this paper, the exercise of the right to use private property has tended to emphasize its use for the "business" of making things and offering goods and services in the marketplace. The other side of this operation is, however, equally important. In the process of a sale a consumer agrees to buy such goods or services. And, in the American system, the consumer (or would-be consumer) is also free in his right to use his property as he sees fit. Putting it bluntly, the free citizen may choose to buy or not to buy if he has the wherewithal. (In this context it is a somewhat different problem if the hoped-for consumer is unable to buy.)

In his buy or no-buy decision the free citizen exercises an extremely powerful restraint on the free use of private property by would-be sellers. Even with the complete absence of any government-imposed restraints whereby a man, if he cares to, may make all the chocolate-covered widgets he wants, the consumer can effectively deny him the privilege of selling them and thereby creating a going business. Nobody cares if he makes them (provided he has room to store them and it doesn't become a public nuisance) but he has no right or means to make people buy them, either above or below his costs.

The privilege of being in business in America is, therefore, restrained by a free people operating at two different levels: the first, through their Government, and the second, through their individual free choices in the markets. While the second level is not very visible in the sense of organized action, there is much evidence that given a relatively free competitive climate established and maintained by the Government constraints, it is every bit as powerful as the first. In addition to its tremendous power, the consumer-imposed restraint can be swift, merciless, and without appeal.

Thus, on the American scene, being in business is a privilege.

Our tradition has been that anyone may be in any business of his choice provided (1) he does not run counter to the ground rules established by the people through the Government; (2) he can persuade, not force, free citizens to buy his offerings. The two provisos are closely interrelated on two counts: (*a*) They are imposed by the same free citizens; (*b*) a large portion of the Government-imposed restraints are aimed at preventing the business user of property from interfering with the full freedom of choice of the consumer.

In summary, then, no property owner has the right to say: "My father before me made widgets; I like to make widgets; I do not know how to do anything but make widgets; therefore, I have an inalienable right to make widgets at a profit." Yet, in effect, that is what many do say, especially as they oppose proposed new Government restraints or seek special assistance to make it easier to meet competition.

The American experiment, as it is sometimes called, has resulted on the domestic scene, in a continuing compromise between the extremes of full, unbridled use of private property and State ownership. The specific terms of the ongoing compromise probably never have fully satisfied all or even any of the parties at interest. But the compromise has been workable. As a matter of fact, it would appear that an extremely large majority (whether they be people who think we haven't gone far enough or too far, or who accept any current position as being about right) attribute many achievements of the United States to the workings of the ongoing compromise, and its continued modification following extensive experimentation and debate. In my opinion, one of the deadliest things that could happen would be a consensus that we have finally arrived at the ideal situation and that the debate may therefore be called off.

10. Sovereign right to set ground rules on imports

The point has been made, in many different contexts and on many occasions, that the United States has achieved the highest standard of living ever known. This means that its average citizen consumes more goods and services than any of his counterparts either in the past or the present. When this is related to the fact that there are nearly 200 million people, the aggregate U.S. "market" far outstrips any other. The litany of the largest (such as with —— percent of the world's population the United States has —— percent of its telephones) need not be repeated here. It is too well known.

In the context of foreign trade this makes the United States a "very attractive market" for foreign producers. Not infrequently a small percentage of the total American market will be as big as the total capacity of another country, which means that substantial portions of a foreign plant's output can be sold in the United States without showing up as large percentages of the total U.S. consumption.

In the context of the previous sections of this catalog it may also be observed that the large American market is, in part at least, the result of the country's national policies with respect to competition, monopoly, unemployment, and conditions of employment.

There is an additional aspect of these national policies, however, which has not been made explicit. It is the recognition of the U.S. worker as a consumer. Wages have been looked upon not solely as a cost to be kept as low as possible (for the residual benefit of the owners of a business) but also as a claim check upon the output of the economy. This attitude has been expressed in various ways, such as the famous decision by Henry Ford in the 1920's to pay his workers $5 a day; the national concern for maintaining purchasing power (which is a partial explanation for the adoption of unemployment insurance); and the concern with mass distribution concurrently with mass production. The emergence of a so-called large, affluent middle class is not unrelated to this whole phenomenon.

Viewed in this light, the American market is one of the country's major assets. A market, of course, cannot be owned like a factory or natural resources, but neither was its development strictly accidental nor the result, solely, of the country's extensive natural advantages.

There are observable relationships between the country's policy commitments on the one hand (ranging from the early establishment of a "common market," through control of monopolies and the attempts to maintain "free and fair" competition, to full employment under conditions consistent with human dignity) and, on the other hand, the large market and high standard of living.

If its markets are looked upon as a national asset; and if the preservation of those markets, together with the special characteristics which enhance their value, is important not only as a mechanism for maintaining economic well being but even as an essential element in achieving goals of human freedom and dignity—then it follows that a sovereign nation has the right and the duty to establish the ground rules whereby such markets can be enjoyed by would-be suppliers, foreign as well as domestic.

It does not seem to me that the complaints of U.S. businessmen that they are restrained by domestic ground rules while foreigners are not can be lightly dismissed by labeling them as "protectionism" as if they were part and parcel of 19th-century capitalism. At the same time, it does not seem to me that they can be blithely accepted as requiring the 19th-century capitalism simple answer of "adequate tariff protection."

The new conditions, the new facts of life require new and imaginative answers.

11. Reconciling differing objectives and facts

Involved in this process of setting ground rules are all the problems of reconciling complex and apparently contradictory objectives and facts into a workable pattern. Here, only three different kinds of problems are mentioned:

1. International trade involves interplay among nations and is concerned not only with goods (and services) but also with the characteristics of the nations in which those goods and services were produced. As a result, there is competition not only among the goods but also among the ideologies of the competing countries.

This has probably always been so but currently takes on new and different complexities. For instance, when the "merchant" conducted international trade it was largely carried on by entreprenures and risk-taking wanderers who, by and large, brought to various countries products which were not readily available (such as spices, and hemp in the early days and coffee and tobacco, later—and gold anytime). As industrialization developed, empires and colonization kept the problem under control through captive supplies and markets. Later, "markets" developed in key trading centers and alert traders would move goods to the most attractive spot and thereby contribute to the economists' claim of free trade allocating the world's resources in the best possible (economic) fashion.

Countries with antimonopoly policies compete with countries where cartels are both legal and Government-sponsored; countries with systems of privately owned property and nongovernmental business compete with State-owned enterprises; underdeveloped, low-wage countries compete with high-wage (and high qualitative norms of employment) countries which today are largely without the features of a colonial captive relationship.

2. Not only has the political relationships among geographic areas changed but the very nature of international business has also changed.

Trade, so-called, is much less an arm's-length purchase in a "market" but is largely dominated by the multinational corporation with worldwide markets and plants scattered in many countries. The management of such companies can decide whether to transfer goods from one country to another (still called trade in published statistics) or whether to furnish goods from world-scattered plants to markets which can best be served (in the light of the corporation's own characteristics and objectives). For instance, it is quite difficult to identify what is meant by an American-made television set, automobile, bicycle, or watch each of which will contain varying amounts of foreign-made parts which, in turn, may be purchased abroad, made abroad in captive plants, or made abroad by companies operating under various license, patent, and management-service agreements. The industrial process of "rationalizing" production is, in the most important industries, now being done on a worldwide scale. In the United States, for instance, within a very short period (probably less than 40 years) we have gone from local, to regional, to national, to international planning of production and marketing facilities.

State-operated enterprises also function in ways substantially different from the conditions assumed under free trade.

3. The political and social problems and objectives have been substantially changed, too, largely by the revolution of expectations. Poor, underdeveloped, and less developed countries are all seeking the currently accepted goal of economic growth. The facts of life both in the developed and less developed countries put great pressure on the MFN policy which had as its selling point equal treatment for all. Currently, the idea of treating unequals as equals is being challenged as unfair.

NOTE

(Written in July 1967)

The remainder of this "catalog" is not so fully developed as some of the preceding sections. The reason is that I would like to be able to get critical appraisal of the whole concept before embarking on extensive work and research that would be necessary to make the whole story coherent. In addition, such critical appraisal could help define the additional work, if any, which might be done and thereby make it more efficient.

The remaining sections, therefore, are generally in outline form and, no doubt, contain somewhat more duplication than eventually would be tolerable.

12. The kit of control techniques

Every nation has, in fact, exercised some control (including both restraints and stimulants) on foreign trade. Being a member of the Tariff Commission, I may have a somewhat myopic point of view. Yet, looking at the history of the United States from its very beginning, through the reasons for the establishment of the Tariff Commission, to many of the practical observations and theoretical analyses of the relations between tariffs and trade, there seems to be good reason to suspect that many people look (and have looked) upon tariffs as the main, if not in fact the only, tool for control of exports and imports.

Merely to make this charge is to have it denied because obviously there are and always have been other techniques. But we still find such statements that the reduction in tariffs by the United States since the midthirties has caused a large increase in imports. Surely the reductions have been a factor, but to say the "caused" runs into difficulties not only of logic but of analysis. The Tariff Commission's members can give firsthand evidence of the economic and legal difficulties of appraising the casual relationships between changes in duties and changes in imports.

At the same time there are other observable facts which indicate that tariffs do not at the present time bear the same relationship to trade as they did in the past. For one thing, in the United States the changing importance of tariff revenue to total Government revenue has changed our attitude toward tariffs. Even more so, however, has been the development and refinement of other means of controlling trade and the changing mix of their importance. Just to mention the most obvious:

Regulations relating to health, safety, labeling.
Taxes (such as European road taxes).
Quotas.
Valuation systems.
Administrative practices.
Antidumping procedures.
"Voluntary restriction."

The above are some of the other "tools" used. Meanwhile there has also been some reshuffling and change of emphasis on the rationales for using various techniques:

Defense requirements.
Protection of domestic governmental programs (sec. 22 of the Agricultural Adjustment Act e.g.).
Monetary stability.
Balance of payments.
Market stability.
Export stimulation.

13. International trade and world markets

Reference has already been made to the multinational corporation and State-owned enterprises. These are both cause and result of essential changes in world trade.

When producing and selling units were local or regional and relatively small trade was, to a large extent, an exchange. Now, it is much more a planned operation made possible by very recent developments such as—

Instantaneous communications.
By past standards, almost instantaneous transportation.
The computer.
Development of the ability to manage large-scale enterprises (dependent in part on the above).
Technological developments in processes, materials, and products.
World markets which, in some respects make even the term "international trade" obsolete. The "international" aspects of producing for and selling to the world become more annoyances to doing the job than methods of achieving it.

One of the results of these developments has been the declining value of monopoly (as it relates to a given, traditionally defined product) because substitutes, both technically and pricewise, are more readily available.

One aspect of world markets and multinational corporations illustrates managerial changes over the sweep of time. Perhaps not more than 50 years ago in the United States both production and markets for many items were local, or at best regional. Production of some items were geographically concentrated, like textiles in New England.

As textile manufacturers began to look at new locations, principally the South, they considered wage rates, tax concessions, nearness to supplies and markets, unions, labor supply, and the like. Part of the consideration, too, was the construction of new and modern plants which could have furnished their own benefits even in the old location.

The same considerations are now taken into account, not merely on a national but on a world base. While some of the risks (such as the possibility of nationalization or unstable governments) may be greater in the international than in a national arena, the factors in the decision-making process are the same and the managerial pattern for dealing with them are the same. Given the developments cited above, such as communication, transportation, and managerial skill, plant location decisions are now made, in many companies, in a worldwide context.

Another aspect is that while a country's exports of certain articles may be going down, the amount of world business achieved by the country's firms can be expanding. For instance, in a recent year the world business done by U.S. corporations through foreign affiliates in foreign countries was twice as large as this country's exports. The corporate entities involved did more world business but decreased exports from the United States. In many cases companies increased their imports into the United States of either parts or finished products or both, or at least changed the mix of things made in their various plants in the several countries, as most notably, following the Canadian auto agreement.

14. The concepts of industry, injury, and like and competitive products

While the facts of business and world trade are thus changing, most of the domestic laws dealing with the impact of imports on the domestic economy continue to use such concepts as "the industry affected," "like and directly competitive products," and "injury to a firm or group of workers."

These concepts seem to be based on such assumptions as:

The volume of employment in the United States is directly proportionate to the volume of production.

The corporate health of a company is directly related to the volume of a product which it makes.

An imported article sold in the United States replaces the sale of a similar domestic-made product (with similarity resting more on physical characteristics than on market competition including price and substitutability) to say nothing of the marketing efforts of importers (or foreign manufacturers) to develop markets in the United States.

While such assumptions were never wholly in accord with the facts they may have been close enough when most companies were clearly in an industry, multiproduct companies were few, and interproduct competition was small. But the assumptions no longer approximate the facts even remotely in a large number of items and in corporate situations which are extremely important in world business.

15. The consumer

The theoretical structure of the free traders leads to the conclusion that the most economic allocation of resources resulting from the working of a free market will produce goods and services for the consumer at the lowest possible price and at the highest possible volume (or, perhaps, at optimum price and volume).

Protection of an uneconomical or inefficient industry in a particular country, therefore (so the argument goes), results in unnecessarily higher prices. Being very specific, a consumer should be delighted to be able to buy a man's dress shirt in the United States for $1 (made in Hong Kong) rather than for $3 (made in the United States). And, protecting the $3 U.S. price deprives the consumer of that choice.

The argument is appealing but has many ifs in practice: if the former maker (worker) of the U.S. shirt can transfer to another job (better suited to the U.S. use of resources) and can, thereby, have the $1 to buy a shirt (and $2 left to buy something else); if the supply of $1 shirts is assured both in the short run and after the United States stops making shirts; if the transition problems do not interfere too seriously with other domestic goals; etc.

16. Foreign trade and international relations

Three items come quickly to mind under this heading:

The "trade not aid" philosophy.

The relationship between trade policies and the foreign relations objective of the Government as, for example, in its relationship with LDC's and as it relates to military requirements.

So-called private diplomacy, including the fact that some multinational corporations far outstrip many national governments in size, influence, technological skills, and ability to adapt to world market changes.

17. Realities of making trade policies

Constitutional authority ultimately rests with Congress.

In fact, much has been delegated to Executive (in part at least for sheer technological difficulties of setting and maintaining trade (tariff) machinery).

The increase in importance of international agreements which confine and constrain the full freedom of unilateral sovereign determination (such as the U.S. GATT commitments).

Domestic pressures from interested parties (of all persuasions).

The reality of transition problems; immobility of labor, capital; resistance to change; the older worker; distressed areas.

Difficulties of collecting information and establishing machinery for achieving theoretically desirable objectives (e.g., adjustment assistance?).

18. Inability to hold back change

The modern industrial world is filled with examples of the futility of trying to prevent change—the best that can be done is, perhaps, to slow it or guide it slightly.

Individual storeowners and wholesalers tried to stop the chainstore and the integrated merchants.

Small business.

Fair trade (price maintenance) laws.

Bigness.

19. The ragged edge of knowledge

In this catalog there are some items about which we know quite a bit and others where ignorance of all but the bare outline of the fact is common.

Integration of such ragged bits of knowledge into a truly integrated foreign trade policy is in fact, then, much more difficult than even the theoretical problem (which is, quite obviously, complicated enough).

20.

Numbering the items in this catalog is merely a convenience for reference purposes and should not be interpreted as indicating that there are just 19 items. This open-ended item is included as a reminder that there are other things to be considered.

Statement of Dr. Harry P. Guenther, Dean, Georgetown University, School of Business Administration

Summary of Highlights

1. U.S. balance-of-payments policy and trade policy have been based upon the assumption of a fundamental U.S. superiority in international commerce.
2. This assumption is invalid as evidenced by adjusted trade data and the U.S. share of world trade.
3. The assumption of commercial superiority and notion that reciprocal tariff reductions would bring corresponding trade barrier reduction led to weak bargaining in the Kennedy round.
4. The present U.S. position requires a reopening of trade negotiations to include nontariff barriers and a reexamination of the terms of the GATT.

Introduction

This paper is submitted in response to the invitation of the U.S. Senate Committee on Finance for interested parties to submit written statements in connection with the committee's legislative oversight review of U.S. trade policies.

The material presented is based upon the premise that the United States has a serious, longrun balance-of-payments problem, and that this problem makes the formulation of U.S. trade policy and certain mistaken assumptions which have recently surrounded that formulation, of unusual significance.

The U.S. balance-of-payments deficit is serious because, being persistent, it has led to a situation where dollar claims held by foreigners far exceed our gold supply. This in turn has raised questions about the stability of the dollar and has placed us on the defensive in international economic policy debates.

That the U.S. balance-of-payments deficit is a longrun problem has been asserted in private quarters for some time. There was finally concurrence in the public sector in a speech by Assistant Secretary of the Treasury Winthrop Knowlton on May 2, 1967, before the World Affairs Council. The deficit, measured on a liquidity basis, has persisted in every year but one since 1949 and during the last 5 years it has averaged over $2 billion. This continuing large deficit has been in spite of an official Government program to eliminate it. That program has been steadily expanded in scope and the temporary controls extended, but the 1967 deficit seems certain to again exceed $2 billion.

The seriousness and longevity of the deficit should not be discounted because of Vietnam. For despite the fact that that war may be costing us as much as $2 billion in balance-of-payments drain, we have at the same time benefited from bookkeeping and nonrecurring items as well. Thus, there was a favorable impact of nearly $1 billion in the first half of 1967 alone as foreign official agencies made deposits or purchased certificates with a maturity exceeding 1 year. In 1966 nonscheduled repayments on U.S. Government credits exceeded $400 million. It is thus unlikely that the deficit would disappear if the war suddenly came to a halt even if we did not subsequently provide substantial economic assistance. And it would seem extremely naive to believe that the end of the war would lead to a surplus of sufficient magnitude to persuade the Government to remove restraints on capital movements.

TRADE AND THE BALANCE OF PAYMENTS

U.S. policy with regard to the balance-of-payments deficit has been based upon the belief that our trade surplus would grow with a little effort and by natural causes, thus eliminating the deficit. This is not only apparent from Presidential messages on the balance of payments,[1] but is the logical implication of the claim that capital controls were temporary. To be temporary it was necessary, in the absence of other major policy initiatives, that some fundamental force be working in our favor. As it was apparent that significant reduction in our overseas commitments would be at best a long-range factor, and as substantial changes in European capital markets have a similar timetable, the fundamental force had to be trade.

While it is my strong belief that trade is not the solution to our balance-of-payments deficit under present international political conditions, I would assert that we are running serious further risks to our balance of payments and will fail to achieve what relief through trade is available if the present assumptions underlying our trade policy formulation are wrong. Unfortunately that appears to be the case.

THE UNDERLYING ASSUMPTIONS

Expressed, for brevity, with oversimplification, this country seems to be formulating its policy posture with regard to trade on two broad assumptions. The first of these is that the United States has a pervasive fundamental, and steadily widening commercial superiority over the rest of the world on an almost across-the-board basis. This is in large part a carryover from experience in World War II and immediately thereafter and because of an up-to-now clear superiority in certain areas of glamorous technology—aircraft, atomic energy, and computers. This belief in our commercial superiority is reflected in the terms of the GATT, in the previously referred to Presidential balance-of-payments messages, in the assumption that our deficit was a short run problem, and in the recent Kennedy round tariff negotiations.

Evidence suggests that such a superiority does not exist. This is not to argue that we are poorly equipped to deal in international

[1] See Presidential balance-of-payments messages of 1961, 1963, 1965 and Economic Report of the President 1966, 1967.

markets, but it is no longer 1947 when markets are ours for the asking and exports grow without effort either.

Let us look for a moment at the available data. The Department of Commerce reports that the United States has had a merchandise trade surplus ranging between $3.6 billion and $6.7 billion since 1960, an impressive total indeed. However, in a memorandum item, the balance on merchandise trade is shown after adjustment to exclude exports financed by U.S. Government grants and capital outflows. These figures range from $600 million to $3.9 billion. The annual comparisons for the years 1960 to 1966 are shown below.

[In millions of dollars]

	1960	1961	1962	1963	1964	1965	1966
Balance on merchandise trade	4,757	5,444	4,417	5,079	6,676	4,772	3,658
Balance excluding Government-financed exports	2,859	3,235	2,084	2,358	3,875	2,014	646

The merchandise trade surplus figures before adjustment are not incorrect, but they are the incorrect figures to use in formulating trade policy. Yet our trade surplus is conventionally described in these terms, both domestically and abroad, which obviously affects our negotiating posture. This would be a far less significant factor if our aid was not tied and these exports still took place as it would then more fairly represent an economic choice by the aid recipient. Assume for the moment two nations, A and B. Country A has merchandise exports of $5.5 billion and imports of $5 billion giving a surplus of $0.5 billion. Country B has merchandise exports of $5 billion and imports of the same amount giving a zero balance. It would seem logical in the process of bilateral trade negotiations that country A would be under some pressure to make the greater trade concessions. Now assume country B launches an aid program involving grants of $0.5 billion which are 100 percent tied to country B exports—and assuming no leakage or substitution. Country B would now have a trade surplus of $0.5 billion identical to that of country A. Despite the neutral balance-of-payments impact on aid of country B under the assumptions used, she would now in all probability face a different situation in bilateral trade negotiations with country A.

In addition to exports directly financed by Government grants and capital flows, there is some further quantity of agricultural exports, which are commercial exports, but the products themselves are raised only by virtue of Government subsidies under the terms of which they are sold at lower prices in international markets. Here again, that portion of our exports does not reflect a genuine commercial advantage.

A third adjustment involves the basis of import valuation. Without arguing the relative merits of f.o.b.–c.i.f, the fact is that other nations report their trade statistics with imports on a c.i.f. basis while those of the United States are on an f.o.b. basis. Here again, while there is no impact on our overall balance of payments, the result shows the U.S. merchandise trade position in a light more favorable than is true in other nations using f.o.b. valuation. The Department of Commerce now has computed a c.i.f. adjustment for imports of 8.9 percent. Adjusting 1966 merchandise imports upward on this basis, the

Department shows 1966 imports of \$27,815 million compared to an unadjusted figure of \$25,510 million.[2] This adjustment of \$2.3 billion dwarfs the memorandum item showing the merchandise surplus adjusted to exclude Government financed exports of \$646 million.

The final item to note is the U.S. share of world trade. U.S. exports related to world exports have declined from 18.2 percent in 1960 to 16.8 percent in 1966.[3] While it is obvious that the United States continues to be a very large factor in world trade, these figures do not support the assumption of a broad and growing superiority.

The second broad assumption underlying the U.S. approach to trade policy is that multilateral tariff reductions will move us toward free trade. More specifically it is assumed that the Kennedy round resulted in roughly comparable concessions and that each country's relative progress toward free trade was about equal. Regrettably, this assumption too is questionable.

On the issue of equality of concession, only the future can tell us the answer with certainty. However, in view of the fact that the U.S. share of world trade has tended to diminish in recent years there is some cause to worry about the U.S. case. Our negotiators apparently worked with 1964 data as a base. The years since have not been nearly as good in terms of the U.S. trade surplus and our exports have declined as a percent of the world total. Secondly, there has been a tendency to speak of the comparability of concessions overall by applying the average tariff cut to the volume of trade (historical, 1964 base) affected. Thus, it was inferred, a large cut on a small volume of trade is equivalent to a small cut on a large volume. This may clearly be nonsense if, for example, the large cut (on small volume) takes place on items where it is a high tariff which has held down trade. Obviously, the matter of real concern is what imports and exports will be, not what they were.

Subject to much more precise analysis is the subject of relative progress toward free trade. Even assuming that the concessions were equal and fair relative to the various national tariff wall levels, an adequate comparison requires attention to the dynamics of nontariff barriers as well.

In the European Economic Community (EEC), tariffs have not been the only barriers to trade recently subject to revision and tariffs are a relatively smaller part of the barrier to trade than is true of the United States. Because of the border tax mechanism, allowing charges to be levied on imports equivalent to domestic indirect taxes (and the tax is applied to c.i.f. value and the tariff to landed value including the tax), U.S. exports face a significant barrier in addition to the tariff. Thus, tariff cuts or removal are of less relative significance to EEC countries than to the United States. Added to this is the fact that the EEC member countries recently agreed to a border tax harmonization scheme, the results of which will apparently raise the border tax on imports into five of the six nations (the exception being France).

Without trying to assess the overall impact of border tax harmonization, data below in tables I, II, and III give an example of the nature of the impact of the combined forces of tariff cuts and tax harmoniza-

[2] U.S. Department of Commerce, Highlights of Foreign Trade, June 1967 and Survey of Current Business, September 1967.

[3] IMF, International Financial Statistics.

tion and the relative impact of tariff cuts in the United States and certain other nations for three selected products. No claim is made that the products chosen are representative of trade in general between the countries used. However, the application of the border tax and the changes due to harmonization are in no way unique to these products.

TABLE I-A.—*Phenol—United States to Germany*

[In cents per pound]

Selling price, country of origin	9.5
Before Kennedy round:	
Duty: 4 percent, export price, c.i.f. basis (10.9 cents)	.4
Freight and insurance	1.4
Border tax (4 percent on landed value, 11.3 cents)	.4
Total costs	2.2
Landed cost of entry	11.7
After Kennedy round (20 percent):	
Duty: 3.2 percent, export price, c.i.f. basis (10.9 cents)	.3
Freight and insurance	1.4
Border tax (4 percent on landed value, 11.2 cents)	.4
Total costs	2.1
Landed cost of entry	11.6
After separate package (50 percent):	
Duty: 2 percent, export price, c.i.f. basis (10.9 cents)	.2
Freight and insurance	1.4
Border tax (4 percent on landed value, 11.1 cents)	.4
Total costs	2.0
Landed cost of entry	11.5
After Kennedy round and border tax harmonization:	
Duty: 3.2 percent, export price, c.i.f. basis (10.9 cents)	.3
Freight and insurance	1.4
Border tax (14.7 percent on landed value, 11.2 cents)	1.6
Total costs	3.3
Landed cost of entry	12.8
After separate package and border tax harmonization:	
Duty: 2 percent, export price, c.i.f. basis (10.9 cents)	.2
Freight and insurance	1.4
Border tax (14.7 percent on landed value, 11.1 cents)	1.6
Total costs	3.2
Landed cost of entry	12.7

TABLE I-B.—*Phenol—Germany to United States*

[In cents per pound]

Selling price, country of origin	7.0
Before Kennedy round:	
Duty: 3 cents per pound plus 17 percent ad valorem (ASP, 9.5 cents)	4.6
Freight and insurance	1.4
Subtotal	6.0
Less rebate	.3
Total costs	5.7
Landed cost of entry	12.7

TABLE I-B.—*Phenol—Germany to the United States*—Continued

After Kennedy round:	
Duty: 1½ cents per pound plus 8½ percent al valorem (ASP, 9.5 cents)	2.3
Freight and insurance	1.4
Subtotal	3.7
Less rebate	.3
Total costs	3.4
Landed cost of entry	10.4
After separate package:	
Duty: 1½ cents per pound plus 11½ percent ad valorem (country of origin selling price, 7 cents)	2.3
Freight and insurance	1.4
Subtotal	3.7
Less rebate	.3
Total costs	3.4
Landed cost of entry	10.4
After Kennedy round and border tax harmonisation:	
Duty: 1½ cents per pound plus 8½ percent ad valorem (ASP, 9.5 cents)	2.3
Freight and insurance	1.4
Subtotal	3.7
Less rebate (14.7 percent)	1.0
Total costs	2.7
Landed cost of entry	9.7
After separate package and border tax harmonization:	
Duty: 1½ cents per pound plus 11½ percent ad valorem (country of origin selling price, 7 cents)	2.3
Freight and insurance	1.4
Subtotal	3.7
Less rebate (14.7 percent)	1.0
Total costs	2.7
Landed cost of entry	9.7

TABLE III-A.—*Styrene monomer—United States to Netherlands*

[In cents per pound]

Selling price, country of origin	8.0
Before Kennedy round:	
Duty: 8 percent, export price, c.i.f. basis (8.7 cents)	.7
Freight and insurance	.7
Border tax—5.25 percent on landed value (9.4 cents)	.5
Total costs	1.9
Landed cost of entry	9.9
After Kennedy round (20 percent):	
Duty: 6.4 percent, export price, c.i.f. basis (8.7 cents)	.6
Freight and insurance	.7
Border tax—5.25 percent on landed value (9.3 cents)	.5
Total costs	1.8
Landed cost of entry	9.8

TABLE III-A.—*Styrene monomer—United States to Netherlands*—Continued

After separate package (50 percent):	
Duty: 4 percent, export price, c.i.f. basis (8.7 cents)	.3
Freight and insurance	.7
Border tax—5.25 percent on landed value (9 cents)	.5
Total costs	1.5
Landed cost of entry	9.5
After Kennedy round and border tax harmonization:	
Duty: 6.4 percent, export price, c.i.f. basis (8.7 cents)	.6
Freight and insurance	.7
Border tax—14.7 percent on landed value (9.3 cents)	1.4
Total costs	2.7
Landed cost of entry	10.7
After separate package and border tax harmonization:	
Duty: 4 percent, export price, c.i.f. basis (8.7 cents)	.3
Freight and insurance	.7
Border tax 14.7 percent on landed value (9 cents)	1.3
Total costs	2.3
Landed cost of entry	10.3

TABLE III-B.—*Styrene monomer—Netherlands to United States*

[In cents per pound]

Selling price, country of origin	8.0
Before Kennedy round:	
Duty: 2.8 cents per pound plus 18 percent ad valorem (ASP, 8 cents)	4.2
Freight and insurance	.7
Subtotal	4.9
Less rebate	-----
Total costs	4.9
Landed cost of entry	12.9
After Kennedy round:	
Duty: 1.4 cents per pound plus 9 percent ad valorem (ASP, 8 cents)	2.1
Freight and insurance	.7
Subtotal	2.8
Less rebate	-----
Total costs	2.8
Landed cost of entry	10.8
After separate package:	
Duty: 1.4 cents per pound plus 9 percent ad valorem (country of origin selling price), or 20 percent, whichever is lower	1.6
Freight and insurance	.7
Subtotal	2.3
Less rebate	-----
Total costs	2.3
Landed cost of entry	10.3

TABLE III-B.—*Styrene monomer—Netherlands to United States*—Continued

After Kennedy round and border tax harmonization:	
Duty: 1.4 cents per pound plus 9 percent ad valorem (ASP, 8 cents)	2.1
Freight and insurance	.7
Subtotal	2.8
Less rebate (14.7)	1.4
Total costs	1.4
Landed cost of entry	9.4
After separate package and border tax harmonization:	
Duty: 1.4 cents per pound plus 9 percent ad valorem (country of origin selling price), or 20 percent whichever is lower	1.6
Freight and insurance	.7
Subtotal	2.8
Less rebate (14.7)	1.4
Total costs	.9
Landed cost of entry	8.9

TABLE II A.—*Phthalic anhydride—United States to Germany*

[In cents per pound]

Selling price, country of origin	14.0
Before Kennedy round:	
Duty: 14 percent, export price, c.i.f. basis (15.5 cents)	2.2
Freight and insurance	1.5
Border tax (4 percent on landed value, 17.7 cents)	.7
Total costs	4.4
Landed cost of entry	18.4
After Kennedy round (20 percent):	
Duty: 11.2 percent, export price, c.i.f. basis (15.5 cents)	1.7
Freight and insurance	1.5
Border tax (4 percent on landed value, 17.2 cents)	.7
Total costs	3.9
Landed cost of entry	17.9
After separate package (50 percent):	
Duty: 7 percent export price, c.i.f. basis (15.5 cents)	1.1
Freight and insurance	1.5
Border tax (4 percent on landed value, 16.6 cents)	.6
Total costs	3.2
Landed cost of entry	17.2
After Kennedy round and border tax harmonization:	
Duty: 11.2 percent, export price, c.i.f. basis (15.5 cents)	1.7
Freight and insurance	1.5
Border tax (14.7 percent on landed value, 17.2 cents)	2.5
Total costs	5.7
Landed cost of entry	19.7
After separate package and border tax harmonization:	
Duty: 7 percent, export price, c.i.f. basis (15.5 cents)	1.1
Freight and insurance	1.5
Border tax (14.7 percent on landed value, 16.6 cents)	2.4
Total costs	5.0
Landed cost of entry	19.0

TABLE II-B.—*Phthalic anhydride—Germany to United States*

[In cents per pound]

Selling price, country of origin	13.0
Before Kennedy round:	
Duty: 2.4 cents per pound plus 14 percent ad valorem (ASP, 14 cents)	4.4
Freight and insurance	1.5
Subtotal	5.9
Less rebate (4 percent)	.5
Total costs	5.4
Landed cost of entry	18.4
After Kennedy round:	
Duty: 1.2 cents per pound plus 7 percent ad valorem (ASP, 14 cents)	2.2
Freight and insurance	1.5
Subtotal	3.7
Less rebate (4 percent)	.5
Total costs	3.2
Landed cost of entry	16.2
After separate package:	
Duty: 1.2 cents per pound plus 7 percent ad valorem (country of origin selling price) or 20 percent, whichever is lower	2.1
Freight and insurance	1.5
Subtotal	3.6
Less rebate (4 percent)	.5
Total costs	3.1
Landed cost of entry	16.1
After Kennedy round and border tax harmonization:	
Duty: 1.2 cents per pound plus 7 percent ad valorem (ASP, 14 cents)	2.2
Freight and insurance	1.5
Subtotal	3.7
Less rebate (14.7 percent)	1.9
Total costs	1.8
Landed cost of entry	14.8
After separate package and border tax harmonization:	
Duty: 1.2 cents per pound plus 7 percent ad valorem (country of orgin selling price) or 20 percent, whichever is lower	2.1
Freight and insurance	1.5
Subtotal	3.6
Less rebate (14.7 percent)	1.9
Total costs	1.7
Landed cost of entry	14.7

These tables make it clear that comparisons of tariff cuts alone, even if they are "equal," by no means proves equality of relative barrier removal, and that nontariff barriers can be adjusted in ways which offset tariff reductions. In each of the products analyzed it is clear that tariffs are a relatively smaller portion of the barrier to trade in the foreign country than in the United States, that the tariff cuts removed a greater portion of U.S. barriers than those of the foreign nation, and that the tariff cut abroad was offset due to border tax harmonization.

The inequities suggested above are possible because of the GATT. The defects in GATT (from the U.S. viewpoint) stem from the environment of world trade at the time it was formulated following World War II. At that time the United States did have a fundamental across-the-board commerical advantage and our neighbors needed help. The permission to form trade blocs and to rebate indirect taxes were of small consequence to the United States at that time. As time went on, with the economic recovery of Western Europe and Japan, our position changed and with each successive round of tariff reductions, tariffs became relatively less important in the barriers to trade of other nations and the permissive clauses of the GATT gained in significance.

CONCLUSIONS AND RECOMMENDATIONS

The continuing balance-of-payments deficit of the United States does not permit this country great latitude in economic bargaining with other nations. We not only cannot expect our merchandise trade account to quickly eliminate the deficit, but viewed realistically there is good cause to question the assumption of an across-the-board and expanding U.S. commercial superiority. Such an assumption and the belief that tariff cutting provides an equality in lowering barriers to trade further endangers our present trade position.

In view of the arguments developed in this paper, the following recommendations seem well suited to this Nation's problems:

(1) Presidential authority under the Trade Expansion Act of 1962 not only should be renewed but should be expanded to specifically include nontariff barriers on the broadest scope;

(2) International trade negotiations should be renewed at the earliest opportunity to fully explore nontariff barriers to trade as well as remaining tariffs;

(3) The GATT should be revised to eliminate preferences due to tax treatment that are available to some but not all developed nations and to allow significant trade preferences to be granted to developing nations;

(4) The entire U.S. economic AID program should be overhauled in the light of GATT revisions, our own balance-of-payments problems, developing nations needs, and anticipated rates of return.

NEW YORK, N.Y.

Senator RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: On September 27 you announced that all interested parties were invited to submit written statements to the Committee on U.S. Foreign Trade Policies and Practices, and that all such papers should be submitted no later than November 1, 1967. Because of the relatively short period of time which you have allowed for preparation of statements, I have been unable to prepare and develop the subject as fully as I would otherwise have done.

In my opinion, there are two aspects of the problem, the immediate and the long term. For the short run, the Congress faces (a) the task of the cleaning up job of post-Kennedy round legislation and (b) it has to deal with the plethora of bills restricting imports into the United States which have been introduced into the House, as well as the Senate. I should like to address myself to these immediate problems.

In the first place, there are three pressing post-Kennedy round matters that need to be dealt with before long-range trade policies are subjected to the scrutiny of the legislative process.

1. The first item of legislation is relatively simple. It consists of an extension of the negotiating authority of the present Trade Expansion Act. Without an extension of this authority the U.S. Government will not have the power to negotiate even minor tariff adjustments resulting from continued participation in the General Agreement on Tariffs and Trade—the GATT. Unless the President is granted the authority to change tariff rates as a result of escape clause actions, or for any other reason, he will not be empowered to grant compensatory duty reductions to countries affected thereby. Under these circumstances, the only recourse these other countries would have would be to take retaliatory action against U.S. exports. It should be understood that any such extension of authority would not be used as a basis for any major tariff negotiations.

2. The second important matter to be immediately dealt with relates to adjustment assistance. The criteria of the present act are so tightly written that no applicant for adjustment assistance has been able to qualify. The new act should substantially liberalize the terms of the present act by making a favorable finding for the receipt of adjustment assistance easier than at present, and to provide for more liberal loans, tax benefits and retraining programs for workers in injured firms or sections of industry. Liberalization of the adjustment assistance provisions could be patterned after the trade adjustment provisions of the Canadian-American Automobile Agreement.

3. The ASP Package: Some of the most important concessions negotiated at Geneva under the Kennedy round were provisional, and contain what is generally referred to as the ASP—that is, American selling price—package. These can only come into effect when the U.S. Congress has accepted them as a separate agreement, and this constitutes the third area of immediate legislative requirements in the trade field.

The American selling price method of tariff evaluation was initiated in the 1920's when there was little question that the chemical industry needed some sort of protection. Before the First World War, the United States depended on Germany for dyes and pharmaceuticals, two of the products made from benzenoid chemicals. Occasionally, Americans formed companies to manufacture these items, but German cartels drove them swiftly out of business with drastic price cuts. Thus, during the 1914 war, the United States found itself without supplies. The result was the Tariff Act of 1922 in which Congress established the ASP system of customs valuation as a way for the industry to protect itself. It was a device to protect an infant industry, but it was a highly unusual device, and except for its extension to rubber footwear, canned clams, and knitted gloves during and after the Second World War under situations that were completely different, it is the only example of this type of valuation of goods for customs valuation by the United

States. Whereas it might have been justified at the time when the chemical industry was struggling against great odds, it cannot be argued that the same companies at the present time are infant industries. In effect, ASP applies to only 4 percent of U.S. chemical imports (worth $31.1 million in 1965) out of $778 million worth of chemical imports in 1965, and it does not even apply to all U.S. benzenoid imports, which amounted to $64.9 million worth in 1965. It only applies to the benzenoids deemed competitive "for domestic products."

Actually, it is a well-known fact that a preponderant percentage of benzenoid chemicals are manufactured by a few large companies which are no longer infant industries and should be able to withstand the rigors of normal competition. In the case of smaller companies which might be seriously hurt, the liberalized adjustment assistance provisions of the new law suggested above should take care of them.

The reason that the ASP package is so important is because it has become a symbol to the Europeans and to other industrialized nations of a legislative nontariff barrier, and a particularly onerous and unfair one at that. To get rid of it, they have offered greater concessions than will be required of the U.S. chemical industry in getting rid of ASP. The effect, if Congress approves this supplementary agreement, would be that the weighted average reduction on all U.S. chemical duties would be 47 percent rather than the 43-percent reduction brought about by the Kennedy round without the ASP package. In exchange for these further concessions, the EEC would increase its average chemical tariff reductions from 20 to 46 percent. In other words, the American chemical industry alone would be exchanging an additional 4-percent tariff reduction in the U.S. market for an additional 26-percent reduction in the European market. If and when the ASP package comes into effect, the average benzenoid chemical duties of both the EEC and the United Kingdom will be much lower than that of the United States.

Secondly, the U.S. industry has more than demonstrated its ability to compete with the industries of Europe and the rest of the world by maintaining a very substantial export balance. In addition, however, there are other industries that would benefit from passage of the proposed ASP package. The EEC would modify its road taxes so as to eliminate existing discrimination against the type of car produced in the United States. The United Kingdom, for its part, would reduce by 25 percent the margin of preference it now grants Commonwealth producers of tobacco.

Passage of the ASP package is essential if the Kennedy round is to be completed. On it may depend not only the concrete benefits contained in the package itself, but the ability of the United States to continue its role of leadership in international trade.

IMPORT QUOTAS

A considerable number of bills are now pending before one or both Houses of Congress that would restrict imports—in most cases by quotas—of a broad range of manufactures and commodities. Also, the Dent bill, which has already passed the House, sets up machinery to permit the President to restrict imports of any product which is produced abroad under labor standards below those existing in the United

States. In addition, a number of other bills have been introduced that would curtail imports for a variety of reasons. All of these bills have been introduced for the purpose of protecting U.S. industries from foreign competition, and all of them, if enacted into law, would decrease U.S. imports, as well as U.S. exports, because of inevitable retaliation by importing countries. The net effect would undoubtedly be to decrease our foreign trade and the total of foreign trade throughout the world.

The rationale of protectionism should be viewed both from the point of view of the industries seeking increased protection from imports, as well as the effect of such import restrictions on the total economy of the United States, including exports and their relation to the balance of payments. The history of the postwar years has demonstrated that decreasing trade barriers has increased international trade. After all, the lesson of the trade policies pursued by the United States since 1934 is that tariffs can be very substantially reduced without great damage to domestic interests, and with undoubted benefit to the national economy. Although our tariffs are now but a fraction of what they were under the Smoot-Hawley Act of 1930, the gross national product of the country, the total number of persons employed, and the average real income of the population are at an alltime peak. The gloomy predictions of the opponents of trade liberalization; namely, that mass unemployment, extensive business failures, and industrial stagnation would result from the lowering of tariffs and trade barriers, have not been fulfilled.

On the other hand, it would be inequitable and unfair to expect that individual workers, firms, or industries should be called on to bear the economic cost of trade policy decisions taken in the national interest, but which do prove injurious in particular instances. For such cases we have a law against unfair competition resulting from "dumping practices" and this should be enforced. We also have trade adjustment provisions incorporated in the Kennedy round legislation. They should be liberalized as recommended above.

If we have faith in competition within our borders, we must also have faith in the values of international competition, and indeed the multibillion-dollar value of the foreign subsidiaries of so many of our domestic corporations is a commitment to just such competition. We are used to competition between industries in this country—aluminum versus steel; plastics versus aluminum; cans versus bottles versus paper containers for milk and soft drinks; and between sections of the country—textiles between New England and the South; citrus fruit between Florida and Texas and California. Such competition—enforced by our antitrust laws—has been the foundation on which our economic strength has been built, and which has been the basis of ever-increasing sales and profits and to generally lower prices for our consumers in terms of their purchasing power as compared to all other countries.

The Dent bill attempts to base unfair competition on the differential in wage rates between the United States and other countries. If carried to its logical conclusion, practically all imports could be subject to increased duties, the rise in rate of duty being dependent on the very much higher wage rates in the United States and the wage component of the import involved. If the wage differential actually is the real measure of fair competition between U.S. and foreign products, how can one account for annual U.S. exports of $25 billion? The answer is, of course, that wage rates by themselves do not determine the relative level of prices nor the basis of competitive values. Output per man-hour, social security taxes based on wages, degree of mechanization and automation, the education and skills of the worker, and as important as any other, management skills and organization, relative price levels in different countries, tax rates, foreign exchange rates, interest rates—all these are variables and affect prices—not wage rates alone. If relative wage rates are to be used as a basis for determination of whether import prices are fair or not, then all these other factors should also be cranked into the equation, obviously an impossible and futile exercise.

FUTURE OF U.S. TRADE POLICY

The writer has recently prepared an article entitled, "A Proposal for New Initiatives in U.S. Foreign Trade Policy," that appeared in the spring 1967 issue of Orbis, a quarterly journal of world affairs published by the Foreign Policy Research Institute of the University of Pennsylvania. This article was reprinted by the Subcommittee on Foreign Economic Policy of the Joint Economic Committee, Congress of the United States, in its hearings on the "Future of U.S. Foreign Trade Policy" (vol. II, p. 465).

With your permission, Senator Long, I should like to request the privilege of resubmitting this article to your committee, inasmuch as there has not been time to abstract the pertinent parts that correspond to the 16 headings listed in your press release of September 27.[1]

The article covers both proposals for current legislation, as well as suggestions for the future course of U.S. foreign trade policy. As to the latter, it applies particularly to your item No. 15, "A Free Trade Area With U.S. Participation."

I would appreciate the opportunity to testify before your committee on my free trade area proposal in case you are planning to hold public hearings at some future date.

Respectfully submitted.

RALPH I. STRAUS.

KENSINGTON, MD.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance, New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: The enclosed paper is submitted for inclusion in the Compendium on Legislative Oversight of U.S. Trade Policies. I am submitting it as an interested citizen as well as an international economist working privately after more than 30 years as a civil servant working on the trade agreements program for the U.S. Government.

The statement is based on a proposal for a new approach to international trade discussion which I developed during a sabbatical year (1964–65) granted me as a career service award by the Secretary of Labor. It was originally spelled out in the manuscript, "Rethinking Foreign Trade Policy," Washington, February 1966, copies of which can be obtained from the Division of Foreign Economic Policy of the

[1] Mr. Straus' paper appears at p. 403 of vol. I.

U.S. Department of Labor. The central thesis of that manuscript is presented in a statement, "The Restructuring of Foreign Trade Negotiations," in "Issues and Objectives of U.S. Foreign Trade Policy," Subcommittee on Foreign Economic Policy, Joint Economic Committee, Congress of the United States, September 1967.

On the basis of my conversation with Mr. Robert A. Best, the enclosed statement is directed particularly to the format of the proposed approach, with emphasis on its usefulness as a method of dealing with nontariff trade barriers. It also brings out the advantage of facilitating the coordination of foreign trade policy with other economic policy.

When the committee schedules its public hearings on U.S. foreign trade policies, I will appreciate an opportunity to present an oral statement.

Sincerely yours,

ROBERT B. SCHWENGER.

A FORMAT FOR INTERGOVERNMENTAL DISCUSSION OF TRADE BARRIERS IN A DYNAMIC ECONOMIC ENVIRONMENT

(By Robert B. Schwenger)*

RÉSUMÉ

Modern industrial countries have evolved a dynamic mixed economy competitive process which puts technological progress to serving the people. Our shrinking world must similarly evolve a dynamic process adapted to its needs. Trade policy should be formulated in this perspective, since the U.S. economy can achieve its greatest potentiality as part of a dynamic world economy. Our present "bargaining-away-barriers" trade policy was formulated in the perspective of the excessive, "beggar-my-neighbor" trade restrictions of the great depression and has reduced them to merely nuisance levels. Most Government actions now affecting trade substantially (whether they are high tariffs or nontariff barriers) are directed to national mixed economy policy purposes.

A number of ways have been improvised, as "temporary exceptions" to the bargaining-away format, for reaching understanding and cooperation regarding such purposes. A new policy format is suggested (labeled "deliberating-the-public-interest") in which intergovernmental public discussion of the effects of individual trade barriers in the light of their purposes would be followed by national reconsideration and, as appropriate, intergovernmental cooperation.

CONTENTS

1. Introduction.
2. Summary of a "deliberating-public-interest" format.
3. The dynamic, competitive, mixed economy puts technology to serving the public interest within a country.
4. The trading countries are interdependent parts of a world economic mechanism.
5. The international trade and production community requires a mixed economy structure.

*Mr. Schwenger worked in the trade agreements program as a U.S. civil servant from July 1934 to December 1966.

6. The need is being met after a fashion.
7. Open procedures can help the forming structure function representatively.
8. The "bargaining-away" format has done its job.
9. The bargaining format impedes positive intergovernmental trade cooperation.
10. Discussion must focus around the purpose of a trade barrier.
11. Cooperation already improvised, as "exceptions" to the bargaining program, prefigures the new format.
12. A rational approach.

1. INTRODUCTION

This paper suggests a new general format for future intergovernmental trade discussion and domestic legislative authorization.[1] It is based in important part on techniques improvised among governments, over the years of the present trade agreements program, for dealing with intergovernmental actions (such as farm income, mineral supply, full employment and depressed area measures) that create trade problems not amenable to solution directly through the present program's "bargaining-away-barriers" format. (A comparable label for the suggested format might be "deliberating-the-public-interest.")

In effect, the suggested format would institutionalize the revolutionary acceptance among governments and people, particularly in the great trading countries, of the obligation to consult regarding acts distorting trade even when they cannot be bargained away, and the obligation to avoid injuring one another by such acts as far as practicable. It would drop the idea of short-term reciprocity and the concern for "balance" in trade-barrier negotiations which have caused so much public bickering and resentment in recent years. Instead, it would embody a concern to maintain a dynamic competitive process in the world economy.

Adopting the format would involve a shift of emphasis in the official view as to the way of accomplishing our objectives in the foreign trade field. Instead of regarding all barriers as impeding economic efficiency and peace and, therefore, as actions to be discontinued, we would deliberate publicly regarding individual acts affecting trade—with the idea of maintaining those exceptional ones needed for desirable national economic objectives. Moreover, the barriers maintained would be coordinated as far as possible with related actions of other governments. We would replace a program originally designed to achieve an armistice (and eventual disarmament) in the economic warfare of the great depression with a program creating positive economic peace on the basis of increasing interdependence as beneficiaries of an expanding world economy. We would move a step further toward interna-

[1] The suggested format is one method of following certain principles of international trade discussion worked out by the writer during a career-service sabbatical year (1964–65) spent at the University of Stockholm's Institute for International Economic Studies. The approach was first put in publishable form in February 1966 in a manuscript, "Rethinking Foreign Trade Policy," some copies of which are still available at the Department of Labor (Office of Foreign Economic Policy).

A condensed presentation of the central thesis of that manuscript will be found in "Issues and Objectives of U.S. Foreign Trade Policy," Joint Economic Committee, U.S. Congress, September 1967. The present, shorter paper emphasizes the advantages of the proposed format for discussing the more recalcitrant trade barriers, most of which reflect conflicts between the present trade policy and other economic policy.

tional principle and law, and a step away from economic power, in reaching trade understanding.

2. SUMMARY OF A "DELIBERATING PUBLIC INTEREST" FORMAT

There would be established a continuing forum for conversation among governments regarding any of one another's specific actions which had (or was alleged to have) significant repercussions on international trade.[3] The forum would be open to participation by all governments. The conversation would be held in public.

The conversation would be nonadversary. Each participating government would be committed to state the economic purpose of any of its actions brought up for consideration and to limit the action to the level and the duration required for that purpose. The forum would not debate the purpose but would address itself to the economic effects of the action. The stated purpose and the facts and analysis of effects would be published in a report. Actions by other governments affecting the same trade might be included in the conversation on the same nonadversary, analytical basis. There would be no recommendations.

Following (or in connection with) the intergovernmental conversation, the acting government would be committed to give public reconsideration to its action, through its own constitutional processes, in the light of the facts and analysis brought out. (For most U.S. actions other than tariffs reducible without serious injury, this would presumably mean congressional reconsideration.) If the government decided that the action was not currently necessary or, on balance, desirable, it would schedule it for discontinuation. If it found that an alternative or modified action would serve the stated purpose sufficiently and with fewer undesired side effects, it would change its program accordingly. It might, of course, decide to make no change.

Following (or in connection with) the reconsideration, the acting government might seek cooperation from other governments in the particular mix of actions that would serve the stated purpose in the most efficient way. All participating governments would be committed to give public consideration to thus cooperating with the acting government. Much cooperation would probably be agreed upon in commodity or sector groups.

Each participating government would maintain a special independent official trade-information structure (preferably an agency of the parliament), the sole responsibility of which would be to assure that the facts and analyses for assessing the effects of trade-affecting actions were fully and understandably available at both the multilateral conversations and the national reconsiderations and were brought to public attention. The head of this trade-information structure would have the status and authority needed to obtain appropriate information. He would be a member of an inter-governmental trade-

[3] While the term, "trade barrier," is used in the general discussion because that is the public practice in GATT and the trade agreements program, the more accurate term, "government action affecting international (or foreign) trade," is used in this specific statement of the format. Not all the actions in question are barriers in the sense of obstructions; some (e.g., export subsidies) are stimulants to trade. Not all are directed at trade; some (e.g., price pegging, production subsidy, taxation, and social legislation) are purely domestic measures in intention. They vary with changes in the domestic problems to which they are directed, and cannot usefully be considered barriers to be governed primarily by trade considerations.

information organization to exchange facts and serve the intergovernmental public forum.

Actions might be scheduled for examination on the basis of a government-complaint procedure, a report by each government on the economic effects of its own actions, recommendation of the principal officers of the special information structure, or reference from more specialized intergovernmental groups (such as international commodity groups) within the purview of the general forum and its public process. In addition, it should probably be open to a government to put forward for consideration an action which it contemplated but had not yet taken; this technique might appeal in cases where foreign government cooperation was particularly valuable for insuring the success of the action.

The intergovernmental conversation would deal primarily with the economic effects of a government action. It would cover all significant effects—domestic and foreign, direct and indirect, concentrated and diffused, immediate and longer term, costs and gains. It would run to specifics. As far as possible, it would be in quantitative terms—estimating or evaluating even when examining doctrinaire allegations of effect. How much does an action change prices, costs, profits, production, consumption? Who is affected adversely, who beneficially, when, and to what degree? What is the effect on the growth of the world production process—on innovation—on adjustment to current changes in the economic environment? A participant government would not take a position as between a national (say, producer) interest that might be helped by an action and another national (say, transportation or consumer) interest that might be injured. Each would be assessed separately; and the presentation of this combination of assessments—for all interests, wherever found, which are significantly affected by the action—would be the formal object of the examination.

Disagreements would be reported—and quantified as far as possible; they would relate to facts, not to recommendations for action—although perhaps facts about alternative possible actions might be presented. There would be no reporting of resolutions to create a sense of progress or a facade of decision. The consequences in action would come in the public national reconsideration and the consultations regarding cooperation. The latter might, in many cases, take place in existing commodity councils or other organizations for intergovernmental cooperation. The new forum would have a coordinating and multilateralizing influence on all intergovernmental discussions related to trade.

3. THE DYNAMIC, COMPETITIVE, MIXED ECONOMY PUTS TECHNOLOGY TO SERVING THE PUBLIC INTEREST WITHIN A COUNTRY

The suggested format of trade discussion is based on the assumption of a world undergoing great economic change. Two main characteristics of that change are (*a*) a technology—a state of the arts as theorists call it—advancing at an accelerating rate and amenable to even more rapid advance when directed to particular areas of need and (*b*) a rapidly integrating world economy which, to the extent it is permitted to function as such, will direct this technology toward the great economic challenges of our time—including the challenge to continue economic growth and to relieve the misery of the world's very poor people—much more dramatically and effectively than can a series of national economies governed as though each were a separate production complex.

Some insight into the kind of U.S. policy toward foreign trade appropriate in a world of this sort can be obtained by considering the role of government in the process by which technological progress is put to the service of society within a modern, private ownership, industrial country. Government moderates the effects of competition on a number of matters—e.g., farm prices and output, monopolistic controls and practices, investment, savings, and wages. Effective competition persists in the form that John Maurice Clark describes as a dynamic process.[3] There is freedom for initiative and innovation. There is a tendency to try to better, or to join, one's competitors. Individuals operating in groups often have an advantage, and most advances in technology seem to increase this advantage and to make the optimum group size larger. However, limits are imposed on excessive economic power seeking in conformity with basic social and moral concepts—e.g., business methods must be socially acceptable, they must not unduly restrict community progress and the benefit pattern must not outrage egalitarian ideals. As necessary, government intervenes in response to political pressures—some (often secret) from special interests—some from informed public opinion.

The economic process comes to be carried on by a dynamic combination of heterogeneous units—individuals, firms, associations, combinations, public corporations, labor unions, community action groups, clubs and societies, together with the press and other information media and all the complex and conflicting units of government. All of these, in a sense, compete for the custom and support of the paying and voting public. Any of them may influence the market or check and balance the influence of the others. The sum of all this—and more—is the dynamic mixed economy. It has been a dramatically successful combination thus far, However, eternal vigilance seems necessary to keep it in dynamic balance. It must grow and change to meet its challenges. Not the least difficult of those challenges come from the increasing importance of economic relations with other countries.

4. THE TRADING COUNTRIES ARE INTERDEPENDENT PARTS OF A WORLD ECONOMIC MECHANISM

The various national economies, particularly in the private-ownership industrial countries, are growing together: to a significant extent, they already are inseparable parts of a single production-consumption process. Not only is there a good deal of trade but also a movement of production methods, distribution systems, skills, capital, and all of the things and ideas that each economy develops to enrich the consumption pattern of its people. One national part of this international economy cannot be governed without regard to what is done in governing the other national parts. Moreover, the mechanism is growing dynamically, so that a national gain contrived by the govern-

[3] Clark, J. M., "Competition as a Dynamic Process," the Brookings Institution, Washington, D.C., 1961.

ment of one of the countries at the expense of others tends to be short lived; the adverse repercussions on the overall growth can more than wipe out the gain. To understand the effects of government action within a country, one must examine the relevant portions of the entire international economy. Where intervention is undertake, it cannot be carried out efficiently by one government without the cooperation of others having jurisdiction over economic processes which interact with those the subject of the intervention.

5. THE INTERNATIONAL TRADE AND PRODUCTION COMMUNITY REQUIRES A MIXED-ECONOMY STRUCTURE

From the perspective of our present, bargaining-away posture toward foreign trade barriers, this interdependence appears as an embarrassing problem when we want to intervene for reasons of national policy. Other governments must be persuaded to reinforce, and not counter, this type of "trade barrier." If we are to raise our domestic cotton prices, holding down the level of our production in an effort to give our farmers acceptable incomes (when technological ferment would otherwise impoverish them in the free market), other governments must also limit cotton production and certainly must not encourage its expansion. If we set certain health or quality standards for a perishable product, other governments must not let lower grade products spoil the market. If we give surplus wheat to an exchange-short government for its poor people, that government must not let the wheat be used in place of our normal commercial exports. If we raise tariffs against imports or subsidize our exports to compensate for costs we consider special to us, foreign governments must not pay subsidies to offset our action. If we limit the rate of expansion of a certain import trade in order to avoid market disruption, foreign governments must help by limiting their exports. How are we to persuade them to cooperate in such efforts to use the power of government to serve our idea of the public interest?

However, there is another way of looking at it—a larger trade policy perspective—which can serve as a better intuitive guide in serving our national purposes. The growth and integration of the world's production mechanism is making an economic community of its beneficiaries. The members of that community have a common interest in the dynamic operation of the world mechanism, whatever their country. Like the national communities in the industrial countries, this world trade-and-production community must evolve a dynamic competitive mixed-economy, social-political structure adapted to its needs. Within such a structure the emerging world community can, as the national communities have done, grow much more rapidly and give a greater and greater proportion of its people substantial economic benefit. The structure should express in action not only the real differences but also the essential unity of economic interest among the different countries just as the mixed economy structure within a country reflects in action the essential unity of interest of labor and management, farm and city, rich and poor.[4] Trade policy is part of the role of government in such a structure.

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[4] For the insights out of which this and related parargaphs were written, a particular debt is due to Prof. Gunnar Myrdal. (See especially his "Beyond the Welfare State," Yale University Press, 1960.)

6. THE NEED IS BEING MET AFTER A FASHION

The need for such a structure is slowly, unevenly, but increasingly being met. Not only is cooperation developing among firms such as shipowners, traders, and underwriters, whose operations are naturally international, but more and more originally domestic firms are extending their operations over a number of countries. Ties and affiliations are being developed among labor unions, trade associations, chambers of commerce, and all sorts of groups whose roles in the national economies must be played in the larger economic community, too.

Inevitably, the pattern is forming unevenly. The nongovernment entities that influence the international economy tend to represent the larger and mor powerful interests. Small producers find international operation too difficult or costly. Consumer and civic groups do not readily discover, and express internationally, their common interest with their foreign counterparts in the maintenance of market dynamism. Community organizations, unions, and the many other types of nongovernment entities that can influence decisions in the national mixed economy cannot very easily do so on an international scale. Hence, the international structure of nongovernment entities is growing in an unbalanced way. The number of large firms operating over more than one national market is increasing rapidly. Industrial organization managers are stepping in to embrace and direct the interdependent world production mechanism. Their contribution toward the effectiveness of that mechanism is very great and they are channels for dynamism and efficiency interchanges which governments are not in a position to envision. By the same sign, however, they can inhibit such interchanges. A mechanism is needed to relate their power to the public interests requiring international representation.

Similarly, the structure for carrying out the role of representative government in the dynamic international production-distribution mechanism is unbalanced. Governments acting on the international scene—whether in organizations or in bilateral cooperation—are "narrower" and less responsible than they are in domestic matters. It is almost exclusively the executive branches of the various national governments which have developed ways of acting together. It is true that there are international institutions of legislative and judicial form, that executives tend to limit their action to that which has parliamentary support, and that they often associate other branches of government with themselves in their international representations. Nevertheless, on the intergovernmental plane, it is difficult for economic interests not adequately weighed in executive decisions to find corrective expression through legislative, judicial or "commission" processes.

7. OPEN PROCEDURES CAN HELP THE FORMING STRUCTURE FUNCTION REPRESENTATIVELY

The foregoing characteristics of the international politico-economic structure are doubtless imposed by unavoidable real circumstances: The difficulties of communication, the costs of international business, and the system of sovereign nation-states. In any case, it is not here proposed to change them. However, it is proposed to use national authority and international agreement to make them operate more openly and, thereby, to involve them more fully in checks and balances of the type which characterize the representative, mixed economy process.

It is to this end that the suggested format includes a trade information structure. This would remove the veil of secrecy which so often shuts governments off from their own normal sources of information on trade matters. It would contribute to more fully informed public discussion in advance of significant decisions and to effective public scrutiny of subsequent performance. It would tend to keep governments from assuming adversary trade policy attitudes based on just one segment of their national interests. It would enable the public in each country to weigh foreign as well as domestic considerations and to take the growth of the world economy into account.

The senior officer for trade information to be established in each country under the suggested format should be equipped with the necessary responsibility and authority to maintain constant pressure, on those involved in deciding the trade role of government, to reveal their actions and to show publicly that they have considered all relevant facts bearing on the public interest. He should have no right to guide policy but he should have an almost unlimited right to know—to sit in on discussion—and to make information public except as there is a public need for confidentiality. The operations of these officers, affecting governments through the mixed public process, could lead to international understanding more effectively than has the largely secret intergovernmental discussion in the present format.

8. THE "BARGAIN AWAY" FORMAT HAS DONE ITS JOB

Cordell Hull's trade agreements program was a triumph of statesmanship in its time. It brought down the high walls behind which nations tried vainly to protect themselves out of the great industrial depression. It dramatized and institutionalized the two-way nature of trade—the lesson that a unilateral trade restricting act can be completely frustrated by a foreign counteract. It caused the United States, for the first time in history, to emerge from a major war lowering tariffs instead of raising them. It functioned as a natural bridge across which opinion in the great trading countries moved away from faith in trade barriers as instruments of domestic welfare toward the concept of a reciprocal interest among countries in reducing one another's barriers; it used protectionist sentiment to help reverse the protectionist trend. It has reduced to little more than nuisance levels most of the trade barriers which are not of major importance in the economic policies of the countries maintaining them.

9. THE BARGAINING AWAY FORMAT IMPEDES POSITIVE INTERGOVERNMENTAL TRADE COOPERATION

But the virtues of the bargaining format for dealing with the excessive depression barriers are the very qualities that prevent its resolving present trade problems. It is directed against all foreign government barriers impeding American exports; it has almost no rationale for government cooperation in a foreign market-moderating purpose—whether national or affected with an international interest—

which a particular foreign barrier may be designed to serve. Regarding barriers of this sort, which have a positive policy importance, the most distinguished and responsible officials have sometimes been reduced to railing at one another publicly for refusing to bargain in good faith. This is because the public framework of their conversation forbade recognition of important parts of the reality they were discussing.

10. DISCUSSION MUST FOCUS AROUND THE PURPOSE OF A TRADE BARRIER

It should be noted that this has been true whether the barrier in question was in the form of a tariff or in some other form. Since tariffs lend themselves readily to quantitative statement of a sort, they were more easily reduced than other kinds of barriers under a bargaining format giving the President a measured degree of negotiating authority and requiring him to obtain a measured reciprocal balance of concessions from each country bargained with. Moreover, other barriers were sometimes substituted for tariffs in order to satisfy the bargaining format; as when the first important program reduction of a high U.S. tariff (that on sugar) was accompanied by the establishment of a comprehensive variable quota system within which sugar trade has been controlled ever since. Hence, most of the substantial barriers remaining after the Kennedy round are nontariff barriers (NTB's). There are dozens of forms of NTB's, of all degrees of importance; new ones are constantly being invented. Very few facts are available about most of them.

While the new forms probably create some new problems, the key to an approach which will deal with restrictions governments consider necessary is discussion centered around their purposes. The form used to carry out the purpose may be subject to change to avoid effects not essential to the purpose. This brings a wide range of domestic problem discussion into the international forum. There should be no problem of appropriateness in such discussion, however, since no recommendations may be made by the international forum and since all countries will have their domestic problems and programs discussed. The consideration of which barriers a country wishes to maintain and which are no longer of net advantage to it must, of course, be a purely domestic matter. In this process, conflicts between a country's domestic objectives and its foreign trade objectives will be worked out, and the decision as to priorities will benefit by a maximum of information and a world perspective.

11. COOPERATION ALREADY IMPROVISED, AS "EXCEPTIONS" TO THE BARGAINING PROGRAM, PREFIGURES THE NEW FORMAT

From the very beginning of the trade agreements program, governments had to improvise ways of going along with one another's decisions to retain actions affecting trade. Much of this was done tacitly, but some of it was based on discussion of the domestic purposes of the actions and of ways of limiting their undesirable international effects as far as was consistent with the purposes. To the extent that such discussion was made public, much of it was kept in forums not associated with the tariff discussions, e.g., International Commodity Councils, FAO Committees, OEEC and later OECD Committees.

Some of the discussions led to agreements formal enough to bring to Congress for approval quite without reference to trade legislation. Sometimes there were flareups within the Government over trade policy—as between U.S. representatives at the GATT bargaining meetings and U.S. representatives at other forums. But, as the bargaining became less productive, the two kinds of discussion began to merge. The tariff reductions of the Kennedy round are intricately interwoven with understandings regarding the operation of relatively high barriers which are to be maintained (e.g., on wheat and flour, textiles, and chemicals). Governments are now using the two approaches to complement one another. The new format suggested in the present paper would complete and formalize that trend—opening it to wider public surveillance and participation.

12. A RATIONAL APPROACH

Under the proposed format, the President might be authorized to completely eliminate nuisance barriers whose protective impact was negligible—perhaps after a prescribed process of consultation and some sort of adjustment assistance assurance where appropriate. For other U.S. barriers that might be brought to the multilateral forum, he would presumably bring the results of the discussion, with his recommendations, to the Congress for consideration.

What is envisioned might be described as a working operation synthesis at a point in the relations between governments—and the component units of government—where a number of programs and theories converge and confuse and conflict. Formats for reasonably harmonious operation in such circumstances do not spring full blown from the heads of writers or economists or officials. They get worked out in meeting problems. This paper has reasoned from some of the formats partially worked out in practice to one general format that would symbolize the great, common opportunities to which trade-policy discussions can point the way. Since deliberation of facts is at its core, it would militate toward rationality, rather than national bargaining power, in meeting those opportunities.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: The October 23 issue of the International Commerce published by the U.S. Department of Commerce carried a block suggesting that interested parties convey to you their views on U.S. foreign trade policies.

Time was too short: Statements have to reach you by November 1. Sufficient time was not given for hundreds of export trade and international trade associations to convey to you their views.

I believe I am qualified to speak for literally thousands of concerns and millions of people employed in foreign trade: The reasons that I make such a bold statement are—

Fifty years actively engaged in world trade: Traveled in over 150 countries; lived in 10.

Active in scores of international trade associations: See attached letter of the Insurance Co. of North America showing recent affiliations.

Attend more export meetings than any other American: As chairman of the Regional Export Expansion Council, and as a member of the National Export Expansion Council, I have this year been either the speaker, a moderator, or on the panel of 68 meetings, up and down the Atlantic coast. On November 8 and 9, I will be in Mobile, Ala., as a speaker with the Argentine Ambassador.

Have now spent 7 years since I retired working hard as hell to help our country increase its exports: All of this effort without pay, and with expenses out of my own pocket, to the extent of over $1,500 per year.

I believe we are entering a period of isolationism that will make the Hawley-Smoot days appear conservative: If any country needs international trade to solve its problems, our country certainly badly needs it now.

Dollar deficit: Twelve years, in which one has existed is a long time. And it will get worse, even to the extent of requiring a devaluation of the dollar, if our Congress takes the isolationists steps that too many Congressmen are proposing.

My comments on the specific areas of interest listed by your committee: I am not qualified to comment on those listed, and to which I make no comments. I respectfully ask that the committee in their deliberations consider my thoughts and remarks on the following:

Reciprocal trade agreements: the United States has been a very large net gainer. No domestic industry has been sacrificed. Millions of American workmen and agricultural workers have gained employment by our exports.

True—Concessions have been made: To get concessions from other countries, we must make some concessions. Please challenge any industry that is against imports to inform you what percentage of their production is exported—and what percentage imported. All but the steel industry have exports far in excess of imports. The chemical industry's exports are three times imports; the shoe, six times.

"I saw eight screwdrivers in my hardware store imported from Japan": An American manufacturer of screwdrivers rushes to his Congressman and says, "We must stop imports. I'm getting hurt." He thinks that if imports were stopped that he would sell those eight screwdrivers.

Japan buys more from us than we sell her: How can any Congressman fall for such illogical ideas, and do anything to hurt our sales to Japan?

Tariff Commission: Well run; have done a terrific service for the American people in spite of terrific political pressure.

Customs administration: Much more efficient today than previously, and, in spite of bureaucracy, fairly well run.

Valuation of imported goods: The American selling price (ASP) should be abolished by Congress, immediately. The section of the chemical industry that have for many years had this unheard of protection, has exports of 9 to 1 of imports. If the American chemical industry, nonexistent before World War I, and which owes its origin to seizure of German patents (and sold by Alien Property Custodian Palmer to them for a song), cannot be competitive after 50 years of high protectionist tariffs, they ought to go out of existence. The ASP results in current duties of 178 percent on the sales price of some imported chemicals. Can any industry expect that kind of protection?

> If ASP is not abolished many of the great advantages of the Kenndy round will not be operative until ASP is abolished. Look at the concessions that U.S. manufacturers will get by abolishing ASP. ASP is hated and loathed by every foreign nation.

Procedures for aiding workers and industries harmed by excessive imports: Those in existence are workable. True they have not been used to any great extent, but only because industries have not been able to prove that they have been harmed. The Export Act of 1962 made such provisions to assure protectionists that no industry would be sacrificed.

Policies needed to expand exports: See the recommendations of the National Export Expansion Council.

Provide for a larger budget for the U.S. Department of Commerce: Other nations, in proportion to their trade, do more for their manufacturers and suppliers than we do. The U.S. Department of Commerce is the only Department of our Federal Government that assists American concerns in increasing their exports.

U.S. share of exports is diminishing: And has now been for many years. Without Government's greater support, it will continue to diminish. Commerce's budget is pitiful.

The prospects for exports and imports over the next decade, and how the Kennedy round negotiations will affect these trends: Total trade (international) of the United States, both exports and imports, should increase from 6 to 10 percent yearly, and by 1975 should exceed $75 billion.

The Kennedy round will, if full benefits are to be attained and the ASP abolished—and if no stupid import restrictions are imposed by Congress—assure that volume being attained.

The major tariff and nontariff barriers which must be faced in exporting, and some estimates of their relative effects: See reports of the National Export Expansion Council, the U.S. Department of Commerce reports, and the knowledge of those that negotiated the Kennedy round. The export trade has over many, many years informed Commerce and the State Department of the barriers that hurt trade.

The effect of U.S. foreign investment (and the voluntary restraint programs) on exports to developed and less developed countries: All investment restraint programs are terribly damaging to the long-range interest of the United States. Such programs should be canceled immediately. American investments abroad and the establishment of American industry abroad are essential to increased exports. Those overseas operations mean, when profits are returned to the United States, millions in revenue for our Government in taxes. Factories of American companies abroad produce increased exports—and the records prove it.

What could be American projects are being lost: Yes; such investment restrictions are causing the United States to be replaced by other nations. See the reports of the National Export Expansion Council. Ask the American banks of the detrimental effects.

Tariff preferences for products of less developed countries: Dangerous, because of retaliatory action by other countries. In addition, we must soon reach the conviction that we cannot solve the problems of all the countries of the world. Let those countries that economically should not exist solve their own problems, even if it means chaos and revolutions, with the Soviet Union assuming the financial burden. Why help countries that hate us? Let's exert our effort where we are appreciated. Communism will not always rule—witness Indonesia, etc.

A free trade area with U.S. participation: What could that area be? Canada, and England (if not admitted to EEC). Certainly not the Western Hemisphere nations—nonmanufacturing- -and most competitive with our agricultural exports.

Are free trade areas beneficial to the world? Certainly to those within the area, but many times disadvantageous to those outside.

Good for the world if they increase world trade: If, for example, the EEC, because of the elimination of duties, and the establishment of large industries (made possible by a bigger potential market) means a better market for U.S. goods, then we have done well by encouraging same.

If we could get into EEC: Yes; because we would not then be at the current disadvantage of higher duties than those now in EEC.

The GATT as an instrument for assuring expanded world trade on a reciprocal, nondiscriminatory basis: Most emphatically "yes." Have done a fine job. Have never sold the United States down the river. To deal with hundreds of countries individually would be not only time consuming but impractical.

Subject on which no information was requested: But very important.

East-West trade: Most essential if United States is not to lose an opportunity that is being seized by other nations and which can never be regained by the United States.

American companeis have been denied the right granted to their competitors in other countries: While others trade rather freely with the Communist bloc, American companies are prevented from laying the groundwork for a section of the world that will consume tremendous quantities of goods in years to come. No section of the world will surpass the Soviet bloc in its progress of consumer consumption in the next 50 years. The now "developing countries" (mostly backward and primitive) will amount to a small, infinite market compared with the Soviet bloc.

I challenge your committee: I challenge anyone, or all of your committee, to read the report of the Committee on Banking and Currency, House of Representatives—a report pursuant to House Resolution 1043, 89th Congress, second session, for the Committee on International Trade.

I am proud to be an American: I think the report is terrific. I am proud of our CIA.

How could anyone be against the Fiat Soviet auto plant getting American machine tools: How could anyone read the report and not be in favor of permitting American machine tools from being supplied? Should we accept defeat and allow German, Italian, French, or British machine tools to be supplied, so that our competitors would in future years be well established in the trade?

Russia devoting more of its energy to serving its people, and less to war supplies: Who could read the report and fail to realize that motels, highways, service stations will be built—with less going to war supplies.

The Soviet Fiat plant will be built: Our shortsighted action of Congress will not prevent the plant being built. Their actions does damage America's chance to sell nonstrategic goods, at a profit, with resultant taxes for our Government.

Now, let's look at history—and how isolation has damaged the United States: Here are the irrefutable facts:

At the turn of the century: As the 20th century opened, we had world trade, both exports and imports, of $2 billion.

After World War I: Total trade, both exports and imports, was $12.6 billion.

The famous Hawley Smoot days—isolation rampant—the depression: Total trade, exports and imports, dropped to $5 billion. How many Americans did that throw out of a job?

1966: Total trade, both exports and imports, $48 billion. With a favorable trade balance of $5.2 billion (exports over imports) that permitted us to help the rest of the world in economic and military aid. It also caused a $2 billion payment deficit. We have had since 1959 a dollar payment deficit.

How can this deficit be corrected? No better way than to increase exports. Can we do that with isolationism rampant in Congress? If any—yes, any—import restrictions are enacted, exports will not only not increase, they will materially decrease.

Other ways to cure deficit: They are:

Stop American tourists: There is a $2 billion deficit in tourism.

Stop economic aid: Much of it should be stopped, but we have become an altruistic nation, determined to save the world—with chance of destroying our great country. How can any country in 15 years give $1,500 billion (yes, $1½ trillion) away? Are we loved or hated for such givings?

Military aid: Our military says it's necessary to survive.

Is America a failure at exporting? If any more obstacles are put in the way of the American international trader we will do worse than we are.

Are we doing good? Who would say so, when our exports of gross national product (GNP) amount to the following in comparison with other countries: United States, 5 percent; Canada, 17 percent; Japan, 9 percent; West Germany, 15 percent; United Kingdom, 14 percent; Italy, 12 percent; France, 11 percent; Netherlands, 35 percent.

Would you be disgusted? If you were any one of the 1,200 businessmen serving on the national and regional export expansion councils, would you continue to give gladly of your time to help exports if your Government and Congress take steps to make your goal unattainable?

I, personally, am about fed up: I was originally appointed on the Regional Export Expansion Council by President Eisenhower in 1960, and subsequently by President Kennedy and President Johnson. I, in June, accepted another 2-year term expiring in June 1969. Why should I give 90 percent of my time to think I am helping the country I love to increase its exports when it is such a discouraging job?

I have spent 4 hours of my time typing this letter. I hate to type. I can't type. Please pardon errors. How many retired men, 72 years old, would go to the trouble that I have to give you my honest opinion and views, which I firmly believe should be advantageous to your committee.

Statements should be limited to 20 pages—and a one-page summary: I have limited my remarks to six pages, one-third of the permissible number. I have not made a one-page summary. Who could summarize what I have said on 18 subjects in six pages.

I regret that this report will reach you 1 day late. Meetings and other commitments prevented me from writing you before this evening.

I hope that I have been helpful. I have been honest.

Sincerely,

W. H. LUKENS,
Drexel Hill, Pa.

TRADE AND THE BALANCE OF PAYMENTS

(By Dr. Lewis E. Lloyd, Economist, the Dow Chemical Co.)

Discussions relative to and following the Kennedy round of GATT negotiations have centered attention largely on technical factors and the mechanics of trade and trade barriers. These gain relevance as they are projected against the fundamental economics of trade. For a full evaluation of U.S. present trade relations, and particularly for projecting into the future, it is essential that careful attention be given to the fundamentals involved. Accordingly, this paper will address itself to the U.S. balance-of-payments problem, its basic cause, and its implications for foreign trade policy.

For several years the U.S. negative balance of payments has been a mattter of concern, both in government and financial circles. The subject has been widely discussed in the press. It has been a regular subject of discussion at the regular meeting of the central bankers of the major industrial nations. It, along with the problems associated with the British pound, has raised many questions of international liquidity and schemes for coping with continuing balance-of-payments problems for the two major trading currencies in the world.

Already the United States has taken several actions to minimize the outflow of dollars and improve the short-term balance of payments. These include, among other things, reduction of duty-free imports which travelers may bring home, guidelines for control of the outflow of capital investments in overseas plants, and a foreign investment tax on portfolio investments. Moreover, in recent years, to minimize the outflow of gold and the overseas dollar balances, we have borrowed extensively in foreign currencies from several European countries.

How big, then, is this balance-of-payments problem? How did it suddenly come to the front as a major concern? What are the fundamental causes?

BALANCE-OF-PAYMENTS SITUATION

First, it will be desirable to clarify the relation between trade balance and balance of payments. Foreign trade and foreign trade balances refer to the shipment of commodities and manufactured goods across borders. The balance of payments, in addition to including the trade balance, includes also all the other economic relations between a nation and its trading partners. More specifically, the balance of payments consists of—

1. The net of foreign trade.
2. The net of foreign services—shipping, insurance, et cetera.
3. The net of tourism.
4. The net of capital flow, including payment of interest, dividends, et cetera.
5. The net of gifts—foreign aid, as well as private gifts.

A "negative" balance of payments means that more dollars have left our shores than have returned in a given year. A "positive" balance would mean the reverse. Obviously, over an extended period of time it would be desirable to have the balance of payments net out at zero. This would indicate that, on the average, our total outflow of goods and services of all types precisely balance the inflow.

It is clear that the flow of capital, either short term because of differential interest rates or longer term in response to investment opportunities, can substantially affect the balance of payments. It is also clear that our massive foreign aid program has had an important influence on the outflow of dollars which has given us a negative balance of payments even when the trade balance was favorable.

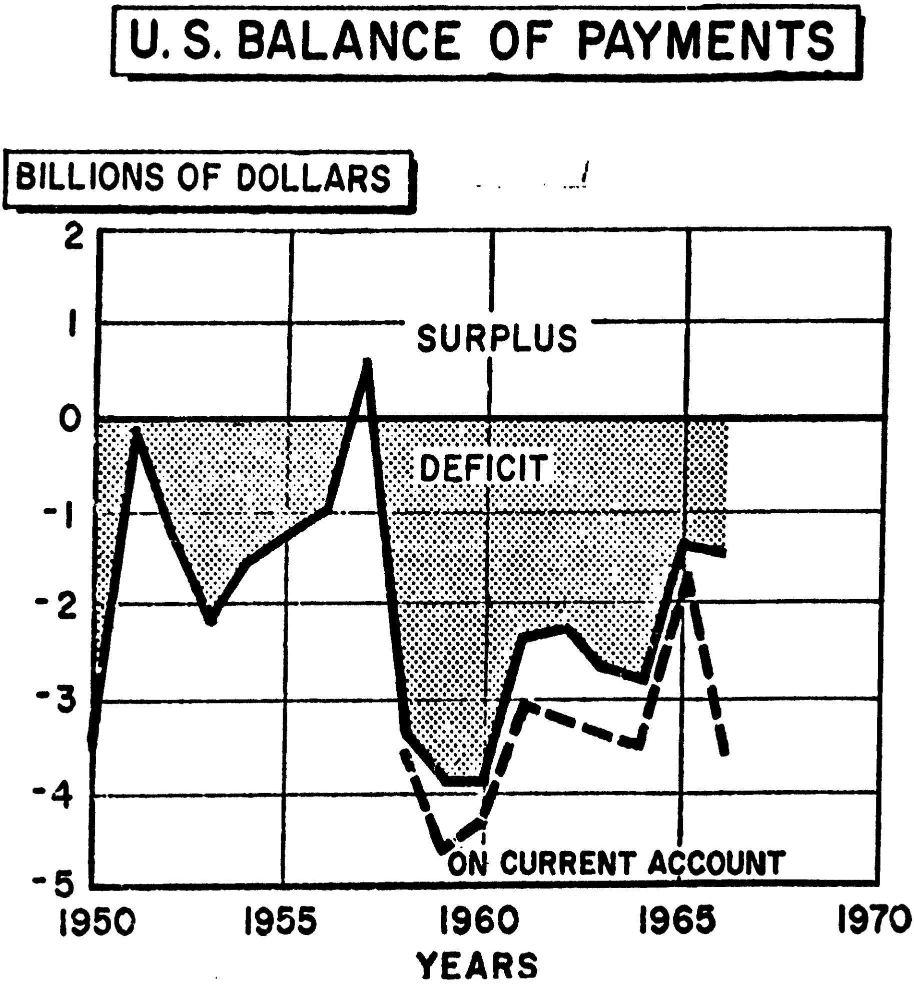
A look at the record clearly shows why there is concern about the position of our balance of payments. Chart 1 shows that we have had a negative balance of payments every year since 1949, except for the year 1957 when the Suez crisis forced Europe to buy quantities of oil from the dollar area. This means that year after year more dollars have left our shores than have returned. This continuing and growing deficit exists because foreigners who get dollars from our imports, from tourism and from gifts, can on the average use these dollars to buy elsewhere more cheaply than in the United States.

Since 1958 the Federal Government has taken several actions in order to minimize the size of the reported negative balance of payments. They have induced the French and others to prepay long-term debt; they have obtained prepayment for military equipment before delivered; and they have borrowed foreign currencies. The solid line in the chart shows the official reported balance of payments: the dashed line shows the current account negative balance of payments before adjustment for the above-mentioned special transactions.

As a result of the continuing outflow of dollars, foreigners have increased their short-term claims against the dollar, and in addition, have exchanged dollars for about half of the gold that we had at the end of the war. Chart 2 shows the U.S. gold reserve and the net claims against the dollar—that is, foreign claims against the dollar less our claims against other currencies. In 1948 and 1949 our gold reserve was at $24.6 billion. It has now been reduced to about $13 billion. The gross foreign short-term claims against the dollar at the end of June 1967 were $33.6 billion, but our claims against foreign currencies are only $7.9 billion, so the net is something like $25.7 billion.

As a result of the continued growth of claims against the dollar, there has for some time been concern about our ability to meet our promise that we will exchange gold for any dollars that foreign central banks present for gold. Chart 3 shows the amount of gold we would have had left during the 1950's and early 1960's had the claims

CHART 1

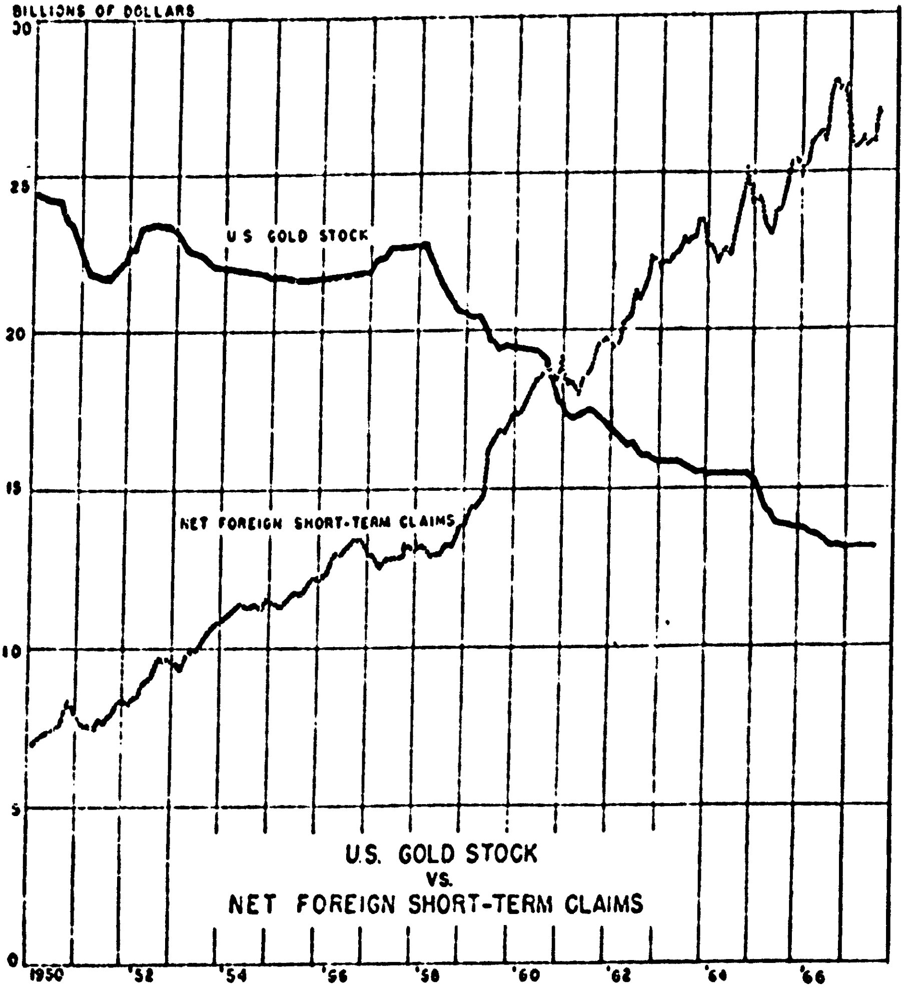


all been tendered. Since mid-1962 we have not had enough gold to meet the net foreign claims. We are now short by more than $15 billion of being able to cover all the claims against our gold.

As shown by the dashed line in the chart, gold is also required as backing for the dollar. Formerly, a 25 percent reserve was required for both Federal Reserve notes and Federal Reserve deposits. By early 1965, however, the gold required to support our bank credit had risen to almost $14 billion, and this left only about a billion of free gold to meet any foreign claims that might be tendered for gold. The administration then asked and Congress authorized the removal of the gold cover from Federal Reserve deposits. The domestic banking requirements dropped to about $8 billion when the gold cover was removed from deposits, but has now increased to a level of about $10 billion. This leaves only about $3 billion of free gold against net claims of $26.9 billion by the end of July 1967.

It is clear that since 1960 we have not had enough gold to meet all of our foreign commitments, let alone our domestic banking requirements. It is this shortage of gold that has reduced foreign confidence in the dollar and toppled it from its former position as the most sought after currency in the world.

CHART 2



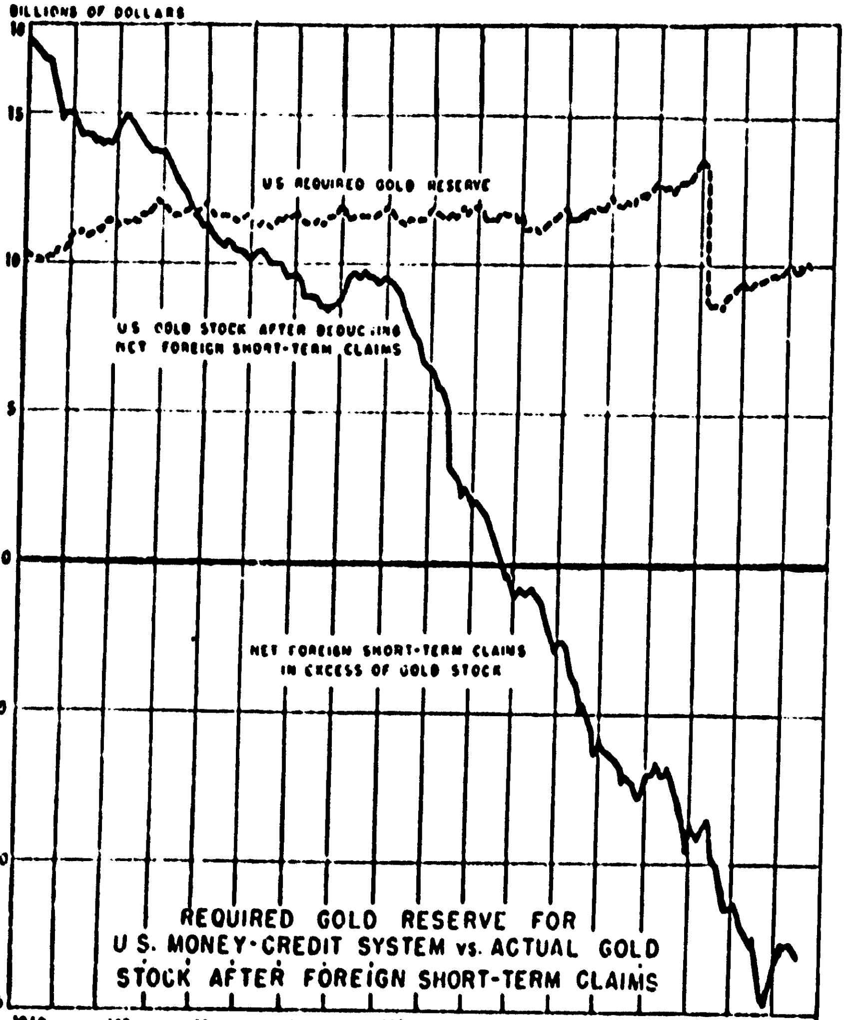
Source: American Institute for Economic Research

The seriousness of our international monetary position is the fact that many of the dollar claims held by foreigners are used to support credit in their country as though the dollar claims were gold itself. As a consequence, both foreign central banks and the U.S. banking system have each extended extensive credit, based on the same gold. If at some point confidence slips, there will not be enough gold to go around and this is precisely why many people are concerned about international liquidity.

The U.S. balance-of-payments situation has worsened again this year. It is clear to all that we cannot continue to run such a large negative balance of payments indefinitely. The problem has become so important that it becomes the matter of first concern in all of our foreign economic relations. What are some of the consequences of our unfavorable balance-of-payments position? What can be done to alleviate the problem?

Ideally, it would seem that we should plan to move from a negative to a positive balance-of-payments position for a few years so as to win back equilibrium. The administration has mounted a massive

CHART 3



Source: American Institute for Economic Research

campaign to increase exports and has tried to reduce capital outflow in an attempt to attain this objective; but the imbalance worsens instead of improving. Legislation has been introduced to take the gold cover off Federal Reserve notes. This would unpeg the dollar from gold altogether. Some propose that a devaluation of the dollar would be the answer. In order to better understand the suitability from these or other possible actions, it will be necessary to examine in depth the nature of foreign trade and our other economic relations.

THE NATURE OF INTERNATIONAL TRADE

Objectives of foreign trade

When we examine the objectives of trade, foreign or domestic, we find that individuals trade to increase the range of choices and, hopefully, to lower the cost of satisfying human wants. How does trade lower costs? To answer this question, we shall need to examine some fundamental economics.

The basic economic problem consists in this: Man has limitless wants; he seeks to satisfy them with limited resources.

Man, being a rational animal having the power of memory, reason, and imagination, persists in forever visualizing new wants which he would like to have satisfied. The natural resources and the human energy available to satisfy these wants are limited.

Faced with this basic dilemma, man must make choices. He must decide how he will allocate the scarce resources and toward what ends. He must make decisions on what will be produced, and then other decisions about how the production will be divided between the members of society.

Producing a standard of living

The standard of living of a society consists of the sum of the goods and services that are produced. We can picture the four factors of production and their relationship by the following equation:

$$MMW = NR(HE \times T)^{I}$$

where--

MMW = man's material welfare
NR = natural resources (land)
HE = human energy (labor)
T = tools (capital)
I = idea (entrepreneurship)

Analysis indicates that natural resources are a fixed quantity. Man may conserve them or utilize them more efficiently, but he cannot create them. Human energy increases only slowly and even then is balanced by an equal increase in consuming units. By contrast, the use of tools and ideas may increase rapidly and without limit. The use of tools permits the effective division of labor in a society. This reaches its ultimate in the modern, automated factory system where productivity can be very high.

It is interesting to note that the factor "tools," or "capital" as the economist calls it, multiplies human energy. In the United States, we have substituted mechanical energy to the point where something over 98 percent of our total energy input is now mechanical. The extent to which tools are available in a society is proportional to the savings—stored-up human energy.

Equally if not more important is the input of ideas and innovation. The entrepreneur who conceives an idea for a better product or process, organizes the human and natural resources toward this idea, takes action, and bears the risk for his decisions, is certainly as important, perhaps even more important, than capital itself. Without new ideas and innovation, we would merely replicate the present, and such is the road to a stagnant society.

It is clear that whenever a nation or a community wants to increase its standard of living, the way to do it is to produce more. Not much can be gained by trying to redivide the pie in different ways. It is much more important to increase the total size of the pie. The individual has two options: he may produce more, or he may find a way to get part of another's production. Society, however, has only one option: it must produce more. Of course, countries as a part of the total world society may, through gifts and aid programs, through war reparations, or through unequal trade practices, conceivably benefit at the expense of some other nation or peoples. This, however, is not an effective way for a permanent improvement in a standard of living.

It is clear, then, that trade in and of itself is not a direct way to increase living standards. There are, however, some ways in which foreign trade may affect the factors of production. Examination reveals that there are five economic reasons why a nation may benefit from international trade:

1. If a nation is lacking in certain essential raw materials, it will need to import them. In fact, if a nation's sources yield essential raw materials of only low grade, it may import them more cheaply from nations with sources of high-grade minerals. Some nations are more favored than others in the abundance of natural resources. Few, if any, find themselves with adequate quality and quantity of all desired raw materials. Hence, all nations will probably need foreign trade to get certain raw materials.

2. A second reason why nations may want foreign trade is to get a full variety of animal and plant life. Nations with an abundance of suitable soil and climate for growing certain products may profitably sell these in world markets. Coffee, bananas, rubber, and spices are products, for example, that grow readily in tropical areas, while edible grains and food animals are more efficiently produced in temperate climates.

3. Another reason for foreign trade is to obtain a mass market. Whenever production can be mechanized, unit costs decrease in proportion to the size of the production unit. Outstanding examples are large steel mills, petroleum and chemical plants, and the production-line automobile plants. Large-scale production is not possible, however, unless there is a mass market. Wherever a country is too small to represent by itself a mass market, it will need trade with its neighbors to expand the market and get the advantages of large-scale production.

4. Conversely, a nation may profit by foreign trade if its technology, ingenuity, and inventiveness lag behind. By trading services and craft products with neighboring nations for mass-produced items, a backward nation can obtain manufactured products not otherwise available to it. Industrial nations can get new and/or patented products that it does not yet produce.

5. Finally, the balance of supply and demand is constantly shifting in each nation—crop failures, temporary imbalance in new capacity, etc. Foreign trade often is able to bridge the demand/supply gap in individual countries on a current basis.

The exchange equation

"Trade" is the term we use to describe the exchange process; the act whereby we increase the variety of goods that we may enjoy. It is an essential part of that production technique called "division of labor" that permits specialization and large increases in efficiencies.

In a division of labor society, some workers produce a given goods or service and exchange this with other workers for the products of their labor. When a society becomes industrialized, barter is inadequate to bring about the exchange of goods and services, and so money is used as a tool to expedite the exchange. We can indicate this process by the following equation:

GOODS AND SERVICES⇆MONEY⇆GOODS AND SERVICES

It is important to note that the economic exchange process is not complete with the first step of exchanging goods for money, but only after the second step of exchanging the money for another economic good. If one individual or group of individuals exchanges goods or services for money, and retains or hoards part of this money, failing to exchange it for other goods and services, then an imbalance results. It means that others have production for which there is no market.

As we shall see shortly, this basic equation of economic exchange portrays the economics of trade between nations as fully as within a country. In the case of nations, however, if the export and import of goods and services does not balance, then money will flow into or out of the country and from this there are some important economic consequences.

From this equation it is obvious that trade in and of itself does not increase the amount of goods and services available. It merely brings about redistribution of the goods already produced. If a nation or a community wants a higher standard of living, it must either produce more or find a way to get part of somebody else's production.

FREE TRADE THEORY

Historical development

In 1776, Adam Smith, a professor of moral philosophy at the University of Glasgow, published his revolutionary book, "Inquiry Into the Nature and Causes of the Wealth of Nations." Prior to this date, economic thinking had been dominated by a theory called mercantilism. Its central theme was the notion that a nation is prosperous in proportion to its supply of the money commodity—gold or silver. Common belief held that one way to increase the stock of precious metals was to expand exports and limit imports, and thereby induce an inflow of gold and silver bullion. This naturally required a host of regulations and restrictions in the country as well as at the borders, and with all a swarm of enforcing agents.

Adam Smith, in his "Wealth of Nations," developed a new concept. He declared that wealth consisted in the quantity of goods and services produced and freely exchanged. He proposed competition as an effective regulatory force in a free economic society and saw government regulations as unnecessary overhead. Complete freedom for trade between areas and different countries was a natural extension of his idea of division of labor and competition.

At the time Adam Smith proposed the free-market economy, all of Europe was in a transition from a feudal society into an age in which personal freedom was gaining acceptance and dominance. Representative and constitutional governments came into being; universal education and suffrage were counted as worthy goals. Free-market economics was in line with the trend.

By the end of the 19th century, Europe had moved far in the direction of separating economic decisions and activity from control by political power. Most of the European nations practiced essentially laissez faire in economic activities. Trade barriers were reduced, and eliminated altogether by England. Among the industrial or industrializing nations, the United States alone maintained rather high tariffs. From the beginning, the United States was committed to maximum economic freedom and the utilization of competition in the marketplace to regulate and direct the internal economy. In contrast to internal policy, external trade was hampered by substantial duties on imports. In part, this was for revenue, prior to the income tax amendment, and in part because many thought that tariffs would protect and foster industrial growth in the New World.

Early in the 19th century, utopian socialists—and later, Marx, Engels and others—proposed substituting government control and direction of the economy as a substitute for the free-market system. By the turn of the 20th century, the clamor for government controls and for the socialist approach to economic problems had gained substantial headway. Little by little, political actions were taken to move segments of the economy under political control. Sometimes, this consisted of extensive regulations—as, for example, in utilities in the United States. In other areas, and particularly in Europe, it went all the way to state ownership, so that today most of the power facilities, telephones, TV's and even railroads are a state monopoly.

The ideas of central control had gone so far that early in the century the labor control party were able to install socialists in the government in the United Kingdom; and in the 1930's, Italy, Germany, and Spain were taken over by socialists who installed dictators at the head of the government.

Even in the United States, high corporate income taxes, laws favorable to monopoly unions, and a proliferating maze of regulations and controls have injected political decisions deeply into the economic sphere.

Accordingly, in the past half century, in Europe and the United States there has been a substantial move away from dependence on free markets within nations themselves. In fact, in France, in Holland, and in England there is today a central planning agency that tries to plan and direct the total overall economy from centralized government. These stop short of full government control, but do establish national wage policies and capital programs.

As the European nations moved away from free-market economics and embraced more and more central planning, it became necessary also to restrict the freedom in international trade. No internal plan of control can succeed if there is freedom to thwart and subvert the plan at the border. Accordingly, the European nations, particularly under Hitler and Mussolini, moved extensively away from free trade and toward regulation of exports and imports. Even after the downfall of state socialism in Italy and Germany, many of the state-owned industries were retained, substantial controls and regulations have remained, and a good deal of central planning practiced. To match this, foreign economic relations had to be controlled. Where it was not expedient or adequate to adjust tariffs to this end, exchange controls and quantitative regulations, including licensing and quotas, were instituted. In general, in recent decades the European nations have relied less on tariffs and more on direct and other indirect controls to regulate their foreign trade and balance of payments.

The United States started out as the nation most committed to free-market economics. Since the turn of the century, however, we have been moving steadily in the direction of more government controls and restrictions. It is interesting that at the very moment when we are beginning to catch up with the Europeans in government interferences in economic decisions, we are putting on our greatest drive to remove tariffs. At the very moment that we deny the suitability for free-market decisions internally, we insist that they should be the exclusive arbiter in international trade.

Free trade theory

The extension of the ideas of division of labor and free markets to a worldwide basis has been formalized in the free-trade theory. This proposes that in the absence of interferences, division of labor would take place on a worldwide basis: that, as a consequence, man-hour productivity would increase everywhere and this would mean higher standards of living for all. It would result in the use of the best, most readily available raw materials, the best locations, the most effective human energy, and the best ideas, coupled with the best tools to bring about the lowest cost production. The theory proposes that under such conditions individuals would be employed at their highest skills, the most readily accessible and highest quality raw materials would be utilized, and the ultimate in mechanization reached. In other words, this theory holds that if there is complete freedom for trade throughout the world, man-hour productivity, per capita income, and living standards will be maximized. The theory also holds that unilateral adoption of free trade will benefit any nation that practices it, whether or not other nations reciprocate, and that any nation that does not practice free trade cannot obtain the highest standard of living for its people.

The free trade theory does not even require that each nation be able to do something better than all other nations, but merely that each nation be engaged in that production which it can do better than anything else. Dr. C. E. Griffin, professor emeritus, University of Michigan, states the principle of comparative advantage as follows: "If a country is blessed with advantages it always has greater advantages in some lines than in others. It will, therefore, gain most if it devotes its efforts to the things it can do best and exchanges the products of these efforts for things in which its advantage is least." (Clare E. Griffin: "A Tariff Policy for Modern Times", Michigan Business Review, vol. V, No. 5, September 1953, p. 9.)

The advantages proposed for free trade are both desirable and convincing, since man seeks to satisfy his wants with the least possible effort. The free trade theory is very appealing. In an ideal world, free trade might be as perfect in practice as in theory, but to fully evaluate its application, we must examine the premises on which it is based and see to what extent they are realized in the real world. We shall see that many conditions must be fulfilled if free trade is to give the results claimed.

For several decades, discussions concerning international trade have focused attention primarily, in fact almost exclusively, on the question of tariffs. There has been a tacit assumption that the elimination of tariffs would in and of itself lead to the advantages of free trade.

Careful examination shows that the free trade theory was conceived as a basic natural law. Its attention is centered on division of labor based on natural advantage—natural advantage associated with either inherent individual skills or advantages in natural resources and climate. Although the statement of the theory does not say so, it is inherent in its major premise that other factors, let us call them unnatural advantages, are all equal. It means that all the ways other than tariffs by which governments may interfere with or structure the international marketplace must be eliminated or equalized. In other words, it assumes that all of the international economic relations of the peoples of nations are on a completely free-market basis. when the economic engineer seeks to apply the free trade theory, he finds that, as a minimum, the following conditions would have to be met in order for the proposed results to be obtained:

1. No government enterprises;
2. No government subsidies;
3. No major variation in taxes on business;
4. Uniform business laws, uniformly enforced;
5. No immigration restrictions;
6. Complete free markets in exchanges rates and movement of capital;
7. No overriding defense requirements; and
8. No cartels.

When government enters production or engages in state trading, prices are based on political considerations and not economic costs. As a consequence, international trade which involves government enterprise will not generally lead to an international division of labor based purely on economic efficiency. Trade and economic programs that are tailored to political objectives have shown a history of low economic efficiency. This is not surprising because the political reward system penalizes mistakes so much more severely than it rewards success.

In similar manner, international trade based on government subsidies—whether it be tax forgiveness, whether it be government guaranties of loans, whether it be sales of subsidized products below home prices, or by whatever means—all subvert the price mechanism in the economic allocation process. In fact, the whole object of a subsidy is to negate the consequences of the decision of the marketplace. Thus, subsidies thwart the objective of free trade.

If there are major variations between countries in the taxation of businesses, then government-imposed taxes will be a major factor in determining the economic division of labor. This will thwart the allocation based on true economic costs.

In similar manner, laws governing business activity, man-hours, overtime payments, minimum wage rates, safety standards, and vacation and holiday practices, influence production costs. However, socially valuable such regulations may be, when there are wide differences between different countries this may influence the allocation of production more than does true economic efficiency.

Human energy—labor—is one of the key factors of production. If maximum efficiency is desired, then workers must be free to move so that the most effective combination of natural resources, workers, capital and ideas may be combined.

In a capitalistic, industrialized society, capital is a very important factor of production. Accordingly, there should be no restrictions on the movement of capital across national borders nor on the earnings from the employment of resources in any given areas. In like manner, there should be a complete free market in exchange rates so that the exchange rates can adjust between countries and properly relate changes in productivity and wage rates.

No nation will be willing to truly face the ultimate in international division of labor unless it feels secure from war and the necessity of maintaining an adequate national defense. Modern warfare is heavily based upon technology and the products thereof. The implications for national defense are clear.

Finally, businessmen themselves are inclined to try to thwart the verdict of the marketplace. One way is to form cartels. In so doing, producers either collude in setting prices or on dividing the market by territory. Cartel practices are outlawed in the United States but have been a regular part of export practices of the European and Japanese business communities. A cartel may set export prices at, above, or below domestic prices, depending on the immediate objective. If the export is primarily to move surplus, then the export price may be set low. Under other conditions and especially to underdeveloped countries, the export price is often held above domestic prices.

Basically, cartels are formed to reduce or eliminate competition. In foreign trade, cartel pricing may be used to drive competition out of business, or to prevent potential competitors from getting started. After the competition has been destroyed or blocked, then prices are raised to higher and lucrative levels.

Individual firms may also treat the foreign market different than the home market. It is not uncommon for a producer who has some unused plant capacity to reason that, on an incremental basis, the cost of producing additional units, up to capacity, would be very low. Further, that he could sell the extra production at lower prices in foreign countries without disturbing his home price, and thus add some incremental profit. This is, in fact, a very common practice. It distorts the price mechanism, causing it to give a false signal. The undesirability of this type of short-range, shortsighted practice is indicated by the derogatory term, "dumping."

Thus, business practices may also thwart the international marketplace in its allocative function of maximizing efficiency. Within a country, government regulations may be used to prevent collusion and reinforce competition. No government, however, can control what the nationals of a foreign sovereign nation do. The most it can do is to offset at the border the consequences of restrictive practice by foreign producers.

When a theory is applied under conditions different than those which its premises assume, the results are likely to be quite different than promised. When we look at the real world of commerce, we see that there are many ways in which governments structure and interfere in the international marketplace, ways that thwart the ideal division of labor.

To be realists, we must do one of two things: Either we must succeed in eliminating all interferences in the marketplace and accept a large degree of laissez-faire in economic affairs, both internally and internationally, or we must recognize that we are not dealing with an ideal situation. It may be that the structure of tariffs that has been widely used for many decades is a practical way of dealing with the imperfections in the international marketplace when the world is divided into sovereign nations.

It is interesting to note that when six countries of Europe sought to establish a Common Market, they had to wrestle with these very problems. As they have eliminated, step by step, the tariffs between them, they have had to try to harmonize the other factors that impinge upon economic efficiency. They have permitted the freedom for workers to move from country to country. They are seeking to harmonize their fringe benefit programs. They are moving in the direction of harmonizing business laws—antitrust and patent laws, et cetera. They are making progress toward harmonization of business taxes, and they are looking forward to the day of a common currency, which would eliminate the exchange problems.

This is not surprising, because in the great free trade area between the 50 States of the United States, we have met or approached all of the requirements in the premises of the free trade theory.

Theoreticians have steadily set their face toward the ideal of free trade and the maximum division of labor. There is reason to doubt that a maximum division of labor for maximum efficiency on a worldwide basis would, in fact, be a desirable situation. Maximum division of labor would carry with it the risk of maximum instability. Communities, companies, even individuals, find it desirable to spread the risk—to diversify, to apply the insurance principle. Even the Detroit auto industry has seen fit to spread its production units into every corner in the United States and to expand into many other products in addition to automobile production.

Stability is becoming an increasingly prominent objective of industrial systems. It is doubtful that, given a free choice, workers would choose the small increments of productivity increase over the increased risks from maximum specialization. Countries that are essentially "one industry" countries (coffee dominance in Brazil, copper in Chile, and tin in Bolivia) are in frequent trouble due to instability in fluctuating markets. The ideal would surely be some appropriate accommodation between diversification and maximum specialization.

In the economic reasons for foreign trade, we noted the need for a mass market. The economics of total cost, including distribution to the consumer, indicates that there is a practical limit to the advantages from specialization as between industrial countries. For example, it would not be economically desirable to have the United States make all of the automobiles and Europe make all of the steel. Both Europe and the United States have ample requirements to permit maximum savings from large-scale production in both of these products. To ship half of the cars to Europe and half of the steel to the United Sttaes would add unnecessary shipping costs.

The free trade theory presupposes a world marketplace that is unhampered by government restrictions and interferences of any sort.

It assumes a worldwide dissemination of pertinent product information. It assumes freedom to advertise and transmit knowledge about products. And, in a sense, it also assumes an openmindedness about foreigners and foreign products—no nationalistic bias.

To what extent are these conditions met in actual practice? What are the conditions and special hazards that the businessman meets and must adjust to in international commerce? To what extent do governments place special hurdles that impede international trade?

In actual practice, most countries apply a whole host of procedures, taxes, and restraints on imports. Some countries, like the United States, rely primarily on duties. Others have, in addition to duties, extensively utilized direct quantitative restrictions and more subtle regulatory practices. The United States has been extensively reducing trade barriers for two decades; by contrast, many other countries have been increasing restrictions, especially in the area of nontariff barriers.

The U.S. Department of Commerce, Business and Defense Services Administration and the Bureau of International Commerce, have set forth a definition of "nontariff trade barriers" and listed many practices which are or can be used to impede imports:

Definition of nontariff trade barrier

A nontariff trade barrier is defined as any law, regulation, policy, or practice of a government, other than the import duty proper, which has a restrictive impact on imports. For purposes of this questionnaire, this definition does not include impediments to trade resulting from the operation of foreign cartels, private monopolies, or other nongovernmental business practices.

Some nontariff restrictions may be specially designed to insulate segments of the domestic economy from the effects of imports from foreign competition. There are, however, many other reasons for these barriers including the conservation of scarce foreign exchange, the promotion of economic development, the protection of domestic business against unfair competition from abroad, the protection of the public health, safety and morals, the protection of the national security, the collection of revenue, and the control of imports of products for the public account in favor of domestic procurement. Some of these barriers are recognized as legitimate under international commitments to the extent that they are not abused.

The following is an illustrative list of trade regulations and practices which may be so drawn or administered as to have a restrictive effect on the sale of U.S. goods abroad, and should be considered as nontariff trade barriers.

A. Customs law

(1) Regulations governing the right to import.
(2) Valuation and appraisement of imported goods.
(3) Classification of goods for customs purposes.
(4) Marking, labeling, and packaging requirements.
(5) Documentary requirements (including consular invoices).
(6) Measures to counteract disruptive marketing practices, e.g., antidumping and countervailing duties.
(7) Penalties (for example, fees charged for mistakes on documents).

(8) Fees assessed at customs to cover cost of processing (handling) goods.

(9) Administrative exemptions (for example, administrative authority to permit duty-free entry of goods for certain purposes).

(10) Treatment of samples and advertising material.

(11) Prohibited and restricted imports.

(12) Administration of customs law provisions (delay in processing goods, inadequate or delayed publication of customs information).

B. Other legislation specifically applicable to imports, under which restrictions are applied prior to entry of goods.

(1) Taxes.

(2) Balance-of-payments restrictions (including quantitative import restrictions, licensing fees, prior deposit requirements, import surcharges, credit controls on import transactions, multiple exchange rates).

(3) Restrictions imposed to protect individual industries (including measures to protect infant industries).

(4) Taxes applied to imports to compensate for indirect taxes borne by comparable domestic goods (European turnover taxes).

(5) Restrictions applied for national security reasons (other than under customs law).

(6) State trading (or the operation of enterprises granted exclusive or special import privileges).

(7) Sanitary regulations (other than under customs law).

(8) Food, drug, cosmetic, and pharmaceutical regulations.

(9) Patent, trademark, and copyright regulations.

(10) Shipping and insurance regulations.

C. Other legislative and administrative trade barriers

(1) Government purchasing regulations and practices.

(2) Domestic price control regulations.

(3) Restrictions on the internal sale, distribution, and use of products:

(*a*) Screen quotas and other restrictions affecting motion picture film and television program material.

(*b*) Specifications, standards, and safety requirements affecting such products as electrical equipment, machinery and automobiles.

(*c*) Internal taxes that bear more heavily on U.S. goods than on domestic products (for example, automobile taxes in Europe based on horsepower rating).

(4) Restrictions on advertising of goods.

(5) Restrictions on display of goods at trade fairs and exhibitions.

It will be useful to single out a few of the more important nontariff barriers and to examine them specifically:

1. State trading. Obviously, nations such as the U.S.S.R. and its satellites, which set up a political bureau to plan and handle all foreign trade, have moved the foreign trade sector of their economy completely into the political arena. While only a few nations openly apply state trading, many other nations in applying licenses, quotas and the like, start by developing a central plan which includes a specific level of expected exports and imports.

It is interesting to note how many businessmen and Government spokesmen credit our export controls as the factor that prevents a substantial increase in our shipments to Russia. They seem to forget that the U.S.S.R. and its satellites plan their total economy in 5- to 7-year increments. The level of imports will change only as they revise or extend their comprehensive plans. Their imports will match their exports, and both are planned well in advance.

2. Import licenses are a widely used means of controlling imports. Most of the underdeveloped countries use licenses extensively. Many countries, even when not faced with unfavorable trade or balance of payments, leave their import license procedures on the books. They merely make licenses easy to get when imports are desired.

3. Some countries require import deposits, which run from a modest amount up to as much as 200 percent of the value of the merchandise. These deposit systems have been extensively used by South American countries. Even more important than the interest cost is the loss in purchasing power through a rapid and continuing price inflation that reduces the purchasing power of the local currency.

4. Foreign exchange allocations of currency for imports. This has been extensively used in Japan and in some Latin American countries. It was also used by Europeans after the war until they began to have a surfeit of dollars.

5. Price controls has been used by India and Belgium to limit specific imports.

6. Specific requirements such as field testing of pesticides by West Germany and France, or difficulty in registering pharmaceutical products in Spain, is another method of limiting imports and the competition therefrom.

7. Excessive delays in the clearance of import licenses and excessive paperwork are procedural impediments in a number of countries, notably in South America.

8. Cartel arrangements which may be used to freeze out other potential suppliers—an example is the arrangement in the EEC for the distribution of ammonium sulfate fertilizer that precludes U.S. entry into that market.

9. The use of turnover, value-added or cascade consumption taxes and special surcharges in some EEC countries are another potent nontariff barrier.

In moving to harmonize the taxes on business within the EEC, several countries are adding or adjusting their value-added tax. This becomes significant, because whereas the total tax against business in Europe does not differ greatly from ours, in most countries half or more of the corporate tax is in the form of a value-added or turnover tax, whereas most of our corporate tax is profits tax. When we ship to Germany, we will already have paid income tax on the total income, and will in addition have to pay a border tax equal to the turnover tax that would have been paid if the product had been made in Germany; so the total tax on exports from the United States to Germany will be considerably higher than on German production.

By contrast, when a firm in Germany or a number of other European countries ships to the United States, the value-added or turnover tax is refunded. Thus, the tax on a U.S. export sold in Germany may be twice as much as the tax that a German producer pays on exports to the United States. This is one example which shows how taxing differences can affect international trade.

U.S. trade experience

National trade policy, if it is to be successful, must be sound. To be sound, it must recognize and accommodate to the facts of the real world—a world composed of sovereign nations and less-than-perfect men. Men who are often shortsighted and seek short-term gain over longer term benefits. A world in which in proportion as political forces are injected into the economic process, short-term or irrelevant criteria influence decisions and, as a consequence, basic factors are submerged.

It will be instructive to examine the recent history of U.S. foreign trade and economic policy as a frame of reference for projecting the future. Past policies need to be examined and evaluated in order to judge what changes are required for the future.

It will probably be adequate to look at our foreign economic history in the period since World War II. Important changes in foreign economic policy that represent a break with our total history occurred in the early postwar years. The practical policy question is whether these policies should be continued and extended or whether some basic and important changes are necessary.

One break with the past was our initiating and joining the organization known as General Agreement on Tariffs and Trade (GATT). By this step we shifted from bilateral to multilateral trade negotiations and agreements. The trade agreements acts have authorized the Chief Executive to negotiate reciprocal tariff cuts with other nations. Since 1948 these negotiations have been carried on through the GATT organization on a multilateral basis.

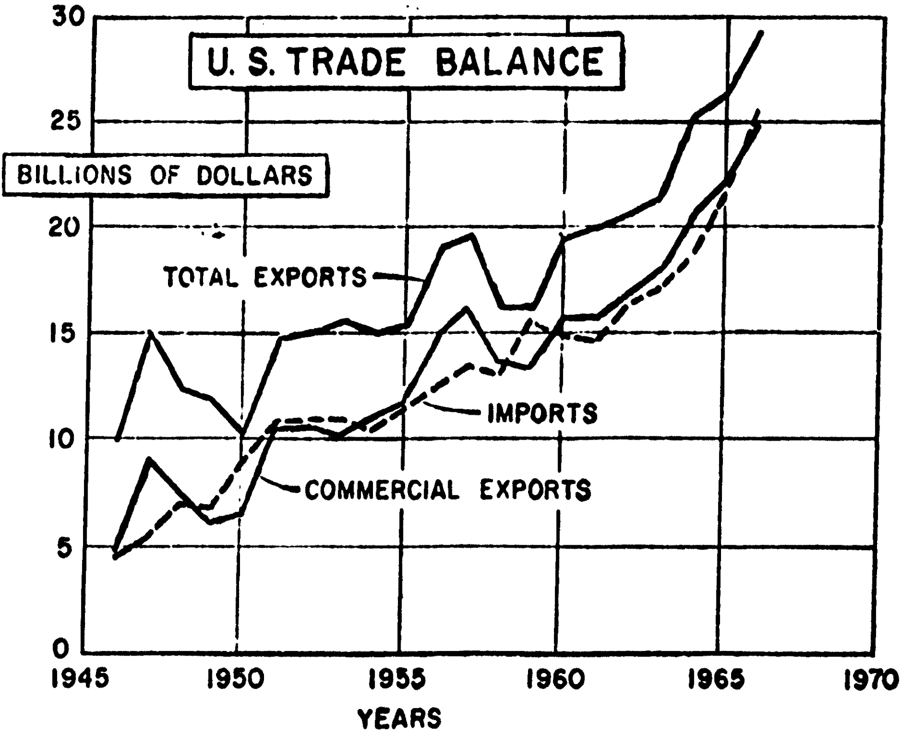
It is difficult to determine the average level of tariff rates for any given nation and, even more difficult, to judge their degree of protection. It seems clear, however, that since 1934 U.S. tariff rates have been reduced, on the average, by more than 75 percent and that the recent GATT negotiations will have reduced the remaining tariff level by an estimated 35 percent. The reason the average will be less than the 50 percent authorized by the Trade Expansion Act of 1962 is that already many of our tariffs were so low that they were reduced less than the full 50 percent.

The argument for the Trade Agreements Act in 1934 and for its many extensions since has always been that reciprocal tariff reduction would increase our exports and thereby improve our economy, and particularly our balance of payments. On the basis of both theory and practice, this is a forlorn expectation. At at time when we claim to have the largest favorable trade balance in the world, we could hardly expect the Europeans and others to agree to tariff changes such that it would further tip the trade balance in our favor. Nevertheless, we should examine the trade data for the past couple of decades and see what indeed has happened to our foreign trade.

Chart 4 shows the U.S. imports and exports in the postwar years. The dashed curve shows the imports and the upper curve the exports as reported by the Department of Commerce. The lower solid curve shows exports after removal of that part that is not competitively sold in world markets.

A significant part of our exports are goods that we buy with our own money and ship overseas. Included are sizable quantities of agricultural products sold under Public Law 480 to the less developed nations of the world. These are paid for in the country's local currency.

CHART 4

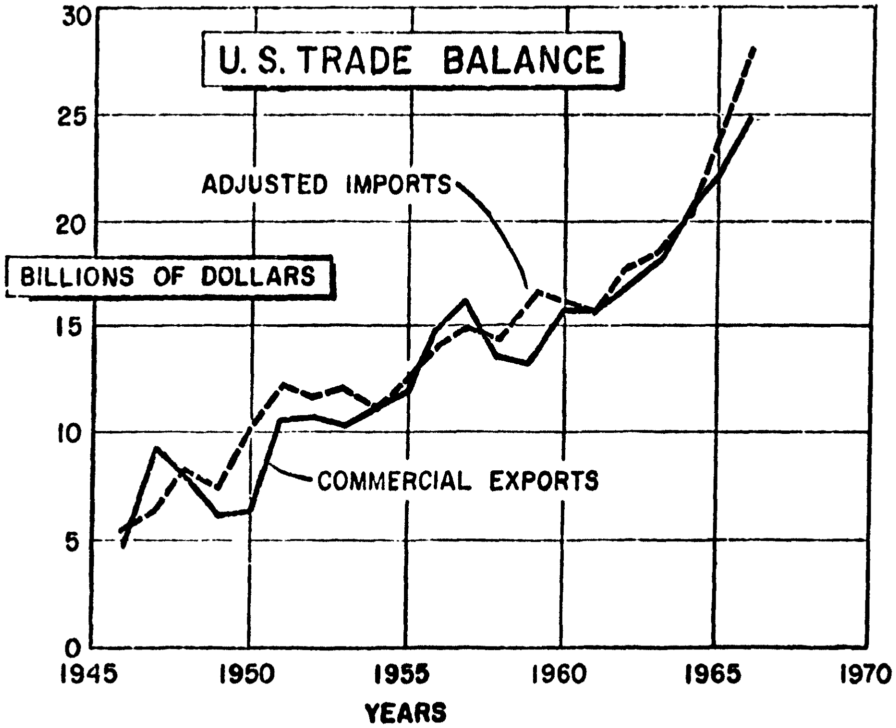


and these payments are blocked so that they cannot be converted to dollars but must be spent in the country. To date, about the only use we have been able to make of these currencies is to build elaborate embassies and to finance congressional junkets. So these sales are, in fact, a gift. Also included as exports are the food supplies that we ship as relief to famine areas. Included also are sizable shipments to our military establishments overseas. And finally, included are annually $2 to $3 billion of agricultural products which are subsidized. The grain and produce that are under our price-support programs are sold on the world market well below the support price at home. The difference constitutes a subsidy that has averaged about 25 percent. When all these exports that are paid for with American dollars or subsidized are subtracted from the export data, the so-called trade surplus vanishes.

We follow the practice of tabulating our foreign trade on the basis of f.o.b. values (for imports this is the price at the foreign factory or shipping point). Practically all other nations use a c.i.f. basis (cost, including insurance and ocean freight—that is, landed cost). Practically all of our imports and most of our exports move on foreign bottoms. In the case of imports, therefore, we pay out dollars for the landed cost. The ocean freight, insurance, and other transport costs have to be added to arrive at a landed cost. Several studies have indicated that this ranges from 10 to 25 percent. One study shows an average of 17 percent.

In chart 5, the import curve has been converted to a landed cost basis by adding a modest 10 percent. It is clear from this data that our commercial exports (those sold in competition in the world market) and our imports on a c.i.f. basis for which we pay out dollars has not been in balance in the past two decades, and that we do not have a favorable trade balance but a net unfavorable trade balance—gifts can hardly be called "trade"—and that the dollar value of imports has actually grown more than commercial exports since the end of the 1940's.

CHART 5



Moreover, even the adjusted exports shown in chart 5 exaggerates our competitiveness. A significant portion of our exports are from U.S. firms to their overseas subsidiaries. Department of Commerce data shows that this has varied from $2½ to $3 billion annually in recent years. In many cases, these exports were not competitive and were justified solely on the basis of internal corporate accounting.

It is clear that we not only do not have a favorable trade balance, but actually an unfavorable one as far as our competitive commercial exports are concerned. Instead of our trade data indicating that there would be a large growth in our exports relative to imports if all tariffs were lowered or eliminated, it indicates the exact opposite; namely, that we are not competitive in world markets and that, in the absence of tariff protection, imports can be expected to climb faster than exports. Moreover, there are other independent evidences that we are, on the average, noncompetitive with efficient foreign producers.

One such is the changing character of our exports and imports since the early 1950's. Dating back to early this century, the United States imported primarily tropical products, raw materials, and products of low labor content; and exported primarily manufactured goods.

In the past decade and a half, this has been reversed. We now export, on balance, more agricultural products, raw materials, scrap iron, chemical raw materials, and products of low labor content, than manufactured products. More than half of our imports are now manufactured goods of high labor content—cameras, typewriters, automobiles, motorcycles, TV's, dyes, medicinals, et cetera. This striking change in the character of our trade is a clear-cut indication that our labor costs are pricing us out of world markets. The higher the labor content of a product the less we export and the more we import relatively.

A study that compares our exports and imports in various important classes of products for the years 1951–60 shows some striking differences. In most cases, the trend that had been established in the 1950's has continued and in some cases accelerated. The following are some examples of the percentage change in the ratio of exports to imports:

	Export	
	Percent gain	Percent loss
Hides and skins (raw)	43.2	
Leather manufacturers		32.5
Rubber	32.1	
Rubber manufactured goods		42.6
Wood, not manufactured	30.4	
Wood, manufactured		10.3
Pig iron	20.7	
Scrap iron	57.1	
Steel mill products		14.7
Metal manufactures		15.3
Machinery (6 classes)	(1)	(1)
Crude coal tar products	746	
Coal tar dyes		32.0

1 All 6 classes negative and ranging from 2.8 to 22 percent.

The result of this study is summarized as follows:

We have registered large losses in share of market in exports of manufactures with relatively high labor content. Leather Manufactures. Fur Manufactures. Grain Manufactures. Rubber Manufactures. Cotton Manufactures. Products made from Man Made Fibers. Food Manufactures. Steel Mill Products. Metals Manufactures. All kinds of machinery except agricultural. All kinds of vehicles except aircraft. Photographic goods. Scientific Apparatus. Toys. Firearms.

This is true in small industries as well as large, as the footnotes to the main product groups amply show. In specific product after specific product imports capture a larger share of market where labor content is high. Exports capture a larger share of market only where labor content is low.

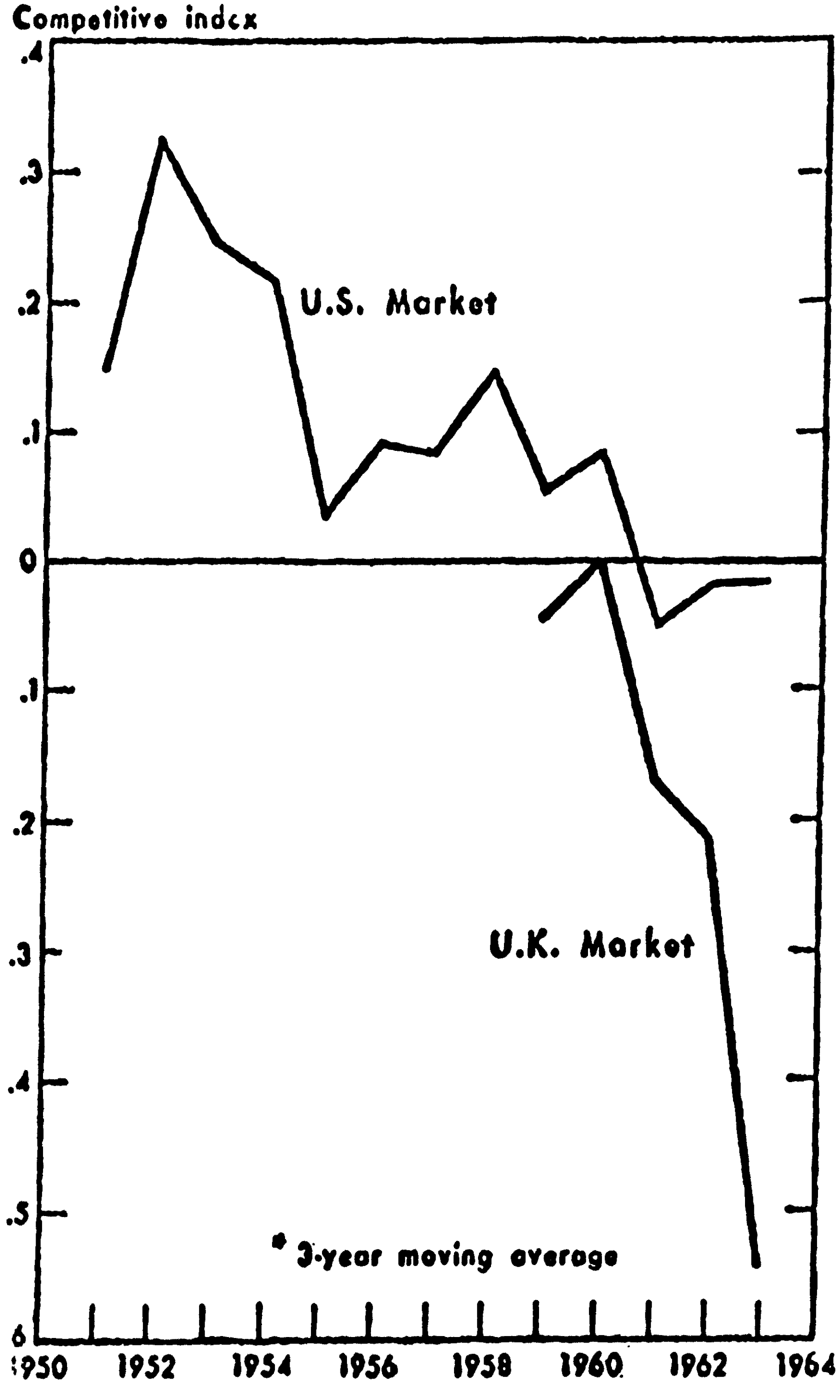
"The kind of exports in which we are gaining ground are those ordinarily associated with underdeveloped countries. The kind of exports in which we are losing ground are ordinarily associated with highly developed countires. The common denominator of the difference is labor cost. Not hourly wage rates. Labor *cost*.[1]

A report in the Survey of Current Business (February 1966) shows that the unfavorable trend in steel has continued and accelerated. Whereas exports of steel mill products were about 6 million tons in 1947, they were down to 2¼ million tons in 1965. By contrast, imports had increased from about 0.1 million ton in 1947 to 10¼ million tons in 1965.

[1] Testimony of James M. Ashley, president, Trade Relations Council of the United States, Inc., presented Mar. 19, 1962, before the House Ways and Means Committee, 87th Cong., second sess., with respect to H.R. 9900 (Trade Expansion Act of 1962).

Chart II

COMPETITIVE MEASURES OF U.S. GOODS*



Another study, made by the Federal Reserve Bank of Boston and reported in the New England Business Review (July 1965), further confirms the shift in trade and its implication for our relative competitiveness. Figure II, reproduced here, shows the results of their study. Pertinent quotes help explain the curves on the chart.

The results presented in Chart II do imply a deterioration in the competitive position of U.S. consumer goods from the early fifties to the early sixties.

Chart II also presents a series on our competitive ability abroad. Because of lack of data this series is for a shorter time period. It depicts the ability of the United States to sell consumer goods in the United Kingdom, as compared to that of all other foreign countries that sell in the United Kingdom except the United Kingdom. In this way, a measure is provided of the ability of the United States to compete in so-called third-country markets where both the United States and foreign goods must bear the import and transportation charges.

The results of this series imply a much greater deterioration in the U.S. competitive position than that shown for the U.S. market.

A final evidence of our noncompetitiveness is a continuing chronic negative balance of payments. Our merchandise exports and imports are, of course, only a part of our economic exchange with other nations. We have to look at the balance of payments to see the whole picture. The economist speaks of "goods and services" and our international economic relations must include the service sector as well as the goods sector. It is the balance-of-payments figure that shows the balance or imbalance of our total economic exchange with other nations.

It turns out that our foreign-aid policy represents another break with previous history in our foreign economic relations. The massive outflow of dollars through foreign-aid gifts—more than $6 billion annually in recent years—have had important implications for our balance of payments. If all the aid dollars were spent in the United States for goods and services, there would be no effect on our balance of payments. Such, however, is not the case. Even in recent years, less than 50 percent of grants and loans have returned in the form of purchases. Incidentally, if all these dollars had returned, we would have had from 1 to 1½ million more industrial jobs than we have had in the last half dozen years. Nevertheless, the most fundamental factor relative to a balance of payments is the competitiveness of a given economy in world markets. If, for example, our competitive position were favorable enough, all of the foreign-aid dollars would be spent for our products, and thus, the gifts would not have an influence on the balance of payments.

Causes of loss of competitive position

There are two basic causes for our noncompetitive position and its unfavorable consequences for the balance of payments. One has to do with the inflation process, and the other with rigidities in the foreign exchange market. A nation's competitive position is determined by its wage rate divided by its productivity vis-a-vis other nations. At a given exchange rate, if the wage rate divided by productivity turns out to be the same for two nations, then they will on the average be competitive. If the wage rate in one country is twice that of the other and its productivity is twice that of the other, they will have the same average unit cost factor.

But wage rates and productivity factors are constantly changing and at different rates for different countries. When this happens in a truly free international market, the exchange rate will adjust to keep the average relative unit cost factors the same.

Another important change took place following World War II: namely, the establishment of the International Monetary Fund and its control of exchange rates. Exchange rates are now fixed by this international bureaucracy and are not subject to fluctuation in a free market as they were early this century. Here we have a political rigidity which affects one important part of the international market.

The present exchange rates were fixed soon after World War II, long before anyone could foresee the resurgence of Europe and Japan and the phenomenal increase that they have made in productivity. Their productivity has increased about twice as fast as ours, and they have not matched their rapid productivity gains with equally large wage rate increases as we have. As a consequence, they have improved their competitive position vis-a-vis the United States.

Inflation

Another important factor is the inflation that we have sustained and which has not been matched by any devaluation of the dollar or exchange rate adjustment.

On page 12 we noted that money is a tool used to assist in the economic exchange process.

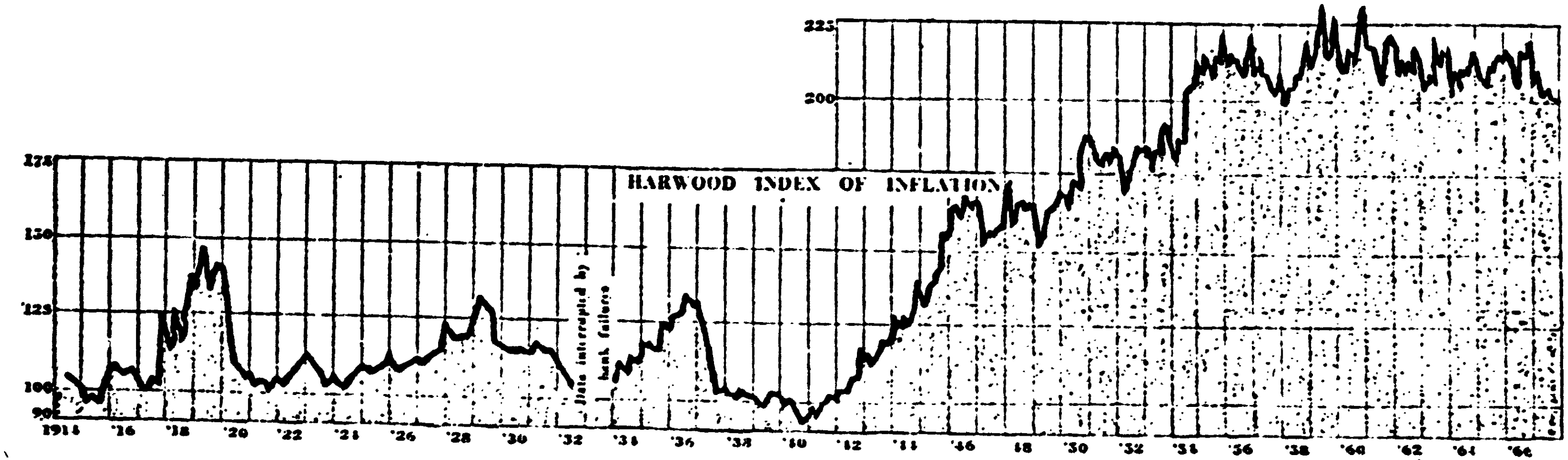
GOODS AND SERVICES⇄MONEY⇄GOODS AND SERVICES

If the amount of money is kept in step with the amount of goods and services to be exchanged, the exchange process can operate smoothly. If, however, hoarding (which draws money from circulation) or counterfeiting (which adds excess money) distorts the money supply in relation to the economy, the economic exchange process is disrupted.

Private counterfeiting, although constantly being tried, has never become large. The creation of worthless, paper, fiat money by monetization of the Federal debt, however, has reached major proportions in the United States. This type of "printing press" money has an effect on the exchange process similar to that of private counterfeiting. During World War II, Korea, and subsequent years, Federal expenditures have often exceeded income. A substantial portion of the bonds covering this debt has been delivered to the central Federal Reserve Bank. In this way they become new and additional money created out of "thin air." More than $100 billion of "printing press" money has been injected into the banking system and this has served as a base for further credit expansion. By this process of monetization of the Federal debt, the ratio of money supply to goods and services to be exchanged has more than doubled.

Chart 6 shows the Harwood Index of Inflation dating back to the beginning of the Federal Reserve System. In this curve we see the inflation of World War I and the rapid deflation that precipitated the sharp economic setback in 1921. We see the inflation of the 1920's and the deflation after early 1929 which precipitated the great depression. We see the inflation of the 1930's and the deflation of 1936 which precipitated the stock market crash in 1937 and the economic setback in 1938. And finally, we see the much larger inflation that has resulted from Government deficits of World War II, Korea, and subsequent years.

CHART 6



Source: American Institute for Economic Research

This curve shows the true economic inflation and should not be confused with price increases, which are not in and of themselves inflation, but rather, are one of the consequences of monetary inflation. Frequently, price increases lag sometimes as much as several years following the injection of inflationary money into the banking system. This may be the reason why many people focus on price increases and forget to relate it to the basic cause—"printing press" money.

There are far-reaching consequences from such extensive monetary inflation. One is the increase in prices. In the postwar years, $2 (one good dollar and one "printing press" dollar) have been coming to the marketplace to bid for a dollar's worth of goods. Since the market couldn't tell one from the other, prices have been bid up to twice prewar level. In fact, the price index indicates that the dollar is only worth 43 cents in terms of 1939 purchasing power. Not only have prices of products been bid up, but also wages. The price of labor has gone up along with, in fact a little more than, the price of goods.

This monetary inflation has had important consequences for our competitiveness in world markets, and hence, for our balance of payments. The basic difficulty becomes evident when we examine the exchange equation:

GOLD

⇅

GOODS AND SERVICES⇆DOLLARS⇆GOODS AND SERVICES

Normally, when foreigners sell us goods or services or by whatever means get dollars, they would spend these dollars for our goods and services. If this balanced out, there would be no distortion. As a result, however, of our monetization of Federal debt, the prices of our goods and services have more than doubled. There is one economic good, however—gold—that still has the same price as was fixed in 1934; namely, $35 an ounce. Thus, gold is the cheapest commodity that we offer to the world. It is not surprising that foreigners prefer to trade our dollars for gold or to hold these dollars against the day when they might wish to trade them for gold. So long as confidence remains, the advantage of holding dollars in the form of Treasury notes or bills is that they pay interest. When dollars are cashed in for gold, not only is there no interest payment, but there is in fact a storage charge.

The monetary inflation and its consequent higher labor costs and prices is the basic reason why our products are not more competitive in world markets. To be sure, the foreign aid dollar outflow has aggravated the problem, but fundamentally our unit costs have advanced higher than that of our aggressive competitors in the Common Market and Japan.

Since 1960 the Chief Executive, with the cooperation of the Federal Reserve System, has sought to drive our economy forward at an artificially high growth rate through inflationary monetary and fiscal policy. Here we see a massive interference in the market mechanism. At the same time, the administration was mounting an all-out drive to eliminate or minimize our tariffs—almost the only restriction that we have placed on external economic relations. These two policies are incompatible and one or the other must be abandoned.

We cannot hope to get back to a permanent balance in our foreign accounts until we recover our competitive position. The straightforward and simple way to do this would be to establish a free exchange rate or at least widen the limits for fluctuation so that supply and demand forces can make some real adjustment. In this way, the relative value of the currencies of different countries would again truly reflect the average wage level divided by productivity, and hence, the average real price level in each country.

The basic problem of the United Kingdom is the same as ours. They, too, have lost their competitiveness. In their case, it is more through lagging productivity gains than inflation, but the end result is the same. With fixed exchange rates, the international exchange system has no automatic adjustment mechanism.

Future trade policy

First, in looking at the question of future trade policy, we need to recognize that trade is not an isolated event but only part of our total foreign economic relations. We need to develop a policy that covers and coordinates all of the economic relations between other nations and ourselves—trade, tariffs, quantitative controls, dumping practices, cartels, patents, exchange rates, capital transfers and repatriation, tourism, and aid.

We must also recognize that theories do not operate in a vacuum: that the real world differs substantially from the idealized conditions visualized by the free-trade theory. It is essential that our policies be based on the real situation, on reasonable expectations of the behavior or sovereign nations, and on enlightened self-interest.

1. We should recognize that the system of trade controls that nations have developed through the years has, in fact, been a system. That tariffs, for example, are only one of the ways of "handicapping" in the world marketplace. In part, tariffs have been used to compensate for other restrictive practices. Further, we should realize that of all the various forms of Government restrictions on trade, tariffs are much less objectionable than are quotas, licensing, and other quantitative restrictions. We should be extremely leery of moving in the direction of quotas and licensing in areas where tariffs have been reduced or eliminated, and as a consequence, industry and jobs jeopardized. Quantitative controls inject Government policy decisions deeply into the economic process. It becomes difficult, even to the point of impossibility, for Government regulations to avoid inequities as between individual enterprises. If we find that on the products of some industries our tariff rates have been reduced too much, it would be better to increase the tariffs than to get involved with licensing and quotas.

2. As a first step, we should recognize the basic cause of our difficulties and readjust the exchange ratios of the various currencies to reflect the average unit costs of each country. The simple way to discover the relative average costs would be to reinstitute a free market in foreign exchange. Those who claim that this would disrupt foreign trade because of uncertainties of foreign exchange rates apparently have never heard about "hedging" by buying exchange futures—a common practice even today.

An important side effect of floating exchange rates, or at least a widening of the margins within which exchange may fluctuate, is that it would take care of the so-called international liquidity problem Experience indicates that when free market forces can adjust the exchange between currencies, very little of the money commodity—gold—is required because there are few imbalances that have to be corrected by the shipment of gold. It is the present system of rigid exchange rates which makes almost any level of gold reserve inadequate to meet all of the imbalances that tend to pile up.

3. We need to put an end to our Federal deficits and monetary inflation in the United States in order that we do not further aggravate the problem of pricing ourselves out of world markets through the well-known inflation process.

4. We need to substantially revamp and improve our antidumping laws. In a world of sovereign nations, it is inevitable that producers with any idle capacity will seek to sell in foreign markets, at dumping prices if necessary. Such a producer can always justify his lower foreign price by incremental costing of his extra production and by reasoning that dumping overseas does not affect his market price at home. This kind of distress selling, and even more so, direct predatory pricing with an attempt to drive localized production from the market, is disruptive of ordinary marketing processes. It gives false signals both to consumers and producers as to the relative value of competing products. International trade will grow on a sound basis in proportion as dumping practices can be minimized.

The low levels of tariffs to which we are now committed will be an open invitation to extensive dumping practices; therefore, we need to prepare the best possible defenses against this type of market disruption.

A sound antidumping law would establish dual criteria as a basis for dumping penalties:

(1) That there be, in fact, sales below fair market value;

(2) That there be injury to producers in the country of import.

The crux of the matter comes in the definition of the terms in these two criteria.

To arrive at a definition of "dumping," a fair market value must be established. Important criteria for the definition of "fair market value" are—

(1) That it should represent a price at which the product is freely offered in the country where produced;

(2) In normal wholesale quantities, unless the import is similar to a level of trade in the product for which there is special pricing and conditions of sale in the home market—"condition of sale" here referring to end use, type of shipment, duration and volume of the commitment, etc.;

(3) That the price be taken as f.a.s. (free alongside ship) or f.o.b. ship's rail (depending on whether packaged or bulk cargo) at the time and place of shipment or at the nearest port;

(4) That calculations of currency exchange rates used in any antidumping case be the actual involved in trade transactions where there is a difference from official rates.

It is important that an injury test be relevant to the actual market conditions. Any suitable definition should include the following criteria:

1. An antidumping statute should recognize no injury for products that are noncompetitive. For this, the U.S. criteria of "like and simi-

lar" in present legislation in defining competitive products seems to be a good one.

2. There should be a presumption of no injury where import sales are not below the prevailing price in the country of importation. There should be no penalty for imports that meet the going price.

3. There should be a finding of injury if the import is sold at prices below the prevailing price in the country of importation and producers have capacity to supply 10 percent or more of the home market.

4. Each product or product line should be considered an industry in and of itself. An injury test which looks to the average profitability of an industry or a company therein is meaningless: in fact, there is no economic basis for applying any profitability test in an antidumping law.

5. Experience has also shown that in a large and diversified country like the United States, regional considerations may be important. Even as we recognize regional pricing under the Robinson-Patman Act, we should also recognize regional areas for antidumping injury cases.

6. Special consideration should be given to shipments from a parent company to a foreign subsidiary. If a product is shipped to a subsidiary and further upgraded by 25 percent or more, there should be the presumption of no injury, since the product does not enter the channels of trade but rather serves as a raw material.

7. Special consideration should be given to "coproducer" transactions. In many instances, coproducer sales will be made at special prices. Since the coproducer buyer is not interested in destroying his own price structure, such a sale, even though technically "dumping," will not tend to injury the market of the country of destination.

It is recognized that the rules of procedure and the ways in which they are applied can greatly influence the effectiveness of any regulation. It would seem that the following principles should be incorporated into any antidumping law:

(1) A chance for interested parties to be heard;
(2) Prompt disposition of cases;
(3) Safeguards for confidentiality of data; and
(4) A requirement that complainant and defendant supply necessary data promptly.

Failure of the former to comply within a specified time would dismiss the case, and of the latter would automatically constitute a finding of dumping.

In the matter of procedures, it is important that the findings be prompt and not delayed, and that they be as specific as possible with a minimum of judgmental leeway. Only if both the regulations and procedures are specific and clear can either the exporter or domestic industry judge what is dumping and what is not.

A failure to make these changes that strike at the root of our balance-of-payments problem can only lead to further controls and regulations. In time, we would be faced with more restrictive capital export and investment controls. Gradually, step by step, we would find it necessary to place quotas on the products of one industry after another, as we have already done on agricultural products, oil, and cotton textiles. It is time to give attention to the fundamentals, and tailor our next move in trade policy to the fundamentals of the problem.

STATEMENT SUBMITTED BY DAVID A. GOLDEN, OF LAMB & LERCH, COUNSELORS AT LAW, NEW YORK, N.Y.

From the beginning of the trade agreements program there has been concern that as a result of a decrease in import restrictions there would be such an increase in imports as to seriously injure or to threaten serious injury to domestic manufacturers. When the President was given authority in 1934 to reduce import restrictions he committed himself to use the authority in such manner as not to injure sound and important American industries. However, in administering the Trade Agreements Act it soon became apparent that some domestic industries would be seriously injured. An "escape clause" was, therefore, included in trade agreements which permitted the United States to withdraw a concession under certain conditions.

The Trade Agreements Extension Act of 1951 for the first time had an "escape clause" procedure provided for by statute (sec. 7). This provision in substance held that the Tariff Commission should investigate all escape clause applications; imposed a time limit for the investigation; and allowed an actual as well as a relative increase in imports to satisfy the procedural criteria. The Tariff Commission pursuant to the investigation then had to determine if as a result in whole or in part of concessions granted, imports of the article under investigation were being imported into the United States in such increased quantities, either actual or relative, as to cause, or threaten, serious injury to the domestic industry producing like or directly competitive products. Section 7 of the Trade Extension Act of 1951 was reenacted in 1955 and 1958. It lasted until 1962.

Under section 7 of the Trade Extension Act of 1951 (and its reenactment) 113 investigations were completed by the Tariff Commission. Of that number of investigations the Tariff Commission found that in 33 investigations the criteria for injury was met by the domestic industry and recommended to the President that relief be granted; in eight investigations the Tariff Commissioners were divided as to their findings and therefore, the cases had to be referred to the President for disposition; and 72 cases were dismissed by the Tariff Commission on the grounds that the domestic industries did not meet the criteria set up by Congress for relief.

Of the 41 investigations referred to the President, 15 were granted relief pursuant to the statute and 26 were denied relief.

In the Trade Expansion Act of 1962 Congress enacted a sweeping reorganization of safeguard procedure which among other things made a form of relief available to groups not covered by earlier acts, such as individual firms and employees of injured industries. Under the 1962 act the President could provide relief in cases of injury to an industry by withdrawing, or modifying the concession or he may grant trade adjustment assistance such as loans, tax relief, and technical assistance. During the debates in Congress on the 1962 legislation it was held out to labor as an inducement for the passage of the act that individual groups of workers, not provided for under previous legislation could obtain trade adjustment assistance.

However, in addition to the attempted beneficial changes made by the 1962 act, the criteria for "injury" was changed, which change made it impossible for domestic industries, firms, or individuals to get any trade adjustment assistance.

Before the Commission can make an affirmative finding under section 301(b)(1) of the Trade Expansion Act of 1962, it must determine (1) that the imports in question are entering the United States in increased quantities; (2) that the increased imports are a result in major part of trade agreement concessions; and (3) that such increased imports have been the major factor in causing, or threatening to cause, serious injury to the domestic industry concerned. If the Commission finds in the negative with respect to any one of these three requisites, it is foreclosed from making an affirmative finding for the industry.

Since the drastic change made by Congress in the act of 1962 in determining the criteria for injury to be found by the Tariff Commission before relief can be secured by an industry, firm, or individual, not one petition was found to have met that criteria. From the enactment of the 1962 Trade Expansion Act to date, domestic industries have filed 10 petitions with the Tariff Commission for investigation and trade adjustment assistance; domestic firms have filed six petitions; and workers have filed five petitions. In all, 21 petitions have been filed and as previously stated the Tariff Commission has not made an affirmative finding in any.

An excellent example is the petition filed by myself on behalf of the U.S. Potters Association. It was the first case which came before the Tariff Commission for relief under the Trade Expansion Act of 1962. As a matter of fact the petition was filed under section 7 of the Trade Agreement Extension Act of 1951, as amended, and the hearings were also held under the provisions of the act. However, before the Tariff Commission could render its findings the Trade Expansion Act of 1962 was passed and, therefore, this petition had to be adjudicated under the new act with its changed criteria for "injury."

The Commission found that there was an upward trend of imports of earthenware tableware and kitchen articles and that such earthenware "is being imported * * * in * * * increased quantities" within the meaning of the Trade Expansion Act (p. 4—"Report to the President on Investigation No. 7–114"—TEA–1–2). They also found (in one category) that the significant increase in imports occurred years after the duty reductions were made, hence the duty reductions could not be the major cause of the increased imports.

The Tariff Commission stated that 15 domestic producers of earthenware had ceased production, eight of which terminated production in the period 1957–61. Production declined from 30 million dozen pieces in 1954 to 26.8 million dozen pieces in 1957 and to 22.1 million dozen pieces in 1958; production then increased to 24.4 million dozen pieces in 1959 and declined to 21.6 million dozen pieces in 1961. In all of the years 1957 through 1961, dinnerware accounted for more than 98 percent of the total quantity of earthenware produced. Sales of household earthen dinnerware by domestic producers declined from 26.4 million dozen pieces valued at $57.15 million in 1957, to 23 million dozen pieces valued at $48.4 million in 1961. During 1958–60 the average annual imports were 17 percent greater than 1955–57, and in the 2-year period 1961–62, they were 11 percent greater than in 1958–60. Imports of earthenware amounted to 6.5 million dozen pieces in 1957, increased to 9.2 million dozen pieces in 1960. Estimated imports of earthenware dinnerware rose from 2.5 million dozen pieces in 1957 to 4.3 million dozen pieces in 1960, then to 3.4 million dozen pieces in 1961. These imports were equivalent to 9 percent of the apparent consumption of such dinnerware in 1957 and to 13 percent in 1961. (See Report to the President on Investigation No. 7-114 (TEA 1-2) under sec. 301(b) of the Trade Expansion Act of 1962). The statistical information secured from the Labor Department, Bureau of the Census, Customs Bureau, and so forth, can be found in the report submitted to the President; the testimony adduced at the hearings and the exhibits submitted can be seen at the Tariff Commission.

Since the finding by the Tariff Commission that the domestic earthenware dinnerware industry did not meet the criteria as established by the Trade Expansion Act of 1962 and, therefore, no relief was afforded the industry, matters have worsened. The following table secured from the Bureau of Labor Statistics covering this industry tells its own story. (See table 1.)

It can readily be seen from all of the foregoing that there must be a liberalization by Congress of trade adjustment assistance under section 301 of the Trade Expansion Act of 1962. Domestic industries, firms and workers are entitled to have their companies and jobs protected from ruinous imports. The domestic pottery industry is one such industry that needs help from unbridled imports. It is too much to expect that this industry which is economically and efficiently operated can give up 27 percent of domestic consumption to imports and remain in business.

TABLE 1.—FINE EARTHENWARE TABLE AND KITCHEN ARTICLES, SIC 3263

[Dollar amounts in millions]

	Shipments	Imports	Total supply	Imports, percent of total	Employment	Employment decrease (percent)	Imports increase (percent)
1960	$60.2	$13.0	$73.2	18	8,770		
1965	51.1	18.5	69.6	27	6,447	−26	+42

There can be no doubt that the Trade Expansion Act of 1962 should be amended so as to at least reinstate the "escape clause" remedy that was introduced through the Trade Extension Act of 1951 as amended; to eliminate the tests contained in the Trade Expansion Act which require an industry to prove that increased imports was due in major part to a tariff concession and that such imports were a major factor in causing serious injury to the domestic industry. In order for an industry to receive relief from imports by way of increased duties or quotas it should be necessary to show that imports contributed in any substantial degree to causing or threatening serious injury. It should also make it mandatory on the President to proclaim the increases in duty or other import restrictions found and reported by the Tariff Commission to be necessary to prevent or remedy serious injury from imports.

Antidumping

Our negotiators to the "Kennedy round" of trade negotiations held under the auspices of GATT, entered into an agreement with the other GATT countries to establish an International Dumping Code. This action was taken without any specific authority under the Trade Expansion Act or any other act of Congress. A question, therefore, has been raised as to whether or not Congress has to ratify that agreement. The free-trade proponents claim that the code does not have to have congressional approval, but that it can be proclaimed by the President.

In any event it is well to look at the proposed code in relation to the present Anti-Dumping Act of 1921. At this point it is well to note that the present Anti-Dumping Act of 1921 should be made more effective in procedure and in protecting domestic industries who are injured by competing with the dumped imports. To that effect there are many bills presently pending in Congress to tighten up the administration of the Anti-Dumping Act to make it more speedy and certain in its application.

The proposed antidumping code seriously weakens the deterrent effect of our present Anti-Dumping Act, even under the present administration. At the present time if a valid dumping complaint is being investigated the appraisement of all entries made by importers of the merchandise under consideration, are withheld pending the investigation. This is to insure that even though the dumped imports are permitted to enter the commerce of the United States, nevertheless, if dumping is found to exist, he dumping duties will be paid on the imports made during the investigation. The proposed dumping code would eliminate the withholding of appraisement.

Under the present act if a dumping complaint is filed, the Treasury Department first determines if the merchandise is sold for export to the United States at less than its "fair value." After an investigation if it is determined that the merchandise is in fact sold for export at less than its "fair value" the matter is then turned over to the Tariff Commission to investigate whether or not a domestic industry is being injured due to the imports being exported at less than their "fair value." If a domestic industry is being injured by these imports, dumping is found and a special dumping duty is imposed.

The proposed dumping code contemplates an immediate investigation by the Tariff Commission of the question of "injury" to the domestic industry. It would require the dismissal of the antidumping complaint if the Tariff Commission, after a preliminary and hasty investigation, concludes that the dumped imports are not causing injury.

It is, therefore, suggested that if a new antidumping law is needed or contemplated, the one presently pending in Congress (S. 1726) be acted on.

Further duty reductions

In the fact of the deep reductions made in U.S. duties agreed to by the United States in the Kennedy round, no authority should be given to the President to make further reductions, for a period of at least 5 years. It will take some time for domestic industries to adjust themselves to the current reductions in duty and to meet increased foreign competition as a result of the duty reductions. To extend the President's authority to further reduce U.S. duties in the near future would put an undue hardship on domestic industries.

Congress can best determine if additional authority should be given to the President. At the present time there are many bills pending in Congress seeking import quotas or other relief from ruinous imports. As soon as the current duty reductions are felt by domestic industries there might be an influx of "escape clause" actions filed with the Tariff Commission or many bills introduced in Congress for relief from imports. A "cooling off" period from further duty reductions or import restrictions could benefit all parties concerned.

Respectfully submitted.

LAMB & LERCH.

DAVID A. GOLDEN,
Of counsel.

STATEMENT SUBMITTED BY C. AUSTIN CASTLE, WASHINGTON, D.C.

SUMMARY

This is the "one-page summary of the highlights of the full statement," as requested in the last line of Senate Finance Committee's press release of September 27, 1967, sent to me by Mr. Tom Vail, the committee's chief counsel in his letter of that same date.

Section A. The 16-facet worldwide perspective in Senate Finance's release of September 27, 1967, can make your announced "Compendium of Papers on Legislative Oversight Review of U.S. Trade [i.e., not payments] Policies" required study beneficial to both the United States and to our planet's 139 other nations—all in world trade; i.e., in business.

Section B. Fifty percent victory: For the first time in our country's 191 years of existence, the United States can—though imperfectly—compute U.S. imports c.i.f., i.e., on the world's standard base for imports.

Section C. Letter (1⅓ pages, 1,192 words) of September 9, 1966: It took me 10 years to set up this letter. Its content is lasting.

Section D. Devaluation of currencies: (1) Of U.S. dollar, one of 14 dollars in our planet's trade—33 years before Kennedy round; (2) of Finnish markka on October 12, 1967, i.e., after Kennedy round; (3) of 99 devaluations, 25 in 1966, i.e., during the Kennedy round negotiations—all of which are unconstitutional. (See art. I, sec. 8, items 3 and 5, of the Constitution of the United States for "Powers of Congress.")

Section E. Conclusion: U.S. nonrealism in (1) the official U.S. arithmetic of U.S. foreign trade (this is not payments) and in (2) the manipulated "values" of non-U.S. currencies vis-a-vis our U.S. dollar has made U.S. foreign trade policies catastrophically harmful to both the U.S. socioeconomy and to the socioeconomies of the other 139 nations on our planet.

Section F. Addendum of incredible oddities.

STATEMENT

Section A-1. Proverb: "There needs a long apprenticeship to understand the mystery of the world's trade," from page 173 of volume II of "Best Known Quotations and Proverbs." I find that experts from small, old countries are tops in appraising trade between the 140 nations on our planet.

There are many "instant experts" on it in our country. Their conclusions must be measured against those of their superiors from the fifteen-sixteenths of earth's peoples outside the United States, which has lent one-sixteenth of them today, and will have only one-twentieth of them by the year 2000—33 quick years away.

Section A-2. There follow the 16 areas which the Senate Finance press release of September 27, 1967, says "might properly be explored and developed in the papers" submitted to the committee for its "Compendium on Legislative Oversight Review of U.S. Trade [this is not payments] Policies." Where I qualify, I give comments.

1. "Possible shortcomings in the applicable statutes."

2. "The negotiating process and ad hoc trade [this is not payments] agreements."

3. "Role of the U.S. Tariff Commission" [now 50 years old]. Investigated c.i.f. under instructions from Senate Finance.

4. "Customs administration."

5. "Valuation of [U.S.] imported goods" [not payments]. (Note: Over Senator Russell B. Long's signature as chairman of the Senate Finance Committee, under date of February 9, 1966, instructions were given to the Honorable Paul Kaplowitz, the then Chairman of the U.S. Tariff Commission to carry out the Finance Committee's resolution approved in its executive session of that date, viz: "* * * to make an investigation of the methods of valuation used by the United States and by the principal trading partners of the United States * * *" as explained in detail in the instructions—291 words q.v.

On November 3, 1966, I testified to the U.S. Tariff Commission in these 45 words, available in the printed record:

> Mr. Chairman and gentlemen, the United States of America must tabulate U.S. imports c.i.f. for exactly the same reasons and for exactly the same purposes as do 133 nations, as do all businessmen, as does IMF, and as does the United Nations.

I could have added to the above (1) the reasons why Israel, after ad hoc research by an ad hoc international committee, elected to tabulate its imports c.i.f.; (2) the reasons why at least two nations switched away from the U.S. way of tabulating imports to c.i.f.; (3) the textbook reasons for c.i.f. as explained/taught in many U.S. and non-U.S. schools, etc., etc. I urge that the "reasons" and the "purposes" in my testimony be compiled by an agency of the U.S. Government. I have done so.

See 24-page release on February 7, 1967, by the U.S. Tariff Commission, entitled "C.i.f. Value of U.S. Imports," for the results of its studies under instructions from Senator Long as chairman of the Senate Finance Committee. For the first time in U.S. history there is official c.i.f. value for U.S. imports.

6. "Dumping and unfair methods of competition in import" trade [this is not payments].

7. "Procedures for aiding [U.S.] workers and [U.S.] industries [and U.S. communities] harmed by excessive [sic] imports" [of foreign goods and of foreign services].

8. "Policies [foreign and domestic] needed to expand U.S. exports" (i.e., the sales of U.S. goods and services to our planet's other 139 nations with fifteen-sixteenths of earth's peoples in 1967 and with, it is forecast, nineteen-twentieths of them by year 2000). Important: Expansion of U.S. exports was explored in depth, in a 37-page, 7⅞ x 10¼ inch report by 11 ad hoc committees of—total—267 leading U.S. businessmen and some professors, all named, in the "White House Conference on [U.S.] Export Expansion," September 17–18, 1963, sub-

mitted to the late President John F. Kennedy on September 20, 1963, over the signature of Mr. Luther H. Hodges, conference chairman and the then Secretary of Commerce. This excellent report made definite recommendations for "Government action by the executive and legislative branches," plus others which called for "grassroots activity by business, labor, agriculture, and educators throughout the country." The conference vice chairmen were: Mr. Neil C. Hurley, Jr., Chairman, National Export Expansion Council, and chairman of the board and president, Thor Power Tool Co.; Mr. Fred C. Foy, Honorary Chairman, National Export Expansion Council, chairman of the board, Koppers Co., Inc.; Mr. Thomas J. Watson, Jr., chairman of the board, International Business Machines, Inc.; the Honorable Franklin D. Roosevelt, Jr., Under Secretary of Commerce, chairman for procedures and assignments; Mr. E. E. Schnellbacher, Assistant Director, Bureau of International Commerce, executive director of the conference—and still at his post, i.e., available. It is of utmost importance that those who now review all "aspects of the U.S. trade structure and the administration of the [U.S.] trade agreements program" (as stated in the Senate Finance Committee's press release of Sept. 27, 1967) study this 1963 official report so as to harvest its conclusions.

9. "The prospects for [U.S.] exports and [U.S.] imports over the next decade and how the Kennedy round negotiations will affect those trends," and, also, U.S. jobs.

10. "The major tariff and nontariff barriers which must be faced in [U.S.] exporting and some estimates of their relative effects." (NOTE.—Devaluation of foreign currencies are now the main nontariff strategy in world trade. But their impacts on the U.S. balance of trade and on the U.S. balance of payments have never been appraised!! See sec. D, below.)

11. "The consequences for U.S. exports of the adoption by the European Economic Community of a common value added tax."

12. "The effect of U.S. foreign investments (and the voluntary restraint programs) on U.S. exports to developed and less developed countries." (NOTE.—Because of our planet's new jet age intimacies of its people and of their goods and services and because of the world's exploding technology it is urgent for humans everywhere to realize that every community/nation, including our country, is underdeveloped in terms of both its short-term and long-term potentials, which are decisionmaking guidelines for all business.)

13. "Tariff preferences for products of less developed countries." (NOTE.—This relates to what economists like to call infant industries. Most college textbooks on economics can orient a student of this subject on it.)

14. "Commodity agreements." (NOTE.—Agricultural products are the prime examples of this problem. Representative William J. Scherle, of Iowa, a grain and livestock farmer and businessman, is a specialist in this world trading of agricultural commodities. For Mr. Scherle's penetration see the pages before and after page 969 of the printed 1134-page hearings of Representative Dent's General Subcommittee on Labor for July 27, 1967.)

15. "A free-trade area with U.S. participation." (NOTE 1.—World Trade is confrontation of living standards, now that "know-how" is worldwide, often in 24 hours. The best U.S. perspective on world trade,

in the last four decades, is Representative John H. Dent's House Concurrent Resolution 325 of April 26, 1967, the text of which is:

(CONCURRENT RESOLUTION

(Whereas industries in the United States engaged in the production of goods are required to meet the minimum wage and overtime compensation standards of the Fair Labor Standards Act of 1938; and

(Whereas these [U.S.] industries are subject to unfair competition by reason of the importation of goods from foreign producers who do not meet such standards: Now, therefore, be it

(Resolved by the House of Representatives (the Senate concurring). That it is the sense of the Congress that the minimum wage and overtime compensation standards established for employees in the United States of America by the Fair Labor Standards Act of 1938 should be met by foreign producers and that the importation of goods from foreign producers who do not meet such standards should be prohibited.)

(NOTE 2.—On January 9, 1848, in Brussels, Belgium, the Communist Karl Marx advocated "free trade" saying "the free-trade system works destructively," "carries antagonism of proletariat and bourgeoisie to the uttermost point," "the free trade system hastens the social revolution," "in this revolutionary sense alone * * * I am in favor of free trade.")

16. "The GATT as an instrument for assuring expanded world trade on a reciprocal, nondiscriminatory basis." (NOTE.—Up to now there is no worldwide definition of "reciprocal" which can be implemented de facto in all our planet's 140 nations, of which the United States is one.)

A-3. The goal of world trade is (1) betterment of our planet's exploding population, now 3,333 million humans; (2) without harm to any group of its people, i.e., to any of its 140 nations. This goal is apparent in each of the 16 areas listed above. But—

Sadly lacking is a formula by which a—especially our—nation can audit its world trade in a businesslike way. (For definition of "businesslike," consult certified public accountants who compile—on one double page—a "consolidated balance sheet," for at least 2 years, of leading U.S. corporations. Haskins & Sells, 2 Broadway, New York, N.Y., handles this work for the largest corporation in the United States viz., General Motors Corp., with its 21 foreign affiliates/subsidiaries, as instanced in GM's annual reports year after year, q.v., Senator John Sparkman, member of nine committees, went into this matter in the last months of 1966 in connection with his bill S. 3522, on which Senate Finance held hearings as reported in its 177-page brochure "Foreign Trade Statistics," released in September 1966.)

A-4. I plead with the Senate Finance Committee to (1) set up machinery to evolve a formula for the audit of U.S. world trade (this is not payments), and urge (2) that the committee consider giving instructions to that end to the U.S. Tariff Commission, comparable to the instructions re valuation of imports which it gave to the Tariff Commission on February 9, 1966 (which produced, for the first time in U.S. history, a way to convert the f.o.b.-countries of their origins values of U.S. imports to their approximate c.i.f. values, the world standard. Non-American, and many American, world trade experts applaud).

A-5. A vital computation in any nation's world trade (this is not payments) is its "trade surplus", and all nations compute it so as to evolve trade policies.

The world consensus on how to compute it is this simple, five-word formula (which has a plus or minus answer): "Exports f.o.b. minus imports c.i.f." (The exports must be only bona fide, commercial sales, i.e., include no "give-aways" and no subsidized exports.)

A–6. Of help in implementing the above formula is this basic knowledge (seldom taught in U.S. colleges):

Balance of trade.—Balanza comercial-Balanca comercial-Bilancia commerciale-Balance commerciale-Handelsbilanz-Maazan mischari-Empopikov ioozuylov-etc. I have the Burmese and the Japanese, i.e., a total of 10 languages out of the 135 major languages used by our planet's 140 trading nations.

Balance of payments.—Balanza de pagos-Balança de pagamentos-Bilancia dei pagamenti-Balance des paiements-Zahlungsbilanz-Maazan tashlumin- 'Ioozuylor Phnywuwr, and I have the Burmese and the Japanese.

A–7. Each nation computes its own BOT (balance of trade) and its own BOP (balance of payments) with its own official statistics. It does not use those of our country, an obvious fact but ignored, often, by U.S. academicians researching on world trade!

A–8. See A–5 above. These are not one, but two dishonesties in the U.S. official (sic) computation of the U.S. "trade surplus," viz:

I. The f.o.b. export figure includes both giveaways and subsidized exports, tabulating them, believe it or not, as parts of commercial sales!

II. The c.i.f. import figure is not even used! What is used is the f.o.b. values of U.S. imports in the * * * countries of their origins.

A–9. Were the "U.S. trade surplus" computed honestly, it would be a minus result, meaning that U.S. imports exceed U.S. exports.

A–10. The above conclusion is clarified in—

(1) Representative Gross' insertion in the Congressional Record for September 29, 1965, copy attached, q.v.

(2) My letter of September 9, 1966, to Senate Finance, copy attached, q.v. (that letter required 10 years to write).

[From the Congressional Record, Sept. 29, 1965]

United States Is Noncompetitive in World Trade

DISTORTED TRADE STATISTICS

The SPEAKER. Under a previous order of the House, the gentleman from Iowa [Mr. Gross] is recognized for 30 minutes.

Mr. GROSS. Mr. Speaker, it is my purpose to bring before the Members of this House a matter that I think will be recognized as being of great importance, especially as it bears on our foreign trade policy and the balance-of-payments equation.

I refer to what has been a longtime practice in the statistical treatment of our imports. This practice has led to a distortion of the balance of trade between this country and the other leading trading nations; and the distortion is important enough to affect policies and actions that may be shaped or modified by statistical data.

We hear a great deal, for example, about our favorable trade balance in the form of export surpluses from year to year. The matter to which I refer should lead to greater caution in statistical use, and even to a change in the collection and publishing of these statistics.

Only in recent times has it come to be noticed that the United States uses a different basis for reporting its imports from that followed by nearly all other countries of the world. We record our imports to reflect the f.o.b. value, foreign point of shipment, whereas nearly all other countries report their imports on c.i.f. or port of entry basis. They add to the f.o.b., foreign port of export, the freight and insurance charges incident to shipment to their own ports of entry from abroad. This is the method referred to as c.i.f.—cost, insurance, and freight.

As a result when we export $1 million, let us say, to Britain, their import figure, covering the identical merchandise, will record the imports as some $1.2 million, by adding costs of insurance and freight from U.S. port of export to England. This will be some $200,000 higher than our records show as exports; while if Britain ships us $1 million in merchandise we record it as $1 million and not at $1.2 million or some similar figure.

It has not been possible to compute precisely the amount of the distortion caused by these different bases of recording imports. However, we have some statistics on total imports of particular countries from this country, and these import figures may be matched with our recorded exports to those same countries.

For example, in 1963, according to our official Commerce Department statistics, we exported to Japan a total of $1,714 million in merchandise. Japan recorded imports during the same year from the United States at $2,077 million, or $363 million more than our exports. While the cutoff date at each end of the year will find shipments at sea in both directions, the distortion cannot be very large. The $363 million can be regarded as representing approximately the shipping charges and insurance from the United States to Japan, or 21.2 percent more than our export statistics show. In 1964, using the c.i.f. basis, Japan recorded our exports of $1,908 million as imports of $2,336 million from this country, or 22.4 percent higher than our recorded exports.

According to our own statistics this country exported $1,714 million to Japan in 1963 while we imported $1,498 million from Japan. Were our import statstics recorded on a c.i.f.—cost, insurance, and freight—basis and, assuming shipping and insurance charges on the eastward voyage from Japan to the United States to be the same as on the westward voyage, we would increase our import figures from Japan by 21.2 percent of the total of $1,498 million. The total would then have been $1,815 million. In other words, the United States would have recorded an adverse balance in trade with Japan in the magnitude of $101 million instead of showing a surplus of exports in the amount of $216 million, as recorded in our official statistics.

If we turn again to 1964 we find a similar distortion. According to our official trade statistics we exported to Japan $1,908 million in that year while we imported $1,769 million giving us a surplus in exports of $139 million. If, however, we bring our f.o.b.—foreign port—level up to the c.i.f. value, again using the difference already referred to—this time 22.4 percent as representing the difference between f.o.b. and c.i.f—we find the imports of $1,769 from Japan rising to $2,165 million, leaving us with an adverse merchandise balance of $257 million instead of a surplus of $139 million

Mr. Speaker, to me this transformation of the United States from a surplus to a substantial deficit position in our trade with Japan is a serious matter. The public, including all of us, have been fed with the impression that our exports to Japan have exceeded our imports from Japan, year after year. Japan apparently, despite her valiant struggle, had not been able to square her trade with us.

This distortion of fact, indefensible as it is, undoubtedly colored our trade policy vis-a-vis Japan. We pride ourselves on being guided by the facts. This is all the more reason why we should be careful of the data on which we rely. There is a great onus on our executive departments that collect and disseminate statistics, to assure the accuracy and integrity of all the statistical data they give out because we seldom have other sources and therefore must rely on the Government.

If we turn from Japan to the United Kingdom we find a similar distortion. The United Kingdom, like Japan, computes its import statstictics on the foreign sales price plus shipping costs and insurance from the foreign port of shipment to the English port.

If we match our exports, f.o.b., United States, as recorded in our official statistics, with the United Kingdom's recording of these same imports for the years 1962, 1963, and 1964, we find that the British after adding shipping costs and insurance from this country, recorded her imports from us at a higher average level for the 3 years of 22 percent.

Our exports of $1,074 million to the United Kingdom in 1962 were recorded at $1,334 million in the official statistics of that country. This was 24.1 percent higher than our exports. The excess of the British imports according to the British method of recording imports was therefore $260 million.

However, if we add 24.1 percent to our imports of $1,005 million from the United Kingdom in 1962, they would reach a level of $1,247 million, or $173 million more than our exports of $1,074 million to that country.

Yet, the impression has been widespread that Britain has been suffering from a substantial adverse merchandise trade balance with this country.

In 1963 there was an apparent British deficit of $387 million in her trade with us; but if we enhance our imports from there by 20 percent—which was the difference attributable to insurance and freight in 1963—they will reach a level of $1,295 million compared with our exports of $1,161 million. This would show an adverse U.S. balance of $134 million.

For 1964 our exports were $1,468, recorded by the British at $1,790 by adding shipping costs and insurance. According to this result the British deficit was $322 million. We recorded our imports from Britain at $1,141 million. If we add 22 percent, which measures the British markup attributable to the c.i.f. basis she uses, our imports from that country would have been $1,392, instead of $1,141 as recorded by us, leaving us this time with a merchandise export surplus, but one of only $76 million instead of $322 million, as figured by the United Kingdom.

Mr. Speaker, the average markup on our imports from Japan and the United Kingdom would be 22.9 percent for the 3 years of 1962–64 if we undertook to bring our import statistics to a par with those of nearly all other countries, assuming that insurance, freight, and other shipping charges from all other countries were the same on the average as from England and Japan. This, however, is not the case. Obviously the charges applicable to shipments from Canada and Mexico would be very much lower.

Since these two countries account for 20 percent of our imports this share should be averaged in at close to zero. If we use zero for them, as if no freight or insurance charges were applicable to imports from them, the 22.9 percent would be reduced by one-fifth—20 percent.

Inasmuch as the remaining countries—with the exception of Cuba, with which we have only a very small amount of trade—lie a considerable distance from us, some of them farther away than England or Japan, it would seem safe to accept the figure of 22.9 percent minus 20 percent. The remainder would be 18.3 percent, applicable to imports as a global average.

To be on the safe side, we might settle for 17½ percent.

That this is far from being an insignificant factor in our merchandisise trade balance will become obvious as soon as we apply it to our total imports. These were recorded at $18.68 billion in 1964.

If we enhance them by 17½ percent we arrive at an additional $3.25 billion. Added to $18.68 billion, the total would be $21.93 billion. This would put our imports on a comparable basis with those of nearly all other countries. Our 1964 exports were $25.6 billion, thus casting a surplus of $6.9 billion under the official system of recording imports adhered to by the Department of Commerce. If the correction is made the surplus shrinks to $3.65 billion.

This reduced surplus is then not the towering factor in our balance of payments that it has been widely acclaimed as being. It is only half of the magnitude generally assigned to it.

This serious shrinkage of a plus factor in our merchandise trade balance resulting from abandonment of on untenable method of measuring our imports has other implications.

It flatly contradicts the perennial claim that American industry is indeed highly competitive in foreign markets, as witness our huge export surpluses. This inflated balloon is now deflated beyond hope of reinflation.

I have previously pointed out to this House that our export of subsidized farm products—wheat, wheat flour, rice, cotton, and dairy products—has been, at a level of some $2.3 billion. Most of these shipments were made under the AID program. Of this $2.3 billion we shipped $1.38 billion during the fiscal year 1963–64 in the form of wheat, wheat flour, cotton, rice, dairy products, tobacco, and oilseed products with export payments, over and above AID exports. These were classified as "commercial exports," by the Department of Commerce even though they were subsidized. These shipments have been treated as separate from governmentally assisted exports and not reported under that classification, thus making our commercial exports look better than they should. See Foreign Agricultural Trade, May 1965, U.S. Department of Agriculture, table 1, page 7.

In 1964 we shipped additionally $1.4 billion in nonagricultural merchandise financed by U.S. Government grants and capital. See Foreign Agricultural Trade, July 1965, U.S. Department of Agriculture, table 1, page 8. Added to the $2.3 billion of U.S. Government financed exports of agricultural products, the total rises to $3.7 billion. This then neatly wipes out the $3.65 billion of surplus exports to which the $6.9 billion had shrunk after our imports were placed on a c.i.f. basis.

Mr. Speaker, the upshot is that the United States does not enjoy an export surplus at all if we count only our private commercial unsubsidized exports; and it is these exports that measure our competitive status in the world.

The stimulation of our exports of agricultural products by subsidies and grants has hidden the lag in our exports of manufactured goods with the exception of machinery. Our exports of machinery, stimulated by our fast-growing foreign investments, rose from $3.95 billion in 1957 to $6.3 billion in 1963, a gain of $2.5 billion. This more than equaled the increase of $2.1 in our total exports during the same period.

Considering the increase in agricultural exports and that of machinery, it is obvious that our exports of other manufactured goods combined must have shrunk. These other exports cover the whole spectrum of American industry. Some of these others did increase, helped by AID shipments, but our private unsubsidized commercial exports in general, with the exception of machinery, declined.

This is the situation and it is at complete variance with the official statistics on which optimistic statements continue to be based.

Mr. Speaker, I am not an expert on trade statistics but am fully confident that the statistics I have presented are reliable. They were supplied by Mr. O. R. Strackbein who is chairman of the Nation-Wide Committee on Import-Export Policy. His knowledge in this field needs no affirmation by me, and his repuation for accuracy of the data supplied by him has not been questioned to my knowledge over the years. I have no hesitation in relying on his researches.

Mr. Speaker, I am introducing a resolution designed to cure the distortion of statistics of which we have been the victims. I think we in Congress no less than the public are entitled to get our statistics straight. Too much rides on conclusions drawn from them to continue to submit to the dangers of false guidance. False and unjustifiable policies are too prevalent as it is. We do not need false statistics to encourage and bolster them.

Mr. Hall. Mr. Speaker, will the gentleman yield?

Mr. Gross. Yes, I am glad to yield to the gentleman from Missouri.

Mr. Hall. I should like to compliment the gentleman on taking the time to appear in the well of the House at this time of the day to bring this very important subject before the House and before the Nation. As I understand, this deals with the statistical way of reporting imports in some countries, and exports in others, and the treatment of each, as differentiated from the way that our Department of Commerce treats our calculation of exports and imports.

Mr. Gross. The gentleman is precisely correct.

Mr. Hall. I believe it is most noteworthy that the gentleman brings this to our attention. Of course, until such time as we can at least "figure," as we say down in the Ozarks, in the same way that our competitors around the world in international trade are calculating exports and imports, we certainly cannot expect to meet their requirements, we certainly cannot expect to "out figure" the European Common Market, and we certainly cannot expect to tear down all of our protective tariffs as we did under the reciprocal trade agreements of 1962 and not have an outflow of gold and an imbalance of trade in favor of the other nations around the world.

This is a most timely and important subject, and I compliment the gentleman for bringing this to the attention of the House. I thank him from the bottom of my heart.

Mr. Gross. I thank the gentleman from Missouri for his kind comment.

Washington, D.C., *September 9, 1966.*

To: U.S. Senate Committee on Finance.

Attention: Statisticians.

References: (1) S.J. Res. 115 (Senator Dirksen); (2) S. 3522 (Senator Sparkman).

Subject: Currency valuation of imports. World consensus is C.I.F.

Gentlemen: A. As I did on July 22, 1962, and on February 24, 1965, I confirm again now, on September 9, 1966, my 155-word letter to you of July 3, 1958, published on page 1517 of your 1958 hearings on H.R. 12591 (Trade-Agreements Act extension), the Honorable Harry Flood Byrd being then your chairman.

Indeed, additional worldwide data assembled by continuous ad hoc research during the intervening 8 years actually fortify the statements in that letter, including the deplorable one second-rating our U.S. "authorities" on international trade (not to be confused with international payments) from our U.S. population (now one-sixteenth of earth's peoples) to the non-U.S. "authorities" from the fifteenth-sixteenths of earth's peoples outside our United States.

B. One reason for the nonsuperiority of our U.S. "authorities": Those U.S. texts on economics studied in our U.S. universities do not have even an entry for c.i.f. in their indexes. Thus, U.S. students are not taught the meaning of the international triad, c.i.f. and, lacking intimate commercial experience in international-trade auditing, they reach the rating of "U.S. authorities" without suspecting the de facto worldwide significance of c.i.f. (President Eisenhower's specialist is included in the above, his name being available. And, I can add other names.)

C. The "professors" err. One example: On page 136 of his 197-page, 1945, $2.50 book, "America's Role in the World Economy," the then "Littauer Professor of Political Economy" at Harvard University, and, also, "Special Economic Adviser, Board of Governors of the U.S. Federal Reserve System," Dr. Alvin H. Hansen, lists five products in which, he says, "American producers . . . can undersell any competitor." For each one of his astutely selected five items, both U.S. and non-U.S. statistics now prove the professor wrong. Nor is c.i.f. in the index of his book. Nor balance of trade, although there are 16 references to balance of payments. Nor does he make appraisals of even one of the many foreign devaluations on the U.S. socioeconomy. (And, to tell the whole truth, a pedagog's first duty, on his page 188, after his sentence, "American imports did not rise," he should have stated that the United States was forced to devalue—on January 31, 1934—our dollar. That devaluation made (1) U.S. products cost foreigners 41.06 percent less, but made (2) foreign products, i.e., imports, cost Americans 69 percent more. Naturally our imports "did not rise." The disaster which the professor generates is that those whom he taught grew up to be influential U.S. "thinkers." Even helped formulate U.S. policies. And some of the opinions voiced to your committee are proliferations of the professor's errors.

D. For an honest dedication to pro-United States and proworld analyses of international trade, Mr. O. R. Strackbein has achieved both U.S. and non-U.S. applause. Our country, for its and the world's guidance, needs more philosophers of international trade/jobs realism like him. His 193-page, mid-1965, $3.75 book, "American Enterprise and Foreign Trade," mostly well reviewed and commended, is a compact sample of his decades of his productive thinking pro-United States and proworld.

E. At the committee's hearings on August 31 and September 1, opponents of Senator Dirksen's and Senator Sparkman's bills called the requirements in them too "burdensome" and/or too "costly." Those witnesses' provincialism could not have gone farther, since 133 out of 154 nations—this is my later count; in my letter of July 3, 1958, I said "89 out of 104"; but compile your own list, there being three easy sources—officially tabulate their imports c.i.f., which uniformity makes c.i.f. the world consensus.

If the c.i.f. procedure is so burdensome and so costly why don't at least some of those 133 countries switch to the U.S. base, viz., f.o.b. countries of origins of the imports? I insist that these home-grown, bleeding-hearts alarmists confer posthaste with little—smaller than Vermont, U.S.A.—Israel (which made an ad hoc study before electing to tabulate its imports c.i.f.), with United Kingdom (which tabulates f.o.b. for bop and c.i.f. for bot), with Japan, and with all the old trading countries on our earth plus the newly emerging African countries, even via their embassies here in our Nation's Capital. The opponents of these bills must cure their provincialism—as non-U.S. experts well know.

F. During the hearings, the outstanding bleeding hearts were: (1) The Assistant Secretary for International Affairs from the U.S. Treasury Department. (2) Counsel for the United States-Japan Trade Council, who failed to tell Senate Finance Committee the "whole truth," viz, that his employer, Japan, tabulates its imports c.i.f. (3) The representative for the "National Council of American Importers, Inc." who really goofed (details available).

G. The guiding perspective on international trade (not payments) is the "warehouse" concept of nations, including our country. An emigrant and an export from that warehouse are analogous; an immigrant and an import are analogous. The formulas to compute the excess of immigrants over emigrants (and vice versa) and the excess of exports over imports (and vice versa) are identical.

They derive from the "inventory" concept of people (as in a census) and of merchandise. That is, when a U.S. resident emigrates he decreases by one human the total U.S. "population mix"; when an immigrant enters the United States he adds one human to the total U.S. "population mix"—and our Bureau of the Census so counts. In identical manner, when a product is exported from the United States it decreases the total "U.S. product mix" in the warehouse known as United States; when an import enters the United States it adds to the total "U.S. product mix" in terms of its inventory value, which is c.i.f. as the experts of 133 nations can confirm.

II. Lacking an official U.S. c.i.f. import figure, U.S. policymakers and U.S. students of international trade (not payments) cannot compute essential data, two of which are:

(1) Per capita imports (check with 133 countries).

(2) Export/import surplus (check with 133 countries).

Not even the Department of State can operate vis-a-vis other nations, either taken as groups (e.g., Common Market, GATT, etc., etc.) or as individual trading partners of the United States of America without these essential guides to trends. Also, it is inconceivable that the (staff of the) President's own "Special Representative for Trade Negotiations" can honestly overcome this hurdle of no(!) c.i.f. statistics for U.S. imports in confrontations with the delegates whose countries have, for decades, tabulated their own imports c.i.f. I believe these countries total 133, and have nine-tenths of earth's peoples as their populations

Respectfully,

C. A. Castle.

Note.—Ten years were required to set up the contents of the above 1,192-word letter because experts and official statistics of foreign countries had to be consulted.)

Section B. Fifty-percent victory.

Section B-1. References: (1) In its 24-page (plus two preface pages) release of February 7, 1967, the U.S. Tariff Commission reported on the results of its studies on "methods of valuation [of imports] used by the United States and by its principal trading partners to determine the duty applicable to imports" This study was ordered by Senate Finance Committee on February 9, 1966, in Senator Long's letter to the Chairman of the U.S. Tariff Commission. (2) In its four-page release—CB66-152—of December 20, 1966, the Bureau of the Census, U.S. Department of Commerce, reported its findings re the "value of U.S. imports on a c.i.f. basis."

Section B-2. The USTC release (its pages 1 and 22 of its statistics) indicates an addition of 10 percent to convert current official U.S. import values to a c.i.f. base. The Census release is entitled "C.I.F. Calculations Add Nine Percent to Import Figures."

Section B-3. These official findings for the first time in U.S. history, provide, officially, for computation of U.S. imports on the c.i.f. base, which has been the world standard for decades.

Section B-4. It is, however, only a 50-percent victory, because the 10-percent and the 9-percent do not match the percentage used by other nations in their tabulations of their imports of goods from the United States. Their percentages are: 24.08-percent, 19.9-percent, 25.1 percent, 21.5 percent, and 16.6 percent—and 12 to 18 percent for nine countries as a group.

Section B-5. All necessary data re the above is available in statistical detail from official sources.

Section C. My letter to Senate Finance, dated September 9, 1966 (1⅓ pages, 1,192 words, in "Foreign Trade Statistics," the brochure released by Senate Finance in September 1966), is attached to section A-10 above. It required 10 years to set up the content of that letter. Its content is lasting, can be expanded into a text on international trade (this is not balance of payments, but is related to "Measuring the Nation's Wealth, Wealth Inventory Planning Study," as reported in December 1964, in an 835-page Joint Economic Committee book, following hearings by Senator William Proxmire's Subcommittee on Economic Statistics).

Section C–1. The base logic is:

1. When an export leaves the warehouse called the U.S.A., it reduces the inventory of U.S. goods, i.e., the U.S. "wealth," by its f.o.b. value.

2. When an import enters the warehouse called the U.S.A., it augments the inventory of U.S. goods, i.e., the U.S. "wealth," by its c.i.f. value.

Section C–2. I have worked over the above inventory concepts of U.S. exports and of U.S. imports with international authorities, one in Brookings Institution and one in the U.S. Department of Agriculture for farm products, since foreign countries sell into the U.S.A. annually some $5 million (c.i.f.) farm products, half of them identical with those produced on U.S. farms by U.S. farmers, thus reducing the latter's jobs and explaining, significantly, the alarming decrease in the numbers of U.S. farmers. (Indeed, it now seems unwise for U.S. teenagers to prepare to go into U.S. farming for lifetime livelihoods, since U.S. farm jobs are likely to phase out before today's teenagers reach their retirement at 65 years, i.e., from years 2013 to 2019.)

Devaluation of foreign currencies

Section D–1. There are about 140 currencies on our planet, all used in world trade, which is business. Each nation fixes the "value" of its own currency, and can alter that "value" again and again and again; and almost all changes in the "value" of a currency are downward, i.e., devaluation. (The European guilder and the deutschemark were upvalued, but by only a tiny fraction of their prior devaluations. I know of no other up-valuation.) The International Monetary Fund, a non-U.S. agency, attempts to monitor devaluation, with incomplete success.

Section D–2. For I have a list [should be published] of 99 devaluations since 1940, 25 of them in 1966 alone (that is, during the Kennedy round trade negotiations). All these devaluations were made on the advice of the devaluing countries' trade experts, i.e., not on whims.

Section D–3. All aimed at (1) increasing the devaluing country's sales of its goods and services (tourism, etc.); and (2) decreasing the devaluing country's purchases of its imports of goods and services (tourism, etc.). Both objectives were usually aimed mainly at the United States of America. (Two examples: Canada's devaluation of its dollar on May 2, 1962; and Mexico's four devaluations of its peso which was worth 0.20⅗ U.S. cent in 1946, but since 1954, has been worth only 0.08 U.S. cent. Both these two countries have pronounced their respectives devaluations a "success," thus implying, perhaps, future devaluations, an implication which I read into President (of Mexico) Gustavo Díaz Ordaz's address to our Congress on October 27, 1967, using the original version in Spanish.)

Section D–4. A devaluation "lasts" about a decade. All its impacts are not implemented the next day, as some U.S. experts seem to me to think.

Section D–5. After its trading partners have "adjusted" to one of its devaluations, a devaluing country can devalue—again. Devaluation is, now, recurrent trade strategy.

The most important part of this paper

Section D–6. Items 3 and 5 of section 8 (powers of Congress) of article I of the Constitution of the United States read:

> The Congress shall have power—
> 3. To regulate commerce with foreign nations * * *
> 5. To coin money, regulate the value thereof and of foreign coin * * *.

Section D–7. But, the powers of the U.S. Congress are limited to the one fifty-fourth of our planets' surface; i.e., to one-sixteenth of earth's land which is the geographical United States, which insignificance is emphasized by noting that our country is but one of our planets' 140 "nations."

Section D–8. The planets' other 139 nations have, only since 1940, devalued their currencies at least 101 times. In so doing they have up-valued our U.S. dollar in their markets, a de facto change in its value which our Congress cannot control. It is, therefore, in order for an American to denounce those devaluations as "unconstitutional." I beg that the Senate Finance Committee take a position on this point.

Section D–9. Illustration of the above: If your neighbor removes—say—2 feet of topsoil from his plot, he has done two things, viz: (1) He has made his plot lower than yours, but, (2) he has made your plot higher than his.

Section D–10. Shocking: There is no study of the impacts of foreign devaluations in the U.S. socioeconomy. In 2 years of search I have been unable to find one in any U.S. agency and in any U.S. college.

Section D–11. Worse: Two employees in Federal Reserve, one in Export-Import Bank, a staff member of the Joint Economic Committee, a member of Brookings Institution, and the Bureau of International Commerce, U.S. Department of Commerce, in official letters in 1965 and in 1967, all confirm that "no official U.S. Government study has been prepared on this subject" of the "effects of foreign devaluations on the U.S. balance of payments and the U.S. balance of trade."

Section D–12. No denunciation of the above bureaucratic stupidity/negligence can possibly be too strong.

Section E–1. Conclusion: U.S. nonrealism in (1) the official U.S. arithmetic of U.S. foreign trade (this is not payments) and in (2) the the manipulated "values" of non-U.S. currencies vis-à-vis our U.S. dollar has made U.S. foreign trade policies catastrophically harmful to both the U.S. socioeconomy and to the socioeconomies of the other 139 nations on our planet.

Section E–2. How? By generating synthetic "comparative advantages" which drive a nation's industries into wrong areas of production for generations.

(This subject is better discussed with trade experts in the fifteen-sixteenths of our planet's peoples outside our country than with their counterparts inside the United States, only one-sixteenth of our planet's peoples.)

Section F. Addendum of incredible oddities applicable because all are true, to assertions in the above "paper."

Section F–1. The devaluation of the U.S. dollar in 1934 made—

Our goods and services cost foreigners 40 percent less.

Our purchases of foreign goods and services cost us 69 percent more.

Section F–2. When Canada devalued (May 2, 1962), a U.S. broker supplied a list of seven Canadian industries which would benefit—one being International Nickel—and, contrariwise, (a) the mayor of a Connecticut town wrote to me about the harm done industry in his community, (b) GM and Mead Johnson suffered, etc., etc.

Section F–3. Devaluation equates technical know-how! In one of its publications available in both our language and Spanish, the International Monetary Fund reports that the British pound was devalued to equate $2.80 simply because, at its previous "value" of $4.03, the British could not meet U.S. competition in third countries!

NOTE.—The British are fond of, and adept at, the strategy of devaluation, and are now, the press of November 15, 1967, reports, probably "forced" to devalue their pound again. The British pound has equated: $8.23, $4.87, $4.03, $2.80 (the current rate), and only $2.43 if Britain's 15-percent surcharge on imports (of October 1964, and since rescinded) is computed as one more devaluation of it. Make your own appraisals of what happened to world trade.

Section F–4. There were 25 devaluations in 1966, i.e., during the Kennedy round in Geneva, yet I am informed by a staff member of the President's Special Representative for Trade Negotiations that "* * * devaluations were not up for consideration," which is as fantastic as saying that the designs of a transatlantic liner ignore the water!

Section F–5. In its press release of October 12, 1967, the Embassy of Finland reports the devaluation of its markka, making imports cost Finnish purchasers 31.25 percent more, but making Finnish goods and services (tourism) cost foreign purchasers of them 23.81 percent less.

On pages 65–70 of its "General Summary" (undated; I received it August 25, 1967) the office of the Special Representative for Trade Negotiations reports on the Kennedy round negotiations with Finland—but the devaluation of the markka, taking place after those negotiations, has completely vitiated their impacts upon the socio-economies of both the United States and Finland!

Section F–6. Uruguay devalued, again, on November 6, 1967. Devaluations are currently normal world trade strategy.

Section F–7. Etc., etc.—That U.S. experts on international trade ignore devaluations reflects on them adversely to the nth degree.

Section F–8. The import/export impacts of the Finnish markka's devaluation, in F–5, are official, i.e., the 31.25 percent more and the 23.81 percent less. As given in F–1, the corresponding figures for the U.S. dollar's devaluation (in 1934) are 69 percent more and 40 percent less, according to authorities.

It is incredible that no U.S. agency will compute—and publish—the corresponding percentages for the 101 devaluations that I list, or for any of them, from United Kingdom's repeated devaluations of its pound to, say, Italy's devaluation of its lira. (The U.S. dollar once brought 5 lira; today it buys 625 [1] lira!)

Any mathematician can make the required computations, but they should be made, and published officially by the authorities in the U.S.

[1] Meaning, in reverse, that an Italian must now assemble 625 lira to buy $1 worth of U.S. goods and services. He can't do it!

Government (Treasury, Federal Reserve, etc., etc.) so that they may be quoted. It would be of great help if Senate Finance could insist upon these devaluation percentages.

Section F-9. Because of the fact that U.S. giveaways and U.S. subsidized exports are tabulated as "commercial exports," it is possible for the United States to (1) "up" its "trade surplus" to any figure, merely by, say, giving more wheat to India, etc., etc.; (2) meaning that U.S. trade deficits are easily eliminated, merely by using U.S. taxpayers' money to buy U.S. "exports"!

Section F-10. Ecology of our Nation's Capital: Were our U.S. capital a commercial center, like Pittsburgh, Bonn, London, Berne, Paris, Tokyo, Amsterdam, etc., etc., U.S. official trade negotiators would live intimately, for years, with U.S. industries, experiencing as their neighbors the harmful or helpful impacts of imports. This "education" is standard for all the foreign negotiators!—but not for the U.S. bureaucrats who confront those talented foreigners in trade negotiations.

Section F-11. All our planet's 140 nations, having exploding populations, require more jobs. There are only two ways by which any nation can generate its jobs, viz: its internal commerce and its foreign trade. It is now in "style" to stress the latter rather than the former, but this solution cannot be final, since our planet, as a whole, has to be self-sufficient. It cannot export to or import from other planets.

PART III

Specific Industry Problems

Statement of Independent Refiners Association of America Regarding Oil Import Quotas

SUMMARY

Independent refiners share the concern of independent producers with regard to recent changes in the oil import program which are designed for purposes other than the national security and which threaten the effectiveness of the program in maintaining a healthy producing and refining industry. They endorse S. 2332 which seeks to confirm and tighten the established oil import program.

IRAA points out that the real success of the program depends not only on the overall quantitative limit on imports but also significantly upon the way in which quotas are actually distributed. This aspect of the matter, which is not touched by the presently proposed legislation, is of particular concern to independent refiners because the very survival of most independent refiners today depends upon their oil import quotas.

There was carefully developed over several years and under three Presidents a method for distributing import quotas which has been highly effective; namely, to refiners on a sliding scale basis in inverse relation to refining size. To discourage further deleterious tinkering with the program, IRAA urges the Senate Finance Committee to express its endorsement of this method of distributing these valuable import rights and to confirm the quota treatment which the independent refiner has had and must continue to have if the import program is to succeed.

Detailed reasons and views in support of IRAA's position are set forth in the current statement and in several prior IRAA statements at congressional and administrative hearings. These are submitted and also incorporated by reference.

STATEMENT

This statement is submitted by the Independent Refiners Association of America for two purposes. The first is to express the views of this association in connection with the committee hearings of October 18–20 on specific import quota proposals including oil. The second is to express IRAA's views with respect to the committee's general review of U.S. trade policies, and the proposed extension of the trade agreements statutes, as to which hearings are yet to be convened and the committee has asked that papers be filed in advance.

It is appropriate at the outset to identify this association and the companies it represents. The Independent Refiners Association of America consists solely of independent oil refiners. It includes independent refiners of all types—in all parts of the country and of varying size—representing their common interests as independents.

A word about the independent refiner. The independent refiner characteristically owns or controls little of the crude petroleum which he processes and except in rare instances, has little control over the markets in which he sells the products which he manufactures. Yet without a refining element in the petroleum industry crude oil cannot be transformed into consumable products and without the independent refiner, the competitive elements in the marketplace which provide such products to the consumer will be removed. Moreover, the independent refiner by size and location possesses facilities not readily susceptible of destruction, in even the most grave national emergency. Further, an excess refining capacity upon which this country must depend in times of national peril exists in operable condition, immediately available, only by virtue of the existence of the plants of the independent refiner. The independent refiner is, therefore, critically important to competition in the domestic economy and to our national security in emergencies.

Because of their position, dependent upon the purchase of crude oil for their raw material supply, independent refiners have had from the inception of oil import controls a special concern with the measures proposed to allocate foreign oil to firms in the United States. From the outset of import controls in 1959, this subject has been a matter of major interest to the association and its members. The current importance of import controls to independent refiners is most simply illustrated by the fact that, absent the share in foreign oil which the import control program allocates to independent refiners, most independent refiners in the United States would be operating at a loss today.

As a result of IRAA's deep concern with oil imports we have testified at all of the congressional hearings bearing on this subject and all of the administrative hearings on this subject since the inception of the program. The impact upon independent refiners of alternative control measures and the facts in support of independent refiners' proposals (which have been largely embodied in the program as developed until recently) have been set forth previously in these various statements. The most recent of these, submitted in the Department of the Interior's general hearings on the oil import program in May 1967, brought these facts up to date. In the interest of brevity we incorporate by reference and attach herewith certain of these key statements, to wit: statement of May 10, 1961, before the Department of the Interior oil import hearings; statement of September 2, 1964, to the Senate Select Committee on Small Business; statement of March 10, 1965, before the Department of the Interior oil import hearings; statement before the May 22–24, 1967, Department of the Interior oil import hearings, and the statement of Under Secretary Elmer Bennett dated April 21, 1960, explaining the fundamental premises of the import program, and referred to in the last-mentioned IRAA statement.

We should like, however, to highlight certain aspects of the matter of direct and immediate significance for the legislation currently under review.

1. Oil import controls differ from general protectionist legislation

The pending oil import legislation (i.e., S. 2332) differs greatly from the pending bills of a general protectionist nature considered by the Senate Finance Committee in the hearings of October 18–20, 1967. It is most significant that the existing oil import program (which it is the purpose of S. 2332 to confirm) has its statutory origin and basis in the several trade expansion acts. Oil import controls are there authorized—under the national security exception to the general program for unrestricted trade. A national security exception was recognized as a necessary part of this country's trade expansion policies. National security has been and should continue to be the basis and the objective and correspondingly the limit of the oil import program.

The other protectionist bills pending before the Senate Finance Committee represent instead a direct collision with thhe policy of free trade which so recently was pressed to significantly new accomplishments in the so-called Kennedy round. This difference between the oil import control legislation and the bills of a general protectionist nature should be recognized in the consideration of these bills by the Congress. The national security exception to free trade, which has been an essential part of the free trade policy since its inception, should meet with the approval of even the most vigorous free trade advocates who otherwise would oppose general protectionist legislation.

The oil import proposal now before the committee reflects essentially the concern of its sponsors that recent administrative actions are tending to twist the program toward objectives other than the national security (specific instances are discussed separately below). It represents a tightening of the program to its national security purpose. As such, the legislation deserves the endorsement of everyone including those favoring the original trade expansion legislation now up for further extension.

2. Recent steps to subvert the oil import program

S. 2332 is a response, in effect, to recent steps by the administration, some accomplished and others still proposed, which would have the practical effect of subverting the oil import program as it has been so carefully developed over the years under three different Presidents. The recent measures which would use the import program for purposes other than the national security include:

(*a*) The grant of special import treatment to the Phillips Petroleum Co. to encourage it to make investments in Puerto Rico which would help the economic development of that territory. Following this special deal, other companies promptly sought similar treatment with proposals to stimulate the economic development of Puerto Rico, the Virgin Islands, and even Guam in exchange for the grant of valuable import rights. All these proposals are extraneous to the national security. Worse, they will weaken the program and thus thwart the national security. As desirable as the economic development of these territories may be, it is not an objective of the congressional mandate on which the oil import program is based.[1]

(*b*) The grant of special import quotas to promote air pollution control. The President on July 17, 1967, authorized changes in the oil import program designed to aid in air pollution control. The Secretary of the Interior thereby was authorized to grant additional allocations—

> Notwithstanding the levels established in section 2 of this Proclamation [the limitation on oil imports (except for residual fuel oil) to 12.2% of domestic production in accordance with a careful Cabinet Committee study and Presidential determination that imports above that level would threaten the national security].

A breach of the 12.2-percent limit by the Secretary is there clearly authorized.

In the same proclamation and again for the express purpose of aiding air pollution control, the definition of residual fuel oil (which is outside the 12.2-percent limit) was redefined to include No. 4 fuel oil. The net effect was to remove No. 4 fuel oil from the 12.2-percent limit and to authorize an increase in overall imports beyond the 12.2-percent limit as previously applied by an undetermined amount of No. 4 fuel oil imports. As desirable as the control of air pollution may be and as desirable as strenuous efforts in aid thereof by the Government may be, there is still, however, no connection between air pollution and the national security. Significantly none was even asserted.

(*c*) Expansion of asphalt imports in excess of the 12.2-percent overall limit. The President on April 10, 1967, authorized changes in the oil import program which would permit imports of asphalt "without respect to the levels of imports prescribed in section 2 [the limitation on imports to 12.2 percent of domestic production]". Again, a breach of the 12.2-percent limit by the Secretary is clearly authorized.[2]

(*d*) The administration's threat in February 1967, released through "briefings" by Federal officials, to use import controls as a threat or sanction to enforce compliance with the administration's desire to roll back gasoline prices. No hint of any national security connection

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[1] Trade Expansion Act of 1962, Pub. Law 87–794, 19 U.S.C. § 1862. Nowhere does the statute contemplate grant of quotas for foreign oil for the purpose of improving economic welfare or unemployment which has not been adversely affected by excessive imports. The lawyers who prepared the Presidential Proclamation legitimatizing the special deal for Phillips apparently recognized this because the special quotas for Puerto Rico there authorized were expressly limited to "instances in which the Secretary determines that such action would not impair the accomplishment of the objectives of this Proclamation. . . ." (Section 8(b)(2) of Proclamation 3279, as amended.) The Secretary has authorized the Phillips deal; impliedly he has determined that this one special deal will "not impair the accomplishments of the objectives of this Proclamation." But what about the host of applications for similar treatment now pending! Also interesting: the case for quotas for Puerto Rico and the Virgin Islands is completely at odds with the statute's concern for excessive imports in that it relies on alleviating unemployment by increasing imports into these areas, and thence to the mainland.

[2] The proclamation does limit the Secretary's authority to circumstances which "he determines to be consonant with the objectives of this proclamation" thereby preserving the national security objectives as a matter of legal draftsmanship and thus keeping technically within the congressional mandate. The fact remains, however, that breach of the 12.2-percent limit, as previously determined necessary for the national security, was authorized and authorized prior to and in the absence of any real study of the national security impact of asphalt decontrol, i.e., one inviting industry comment such as the Director of the Office of Emergency Planning subsequently initiated. 32 Fed. Reg. 6155, Apr. 19, 1967.

appears here and none was even suggested. The administration merely found its control over valuable import rights a most powerful tool. It felt no restraint in using this powerful tool for objectives completely unrelated to the national security.

(*e*) There is under consideration by the administration at the present time (by reason of its affirmative sponsorship by key Members of Congress from New England) a proposal which would in effect accord to No. 2 fuel oil (the prime heating oil) a relaxation like that for No. 4 oil, permitting imports beyond the existing 12.2 percent overall limitation. It remains to be seen whether if done, it will be done by "redefinition" as in the case of No. 4 oil or by authorization "notwithstanding" the 12.2 percent limit as in asphalt, and the air pollution bonus quotas. But it is obvious that one breach easily begets another. The express purpose of this proposal is to reduce home heating oil costs for consumers in New England. No hint whatsoever of a national security purpose appears.

With such steps already taken and proposed, the present legislative proposals to restrict such adventurous toying with the program make sense.

3. Significant aspects of the oil import program not dealt with in proposed legislation—To whom shall quotas go?

While the limitation of oil imports quantitatively (heretofore to 12.2 percent of domestic production plus residual as required) is a substantial part of the oil import program and the present bill is concerned solely with tightening such quantitative restrictions, it is important to note that the real success of the program and attainment of its national security objectives depends significantly upon the manner in which quotas are actually distributed.

Because of the large price differential between domestic and foreign oil, these quota rights are valuable. To whom shall these valuable rights be granted and on what basis? This matter, which is not touched by the present legislation, is of particular concern to independent refiners. As noted above, the very survival of most independent refiners depends upon their oil import quotas.

For reasons which are developed in detail in the prior IRAA statements attached hereto, the carefully developed system of distributing import quotas to refiners and on the basis of a sliding scale in inverse relation to refinery size[3] serves best the objectives of the oil import program. For reasons there documented, that system best serves to maintain a sound producing industry, a sound refining industry, a wholesome competitive environment and the health of the small companies in the oil industry upon which national security especially depends. For a single concise statement on this critical point we refer to the explanation of the Government's decision to distribute quotas in this way, given by Under Secretary of the Interior Elmer Bennett on April 21, 1960, a full copy of which is attached hereto. He said in part:

Caught in the two-fold squeeze of declining general business and the competitive pressures from large importers with access to lower-cost imported crude,

[3] In short, the system as developed over many years prior to the recent grant of quotas to petrochemical companies and for the several other purposes noted above.

the domestic refiner was faced with serious problems. I would be less than frank if I did not point out there was grave concern within the Federal Government about the future of the independent refining segment of the industry.

The independent refiner was threatened with extinction by those integrated companies whose refinery locations gave them access to lower-cost raw materials but whose marketing areas everywhere permitted fullest use of this competitive advantage.

The facts and factors there set forth still exist and are still relevant.[4] Extinction of the independent refiner has been averted and this is due directly to the method in which import quotas have been distributed. By that very token, any steps which threaten the independent refiner's quota position, threaten his survival.

IRAA'S RECOMMENDATION

We urge that the Senate Finance Committee's report on S. 2332 include not only an endorsement of the quantitative limits heretofore in effect (which S. 2332 would confirm and tighten), but an endorsement also of the method by which quotas have actually been distributed prior to the recent administrative aberrations herein noted, that is, quotas to refiners and on the basis of a sliding scale in inverse relation to refining size. We urge that the Senate Finance Committee also express clearly its disapproval of the recent steps which have provided for quotas outside of the refiner-sliding scale system and for purposes unrelated to the national security. (If and to the extent that some of the recent steps cannot now be reversed, we urge congressional recognition of the special role of the independent refiner and congressional endorsement of the rule that any reductions in refiner quotas (needed to pay for special quota deals and stay within the 12.2 percent limit) shall be borne by the major oil companies.) Such congressional expression confirming the skillful administrative development of the import control machinery until recently will discourage further tinkering with the import program. This tinkering, if continued, will soon defeat that program's basc objectives and ultimately destroy both the independent refiner and the independent producer.

In taking this position the Senate Finance Committee will also confirm the position and views of every congressional committee which has considered this subject.[5]

Respectfully submitted.

EDWIN JASON DRYER,
MEYERS & DRYER,
Washington, D.C.,
Counsel for the Independent Refiners Association of America.

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[4] See IRAA statement May 22–4, 1967, p. 12.

[5] See especially the report of hearings on "Oil Import Allocations," August 10 and 11, 1964, by the Senate Select Committee on Small Business and the annual reports of that committee from 1964 to date.

GENERAL INDUSTRIAL WORKERS UNION,
LOCAL 146, D.R.W. & A.W., AFL-CIO
Linden, N.J.

New Address: 6 West Elizabeth Avenue, Linden, N.J. 07036.

MR. TOM VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building,
Washington, D.C.

DEAR SIR: Enclosed please find statement covering our local union's views relative to the contemplated public hearings to be held before the U.S. Senate Finance Committee.

Our local union is most appreciative of Senator Long's and your interest in this matter of utmost concern to our people.

Please keep up informed as to the scheduled dates of the public hearings and it is also our wish that a representative from our local union will be able to express the enclosed views relative to the best interests of the bargaining unit people we represent.

Also, enclosed please find petitions signed by over 700 members of our local union. Thank you very much for your kind interest in this most urgent matter.

Very truly yours,

VINCENT SPINA, *Secretary.*

(Note: The petition referred to above was made a part of the official files of the committee.)

STATEMENT

To the Members of the Senate Finance Committee:

It is a known fact that the U.S. Government controlled the General Aniline & Film Corp. from 1942 until 1965. This control did not permit the corporation to expand as other chemical corporations have done. Our international and local union spent many trying hours, days, and years to have the General Aniline & Film Corp. returned to private American interests.

Following the sale of the corporation to private American interests, our corporation has expanded at Linden, N.J., as well as in other divisions of the corporation. The Linden division has hired well over 100 employees since the disposition of the corporation by the Government.

Now the employees are threatened by the reduction of tariffs on benzenoid chemicals.

Over 741 employees at our plant are classified as benzenoid workers; this means those employees could very well lose their jobs. This does not include clerical, laboratory technicians and craftsmen who would also be layed off. The total could very well equal 1,000 employees.

The average age of our bargaining unit people is 47 years of age. This would mean that our members who have held no other jobs would find it very difficult to find other gainful employment. This could result in their being added to already overburdened welfare rolls of the communities in which they live. I am speaking of Elizabeth, N.J., Linden, N.J., Rahway, N.J., plus other communities.

The economic impact on the employees and the immediate communities in which they live could very well be catastrophic. The loss in wages and fringe benefits would be well over $8 million.

Petitions have been signed by over 700 members of my local union requesting that the American selling price system of valuation be maintained.

Gentlemen, before closing, I most humbly request that the members of this committee give this matter your deepest deliberation before final disposition of the matter is made. I further hope that in the final analysis not one single American worker's job is put in jeopardy. Thank you very much.

Respectfully submitted.

VINCENT SPINA, *Secretary.*

STONE, GLASS & CLAY COORDINATING COMMITTEE,
Washington, D.C.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR MR. VAIL: We certainly appreciate this opportunity to present our views on foreign trade policy. I am enclosing the statement made on behalf of the Stone, Glass & Clay Coordinating Committee for publication in the compendium. The statement is offered as a brief, concise, and factual view of the problems involved with our present trade policy.

As I have pointed out in this statement, the unions involved represent employees in industries that are already extremely import sensitive and this sensitivity can only be accelerated by the tariff cuts of the Kennedy round.

We believe our trade policy requires, in the interest of the United States, regulatory controls in the form of import quotas in order to maintain a healthy economy and to maintain employment and industry in this country.

When the hearing is held I would appreciate if you would enter the appearance of the Stone, Glass & Clay Coordinating Committee, listing me as a witness, and reserving time for the international presidents within our committee to testify to specific problems within their industry. I have listed the names and addresses of the seven international presidents in our statement.

With best regards.

Sincerely,

HOWARD P. CHESTER,
Executive Secretary.

Statement of Position of the Stone, Glass & Clay Coordinating Committee

In the Matter of Compendium To Be Published on Legislative Oversight Review of U.S. Trade Policies

Whose members are
The American Flint Glass Workers' Union of North America.
The Glass Bottle Blowers Association of the United States & Canada.
The International Brotherhood of Operative Potters.
The United Brick & Clay Workers of America.
The United Cement, Lime & Gypsum Workers International Union.
The United Glass & Ceramic Workers of North America.
The Window Glass Cutters League of America.

STONE, GLASS & CLAY COORDINATING COMMITTEE,
LEE W. MINTON, *Chairman.*
LEWIS MCCRACKEN, *Secretary-Treasurer.*

Submitted by Howard P. Chester, executive secretary, Stone, Glass & Clay Coordinating Committee.

SUMMARY

(1) Import sensitive industries—Pottery, ceramic tile, pressed and handmade glassware, hydraulic cement, and flat glass.
(2) U.S. industries willing to share in growth.
(3) Congressional concern with foreign trade policies.
(4) Deficiencies in present Trade Expansion Act.
(5) Understanding import statistics.
(6) Flight of U.S. private capital.
(7) Jeopardy to our economy of unregulated imports.
(8) Nation requires strong industries and maximum employment.
(9) Must provide reasonable and orderly control of imports.

STATEMENT

Mr. Chairman, and members of the Senate Finance Committee, my name is Howard P. Chester. I am the executive secretary of the Stone, Glass & Clay Coordinating Committee. We are composed of seven international unions, all affiliated with the AFL-CIO, who have joined together to cooperate on mutual problems that affect any one of our seven affiliates. We have a combined membership of 250,000 workers, with active locals in almost all of the 50 States.

The identities of these unions, their chief officers, and their headquarters addresses are:

Mr. George M. Parker, president, the American Flint Glass Workers' Union of North America, Toledo, Ohio.
Mr. Lee W. Minton, president, the Glass Bottle Blowers Association of the United States and Canada, Philadelphia, Pa.
Mr. E. L. Wheatley, president, the International Brotherhood of Operative Potters, East Liverpool, Ohio.
Mr. Paul Pelfrey, president, the United Brick & Clay Workers of America, Chicago, Ill.

Mr. Felix C. Jones, president, the United Cement, Lime & Gypsum Workers International Union, Chicago, Ill.
Mr. Ralph Rieser, president, the United Glass & Ceramic Workers of North America, Columbus, Ohio.
Mr. Harry Baughman, president, the Window Glass Cutters League of America, Columbus, Ohio.

In this review of U.S. trade policies we would like to make it clear from the beginning that the unions listed above represent employees in industries that are already extremely import sensitive and we know that the Kennedy round of tariff cuts will serve to further accelerate the foreign low-wage imports in these industries. They are presently faced with large shares of the domestic market being captured by foreign imports, causing plants to close and workers to suffer loss of their employment.

To list some of the industries now suffering severe damage: pottery, ceramic tile, pressed and handmade glassware, hydraulic cement, and flat glass. We submit that for these labor-intensive industries to compete with the like product produced in foreign countries, who have willingly accepted our technology and our mass production system but did not accept our high wages, can only be destructive to our high-wage, high-purchasing-power economy.

Most industries are willing to share in the growth of U.S. markets with the foreign producers, but they are not willing to have this growth completely absorbed by imports or to have present productive capacity and employment displaced by imports.

The Congress is showing its concern with our foreign trade policies and bills have been introduced: to establish import quotas on specified products; to amend the Trade Expansion Act; to amend the Anti-Dumping Act; and to provide for orderly marketing, and certainly we in labor who are vitally affected by imports should unite our efforts and fight for fair and just trade legislation.

There are several important deficiencies in the present Trade Expansion Act: (1) We know that trade adjustment assistance has not worked, in fact not one case has been allowed and this was a very important provision to labor and the reason for AFL–CIO support. However even this could not replace a job and a useful, productive place in society. (2) We know that the present criteria in the escape clause for a finding of injury is far too stringent, the use of the word "major," under title III, section 301, has resulted in a prohibitive, rigid interpretation by the Tariff Commission which has rendered this section useless to workers or firms.

We also know that our import statistics are understated, reported on foreign value instead of like most nations on a c.i.f. basis, which understates our imports by 10 to 20 percent. If we reported on a c.i.f. basis, our so-called balance of trade would evaporate if not disappear. Our statistics should be reported on a factual basis so the general public is aware of our real position in foreign trade.

Are we encouraging the flight of U.S. private capital to foreign nations? The answer is yes, with foreign capacity increasing in practically all products aided in many cases by U.S. private investment, which has now reached the astonishing figure of, in excess of $50 billion. This foreign increased capacity can only serve to decrease our exports and increase our imports and since capital is mobile and labor is not, the result is loss of American jobs and loss of those American industries that do not have the capital to make such a move, and an overall deterioration of the American economy.

We cannot afford to allow any vision of free trade to blind us to the serious jeopardy to our economy of unregulated imports that are beyond the reach of our laws on minimum wages, maximum hours, health, and safety standards and exploitation of labor. The tariff and import quotas are the only substitutes for such laws within our reach, and with the recent tariff cuts, the tariff will be little or no deterrent, so it is understandable why import quota legislation has been introduced, it is our last defense to handing over the richest market in the world, but of course it would not long be the richest market, because as imports continue to rise so would unemployment and with unemployment the drastic drop in purchasing power.

Our Nation requires strong industries and maximum employment to maintain a healthy economy, and without a healthy economy our position as a world power and leader of the free world will quickly deteriorate, and just as quickly be replaced by another country less generous than the United States.

Our foreign trade policy must provide reasonable and orderly control of imports, whether through orderly marketing negotiations or by omnibus import-quota legislation covering all lines of commerce.

Thank you for this opportunity to present our position.

LEAD-ZINC PRODUCERS COMMITTEE,
Washington, D.C.

Re Legislative Oversight Review of U.S. Trade Policy.

Hon. RUSSELL B. LONG,
Committee on Finance, U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR LONG: The domestic lead-zinc mining and smelting industry wish to commend you and your committee for your interest and action in examining U.S. trade policies and, particularly, in asking for factual and objective comments that we hope will be used in a new, constructive trade program. We would like to address ourselves to item 1 in your press release, "Possible Shortcomings in the Applicable Statutes."

Our industry has been subjected to a series of economic cycles basically produced by excessive, unneeded imports that have alternately produced excessive metal stocks in the United States or, conversely, shortages of necessary domestic stocks when the foreign metal price exceeds that in the United States. These conditions of metal surplus in turn depress our market prices with periods of mines closures and unemployment and other periods of intensive effort directed to providing U.S. consumers with necessary metal supplies, when foreign production is channeled to more favorable foreign markets.

We have worked with the executive departments since World War II trying to develop a minerals policy that would stabilize imports at levels required to supplement domestic production of both lead and zinc. Unfortunately, every time we mention restrictions of imports we run headlong into trade policy dictated by the State Department. Their philosophy seems to be one of great concern for the foreign industry, and we are always referred to their policy of not wishing to disturb GATT negotiations and that our alternative to legislation is an appeal to the Tariff Commission for determinations of import injury and recommendations for assistance.

At recent hearings of the Finance Committee discussing import quota plans, reference was made to the fact that the U.S. Senate has never accepted GATT, and we are at a loss to understand how this argument can be valid in opposing our efforts to aid both the U.S. producer and consumer.

Our primary interest in writing your committee at this time is to briefly discuss the industry effort before the Tariff Commission. This has involved 12 different actions with two unanimous findings of import injury and recommendations for appropriate import controls.

We are attaching to this letter an exhibit entitled "Summary of Lead-Zinc Legislative and Government Experience Since 1950," that indicates in some detail the actions before the Tariff Commission and the results of their study.

The first finding of injury was returned May 21, 1954, but the President at that time did not wish to disturb State Department relations with foreign importers and a stockpile purchase and barter program was instituted to avoid accepting the Tariff Commission recommendation. This program was only temporary and resulted in large tonnages of lead and zinc placed in Government stockpiles that have now been declared "surplus." The current effort of the Government to sell this "surplus" is currently a real problem, insofar as the industry is concerned. Stockpile purchases were a temporary palliative and were abandoned in 1957. The President then proposed an import excise tax in the form of legislation. The Ways and Means Committee held a hearing but after obtaining the background information, informed the President that he still had an obligation to make his own decision which should have been based on Tariff Commission recommendations.

The industry was at this point forced to file another escape clause and, once again, on April 24, 1958, the Tariff Commission unanimously found serious import injury with a recommendation for both restricted quotas and higher duty rates. Once again the President suspended consideration of the Commission's recommendations and proposed the "Seaton plan," a subsidy program for lead and zinc. This was not approved by the Congress and later on the President did accept on a partial basis an import quota restriction that, unfortunately, favored the importer rather than the domestic producer based on economic conditions at the time. This quota was subject to annual reviews and the plan remained in effect until October 1965, when general business conditions had improved sufficiently to relieve the need for the import quota restriction.

In the meantime, the Trade Expansion Act of 1962 had been enacted, eliminating the escape clause and substituting provisions for adjustment assistance. We objected strenuously to elimination of the escape clause even though its provisions for assistance were greatly limited and took the position that adjustment assistance as such was of no use to our industry and based on the legal requirements, could not be obtained. As you know, import restrictions or adjustment assistance to industry, companies, or workers can only come about after the Tariff Commission can make an affirmative finding that (1) the imports in question are entering the United States in increasing quantities; (2) that the increased imports are due "in large part" to trade agreement concessions; and (3) that such increased imports are "the major factor" in causing the import injury. This law has been tested by 20 cases, one from the zinc industry, all with negative results. We would summarize this solution as recommended by the executive department as having been ineffective in the past and impossible to use at the present time or in the future.

In summary, it has been our experience that the escape clause of the Trade Agreements Act was not a satisfactory long-term solution for assistance to U.S. industry and the provisions of the Trade Expansion Act completely eliminated any avenue of help. It is imperative that the Congress establish some workable legislative plan that will assist domestic industry, as it is threatened by unneeded imports. We would hope, as a result of study, that your committee can recommend amendments to the Trade Expansion Act whereby industry can appeal for import relief under rules and regulations that will be workable and further, it will be incumbent upon the President to accept or enact the recommendations that are made to accomplish such relief.

Sincerely yours,

ROBERT G. DWYER, *Chairman.*

SUMMARY OF LEAD-ZINC LEGISLATIVE AND GOVERNMENTAL EXPERIENCE SINCE 1950

Details of experience of the domestic lead-zinc industry under various provisions and procedures of U.S. trade laws, international negotiations, and legislative proposals for a lead-zinc minerals policy

1. On May 10, 1950, the lead mining industry petitioned the Tariff Commission for "escape clause" action, requesting that tariffs on lead ores and metal, reduced 50 percent below 1930 rates, be restored and, in addition, be raised 50 percent to relieve import injury. (The 1930 tariff rates on lead were cut 50 percent in 1943 under negotiations for the Mexican Trade Agreement.) This petition was filed in accordance with article XI of the Trade Agreement With Mexico (1943) and with the provisions of Executive Order 9832 (1947) that first established the Commission's "escape clause" procedures. On July 18, 1950, the Commission informed the industry that no consideration would be given to this "escape clause" petition because the Mexican agreement was being canceled by the United States effective December 31, 1950. The industry's petition was formally dismissed by the Commission on January 25, 1951. With the cancellation of the Mexican agreement, the 1930 duty on lead (2⅛ cents per pound—metal) was temporarily restored.

2. In spite of presentations in early 1951 by the lead-zinc industry before the Committee for Reciprocity Information in preparation for the trade agreements negotiations at Torquay, the duty on lead, which had been restored only 5 months before by abrogation of the Mexican

agreement, was cut 50 percent to its prior level ($1\frac{1}{16}$ cents per pound—metal) on June 6, 1951. In addition, the duty on zinc was cut by 60 percent at Torquay on the same date, to 0.7 cent per pound—metal.

3. On February 14, 1951, the lead mining industry made application to the Tariff Commission under the provisions of section 336 of the Tariff Act of 1930 for an investigation of the "differences in the cost of production" of lead in the United States and foreign countries. Rates of duty on lead had become eligible for change by action under section 336, since the termination of the Mexican agreement with lead duty rates returning to those provided by the Tariff Act of 1930. After the filing of this application, the tariff reductions of the Torquay negotiations were announced (May 8, 1951). Inasmuch as trade agreement rates of duty cannot be changed by action under the provisions of section 336, the Tariff Commission dismissed the application on May 29, 1951.

4. On September 14, 1953, the lead-zinc industry petitioned the Tariff Commission for escape clause action under section 7 of the Trade Agreements Extension Act of 1951. Hearings were held during November 1953. On May 21, 1954, the Commission made a unanimous finding (escape clause investigation No. 27) that serious injury was resulting from excessive imports and five Commissioners recommended maximum permissible increase in duties (pig lead, 2.55 cents per pound; slab zinc, 2.10 cents per pound).

5. Concurrent with this 1953–54 "escape clause" action, by resolution of the Senate Finance Committee (July 27, 1953), and the House Ways and Means Committee (July 29, 1953), the Commission also conducted a general investigation in accordance with the provisions of section 332 of the Tariff Act of 1930. This was transmitted to the Committee on Ways and Means and to the Committee on Finance on April 19, 1954, and is a 256-page volume with a detailed analysis of the economic conditions and pertinent statistics concerning the lead-zinc industry of the United States.

6. On August 20, 1954, President Eisenhower advised the Committee on Ways and Means and the Committee on Finance that he would not implement the unanimous recommendations of the Tariff Commission in their May 21, 1954, report (T.C. No. 27). The President cited as one of the reasons for not implementing the Commission's findings, that the maximum permissible increase in duty was insufficient to "reopen closed mines" and would have only a "minor effect" on U.S. prices. In lieu of accepting the Commission's recommendations the President instituted increased defense stockpile purchases of these two metals and subsequently initiated barter. The President further stated that he was directing the Secretary of State to seek recognition by foreign countries who were principal importers that they would not take any "unfair advantage" of his alternative programs. However, the record now shows that imports for consumption did not decline and, in fact, increased following the President's letter.

7. In a series of regulations issued May 28, 1957, the Department of Agriculture essentially stopped all bartering in lead and zinc, which was the major alternate stabilization program instituted by the President. In testimony before the Ways and Means Committee, August 1, 1957, Mr. Gordon Gray, Director of the Office of Defense Mobilization, announced that the defense stockpile goals for lead and zinc had almost

been met and that purchases would cease in the very near future. This statement was again repeated by Mr. Gray in his testimony before the House Appropriations Subcommittee during February 1958. The Office of Defense Mobilization announced that April 1958 was the last month it would purchase zinc, and lead buying was scheduled to be stopped at the end of June.

8. In his letter to the two congressional committees of August 20, 1954, the President concluded by stating that if the action he was taking, instead of following the Commission's recommendations, did not accomplish the objectives he sought that he "will be prepared early next year to consider even more far-reaching measures, and to make appropriate recommendations to the Congress." On June 19, 1957, following the sequence of events cited in paragraphs 6 and 7 above, Secretary of Interior Seaton forwarded to the Congress, for the executive department, a bill providing for the suspension of present duties and substituting a series of import excise taxes which would be effective only if the price of lead was below 17 cents and the price of zinc below 14½ cents.

9. Hearings were held August 1 and 2, 1957, before the Committee on Ways and Means on H.R. 8257 (and similar bills for an import excise tax on lead and zinc). Hearings were also held on a companion bill, S. 2376, by the Senate Finance Committee on July 22–24, 1957. The U.S. lead-zinc mining industry concurred in the proposed "peril point" market prices of 17 cents lead and 14½ cents zinc. It also pointed out, however, that the proposed excise tax schedule was wholly inadequate to sustain the "peril point" prices. The proposed schedule for zinc was, on an average, about 40 percent less than the Tariff Commission's 1954 recommendations; for lead, on an average, about 20 percent less. In only one instance was the proposed schedule greater than the Commission's recommendations—that was for lead, at lower market price levels and then was only 0.45 cent more than the Commission's report. Also, these rates were inconsistent with the President's comment on the 1954 Tariff Commission's rate proposal, cited in item 6.

10. Testimony was presented to the Committee on Ways and Means by Mr. Gray on August 1, 1957, and repeated on February 19, 1958, that the lead-zinc industry was not eligible to seek relief under the "national security amendment escape clause" (section 7(b) of the Trade Agreements Extension Act of 1955). He stated the reason for his decision was the existence of very large stocks of both metals in the hands of the Government which were acquired by the two alternative programs instituted by the President when he declined to follow the recommendations of the Tariff Commission.

11. Following the hearing, Mr. Cooper, chairman of the Ways and Means Committee, wrote the President that the Ways and Means Committee would not consider tariff legislation that was counter to the principles of the trade agreements program particularly since the President had authority to act under provisions of the escape clause or National Security Amendment of the Trade Agreements Extension Act (1951 and 1955). The President agreed that "expansion of foreign trade is in the best interests of the United States" and indicated that: "It is my understanding the industry will file an escape-clause action if the Congress does not pass the requested legislation."

12. This legislative program "died" with the exchange of letters between Mr. Cooper (August 16, 1957) and President Eisenhower (August 24, 1957), and the Emergency Lead-Zinc Committee again petitioned the Tariff Commission for escape-clause action. The petition was filed September 27, 1957, and hearings were held November 19–26, 1957. The U.S. industry petitioned the Commission not only for increased duties, but also for quotas. A complete quota plan was submitted to the Commission.

13. On April 24, 1958, the Tariff Commission again unanimously found (Escape Clause Investigation No. 65) that the domestic lead-zinc industry was suffering serious import injury. Three Commissioners recommended the maximum increase in duty (50 percent above the 1945 rates, pig lead, 2.55 cents per pound; slab zinc 2.1 cents per pound) and also recommended the imposition of absolute quotas, based on 50 percent of imports during the period 1953–57. The other three Commissioners recommended a return to the 1930 duty rates (pig lead, 2.125 cents per pound; slab zinc, 1.75 cents per pound).

14. At the conclusion of the 60-day period, as provided in the Trade Agreements Act, the President advised the chairman of the Senate Finance Committee that he was "suspending consideration" of the Commission's recommendations. The President further stated that a final decision would be appropriate after the Congress had completed its consideration of a "minerals stabilization plan," proposed by the executive department and submitted by Secretary of the Interior as the "Seaton plan."

15. The "Seaton plan"—S. 4036—proposed stabilization payments on domestic production up to 350,000 tons of lead and 550,000 tons of zinc when the market price was below 15½ cents per pound for lead and 13¼ cents per pound for zinc. An additional limited tonnage payment was to be made when the market prices of lead and zinc were below 17 cents and 14¼ cents per pound, respectively. This legislation passed the Senate, but was defeated by the House in August 1958.

16. Presidential Proclamation No. 3257 of September 22, 1958, established absolute quota restrictions on imports for consumption of unmanufactured lead and zinc, effective October 1, 1958. However, the quota amounts were set at 80 percent of the average annual commercial imports for the base period, much more generous to the importer than the 50 percent recommended by the Tariff Commission. There was no change in basic tariff rates and no provision for quota control of manufactured items. The annual quotas established limits for imports of ore and metal combined, as follows—lead 354,720 tons and zinc, 520,960 tons.

17. ELZ received an invitation to send one "observer-delegate" to the London Conference of the United Nations' Interim Coordinating Committee for International Commodity Arrangements, September 1958. The Committee was unable to be represented. Mr. C. E. Schwab, Committee Chairman, attended the second meeting in Geneva, November 1958. Plans were formulated for a long-term lead-zinc study group.

18. Metal prices improved slightly following the quota proclamation but dropped again in early 1959. In March the western Senators introduced S. 1566, a lead-zinc flexible quota bill. Allowable imports (under quotas) were still excessive, lead and zinc stocks were increasing, mine

production showed no improvement, and employment had not increased.

19. The third session of the U.N. Lead and Zinc Committee, held during May 1959, in New York, found a world excess production of lead and zinc metal over consumption. Voluntary production curtailments were announced by the larger exporting nations. Plans were laid for establishing an Internatonal Lead-Zinc Study Group.

20. By mid-1959, the continued troubles of the mining industry prompted further congressional action with introduction of S. 2169 (Murray-Montana and others) and H.R. 7720 (Anderson-Montana and others). This bill proposed cancellation of existing duties and application of a 4-cent tax on metal imports whenever market prices were below 15½ and 13½ cents per pound, respectively, for lead and zinc. Wayne N. Aspinall (Colorado) introduced H.R. 7721, a flexible quota bill. This bill proposed a minimum quota and a larger flexible quantity based on market price.

21. In May 1959, Wayne N. Aspinall introduced House Resolution No. 177 stating "that it is in the national interest to foster and encourage (*a*) the maintenance and development * * *, (*b*) orderly discovery * * *, and (*c*) research, to promote the wise and efficient use of domestic metal and mineral reserves." Hearings were held June 29 with ELZ representation. This was passed by the Congress, and while not having legislative force, it did call on the executive department to advise the Congress as to relief actions proposed.

22. During July 1959, the U.S. producers of coated and uncoated zinc sheets filed for a section 7 escape clause investigation. Hearings were held November 3, with ELZ presenting a statement. On January 14, 1960, the Tariff Commission issued a report (Commissioners Talbot and Overton dissenting) that injury from imports did not exist, and therefore, no recommendation for a change in tariff rates.

23. ELZ planned to file another escape clause at the end of 1 market year under quotas. Tariff Commission counsel ruled that an industry operating under an escape-clause proclamation was precluded from filing again for section 7 relief. In August 1959, mining State Senators introduced Senate Resolution 162, directing the Tariff Commission to review again (under the provisions of sec. 332) the condition of the lead-zinc industry with findings of additional import restrictions needed for a sound and stable industry. Hearings were held January 12, 1960, with ELZ witnesses discussing all phases of the industry problems. Fluorspar had a similar hearing under Senate Resolution 163 with the report issued February 29, 1960. Three of four Commissioners refused to make specific findings on the grounds that the Commission lacked authority under section 332 to submit recommendations or findings. In the lead-zinc report, issued March 31, 1960, Commissioners Talbot, Overton, Jones, and Dowling maintain this same position. Schreiber and Sutton recommended increases in tariffs to 3 cents on lead and 2.5 cents on zinc metal, and 70 percent of this on ores and concentrates. In addition, compensatory duties were proposed on manufactured items.

24. Six companies (importing smelters) filed a representation with the Commerce Department (August 28, 1959) and on November 24, 1959, with the Tariff Commission requesting formal investigation under Executive Order 10401 to determine "to what extent the quotas

imposed by Presidential Proclamation of September 22, 1958, remain necessary." This was opposed by the ELZ Committee, and Senator Murray as sponsor of Senate Resolution 162. This petition was refused by the Tariff Commission on December 15, 1959, as untimely in view of the Senate Resolution 162 investigation.

25. The International Lead and Zinc Study Group was formally created and its first meeting held in Geneva, January 1960. Voluntary commitments made in New York in May to restrict zinc sales were withdrawn. Regarding lead—Australia, Canada, Mexico, and Peru stated they would withhold offerings to the market. The United Kingdom announced that its Government had available for "orderly" disposal, 54,000 metric tons of slab zinc.

26. Hearings were held by House Interior Committee in March on a small mine subsidy bill (H.R. 8860, Edmondson, Oklahoma). This passed the House prior to the political convention recess. It passed the Senate in the postconvention session and was pocket-vetoed by the President as being difficult to administer, would establish an uneconomic precedent, production would adversely affect the market, and the present quota plan was still in effect.

27. On April 6, 1960, Congressman Howard Baker (Tennessee) introduced H.R. 11584, sponsored by the "importing smelters" proposing import taxes at the rates recommended by the minority in the March Tariff Commission Report (3 cents per pound for pig lead, 2.5 cents per pound for slab zinc—duties on ore, 70 percent of these rates). The domestic miner did not consider these rates as adequate to correct the import problems in times of surplus supplies. The legislation was not considered by the Congress.

28. In June 1960, Senator Kerr introduced the "importing smelters" bill as S. 3698, essentially the Baker bill, but including a 1-cent removable tax in the 3 cents and 2.5 cents on lead and zinc, respectively. The basic tax rates were proposed as 2 cents and 1.5 cents, respectively, for lead and zinc with an additional 1 cent to be applied or "triggered" when the market price was below 13.5 cents and 12.5 cents, respectively, and removed above 14.5 cents and 13.5 cents, respectively. Senator Bennett introduced the ELZ removable 4-cent tax as S. 3696 (H.R. 11786, Pfost, Idaho). This was essentially the same as S. 2169 (see item 20), except the "trigger" for removal of the 4-cent tax of 15.5 cents and 13.5 cents, respectively, for lead and zinc was further specified by the requirement that the combined price for lead and zinc must average 29 cents per pound. In Finance Committee action, Senator Kerr was successful in attaching S. 3698 as an amendment to the Virgin Islands bill, H.R. 5547, already passed by the House, and thereby bypassing the normal origination of lead-zinc tariff legislation in the House Ways and Means Committee. Senator Kerr's main interest was the small mine subsidy bill, and the lead-zinc tariff bill never reached the Senate floor. No lead-zinc tariff legislation was passed in the 86th Congress.

29. In 1955 import taxes on imported bicycles were increased by Presidential proclamation following a finding of injury in a section 7 escape clause action. The President imposed only a part of the recommended tax increase. An importer challenged the validity of the proclamation and the courts held that the President lacked discretionary power to accept only in part a recommendation of the Commission.

This case doubt on the legality of lead-zinc quotas; however, the executive department held that the 1958 extension of the Trade Agreements Act gave the President authority to accept Commission recommendations in whole or in part, lead-zinc quotas were imposed subsequent to the 1958 extension and, therefore not affected by the "bicycle decision." (Later peril point hearings reaffirmed bicycle rates, and these were imposed by Presidential proclamation, February 1961.)

30. The second session of the International Lead and Zinc Study Group was held in Geneva, September 1960. There was no action on restrictions of zinc offerings. Voluntary restrictions on commercial offerings of lead remained as per the February 1960 meeting. Concern was expressed with plans of the United Kingdom to sell 35,000 metric tons of slab zinc from Government stockpiles by September 30.

31. On September 30, 1960, the Tariff Commission issued its first (under Executive Order 10401) report reviewing the lead-zinc industry experience after 2 years of import quotas. The statistical information indicated that serious injury continued in the domestic industry due to imports, and the inference was that quota controls should continue. The quota proclamation was continued in effect.

32. Metal prices dropped in December as metal stocks built up, reaffirming need for legislative import controls. Mr. Wayne N. Aspinall, chairman of the House Interior Committee, introduced H.R. 3416, in January 1961, providing a base permanent tariff on lead and zinc metal of 2 cents per pound (70 percent on ores and concentrates) and a removable tax of 2 cents (applied below 13½ market price and removed above 14½ cents market price). It included compensatory tariffs on manufactured items and a small subsidy to domestic miners financed from tariff collections. This legislation was planned to (1) get the miner to work, (2) stabilize a reasonable price and supply for the consumer, and (3) provide a portion of our market to the importer at a good price with reasonable tariff rates. This was assigned to the House Ways and Means Committee for hearings. The same bill was introduced in the Senate by Senator Anderson as S. 1747, April 1961, and was assigned to the Interior and Insular Affairs Committee.

33. The small mines subsidy bill was reintroduced as H.R. 84 by Mr. Edmondson of Oklahoma (S. 115 Kerr of Oklahoma), and hearings were held by the House Interior Committee in March, June, and July 1961. The administration opposed the bill as too expensive and stated that added mine production would be detrimental to the current market price. They recognized Government responsibility for encouraging the small mines during war times and proposed a phaseout subsidy based on a combined price of 27½ cents per pound paid on 750 tons each of lead and zinc the first year, 500 tons the second year, and 250 tons the third and last year. The Interior Committee reported out a compromise version. The subsidy was to be paid whenever the domestic price for either metal was below 14.5 cents per pound. The subsidy would be paid on 1,500 tons each of lead and zinc in 1962, 1,200 tons in 1963, 900 tons in 1964, and 600 tons in 1965, with total cost limited to $16.5 million. Proposed payments were further limited to domestic producers by past production records. In this form, the bill passed the House on August 24, 1961 by a 196 to 172 vote. It passed the Senate by a voice vote on September 21, 1961, and was signed by

the President on October 4, 1961. Operating funds were provided by a supplemental appropriation in 1962.

34. "Importing smelters" tax bill was again introduced in March 1961 by Congressman Baker as H.R. 5193, and by Senator Kerr as S. 1361. The tariff rates were the same as the Kerr-Baker bill of the 86th Congress, with a permanent tariff of 2 cents on lead metal, 1.5 cents on zinc metal, 70 percent of these rates on concentrates, and an additional 1 cent removable tax on each metal controlled by peril points of 13½ cents and 14½ cents on lead and 12½ cents and 13½ cents on zinc. A change in this bill divided the compensatory rates on manufactured goods to a 1 cent base tariff on lead products, 0.8 cent base tariff on zinc products, and 1 cent removable on each controlled by above peril points. The Baker bill was reported out of the House Ways and Means Committee late in the first session of the 87th Congress with no action by the House or Senate.

35. The third session of the International Lead and Zinc Study Group was held in Mexico City, March 20, 1961. Nations other than the United States felt that their zinc stocks were normal and called for no controls. The U.S. delegate discussed our problems of stocks and reduced production, but no action was taken. The lead stock was acknowledged to be a world problem. The solution presented and accepted was a U.S. offer to barter surplus world stocks in return for reduced mine and metal production. LME metal prices at the time of this meeting were: lead, 8⅜ cents; zinc, 10½ cents. Seven months later, prices were: lead, 7⅞ cents; zinc, 9 cents.

36. The Senate Interior Committee held a hearing in May 1961 to study the general condition of the domestic lead-zinc industry, and a second hearing in July to consider the Anderson bill, S. 1747. Testimony by ELZ noted that domestic stocks of metal and ores and concentrates were at record highs with domestic mines and plants posting substantial voluntary production restrictions as follows:

a. The Anaconda Co. discontinued all lead-zinc mining at Butte, and curtailed refinery facilities.

b. American Zinc, Lead & Smelting Co. cut metallic zinc production 10 percent and closed three Tennessee mines.

c. St. Joseph Lead Co. curtailed zinc smelter production 15 percent, zinc ore production 15 percent, lead ore production 10 percent, and postponed plans to increase lead smelter capacity. In June, they announced that the Bonne Terre mine would close because of low metal prices, after 94 years of operation.

d. The New Jersey Zinc Co. curtailed production of slab zinc and alloy metal by 15 percent, followed by a second 15 percent cutback at Palmerton, Pa., and Depue, Ill., smelters. Also closed Flat Gap mine at Treadway, Tenn.

e. Matthiessen & Hegeler Zinc Co. reduced its slab zinc production by 20 percent.

f. American Smelting & Refining Co. curtailed zinc metal production at Corpus Christi, Tex., by 11 percent.

g. Several months previous, the Eagle-Picher Co. substantially cut back zinc metal production at Henryetta, Okla.

The Interior Committee reported out the Anderson bill (S. 1747) substituting provisions of H.R. 84 for the subsidy terms of S. 1747. The Senate Finance Committee requested jurisdiction of the bill because of its tariff provisions. A hearing was held to hear administration witnesses who opposed both the tariff and subsidy provisions stating, "we believe that the program would prejudice the broader interests of the United States * * * in its political relations with other countries." The bill was amended in executive session of the Finance Committee eliminating all tariff provisions and reported out as a subsidy bill. At this point, Senator Anderson moved for Senate consideration of H.R. 84, with approval as reported in item 33 above.

37. The administration was under pressure all year for formulation of a lead-zinc minerals policy, and on June 23 proposed the following:

a. A "barter" purchase of $65 million of domestic lead-zinc stocks.

b. A proposal for the Treasury Department to discontinue commercial sales of silver, permitting the market price to rise.

c. Appointment of a mining task force to study local conditions in mining districts.

Adverse reaction from industry and Congress was immediate as the program had no long-term stability and would again subsidize foreign production. The proposal was shelved.

38. Following the State Department foreign lead barter announcement in Mexico City, negotiations proceeded with Consolidated Mining & Smelting Co. of Canada, Ltd., and Broken Hill Associated Smelters Proprietory, Ltd., of Australia. On August 24, 1961, the Department of Agriculture announced completion of arrangements for contracts totaling $18 million to acquire for the U.S. supplemental stockpile 55,000 tons of Canadian lead and 45,000 tons of Australian lead. The U.S. lead-zinc industry was in accord and on record as opposing these barter deals. Deliveries totaled 106,021 tons during 1961 and 1962 with 50,474 tons from Australia and 55,547 tons from Canada.

39. On September 23, 1961, the Senate adopted Senate Resolution 206 requesting the Tariff Commission to bring up to date the investigation of the lead-zinc industry published in March 1960, under provisions of section 332 of the Tariff Act. A public hearing was held on January 16 and 17, 1962. Witnesses appeared for the domestic lead-zinc miners, to again prove that imports continued to injure our industry even under the quota system, and that quotas, as presently constituted, provided insufficient controls on unneeded imports. Importing smelters urged a "reasonable" tariff in place of quotas. Canadians, Mexicans, and Peruvians urged cancellation of quotas and lowering of tariffs (see item 47).

40. On October 2, 1961, the Tariff Commission issued a second lead-zinc report (under Executive Order 10401) reviewing the industry experience after 3 years of quotas. It informed the President that serious injury continued in the domestic industry due to imports, and quota controls should continue. The President accepted the Tariff Commission findings on February 9, 1962.

41. The fourth session of the International Lead-Zinc Study Group was held in Geneva during October 1961. A comparison of world metal (lead-zinc) production and consumption indicated a surplus still continued with stocks accumulating; however, there was optimism amongst the importing countries that the situation for the first half of 1962 might improve. The United States was purchasing lead under barter from Canada and Australia (see item 38) with agreements from these countries to curtail their production. There was agreement that

production should be reduced, but no effective action was taken to control contemplated metal surpluses. The United States continued to receive criticism for its import controls, even from the countries benefiting from the barter contracts.

42. Tariff legislation to protect the lead-zinc mining industry was again introduced in the second session of the 87th Congress by Congressman Wayne N. Aspinall, as H.R. 9965, and by Senator Clinton P. Anderson, as S. 2747, in January 1962. Twenty other Congressmen introduced identical legislation, and 21 Senators cosponsored the Senate bill. This proposed the same tariff rates (2 cents permanent and 2 cents removable at peril points of 13½ and 14½ cents per pound) as included in similar bills of the first session, but eliminated provisions for the mine subsidy, enacted in the previous session of Congress. This legislation was prepared to provide consumers requirements and permit imports as needed. The legislative climate of this Congress was free trade and the session adjourned without consideration of the lead-zinc bills.

43. The fifth session of the International Lead-Zinc Study Group was held at Geneva in March 1962. The balance sheet for world metal production and consumption again showed a surplus for final 1961 figures and in the estimates for 1962. There was general agreement that reductions in production were needed, with offers by some countries to do so. The U.S. delegate offered reductions, subject to agreements to be negotiated between individual producers and U.S. Government representatives. Some substantial producing countries were uncooperative, and the session adjourned until May 28 for further consideration of the problems.

44. The proposed Government-industry discussions, referred to above, were ruled by the Justice Department to be contrary to antitrust regulations. The U.S. delegate informed the study group secretariat that U.S. reductions proposed during March could not be negotiated.

45. The fifth session of the study group was resumed in Geneva on May 28, 1962. New balance sheets of production and consumption were prepared for 1962. Following a restatement of voluntary reductions by several producing countries, there appeared to be an estimated world lead deficit for 1962 (consumption over supply) of 18,000 metric tons, and a zinc surplus of 87,000 metric tons. World metal stocks were still excessive, and United States and world prices had decreased since the first of the year. The collection of world statistical information by the Lead-Zinc Study Group had improved but there still was no study group help for control of excessive imports into the United States, that continued to depress our domestic mining industry.

46. The Presidential announcement of January 31, 1962, of an investigation of the national stockpiling program, reacted unfavorably on world metal markets. The price of lead in the United States (9.5 cents per pound) and on the London Metal Exchange (7.3 cents per pound) was depressed to new lows since price controls were removed following World War II. ELZ testified before the stockpile committee emphasizing that (a) the announced maximum objectives for lead and zinc in the stockpile appeared to be ridiculously low, (b) no disposals should be considered until objectives were reevaluated considering reconstruction needs in the United States and abroad, and (c) industry

representatives should be consulted in estimating metal supply and demand during an emergency. In June 1962, the ELZ Committee offered services of industry experts to assist the OEP in determining stockpile goals (based on supply and demand statistics) for lead and zinc. This offer to the Director of the OEP was diverted to the Department of the Interior that furnishes supply data. ELZ was assured that the industry offer of consultation regarding stockpile objectives would be used, but the services of mining industry representatives were never requested.

47. The Tariff Commission published Document 58 in May 1962, pursuant to Senate Resolution 206, directing a study of the lead-zinc industry. This is a factual report of industry conditions, complete with statistics. The figures again highlighted the excessive imports that suppressed domestic prices and mine production. This investigation, conducted under section 332 of the Tariff Act of 1930, could not consider import injury to the industry or recommend corrective import controls.

48. The ELZ Committee testified before both the House Ways and Means Committee and the Senate Finance Committee to discuss further complications to the security of our domestic lead-zinc mining industry that would develop from provisions of H.R. 11970, the Trade Expansion Act of 1962. Under the definition of an "industry," and according to new rules for determining injury, lead-zinc mining could not qualify for escape clause relief. The economics of the lead-zinc miner was presented as the outstanding example of an industry injured by imports and so determined by the Tariff Commission. Adjustment assistance proposed in the legislation would not help in our case. ELZ proposed an effective escape clause and elimination of adjustment assistance.

49. The Trade Expansion Act was approved by Congress and enacted as Public Law 87-794 on October 11, 1962. An escape clause "of sorts" was included, requiring a Tariff Commission finding that "increased imports have been the major factor in causing or threatening to cause" serious injury to a domestic industry. In making such a finding, the Tariff Commission must "take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment." Under a finding of injury, a firm could obtain a recommendation for import restriction. The President may accept this or recommend adjustment assistance (technical assistance, loans, tax carryback). Unemployed workers may obtain adjustment assistance as unemployment payments, retraining, and relocation allowances. The terms of the "escape clause" are so stringent that for all practical purposes, it will be inoperative for obtaining import relief, even for an industry such as lead-zinc mining with two previous findings of import injury and recommendations for import controls. Interpretation of the law, following enactment, proved that the Tariff Commission could not recommend adjustment assistance for employees, companies, or industries (see item 55).

50. The sixth session of the International Lead-Zinc Study Group was convened October 24, 1962, in Geneva, Switzerland. This will be remembered as the U.S. stockpile meeting, as great concern was raised by many of the 23 participating countries who correctly fear the dras-

tic effects of disposals on world markets during those periods when metal stocks are surplus to world consumption requirements. Foreign producers were quite insistent that the study group be consulted by the U.S. Government before any disposal of lead and zinc is arranged. From the U.S. lead-zinc industry standpoint, this was the only positive accomplishment of the meeting. World production of lead and zinc still showed a surplus compared to consumption. Canada and Australia estimated for 1963 the largest lead and zinc production in their history. This estimate followed the completion of a lead barter arrangement whereby the United States stockpiled during 1961 and 1962 50,474 tons from Australia and 55,547 tons from Canada. (This agreement, sponsored by the State Department and opposed by the U.S. domestic industry, further aggravated the question of "so-called surpluses" in the supplemental stockpile.) The United States was still abused during the study group session for trying to maintain a "marginal lead-zinc mining industry" through tariffs, quotas, and subsidies. Voluntary production curtailments were no longer considered by the group. A special working party was assigned to study controls through international agreements. This, plus statistics, continued to extend negotiations within this group.

51. On October 1, 1962, the Tariff Commission issued a third lead-zinc report under provisions of Executive Order 10401, reviewing the industry experience after 4 years of quotas. It informed the President that serious injury continued in the domestic industry due to imports, and quota controls should continue. The President accepted the Tariff Commission's findings on January 9, 1963.

52. The small mines subsidy bill referred to in item 33 was financed for the calendar year 1962 through a supplemental appropriation of $4,690,000, authorized July 25, 1962. Sixty producers were certified for 1962 participation. Fifty-four received payments amounting to $1,012,-580 paid on 21,152 tons of lead and zinc (8,241 tons was lead). Approximately 42 percent of the subsidy was paid to producers in the tri-state mining district. No estimate is available on "new production" stimulated by the plan, but appears to be a small percent of the total program.

53. The 1962 market prices for lead and zinc remained at continuing low levels. High lead stocks resulted in a price drop to 9.5 cents per pound—lowest since price controls were relaxed following World War II. Lead mine production was the lowest since 1900, resulting from low prices and the shutdown of mines in Missouri by a prolonged strike. The zinc price at approximately 11.5 cents per pound also reflected excessive zinc stocks. Excessive imports continued under the quota plan, again exceeding domestic production. Since inception of the quota plan on October 1, 1958, through 1962, imports of lead were 140 percent and zinc 110 percent of domestic production.

54. A lead metal import quota of 31,520 tons per year was assigned to Yugoslavia under the 1958 Presidential quota proclamation. Under provisions of the Trade Expansion Act of 1962 a trade concession should be suspended "as soon as practicable" to any country dominated by communism, which was the situation in Yugoslavia. This meant that the lead import duty would be doubled on Yugoslav imports and would be a small additional protection to the U.S. domestic industry. The State Department recalled a treaty of commerce agreed

with Serbia in 1881 that called for a 1-year notice on intention to revoke a concession. No such notice was given by the President. The provision of the Trade Expansion Act cited above was amended in December 1963 by Public Law 88–205 giving the President the power to maintain a trade concession with a country, if doing so would promote the independence of such country from domination by international communism. The quota privilege for Yugoslavia remained in effect.

55. The Hanover, N. Mex., zinc mine and mill was closed for economic reasons on December 1, 1962. An application was filed with the Tariff Commission by the union representing the unemployed workers requesting adjustment assistance provide under terms of the new Trade Expansion Act. As indicated in item 49, the new "escape clause" provisions required in this case, that unemployment resulting from imports must be due in major part to a trade concession granted under trade agreements. The Commission found (March 11, 1963) that competition from imports was a factor in the decision to close the property, but not the major factor. The petition was denied. It is practically impossible for a domestic industry to obtain a finding of injury under the "escape clause" of the new Trade Expansion Act. The Tariff Commission considered 12 applications for relief under the escape clause during 1963, from workers, companies, and industries. All were denied. Any assistance to curb excessive imports will have to come from congressional action.

56. The Interntaional Lead-Zinc Study Group has noted the increase of new lead-zinc smelting capacity around the world that is in excess of actual need. A part of this expansion is a new lead smelter at the Tsumeb Mine in the Union of South Africa, to "go on stream" in 1963. South Africa was allotted an annual import quota under the 1958 quota proclamation for lead ores and concentrates of 29,760 tons. There was no allowable import quota for lead metal. The operators of the South African mines would like their quota classification changed from concentrates to metal to accommodate this change in their product. The concentrates were being treated in the United States on a "toll" basis, and the smelter applied to the U.S. Tariff Commission on March 8, 1963, to have the African concentrate quota reallocated to other countries producing lead concentrates to assure continued operation of this smelter. The Emergency Lead-Zinc Committee opposed any change in the quotas as presently constituted until an overall import control plan would become effective to assist the entire lead-zinc mining and smelting industry. The ELZ Committee so advised the President, the Tariff Commission, and our friends in the Congress of our position on this matter. The smelter application for a change in the quota was denied by the Tariff Commission on March 27, 1963. The section of the law applicable to their petition provides for reductions or terminations of a trade concession, if it appears to the Commission that the duty or other import restriction proclaimed by the President may no longer be necessary to prevent serious injury to the industry. The Commission stated that an investigation was not warranted at this time. The interpretation was a recognition of the continuing injury to the domestic lead-zinc mining industry as a result of excessive imports.

57. The Senate Subcommittee on Minerals, Materials, and Fuels held hearings May 9 and 10, 1963, on the state of the mining industry. Government and industry witnesses, including the Emergency Lead-

Zinc Committee, presented statements. Senator Gruening (Alaska), committee chairman, and other Senators emphasized that the executive department should begin to give at least as much attention to domestic mining industries as they now do to foreign production. The efforts of the lead and zinc mining industry received considerable attention from all Senators in attendance.

58. Flexible import lead-zinc quota legislation was introduced on May 14, 1963, by Senator Clinton P. Anderson as S. 1534 and by Congressman Wayne N. Aspinall as H.R. 6269. These bills were cosponsored by 26 Senators and 23 Representatives. The legislation was proposed to replace the absolute quota established by Presidential proclamation and would provide the following: (1) A fixed quarterly quota for each metal, somewhat below the 1958 proclamation levels whenever the market price for each metal was below 13.5 cents per pound; (2) a flexible quarterly quota established as the difference between the total domestic supply and U.S. consumption whenever the market price for each metal was above 13.5 cents per pound for a prescribed period; (3) the ratio of imported ores to metal was increased to assist operations of custom smelters; (4) it was proposed that quotas be on a global basis rather than by countries, as at present, to accommodate changes in world production of the ores and metals; and (5) an import quota system was proposed to control imports of manufactured lead-zinc products, as imports of several of these items have increased greatly from the quota base period 1953–57 and are an "end run" around the present quota system. Examples—litharge increased from 2,765 tons annually (1953–57) to 22,437 tons 1963; zinc oxide increased from 3,153 tons annually (1953–57) to 13,864 tons 1963.

59. H.R. 6269 was assigned to the House Ways and Means Committee for consideration; however, Congressman Wayne N. Aspinall, chairman of the House Interior and Insular Affairs Committee, announced "background hearings" on the bill before the Subcommittee on Mines and Mining for June 13, 1963. The Emergency Lead-Zinc Committee was represented by five witnesses; there were numerous statements of support from Members of Congress, mining companies, and mining and trade associations. There was no industry opposition to the bill. Statements from the executive department were in generalities as their official positions on the legislation had not been filed at that time (when prepared they were negative). The Interior Department suggested another Tariff Commission hearing, the State Department recommended negotiations on a global nature and argued against further protection for domestic industry. The Interior Committee issued a report of the hearings with a resolution urging the Ways and Means Committee to give favorable consideration to lead-zinc import legislation.

60. During 1963 the Office of Emergency Planning (OEP) initiated a program to reevaluate stockpile objectives for strategic and critical materials in the Nation's stockpiles, based on needs in the event of "conventional warfare." This assumed supplies would be available from the United States and neighboring countries in North America. Previous objectives had been as high as 1,154,000 tons for lead and 1,256,000 tons for zinc. The new objectives were reduced to zero on June 17, 1963. No objectives have been calculated for nuclear war or

rehabilitation needs. It is therefore premature to designate supplies as surplus or consider disposals. Legislation to provide the executive department with authority to authorize stockpile disposals was discussed and studied in the Congress, but there was no effective action in 1963 and it is expected that Congress will retain control of disposal authority.

61. Hearings were held on S. 1534 before the Senate Interior and Insular Affairs Subcommittee on Minerals, Materials, and Fuels, August 14, 1963. Senators Clinton P. Anderson and Ernest Gruening were assisted by other interested Senators in conducting the hearing and questioning witnesses. The mining industry was well represented by Emergency Lead-Zinc Committee witnesses from numerous producing areas. The bill was supported by several Senators and Representatives and lead-zinc manufacturers, who presented favorable statements urging enactment. Opposition to the bill was expressed by Robert Koening, of Cerro Corp., an importer and free trader. The Department of Interior opposed the bill (echoing State Department philosophy) for various reasons, emphasizing, in their opinion, "this advocated price support practices, control of trade, guaranteed markets, and asking for assistance when none is needed." They completely overlooked the need for a plan of long-term stability in the industry that the Department has discussed, but not acted on, for years.

62. On October 1, 1963, the Tariff Commission sent to the President an annual report reviewing developments with respect to the lead-zinc industry. This was the fourth report since enactment of quotas but the first one to be made under provisions of the Trade Expansion Act of 1962, section 351(d)(1).

In prior reports under provision of Executive Order 10401, the Commission judged competition with respect to trade of imported articles and could recommend an investigation to determine if the quotas should remain, be modified (relaxed), or withdrawn. Their reports of 1960, 1961, and 1962 found that no investigation was warranted based on the continuing problems within the domestic industry.

Under the Trade Expansion Act, the Tariff Commission prepared a factual report of the statistical situation with no additional comment on the question of hearings.

This report was referred to the Office of Special Representative for Trade Negotiations (Herter group) and studied by an interagency committee with representatives from Interior (chairman), State, Commerce, and Labor. Apparently in view of improved conditions within the industry this committee recommended a full-scale review of the industry experience under quotas, as the President, on March 3, 1964, ordered the Tariff Commission to undertake an investigation under section 351(d)(2) of the Trade Expansion Act of 1962 for the purpose of advising him on the probable economic effects of a change in import quotas on unmanufactured lead and zinc. The hearing date was set for June 23, 1964.

63. During the latter part of 1963, representatives of the Emergency Lead-Zinc Committee and the lead-zinc custom smelters studied the provisions of S. 1534 to consider improvements in the formula for control of flexible import quotas that would serve industry needs and answer executive department objections. Several suggestions were made, the more important being (1) the use of a fixed or flexible quota

calculation to be determined by the relative surplus or deficiency of producers stock levels of metal, rather than a fixed market price (13.5 cents per pound), (2) maintain country quota assignments, but on a percentage scale of present schedules (eliminating Italy, who had not recently used their quota), (3) a country using less than 90 percent of its quota during a year would lose a portion of its assignment to be placed in a global quota, (4) emergency quotas could be established if the metal demand required such action, and (5) provisions remained for quotas on lead-zinc manufactured items. The full Interior Committee approved S. 1534 as amended, December 10, 1963, and re-referred the bill to the Senate Finance Committee for further consideration, recommending approval by the Congress.

64. On September 4, 1963, a bipartisan group of 15 Senators, led by Senator Clinton P. Anderson, addressed a letter to President Kennedy expressing their interest in the concern of the executive department over the "chicken war" with the Common Market nations (EEC) involving only 2½ percent of domestic production and $50 million annually in foreign trade. At the same time the administration was ignoring action needed to stabilize the lead-zinc mining industry with production value reduced from $375 million in 1951 to $160 million in 1962.

65. The seventh session of the International Lead-Zinc Study Group was held in Geneva, Switzerland, November 4–7, 1963. The United States was again subjected to the continuing criticism of our "friends" who insist that U.S. import quotas be removed. All countries making a statement at the plenary sessions of the group insisted that the general improvement in world lead-zinc statistics were now sufficient to justify quota removal, as these restrictions were only temporary in nature. It was and is our industry position that quotas have only begun to work and should be allowed a chance to perform their intended function—to restore domestic mine production.

Most of the delegates present were still greatly concerned over the possibility of releases of lead and zinc from the U.S. stockpiles and insisted on consultation with the United Nations group if disposals were to be considered.

For the first time the U.S. delegation included four representatives, a special Subcommittee on Mines and Mining, from the House Interior and Insular Affairs Committee, together with the staff consultant on mining. Members of the delegation are free to voice their opinions in U.S. delegation meetings and our Congressmen did so very effectively to impress upon the State Department that U.S. policy at these meetings should place greater emphasis on domestic problems as compared with State Department concern for the world economy. The Interior and Insular Affairs Committee published a review of the study group session as Committee Print No. 18, on February 18, 1964, recommending no change in 1958 quotas until replaced by import legislation proposed in H.R. 9855. (See item No. 67.)

66. During 1963 prices for both lead and zinc increased, reaching 13 cents per pound (lead January 2, 1964; zinc December 3, 1963) and approached reasonable minimum prices for the first time since 1956. This rise resulted from decreased producers stocks (see statistical summary). Consumption increased for both metals (7 percent for lead, 5 percent for zinc), reflecting increased usage by the automobile and

steel industries. Mine production showed a tendency to increase although lead mine production was materially affected in both 1962 and 1963 by the strike in Missouri August 1, 1962 to March 31, 1963. The 1963 statistics again emphasized the natural timelag in the response of mine production to meet the needs of increased consumption following years of unreasonably low prices that discourage exploration and development of new ore resources and maintenance of normal mine operations. It is even more apparent that production and price stability must be provided by sensible import controls.

67. Following amendment of S. 1534 referred to in item 63, the lead-zinc industry continued its study of methods for calculating flexible quotas to stabilize the natural changes in quota levels from one quarter to another. This new proposal was introduced in the House of Representatives on February 3, 1964, by Wayne N. Aspinall as H.R. 9855 and by 31 other Congressmen. The quotas would be determined from a minimum of simple arithmetical factors defined in the legislation as follows:

(*a*) A calculated quota represents the difference between domestic production and domestic consumption of lead or zinc metal for a given period.

(*b*) A basic quota represents a percentage, as provided in the legislation, of consumption for 2 previous years and upon enactment of the legislation would initially be established at levels of quotas presently in effect.

(*c*) A minimum quota, as the word indicates, is a minimum figure that would be guaranteed the importing nations, regardless of domestic consumption and production.

Each quarter the Secretary of the Interior would examine these three quota figures in relation to the market position of metal stocks, that is, are these stocks surplus or deficient to normal levels as defined in the legislation. Based on this metal stock position the Secretary would determine a quota for the ensuing quarter that would use one or a combination of the three quotas described above, directly reflecting consumers' needs and the ability of the domestic industry to produce ores and metal as defined in provisions of the legislation. Except for this change the bill was essentially the same as S. 1534, as amended.

68. All lead and zinc manufactured products are on the list subject to a reduction of import tariffs during the Kennedy round of negotiations initiated at Geneva during 1964—as provided under terms of the Trade Expansion Act (TEA) of 1962. The Emergency Lead-Zinc Committee appeared before both the Tariff Commission and the Trade Information Committee in February 1964 protesting the inclusion of these items on the negotiation list as reduced tariffs will increase imports of manufactured items and reduce consumption of lead and zinc produced by U.S. mines and smelters. Present duty schedules should be maintained particularly on lead and zinc articles that have a record or potential record of excessive imports. Litharge and zinc oxide are examples. Unmanufactured lead and zinc were not on the negotiation list as items included under escape clause action were eliminated by provisions of the TEA.

69. Consumption of both lead and zinc increased in 1963, comparable to general business trends, continuing into 1964, and U.S. primary producers metal stocks at the close of 1963 and again in 1964 were at

the lowest levels since the prequota period. The lead price increased from 10.5 cents per pound on January 15, 1963, to 13 cents per pound on January 2, 1964, and zinc increased from 12 cents on July 2, 1963, to 13 cents on December 3, 1963. Metal stocks continued to decline in 1964 both in the United States and abroad, reversing the normal world and U.S. metal market price relationship. The London Metal Exchange usually quotes lead and zinc 2 to 3 cents below U.S. prices. In April 1964 the LME zinc price exceeded that in the United States and lead followed in August. The LME average zinc price in July 1964 was £140 or 17.5 cents per pound and producers outside the United States established a producers price of £125 (15.625 cents), followed by a further reduction in September to £110 (13.75 cents). The U.S. zinc price at that time was 13.5 cents and closed the year at 14.5 cents per pound. The LME average August 1964, lead price was 13.6 cents per pound (United States, 13.2 cents) and reached levels of 18.5 cents in mid-December (United States, 16 cents). A producers lead price was discussed but is difficult to attain as lead metal marketing is complicated by a large production of secondary lead metal. The U.S. industry is to be complimented on maintaining domestic lead-zinc prices at reasonable and competitive levels compared to inflated world market demands.

70. The tight metal supply situation, referred to above, initiated requests from consumers, early in 1964, for a release of both lead and zinc from the national stockpile. Stockpile holdings at June 30, 1964, totaled, lead, 1,378,368 tons—cost value 14.4 cents per pound; zinc, 1,580,741 tons—cost value 14 cents per pound. Government agencies declared this all surplus to conventional war defense needs. The U.S. industry was never consulted on developing this zero objective and disagrees with such a determination. The zero objective made the material eligible for disposal and legislation was introduced requesting congressional authority for limited disposals to industry under controlled conditions to eliminate market disruption. H.R. 11004 authorized release of 75,000 tons of zinc and H.R. 11257 for 50,000 tons of lead. This legislation became law in July 1964 and metal sales began in August: 67,500 tons of zinc was sold to domestic producers of primary slab and 7,500 tons to independent alloyers; 29,000 tons of lead was allocated for sale to domestic producers of refined lead, 9,200 tons to representatives of foreign lead producers, 4,300 tons to secondary lead producers, and 1,200 tons to domestic consumers. The balance of 9,000 tons was sold in December, allocated amongst the above category. All the material was sold for domestic consumption, to be distributed on an equitable basis at no profit. These two limited disposals were approved by both producers and consumers as metal stocks were reduced to minimum levels by increasing consumption.

71. The Tariff Commission hearing referred to in item 62 was held June 23, 1964. Senator Anderson and Congressmen Aspinall and Edmondson presented personal statements, representing 53 Members of Congress from 21 States. These statements reviewed industry efforts for establishing a lead-zinc minerals policy and strongly advocated that before any change is made in the present quota proclamation, the flexible quota legislation be enacted to solve industry problems. As usual the importing nations urged elimination of trade barriers and free access to our markets. The domestic industry position was well

presented by ELZ witnesses, who urged (*a*) consideration of the flexible quota bill as a long-range minerals policy, and (*b*) recommendations for its enactment. This was endorsed (with only one exception) by the U.S. custom lead-zinc smelting industry. This hearing was conducted under provisions of section 351(d)(2) of the Trade Expansion Act of 1962. The Tariff Commission is asked to advise the President "as to the probable economic effect of the reduction or termination" of the present quota system. The industry brief, filed following the hearing to summarize the industry statements, stressed (*a*) the domestic industry has yet to recover from the injury which the quotas were meant to cure, (*b*) the probable economic consequences of modifying or eliminating the absolute quotas (particularly with respect to near future predictable imbalances of world metal supply versus demand) and (*c*) the probable economic effects of a flexible quota (stressing this as the long-term solution).

The procedure is to refer a Tariff Commission report on a hearing of this type to an Interagency Committee (State, Commerce, Interior, Labor) for recommendations of action by the President.

72. During July 1964 a representative of the Japanese lead-zinc industry proposed to the ELZ that we appeal to the U.S. Government for use of Government stockpile releases (*a*) "as a short-term measure to prevent further excessive rise in the world zinc price," (*b*) that as new mines and smelters come in around the world, the U.S. stockpiles should be under close supervision and control of the International Lead and Zinc Study Group for use as global buffer stocks to stabilize metal prices. The ELZ answer was a restatement of position that (*a*) stockpiled materials are for use in case of a national emergency (*b*) Congress provided that they were to remain isolated from domestic and world markets and (*c*) it is unthinkable that Congress would abdicate control of these materials any more than it would other Government property.

73. The eighth session of the International Lead-Zinc Study Group met in Madrid, Spain, October 21, 1964. The session, once again, was principally a "lobby" against U.S. import quotas and tariffs in the continuing foreign effort to take more of our domestic market. Interest was shown in short-term stockpile releases to ease current metal shortages but there was great concern over any long-term disposal plan that might be given consideration in the United States. This latter concern recognizes the results of a study group report (unpublished) summarizing planned expansion of lead and zinc mining and smelting facilities in the next few years that appear to exceed any current estimates of increasing consumption. This situation was emphasized by the statements of numerous countries that an International Commodity Agreement (ICA) to stabilize world lead-zine production, consumption and trade, should be established during the current period of improved business conditions. The ELZ stated its position to the State Department, once again, that an ICA is not a practical means of stabilizing domestic industry and leads to undesirable Government controls of American business. The 1965 forecast was a deficit of metal supply compared to consumption (before stockpile release) of the same magnitude as 1964.

74. The lead-zinc flexible quota bill was reintroduced in the 89th Congress as S. 564 by Senator Clinton P. Anderson with 24 cosponsors

and Congressman Wayne N. Aspinall as H.R. 3183 with 34 identical bills, representing Members from 20 States. The principles of the legislation were the same as S. 1534, amended and H.R. 9855 of the previous Congress, with some adjustments reflecting changed economic conditions. The minimum quota was increased to quota levels of the 1958 proclamation for both lead and zinc, making this legislation no more restrictive than the then present quota program. The South African lead ore quota was assigned to a global category as these ores were being smelted in a new African smelting installation and no African ore imports were expected to be entered against their quota beginning in 1966. The unused Italian zinc metal quota was assigned to a global quota. These are indicators of the flexible features of the legislation and the recognition of changing world trade patterns.

75. The increasing consumption of lead and zinc in 1964 continued in 1965. The reduction in producers' metal stocks, plus the normal lag in "bringing in" new mine and smelter capacity to meet increased consumption, was the basis for a second release of both metals from the stockpile. Legislation was introduced in January 1965 as H.R. 1658 for lead and H.R. 1496 for zinc. Each bill authorized the release from the national and supplemental stockpiles of 150,000 tons of metal for sale to the industry plus 50,000 tons for direct Government use. The legislation was combined as H.R. 1496, including a copper sale with an additional 30,000 tons of zinc in brass; approved as Public Law 89-9, April 2, 1965. The zinc sale was made in two offers of 75,000 tons each and completed in August 1965. The initial lead sale was 60,000 tons offered and purchase requests of only 19,568 tons, August 1965. In October, sales were begun on a "off-the-shelf" basis with bids open during the third week of each month. On December 31, 1965, 35,057 tons of the 150,000 tons authorized had been sold.

76. The Tariff Commission report (T.C. Pub. 157) following the investigation, referred to as item No. 71, was issued June 8, 1965. The Commission reported to the President that termination of quotas on unmanufactured lead and zinc "would not likely have a detrimental effect on domestic lead and zinc producers unless world demand for these metals should subside substantially in relation to world supplies."

77. The report to the President was referred to the Office of Special Representative for Trade Negotiations (Herter Committee) for study and recommendations. This study was made through an interagen y committee, principally representatives from Departments of Interior (Chairman), Commerce, State, Labor, and Treasury. Representatives of our committee conferred with all these departments and the counsel to the President stating our position on this report as:

1. No precipitous action should be taken to change the present quota system until the effect of stockpile releases and the effects of the worldwide buildup of production on domestic and world markets could be evaluated.
2. The logical adjustment to solve inequities of the absolute quota proclamation was substitution of provisions of the flexible quota legislation (S. 564, H.R. 3183). Friends of the industry in Congress agreed with this position and so advised the President.

The reasoning was logical and valid; but effective October 22, 1965, the President terminated the quota proclamation on entry of lead and zinc ores and concentrates and 30 days later on the entry of lead and zinc metal.

78. The producers' stocks of zinc remained at levels considered below normal, during 1965, accompanied by increasing consumption. In June legislation was initiated for a third release from the stockpile of an additional 300,000 tons of zinc. This was generally considered by all facets of the producing and consuming industry as "excessive" and at an industry-GSA meeting in August, agreement was reached on an authorization of 150,000 tons. The House bill, H.R. 9047, was amended to this amount. The Senate approved a release of 225,000 tons and a compromise of 200,000 tons was enacted as Public Law 89-322 on November 4, 1965. Following joint agreement of the industry and GSA, 75,000 tons was offered for sale. Actual sales from this authorization totaled 68,727 tons in 73 lots.

79. At the close of 1965, direct use of lead and zinc from the stockpile by Government agencies totaled 1,184 tons of lead and 3,092 tons of zinc (50,000 tons of each metal authorized).

80. The ninth session of the International Lead-Zinc Study Group met at Tokyo in November 1965. The production-consumption balance for lead showed an apparent surplus in 1965 of approximately 1-plus percent of consumption; assuming that planned U.S. stockpile sales were completed. The 1966 balance showed similar apparent deficit of supply in 1966, assuming no further stockpile sales—1965 actual stockpiles were less than authorized and were continued into 1966. An apparent world surplus was shown for zinc in both 1965 and 1966 as metal production seemed to be increasing at a greater percentage than consumption. The group prepared a summary of announced expansions of mining and smelting capacity, and while totals were not given, the conclusions are that world mine and smelter capacities will be substantially increased by 1968. Foreign nations still insist on being consulted before sales are made from the U.S. stockpiles and some of the exporting nations, led by Mexico, are still asking for consideration and adoption of an International Commodity Agreement. A "price mechanism study" and a report of "forward estimates of consumption" through 1970 were presented to the group and discussed but not released as they were considered needing further study. The study group "welcomed" the action of the President in removing quotas and noted the time was opportune for further liberalization of trade restrictions in those countries "where practiced."

81. As reported in item 49, the Trade Expansion Act of 1962 included provisions for adjustment assistance to an industry, firm or workers following a finding by the Tariff Commission, that as a result in major part of concessions granted under a trade agreement, imports of an article have increased in sufficient quantity to cause or threaten to cause, serious injury to the domestic industry involved. From May 4, 1961, through August 30, 1965, 20 applications were filed and investigated by the Commission (nine by industry, six by firms, five by workers). The first application by workers was from the zinc industry, item 55. The first 18 findings were a unanimous negative finding by all Commissioners. The hearings on the last two applications resulted in a split decision by the Commissioners (Dec. 21, 1964, and Oct. 29, 1965). No action has been announced by the President for application of adjustment assistance for these industries. The TEA provided for exclusion from the "Kennedy round" of tariff negotiations, items under a concession resulting from escape clause action of the previous Trade Agreements Act. Eight items were excluded including unman-

ufactured lead and zinc (quotas). The TEA also provides for an annual review of these excluded industries and reduction or termination of the concession by the President following advice of the Tariff Commission and other executive agencies as reported in item 77. This type action resulted in cancellation of the lead-zinc quotas. Concessions have been terminated on three other items, modified on one, one is awaiting Presidential action and hearings have been held on the remaining two (May 1967). U.S. industry has certainly lost the "escape clause" provisions of former trade legislation. Revisions or extensions of the TEA of 1962 must include effective provisions to assist industry affected by excessive imports.

82. The small mines subsidy bill (item 33) was scheduled to "phase out" at the close of 1965. (No payments were made in 1965 as the lead market price was 16 cents and zinc was at the stabilization price of 14½ cents per pound, established for both metals.) Legislation was introduced by Congressman Ed Edmundson as H.R. 5842, March 4, 1965, to extend and amend the original act (Public Law 87–347—Oct. 3, 1961). Public Law 89–238 (Oct. 5, 1965) extended the act with the following amendments: (1) Total annual payments limited to $2.5 million; (2) payments cannot be made on sales in excess of 1,200 tons of either lead and/or zinc annually; (3) the termination date for the program is December 31, 1969; and (4) a "small domestic producer" cannot have produced or sold in excess of 3,000 tons combined recoverable lead and zinc in a 12-month period between January 1, 1960, and the first day of the period for which he seeks payments. During 1964, payments were made to 82 producers on production of 6,177 tons of lead ($145,989) and 14,402 tons of zinc ($200,201).

Total appropriations available to the program December 31, 1965	$5,237,083
Total stabilization payments and expense through 1965	2,306,396
Balance remaining for future use	2,930,687

83. S 28, the Materials Reserve and Stockpile Act of 1965, was introduced on January 6, 1965, to repeal and replace the Strategic and Critical Materials Stockpiling Act as amended of 1946. This would consolidate the National and Supplemental Stockpiles and Defense Production Act inventory into the (1) national stockpile (these with an established objective) and (2) the metals reserve inventory (materials excess to stockpile objectives). The President could authorize disposals for defense purposes or to avoid economic dislocation without congressional authorization, but Congress could veto such action. This passed the Senate by a voice vote on February 10, 1965. A 2-day hearing, July 1965, was held by Subcommittee No. 1 of the House Armed Services Committee with witnesses from the Bureau of the Budget and Attorney General discussing "unconstitutional interference" of congressional power to veto disposals. The hearings were adjourned indefinitely with no further action on the bill in the 89th Congress. Disposals of numerous materials were authorized by congressional action under the present law.

84. All activities of the Emergency Lead-Zinc Committee are being continued in 1966 by the Lead-Zinc Producers Committee.

85. Industry and GSA met in January 1966 to discuss a marketing plan for the remainder of lead and zinc authorized for sale from the stockpile by legislation enacted in 1965. Sale of lead as an "off-the-shelf" item during the third week of each month (started in October 1965) was continuing and GSA wanted to include in the plan, the bal-

ance remaining of the authorized 150,000 tons. This was announced as an amendment to the original sales offer on March 10, 1966, with 103,305 tons available for sale through December 1966. A similar sales plan was announced for zinc on February 7, 1966, for the balance of approximately 129,708.5 tons authorized for disposal, to be offered the second week of each month, February through September 1966. Starting in June 1966, sales were open all month for both lead and zinc.

SUMMARY OF STOCKPILE SALES [1]

[In short tons]

	1964	1965	1966	Balance remaining authorized for sale (Jan. 1, 1967)
Lead	50,000	35,057	73,208	41,735
Zinc	75,000	218,727	42,165	89,107

[1] Actual delivery does not coincide with the year of sale.

Lead sales for 1966 reflect purchase to supplement production cut in Missouri smelter expansion. By March 1967 sales of both metals were nil.

86. During the industry-GSA January 27, 1966, meeting, the GSA proposed use of stockpile lead and zinc in the AID program. They cited use of stockpile tin, nickel, etc., as a precedent. The direct use of so-called surplus metals in the stockpile is preferred in AID rather than barter, and it is against U.S. fiscal policy to use dollars. Their tonnage proposals were considered by the industry as high and were scaled down to 2,500 tons of lead and 5,000 tons of zinc for sale at our domestic price from stocks authorized for commercial sales. Industry cautioned GSA on disturbing diplomatic relations with foreign suppliers, as this practice affects their markets. The quantities were raised in July to 10,000 tons of lead and 15,000 tons of zinc, following telephone conversations with the industry. Negotiations on this "sale" were continuing in 1967.

87. GSA was receiving considerable pressure in early 1966, apparently from the executive department, to sell stockpile lead and zinc as a source for Federal revenue. Industry advised GSA of expanding metal production and the probable adverse market effects of substantial sales. "The Government must face the proposition of limiting imports to sell stockpile supplies."

88. As previously reported, the industry proposed replacement of the Presidential quota proclamation with provisions of flexible quota legislation, S. 564 and H.R. 3183. With the proclamation canceled, new legislation was proposed to provide limited, but effective, import quotas based on the current and improved business conditions. The legislation was introduced as H.R. 16660 on July 28, 1966, by Congressman Wayne N. Aspinall and 29 Congressmen sponsoring identical bills. On the same day, Senator Clinton P. Anderson introduced the same provisions as an amendment to and substitute for S. 564. This proposal was limited to a 5-year term, during which quotas would be applied on either lead or zinc ores and metal for one term of 3 years, if producers' stocks rose to levels defined as excessive in relation to producers' shipments (a direct measure of consumption). A quota would be canceled during the 3-year term, if producers' stocks were less than specified minimums. Specific quotas

would be assigned to countries with an import record in excess of 10 percent of imports during a current base period. Quotas could be placed on manufactured items, if imports were excessive. Importers were guaranteed a minimum quota. This was proposed as "stopgap" legislation to control unneeded imports from increasing as a result of excess production expected from the announced expansions of lead and zinc mine and smelter capacity around the world. It would provide an immediate remedy when needed and allow time to assimilate any surplus or allow the Congress or executive department to formulate a long-range minerals plan. Congressional time was short and no action was taken.

89. On August 18, 1966, a supplemental list of articles was published on items to be considered in the Kennedy round of trade negotiations. A change of definition for "pigments" in the Tariff Schedules of the United States brought litharge and zinc oxide into consideration for tariff reductions. A statement was submitted by the LZP to the Tariff Commission and Trade Information Committee urging maintenance of present duty scales on zinc oxide as imports are detrimental to domestic industry. Also the increasing imports and largest percentage are from Mexico, a nonsignatory nation to the GATT agreement. A similar statement was presented by a litharge producer.

90. The 10th session of the International Lead-Zinc Study Group met at Munich, Germany, in November 1966. Balance sheet—lead showed a projected deficit of 13,000 metric tons for 1966, and a surplus of 45,000 metric tons in 1967, before any stockpile sales in that year. The zinc figures are a 38,000 metric tons surplus in 1966, and a 123,000 metric tons surplus in 1967, before stockpile sales in that year. Free trade—there were numerous comments applauding the action of the United States in canceling import quotas, reference to U.S. participation in the Kennedy round as an indication of their hopes that we would not consider further restrictions on imports and general approval of free trade policies. Outlook for the future—the point was made by many countries that business has been good, but the forecast of a near-future surplus in metal supplies calls for more action by the study group than just a continuation of statistical studies. Action—the proposed action was in two categories: (*a*) general praise for the zinc producers' price outside the United States (United Kingdom has reservations at present levels), and the suggestion that similar action should be taken for lead. This was emphasized by statistics that indicated lead situation stronger than zinc, but prices just the reverse; (*b*) a continuing effort to interest the study group in price action through an International Commodity Agreement (ICA). This was particularly stressed in the Polish statement and supported by Norway, Denmark, Peru, Mexico, and U.S.S.R. This action is met by the comment from other countries that such a plan requires information not now available for consideration of an ICA. Stockpile sales—grave concern was expressed in practically all statements regarding the U.S. intentions or plans for further stockpile sales, particularly in view of a 1967 surplus balance for both metals without such sales. The U.S. delegate stuck with the executive department's position that our Government will continue to seek ways to dispose of the surplus "without undue market disruptions." There was no clear definition of this quote, even during long discussions in the meetings of the U.S. delegation (Government and industry representatives). The tabulation of industry expansion indi-

cated that lead and zinc mine capacity are estimated to increase 19 to 20 percent by 1969, compared to 1966. Smelting capacity expansion was estimated at 14 to 15 percent.

91. The domestic lead price held constant through 1965 at 16 cents per pound, f.o.b. New York. This was reduced to 15 cents on May 5, 1966, and again to 14 cents on October 10, 1966, closing the year at that level. Both price reductions were made to restore the world balance in pricing the metal, reflecting the decrease in quotes on the London Metal Exchange; 1966 domestic consumption set a new record. The additional metal supply came from increased mine production (6 percent), an increase in imports of lead ore (18 percent) and lead metal (31 percent) and stockpile sales of 73,000 short tons (not all delivered in 1966). These offset a temporary reduction in smelter production. Producers' and consumers' metal stocks did not show much change during the year. The domestic price for zinc, stable at 14.5 cents per pound from October 1964 through 1966, dropped to 13.75 cents on May 1, 1967, reacting to the increase of slab zinc stocks around the world. The producers' zinc price outside the United States, 13.75 cents (110£) per pound at the beginning of the year, was reduced to 12.75 cents (102£) per pound in March. The London Metal Exchange responded to these changes, from a high of 17.5 cents per pound in July 1964. As in lead, domestic zinc consumption set a new annual record in 1966. Zinc production in 1966 was affected by mine strikes in Tennessee, a smelter strike in Illinois, a new zinc mine placed in operation in the State of Washington, and an electrolytic refinery reopened in Montana in the latter part of the year. Slab zinc production was 3 percent above 1965. General imports were entered at substantially increased rates, 22 percent for ores, and a startling 82 percent for metal. Stockpile sales totaled 42,000 short tons, compared to 219,000 short tons in 1965. Mine production in 1966 was 6 percent under 1965, due to strikes, but will probably increase well above this figure in 1967. Consumers' stocks were fairly stable during the year, but producers' stocks increased from 40,000 short tons in January 1966 to 125,000 short tons on April 30, 1967. This is equal to 140 percent of 1 month's shipments, somewhat above what is considered the normal minimum stock level.

92. The legislation described in item 88 was reintroduced in the 90th Congress by Congressman Wayne N. Aspinall as H.R. 51 on January 10, 1967, and by Senator Clinton P. Anderson as S. 289 on January 12, 1967; 34 Congressmen and 27 Senators were cosponsors. This legislation was changed to provide for mandatory quotas on manufactured lead and zinc items when imports exceeded defined limits. This provision was discretionary in the 1966 proposal.

93. S. 289 was referred to the Senate Interior and Insular Affairs Committee. A hearing was held on April 12, 1967, with statements presented by industry and Government witnesses. LZP represented the industry discussing (1) the economic history of the industry relating this to previous congressional action, (2) the urgent and current need for enactment of S. 289 considering the changing supply-consumption ratio, (3) a detailed description of the bill, and (4) proposing three amendments to clarify interpretation of quota mechanics and simplify application of quotas on manufactured items. The amendments were accepted and the committee action in ordering S. 289 reported favorably, was unanimous. The executive department recommended against enactment of the bill urging the industry to use remedies in the TEA relating to injury from imports. The In-

terior Committee viewed this "argument" as lacking in validity and in complete disregard of the facts as shown by repeated negative experience under this law. The bill was referred to the Senate Finance Committee on May 4, 1967, for further action.

94. On January 6, 1967, the Office of Emergency Planning announced nuclear war stockpile objectives. This concluded a 3-year study to determine how conventional war stockpile objectives should be changed to suit nuclear war conditions. The nuclear levels specified for 77 items were equal to or lower than conventional objectives for all but one material—opium. Nuclear and conventional war objectives for both lead and zinc are zero. Both objectives are completely unrealistic from the standpoint of emergency needs during either war or peace. They were arrived as without industry consultation.

95. In October 1967, the lead price decreased from 15 cents to 14 cents per pound and production of lead by certified small producers was again eligible for stabilization payments. Lead payments are 75 percent of the difference between 14½ cents per pound and the average price for the month in which sales occurred. Zinc payments are at 55 percent of this same difference, and small producers became eligible when zinc was reduced to 13.5 cents per pound in May 1967. The program extends through 1969, and funds available December 31, 1966, totaled $2,901,633. Sixty-two producers were certified to receive lead payments.

96. The changing economics of the lead-zinc industry in 1967 have prompted the following actions:

1. In January 1967 the Anaconda Co. stopped its zinc mining operations in Montana, as they were becoming uneconomic even at the then current price of 14½ cents per pound.

2. In February 1967 the American Zinc Co. shut down its mine at Hanover, N. Mex., and its flotation plant at Deming, as these operations had become uneconomic; 118 employees were affected.

3. Effective March 10, Mathiessen & Hegeler Zinc Co. reduced slab zinc output at its Meadowbrook, W. Va., smelter by 400 short tons per month, because of rising smelter inventories. (Production capacity 50,000 tons per year.) On April 11, 1967, their smelter was closed by a strike.

4. In mid-March the St. Joseph Lead Co. announced that slab zinc production at their Josephtown, Pa., smelting division had been reduced by 10 percent for the first quarter of 1967 and the second quarter output would be trimmed approximately 18 percent. (Production capacity 26,000 tons per year.)

5. American Smelting & Refining Co. announced that operations would be suspended at its Van Stone Mine effective May 1. This is located in Colville, Wash., and during 1966 was producing 820 short tons of zinc per month and employed 55 men.

6. On May 5, 1967, the Bunker Hill Co. announced that, after investing $3½ million in development of a lead property near Fredericktown, Mo., it is now halting development work "because of softening in the domestic lead market."

7. On May 19, 1967, the American Zinc Co. announced a temporary cutback of 10 percent in zinc production because of producer stock buildup and lower consumption by the automobile and steel industries; 1966 production was 130,000 tons. Altogether, these cutbacks involve nearly 10 percent of the total annual zinc output in the United States.

SUMMARY OF U.S. LEAD STATISTICS SINCE 1950

[In short tons of lead]

Period	Production				Stocks, end period		Dutiable imports, ore and metal	Industrial consumption	Lead and zinc employees		Average E. & M.J. price
	Ore, U.S. mines	Metal, smelter production			Producers	Consumers			Mines, mills	Primary smelter and refinery	
		Primary	Secondary	Total							
1950	430,827	523,386	482,275	1,005,661	137,659	139,884	514,954	1,237,981			13.296
1951	388,164	444,283	518,110	962,393	124,030	102,769	191,649	1,184,793			17.500
1952	330,161	491,518	271,294	962,816	149,778	122,530	[1] 644,217	1,130,795	24,282	17,889	16.467
1953	342,644	488,978	486,737	975,715	196,340	113,763	409,004	1,201,604			13.489
1954	325,419	499,509	480,925	980,434	201,250	124,641	460,197	1,094,871	17,016		14.054
1955	338,025	493,743	502,051	995,794	150,822	117,458	424,413	1,212,644			15.138
1956	352,826	555,965	506,755	1,062,720	159,259	123,995	420,005	1,209,717	16,845	17,156	16.014
1957	338,216	553,403	489,229	1,042,632	207,912	129,310	512,289	1,138,115			14.658
1958	267,377	486,602	401,787	888,389	303,316	122,900	[2] 561,263	936,387	10,500	13,641	12.102
1959	255,586	353,333	451,387	804,720	230,238	126,496	347,117	1,091,149	9,893	13,308	12.211
1960	246,669	384,821	469,903	854,724	305,841	97,268	354,211	1,021,172	9,430	13,303	11.948
1961	261,921	474,531	452,792	927,323	312,402	99,140	354,714	1,027,216	9,312	13,335	10.871
1962	236,956	403,446	444,202	847,648	236,547	92,496	340,191	1,109,635	8,561	12,020	9.631
1963	253,269	403,988	493,471	897,459	168,113	119,930	342,161	1,163,358	8,595	11,893	11.137
1964	286,010	458,036	541,582	999,618	138,182	113,441	341,638	[3] 1,202,138	[4] 9,324	11,979	13.596
1965	301,147	424,861	575,819	1,000,650	133,231	103,153	[5] 354,630	[6] 1,241,482	9,405	12,700	16.000
1966	319,302	457,786	550,398	1,003,184	166,060	86,538	[7] 439,020	[8] 1,300,199	[9] 8,800	13,200	15.115

[1] Duties suspended Jan. 12, 1952, to June 4, 1952. This figure includes 464,617 tons of lead, duty free.
[2] Annual import quotas for consumption effective Oct. 1, 1958, proclamation No. 3257, 354,720 tons of lead, ore, and metal.
[3] Sales from stockpile totaled 50,000 tons in 1964; Public Law 88 373.
[4] Previous figures Tariff Commission. 1964 figure factored from U.S. Department of Labor statistics base of years 1959 through 1963.
[5] Quota proclamation terminated Oct. 22, 1965, on lead ores and concentrates and 30 days later on lead metal.
[6] Sales from stockpile totaled 35,057 tons in 1965; Public Law 89-9.
[7] Genral imports as reported by U.S Bureau of Mines.
[8] Sales from stockpile totaled 73,205 tons in 1966; Public Law 89 9. Balance remaining authorized for sale Jan. 1, 1967, 41,735 tons.
[9] 1966 figures are estimates.

SUMMARY OF U.S. ZINC STATISTICS SINCE 1950

[In short tons of zinc]

Period	Production: Ore, U.S. mines	Production: Metal: Secondary	Production: Metal: Total metal	Stocks, end period: Producers	Stocks, end period: Consumers	Dutiable imports, ore and metal	Zinc consumption: Slab zinc	Zinc consumption: Ores consumed and scrap	Zinc consumption: Total	Average E. & M. J. price
1950	623,375	66,970	910,437	8,884	64,206	394,153	967,134	383,367	1,350,501	13.866
1951	681,189	48,657	930,290	21,901	50,071	285,618	933,971	392,111	1,326,082	18.000
1952	666,001	55,111	959,590	87,160	92,579	[1] 698,509	852,783	358,865	1,211,648	16.215
1953	547,430	52,875	968,980	180,843	84,863	653,832	985,927	356,462	1,342,389	10.855
1954	473,471	68,013	870,433	124,277	100,981	630,488	884,299	296,393	1,180,692	10.681
1955	514,671	66,042	1,029,546	40,979	123,544	569,639	1,119,812	349,268	1,469,080	12.299
1956	542,340	72,127	1,055,737	68,622	104,094	627,071	1,008,790	314,232	1,323,022	13.494
1957	531,735	72,481	1,058,277	166,660	88,342	881,953	935,620	295,973	1,231,593	11.399
1958	412,005	46,605	827,851	190,237	93,266	[2] 687,189	868,327	273,838	1,142,165	10.309
1959	425,303	57,818	856,484	154,419	102,428	514,112	956,197	322,179	1,278,518	11.448
1960	435,427	68,731	868,247	190,810	67,760	501,899	877,884	281,054	1,158,938	12.946
1961	464,390	55,237	902,032	172,586	95,869	479,624	931,213	276,256	1,207,469	11.542
1962	505,491	58,880	938,275	181,513	80,036	510,121	1,031,821	298,769	1,330,590	11.625
1963	529,254	60,303	952,887	74,467	97,169	509,908	1,105,113	309,103	1,414,216	11.997
1964	574,858	71,596	1,025,680	50,226	107,097	487,583	[3] 1,207,268	328,483	1,535,751	13.568
1965	611,153	83,619	1,078,021	39,416	145,371	[4] 561,594	[5] 1,354,092	387,975	1,742,067	14.500
1966	583,418	72,351	1,111,035	76,461	123,195	[6] 805,421	[7] 1,408,337	347,900	1,756,237	14.500

[1] Duties suspended Jan. 12, 1952, to June 4, 1952. This figure includes 599,435 tons of zinc, duty free.

[2] Annual import quotas effective Oct. 1, 1958, proclamation No. 3257, 520,960 tons of zinc, ore, and metal for consumption.

[3] Sales from stockpile totaled 75,000 tons in 1964; Public Law 88-374.

[4] Quota proclamation terminated Oct. 22, 1965, on zinc ores and concentrates and 30 days later on zinc metal.

[5] Sales from stockpile totaled 218,727 tons in 1965; Public Laws 89-9 and 89-322.

[6] General imports as reported by U.S. Bureau of Mines.

[7] Sales from stockpile totaled 42,165 tons in 1965; Public Law 89-322. Balance remaining authorized for sale Jan. 1, 1967, 89,107 tons.

COMMENTS ON LEAD-ZINC STATISTICS

1. Varying U.S. market prices since 1950 have had very minor, if any effect on changes in U.S. industrial consumption of lead and zinc. Conversely, the changes in lead-zinc consumption (directly reflecting the variations in the general economy) together with the surplus of metal stocks, caused by excessive imports, depressed lead-zinc metal prices to unprofitable levels for the domestic miner from 1957 to early 1964.

2. During Korea, U.S. prices of lead and zinc were frozen by the Government at levels several cents below world prices. Import duties were suspended from February to June 1952 to "attract," back to our markets, the normal flow of imports from exporting nations, needed at that time, to support the Korean war effort. The duties were subject to reinstatement when the U.S. price fell below 18 cents for each metal.

3. U.S. prices improved in 1955 and 1956 under the alternative programs initiated by the President (purchase and barter of lead and zinc for the stockpile program in lieu of accepting the Tariff Commission's recommendations), but employment did not return to the early 1952 level.

4. The barter program was a short-term palliative to an industry requiring a long-term minerals policy. As barter stopped, in 1957, unneeded imports continued, and forced the price of lead to decline from 16 cents in early 1957 to 11 cents in July 1958—a drop of 30 percent. Zinc dropped from 13½ cents in April 1957 to 10 cents in August 1957—a decline of 26 percent.

5. Employment, in the lead-zinc mining industry by 1961 was 38 percent of the 1952 figure. The total loss of employment by 1961 within this industry since January 1952 was well over 15,000 jobs.

6. A sharp decline in U.S. mine production occurred in the second half of 1957 and early 1958. The annual rate was lower than the depression years of the mid-1930's. In 1966 lead mine production was still below the 1950–57 average and zinc mine production was slightly above the average figure of this period. The gradual increase in mine production reflects a normal reaction to increased consumption, lower metal stocks, and improved prices; however, it takes time for mine production to react to these other faster changing conditions. In 1967 metal prices are at reasonable levels (lead, 14 cents; zinc, 13.5 cents), although about 1 cent per pound less than the 1966 average. Mine production in 1967 is expected to approach a tonnage that is economically sound for this industry and effective for national defense.

7. The current expansion of foreign mine and smelter production during the next 3 to 5 years will exceed any present estimates for expanding world consumption. The surplus will seek U.S. markets. Now is the time to provide for some type of import control plan that will encourage the domestic miner to explore, develop, and produce lead and zinc, assure the consumer of adequate metal supplies at a reasonable price, and share a portion of the U.S. markets with the exporting nations. A stopgap quota system has been proposed in the 90th Congress to provide the time and temporary import controls during the period of planning and enacting a long-range minerals policy.

Statement of Mushroom Canners Committee, Pennsylvania Canners & Food Processors Association

The American Mushroom Canners Committee

The American Mushroom Canners Committee is part of the Pennsylvania Canners & Food Processors Association. The committee is comprised of 28 different canners and producers from several States who account for approximately 95 percent of the domestic production of canned mushrooms. The committee's membership is listed in appendix A which is attached. The canners committee is the only association which represents domestic processors and producers in matters of collective concern to the industry and in a very real sense represents the voice of the industry.

Position of the committee

The canners committee genuinely welcomes the opportunity presented by the Committee on Finance and the chairman to present its views on U.S. foreign trade policies and practices. In particular, the canners committee wishes to address itself to suggested topics Nos. 1 and 3; namely:

1. Possible shortcomings in the applicable statutes;
3. Role of the Tariff Commission;

and, in particular, to the adjustment provisions of title III of the Trade Expansion Act of 1962 and their administration by the U.S. Tariff Commission. The domestic mushroom canning industry is one which faces severe competition from imports and as an unsuccessful applicant for adjustment assistance under both section 301 of the Trade Expansion Act of 1962 and section 204 of the Agricultural Act of 1956, feels that it is well qualified to provide the committee with factual and objective insight on certain very serious shortcomings in our existing trade policy. The domestic mushroom canning industry submits that the existing adjustment provisions of title III are so drafted as to make their application awkward and difficult to situations not created by Kennedy round concessions and that this situation coupled with their questionable administration by the Tariff Commission effectively denies all relief to those industries which Congress intended to assist.

A brief résumé of the recent problems of this industry will provide a meaningful background for its observations on the adjustment mechanics.

Industry background

For many years prior to 1960 the domestic mushroom processing industry has been a small, but successful and important component of our agricultural economy. Mushroom production is one of our most important specialty crops and has consistently provided a high level of employment to many families and workers and has provided many depressed localities with valuable industry. For example, the single largest cash crop in the State of Pennsylvania is mushrooms.

Competition from imported products has always been a substantial factor in the industry. History has seen certain periods of extremely intense competition from foreign sources and, in particular, from Japan and France. Prior to 1960, however, the industry was always able to coexist with its foreign competition. Foreign suppliers, while occasionally in a favorable position to actively export to the U.S. market, generally provided only restrained competition since a combination of home demand and comparable production and marketing costs prevented any wholesale assault on the U.S. market. Thus, for the years 1954–60, the average annual volume of imported mushrooms was approximately 2,260,000 pounds or between 5 and 10 percent of domestic production.

In 1959 and 1960, however, unbeknownst to the domestic producers, certain ominous developments were taking place in Formosa. The Formosan Government abetted by the U.S. Agency for International Development began searching around for an export product which could provide Formosa with much needed hard currency. Mushrooms were selected as that product. That mushroom production in Formosa was designed solely for export is convincingly attested to by the fact that mushrooms of the type here involved are alien to the oriental diet and no home demand existed for the product. The reaction of certain Western consuming markets to this venture was decisive—France embargoed Formosan imports. Their impact on the U.S. market, however, was withering. The prevailing tariff rates which had been formulated with the traditional suppliers in mind were meaningless in connection with a foreign source which operated as a government controlled and subsidized cartel and relied on child labor and an average wage rate of 5 cents per hour. The following table which depicts the import trend speaks for itself on the devastating impact which low-price Formosan imports have had on the U.S. market.

U.S. IMPORTS OF CANNED MUSHROOMS, 1960–67

[In pounds]

Year	Total imports	Imports from Formosa
1960	2,272,433	None
1961	4,711,204	679,707
1962	10,184,828	6,379,209
1963	13,859,577	11,251,949
1964	10,495,520	8,698,283
1965	13,207,973	11,569,517
1966	14,004,616	12,771,990
967 (8 months)	13,944,386	13,075,197

Source: Department of Commerce reports.

These statistics dramatically portray the onslaught unleashed on the American industry. By 1964, Formosan mushrooms amounted to 30 percent of domestic production and had driven all other foreign suppliers out of the market.

Impact of Formosan imports on U.S. producers

After working for many years to acquaint the American consumer with the mushroom and develop a demand, the domestic industry saw the fruits of its effort taken by Formosan producers who deluged the American market with low-priced imports. The nonexistence of an export market coupled with the loss of a substantial portion of its home market had a predictably disastrous impact on the domestic industry:

Selling prices fell sharply and in many instances below cost.
Inventories doubled.
Employment declined by one-third.
Several producers went out of business.

These facts are fully documented in industry presentations before the President's Trade Information Committee and the U.S. Tariff Commission. While the executive department and the Formosan suppliers have been consistently successful in denying the American producers one iota of assistance by beclouding the situation with legal shortstrokes, one fact, albeit an irrelevant one under prevailing administration of the law, is clear—the American producers have been seriously injured by imports. Since the Tariff Commission and the President believe existing law permits them to deny relief without any consideration of injury, there exists no formal finding by any of the agencies who have considered the industry's plight on its true status. However, this matter will be considered in greater detail below.

Industry experience with adjustment assistance provisions

Beset with the sudden and critical situation which we have briefly described, the industry decided to invoke the relief mechanics of section 301 of the Trade Expansion Act of 1962. As we have stated, our efforts under section 301 and subsequently under section 204 of the Agriculture Act of 1956 failed. While the industry has no intention of attempting to retry its case before this committee, it does wish to point out certain aspects in the structure, formulation, and administration of the adjustment assistance provisions which preordain them to failure.

1. The Trade Expansion Act produced a legislative vacuum

It has always been the policy of Congress to author trade legislation which tempers provisions designed to liberalize trade restrictions with mechanics for according protection to industries which are injured from liberalized trade. Simple equity demands this policy and it is internationally reflected in article XIX of the General Agreement on Tariffs and Trade which provides:

> If, as a result of unforseeen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

Prior to the enactment of the Trade Expansion Act in 1962, our comparable trade laws appeared in the Trade Agreements Extension Act of 1958, which was the successor to a basic legislative scheme first formulated in 1934. Section 7 of the Trade Agreements Extension Act of 1958 popularly known as the escape clause, was designed for the protection of industries which were injured by import competition. Section 7 essentially afforded relief to domestic industries which were injured by increased imports occurring "as a result in whole or in part" from tariff concessions granted by the United States. Section 7 worked reasonably well and numerous domestic industries were successful in procuring relief from unreasonable import competition.

As the expiration date of the 1958 legislation neared, it became apparent that the President and the Congress were anxious to wipe the slate clean and promulgate an entirely new law founded on a new philosophy and providing the President with expansive and far-reaching authority. Thus, President Kennedy told the Congress:

> On June 30, 1962, the negotiating authority under the last extension of the Trade Agreements Act expires. It must be replaced by a wholly new instrument. A new American trade initiative is needed to meet the challenges and opportunities of a rapidly changing world economy.
>
> * * * * * * *
>
> To meet these new challenges and opportunities, I am today transmitting to the Congress a new and modern instrument of trade negotiation—the Trade Expansion Act of 1962.

Indicative of the wave of enthusiasm in Congress for the great good promised by "trade expansion" are the following remarks by the then Representative Lindsay:

> Mr. Chairman, in my view of this bill, the Trade Expansion Act of 1962, is the most important legislation before the 87th Congress. Indeed, I believe that it is the most important bill that I have seen on the floor of the House since I have been a Member. This bill marks the place at the crossroads where we in this country must choose between an inadequate status quo, and a new challenge put to us by a moving, changing, and advancing world. In my view, we have no choice. We must put this bill through as the very least that we must do to build a stronger America both at home and abroad.

In its enthusiasm over the future and the challenge of a changing, advancing world, Congress forgot about the present. The legislation set in motion a chain of events, including the Kennedy round, designed to make material changes in the future status of our foreign trade. The Congress, cognizant that these far-reaching measures and the changes wrought by them might very well have an adverse impact on certain domestic industries wisely included the title III adjustment assistance provisions for the protection of any industry injured from the implementation of the broader provisions found elsewhere in the law. The House Committee on Ways and Means stated:

> In view of the expanded tariff negotiations which your committee believes now to be necessary and authority for which has been provided in the bill, your committee has directed a special effort toward refining and expanding safeguards to protect the interest of United States firms, workers, and industries, including agricultural interests. These safeguards have traditionally fallen into two categories: those applicable before trade agreements are concluded, which attempt to insure that the nature and extent of contemplated concessions will not seriously injure domestic firms and workers; and those available after tariff concessions are put into effect, which seek to remedy serious injury (or threat thereof) that may nevertheless result from such concessions. H.R. 11970 incorporates, in the judgment of your committee, substantial improvements and strengthening of both of these forms of safeguards.

The foregoing makes clear the fact that the 1962 legislation marked a new departure in our trade policy, the fruition of which was not to come for many years. Indeed, it was not until 1967 that any changes were evolved and they have yet to become effective. As such, Congress in 1962 eliminated the section 7 escape clause and replaced it with provisions consciously designed to remedy results which could only potentially occur several years in the future; namely, after the changes made under titles I and II became a reality. In effect Congress passed legislation for the future but made no provisions for the present. Provisions designed to safeguard industries from the ill effects of the Kennedy round had little relevance to industries whose problems preceded the Kennedy round. Imports did not cease after 1962, and industries afflicted by them found themselves in a remedial no-man's land. Manifestly, an industry damaged in 1964 by imports faced an insurmountable job in adapting a safeguard scheme designed for conditions in 1970 to its problems.

We submit that section 301 must be amended so that it may be meaningfully applied during the remaining period before there is any actual impact from the Kennedy round.

2. Administration of section 301

Our trade law safeguards are administered by a Commission which is beholden to the Executive, not the Congress. Its evidentiary standards are vague, its procedures unique, and there is no judicial recourse from its rulings. Despite the title III shortcomings which have been pointed out, we submit that the safeguards could have worked had the Tariff Commission administered them in the spirit which Congress passed them. The Tariff Commission has frequently stated its duties under the law. In *Investigation No. TEA-I-6—Umbrellas and Parts of Umbrellas (Except Handles)* the Commission observed:

> The obligation of the Tariff Commission in investigations conducted under section 301(b)(1) of the Trade Expansion Act of 1962 is to determine and report whether the statutory provisions which authorize action by the President have been met. The conditions to be investigated are specifically enumerated in the law which instructs the Commission to determine:
>
> 1. Whether the article in question is being imported in increased quantities;
>
> 2. Whether the increased imports are a result in major part of concessions granted under trade agreements; and
>
> 3. Whether such increased imports have been the major factor in causing, or threatening to cause, serious injury to the domestic industry producing an article which is like or directly competitive with the imported article.
>
> An affirmative finding in an investigation must rest on affirmative determinations respecting each of these requisites (p. 3).

Cases brought before the Commission collapse on determination No. 2 and the meaningful investigation under No. 3 need never be reached.

Conceding, the infirmity which we have noted that the "concessions" referred to in point 2 are Trade Expansion Act concessions and the law can only be awkwardly applied to previous concessions, we submit that it would have worked had the Commission not seen fit to arbitrarily distort the plain intent of Congress. Industries such as ours fail because they are unable to demonstrate that the increased imports resulted in major part from tariff concessions. The Tariff Commission has persisted in its requirement that the concessions be the immediate and per se cause of the imports. Since it is virtually impossible to establish the type of causal relationship required by the Commission, worthy cases are rejected summarily with findings such as the following with which the Commission decided the mushroom investigation:

> The Commission finds that major changes in the world demand-supply situation provide the principal explanation of the substantial rise in U.S. imports.

We submit that an investigation which produces "findings" like this and fails to even consider the injury issue falls short of intended congressional standards. Moreover, the Senate in passing the Trade Expansion Act took special steps to make clear what they required insofar as the relationship between imports and concessions was concerned.

The forerunner to title III and section 301, section 7 of the Trade Agreements Extension Act of 1958, provided in pertinent part that injurious increases in imports must occur "as a result in whole or in part" from tariff concessions to warrant relief. The phrase "in part" was defined as meaning a "substantial" part. In title III of the original House and administration version of the Trade Expansion Act (H.R. 9900), the section providing for posttrade agreement safeguards for domestic industry, petitioners were eligible for relief if injured by imports which increased "as a result of" trade concessions, et cetera.

The Tariff Commission in its analysis of proposed H.R. 9900 made specific mention of what, in their judgment, consisted of a change in causal emphasis engendered by the new language. In the Commission's opinion, the use of the words "result of" was subject to the interpretation that concessions were the "per se" cause of increased imports.

Upon arrival of the House bill in the Senate, this ambiguity raised by the Commission was immediately clarified by the Senate Finance Committee. That it was, in fact, an inadvertent ambiguity is attested to by the complete absence of discussion or emphasis on this language during its arduous passage through the House. The Senate obviated any possible interpretation, as that suggested by the Commission, by the insertion of the words "result in major part."

The committee analyzed their amendment as follows:

Number of Senate Amendment
Description of Amendment

57 (p. 36, 1.2), 62 (p. 37, 1.12), 65 (p. 37, 1.20). These provide specifically that the causal connection between increased imports and the concessions on the article concerned need not be exclusive. It would suffice if such imports resulted "in major part" from the concessions. The House bill did not qualify the causal connection between the concessions and the increased imports and the Senate felt that the House provision was susceptible of an interpretation requiring a finding that the increased imports resulted exclusively from the concessions on the article.[1]

Webster offers the following definition of the word major: "of a greater value, length, age or the like, than other or others of the same type."[2]

The changes made by the Senate, which were ultimately enacted into the law, were unmistakeably intended to diminish the degree of required causalty which might have been implied under the House version.

In summary, this crucial portion in the remedial mechanics of the act evolved as follows:

As a result in whole or in substantial part (sec. 7).
As a result of (H.R. 9900).
As a result in major part (T.EA., 1962).

In the final analysis the degree of difference between "whole or substantial part" is little different—if any different—than "major part." Neither suggests exclusivity, nor does either suggest over 50 percent. The present language merely requires that concessions be the principal among contributing factors, which is clearly short of the "whole" cause and in most cases approximate with the substantial cause.

Had the Tariff Commission administered section 301 in the spirit suggested by the Senate, we believe that the adjustment provisions would have been workable. We do not subscribe to the analysis made by the President's special representative for trade negotiations that the adjustment provisions failed because "the test of eligibility to apply for the assistance has proved too strict."

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[1] Summary of Senate amendments of H.R. 11970, Trade Expansion Act of 1962.
[2] Webster's New International Dictionary, 2d edition.

There is nothing basically wrong with the test, the problem lies with its administration. Unless and until the Congress can insure that trade safeguards are administered by an agency which is accountable to Congress, there can be no assurance that any system which it enacts will be effective.

Respectfully submitted.

MUSHROOM CANNERS COMMITTEE,
By LEWE B. MARTIN,
Counsel, Washington, D.C.

APPENDIX A

MEMBERS OF THE ASSOCIATION

American Mushroom Corp., Wilmington, Del.
Brandywine Mushroom Co., West Chester, Pa.
John J. Biscanti, Inc., Temple, Pa.
Di Cecco, Inc., Avondale, Pa.
Fran Mushroom Co., Inc., Ravena, N.Y.
Fred Mushroom Products, South Lebanon, Ohio.
Fry Foods, Inc., Bettsville, Ohio.
Giorgio Foods, Inc., Temple, Pa.
Great Lakes Mushroom Cooperative, Warren, Mich.
Grocery Store Products, West Chester, Pa.
Hockessin Food Products, Hockessin, Del.
Hungerford Packing Co., Inc., Hungerford, Pa.
Kennett Canning Co., Kennett Square, Pa.
George & V. H. Leaver, Inc., Port Credit, Ontario, Canada.
Emil Lerch, Inc., Hatfield, Pa.
Losito Mushroom Corp., Toughkenamon, Pa.
P. Mastrippolito & Sons, Inc., Embreeville, Pa.
Mt. Laurel Canning Corp., Temple, Pa.
Mushroom Cooperative Canning Co., Kennett Square, Pa.
Myers Canning Co., Temple, Pa.
Nottingham Canning Co., Nottingham, Pa.
Ostrom Mushroom Co., Seattle, Wash.
Oxford Royal Mushroom Products, Inc., Kelton, Pa.
J. B. Swayne & Son, Inc., Kennett Square, Pa.
Tim's Packing Co., Kaolin, Pa.
Tucso Mushroom Products, Inc., Beach City, Ohio.
United Mushroom Corp., East Palestine, Ohio.
D. Vincenti & Co., Kennett Square, Pa.
West Foods, Inc., Soquel, Calif.

STATEMENT OF THE ANTIFRICTION BEARING MANUFACTURERS ASSOCIATION

The Antifriction Bearing Manufacturers Association, Inc. (AFBMA)

The Antifriction Bearing Manufacturers Association, Inc. (AFBMA) is a national trade association of companies engaged in the manufacture of ball bearings, roller bearings, and parts. The association comprised of 35 producers in 12 States who account for 75 percent of the domestic production of antifriction bearings. The current industry output is approximately $1,300 million per year. Members of the association are shown in appendix A.

The antifriction bearing is a critical component in virtually every mechanical device. Trucks, trains, airplanes, automobiles, machine tools, business machines, and farm equipment are all dependent on bearings. If wheels or shafts turn under load or at high speeds, ball or roller bearings are required.

Bearings and national security

Bearings are of great importance to an industrialized economy and of even greater importance to nations maintaining an elaborate defense establishment. Virtually every piece of equipment in a sophisticated defense arsenal requires one and often thousands of antifriction bearings. Industry surveys show that 12,000 bearings are used in the construction of an attack aircraft carrier, while a typical submarine needs more than 2,000 bearings. The following list shows the 10 primary bearing consuming industries:

1. Motor vehicles and parts (including trucks and trailers).
2. Agricultural, construction, and mining machinery.
3. Aircraft (complete, engines, propellers, and equipment).
4. Motors, generators, and motor generator sets.
5. Mechanical power transmission equipment.
6. Metalworking machinery.
7. Machine tools.
8. Laboratory scientific and engineering instruments.
9. Railroad equipment.
10. Electrical equipment for motor vehicles, aircraft and railroad.

The role of these industries in national defense needs no amplification.

History demonstrates that in times of national crisis, this industry is called upon to supply an enormous amount of items for the defense effort. Appendix C shows vividly the relationship between bearing production and defense activity. During World War II, production rose from $135 million in 1939 to $549 million in 1944. In 1944, 88 percent of total production was devoted to military and supporting projects. With the cessation of hostilities in 1945, the demand receded. Production in 1946 amounted to only $321 million, while for the years 1947–49 production averaged only $360 million. Pressures on the industry similar to those of World War II were created by the Korean war and for the period 1951–54 production averaged $625 million—an increase of $265 million annually over the immediately preceding nonwar years. The productive increase for the 1951–54 period was a direct reflection of our expanded military activities. There is no one who seriously questions the paramount role of this industry to national defense and security.

The rise in imports of antifriction bearing

Historically wars, home demand, and other factors have restrained the abilities of foreign bearing producers to export to the U.S. market. In recent years, the productive capacity of foreign producers, especially that of Japan, has burgeoned far beyond domestic needs. By 1960, Japan alone had more than 50 plants engaged in the production of antifriction bearings and parts. Their collective production was far in excess of any home demand. The following table illustrates the magnitude of the unrestrained growth of the Japanese bearings industry compared with that of other foreign producers:

SELECTED FOREIGN PRODUCTION OF ANTIFRICTION BEARINGS

Year	West Germany (Metric tons)	Italy (1,000 units)	Russia (1,000 units)	Japan (1,000 units)	France (1,000 units)	Czechoslovakia (1,000 units)
1952	24,797	31,165	141,200	19,812	30,400	7,635
1953	25,919	32,425	162,500	29,412	33,260	8,579
1954	28,053	26,908	183,200	33,384	35,000	10,208
1955	37,870	32,143	218,000	27,084	43,800	14,255
1956	42,277	38,321	263,700	48,096	49,000	17,963
1957	49,557	43,345	296,200	61,524	58,800	22,675
1958	49,044	47,835	325,100	54,984	....	27,675
1959	51,518	49,028	350,000	81,153	....	30,845
1960	61,329	55,606	370,200	125,509	76,980	37,243
1961	....	68,000	345,000	188,290	80,000	41,173
1962	....	....	....	244,074	88,000	....

Moreover, a substantial portion of total Japanese production is programed solely for the U.S. market. The Japanese Government through subsidy and incentive programs actively encourages the production for export program. Indeed, many of the Japanese bearing types and sizes, particularly in the miniature precision field, must be exported to the United States since there exists no home demand for these products. The pressure which foreign imports have exerted on domestic producers in recent years has been both vigorous and constantly increasing. Note the rapid growth in imports of antifriction bearings.

IMPORTS OF BALL AND ROLLER BEARINGS AND PARTS, BY COUNTRY OF ORIGIN

	1961	1962	1963	1964	1965	1966
Austria	$269,475	$387,985	$285,035	$259,427	$335,009	$409,148
Canada	1,644,439	2,177,565	2,202,909	2,471,335	3,627,535	5,673,081
France	287,322	387,131	504,488	472,815	1,403,429	1,665,904
Germany	2,177,372	3,684,020	3,424,241	3,901,337	4,914,439	6,265,233
Ireland	....	....	0	81,064	504,787	520,632
Italy	130,094	246,822	402,027	517,019	634,198	837,917
Japan	3,738,071	6,711,235	9,986,308	13,752,211	16,970,258	25,743,365
Sweden	540,948	486,098	318,970	478,330	581,877	893,906
Switzerland	514,543	662,247	509,775	514,417	821,652	1,103,812
United Kingdom	801,091	1,409,510	1,657,306	1,664,274	3,408,144	7,887,592
Other	20,032	123,089	93,794	142,877	201,915	635,506
Total	10,123,387	16,275,702	19,384,853	24,255,106	33,403,243	51,636,094

While the level of imports alarms the domestic producers, their greatest concern is with the pattern of imports. The bearing, while a simple machine, is produced in several different types such as ball, thrust, and roller and hundreds of different sizes. Most are precision instruments which meet sophisticated engineering standards. Foreign suppliers concentrate and confine their exports to the U.S. market to a few high-profit, high-volume types and sizes. Thus, while the total volume of imports is low when compared to domestic production, it is disturbingly high in selected categories. This situation is typified by recent difficulties which the domestic industry has encountered in its efforts to produce and market ball bearings whose outside dimensions fall between 30 and 52 millimeters. Bearings of this type are the domestic industry's largest item of production. In a very real sense, they are the bread and butter of the industry and provide the volume and profit which enables the producers to manufacture the more specialized but often unprofitable lines upon which our defense effort is so reliant. An estimate made by the domestic producers illustrates a portion of the selective impact of Japanese imports on the domestic producers:

U.S. PRODUCTION OF 30- TO 52-MM. BALL BEARINGS COMPARED WITH JAPANESE IMPORTS

[In thousands of pounds]

Year	U.S. production (1)	Japanese imports (2)	Percent (col. 2 of col. 1) (3)
1958	12,747	5	....
1959	17,389	993	5.6
1960	14,853	1,436	9.7
1961	14,280	1,517	10.6
1962	16,460	2,614	13.4
1963	13,807	3,604	26.1

The domestic industry believes that our dependence of foreign capacity for more than 25 percent of our requirements of these important bearings presents a very serious national security dilemma. An identical situation obtains with respect to minature and instrument bearings which are largely purchased by defense suppliers. Had a similar dependence existed in 1940, it is doubtful whether the domestic industry would have had the requisite capacity to respond to the war requirements.

INDUSTRY ACTION ON IMPORTS

Noting the rising tide of low-priced imports, particularly those from Japan, the bearings industry in 1964 petitioned the Office of Emergency Planning under section 232 of that Trade Expansion Act of 1962 to determine whether antifriction bearings and parts were being imported into the United States under such circumstances or in such quantities as to threaten to impair the national security.

The domestic producers contended that the basic evil and threat to national security lay not in the volume, but in the pattern of imports.

Unfortunately, neither the domestic industry, the Office of Emergency Planning, or any other Government agency had or could obtain the necessary data to evaluate the contentions of the domestic industry. U.S. import statistics on antifriction bearings are so rudimentary as to be valueless. Imports of bearings are categorized between balls, rollers, and parts. They are quantified only in terms of pounds and dollars. Manifestly when individual bearings vary in weight from grams to tons and are made in significant varied sizes, reports showing imports by pounds are of little value. Appendix B contains correspondence between the association and Government offices on the problems and deficiencies in U.S. import data on bearings. Secretary of Commerce Connor stated:

> In our attempt to make a determination of the validity of the industry's claims, we were hampered by the lack of detailed import figures.

Appendix D shows the breakdown of domestic bearing production made by the U.S. Department of Commerce. Sheet 9 of appendix B illustrates a breakdown proposed by the domestic industry for imports.

The association submits that data on imports must approximate data on domestic production if responsible Government agencies are to properly implement the trade legislation enacted by the Congress.

This industry has been consistently handicapped by insufficient records and data on imports. This dilemma is well illustrated by the industry's recent experiences with integral shaft bearings. These bearings were an innovation of the industry designed to conserve space whereby the shaft serves as the inner race. They are widely used in automobiles, home appliances, and pumps. They are an important product of this industry and are made and sold in volume. Recently, domestic sales of these bearings declined precipitously because consumers were buying low-price imported integral shaft bearings. Since it was apparent to the industry that foreign suppliers were quoting prices, which were below costs, when the applicable duty was considered, a study was made. The study revealed that customs officials were classifying these bearings as parts of automobiles at a duty far less than that applicable to bearings. More importantly, by not entering as bearings, the U.S. import statistics on bearings materially understated the true volume of bearing imports. While the industry, with congressional assistance, succeeded in obtaining a proper classification of these items, similar problems still exist. The domestic producers are now attempting in H.R. 12264 to insure correct classification of another group of bearings (mounted bearings) which are otherwise classified by the Tariff Schedules.

In regard to H.R. 12264, the domestic industry has again been handicapped by the absence of reliable data. In fact, to gain a true insight into the volume of imports of mounted bearings, the industry has been compelled to buy data by financing special studies by the Department of Commerce.

Sheets 7–10 of appendix B is a request by the domestic producers to the Tariff Commission for a better definition of bearing imports. It will no doubt be rejected because it is "too burdensome" or because customs officials are "too overworked" to provide such material. While there is undoubtedly a burden involved and while customs officials are undoubtedly overworked, we submit that Congress, if it intends to include safeguards in its trade legislation, has the responsibility to make sure that these safeguards can be implemented.

The affected Government agencies must be given the statistical data that will enable them to evaluate safeguard legislation, particularly in matters concerning a threat to the national security.

The Department of Commerce deems antifriction bearings to be of such great defense significance that the Business Defense Services Administration requires domestic producers to report in detail on their output. (See app. D.)

(Clerk's note.—App. D is made a part of the official files of the committee.)

We submit that if foreign suppliers wish to sell in our market, they too, at a minimum, should furnish the same information.

CONCLUSION

The domestic bearing producers, to whom our Government turns in times of national crisis, are concerned over the destructive and disruptive patterns of import competition. They have manifested their concern in a petition under our national security provisions. The statutory investigation required by law could not be made properly because no reliable data existed. We submit that the inability of those entrusted with the administration of our trade laws to make the investigation intended by Congress becomes a matter of serious concern when the problems arise in connection with the impairment of national security. Based on our experiences, we recommend that Congress review those safeguard provisions of our trade legislation and strengthen them so that foreign suppliers who wish to sell to this market are required to divulge the details of their sales in the same fashion required of U.S. producers.

Respectfully submitted.

BERNARD J. SHALLOW, *Chairman.*

APPENDIX A

MEMBERS OF THE ASSOCIATION

The Abbott Ball Co., Hartford, Conn.
Aetna Bearing Co., a Textron division, Chicago, Ill.
American Roller Bearing Co., Pittsburgh, Pa.
The Barden Corp., Danbury, Conn.
Brenco, Inc., Petersburg, Va.
The Fafnir Bearing Co., New Britain, Conn.
The Federal Bearings Co., Inc., Poughkeepsie, N.Y.
Federal-Mogul Corp., Detroit, Mich.
Freeway Washer & Stamping Co., Cleveland, Ohio
General Bearing Co., West Nyack, N.Y.
Hartford-Universal Co., Division of Virginia Industries, Rocky Hill, Conn.
Hoover Ball & Bearing Co., Ann Arbor, Mich.
Industrial Tectonics, Inc., Ann Arbor, Mich.
Keystone Engineering Co., Los Angeles, Calif.
L&S Bearing Co., Oklahoma City, Okla.
Link-Belt Co., Indianapolis, Ind.
Marlin-Rockwell Division of TRW, Inc., Jamestown, N.Y.
McGill Manufacturing Co., Inc., Valparaiso, Ind.
Messinger Bearings, Inc., Philadelphia, Pa.
Miniature Precision Bearings, Inc., Keene, N.H.
National Bearings Co., Lancaster, Pa.
New Departure-Hyatt Bearings Division, General Motors Corp., Sandusky, Ohio
New Hampshire Ball Bearings, Inc., Peterborough, N.H.

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Norma-Hoffmann Bearings Co., Stamford, Conn.
Orange Roller Bearing Co., Inc., Orange, N.J.
Pioneer Steel Ball Co., Inc., Unionville, Conn.
Rex Chainbelt, Inc., Downers Grove, Ill.
Rollway Bearing Co., Inc., Syracuse, N.Y.
SKF Industries, Inc., Philadelphia, Pa.
Smith Bearing Division, Accurate Bushing Co., Garwood, N.J.
Sterling Commercial Steel Ball Corp., Sterling, Ill.
Superior Steel Ball Co., New Britain, Conn.
The Timken Roller Bearing Co., Canton, Ohio
Torrington Co., Torrington, Conn.
Winsted Precision Ball Corp., Winsted, Conn.

APPENDIX B

POPE BALLARD & LOOS,
Washington, D.C., October 21, 1966.

Re investigation of imports of antifriction bearings under section 232 of the Trade Expansion Act of 1962.

Mr. FARRIS BRYANT,
Director, Office of Emergency Planning,
Washington, D.C.

DEAR MR. BRYANT: On October 21, 1964, the Office of Emergency Planning issued a notice of investigation on antifriction bearings under section 232 of the Trade Expansion Act of 1962. This investigation was instituted at the request of the Anti-Friction Bearing Manufacturers Association, 60 East 42d Street, New York, N.Y.

On behalf of that association, I respectfully request that it be permitted to withdraw its application for the reasons set forth below.

At the time the petition was filed, the association was of the belief that antifriction bearings were critical to the national security of the United States and that they were being imported in such a fashion as to threaten to impair the national security.

To the best of our knowledge no one has seriously contended that antifriction bearings are not crucial to the effective and efficient functioning of a staggering array of mechanical entities. Further, we believe it to be conclusively established that those items in our military arsenal which comprise our national defense and provide our national security are universally dependent on the products of this industry.

The strategic importance of securing a large, uninterrupted, and properly distributed supply of antifriction bearings has been confirmed by the war production experience of all major belligerents in World War II. Again the exigencies of the Korean and Vietnam conflicts have stressed the importance of maintaining a domestic capacity to produce bearings in all sizes and styles.

Imports of antifriction bearings, which were comparatively small prior to and after World War II, suddenly tripled dollarwise in 1959 and have spiraled upward since that year. In fact, in the 2-year period since the petition was filed (1963–65), total imports of bearings and parts have increased 75 percent in pounds and 72 percent in dollars; 1966 will be no exception for in only 8 months there are 2 million more pounds and about the same amount of dollars as in the complete year of 1965.

Foreign producers, particularly the Japanese, have continued the considered program of selecting those U.S. bearings produced in the greatest volume. This selective usurpation of the domestic market has been felt the most by the producers of small bearings (32 to 50 millimeters outside diameter) and miniature precision bearings.

The results and effects of this approach are to capture the high-volume U.S. profit lines, leaving the domestic industry to produce the low-profit specialty lines for itself and the world.

At the time the petition and additional views of the applicants were filed, domestic producers had been forced to curtail or eliminate capital investment in new or existing capacity in the areas of the largest import penetration. Some producers, especially in miniature precision bearings, had actually retired and disposed of much of their specialized machinery.

However, the increased demands of Vietnam and the overheated economy of 1965-66 forestalled further removal or destruction of capacity and by requiring increased production have obscured the threat of impairment of imports on the national security. Fortunately, the U.S. industry had the remaining capacity to supply the needed bearings but this continued ability is questionable if imports are allowed unrestrained future entry into the United States.

The complete deficiency of statistical data on imports of bearings has further obscured the adverse effect of these imports on the national security. Imports are reported in basket classifications in terms of dollars and pounds. Dollar figures are f.o.b. foreign port and do not reflect their true competitive impact. Further, by grouping items which vary in weight from a portion of a gram to several tons by weight, the resultant statistics are virtually useless in evaluating the seriousness of a segmented attack such as that being waged by foreign bearing producers on the American market.

Both the domestic industry and the U.S. Government have been handicapped in their documentation of this investigation by the insufficiency of current import statistics. Accordingly, the association urges the Director to institute, now and for the future, a system which will provide meaningful data on the import of antifriction bearings.

Such data would have eased the task of the Office of Emergency Planning in the present investigation and will be vital to all parties if the economic and import situation require further review under Section 232 of the Trade Expansion Act.

Sincerely,

LEWE B. MARTIN.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PLANNING,
Washington, D.C., November 8, 1966.

Re investigation of imports of antifriction bearings under section 232 of the Trade Expansion Act of 1962.

Mr. LEWE B. MARTIN,
Pope Ballard & Loos, Washington, D.C.

DEAR MR. MARTIN: This is in reply to your letter of October 25, 1966, relative to the above investigation instituted by this Office on October 23, 1964, at the request of the Anti-Friction Bearing Manufacturers Association, 60 East 42d Street, New York, N.Y.

The request in your letter, on behalf of that association, that it be permitted to withdraw its application for the reasons set forth in the letter has been granted and our records marked accordingly.

Your comments concerning the inadequacy of statistical data on imports of bearings has been noted. I am forwarding a copy of your letter to the Secretary of Commerce for his consideration.

Sincerely,

FARRIS BRYANT, *Director.*

THE SECRETARY OF COMMERCE,
Washington, D.C., December 6, 1966.

Hon. FARRIS BRYANT,
Director, Office of Emergency Planning,
Washington, D.C.

DEAR GOVERNOR BRYANT: Thank you for your letter of November 8, 1966, asking for our reaction to allegations made by counsel to the Anti-Friction Bearing Manufacturers Association about the inadequacy of import statistics available for antifriction bearings.

The application by the association for an investigation of imports stated that certain types of bearings were being imported in such quantities as to threaten to impair the national security. In our attempt to make a determination of the validity of the industry's claims, we were hampered by the lack of detailed import figures.

Most antifriction bearings are dutiable at 3.4 cents per pound and 15 percent ad valorem. It is therefore necessary only to have data on the weight and value of imports for tariff purposes, and this information has heretofore been adequate for industry and governmental statistical needs. We make every effort to have import, export, and census of manufacturers' figures for bearings, as well as other commodities, reported in such a manner as to provide comparability. Beyond that we cannot always anticipate the need for import information for specific sizes and types of the more than 5,000 categories in the Tariff Schedules, and the gathering of such data would create a heavy administrative burden of very questionable value. Procedures for spot checking of invoices or auditing of entry papers through the cooperation of the Tariff Commission, the Bureau of Customs, and the Bureau of the Census are available on an ad hoc basis when more detailed information is needed. In our investigation of bearing imports, however, we found that these procedures were not useful in assessing the impact of imports in the limited sizes and types under consideration.

In a matter such as this where the national security is involved, the seriousness of this lack of information cannot be overlooked. The Committee for Statistical Annotation of Tariff Schedules at the Tariff Commission has overall responsibility for reviewing statistical data and making changes when justified upon application by interested parties. The Anti-Friction Bearning Manufacturers Association has made such application, and I understand that the Committee is studying the need for changes in the bearing classifications, as well as the feasibility of implementing any changes. Members of the responsible industry division in the Business and Defense Services Administration are working with the Committee, and I hope that a suitable solution can be found so that more meaningful data can be provided for future use.

Sincerely yours,

JOHN T. CONNOR,
Secretary of Commerce.

THE ANTIFRICTION BEARING MANUFACTURERS ASSOCIATION, INC.,
New York, N.Y., November 4, 1966.

CHAIRMAN, COMMITTEE FOR STATISTICAL ANNOTATION OF TARIFF SCHEDULES,
U.S. Tariff Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: Imports of antifriction bearings have been increasing significantly in the past few years and for 1965 amounted to some $33 million. It is estimated these imports will approximate $50 million in 1966.

At present the Tariff Schedules of the United States classifies these imports principally in two separate items; namely, ball bearings and roller bearings.

Recently an investigation was conducted by the Office of Emergency Planning into the threat which increased imports posed to the national security. Both the governmental agencies and the domestic industry were handicapped by the insufficiency of detailed statistical data as to the makeup of these imports by size and type. In fact, this lack of data served to obscure the adverse effect of the considered program of foreign producers in selecting as targets the highest volume sizes and types of bearings. Unless the statistical annotations are reported in more detail, the proper governmental agencies will not be able to analyze the true effect of these imports on this extremely strategic industry.

A schedule of requested detail on bearing imports has been prepared with two criteria in mind:

(1) The production data of the domestic industry is gathered annually in great detail by BDSA Form 88 (copy attached). This detail is published and makes available marketing information for importers. In the important segments of the industry we must have similar data on imports.

(2) The export portion of U.S. foreign trade is now covered by greater detail than imports. To properly assess the true balance of trade we must have equivalent data on imports.

It is respectfully requested that the TSUSA be amended as of January 1, 1967, to report imports of bearings in the classifications contained in the attached schedule.

Sincerely yours,

JAMES J. WHITSETT.

Presently available			Requested
Schedule A	Included TSUSA No.	Description	
		BALL BEARINGS	
719. 7040	....	Ball bearings and parts:	Ball bearings, complete annular, ground or precision, not thrust:*
	680. 3300	Ball bearings with integral shaft.	(112) Under 9 mm O.D. ABEC 1 and 3.
	680. 3400	Ball bearings with integral shaft, CAP.	(113) Under 9 mm O.D. ABEC 5 and over.
	680. 3520	Other ball bearings and parts.	(114) 9 mm to 30 mm O.D. ABEC 1 and 3.
			(115) 9 mm to 30 mm O.D. ABEC 5 and over.
			(116) Over 30 mm to 52 mm O.D. ABEC 1 and 3.
			(117) Over 30 mm to 52 mm O.D. ABEC 5 and over.
			(118-127) Over 52 mm O.D.
			Ball bearings, annular, other.
			Ball bearings, thrust.
		ROLLER BEARINGS	
719. 7060	....	Roller bearings and parts.	(1) Roller bearings: Cylindrical: Not thrust.
	680. 3540	.....do...............	(2) Roller bearings: Spherical: Not thrust.
			(3) Roller bearings: Taper: Not thrust.
			(4) Roller bearings: Not elsewhere classified.

*Referenced numbers are from BDSA FS8, and are the data which domestic industry is required to submit annually.

PARTS

719. 7020	....	Balls and rollers, antifriction.	Balls, antifriction.
	680. 3020	Balls..........	
	680. 3040	Rollers..........	Rollers, antifriction parts for ball and roller bearings.
719. 7080	....	Ball or roller bearings and parts: (NES, CAP):	These should be not grouped in a basket but should be subdivision of above categories; i.e.:
	680. 3100	Balls and rollers: CAP.	(1) Balls: CAP. (2) Rollers: CAP.
	680. 3600	Other ball and roller bearings: CAP.	(3) Ball Bearings: CAP. (4) Roller Bearings: CAP.

PILLOW BLOCKS

719. 9300		Transmission shafts, cranks, pulleys, chain sprockets, etc., and parts:	Ball bearing pillow blocks.
	680. 45	Fixed ratio speed changers.	
	680. 47	Other speed changers.	
	680. 48	Parts	Roller bearing pillow blocks.
	680. 50	Pulleys, pillow blocks, shaft couplings.	
	680. 52	Torque converters.	
	680. 54	Chain sprockets, clutches.	Plain bearing pillow blocks.

Note: CAP (Canadian auto part).

APPENDIX C

U.S. PRODUCTION OF BEARINGS, 1938–66

Year	Value	Event
1938	$91, 432, 761	
1939	135, 758, 941	World War II.
1940	192, 488, 019	World War II.
1941	307, 809, 477	World War II.
1942	441, 515, 372	World War II.
1943	542, 294, 352	World War II.
1944	549, 954, 614	World War II.
1945	374, 700, 860	
1946	321, 530, 173	
1947	352, 501, 000	
1948	(1)	
1949	342, 886, 000	
1950	450, 495, 000	
1951	625, 528, 000	Korean war.
1952	606, 079, 000	Korean war.
1953	644, 868, 000	Korean war.
1954	533, 796, 000	Korean war.
1955	673, 933, 000	
1956	735, 257, 000	
1957	750, 902, 000	
1958	636, 777, 000	
1959	904, 588, 000	
1960	836, 201, 000	
1961	799, 732, 000	
1962	937, 862, 000	
1963	959, 203, 000	
1964	1, 087, 142, 000	Vietnam war.
1965	1, 230, 000, 000	Vietnam war.
1966	1, 350, 000, 000	Vietnam war.

[1] Not available.

Statement of Stainless Steel Flatware Manufacturers Association

The Stainless Steel Flatware Manufacturers Association is a national trade association of 10 domestic producers of stainless steel table flatware who account for over 85 percent of domestic production. A list of the members is attached as appendix A.

Experiences of the stainless steel flatware industry over the last decade as a petitioner under the escape clause of the Trade Agreements Extension Act of 1951, as amended; as an industry which was accorded relief under this act; and as an industry whose escape clause relief was reviewed under Executive Order 10501 and section 351 of the Trade Expansion Act of 1962 provide factual evidence as to topics 1 and 3 [(1) possible shortcomings in the applicable statutes and (3) role of the Tariff Commission] contained in the press release of the Finance Committee dated September 27, 1967. This statement is submitted on behalf of the Stainless Steel Flatware Manufacturers Association in response to the press release of September 27, 1967.

Following a deluge of imports in the 5-year period 1953–57 when there was over a tenfold increase (883,000 dozen in 1953 to 10,600,000 dozen in 1957), the domestic industry in April 1957, pursuant to the escape clause (section 7 of the Trade Agreements Extension Act of 1951, as amended) petitioned the U.S. Tariff Commission for relief.

Wide differences in units costs, which are the basis of true competitive standards, explain why this U.S. industry is particularly sensitive to imports and the flood of imports attracted in the years 1953–57 and subsequent periods.

Disparities in manufacturing and processing costs between the United States and foreign producers, particularly the Asian countries, can be traced primarily to differences in wage rates rather than major differences in manufacturing or processing practices. In both the United States and the Asian countries, manufacturing and processing of stainless steel are labor-intensive operations.

Stainless steel table flatware is very simply a piece of metal stamped, formed, graded, and polished, all processes which require direct hand labor. Nothing is added to the metal by way of parts or accessories, the manufacture of which could be automated or imported to reduce unit costs. The state of the art of producing knives, forks, and spoons has been under constant research and development but with surprisingly meager results.

As a general statement, automatic machinery and manufacturing techniques in regard to stainless flatware are available on a worldwide basis. The basic fact is that the United States does not have a monopoly on any equipment or machinery enabling it to offset lower wage rates by extensive automation in the production of flatware. It is well known that the Asian countries, particularly Japan, possess similar, if not identical, equipment to that used in the United States and that there are very close similarities in the technologies of manufacturing flatware between these countries. Such similarities in efficiency of manufacture accompanied by wide differences in wage rates result in higher cost per unit of product in the United States than in the Asian countries.

In January 1958 the Commission unanimously found in its escape-clause investigation that imports of stainless steel flatware had increased rapidly following trade agreement concessions and caused serious injury to the domestic industry. Such a finding could be made under the 1951 act if the Tariff Commission determined that the injury was substantially caused by increased imports. A recommendation was made to the President that the duty concessions be withdrawn.

Instead of adopting this recommendation, the President by letter advised the Senate Finance Committee that he had asked the Tariff Commission to keep the matter under review in 1958 since the Government of Japan had informed the U.S. Government that it had decided to limit Japanese shipments to the United States to 5.5 million dozen during the calendar year 1958. In a subsequent letter to the Finance Committee dated October 20, 1959, the President stated that the limitations intended by the Japanese Government on stainless steel flatware had been substantially exceeded and he was, therefore, proclaiming a tariff quota effective November 1, 1959, to continue until the President otherwise proclaims.

That tariff quota of 5¾ million dozen which was 20 to 25 percent of domestic consumption remained in effect unchanged from November 1, 1959, to January 7, 1966, when it was modified by Presidential proclamation. Over quota imports which were increasing under the original quota jumped substantially under the modified quota of 7 million dozen.

TABLE I.—IMPORTS IN EXCESS OF QUOTA RISE SHARPLY FOLLOWING INCREASED QUOTA QUANTITIES

Quota years	Quota	Imports (in dozens)	Excess
1963-64	5,750,000	5,859,658	99,658
1965-65	5,750,000	5,989,823	239,823
INCREASED QUOTA AND REDUCED DUTIES EFFECTIVE NOVEMBER 1, 1965			
1965-66	7,000,000	7,671,738	671,738
1966-67	7,000,000	[1] 9,361,362	2,361,362

[1] To Oct. 7, 1967.

Although the domestic industry had not had time to adjust to the January 1966 modifications reducing the effect of the tariff quota by more than 50 percent, it was faced with a complete termination of the tariff quota by October 11, 1967, unless the Tariff Commission, the Department of Commerce, the Department of Labor, the Special Representative for Trade Negotiations and other affected Government departments and agencies and the President could be convinced it should be extended. Quite a formidable task for a small industry.

It should be especially noted by the Finance Committee that the rules were changed as to the criteria for the continuation of the escape-clause relief 8 years after it was proclaimed. Section 7 of the 1951 act, which was modeled after the escape clause contained in article XIX of GATT, provided that where imports increased as a result of tariff concessions and caused serious injury to a domestic industry, the

United States would be free "to the extent and for such time as may be necessary to prevent or remedy such injury" to withdraw or modify the concessions previously granted or establish import quotas.

Executive Order 10401 issued by the President in 1952 provided procedures for periodic review of escape clause modifications of trade agreement concessions. These annual reviews were to keep the President advised of developments with regard to the products which were the subject of escape-clause relief.

In addition to the annual review provision, this Executive order provided that if in the judgment of the Tariff Commission conditions of competition with respect to the trade in the affected imported and domestic articles have so changed as to warrant a formal investigation to determine whether escape-clause restriction could be modified or terminated without resultant serious injury to the domestic industry, a formal investigation must be instituted. The Commission was charged with reporting to the President its findings as to what extent, if any, the continuation of the escape-clause restriction is necessary in order to prevent or remedy the serious injury to the domestic industry concerned.

Compare this to the stringent language of section 351(c)(1) of the Trade Expansion Act of 1962 which provided that escape-clause relief under section 7 automatically expired October 11, 1967, with no affirmative consideration required of the matter by the U.S. Government even though the industry involved might still be seriously injured.

Domestic industry is given the opportunity to petition for an extension of escape-clause import restriction by section 351 of the TEA, but as described above, it must overcome administrative hurdles of enormous proportions. The domestic industry, believing that serious injury still existed and that there would be serious economic effects if the tariff quota were terminated, filed a request for extension in January 1967 under section 351(d)(3) of the TEA. No longer, however, is the criterion "injury" but rather "probable economic effect."

Section 351(d)(1) of the TEA, similar to paragraph 1 of Executive Order 10401, provides that the Tariff Commission should keep under review developments with respect to industries for which escape-clause restrictions were in effect under section 7 of the 1951 act and make annual reports to the President. Section 351(d)(2) of the TEA provides upon request of the President or upon its own motion the Tariff Comission shall advise the President of its judgment of the probable economic effect of the modifiction or termination of any escape-clause restrictions under section 7 of the 1951 act or section 351 of the TEA. In advising the President as to the probable economic effect, the Tariff Commission must take into account all economic factors which it considers relevant including idling of productive facilities, inability to operate at a level of reasonable profit and unemployment or underemployment.

Recognizing this subtle yet real difference, the domestic industry filed with the Tariff Commission in the section 351(d)(3) a Benefit-Cost Analysis of the Economic Consequences of Termination of the Tariff Quota which was prepared by Prof. Harley H. Hinrichs of the University of Maryland. This was the first time to our knowledge that the procedure now required by the Bureau of the Budget for appraisal of most Government projects has been used for an objective measurement in an investigation by the Tariff Commission.

Using a most conservative approach to quantifying the benefits and costs of terminating the tariff quota, it was found that costs (loss of jobs, skill obsolescence, indirect unemployment, and idling of productive facilities) would exceed the benefits (an insignificant saving for each of those new families who buy imported flatware made at low labor costs by foreign workers) by more than 3 to 1 for the 5-year period surveyed. It was projected that imports would increase from 23 percent of consumption to 55 percent and that 700 production workers plus hundreds more service and related workers would lose their jobs. It is requested that this analysis be included as part of this paper.

Taking the liberty to adventure beyond the restrictive confines of section 351 of the TEA, the domestic industry presented evidence to the Tariff Commission that the national interest can be shown to be improved by optimum tariffs rather than no tariffs at all. This information was contained in a paper entitled "National Interest Considerations." In the case of the tariff quota, benefits can be shown to have contributed substantially to the maintenance of the flatware industries in both the United States and in Japan, its principal foreign supplier (80 percent of imports in 1966). It is requested that the study on national interest considerations be include as a part of this paper.

The success of the tariff quota on imports of stainless steel flatware can well be used as an example of the benefits that accrue to the overall U.S. economy when a reasonable import quota is applied to certain specified products. In the 8 years of its operation, it provided job security for thousands of American workmen, safety for many American investors, and contributed strongly to the welfare of those cities and towns whose principal industry is flatware manufacturing.

A sufficient optimism was generated by the tariff quota in the domestic producers to warrant their capital expenditures of $12 million between 1959 and 1966 for plant, machinery, and other improvements to increase efficiency. Sales increased 60 percent within that period, employment increased 15 percent and man-hours worked increased 46 percent. While profits on average continued at an unreasonably low level, the domestic flatware industry made substantial and encouraging progress.

At the same time, importers and foreign manufacturers enjoyed significant benefits from the quota as it brought order to a chaotic market where quality was constantly being sacrificed in profitless price wars. During the 8 years of the quota significant strides were made toward establishing an orderly market for stainless flatware in the United States. The "fast buck" operators who had preempted responsible importer distributors of flatware prior to the quota sought other areas of activity. Sales of imported flatware continued to rise in about the same ratio as U.S. consumption.

Prior to 1959 Japan concentrated its principal selling efforts on the U.S. market. The imposition of the tariff quota obviously was the impetus that inspired Japan to aggressive selling efforts in other world markets. It has been very successful. While the United States was, and still is its principal market, its world market has expanded at a very rapid rate. Between 1959 and 1966, its exports of quota and non-quota-type flatware to the United States increased 71 percent and, during the same period, its total exports to all countries increased 73 percent. Today Japan produces and sells more units of table flatware than any other country in the world. It is now No. 1. The United States is No. 2.

One unanticipated but very important benefit of the tariff quota to American consumers has been the improvement in quality of both foreign and domestic made stainless steel flatware. With both domestic and foreign manufacturers assured of a future position in the U.S. marketplace, they concentrated their efforts to improving the quality of the product which they provide in the various price ranges. An outstanding example is the formation recently of a guild of manufacturers in Tsubame, Japan, to aggressively promote the sale of fine quality stainless steel flatware. Today this quality Japanese product is readily available in the U.S. market—a far cry from the inferior quality of flatware which composed the bulk of the imports originally received from abroad. Certainly this is concrete testimony of one of the principal benefits received by American consumers as a result of the quota.

These effects of the tariff quota were succinctly stated in the Tariff Commission report to the President in April 1965 as follows:

> Apparently the rise in the average value of quota-type flatware imported from Japan reflects an increase not only in the proportion of higher quality ware imported but also in the prices paid for goods of comparable quality. Limiting the quantities that may be imported without the payment of an increased duty contributed to both of these trends.
>
> Some importers, although dissatisfied with the changes made by the TSUS in the description of the articles subject to the U.S. tariff quota, appear to benefit from the quota itself. Japan's practice of allocating export licenses to firms on the basis of their purchases in former years, as well as the U.S. tariff quota, tends to assure such firms a known share of a limited market, allows them to upgrade their merchandise, and permits them to sell at somewhat increased prices without fear of severe competition from other importers. In general, the importation of flatware is now conducted primarily by firms that specialize in flatware and tableware, and by certain retail outlets that import directly.
>
> Firms that formerly imported flatware as a sideline, or only occasionally as special opportunities arose, have for the most part ceased to do so (p. 41, T.C. Publication 152, Apr. 14, 1965).

The Tariff Commission report in the section 351(d)(3) investigation to extend the tariff quota for 4 years was not forwarded to the President until September 26, 1967. Only 11 working days were allowed for consideration of this vital matter by the President and affected Government departments and agencies. This time deficiency served to effectively deprive the domestic industry of an opportunity to analyze the report and prepare for conferences with the affected agencies and departments.

A representative group of domestic producers did visit with Ambassador Roth and officials in the Departments of Treasury, Labor, Commerce, and State. The meetings were approached with some confidence for two of the three Tariff Commissioners strongly supported the economic need for continuance of the tariff quota by stating:

> If restrictions are terminated, on the other hand, the more efficient domestic producers will probably continue operations in the United States, but at the same time import increasingly from abroad, while the less efficient domestic producers, located largely in the Northeast, will reduce employment and production, importing a larger share of their merchandise, or will be forced out of the industry entirely.
>
> In our view, the degree of dislocation in the domestic industry likely to follow the termination of escape-clause restrictions is sufficient to warrant consideration of their continuance.

* * * * * * *

We also noted in recent reports under section 351 (d) (8) the possibility of using adjustment assistance to aid marginal firms and workers in the carpets and glass industries. The stainless steel flatware industry differs from those in that the number and relative importance of marginal firms is greater.

In the course of these meetings, it became unmistakably apparent that governmental agencies and officials entrusted with the administration of our trade legislation safeguards felt first and foremost that escape-clause restrictions must be temporary regardless of whether a convincing demonstration could be made for their continuation. As such, the Tariff Commission findings on the economic posture of the industry, together with the industry's studies (benefit-cost and national interest) relating to the undesirable national consequences from unrestricted imports, were ignored under the overriding official position that safeguards were by definition short term only.

CONCLUSION

In his recent appearance before the Joint Economic Committee of the Congress, Ambassador Roth acknowledged that the mechanics for obtaining adjustment assistance do not work. He is undoubtedly correct in that observation. The domestic flatware producers submit that the law and its administration is deficient not only with respect to obtaining adjustment assistance but also in keeping assistance once it is obtained.

The section 301 standards for obtaining relief, which Ambassador Roth now admits "have not had the expected beneficial effect" at least are clear and concise in their requirements. The Commission must make certain findings and the President must, if the findings are affirmative, take certain definite action; and if he does not take action, he must justify inaction to the Congress. No similar provisions apply with respect to extensions of relief, which are of equal if not of greater importance to industry.

Prior to the statutory expiration of the adjustment assistance, the Tariff Commission, if requested by the domestic industry assisted, merely reports to the President on the "probable economic effect on such industry of such termination." The President then decides whether to terminate or continue relief on the basis of the "national interest."

Congress need not be told that many camels fit under the "national interest tent," most of which have little to do with a small industry such as ours and its problems. Presumably, the President is well within his rights to deny relief extension when the economic effect is clearly adverse because other "national interest" considerations take precedence. Since the President as recently as November 1, 1967, stated that trade restrictions are not in the "national interest," we contend that unless Congress specifically establishes concrete guidelines for when or when not to extend relief, it will invariably be canceled upon statutory expiration. If this is Congress intention, it should remove the extension provision from the law. If it is not, they should be amplified, since the Executive has made clear to this industry and we believe to the public that trade restrictions and a fortiori their continuation are not in the "national interest."

Respectfully submitted.

LEWE B. MARTIN, *Counsel.*

MEMBERS OF THE ASSOCIATION

Gorham Corp., Providence, R.I.
Hobson & Botts Co., Inc., Danbury, Conn.
Imperial Knife Associated Cos., Inc., New York, N.Y.
International Silver Co., Inc., Meriden, Conn.
The Majestic Silver Co., New Haven, Conn.
Oneida Ltd., Oneida, N.Y.
Reed & Barton Corp., Taunton, Mass.
Utica Cutlery Co., Utica, N.Y.
Voos Associates, Inc., Wallingford, Conn.
Washington Forge, Inc., Englishtown, N.J.

APPENDIX A

A BENEFIT-COST ANALYSIS OF THE ECONOMIC CONSEQUENCES OF TERMINATION OF THE QUOTA ON STAINLESS STEEL TABLE FLATWARE

(By Prof. Harley H. Hinrichs* and Roger Lind)

INTRODUCTION: A RATIONALE FOR BENEFIT-COST ANALYSIS IN TARIFF DETERMINATIONS

Often tariff and quota discussions are clouded by references to earlier quasi-theological appeals to "free trade" or "protectionism." However, today such outmoded slogans of the past are yielding to attempts to measure explicitly benefits and costs involved in public policy decisions. Indeed, even in earlier years such calculations—even if not formally spelled out—were often in the minds of the final arbiters in determining tariffs and quota decisions. This paper analyzes one such case: the question of termination of the quota on stainless steel table flatware. As much of the data and other considerations are presented at length in earlier Tariff Commission reports and hearings, or in past and present briefs by counsel for the stainless steel flatware industry, this analysis is limited to a summary prima facie case of specifying and quantifying the benefits and costs that are relevant to a determination in this case.

"Free trade" and "protectionism" as outmoded guideposts

Economists today have developed more sophisticated tools of analysis than simply falling back on ideologies of the past. Free trade, for example, as an ideology developed and promulgated by a 19th-century England that happened to have a headstart on industrialization made a great deal of sense—for England. It made less sense for a 19th-century Germany, or as the German economist Frederick List pointed out: In a small fenced-in yard, it is usually the elephants and not the chickens who espouse freedom of movement. Free trade also makes less sense (as supported by the United Nations Conference on Trade and Development) for underdeveloped countries of the world (or, as might be added, less developed areas within developed countries). When other goals of national policy are considered (such as national defense, income maintenance, war on poverty, social unrest from excess area unemployment, and so on), free trade is usually subordinated to other policy goals. In short, in a commonsense world of policy problems and decisionmaking, a simple appeal for or against free trade may be irrelevant at best; or at worst, it could be highly misleading.

On a more esoteric plane, economic theory has also laid to rest free trade as a controversy (almost in the same fashion as earlier centuries disposed of free will as a bone of contention). Indeed, even in a perfect world with free and per-

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fect competition, free markets, no externalities, full knowledge and with a full complement of necessary conditions to achieve an economic maximum, free trade (as freely moving prices and wages) will yield the most efficient solution for allocating resources—but does not necessarily reach the best position (the optimum optimorum) as determined by a social welfare function. That is, what may be efficient in maximizing production may be inefficient in distributing the fruits of that production. In fact it may be worse than a non-free-trade allocation of resources. And that is in a perfect world.

Now, when we broaden this simple "economic model" to make it resemble more closely the "real world" (such as by introducing government, social goods, private and public externalities, economies of scale, dynamic as well as static comparative advantage, imperfect markets), economists' "theories of the Second Best" demonstrate that pretending the world is perfect and adopting "free trade" by one sector or one country is not necessarily more "efficient" than other means of allocating resources. Indeed, as "theories of customs unions" demonstrate, some countries may "lose" and others may "gain." National interest (if this is chosen to be maximized) can be shown to be improved by "optimum tariffs" rather than by no tariffs at all. Thus, economists now ask the real and relevant questions: who gains? who loses? and by how much? This is what "benefit-cost" analysis tries to do. Such analysis was first used extensively in 1961 by the Department of Defense. Since then its use has been widely extended by order of the President throughout other agencies and departments of the Government. Today it is virtually mandatory that Government agencies use benefit-cost analysis (so-called "PPBS") in evaluating their programs. The benefit-cost method used in this appendix can serve as a vehicle for the Tariff Commission in determining the probable economic effect of the termination of the tariff quota on stainless steel table flatware.

I. METHODOLOGY

We seek to specify and quantify the costs and benefits of removal of the quota on the import of stainless steel table flatware. However, as the *prima facie* case for retention of this quota appears to be so overwhelming, we have intentionally excluded certain "costs" and used fairly conservative estimates of other "costs" to simplify the presentation. Thus, in the sense of using "Occam's razor," we have only quantified those prime costs that demonstrate a necessary and sufficient rationale for maintenance of the quota.

Likewise, the "benefits" may have been overstated in this exposition because of the highly imperfect market structure in the leading export country, Japan. (There exists a de facto collusive oligopoly (quasi-cartel) of Japanese stainless steel flatware exporters that exercises considerable market power over quantitative exports [indeed for countries where import quotas do not exist, this "cartel" may establish export quotas] and thus prices; thus, removal of the quota would give this "cartel" a certain degree of control over U.S. prices now exercised to a degree by the U.S. Tariff Commission and the Executive; it could also result in a gain in "monopoly profits" in Japan and a loss in tariff revenue to the U.S. taxpayer/consumer).

II. COSTS

We consider here four economic "costs" of quota termination: (1) the prime cost of unemployed and underemployed workers in the industry affected; (2) the cost of making obsolescent the human capital (skills) these workers now possess, thus reducing their future earning power (or involving costs of retraining and relocation); (3) the indirect cost of reducing other employment and output now dependent on this industry; and (4) the cost of making unemployed, underemployed and/or obsolescent other factors of production (plant and equipment) in this industry.

We exclude a number of other costs and considerations which would add considerable weight to the position for quota retention. These include: (1) retraining and relocation costs; (2) financial costs to local, State and Federal budgets for unemployment compensation, and other welfare costs; (3) reduction in local, State, Federal, individual and corporate income taxes and other taxes; (4) windfall losses in real estate and other values (property tax bases) in communities affected; (5) adverse effects on the balance of payments due to increased imports and a shift of capital investment in the industry to foreign locations; (6) "welfare" or "income distribution" considerations in that those affected are essentially lower-middle class income groups (average wage: $105 per week) or the more intense and pinpointed costs on the job-loser and company owner as contrasted to the minor highly diffused reduction in consumer prices; (7) consideration of promoting small business as those most affected and most likely to be forced to liquidate are the smaller, weaker companies in the industry whereas the larger corporations in the industry can shift production to foreign sites; and (8) considerations of regional development as those towns and areas most affected are to be found in New England and upper New York State; certain areas of which have suffered from slow development and face a possible return to a status of excessively high rates of unemployment (as experienced in the period before the Vietnam conflict).

Estimate of decline in domestic production following quota termination

First, before unemployment costs can be measured, we must determine (1) the level of future total demand, (2) expected level of domestic sales with quota removal, and (3) the residual to be filled by imports. Note that we are considering "losses" here from present levels of domestic production and not from the growth in domestic production (and jobs and investment) that would accrue if the quota were preserved.

(1) *Future total demand.*—This is projected (see chart, table I and the statistical appendix) on the basis of the very close (and statistically highly significant) relationship with personal disposable income and household formation. Total demand should continue to rise by between 5 and 6 percent per year, reaching a level of about 55 million dozen (of stainless steel table flatware) by 1972 compared to a level of about 40 million dozen as estimated by preliminary data for 1966.

(2) *Future domestic production.*—Method A: Long-experienced experts in this industry estimate that with quota removal sales of domestically produced stainless steel flatware would decline by at least 18 percent between 1966 and 1972 as contrasted to a 38-percent decrease projected for total consumption. Other experts regard this as overconservative and foresee a much greater decline in domestic sales.

Method B: A recent private questionnaire survey of the industry (conducted by these authors) indicates a decline in domestic sales during this 1966–72 period of 28 percent. This naturally might reflect the vivid imprint of the 1954–57 import surge when the absence of a tariff quota resulted in a nearly eightfold increase in imports within 3 years.

Estimate used.—Tending toward the more conservative estimate, and based on the past relationship between production declines and the resulting decline in man-hours employed,[1] we arrived at an estimate of 20 percent for the decline in man-hours due to quota termination and based on the range of a possible 18- to 28-percent drop in domestic sales.

(3) *Future import growth.*—With quota termination, on basis of method A imports would nearly quadruple between 1966 and 1972—reaching a level of about 30 million dozen in 1972 as contrasted with a level of 9 million in 1966. The industry survey indicated a potential ceiling of as many as 33 million dozen in 1972 with quota termination or—without quota termination—still about a 40-percent increase in imports to a level of about 13 million dozen. Thus, even under the present tariff quota imports can be expected to grow at a faster rate (40 percent) than total consumption (38 percent) in this same period of time.

Measurement of economic cost of quota termination

(1) *Cost of unemployed and underemployed labor.*—Given these underlying data and projections cited above, an estimated 20 percent decline in man-hours (translated into equivalent full-time jobs) would mean a loss of about 700 jobs (20 percent skilled, 60 percent semiskilled, and 20 percent unskilled) out of an equivalent full-time work force of about 3,500 production and related workers in

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[1] The figures are as follows:

TABLE OF RELATIONSHIP BETWEEN PRODUCTION AND MAN-HOUR DECLINES

Period of production decline	Percentage of production decline	Percentage of man-hour decline
1952-51	22	15
1957-56	11	7
1961-60	4	4

stainless steel table flatware. On the basis of the average earnings per job of $5,400 in this industry and on the basis of other economic studies[3] that provide expected time-unemployment distributions, the total cost of such unemployment would be about $1,757,700.[3]

(2) *Cost of skill-obsolescence.*—There is an additional loss in that these workers which are eventually reemployed at other jobs generally are employed at lower wage rates than their previous jobs. This is to be expected: a skilled or semiskilled worker (and these comprise 80 percent of those that would be unemployed in this industry) faces the "human capital loss" of the present value of future stream of earnings from the use of his developed skills. When these skills are no longer demanded, he must shift to a job where he has no or little skill (or must undergo the considerable cost and time in retraining and relocating himself and his family). Other economic studies[4] have indicated that the "new" job provides wage rates at between averages of 56 to 78 percent of the wage rate of his "previous" job. In this analysis we use a conservative "new" wage rate at 75 percent of the old wage rate. Thus, over a 5-year period (the period we are using to measure both benefits and costs) this "cost of skill-obsolescence" would total about $4,725,000.[5]

(3) *Indirect cost of induced unemployment.*—This total of direct unemployment and skill loss of $6,482,700 ($1,757,700 plus $4,725,000) will induce other unemployment. Generally, economists have estimated that as many as three to four tertiary sectors jobs (service and related jobs in the community) are dependent on one industrial job. This would be especially true in this industry where certain of the companies and plants represent the economic foundation upon which a small town or community and its services are dependent. To estimate this cost we take another conservative estimate of these "multiplied" losses at only two to one. Thus, the indirect cost of induced unemployment (and output) may be taken as $12,965,400 during this 5-year period under analysis.

(4) *Cost of idling of productive facilities.*—The present value of existing plant and equipment will suffer capital losses in that the demand for their specialized services will decline with the estimated 20-percent decline in domestic demand and production during this 5-year period (1968–72). The present plant and equipment (with the labor force and management) produced in 1966 a total output of about $71 million. A conservative estimate of the value of the total plant and equipment can be roughly set at no less than $30 million.[6] Thus a 20-percent decline in demand for the output of these assets might be capitalized into a capital loss of no less than about $6 million.

[2] Such as "Studies in the Economics of Income Maintenance," Otto Eckstein (Ed.), The Brookings Institution, Washington, D.C., 1967; particularly see John Dorsey, "The Mack Case: A Study in Unemployment," pp. 175–249, op. cit.

[3] Based on the conservative assumption that all such unemployed workers would find jobs within a year, none would leave the labor force, and there are no retraining and relocating expenditures by the workers or government agencies. The expected "layoff" distribution would be:

Jobs found by end of—	Percentage of unemployed	Wages lost
1 month	20	$151,200
3 months	30	283,500
6 months	30	567,000
12 months	20	756,000
Total		1,757,700

[4] See Eckstein, op. cit., p. 203.

[5] Twenty-five percent skill-obsolescence times $5,400 average wage times 700 workers times 5 years.

[6] As estimated by both the new investment over the past 7 years of $12 million increasing output by about 50 percent as well as by judging by a conservative capital/output ratio of 1 to 1 and a capitalization of net profits into net assets for this industry.

Summary: Total costs

To summarize, for only these four more obvious economic costs resulting from quota termination (and excluding the measurement of the eight other potential costs and considerations mentioned earlier) we can conservatively estimate a total cost of about $25,448,100 for this 5-year period following quota termination.

III. BENEFITS

Benefits from quota termination would primarily, if not exclusively, be any gains in "consumer surplus" that would be derived from lower prices (if any, given the highly imperfect market structure involved and the considerable market power potentially available to foreign exporters). However, if we heroically assume that the full impact of the quota termination elimination of the approximate 17–25 percent duty differential on above-quota imports would be passed on to the consumer in lower prices (and by this assumption set a "maximum" as to possible "benefits"), the resulting "gain" over this 5-year period would not exceed about $7,750,000.[7]

Application of interest rates to the analysis

In the spirit of simplicity and conservation (to understate possible costs and to overstate possible benefits) no interest rates were applied to the benefits and costs measured over the 5-year period 1968–72. If these are added, it would considerably strengthen the case for quota retention. This is because most of the "costs" appear earlier and larger in the 5-year period whereas—as can be seen in footnote 7—most of the "benefits" (gains in consumer surplus due to lower prices) accrue toward the end of the period. Indeed, more than half of the gains appear only in 1971 and thereafter. Thus, using appropriate discount rates of 5–10 percent for such benefit-cost analysis would considerably reduce these "far-off" gains relative to the heavier weight given to the more immediate human and capital losses involved.

SUMMARY

Measured as objectively and conservatively as possible it would appear that at a minimum the four costs measured (and excluding eight others) would be more than three times as great ($25,448,100) as the possible maximum benefits ($7,750,000) from termination of the quota on stainless steel table flatware over the 5-year period 1968–72 inclusive. Even without quota termination it can be expected that Japanese (and other Far Eastern) imports will continue to show appreciable increases, sharing in the growth of the American market and indeed—given new sources of lower cost supply elsewhere in Asia and a continued increase

[7] Based on typical economists' measures of consumer surplus from the removal of a tax or tariff (consumer surplus = ½ dQdP). The estimated price reduction per average dozen pieces might be at most 25 cents (given a 17–25 percent tariff differential on imported cost of flatware ranging from only 77 cents from Taiwan to $1.18 from Japan) while the estimated import increase (due to quota removal and not from the lowering of prices that can be expected due to the growth of non-Japanese sources of supply) might range up to 21 million dozen by the end of the 5-year period. The $7,750,000 may thus be derived from the following distribution:

Year	Increase in imports due to quota removal	"Benefits" (net of tax revenue loss)
1968	4 million dozen (×½×25¢) equals	$500,000
1969	8 million dozen (×½25¢) equals	1,000,000
1970	12 million dozen (×½×25¢) equals	1,500,000
1971	17 million dozen (×½×25¢) equals	2,125,000
1972	21 million dozen (×½×25¢) equals	2,625,000
5-year total "benefits" (maximum estimate)		7,750,000

in productivity throughout the world—prices for stainless steel flatware may be expected to decline.

STATISTICAL APPENDIX

In order to obtain an accurate projection of future consumption of stainless steel flatware, it was necessary to determine those factors which have been major determinants of consumption in the past.

Taking a sample of 14 years (1953–66), a multiple regression analysis was run on a 7094 computer. The independent variables in the analysis were personal disposable income and household formations. Other variables considered were marriages and population in the 15–40 cohort, but they were not used in the analysis because of the high correlation between these variables and personal disposable income and/or household formations. The dependent variable in the analysis was consumption of stainless steel flatware.

The results of the regression analysis showed a highly significant relationship between consumption of stainless steel flatware and personal disposable income and household formations. The coefficient of determination was 0.92. This means that 92 percent of the variation in the consumptions of stainless steel flatware could be attributed to variations in personal disposable income and household formations. An F test was used to confirm this relationship and was highly significant. ($F=65.54$.)

The regression program produced the following equation:

$$X_c = B_c + B_1X_1 + B_2X_2$$

Where

X_c=Consumption of stainless steel flatware (million dozen)
X_1=Personal disposable income (billions)
X_2=Household formations (million)
B_c=Constant −41.302 (million)
B_1=.0071
B_2=.6351

Projections of the consumption of stainless steel flatware were then made for the years 1967 through 1972 using the regression equation above. Estimates for personal disposable income were obtained by projecting forward the 1966 figure at a 4-percent rate of growth per year in real terms. Estimates of household formations were obtained from Bureau of the Census data, with the exceptions of the years 1971–72 which were obtained by projecting the 1970 figure forward at a growth rate of 1.8 percent per year.

Table I.—Relationship of Consumption of Stainless Steel Flatware to Personal Disposable Income and Household Formations, 1953–65

	Disposable income (billions of dollars)	Household formations (millions)	Consumption of stainless steel flatware (million dozen)
1953	275.3	46.334	11.563
1954	278.4	46.893	12.050
1955	296.6	47.874	18.081
1956	306.9	48.902	22.309
1957	316.1	49.673	23.725
1958	318.8	50.474	22.775
1959	333.1	51.435	27.217
1960	340.3	52.774	26.281
1961	350.6	53.464	26.492
1962	367.3	54.652	26.074
1963	380.6	55.189	28.729
1964	406.5	55.996	33.801
1965	430.8	57.251	35.756
1966	451.5	58.543	40.057

Source of data: "Disposable income," 1953–65, "Survey of Current Business," U.S. Department of Commerce, August 1966; (in constant 1958 dollars); 1966, "Economic Report of the President, 1967"; "Household formations," Bureau of the Census; "Consumption of stainless steel flatware," 1953–65, Tariff Commission publication No. 189, November 1966, table 5; 1966, estimate, Stainless Steel Flatware Manufacturers Association.

TABLE II.—PROJECTIONS OF CONSUMPTION OF STAINLESS STEEL FLATWARE BASED ON PROJECTIONS OF DISPOSABLE INCOME AND PROJECTIONS OF HOUSEHOLD FORMATIONS

	Disposable income [1] (billions)	Household formations [2] (millions)	Consumption of stainless steel flatware [3] (million dozen)
1966	451.5	58.543	40.057
1967	469.6	59.587	42.050
1968	488.4	60.664	44.560
1969	507.9	61.750	47.142
1970	528.2	62.863	49.820
1971	549.4	63.995	52.597
1972	571.3	65.146	55.455

[1] Disposable income was projected to grow at 4 percent in real terms.
[2] Projections of household formations were taken from Bureau of the Census estimates with the exception of 1971 and 1972 where the projections were based on a growth rate of 1.8 percent per year.
[3] Consumption of stainless steel flatware was estimated using the projections for disposable income and household formations and the regression equation developed from the statistical analysis.

TABLE III.—PROJECTED APPARENT CONSUMPTION OF STAINLESS STEEL TABLE FLATWARE; PROJECTED SALES BY U.S. MANUFACTURERS AND IMPORTS FOR CONSUMPTION RATIOS OF SALES BY U.S. MANUFACTURERS AND IMPORTS FOR CONSUMPTION TO APPARENT CONSUMPTION, 1967-72 (IF TARIFF QUOTA TERMINATED OCT 11, 1967)

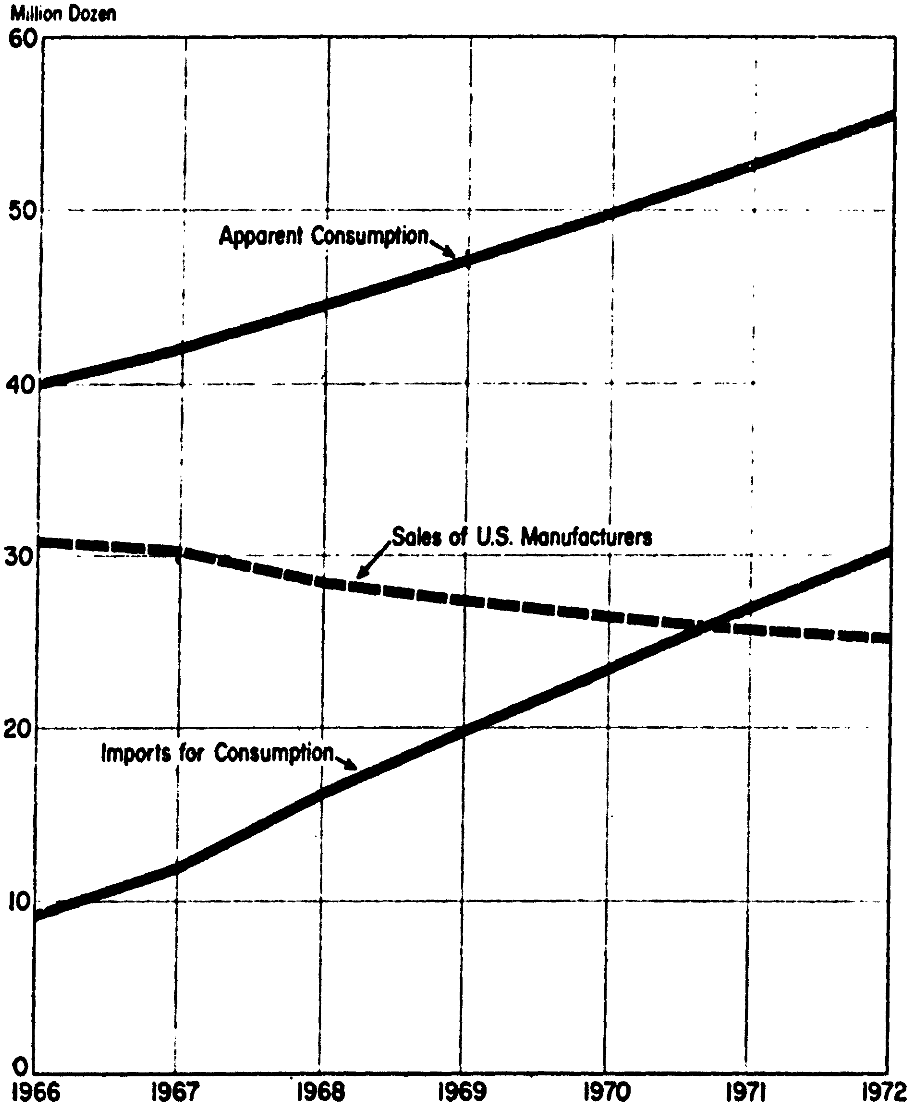
[Amounts in thousand dozens]

	Sales of U.S. manufacturers		Imports for consumption		Apparent consumption	
	Amount	Percent	Amount	Percent	Amount	Percent
1966	[1] 30,871	77.1	[1] 9,186	22.9	[1] 40,057	100
1967	[2] 30,254	71.9	[2] 11,796	28.1	[2] 42,050	100
1968	[2] 28,439	63.8	[2] 16,121	36.2	[2] 44,560	100
1969	[2] 27,302	57.9	[2] 19,840	42.1	[2] 47,142	100
1970	[2] 26,483	53.2	[2] 23,337	46.8	[2] 49,820	100
1971	[2] 25,689	48.8	[2] 26,908	51.2	[2] 52,597	100
1972	25,175	45.4	[2] 30,280	54.6	[2] 55,455	100

[1] Estimated.
[2] Projected.

Note: Sales by U.S. manufacturers were estimated based on the assumption that their sales would fall by 2 percent in 1967, 6 percent in 1968, 4 percent in 1969, 3 percent in 1970, 3 percent in 1971, and 2 percent in 1972.

PROJECTED SALES OF U.S. MANUFACTURERS, IMPORTS FOR CONSUMPTION AND APPARENT CONSUMPTION OF STAINLESS STEEL TABLE FLATWARE, 1966-72, IF TARIFF QUOTA IS TERMINATED



Source: Stainless Steel Flatware Manufacturers Association

TABLE IV

Estimates of the future sales of stainless steel flatware by quantity in dozens of pieces through 1972 based on the assumptions of—
(1) Termination of the tariff quota on Oct. 11, 1967.
(2) Retention of the tariff quota at present quantity level and rate of duty.

[Thousand dozens]

	(1)	(2)
1966	30,871	30,871
1967	30,254	32,644
1968	28,412	34,275
1969	26,004	36,392
1970	24,883	38,292
1971	23,297	40,467
1972	22,366	42,620

Note: These estimates for the total industry are based on extrapolating data from survey replies representing 80 percent of industry sales.

TABLE V

Number of full-time equivalent production and related workers employed by 80 percent of industry in 1966 producing stainless steel flatware.

(A) Skilled	594
(B) Semiskilled	1,727
(C) Unskilled	679
Total	3,000

TABLE VI

Estimated number of production and related workers that would be released in 1968 based on the assumption sale of stainless steel flatware declined by—

	Percent
A	10
B	25
C	50
A	291
B	787
C	1,557

Note: Data based on survey replies of approximately 80 percent of industry.

NATIONAL INTEREST CONSIDERATIONS ON EXTENSION OF TARIFF QUOTA ON STAINLESS STEEL TABLE FLATWARE

(By Prof. Harley H. Hinrichs and Lewe B. Martin)

INTRODUCTION

Whereas an earlier paper[1] presented at the Tariff Commission hearing, May 23, 1967, has amply demonstrated a purely economic case for extension of the tariff quota on stainless steel table flatware by indicating that four obvious costs[2] of the removal of the quota exceeded any "benefits" (some reduction in consumer prices) by at least 3 to 1—even using highly conservative assumptions—and in reality by substantially greater margins (approaching 10 to 1), the purpose of this paper is to underscore that other factors in the general national interest also strongly favor retention of the quota on stainless steel flatware.

Such factors include (1) congressional intent to grant or renew extensions of relief; (2) balance-of-payments effects; (3) the pinpointed unemployment effects in areas that could return to a status of depressed areas; (4) the "welfare" consideration of a serious effect on certain workers, businesses, and cities

[1] "A Benefit-Cost Analysis of the Economic Consequence of Termination of the Quota on Stainless Steel Flatware," by Prof. Harley H. Hinrichs and Roger Lind, May 23, 1967.

[2] (*a*) The prime cost of unemployed and underemployed workers in the industry, (*b*) the cost of making obsolescent the human capital (skills) these workers now possess, thus reducing their future earning power, (*c*) the indirect cost of reducing other employment and output now dependent on this industry, and (*d*) the cost of making unemployed, underemployed and/or obsolescent other factors of production (plant and equipment) in this industry.

relative to a very slight and widely dispersed gain to many consumers; (5) the consideration of the economic repercussions on the small businesses (often family owned and of principal importance to small- or medium-sized communities) that would be liquidated if the quota were removed; (6) retraining and relocation costs involved which far outweigh any consumer benefits; (7) the de facto status of the quota itself which is flexible in practice to allow gradual adjustments to take place, to allow for a steady increase in imports, and to provide an opportunity for American industry to make adjustments in both capital and labor decisions without inflicting undue and unnecessary severe hardship on either; and (8) the failure of any effective adjustment assistance mechanism necessitates that the quota be maintained until the Congress has acted in passing new legislation for such adjustment assistance.

These considerations are briefly spelled out in this paper and shall be further expanded in future papers, as will other points not herein mentioned.

(1) Congressional intent to grant or renew extensions of relief

Initially, it is important to emphasize that while section 351 of the Trade Expansion Act contains provisions providing for the automatic termination of proclamations according import relief to a domestic industry, it also provides for continuations of relief under subsection 351(c)(2). Thus, the Congress gave equal prominence to the extensions of relief as well as to terminations, signifying the unmistakable understanding of the Congress that in appropriate situations a domestic industry should be provided with relief for periods greater than 4 or 5 years or more. While the domestic industry does not suggest that Congress intended relief once granted to last forever, on the other hand, it should be stressed that the act is replete with carefully drafted mechanics for the extensions of tariff relief and that these provisions were intended as viable parts of the legislation and not as idle verbiage.

While the Congress in its considerations of the Trade Expansion Act concluded that the U.S. industry as a whole was competitive with those of other nations, it nevertheless recognized that some industries are not competitive from a unit-cost standpoint and that "our traditional practice of protecting American commerce and labor from serious injury from imports"[3] requires the imposition of tariff assistance to protect certain American industries. Congress gave "special effort" in devising the various forms of assistance and concluded that the section 351 procedures had substantially improved and strengthened the traditional escape-clause remedy and the periods of time for the existence of such remedies.

Wide differences in units costs which are the basis of true competitive standards explain the flood of imports in the 1953–59 period; the increase since the modification of the tariff-quota in 1966; and the new deluge that can be expected from Japan, Taiwan, and the Republic of Korea if the tariff-quota is terminated. Disparities in manufacturing and processing costs between the United States and these Asian countries can be traced primarily to differences in wage rates rather than major differences in manufacturing or processing practices. In both the United States and the Asian countries, manufacturing and processing of stainless steel are labor intensive operations.

Stainless steel table flatware is very simply a piece of metal stamped, formed, graded, and polished, all processes which require direct hand labor. Nothing is added to the metal by way of parts or accessories, the manufacture of which could be automated to reduce unit costs. The state of the art of producing knives, forks, and spoons has been under constant research and development but with surprisingly meager results.

As a general statement, automatic machinery and manufacturing techniques in regard to stainless steel flatware is available on a worldwide basis.

The bald fact is that the United States does not have a monopoly on equipment and machinery which provides an extensive automation in the production of flatware so as to offset the lower wage rates abroad. It is well known that the Asian countries, particularly Japan, possess similar, if not identical, equipment to that used in the United States and that there are very close similarities in the technologies of manufacturing flatware between these countries. Such similarities in efficiency of manufacture accompanied by wide differences in wage rates results in higher cost per unit of product in the United States than in the Asian countries.

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[3] Report of the House Committee on Ways and Means to accompany H.R. 11970, 87th Cong., second sess., 1962, Rept. No. 1818, p. 7.

The domestic flatware industry is justifiably proud of the progress it has made since 1959. It has vigorously attempted to improve its competitive status. The wisdom of granting the initial relief in 1959 is fully borne out by the industry's progress, and the ability of the industry since January 1966, to continue under relaxed import restrictions. The industry's current ability to survive demonstrates that from 1959 through 1966, it did not sit idly by but rather acted to strengthen itself. This process has continued, but the plain economic facts of record show that the flatware industry is not yet sufficiently competitive to meet unrestricted imports.

While the flatware industry has made real progress since its near decimation from imports in 1958, the most recent report of the Commission following investigation TEA-IA-5 establishes that complete removal of tariff assistance would rapidly lead to a situation where imports accounted for between 30 to 40 percent of domestic consumption. A collapse of the price structure would ensue, with the resultant elimination of some producers and the concentration of the remaining production in the hands of a few. Surely, without specifically so saying, the Commission's report established that there would be dire consequences if all relief were removed.

With respect to the current situation, Professor Hinrichs, in his economic appraisal, has convincingly portrayed that the Commission's findings of 1965 are equally true today.

To remove all restrictions now will be to wreck the strides made since 1959. Instead the domestic industry submits that in the face of certain irreparable economic injury, the wisest course is to extend the existing tariff-quota for the 4 years permitted under section 351 of the act.

(2) *Balance-of-payments effects*

Removal of the present quota would result in more than doubling imports that would otherwise occur during the 5-year 1968–72 period under the quota. Imports would rise to at least 116.4 million dozen (about $174.6 million)[4] for this period as contrasted to about 57.5 million dozen (about $86.3 million)[4] with retention of the quota—even though imports indeed would still rise during this period due to the "flexible" quality of the quota. These data are derived from the previous paper cited ("A Benefit-Cost Analysis of the Economic Consequences of Termination of the Quota on Stainless Steel Flatware" by Prof. Harley H. Hinrichs and Roger Lind, May 23, 1967).

[Millions of dozens imported]

Year	Imported if no quota	Imported if quota	Difference
1968	16.1	10.3	5.8
1969	19.8	10.7	9.1
1970	23.3	11.5	11.8
1971	26.9	12.1	14.8
1972	30.3	12.9	17.4
5-year total	116.4	57.5	58.9

Added to these "dollar costs" in the balance of payments on current account (flow of goods and services) are costs on the capital account: During the past 7 years American industry has invested no less than $12 million in plant and equipment in this industry; it would be not unreasonable to expect that at least $10 million might be invested abroad during the next 5 years rather than in the United States if the quota were terminated.

Thus the projected increase in losses on current account (about $88.3 million) plus those on capital account (about $10 million) would total to nearly $100 million over the next 5 years. This means that the total drain on the balance of paymemnts during 1968–72 would be more than double ($184.6 million) the losses that would occur if the quota were retained ($86.3 million).

(3) *Pinpointed unemployment effects*

The increase in unemployment that would spring from the removal of the quota would be pinpointed in areas that had—or still have—unusually high rates of unemployment (taken as the usual standard of 4 percent of the labor force);

[4] Assuming an average import price of $1.50 per dozen; the average January–June 1966, price was $1.47; however, the trend toward escalation in quality suggests that the average during 1968–72 would be no less than $1.50 per dozen, as a conservative minimum.

thus the workers released from jobs if the quota were removed would not be "automatically" absorbed in new jobs (even if they had the required skills) because the areas in which the stainless steel flatware industry has been traditionally located have been generally "distress" areas under current laws (qualifying under the Public Works and Economic Development Act). If the country returns to a pre-Vietnam war "normalcy" (as in 1964 and before), these excessive unemployment rates in these pinpointed areas would be aggravated by removal of the import quota and would thus not be in the national interest. Sample unemployment rates in such areas where stainless steel flatware industry factories are located are as follows:

Labor area	Percentage unemployment rates	
	1964	1966
Providence, R.I.	5.8	3.9
New Haven, Conn.	4.4	3.2
Utica, N.Y.	6.5	4.4
Lowell, Mass.	8.6	6.2

Source: "Manpower Report of the President," April 1967. Earlier (1960) data report 7 percent for Meriden, Conn. and 4.8 percent for Taunton, Mass. (See County and City Data Book, Department of Commerce.

(4) The "welfare" consideration of severe losses on certain workers and businesses as against relatively minor and widely dispersed gains to consumers

This argument is gaining increased credence in international trade theory and practice: it was well expressed by the renowned Prof. Robert E. Baldwin, of the University of Wisconsin, in a study paper submitted to the Subcommittee on Foreign Economic Policy of the Joint Economic Committee in July 1967:

"(1) *Achieving a better balance between consumer and producer interests in economically vulnerable industries.*—This is the key domestic problem in any tariff-cutting exercise. Yet it is one that has not been adequately handled since the first Trade Agreements Act in 1934. The issue can be simply stated. Since the time of Adam Smith, economists have been able to show that—setting aside infant-industry and term-of-trade effects—it is possible for a country to raise its real income level under free trade compared to a system of tariff protection. However, although the gain to consumers in the form of lower prices is more than enough to compensate the producers of protected products from any loss they suffer, in practice such compensation is not made. In industries where workers and employers can readily find alternative employment the adverse effects of tariff cuts are minor. But in industries where employment and profits are already declining because of increased imports or competition from some other domestic or foreign industries; where the workers are older, less skilled, and less educated than most workers; and where the areas in which the industries are located are depressed generally, then the costs of greater import competition can be high for a small group. It is true that even under these conditions there is usually a net gain in the sense that the gainers from lower prices could conceivably compensate those losing their employment. However, in the actual situation where compensation is not made, it is understandable for members of both the legislative and executive branch of the Government to give greater weight to the large loss suffered by a few people than the more-than-offsetting gain distributed very thinly over many people. Obviously the typical legislator knows that he is likely to lose votes on balance if he sacrifices the losses of the few for the greater, but thinly spread gain to the many. But instead of this representing a regrettable fact of politics—as some seem to suggest—I suggest it reflects the actual value judgements of the people in general. In other words, the general public does regard a larger gain spread over many people as inferior to a smaller total loss that falls on a relatively few."

And this is the case when the benefits exceed the costs of a tariff or quota removal. In this particular case, we have already demonstrated that the costs far exceed the benefits (by from 3 to 1 to as much as 10 to 1) so that this line of reasoning as recognized by both economists and legislators becomes even more imperative in the formulation of economic policy in the national interest.

(5) Considerations of small business and domestic competition

Defense of small business and domestic competition has been long recognized as fundamental to American economic principles. As close examination of the financial statements of the 19 companies in the stainless steel flatware industry will indicate, removal of the quota would be the death-knell to the majority of the firms in the industry—primarily the smaller, weaker firms. This would thusly reduce domestic competition in the industry. A majority of the number of firms are already operating at net losses or lower-than-average levels of profit. Many remain in business simply because cash flow has still been positive and thus this branch of their multiproduct output helps to cover overhead costs. Thus, removal of the quota would in fact reduce competition in this industry from a domestic viewpoint and would strike with the greatest severity at the smaller, family-type of business operation.

(6) *Retraining and relocation costs*

Retraining and relocation costs in the United States have been estimated[8] to approach as much as $10,000 per man. This does not include the lost production from unemployment or underemployment. Thus the total retraining and relocation costs alone of the expected 700-plus unemployed workers in 1 year would in fact roughly equal ($7 million) the total benefits consumers might gain over the next 5 years. If a discount rate is applied to these consumer benefits, the immediate costs of retraining and relocation—and ignoring all the other many costs and considerations—would far outweigh consumer benefits over the extended future.

(7) *The quota itself is a flexible instrument and does not protect the status quo but allows for gradual and less painful adjustment*

Retention of this quota does not limit imports; in fact imports even with the quota are projected to increase at a faster rate over the next 5 years than domestic production. See following table which shows the growing increase in imports above the quota limit. Retention of the quota merely—and importantly—provides a gradual adjustment process for American capital and labor to make rational decisions as to future investment and job training over the next few years without being forced to sustain severe and inequitable hardships in the process. The national interest has traditionally been best served by allowing incremental and gradual changes to occur without arbitrary changes in national policy inflicting unusual damage on any segment of its population.

U.S. imports for consumption of quota-type stainless steel table flatware in excess of the existing quota

	Quantity of imports
Quota year:	
1961–62	−4,339
1962–63	0
1963–64	+99,658
1964–65	+239,823
Duty change effective Nov. 1, 1965:	
1965–66	+671,738
1966–67 (to July 28, 1967)	+1,509,219

(8) *Failure of any adjustment mechanism argues for delay until Congress acts*

In making this point, we can think of no better spokesman than the administration's own special representative for trade negotiations, William N. Roth, in his recent (July 11, 1967) statement before the Subcommittee on Foreign Economic Policy of the Joint Economic Committee of the U.S. Congress:

"ADJUSTMENT ASSISTANCE MODIFICATION

"Turning to the adjustment assistance question, we find ourselves dealing with the probability that the Congress, in writing the provisions of the Trade Expansion Act, intended far more readily available recourse to adjustment assistance than has proved possible.

"These provisions were designed to authorize quick and substantial assistance to any worker or firm injured as a result of increased imports caused by tariff concessions. The underlying concept was that rather than restrict imports it was far preferable to help firms and workers meet problems created by import competition through improved productivity.

"Unfortunately, however, the adjustment assistance provisions have not had the expected beneficial effect because in practice the present test of eligibility

[8] Department of Labor Manpower Retraining Division.

to apply for the assistance has proved too strict. In fact, in no case brought under the act have any firms or workers been able to prove eligibility.

"The present test of eligibility requires (1) that tariff concessions be shown to be the major cause of increased imports, and (2) that such increased imports be shown to be the major cause of injury to the petitioner.

"In the complex environment of our modern economy, a great variety of factors effect the productive capacity and competitiveness of American producers, making it virtually impossible to single out increased imports as the major cause of injury. In fact, it has usually been impossible to prove that tariff concessions were the major cause of increased imports.

"Under these circumstances, it is apparent that action must be taken to make the intended assistance a reality. We now have under consideration several formulations that might meet the requirements of the situation. No final decisions have yet been taken, but it is the intention of the administration to propose congressional action to modify the present provisions of the act."

In the same statement Special Representative William M. Roth added: "Ad hoc measures to protect certain products may continue to be needed from time to time, in emergencies." Given the administration's intent to introduce new and effective adjustment mechanisms under the Trade Expansion Act, it would appear quite premature to remove the existing "ad hoc measure" now protecting stainless steel table flatware until such new legislation is in fact adopted.

CONCLUSION

In an earlier paper dealing only with four selective economic costs involved in quota termination, it was demonstrated that there was no "economic" case at the present time for quota removal. This outline of other "national interest" considerations confirms the earlier view. Indeed, even if there were an "unfavorable" economic case, these "national interest" considerations would prevail. However, with both "economic" and "national interest" considerations pointing in the same direction, it would appear that at the present time there is no rational basis for quota removal in the stainless steel flatware industry.

INDEPENDENT WIRE DRAWERS ASSOCIATION,
Washington, D.C.

Re legislative oversight review of U.S. trade policy.

Mr. TOM VAIL,
Chief Counsel, Senate Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: In accordance with Senator Russell B. Long's announcement of September 27, 1967, the Independent Wire Drawers Association wishes to submit a brief memorandum in connection with the Senate Finance Committee legislative oversight review of U.S. trade policy.

The Independent Wire Drawers Association is a national trade association representing over 30 independent nonintegrated wire drawers and fabricators, located in the following States: California, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Ohio, Pennsylvania, Tennessee, and Texas.

I use the term "independent" to indicate these firms are not subsidiaries, divisions or captives of the major steel corporations. I use the term "nonintegrated" in the sense that these firms do not possess basic steelmaking capacity.

I should also like to explain the term "wire drawer." Wire is manufactured from wire rod, a semifinished steel product, by drawing it through a series of dies which reduces the diameter of the wire rod and at the same time increases its length. Thus, the descriptive term "wire drawer."

A wire fabricator manufactures a finished wire product from the wire, producing such things as nails, barbed wire, woven wire fence and welded wire concrete reinforcing mesh. Most members of our association fabricate some wire products in addition to drawing wire.

The basic raw material for the steel wire and wire products industry is hot-rolled carbon steel wire rod. In the United States, wire rod is produced by 15 vertically integrated steel mills; and 93 percent of U.S. wire rod capacity is controlled by a mere 12 of these producers, including such industry giants as United States Steel, Republic and Bethlehem. Steel wire and wire products, however, are produced by both the major integrated producers of wire rod and by many small, independent, nonintegrated wire drawers and fabricators, who are dependent upon the integrated producers for their wire rod. Economists characterize this situation where a supplier is also a competitor as "dual distribution."

There is nothing inherently evil about this dual distribution situation so long as a normal relationshp exists between wire rod, wire and wire product prices which permit an adequate margin for converting wire rod into wire, and wire into products. But beginning in 1955, the behavior of these prices has not been normal, instead, these prices illustrate how an integrated producer in a dual distribution industry can apply anticompetitive price squeezes to their nonintegrated competitors.

The case of a typical wire product, annealed baling wire, graphically illustrates the double price squeeze experienced by the independent wire drawers and farbricators. Prior to 1955 most independent producers purchased their wire rods from domestic steel mills at an average price of approximately $105 per ton. At that time baling wire sold for about $192 per ton which permitted the fabricators a reasonable markup on the wire drawing and fabricating process. But the major steel producers raised wire rod prices in 1955, 1956, 1957, and again in 1958. According to the Bureau of Labor Statistics, wire rod prices rose more than any other steel product during the postwar period. The price of the finished product did not increase proportionately, instead it decreased. A point was reached, in many areas, where the raw material was selling at a higher price than the finished wire product. For example, during 1963, hot-rolled carbon steel wire rod was sold for $144.50 per net ton. Yet, the same integrated steel mill was selling annealed baling wire for $141.50 per net ton.

The independent producer, of course, could not purchase wire rod from the integrated producers at $144.50, clean and draw the rod into wire, fabricate the wire into annealed baling wire and then compete against a price of $141.50. As a matter of survival the independent producer had to turn to imported wire rod.

The enclosed memorandum discusses the duty treatment accorded hot-rolled carbon wire rod and wire products during the Kennedy round of GATT negotiations.

Sincerely yours,

Alan D. Hutchison, *General Counsel.*

Memorandum re U.S. Customs Duty Treatment of Wire Rod and Welded Wire Mesh

The U.S. tariff treatment of wire rod is as follows:

Wire rods of iron or steel:
Other than alloy iron or steel:
Not tempered, not treated, and not partly manufactured:

TSUS Item No.		
608.70	Valued not over 4 cents per pound	0.1¢ per lb.
608.71	Valued over 4 cents per pound	0.25¢ per lb.

On an average, the ad valorem equivalent of these two specific duties is approximately 5 percent. However, the price of wire rod generally varies at just about 4 cents a pound or $88.20 per metric ton. Thus, the independent wire drawer is never quite sure what duty will be applicable. This is a matter of great inconvenience to steel importers and independent wire drawers.

Even though the ad valorem equivalent duty on wire rod is about 5 percent, no action was taken in regard to wire rod customs duties during the Kennedy round of GATT negotiations. The Trade Expansion Act of 1962 authorized the President to completely eliminate duties on articles with an ad valorem or an ad valorem equivalent duty of 5 percent or less. It was expected the duty on wire rod would have been entirely eliminated. It was not reduced at all.

U.S. independent wire drawers face severe competition from imported fabricated wire products, particularly welded wire concrete reinforcing mesh. But the independent wire drawers have always been willing to meet their import competition in the marketplace.

The U.S. customs duty on about all fabricated wire products was reduced 50 percent. For example, the duty on welded wire concrete reinforcing mesh (TSUS item No. 642.80) is 19 percent ad valorem. During the Kennedy round this duty was reduced the full 50 percent.

It is unfair to the U.S. independent wire drawers to reduce the U.S. customs duties on competing fabricated wire end products a full 50 percent and not reduce the duties on his basic imported raw material—wire rod. In all fairness to the U.S. independent wire drawer, the small duty on wire rod should be completely eliminated.

Statement of the Fine & Specialty Wire Manufacturers' Association, Washington, D.C.

This statement is filed on behalf of the domestic producers of fine and specialty carbon steel wire through their trade association, the Fine & Specialty Wire Manufacturers' Association. This association is composed of 18 member companies who account for more than 75 percent of the fine and specialty steel wire produced in the United States. Manufacturing facilities of these member companies are located in 16 States: Alabama, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Texas.

We have requested this opportunity to speak to you during this "Legislative Oversight Review of U.S. Trade Policies" because our industry has been adversely affected by imported wire for more than 10 years. Despite a growing domestic market for our wire we find ourselves producing an ever smaller percentage of it. Best estimates are that in the last 10 years our share of the American market has decreased from 98 percent to approximately 80 percent. Wire mills have been closed and almost all of our members have dropped certain items from their list of products because they could no longer compete in a marketplace where foreign competitors have unfair advantages. I say unfair advantages because they would be so considered under present American laws applying to domestic transactions.

Let us look at a graphic picture of what has happened to steel wire during the past quarter century. It has been necessary to use statistics covering the broad category of "drawn steel wire" since no data are available covering solely the fine and specialty wire field. These graphs were plotted using data from the publication "Foreign Trade Trends" by the American Iron & Steel Institute. The dotted bars show what has happened to the volume of American exports of this product. The solid bars show the very dramatic growth of imported wire. You will note that 1956 was the first year imports exceeded exports and that is why I have selected 1956 as a reference year in these remarks.

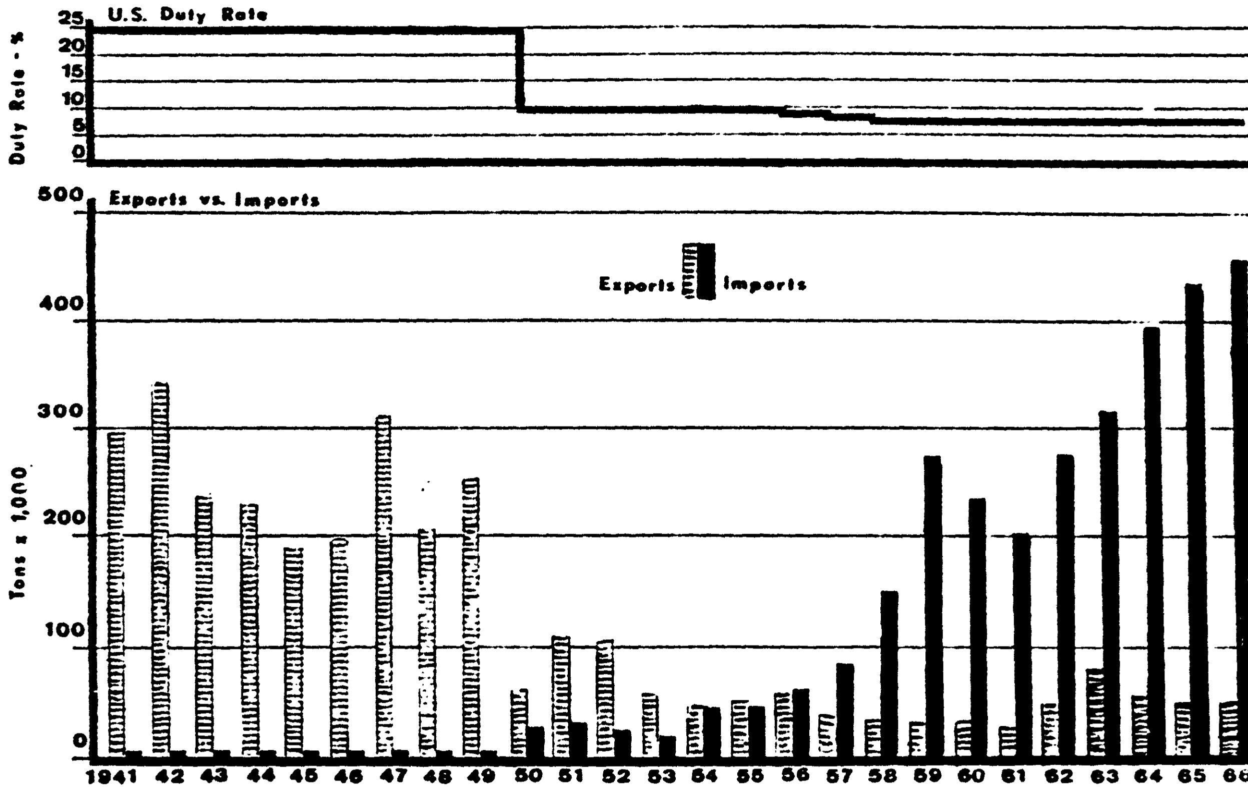
Also plotted on this same graph is the U.S. tariff or rate of duty on wire valued at over 6 cents per pound. There are, of course, several tariff categories for steel wire, but this one would most fairly represent the bulk of fine and specialty wires we are concerned about. Under the Tariff Act of 1930 the statutory rate was 25 percent. In April 30, 1950, the first General Agreement on Tariffs and Trade (GATT) reduced the rate to 10 percent. Three reductions of ½ percent each became effective later with the current 8½-percent rate starting June 30, 1958.

In the year 1950, when the major drop in rate of duty first went into effect—even if only for 8 months—the tonnage of imported wire increased nearly sixfold to a new alltime high of nearly 26,000 tons. Interestingly enough, in that same year exports of wire decreased from 252,000 to 60,000 tons—a drop of better than 4 to 1. It can hardly b ecoincidence that the decrease in duty, the decline in exports, and the jump in imports occurred simultaneously. Not only was the domestic American market being invaded, but what had been a thriving export business was being eroded by these same foreign producers who were not hobbled by high wages nor bound by antitrust laws, Fair Labor Standards Act, and so forth, which are an accepted part of doing business in the United States.

Now, I want to direct your attention to the very startling developments during the last 10 years. Exports of steel wire have remained practically stagnant since 1956 and, in fact, were trending ever downward until some small spark was injected by AID programs in 1962–63. However, even that small spark has apparently been extinguished, as the last 3 years have been at the 1956 level.

The import line, however, shows a very dramatic and steady climb toward the top of the chart. As stated earlier, the 1966 imports of steel wire were 750 percent of those in 1956—or specifically 458,000 tons compared with 61,000, a very substantial 40,000 ton per year increase. During the first 6 months of 1967 imports continued to climb, reaching a total of 292,000 tons. This represents roughly two-thirds of the total wire production of the members of our association.

FOREIGN TRADE TRENDS - Drawn Steel Wire



It seems quite apparent from these figures that the so-called free trade policy, which has been our Government's official policy, does not result in reciprocal trade in the steel wire industry. A once-thriving American export business has in a quarter century been replaced by an ever-increasing invasion of the American market by foreign producers.

Why is this so? Why could imported wire make such an invasion of the domestic market? Fine and specialty wire is one of the highest labor-content items produced from steel. It is estimated that 10 to 12 man-hours are required to produce 1 ton of the average steel hot rolled mill product. In contrast, a survey by our association disclosed an average of 35 man-hours required to produce a wide range of fine and specialty wires. A very special item such as 0.006-inch coated rope wire (which is used in aircraft control cables) has a labor content of 131 man-hours.

It is a well-known fact that wage costs—including fringe benefits—are much lower in other countries than in the United States. They run from something in the range of one-third of ours in West Germany to one-fifth of ours in Japan. Thus, the very nature of our product with its relatively high labor content makes it an attractive target for those nations seeking to increase their trade dollar with the United States. There was a time years ago when our technological advancement kept us ahead of our lower waged competitors. However, this advantage largely disappeared as postwar technological assistance pacts were put into effect and our more advanced machinery and techniques were dispersed to the entire world. We are today competing in the world marketplace—including that portion which is in America—with labor costs far above those of our competitors with no compensating advantages.

You might expect then that perhaps we would have higher tariffs in the United States to at least partially equalize this difference in standards of living. As mentioned earlier our current rate is 8½ percent, while in England it is 25 percent; in France it is 12.4 percent; and in Japan it is 15 percent. Only Germany, with 8 percent and the Benelux countries with 6.4 percent are lower than ours. However, both these have a turnover tax which is added to the tariff. Obviously then, fine wire producers in America—and their highly paid workers—are not given even as much tariff protection in their home market as are their competitors overseas.

It has been urged on all American business that they expand their export efforts. As has been shown, our industry has had rather the opposite result. Let us quickly examine a few of the reasons for the decline in exports of fine wire.

First and foremost, of course, is our previously discussed cost disadvantage. Even considering that we make the finest wire in the world and are more service minded than most foreign mills, our costs necessarily result in prices which are almost laughable in overseas markets. Then, we must add to this the higher tariffs in most other countries as well as the nontariff trade barriers, such as turnover taxes, total value added taxes, quotas, and outright forbiddance of any imports. In this latter category many of the developing or growing nations, forbid any imports once the local industry is capable of producing the product. This barrier is maintained even though the price of the product produced locally may be much higher than the former price paid for imported wire—even from the United States. Some of the Latin American countries engage in these practices.

We have yet another problem when we try to export wire. For some reason, the ocean freight rates on steel wire leaving the United States are higher than those on the same product coming to the United States. An example, to ship 1 ton of tire bead wire—

From New York to London the rate is $39 per ton.
From London to New York it is $29.75 per ton.

From San Francisco to Tokyo the rate is $35 per ton.
From Tokyo to San Francisco it is $25.75 per ton.

From Philadelphia to Antwerp the rate is $31.50 per ton.
From Antwerp to Philadelphia it is $26.50 per ton.

It seems difficult to believe that these rate differences can be related to actual costs differences. Yet they do exist and are just one more "unfair trade practice" that we must face.

Among yet other unfair advantages enjoyed by our overseas competitors is their lack of restriction under such American laws as the Fair Labor Standards Act, and various antitrust and antimonopoly laws. Not only are they not bound by these, but those of our laws which do affect them, such as our antidumping regulations are inadequate and the intent of these laws is consistantly violated by selling in America at prices lower than their own country. Since American industry is unable to satisfy the "damage" requirements of our law, dumping is not an unknown practice when it suits the foreign producers' purpose.

In conclusion, I want to say again that high labor content items such as fine and specialty wire can never be fairly and freely traded among the nations of the world until all those nations have attained an equality in their standards of living. Until that day, proper and equalizing tariffs or quotas must be maintained by the nations which have attained these higher standards in order to preserve them. We in the Fine and Specialty Wire Manufacturers' Association can only foresee that a continuation of past American foreign trade policies will further widen the gap between imports and exports in future years and will result in an ever weaker industry—an industry without which our Nation cannot exist in the modern world.

Respectfully,

J. A. MOGLE,
Chairman, Foreign Trade Committee.

STATEMENT OF THE AMERICAN WATCH ASSOCIATION, INC.

SUMMARY

The attached paper, derived from the AWA's involvement in a 12½-year escape clause action on watch movements, discusses the economic function of the escape clause and its relationship to the goals of U.S. trade policy.

The AWA believes that the multilateral trading system developed under the leadership of the United States has played a central role in promoting economic growth among free world industrial nations in the post-World War II period. Multilateral trade promotes growth by providing access for dynamic and efficient industries to a larger number of customers than would be available to them in their home markets. In this way, international trade operates as a major force in allocating national resources in an economic manner.

Utilization of the escape clause or other devices to prevent effective import competition has the effect of voiding the principle of reciprocity on which the entire multilateral trading system is erected. Those who seek to restrict imports to a certain limited share of the U.S. market invite retaliation which would severely hamper U.S. exports.

Under the Trade Expansion Act of 1962, however, the escape clause is conceived, not as a means of preventing competition, but as a form of temporary relief allowing domestic industry to undertake an effective adjustment to import competition. The AWA's experience makes it clear that adjustment to import competition is a realizable goal.

In the 12½ years during which the escape clause tariff increases on watch movements were in effect, the domestic watch industry underwent substantial changes that materially increased its competitive capability. Sales and profits of the domestic companies are today at an alltime high. While it is premature to assess the effects of the recent termination of the escape clause tariff increases, the early evidence indicates that the domestic watch industry is holding its own.

The AWA observes that if the fruits of the Kennedy round agreement are to be fully realized, it is essential in the future that the escape clause be employed only to facilitate adjustment to import competition in cases of pervasive injury to an entire industry and then only as a temporary form of relief subject to automatic termination unless renewed.

STATEMENT

This paper is being submitted by the American Watch Association in connection with the compendium scheduled to be published by the Senate Finance Committee on U.S. foreign trade policies and practices. The AWA represents about 50 leading U.S. firms engaged in importing watch movements and assembling complete watches for the U.S. and world markets.

For 12½ years beginning in July 1954, imported watch movements were subject to the provisions of the "escape clause." U.S. watch duties during that period averaged about 50 percent above trade agreement rates. On January 11, 1967, President Johnson determined that domestic manufacturers of watch movements had made a successful adjustment to import competition and ordered the restoration of duties applicable under the U.S.-Swiss Trade Agreement of 1936. He thus brought to a close the oldest escape clause action in the history of the trade agreements program.

As a result of the watch action, the AWA has been intimately involved through the years with the criteria and the procedures of the escape clause. We believe that our experience and the opinions derived from that experience may be of interest to others concerned with the future of U.S. trade policy. Although it is not the central purpose of this paper to discuss economic conditions in the watch industry, changes undergone by the domestic producers while the escape clause action was in effect provide, in our opinion, an illuminating case study of the adjustment process. A brief summary of major developments will be found following a discussion of general trade policy considerations. Persons interested in a fuller (though somewhat out-of-date) treatment of the subject may wish to consult "Trade Adjustment in the Domestic Jeweled-Lever Watch Industry" in "The United States and World Trade," Committee on Commerce, U.S. Senate, June 26, 1961, pp. 234–254.

Purpose of the escape clause

The purpose of the escape clause is to relieve serious injury (or threatened injury) inflicted on a U.S. industry by competition from imported products on which a tariff concession has been granted. Although this purpose has remained constant since the escape clause was incorporated into the trade agreements program, the definition of what constitutes serious injury, the degree of relationship which must be shown to import competition and to the results of trade negotiations, and the duration and the objective of relief have undergone a number of changes.

In examining the economic function of the escape clause, it is first necessary to consider where the escape clause fits into the overall structure of U.S. trade policy. For more than 30 years, through five administrations, the United States has been vigorously pursuing a policy dedicated to the reduction of tariffs and other barriers to international trade. Especially since a mechanism for multilateral trade negotiations was developed following World War II, the growth of world trade has been nothing short of phenomenal. Advocates of a liberal trade policy believe it is no accident that this period has also witnessed a remarkable spurt in the economic growth of the United States and the other industrial nations which form the backbone of the international trading system.

The liberal trade position

The thesis of those who support a liberal trade policy can be simply stated: The multilateral exchange of goods, conducted with a minimum of governmental interference, assists the economic development of all parties to the trading system. International trade performs this catalytic function by enabling each trading partner to concentrate his resources on the activities in which he enjoys the greatest relative efficiency. A liberal trading system affords each partner's efficient industries access to broader-than-national markets. Equally important, it allows each partner's industries and consumers access to less expensive commodities produced by other countries, thus reducing production and living costs.

Because of our own immense, tariff-free internal market, we in the United States sometimes fail to recognize the contribution which the export market makes on particular commodities to the efficient utilization of domestic economic resources (and, therefore, to reductions in the price of the commodity domestically). These effects are easier to comprehend in the case of countries like the Netherlands or Belgium or Switzerland where the domestic market is comparatively small. Nonetheless, for many products of U.S. industry, export trade provides an irreplaceable means of mobilizing a substantially larger number of consumers than would be available in the domestic market alone.

For example, the U.S. aircraft industry exports about 15 percent of its total production, well over a billion dollars annually. The same is true for the scientific instrument industry and the farm machinery industry. More than 20 percent of domestic production is exported in the case of cash grain farm products, coal, construction equipment, and metalworking machinery. Lubricating oils and leaf tobacco exports are around 30 percent. Hides and skins, sewing machines, gear-cutting machines, and photofinishing equipment are above 30 percent, milled rice above 40 percent and new locomotives over 50 percent.

These few examples illustrate how critically important the export market is in sustaining production and employment in these industries, which are among the most efficient in the United States. In each instance, economic analysis would undoubtedly disclose that the earnings of these industries on their export business substantially exceed the incremental costs incurred in producing the additional goods required to serve the export market. Thus, the export market plays a fundamental role in reducing unit costs of production for efficient industries and, indeed, in allocating the resources of the Nation as a whole in the most economic manner.

There are undeniably numerous factors which distort the operation of the multilaterial trading system, including nontariff barriers, "infant industry" considerations, etc. But in general the system appears to work superlatively well as a mechanism which provides economic leverage for dynamic industries allowing them maximum opportunity for growth.

At one time, there was a school of thought which rejected this view entirely and which embraced trade only on commodities offering no competition for domestic industry or providing an essential supplement to small-scale domestic production. Comparatively few people would argue today that the United States could or should adopt a policy of economic self-sufficiency. The staggering subsidy costs inherent in such an approach, the violence it would do to established economic relationships, and the consequences of a beggar-thy-neighbor policy for foreign relations all work to limit the appeal of this simplistic economic notion.

The real issue in recent years between liberal trade forces and the protectionists is over the scope and extent of reciprocity in international trade. It is into this context that the escape clause fits.

The protectionist view

Protectionists want the escape clause to prevent import competition from seriously disturbing the habitual operations of the domestic industry. Thus, at one time, the philosophy embodied in the escape clause seemed to be that the domestic producers were entitled as a matter or right to a fixed share of the U.S. market. Any difficulties they experienced in maintaining that share was cause for an escape-clause action, regardless of whether or not trade agreement concessions played a major part in creating the problem. An extreme version of this philosophy is to be found currently in S. 2476 by Senator Smith, Republican, of Maine, which would require a finding of "serious injury or threat thereof" to a domestic industry whenever "the ratio of imports to domestic production exceed(s) 10 per centum"—

without any reference to whether the domestic industry involved previously produced 5 percent or 95 percent of domestic needs.

The logical flaw in the share doctrine, as President Truman pointed out on August 14, 1952, is that it "finds that serious injury exists when the domestic industry fails to gain something it never had, even though the industry may be prospering by all of the customary standards of levels of production, profits, wages, and employment." On the national policy level, an even more serious difficulty is that the share doctrine actively invites other countries to adopt identical policies reserving the lion's share of their domestic markets for their own industries. If major U.S. customers adopted the philosophy of autarchy inherent in the Smith bill, U.S. exports would obviously suffer a severe blow.

An even more basic problem with the share doctrine, however, is that it would paralyze the very force that delivers the benefits of trade to the participating partners. For at bottom, the share doctrine represents a refusal to accept the competitive consequences of trade and therefore an implicit denial of the concept of reciprocity.

However disguised this denial might be by pro-trade rhetoric, it would have practical effects that might not differ very greatly from a straightforward policy of protectionism. Other countries simply cannot buy substantial amounts of U.S. merchandise if we limit their ability to earn foreign exchange through trade with the United States. Reciprocity, in short, is the cornerstone of the entire system.

This point was tellingly illustrated some years ago by Harold M. Talburt, Scripps-Howard's Pulitzer prize winning cartoonist. He portrayed the U.S. economy as a surgical patient lying on the operating room table. Over the patient, scalpel in hand, stood the U.S. Congress. Protectionists nearby were instructing the doctor: "Fix him up so he can breathe out without breathing in!" Obviously, it can't be done.

The trade adjustment concept

The Trade Expansion Act of 1962 utilized the escape clause, not as a device for fending off import competition indefinitely, but rather as a means of facilitating adjustment by domestic industry to the competitive effects of tariff reduction. The escape clause was designed to serve, under strict criteria for the determination of serious injury, as a temporary shelter while the affected domestic industry took steps to improve its competitive position. The duration of escape-clause relief was expressly limited, subject of course to renewal if continuation of the injury could be shown. Previously, relief continued until elimination of the injury was established. This shift in the burden of proof made by the 1962 legislation assured a careful periodic reexamination of the economic justification for relief, in place of the cursory review of surface developments which had previously been characteristic.

In addition, the Trade Expansion Act contained provisions for adjustment assistance to individual firms or workers adversely affected by import competition. The intent was to relieve particular hardships without resort to steps affecting an entire industry. Narrow interpretation of strict criteria has prevented the adjustment assistance concept from having any effect outside the bounds of the United States-Canadian automobile agreement. Legislation to deal with this question presumably will be offered in the near future by the Johnson administration.

Competitive adjustment in the watch industry

The AWA's experience makes it clear that adjustment to import competition is a realizable goal. The undeniable fact is that the domestic watch industry underwent very substantial changes in the 12½ years that the watch tariff increases were in effect, and these changes greatly improved the ability of most domestic producers to meet import competition.

In 1953, the last year before the watch tariff increase, U.S. manufacturers sold a total of 10.7 million watches. In 1966, domestic manufacturers probably accounted for 22 million units or more (exact figures are unavailable). Domestic watch production rose from 7.4 million units in 1954 to 15.2 million in 1966, an increase of 105 percent. Imports experienced a sharp upturn beginning in 1965, largely because of spectacular growth in the market for ladies' fashion watches which was almost entirely created and supplied by imports. Prior to this sudden growth, imports by importer-assembler firms were actually lower than in 1953. On the other hand, imports by the so-called domestic producers were substantially higher, reflecting the fact that each of the domestic companies had established or expanded its own manufacturing facilities overseas. Several had also entered into exclusive marketing arrangements with watch manufacturers in Japan for sales in the U.S. market.

The outstanding development during the period was the spectacular rise of U.S. Time (Timex) from virtually a standing start to the dominant position in the U.S. market. On a unit basis, U.S. Time alone is believed to account currently for more than 40 percent of U.S. watch sales. U.S. Time's success was founded on a brilliant marketing strategy and on efficiently organized manufacturing operations. Over the decade of its rise to dominance, U.S. Time established factories both in the United States and in Western Europe, enabling the company to take advantage of maximum production efficiencies in both locations.

U.S. Time's domestic employment rose substantially from 1954 to 1966. Employment of other manufacturers appears to have declined, in large part because of appreciable gains in the productivity of workers employed in the jeweled-lever segment of the industry. Productivity changes, of course, are one of the best indexes and tests of adjustment to a competitive situation. An increase in labor productivity implies a reduction in unit labor costs.

The ability of the domestic industry to compete was also strengthened by product innovations, the best known of which is Bulova's patented Accutron, a battery-powered device regulated by a tuning fork instead of the conventional escapement mechanism. Hamilton and U.S. Time were also marketing battery-powered watches, and U.S. Time had developed an unconventional jeweled-lever watch to go with its inexpensive pin-lever line.

The fundamental strength of the domestic industry was amply attested by the fact that, with one exception, all of the firms in the domestic industry enjoyed all-time record sales and profits in 1966. The lone exception, Elgin, was in financial difficulty as a result of large losses suffered on defense contracts. Elgin's weakness is in striking contrast to the robust economic health of the other companies in the industry. In any case, the difficulties experienced by the firm cannot be charged primarily to import competition.

Distortions caused by high watch tariffs

It is worth noting that the increased escape clause tariffs had some collateral effects which were definitely not favorable from the standpoint of either domestic watch producers or of duty-paying importers. Smuggling of jeweled-lever watches and watch movements, not an appreciable factor prior to 1954, ballooned under the stimulus of higher tariff rates into a traffic estimated in 1964 at 1 to 1.5 million units annually. Duty-free shipments from U.S. insular possessions (through a tariff provision allowing duty-free entry for such products when assembled under certain conditions from imported parts) mushroomed to a peak of 5.45 million units in 1966 before becoming subject to congressionally enacted quotas. Although one of the domestic manufacturers, Hamilton, was the first major company to enter the U.S. Virgin Islands and although all of the principal domestic producers have assembly operations there, it is generally recognized that the insular watch industry would probably not have gotten underway on any significant scale but for the escape clause action. Certainly no one disputes the fact that the growth of the insular industry greatly unsettled the domestic watch market prior to the January 1967 rollback in mainland tariffs.

Such distortions commonly occur under the artificial circumstances created by high tariffs or other trade barriers. This is another reason why sound policy dictates that any escape clause action should have a terminating date. If the relief is plainly designed to be temporary, this will help discourage people from experimenting with methods for getting around limitations on market access. Even with the higher tariffs in effect, it is doubtful, for example, whether a wholesale rush to the Virgin Islands would have taken place if the watch escape clause action had been scheduled to expire in 1960 or 1961.

While it is premature to assess the results of President Johnson's decision to restore the pre-1954 tariff rates, early evidence strongly suggests that the domestic watch industry is holding its own. For the first 6 months of 1967, preliminary figures reported by the U.S. Tariff Commission show that domestic watch production rose to 8,761,000 from 7,956,000 in the first 6 months of 1966, up 10 percent. Imports rose to 9,931,000 from 9,232,000, an increase of 7 percent. However, the greatest part of the increase in imports came immediately after the President acted, probably reflecting postponed entries by those anticipating a reduction in the tariff. If January results in both years are left out of the picture, the increase in imports through June was only 1 percent.

Duty-free shipments from U.S. insular possessions dropped nearly one-third from 2,132,000 in the first half of 1966 to 1,448,000 in the first half of 1967. This reduction was partly due to the operation of the quota system and partly due to the lessening of the artificial incentive provided by higher mainland tariffs. Overall, the share of the market claimed by domestic production actually increased 3 percent during the first 6 months of 1967 as compared to 1966.

Having undergone an extensive adjustment, the domestic watch industry now appears to be well situated to meet increased import competition. While there are those in the domestic industry who continue to demand protection, claiming that they can make more money by closing their U.S. factories and shifting to imports from their own factories overseas, these claims appear to have no factual basis. The domestic industry's call for restoration of the escape clause tariff rates must be interpreted as an outright bid for permanent shelter from import competition. After 12½ years of relief, the domestic producers obviously are not interested in just temporary breathing space.

The future of the escape clause

Use of the escape clause, however, to guarantee domestic industries indefinitely against import competition is inconsistent with the operation of a multilateral trading system based on reciprocity. This point assumes special importance in light of the broad concessions which the United States gave and received in the recent Kennedy round negotiations. As successive annual tariff reductions take place on Kennedy round items, the number of domestic industries seeking relief could be fairly substantial.

If the escape clause is permitted to be used to prevent effective competition or if other restrictions such as quotas are imposed on U.S. imports, other countries will inevitably act against U.S. exports. Reciprocity in the reduction of trade barriers would be superseded by a reciprocity of retaliation. The hard-won commercial gains of the postwar era would be lost to all of the industrial nations. For the United States as well as for other countries, the economic consequences would be extremely far reaching.

In our judgment, it is crucially important that the escape clause be employed only to facilitate adjustment to import competition in cases of pervasive injury to an entire industry and then only as a temporary form of relief subject to automatic expiration unless renewed. Certainly our experience indicates the adjustment to import competition is an attainable goal.

Statement of the Braided Rug Manufacturers Association, Prepared by Albert Taraborelli, Executive Director

1. Purpose of bill, S. 929.
   To correct inequity due to adverse interpretation of tariff law.
2. Industry description.
   Twenty-five small plants in nine States. Efforts of industry to promote product.
3. Imports penetration.
   Imports increased from 1.1 million square feet in 1957 to 139.4 million square feet in 1966. Imports command over 80 percent of domestic market.
4. Competitive position of domestic industry.
   Imports undersell domestic articles by 35 percent. Wage costs in major competing foreign country less than one-quarter of those in the United States.
5. Effect on customs practice on domestic industry.
   Ninety-five percent of imports are incorrectly classified for duty purposes and denies domestic producers a fairer share of the domestic market.
6. Summation.

Gentlemen, this statement is presented on behalf of the members of the Braided Rug Manufacturers Association, which represents over 80 percent of the domestic production of braided rugs, and was prepared by Albert Taraborelli, executive director of that association.

The subject of this testimony will be legislative proposal S. 929 which would amend the tariff schedules of the United States with respect to the tariff classifications of braided rugs composed of tubular braids.

1. PURPOSE OF BILL

For background information, braided rugs are made from two types of braids, known in the trade and by consumers as flat braids and tubular braids. Important to the considerations here is that both are distinctly braids, made on braiding machines, and both meet every known definition of the term "braid". Yet, it has been the practice of customs officials to exclude from the meaning of the term "braids" the tubular type of construction. Rugs made of this type braid are called tubular mats by importers and are subjected to much lower rates of duty than those intended for braids.

For informational purposes, the two types of braids may be described as follows: In one, the material is braided around two alternating centers in a figure 8 pattern, and is referred to as flat braid. In the second type of braid the material is braided around a core or filler and is referred to as tubular braid. The flat braid is dutied at 42½ percent while the tubular braids are dutied at 15, 16 and 30 percent depending on the fiber used. Whether flat or tubular, both braids involve the same type of maypole construction, both are made on braiding machines, and both fall within all accepted definitions of the term braid.

Justification advanced for the practice of excluding the tubular type braids from the category of braids is a custom courts decision in 1944 which dealt with the proper tariff classification of certain ladies handbags and belts. It should be noted that this decision was in no way related to braided rugs.

The law is very clear that all braids be dutied at 42½ percent. Paragraph 1529(a) of the Tariff Act of 1930 provides for "braids, made by hand or on a braiding machine and fabrics and articles wholly or in part thereof, by whatever name known, and whether or not named, described, or provided for elsewhere in this Act." Headnote 2(f) in schedule 3 of the Tariff Schedules of the United States states, "The term 'braids' as used in connection with textile materials includes all braids in the piece, whether flat, tubular, or other construction, with or without cores." It is very clear, from the two references mentioned that Congress intended that all braids, flat, tubular, or otherwise, be dutied as specified.

It is our contention here that all braids are duitable at 42½ percent, and that customs actually violated the law in allowing certain types of braids to be imported at rates of duty other than that specified for braids. The Tariff Commission, replying to request from the House Ways and Means Committee states "From a tariff standpoint there is no reason for different treatment of the two types of braids solely because of the difference in the braid used."

Gentlemen, this bill has been introduced to correct a serious inequity in our tariff laws, as presently interpreted, with regard to the importation of braided rugs. This adverse interpretation of our custom laws has very sharply curtailed the market opportunities of the domestic braided rug industry.

The bill would simply amend the tariff laws to prevent exclusion of the tubular type of braid from the tariff treatment intended for braids.

2. INDUSTRY DESCRIPTION

The domestic braided rug industry is a small industry composed of about 25 small plants in nine States. The braided rug is an American conceived and developed product, having been produced in this country for the last half century. For many years the braided rug was nothing more than a novelty item and was produced on a very small scale, mostly in spare time operations. In the years 1955 and 1956, the industry as it existed at that time, embarked on an ambitious promotional program, with considerable outlays of capital. This was followed by an expansion program, with costly employee training programs in addition to the outlays of capital for expanded production facilities. By 1957 the braided rug emerged as a dependable volume product in the floor covering field.

3. IMPORTS PENETRATION

In 1957 imports of braided rugs began to flow into the U.S. market with a volume of 1.1 million square feet. By 1960 imports had increased to 58 million square feet, passing domestic production of 39.2 square feet. By 1966 imports had reached 139.4 million square feet while domestic production dropped back to 34.2 million square feet. In share of market, imports now account for 80 percent, having increased 10 percent over the previous year of 1965, while domestic production share of market dropped from 28 percent in 1965 to 20 percent in 1966. The domestic market expanded from 41 million square feet in 1957 to 173 million square feet in 1966, an increase of over 300 percent. It is important to note that while the domestic market expanded by over 300 percent, domestic production fell back to 34 million square feet from about 40 million square feet in 1958.

Rapidly accelerating imports on one hand and shrinking domestic production on the other are clear indications that domestic producers are unable to compete in their own markets, and that the ability of foreign producers to penetrate our markets is controlled solely by their productive capacity.

4. COMPETITIVE POSITION OF THE DOMESTIC INDUSTRY

Because of their much lower wage and material costs foreign producers are able to undersell the domestic producer by 35 percent. The domestic industry's efforts to meet foreign competition through increased efficiency or output per worker were in vain since the efficiency and productivity of foreign producers are at least equal to ours. Japan, which accounts for over 97 percent of all imports of braided rugs, has wage costs of less than one-quarter of ours.

A member of this industry recently made a very comprehensive cost study of both import and domestic articles of braided rugs and arrived at the startling conclusion that, even with materials furnished at no cost, he would be unable to compete with foreign producers because of their much lower wage costs.

5. EFFECT OF PRESENT CUSTOMS PRACTICE ON DOMESTIC INDUSTRY

The manuever through which braided rugs are imported as tabular mats at a much lower rate of duty has resulted in a quantity of imports far in excess of that which would have been the case if the correct rate of duty had prevailed. The rate of imports accelerated from one-half million square feet in 1957 to the present rate of 139 million square feet, of which over 95 percent was at a lower and incorrect rate of duty. In 1965 imports at the correct rate of duty amounted to 2.9 million square feet while imports at the lower and incorrect rate of duty totalled over 112 million square feet.

6. SUMMATION

The two bills referred to above would simply provide that any and all braided material, flat or tubular, be uniformly dutied at the intended rate of 42½ percent. The imported tubular mats, regardless of what they are called, are for all intents and purposes braided rugs, and have no distinguishing differences from the American-made braided rug which has been made and sold as such for over 50 years. The whole question hinges on whether or not the imported articles is a braided rug. Paragraph 1529(a) of the tariff law of 1930 says it is. The tariff schedules of the United States say it is. Manufacturers of braiding equipment say that it is. The consumer says it is.

Accordingly, we submit that this article of braid, regardless of its end use, should be dutied as intended, at 42½ percent.

Passage of this legislation would simply prevent the exclusion of one type of braide from the tariff schedules pertaining to braids, and making all types of braids uniformly dutiable at 42½ percent.

This reform would bring fair and long overdue relief to our industry. It would plug a loophole through which foreign manufacturers have been flooding our domestic market with braided rugs, under another name. The application of the correct rate of duty will reduce, but not erase, the wide price differential between domestic and imported articles. It would afford some relief to an industry whose future existence is now in jeopardy. A great part of this threat results from a serious inequity, a deception, and an abuse of our laws. We only ask that the law be applied as intended rather than as interpreted by foreign interests.

STATEMENT ON BEHALF OF THE DOMESTIC PRODUCERS OF SLIDE FASTENERS, AND PARTS THEREOF (TSUS ITEMS 745.70, 745.72 AND 745.74), SLIDE FASTENER TAPE (WHOLLY OF TEXTILE FIBERS) (TSUS ITEMS 386.50 AND 347.3340), PREPARED BY RICHARD A. TILDEN, TILDEN & LEVENTRITT, NEW YORK, N.Y.

SUMMARY

Domestic producers of slide fasteners, tape, and other parts for slide fasteners have already lost a substantial part of the domestic market as a result of duty reductions under the trade agreement program. When the further reductions provided for under the GATT agreement are put into effect, it is anticipated that increased imports will force a drastic curtailment of domestic production, the layoff of American workers and closing of plants. There is presently a wide price differential favoring imported fasteners and parts, which gap will be widened by the projected duty reductions, encouraging more and more users to switch to imported slide fasteners and parts.

The domestic industry believes that Congress did not intend that the trade agreement program would result in the sacrifice of American industry and workers in order to make a gift of the American market to foreign producers. It believes that the program was intended as a means of making all markets available to all producers on an equal basis, without artificial restraints which give one group of producers a competitive advantage over others. Tariff restrictions should be designed to enable both foreign and domestic producers to compete on an equal basis for the domestic market as well as foreign markets.

Where inevitable inequities arise as a result of concessions, an effective means of correcting such inequities must be provided. No such means has been provided by Congress. Both the former "escape clause" and the present "assistance" provisions of the law have proved to be completely ineffectual.

The committee is urged to favorably consider enactment of mandatory relief for industries threatened or injured by the trade program, such as is provided for in S. 1891, presently pending before the committee.

GENERAL STATEMENT

This statement is presented to inform the committee as to the expected effect on the slide fastener industry of the recently announced duty reductions to be made under the GATT agreement, the need of the industry for more rather than less tariff protection, and the importance to the domestic economy of action by Congress to provide effective relief to industries which are seriously endangered by concessions granted under the trade agreement program.

The statement was prepared at the request of the Slide Fastener Association, Inc., a trade association representing 26 domestic producers of slide fasteners and parts, operating 37 plants. The names of the members of this association, and the location of their respective factories are appended to this statement as appendix A. It is estimated that slide fasteners and parts manufactured by these companies constitute more than 80 percent of current domestic production.

THE DOMESTIC INDUSTRY

The American slide fastener industry is a purely American industry both in origin and development. The idea of a fastening device that could be opened and closed by means of a slider was first conceived by an American inventor more than 60 years ago. Many years of experimentation and effort followed and many failures were encountered in attempting to develop and perfect this product. It was not until 1913 that a practical and commercially successful fastener was designed embodying the same fundamental principles as the present-day slide fastener.

Many more years of development and promotion were required before public acceptance of slide fasteners could be created, merchandising problems overcome, and a broad market obtained. During the First World War slide fasteners came to be used to some extent on money belts for sailors and on flying suits for aviators. They were used on gloves and after 1919 on tobacco pouches. In 1923 the B. F. Goodrich Co. commenced manufacturing galoshes equipped with this product, which were marketed under the trademark "Zipper." The wide distribution of the Goodrich galoshes helped greatly to introduce slide fasteners to the general public and they have been known as zippers from that day to this.

By 1928 slide fasteners had been accepted by manufacturers of a variety of products and the demand for them was becoming substantial. At that time there were still only two or three companies in the field. The industry has had a steady growth from the year 1928 when it first began to realize on the long years of research and development and on the large sums of money expended to create a market in the United States for this product.

Slide fasteners, or zippers, are now used in a wide variety of manufactured articles. The slide fastener industry supplies its product for use in production to more than 100 other industries (the products of some of which, of course, are related). The general classifications of articles in which slide fasteners are now most extensively used are women's and men's clothing, handbags, leather goods, and footwear. More than 90 percent of the slide fasteners produced are sold to manufacturers of these and other articles and less than 10 percent are sold at retail.

Experience has demonstrated that it is necessary for the slide fastener manufacturer to constantly supervise the production methods of its manufacturing customers and to cooperate in the introduction of newly designed products on the market to assure satisfactory performance. Laboratory research, engineering, and experimentation in the adaption of slide fasteners to new forms or styles of the products in which they are used, and promotional advertising, constitute a very substantial portion of the expense going into the production of American slide fasteners and are directly responsible for the growth of the American market for this product and its present wide consumer acceptance.

During the period of the war, due to industry restrictions and the limited amount of metals and other raw materials available for civilian production, the manufacture of slide fasteners for civilian uses was greatly curtailed. However, the industry produced large quantities of slide fasteners for the Armed Forces of field jackets, flying suits, combat suits, sleeping bags, jungle hammocks, gun and instrument covers, and many other articles.

Very largely through the extensive engineering research and development work above referred to, accompanied by nationwide advertising, the domestic slide fastener industry has grown steadily and rapidly until there are now some 180 companies engaged in the manufacture and assembly of this product and its component parts.

HISTORY OF IMPORT COMPETITION

The slide fastener industry, which is entirely the product of American inventiveness, ingenuity, and investment, has had to battle for its life since shortly after 1928 against foreign-made slide fasteners produced with low-cost labor, and sold in the United States at prices far below domestic costs of manufacture. This battle has been a long and bitter one, with many ups and downs. Apparently in recognition of the urgent need of the domestic industry for reasonable protection against low-priced foreign slide fasteners and parts, particularly those imported from Japan, the U.S. Tariff Commission and other Government agencies have several times come to the assistance of the industry, with the result that the industry has been enabled to grow steadily and to provide employment for thousands of workers, mostly in small communities where employment opportunities are sorely needed.

Patents afforded the industry reasonable protection until about 1932, when foreign-made fasteners began to flood the American market in complete disregard of American patents. An appeal to the Tariff Commission in 1932 resulted in an order of exclusion. This order helped some, but in view of the expiration of a number of the basic patents, by 1935 the industry was again in trouble. Tremendous volumes of imports from Czechoslovakia and Japan entered the country, and in the fall of 1935 the Commission was again asked for help—this time under section 336 of the Tariff Act of 1930. This appeal resulted in an increase in the rate of duty from 45 percent to 66 percent. Although this increase helped to stem the flood of imports from European countries, it did not have any appreciable effect on Japanese competition. The cost of Japanese fasteners was so low that, from the standpoint of ability to undersell the domestic product, it made little difference to importers whether the duty was 45 percent or 66 percent.

Imports, primarily from Japan, continued to rise, reaching a high of 43 million units in 1938. Then the war came and the industry's problems with imports came to an end. They did not begin again until 1959 after there had been four reductions in the rates of duty through trade agreement concessions. The duty was reduced from 66 to 40 percent on slide fasteners valued at over 4 cents each and to 50 percent on fasteners valued at 4 cents or less and on parts.

Imports jumped from negligible quantities during the years following the war to over 7 million units in 1959. However, they fell off after 1959 for the reason that in 1960 the Japanese importers obtained a ruling from the U.S. Customs Bureau under which slide fastener chain was classified either under paragraph 912 at 17½ percent, or as metal products, n.s.p.f., under paragraph 397 at 19 percent, depending upon whether in chief value of cotton or metal.

Importers found it more profitable to import chain, and assemble the slide fasteners in the United States, paying the 17½ or 19 percent duty, rather than to import completed fasteners and pay the 40 or 50 percent rate. As a result substantial quantities of chain were imported until September 1, 1963, when an appeal to the Customs Bureau resulted in a reversal of the ruling and a requirement that chain in chief value of metal be classified as parts of slide fasteners, with the 50 percent duty applicable.

As a further means of avoiding the 50 percent duty applicable to parts, beginning in 1958 importers began to import from Japan flat and corded slide fastener tape. Corded tape represents approximately 60 percent of the cost of the raw materials going into slide fasteners. Flat tape is simply a narrow strip of textile fiber—primarily cotton—with fast edges. Corded tape consists of flat tape to one edge of which is affixed a cord which anchors the teeth or scoops which make up the chain. The cord may be woven into the tape at the time the tape is made, in which event the end product is known as "woven corded tape," or it may be sewn on after the tape is woven, in which case it is known as "sewn corded tape."

There is no known commercial use for either woven or sewn corded tape except in the manufacture of slide fasteners. The two types look very much alike and only an expert could tell one from the other merely by looking at them. They are used for the identical purpose and are directly competitive.

The slide fastener tape which began to come into the United States in 1958 from Japan was primarily corded tape classified under paragraph 912 with a rate of duty of 17½ percent. By 1960 these imports were beginning to seriously injure domestic producers of such tape and domestic textile and slide fastener manufacturers communicated their concern to the U.S. Tariff Commission, the Department of Commerce, and the Department of State.

Imports of tape from Japan increased from 171,000 pounds in 1958 to 971,000 pounds in 1962, when it was finally determined that the 17½-percent rate of duty was grossly inadequate to protect the industry and that the industry was being seriously injured by increased imports. The result of this determination was that slide fastener tape was accorded special treatment under the long-term international cotton textile arrangement, and graduated quotas were established.

These quotas have been of inestimable value to the domestic industry. Without them it is probable that there would no longer be a domestic industry. As a result of the quotas, imports during most of 1963 were at a relatively low level, totaling 795,000 pounds during the year. However, since the latter part of 1963 (when the Customs ruling on chain was reversed and chain was required to enter at the 50-percent rate), the trend of imports of tape has continued upward—notwithstanding the quotas. The exact extent of this upward trend cannot be determined for reasons which will be outlined hereinafter. However, the upward trend is clearly indicated by the fact that imports of flat and woven corded tape alone increased to 975,000 pounds in 1964, to 1,309,000 pounds in 1965, and to 1,233,000 pounds in 1966. The 1966 figure represents a 56-percent increase over 1963 imports of all types of slide fastener tape.

The impossibility of determining the full extent of the increase in imports of tape arises from the following facts:

The Tariff Classification Act of 1962, which went into effect August 31, 1963, included slide fastener tape under TSUS 347.3340 at the 17½-percent rate of duty. Some time thereafter the Customs Bureau ruled that sewn corded slide fastener tape was a manufactured product and hence should be included under TSUS 386.50, with a 20-percent rate of duty. Woven corded tape continued to be classified under TSUS 347.3340.

As stated above, the usage of woven and sewn corded tape is identical—solely for the manufacture of slide fasteners. The basis for the two classifications is far from clear, but it is quite clear that the result was to make it impossible to determine the quantity of slide fastener tape imported since such time. Figures are available showing the total imports of flat and woven corded tape under the 347 classification, but no figures are available to show imports of sewn corded tape under the 386 classification.

On February 3, 1964, the Bureau of Customs ruled that corded tape had no known commercial use other than in the manufacture of slide fasteners and should be classified as slide fastener parts under TSUS 745.74. As a result of this ruling, imports of sewn corded tape were subject to the 50-percent rate of duty under TSUS 745.74.

There is a difference of opinion among Government officials as to whether woven corded tape also was classified under TSUS 745.74 or remained under 347.3340. Since the ruling of the Bureau specifically referred to TSUS 386.50 and described the item by stating: "The cord is sewn to the fabric after the weaving of the fabric," it is believed that the ruling was construed to be applicable only to sewn tape, notwithstanding the fact that woven corded tape also has no known commercial use other than in the manufacture of slide fasteners, and clearly is as much a part of a slide fastener as is sewn tape.

While no definitive answer as to the classification under which woven tape was imported since February 3, 1964, has been forthcoming, it is safe to conclude that at least some—if not all—has been brought in under the 347 classification. The import figures so indicate. If woven tape during 1964 has been removed from the 347 classification and placed under 745, it seems probable that the volume of imports under 347 would decline and that there would be an increase under 745. As a matter of fact, the reverse is true. Imports under 347 jumped from 793,000 pounds in 1963 to 975,000 in 1964, while imports of parts under 745 declined from $183,000 in 1963 to $135,000 in 1964.

Effective October 7, 1965, TSUS 745.74 was revised to specifically exclude "tapes wholly of textile fibers," in response to pressures brought on the Congress by Japan. Since such date sewn corded tape has been imported under TSUS 386.50 and woven corded tape went back to the 347 classification, if it ever left there.

Accordingly, the figures of 975,000 pounds in 1964, 1,309,000 pounds in 1965 and 1,233,000 pounds in 1966 to which reference has been made as representing imports of slide fastener tape, must be increased by the following:

1. The quantity of sewn and woven corded tape imported under TSUS 745.74 from February 3, 1964, to October 7, 1965.
2. The quantity of sewn corded tape imported under TSUS 386.50 prior to February 3, 1964, and after October 7, 1965.

These quantities are unknown since both classifications contain other items. However, it is reasonable to conclude that the increase was substantially greater than is indicated by the official figures for imports under TSUS 347.3340.

Effective October 1, 1966, the United States and Japan entered into a new bilateral agreement reducing the duty rates on slide fasteners 2 percent per year for 5 years, resulting in a current rate of duty of 46 percent on slide fasteners valued at 4 cents or less and on parts, and 36 percent on fasteners valued at more than 4 cents. These rates will be further reduced under the GATT agreement to 25 and 20 percent, respectively. The duty applicable to parts currently is 46 percent under the bilateral agreement with Japan and will be reduced to 35 percent under the GATT agreement.

The GATT agreement will also result in reductions in the 17½ percent rate under TSUS 347.3340 applicable to flat and woven corded tape to 13.3 percent and in the 20 percent rate under TSUS 386.50 applicable to sewn corded tape to 14 percent.

These reductions have been and are being made despite:

1. An increase in imports of slide fasteners from 1,113,000 units in 1963 to 10,705,000 units in 1966—an increase of more than 860

percent. (NOTE.—Imports during the first 6 months of 1967 totaled 8,761,000 units—an annual rate of 17,522,000 units.

2. An increase in imports of slide fastener tape from $776,000 in 1963 to $1,233,000 in 1966—an increase of nearly 60 percent despite the quota. (NOTE.—The 1966 figure does not include sewn corded tape imported under TSUS 386.50, so that the actual figure is unquestionably considerably larger.)

3. The substantial increase in volume of imports of wearing apparel, bags, and hundreds of other items containing slide fasteners.

ECONOMIC IMPACT OF REDUCTION IN DUTY RATES

Any determination as to probable economic effects of a reduction in duty is dependent upon an estimate as to the extent to which such a reduction would curtail domestic production. It is, of course, difficult to come up with such an estimate in view of the many variable factors involved. However, the Tariff Commission itself estimated in 1945 that a duty reduction of 50 percent would probably result in imports supplying between 15 and 20 percent of the domestic market (1945 report to the Senate on "Postwar Imports and Domestic Production of Major Commodities").

The slide fastener industry believes that this prediction was unduly conservative. It is obvious that imports increase where they can be sold at prices lower than the prices of domestic manufacturers. The desertion of the domestic product for the foreign product for price reasons is bound to be cumulative. As the volume leaders in one after another of the industries using slide fasteners turn to the lower priced foreign product, their less important, low-volume competitors must follow in order not be to be at a competitive disadvantage. The desertion of one large customer, a volume handbag manufacturer, for instance, might force the desertion of 20 of its competitors to the imported product.

The loss of 20 percent of the domestic market to foreign production, as was estimated by the Tariff Commission in 1945 in the event of a 50-percent decrease in duty, would undoubtedly progress to a further loss far exceeding that percentage. Any opening of the gates which would permit foreign-made fasteners to flow into the American market at prices substantially lower than domestic prices would soon result in an increasing flood which might in a short space of time engulf the entire American industry.

It is important to note that since this prediction by the Commission the rate of duty applicable to slide fasteners has already been substantially reduced, and when the GATT reductions are effected the total reduction from the rates in effect when the 1945 prediction was made by the Commission would be 70 percent in the case of slide fasteners valued over 4 cents each, and 62 percent in the case of slide fasteners valued at 4 cents or less.

It is apparent that such a reduction of from 62 to 70 percent of the rate of duty in effect in 1945, would probably lead to a loss to imports of a considerably greater part of the domestic market than estimated by the Commission in its 1945 report to the Senate. Moreover, a loss of even 20 percent of the domestic market to foreign production would directly affect employment in the slide fastener industry. It would necessarily result in reducing employment and probably would also mean reduced compensation for those remaining in employment. It would also adversely affect employment in those industries which supply the slide fastener industry with materials.

If the percentage of the market lost to imports increased to above 20 percent as is highly probably, the closing of domestic plants would inevitably result. Probably the first to close would be branch plants, most of which are located in small towns and are designed to supplement the production of the principal plants. Two of such branch plants, one operated by Scovill Manufacturing Co., and one by Talon, Inc., are located in the so-called Appalachia region of Georgia.

The economic effect of reduced domestic production caused by the loss of a large share of the domestic market to imports can be dramatically demonstrated by an analysis of the effect of the closing of these two branch plants.

According to an article which appeared in the Atlanta Journal and the Atlanta Constitution on March 1, 1964, the largest monthly payroll in Georgia's Appalachia region is "public assistance." The article goes on to say:

> While poverty in Appalachia, Georgia, may not be as extensive as, say in the coalfields of Kentucky, the region still is a dark spot on the face of shimmering prosperity.
>
> In Appalachia, Georgia (a region rich in natural resources and scenic grandeur), taxpayers spent $1,471,678 during January for welfare assistance. A total of 32,493 persons (out of a population of 675,000) drew an average of about $45 each from their department of family and children services in January.
>
> Fourteen Appalachia counties are listed by the U.S. Labor Department as areas of substantial unemployment—at least 6 percent of the work force is out of work. Eleven of these are listed as areas of "substantial and persistent unemployment."

The article concludes:

> Appalachia's problems may be among Georgia's most striking. But poverty is not limited to the mountains by any means.
>
> Almost incredible conditions of poorness exist within the shadow of the State capitol. Urban areas, such as Atlanta, are overburdened with rural families displaced by farm machines who have come to town only to find that the city has no place for them, either.

The Scovill and Talon slide fastener branch plants are located right in the heart of the Appalachia region just described. The Scovill plant is located in Clarkesville, Ga., a city with a population of only 1,352 persons in Habersham County. According to the latest figures available, Habersham County has a population of 19,000, with about 2,500 unemployed.

The Scovill plant employs 370 workers with an annual payroll of over $1 million. It is one of four industrial plants in the entire area. The other three employ a total of about 640 workers. Total employment in the area served by Clarkesville is approximately 2,000, of which the four industrial plants provide employment for a total of 1,010. There are currently about 2,500 workers in the Clarkesville area who are unable to find employment, and it is obvious that if the Scovill plant were to close an additional 370 workers would be added to the unemployment roll. As indicated by the above-quoted article, there does not appear to be anywhere for these people to go for employment. Even Atlanta—some 95 miles away, and the closest large city—has no place for them.

Similarly, the Talon branch plant is located in Cleveland, Ga., a city with a population of only 700 in White County. The December 1963 Labor Market Report issued by the Georgia State Employment Service of the Department of Labor shows that White County has a population of 6,935, with a civilian labor force of 1,900. As of February 1964, 133 or 7 percent were unemployed.

The Talon plant employs approximately 230 workers and has an annual payroll of approximately $800,000. All except four of such workers are longtime White County residents. The Talon plant is the only industrial plant in Cleveland, and there are only two other industrial plants in the county. These provide employment to about 300 workers. Currently there are 58 employable workers living in Cleveland who have been unable to find any kind of employment. Again it is clear that if the Talon plant were forced to close an additional 230 workers would be added to the rolls of the unemployed, and would have no place to go in the area—not even to Atlanta which is about 65 miles away.

The full economic impact of the closing of these plants can only be visualized by picturing the effect on the cities in which they are located. Attached to this statement are letters from the Honorable S. W. Reynolds, mayor of the city of Cleveland and Mr. Clifford Campbell, clerk of the superior court of White County, marked "Appendix B" and "Appendix C," respectively, emphasizing the importance to Cleveland and White County of the continued operation of the Talon plant, and pointing out the direct economic impact on the area if the plant had to close. The association has on file a certification by the tax commissioner of White County showing that 139 of the Talon employees own their own homes and pay taxes. It is apparent that if the Talon plant were closed these 139 workers would have to sell their homes at a substantial loss, if forced to seek employment elsewhere, and would seriously affect the entire economy of the area.

Since 1964 the administration has been studying poverty conditions in the Appalachia, Georgia, area and the Congress has appropriated millions of dollars to "prop up" the economy of the area and to provide jobs for the unemployed. At the same time as it is spending these millions of dollars, the administration reduces the duties on products manufactured in the Appalachia area, thus endangering the jobs of some 600 workers in slide fastener plants who are fortunate enough to now have employment.

CONCLUSION

Domestic slide fastener manufacturers fully recognize the importance to the national economy of entering into trade agreements under which foreign markets are made "available" to the products of American labor, and the necessity of making compensatory concessions to foreign countries under which the American market will be made "available" to products of foreign labor. However, they submit that making a market "available" merely means to enable both foreign and domestic producers to compete for it on an equal basis, without artificial restraints which give one group a competitive advantage over the other.

There is no indication that any foreign country has ever made a "gift" to the United States of a market for any product produced in that country, and thereby deprived its own citizens of the opportunity of competing with the United States for such market. The United States has not asked for, nor obtained, a competitive advantage for its products in any foreign market. It has asked for elimination of restraints which raised costs of U.S. products in foreign markets to a point where U.S. producers were at a competitive disadvantage.

Similarly, concessions made to foreign countries should be designed to enable foreign producers to compete on an equal basis with American producers for the American market. They should not enable foreign producers to take over the entire market because of lower labor costs, thereby depriving American producers of a market they have developed, and taking jobs away from American workers.

Domestic slide fastener producers are not seeking a monopoly of the American market, despite the fact that no concessions have been obtained under which any foreign market is available to them. They ask only for such protection as is necessary to enable them to compete with imports on a price basis. Records on file with the Tariff Commission fully evidence the fact that they cannot now do so, even with the current rates of duty. The projected reductions in the rates will give foreign producers an even greater price advantage, with the inevitable result that a larger and larger share of the domestic market will be taken over by importers, requiring domestic manufacturers to curtail production, lay off American workers and eventually close plants.

It is inevitable that the negotiation of trade agreements will result in inequities which will seriously injure specific domestic industries. This does not mean that the trade agreements should not be negotiated. It does mean that effective means of correcting such inequities must be provided. The domestic slide fastener manufacturers are satisfied that no such effective means has thus far been provided by Congress and that other witnesses before the committee will present evidence which will similarly satisfy the committee.

S. 1819 (the so-called Smith bill), presently pending before the committee, will, in the opinion of the slide fastener industry, provide a reasonably effective procedure for correcting inequities and relieving industries and workers injured by trade agreement concessions, and the members of the industry respectfully urge the committee to favorably report on such bill, or on another bill containing equally effective features.

Appendix A

Members of Slide Fastener Association

Name and address	*Location of factories*
Adams Industries, Inc., Long Island City, N.Y.	Long Island City, N.Y.
Aluminum Co. of America, Pittsburgh, Pa.	
J. R. Bux & Son, Philadelphia, Pa.	Philadelphia, Pa.
William T. Carson Co., Philadelphia, Pa.	Do.
Coats & Clark, Inc., New York, N.Y.	New York, N.Y., Albany, Ga., Newport News, Va., Warren, R.I.
Ernst Industries, Inc., Long Island City, N.Y.	Long Island City, N.Y.
General Staple Co., New York, N.Y.	New York, N.Y.
General Zipper Co., Long Island City, N.Y.	Long Island City, N.Y.
Ideal Fastener Corp., Long Beach, Long Island, N.Y.	Long Beach, N.Y.
Kaiser Aluminum & Chemical Sales, Inc., Oakland, Calif.	Oakland, Calif.
National Fastener Corp., New York, N.Y.	New York, N.Y.

MEMBERS OF SLIDE FASTENER ASSOCIATION—Continued

Name and address	*Location of factories*
Nynco Zipper Co., Division of New York Notion Co., Inc., Carle Place, Long Island, N.Y.	Long Island, N.Y.
Pilling Chain Co., Inc., West Barrington, R.I.	West Barrington, R.I.
Prentice Corp., Kensington, Conn.	Kensington, Conn.
Scovill Manufacturing Co., Newark, N.J.	Newark, N.J., Greenwood, Miss.
Scovill Manufacturing Co., Waterbury, Conn.	Waterbury, Conn., Clarkesville, Ga.
Seal Fastener Corp., New York, N.Y.	New York, N.Y.
Serval Slide Fasteners, Inc., New York, N.Y.	Do.
Slide-Rite Manufacturing Co., Long Island City, N.Y.	Long Island City, N.Y.
J. Sullivan & Sons Manufacturing Corp., Philadelphia, Pa.	Sullivan Souther, Inc., York, S.C.
Talon, Inc., Meadville, Pa.	Meadville, Pa., Woodland, N.C., Morton, Miss., Cleveland, Ga., Durant, Miss., York, S.C., Stanley, N.C.
Tape-Craft, Inc., Anniston, Ala.	Anniston, Ala.
Titan Zipper Co., Inc., Brooklyn, N.Y.	Brooklyn, N.Y.
Ultra Slide Fastener Corp., New York, N.Y.	New York, N.Y.
Volco Brass & Copper Co., Kenilworth, N.J.	Kenilworth, N.J.
Waldes Kohinoor, Inc., Long Island City, N.Y.	Long Island City, N.Y.
Zipper Products Corp., Brooklyn, N.Y.	Brooklyn, N.Y.

APPENDIX B

CITY OF CLEVELAND, GA.,
March 11, 1964.

Mr. L. R. COOPER,
Plant Manager, Talon, Inc.,
Cleveland, Ga.

DEAR MR. COOPER: The establishment of a plant by Talon, Inc., in the city of Cleveland in 1953 has provided jobs for the citizens of our city which were not available prior to 1953.

The main source of income for our citizens prior to your establishing a plant here, was the lumbering industry and poultry farming. These sources of employment were not enough to provide jobs for our citizens and our population was decreasing at a rapid rate.

The jobs provided by your plant have affected our economy to the extent that we are now a progressive community. Approximately 30 new homes have been built within the city limits in the past 10 years, we have been able to pave all of our streets, increased the capacity and modernized our water system, provided better lighting for the city streets and have attracted many new business establishments.

Taxes received by the city in 1962 amounted to $14,028, as compared to $8,729, in 1953. This increase would not have been possible if Talon, Inc., had not provided the payroll for our people.

You can see from the above facts that if Talon, Inc., was to close its operations here in Cleveland that our citizens now working for Talon or the service employees in other businesses who are dependent on your payroll would have to seek employment outside of this area and would be forced to move and sell their homes at a substantial loss. The fact that assessed valuations of property in the city would be decreased by the loss of Talon, Inc., would in turn require a much higher tax rate to carry the expenses of the city. This would discourage the location of another industry and force present businesses to relocate in other areas.

The loss of Talon, Inc., payrolls expended within the city would adversely affect merchants, doctors, restaurant operators, financial institutions, churches, etc. Therefore, the closing of your plant would be disastrous to our city and we sincerely hope that such a thing will never happen.

S. W. REYNOLDS, *Mayor.*

APPENDIX C

OFFICE OF CLERK SUPERIOR COURT,
White County, Cleveland, Ga., March 11, 1964.

Mr. L. R. COOPER,
Plant Manager, Talon, Inc.
Cleveland, Ga.

DEAR MR. COOPER: I want to personally express my thanks to you and Talon, for locating the plant in White County in 1953. Well do I remember the conditions that existed here prior to the establishment of your plant here. The only source of employment we had before Talon located here was from portable sawmills and poultry growing which only gave a small amount of employment to our people.

The employment of our people by your plant has had a remarkable effect on the whole economy of our county. Many new businesses have been added, homes have been built or modernized, and roads paved through every community in the county. As our youths finished school, they now have employment here in their own county; heretofore they had to seek employment elsewhere.

The valuation of property has made a considerable advance as many new modern homes have been built throughout the county.

If Talon should ever close its operation here I am fearful of what would happen to White County and its people. A great number of the people would be forced to sell their homes at a loss and seek employment elsewhere. It would also cause many businesses to close their doors.

If Talon should ever decide to close its plant here it would be a great disaster to our county. We sincerely hope that this will never happen.

Sincerely,

CLIFFORD CAMPBELL, *Clerk.*

STATEMENT ON BEHALF OF THE DOMESTIC PRODUCERS OF WOODEN SPRING CLOTHESPINS, WOODEN STANDARD CLOTHESPINS, FLAT VENEER PRODUCTS, PREPARED BY RICHARD A. TILDEN, TILDEN & LEVENTRITT, NEW YORK, N.Y.

SUMMARY

This statement is designed to demonstrate through specific examples taken from the experiences of the clothespin and flat veneer products industries in seeking adequate tariff protection, that the "peril point" and "escape clause" procedures in effect prior to 1962, and the "adjustment assistance" procedure which has been in effect since 1962, have been ineffective to avoid or remedy injury to domestic industries resulting from trade agreement concessions, and that remedial legislation is essential to avoid imposing unnecessary and unfair hardships on countless workers, businesses, and small communities.

While it is recognized that the provision of foreign markets for American producers, through tariff concessions, will aid the national economy, the statement contends that if a single American industry, or even a single business or worker, is to be sacrificed to obtain such concessions, an effective means of compensating such sacrificed industry, business, or worker should be devised. The taking of a business or of a worker's job to benefit other businesses or workers in aid of the overall national economy, cannot be distinguished from the taking of real property for use as an interstate highway. In the latter case, the Constitution requires that the owner receive "just compensation." A man's business or job is just as important to him as his real property

and when his business or job is taken for the benefit of others or in order to aid the national economy, he should be compensated.

Recommendations are made as to specific legislation needed to prevent such sacrifices until such time as Congress is prepared to provide compensation to businesses and workers sacrificed under the trade agreement program.

PURPOSE OF STATEMENT

This statement is presented on behalf of all of the domestic producers of wooden spring and standard clothespins and the producers of more than 90 percent of all flat veneer items, such as wooden spoons and forks, ice cream sticks, toothpicks, tongue depressors, et cetera, manufactured in the United States.

Throughout the history of trade agreement legislation the Congress has consistently affirmed and reaffirmed its determination that the program be administered in such manner as to protect the interests of domestic industries. In order to carry out this determination Congress in 1951 established the "peril point" and "escape clause" procedures, designed to protect domestic industry from serious injury resulting from increased imports encouraged by trade agreement concessions.

This policy was an acknowledgment of a fundamental principle of our form of government and our Constitution—that property shall not be taken for public use without just compensation. There is little distinction between taking a person's real property for use as an interstate highway, and taking a person's job or business away from him in order to provide job opportunities for others, or to provide a market for the goods manufactured by others.

In 1962 the administration asked Congress to reverse this policy and to authorize the President to sacrifice such domestic industries as he might determine should be sacrificed in the interests of the overall national welfare. Administration spokesmen—the Secretaries of Commerce and Labor—acknowledged that the proposal would deprive 90,000 workers of their jobs and would cause 800 firms to go out of business during the next 5 years. The sacrifice was "justified" by the administration on the ground that it would provide jobs for an even larger number of other workers. Congress was assured that these 800 firms and 90,000 workers would be "assisted" under the terms of the proposal.

The Congress, in obvious recognition of its obligation not to sacrifice any domestic industry for the benefit of any other industry or for the benefit of the national economy as a whole, without providing adequate and reasonable compensation to the industry sacrificed, insisted upon adjustment assistance provisions which it felt would provide adequate and reasonable assistance to workers, firms and industries injured or sacrificed by the exercise of the tariff-cutting powers included in the proposal.

The proposal was enacted as the Trade Expansion Act of 1962, and it has been announced recently that the powers have been exercised by cutting the rates of duty on most industrial items by 50 percent.

The purpose of this statement is to demonstrate to this committee—

1. That the "peril point" procedure in effect prior to 1962 was ineffective to avoid injury to domestic industries;

2. That the "escape clause" procedure in effect prior to 1962 was ineffective to remedy injuries to domestic industries resulting from trade agreements;

3. That the "adjustment assistance" procedure which has been in effect since 1962 is virtually worthless in providing necessary assistance to workers, firms and industries which have been injured in past trade agreements and which will be further injured, if not destroyed, by the reduced rates of duty about to be put into effect under the GATT agreement; and

4. That action by Congress is essential if we are to avoid imposing unnecessary and unfair hardships on countless workers, businesses and small towns.

PERIL POINT PROCEDURE

As the committee well knows, the basic purpose of the peril point procedure was to provide advance protection to domestic industries against the granting of concessions which would, in the opinion of the U.S. Tariff Commission, result in serious injury. The procedure involved the establishment by the Commission, after public hearings and investigation, of peril points, which were the lowest rates of duties which could be fixed for specific items without endangering domestic producers. The President was prohibited from granting concessions below such peril points without reporting his reasons for doing so to the Congress.

The best illustration of the effect of this "safeguard" is found in the President's report to the Congress of March 7, 1962, on his action in granting concessions below the peril points on a number of items in connection with trade agreements previously negotiated in Geneva. His reasons for doing so boil down to one—that the negotiators were "grievously short of bargaining power." In other words, the negotiators, in order to get concessions which would be helpful to certain U.S. producers, had to have something more to give away. The President, accordingly, authorized the granting of concessions on a number of items, which concessions he had been warned by the Tariff Commission would result in serious injury to domestic producers.

The President attempted to justify this action by determining himself that the concessions could be made without "serious competitive risks for American industry." He explained his action in usurping the function of the Tariff Commission as the "finder of the facts," by stating that the Commission's findings were merely "hasty predictions" which "were necessarily superficial." While it is recognized that the Commission is not infallible and that it had to make predictions as to a large number of items in a relatively short period of time, it is submitted that the Commission was in a better position to make predictions than was the President. The President did not set forth any facts on which he based his prediction that no serious competitive risks were involved, and it did not appear that he made any investigation or conducted any public hearings in an effort to ascertain the facts. The Commission did investigate each of the industries producing the products on which the negotiators granted concessions, and based its determinations on the facts adduced during the investigation and at the public hearings held by the Commission.

In net effect, the President "justified" his action in ignoring the peril points by pointing to the concessions obtained from foreign countries as a consequence. While no question is raised as to whether the President's action was for the overall good of the national economy, or whether he had a legal right to take such action, there is a serious question as to whether the action was consistent with the frequently announced intent of Congress to provide protection to all domestic industries. There is also a question as to what justification there is for purposely endangering the continued operation of producers of specific products, and the employment opportunities afforded by such producers, without first providing some means of compensating the producers and of assisting the workers who may well lose their jobs in the event the Commission's predictions prove accurate. These producers, and their employees, may well have been sacrificed for the benefit of the producers of other items. This may be good for the overall economy, but it is completely contrary to the basic principles to which this Congress has always adhered.

ESCAPE CLAUSE PROCEDURE

The so-called escape clause was enacted in recognition that concessions might be granted, despite the peril-point procedure, which would result in serious injury to domestic industry. In essence it permitted applications to the Tariff Commission for determination as to the effect of increased imports resulting from concessions on particular industries, and recommendations by the Commission to the President for the relief of any injury found to exist.

While this committee has available to it the full record of all cases which were brought under the escape clause, the committee might not be aware of the fact that it was virtually impossible for any industry, no matter how severely injured, to obtain any effective relief. One of the most compelling examples is the experience of the spring clothespin industry. This committee has heard the saga of spring clothespins and has in its records all of the facts and figures up to August 9, 1962, when the writer last appeared before the committee. The record speaks for itself and this statement will be confined to informing the committee as to what has happened since such time.

As the committee knows, the Commission found in October 1957 that the spring clothespin industry was being seriously injured by increased imports resulting from a reduction in the duty from 20 to 10 cents per gross. It advised the President that the maximum increase then permitted—which was to 20 cents per gross—would be inadequate to remedy the injury, and recommended imposition of an import quota. The President agreed with the determination of injury, but disagreed with the recommendation. In December 1957 he issued a proclamation withdrawing the concession and restoring the 20-cent rate of duty.

As predicted by the Commission the increase in the duty has proved to be inadequate. As will be fully developed later in this statement, imports have continued to increase, production and sales have continued to decline, and the domestic industry today is in a much worse financial condition than it was in at the time the increase was promulgated.

This situation has not resulted solely because a 20-cent rate of duty as predicted by the Commission, has proved inadequate. The truth of the matter is that the effect of a 20-cent rate of duty is difficult to determine, since, notwithstanding the President's 1957 proclamation, for all practical purposes the 20-cent rate of duty did not go into effect until 1962.

This anomalous situation arose because of a determination by the U.S. Supreme Court in December 1960, in a case involving bicycles, that the President did not have the power to modify the recommendations of the Tariff Commission. The practical effect of this decision was to invalidate the President's proclamation increasing the duty on spring clothespins, although a decision on spring clothespins was not actually handed down by the Customs Court until November 1961. Protests had been filed by importers in connection with most shipments between December 1957, when the President's proclamation increasing the duty was issued, and December 1960. Following the Supreme Court decision, all imports of spring clothespins were protested.

Accordingly, although the ostensible duty imposed on spring clothespins in December 1957 was 20 cents, the importers received from the U.S. Government a refund of 10 cents on every gross of clothespins included in a protested shipment. Beginning in December 1960 the importers knew that the 20-cent rate was invalid and were content to pay the 20-cent rate with the assurance that 10 cents would eventually be refunded.

The real significance of this situation lies in the fact that the President knew in December 1960 that the proclamation increasing the duty on spring clothespins was invalid. During the same month he received from the Tariff Commission a report informing him, in net effect, that continuance of the proclaimed duty was essential. Nearly 19 months elapsed before action was taken to validate the 20-cent duty. Shortly after the Supreme Court decision the President asked the Tariff Commission to conduct a public hearing and determine a peril point on spring clothespins. This was done on January 9, 1961, and although the domestic producers do not know the exact peril point established, it had to be at least 20 cents since the Commission in December 1961 again advised the President in a formal report that "continuance" of the 20-cent rate was necessary.

Following the establishment of the peril point in January 1961, the United States began negotiating with Sweden and Denmark for a new trade agreement covering spring clothespins. In September 1961 the President announced that agreement had been reached with Sweden, but formal action was withheld pending settlement with Denmark. In December 1961 the writer was informed by a representative of the importers that agreement had been reached with Denmark. Such agreement was not announced by the President until March 7, 1962—although the importers knew about it in December 1961. The March 7, 1962, announcement stated that the rate of duty on spring clothespins was bound at 20 cents in an agreement with Denmark.

However, the 20-cent rate was not put into effect until July 1, 1962. The writer is informed that the agreement with Denmark, reached in December 1961, specifically provided that the 20-cent rate would not be put into effect until July 1, 1962, thus giving importers an opportunity to flood the domestic market with spring clothespins at the 10-cent rate.

Importers took full advantage of this moratorium. During the first 6 months of 1962 a total of 1,461,000 gross were imported. This figure represents an increase of nearly 500,000 gross more than the comparable period in 1961. These imports during the period of the moratorium were sufficient to completely demoralize the domestic market for the entire year of 1962, and imports took over 36 percent of the market in that year.

The most significant feature of this situation is the fact that the agreement to postpone the effective date of the 20-cent rate until July 1, 1962, was not reported to the Congress by the President. An agreement to continue a lower rate of duty for a specified period of time is a "concession" granted in a trade agreement just as much as an agreement to reduce a rate of duty. Since the 10-cent rate which was allowed to continue in effect was below the peril point established by the Tariff Commission, the President was required by section 4(a) of the Trade Agreements Extension Act of 1951, as amended, to report the "concession" on the effective date of the increase to the Congress. This report was not made, so far as the writer can ascertain. If made, it was certainly not made public.

Thus despite a determination by the President that the domestic spring clothespin industry was being seriously injured by a concession granted under the trade agreements program, and despite his knowledge in December 1960 that his action designed to relieve such injury was invalid, no relief of any kind was forthcoming until July 1, 1962. Negotiation of trade agreements takes time. However, section 6 of the Trade Agreements Extension Act of 1951 specifically provided that no concession shall be permitted to remain in effect where a determination is made that such concession is causing injury. The concession on spring clothespins was allowed to remain in effect for 4 years and 7 months after a determination of injury was made by the President himself.

The President had the power to make an immediate withdrawal of a concession under the provisions of the Trade Agreements Act, and a quick withdrawal under the provision of GATT, article 28. Had he desired to do so, he could have effectively withdrawn the concession within days after he learned in December 1960 that his former action was invalid. His delay in doing so resulted in irreparable harm to the domestic industry.

The problems of domestic industry in securing relief under the escape clause were not confined to the difficulty of getting action by the President. There were many difficulties in gettting a favorable recommendation from the Tariff Commission, largely due to differences of opinion as to what Congress meant by the words "industry" and "like or directly competitive products," as used in the escape clause. For example, several of the domestic producers of spring clothespins also produce standard or slotted pins. Throughout the course of several hearings and investigations as to the effect of increased imports of spring clothespins, the domestic producers argued that the Commission should take into consideration the impact of such imports on domestic sales of standard clothespins.

It was pointed out that standard pins are used for the same purpose as spring pins, and are directly competitive. As a matter of fact, the industry established that standard pins had enjoyed a competitive advantage over spring pins for many years due to lower prices; that imports of spring pins were priced at about the same level as domestic standard pins; and that the most serious effect of imports of spring pins was on domestic sales of standard pins. At the same price most housewives will buy spring pins in lieu of standard pins, and with imported spring pins available at the same price, domestic sales of standard pins declined sharply.

Nonetheless, the Commission found, in 1957, that standard and spring pins were "not like or directly competitive within the meaning of the pertinent legislation."

Thereafter standard pin shipments continued to decline, dropping from 4.8 million gross in 1956 to 3.5 million gross in 1961. At the same time imports of standard pins began to sky-rocket, increasing from 44,000 gross in 1956 to 361,000 gross in 1961. Since the Commission apparently considered that spring and standard clothespins were produced by separate "industries," and were not competitive items, the standard pin "industry" applied for an escape clause investigation to determine whether imports of standard pins were causing injury. The result was a determination by the Commission made in February 1962, to the effect that the troubles of the standard pin industry were not caused by imports of standard pins, but were due to the competition from spring pins. How the Commission could conclude in 1957 that spring and standard pins were not competitive, and then in 1962 could conclude that the obvious injury to the standard pin manufacturers was being caused by competition from spring pins, is difficult to understand. However, those are the facts.

Another example of the problems which domestic industries faced in obtaining Tariff Commission action in escape clause cases arose out of the granting of concessions on all items in a so-called basket classification. Such a concession was granted on manufactures of wood, not otherwise classified. This concession affected a large number of wood products, including ice cream sticks, cocktail forks, and other flat veneer items.

Domestic producers of these items were being severally injured by large volumes of imports, particularly of ice cream sticks and cocktail forks, which imports were being sold on the domestic market at prices lower than the cost of production in the United States. The domestic producers, however, could not even apply for escape clause relief since there was no way to establish the actual quantities being imported. Import statistics were not available, and could not be obtained, at least by the domestic producers, as to the individual items in the basket classification. The only figures available were total imports of all items in the classification.

As a result, the domestic industry was unable to sustain the burden of proving to the Tariff Commission that imports of specific items had increased as a result of the trade agreement concession.

The only conclusion that can be reached is that the escape clause and peril point procedures were grossly inadequate to provide any reasonable degree of protection to domestic industry against injury from trade agreement concessions.

ADJUSTMENT ASSISTANCE PROCEDURE

This committee is fully informed as to the extent of the "assistance" which has been rendered to workers, firms and industries under this procedure during the 5 years it has been in effect. The current score is 19 applications and 19 denials of assistance. The failure of such procedure to provide effective assistance in 5 years is proof of its inadequacy. The following discussion of the reasons for its inadequacy may be of assistance to the committee:

The Trade Expansion Act of 1962 makes no provision for those who are and will be injured indirectly by the trade agreement program. These include the merchants and service establishments in small towns, who are dependent upon the plants and their workers located in such small towns for the success of their businesses: the thousands of individuals and firms who supply such plants with raw materials; the trucking companies and their employees who transport raw materials to the plants and finished products from the plants to market; and the small towns themselves.

While the specific firms to which the administration spokesmen referred in 1962 were not identified, it is safe to say that most of them are located in small towns throughout the country. The industries most likely to be injuried and sacrificed under the trade agreement program are generally the small producers located in small towns who are already in trouble as a result of increased imports directly traceable to concessions in duties heretofore granted. Small companies with high labor costs are unable to compete on a price basis with foreign producers paying low wages. Normally they do not have the capital to invest in highly efficient machinery and must rely on labor. The only domestic industries which can hope to survive without tariff protection are the large, highly mechanized, and efficiently operated producers. Most of these are located in big industrial centers and produce items which can compete abroad with foreign-made merchandise.

This point can best be illustrated by a specific example. The town of West Paris, Maine, with a population of 670 people, has only two industrial plants, both engaged in the production of wood products. One employs only about a dozen workers and the other, Penley Bros., employs 148 workers in the production of clothespins. The few remaining workers employed in the town work for merchants, trucking companies, and service establishments. Many of the workers own their own homes, pay taxes to the town, and generally contribute to the continued existence of the town.

The wood used by Penley Bros. in the production of clothespins is largely furnished by hundreds of farmers in the vicinity whose only cash income is from the sale of wood cut from small wood lots.

If the clothespin industry is one of those to be sacrificed, as appears highly likely, the Penley Bros. plant will be forced to close down, putting 148 workers in West Paris out of work directly. Since there are no other employment opportunities in the town, these workers would be forced to look elsewhere for jobs, and probably would have to move their families to a large industrial center, learn a new trade, and hope for a job manufacturing a product which will have a market abroad through concessions obtained from foreign countries.

If they own their own homes they would be forced to sell, with no market for homes due to the lack of employment opportunities in West Paris. The merchants and service organizations in West Paris would lose their customers and unquestionably would be forced to close. The trucking companies and their workers would lose their sole source of revenue in West Paris and would be forced to seek business elsewhere. The hundreds of farmers would lose their market for their wood.

The town of West Paris could not possibly survive the closing of the Penley Bros. plant and would become another ghost town. To be sure, the Trade Expansion Act of 1962 provides for assistance to Penley Bros. However, in order for Penley Bros. to qualify for such assistance it would have to present to the Secretary of Commerce a proposal for its economic adjustment and satisfy him that the proposal was—

> Reasonably calculated materially to contribute to the economic adjustment of the firm; to give adequate consideration to the interests of the workers of such firm adversely affected * * * and * * * that the firm will make all reasonable efforts to use its own resources for economic development.

The machinery and equipment in the Penley Bros. plant is designed solely for the production of clothespins. It could not be used for anything else and would have to be junked. This would leave the company with an empty shell of a building, and it would have to start from scratch. The only advantage of its location is its proximity to wood supplies. Even if it could finance with government loans the installation of new machinery, designed to produce other wood products, its chances of success are practically nil. The production of other wood products is highly competitive and existing manufacturers are already in trouble as a result of increased import competition.

It could, of course, at the taxpayers' risk, tool up for the production of entirely different products, using raw materials transported from another area of the country. In so doing it would be embarking on a highly risky venture, entering another market in competition with existing firms which are probably located closer to the source of supply of necessary raw materials and which have established selling organizations and contacts with the market.

Aside from the difficulty of presenting a satisfactory proposal for its economic adjustment, Penley Bros. would be expected to enter into partnership with the Federal Government. Any loans or other assistance would be subject to such "terms and conditions" as the Secretary of Commerce deems "appropriate." Such terms and conditions would probably include a voice in management, directions as to the specific products to be manufactured, and as to methods of distribution, prices, etc. Individual stockholders of the firm could be required to endorse notes evidencing any loans made to the firm and would remain liable if the firm failed. In effect the firm would become a virtual ward of the Government.

Under these circumstances it is highly probable that Penley Bros. would cease to exist, and would not even apply for assistance under the act.

The next question is what happens to Penley Bros. employees? The bill "assures" these workers of assistance, provided they can prove to the Tariff Commission that they lost their jobs as a result of increased imports resulting from a duty concession. In the absence of an application by the industry or by Penley Bros. for a determination that the company is eligible for assistance, the workers would be on their own, and would face an almost insurmountable task. As indicated before, persuading the Tariff Commission to make a determination as to injury resulting from increased imports is not easy, even with the combined efforts of an entire industry. It is inconceivable that individual workers, even though represented by a union, could assemble the voluminous facts and figures necessary to enable the Tariff Commission to find that increased imports of a particular commodity resulted from a concession granted under the program, and that such increased imports caused or threatened to cause, "unemployment or underemployment of a significant number or proportion of workers."

Even assuming that such a determination is made as to Penley Bros., the individual workers face many other problems. In the first place, the workers would have to accept "suitable training" approved by the Secretary of Labor. This could be training in a field of no interest to the individual worker, for a job in an entirely different part of the country. If the worker refuses the training 'without good cause," he would not be eligible for any assistance.

Again assuming that the Penley Bros. worker could establish his eligibility and was willing to accept the conditions to assistance, he still would face serious problems. If he owned his home in West Paris he probably could not sell it. He would receive a maximum of 65 percent of his average weekly wage or 65 percent of the average weekly manufacturing wage, whichever is less, plus an inadequate allowance for moving expenses for his family. Reestablishment of a family in a new community, with little or no capital to work with, and with greatly curtailed income pending the time the worker is able to find a new job, is not easy.

Finally, the question arises as to what compensation is offered to the town of West Paris itself, the merchants, service establishments, truckers, farmers, etc., who have depended on the continued operation of Penley Bros., and the many others who would be indirectly injured by the sacrifice of Penley Bros. in order to obtain a concession from the European Common Market which would provide employment in Cincinnati, or elsewhere. The answer, of course, is none.

While it may be argued that Penley Bros. is an isolated example, and possibly an extreme one, and that the continued existence of West Paris is unimportant to the national economy, it is suggested that there are literally thousands of small towns throughout the United States which are dependent upon small plants. One of the basic features of the American way of life has been the operation of small businesses in small communities, providing employment to residents of such communities.

Congress has granted powers which can well destroy this way of life, through the sacrifice of these small companies. The writer does not profess to have the omniscient powers necessary to foresee the final results. It may well be that such a sacrifice is needed for the future welfare of the country. However, it is submitted that if the benefits to the overall economy are as great as they have been painted by the administration spokesmen, the taxpayers generally should be willing to pay for such benefits. The burden should not be shouldered by the 800 firms and 90,000 workers the administration asked the powers to sacrifice, or by the uncounted thousands of others who will be directly or indirectly injured by such sacrifice.

THE NEED FOR ACTION BY CONGRESS

The inadequacy of the present law to provide needed protection and assistance will inevitably result in unnecessary and unfair hardships on countless workers, businesses, and small towns unless remedial legislation is enacted. The following discussion of the plight of the clothespin industry will serve to illustrate this danger.

During the years since World War II, as a direct result of increased imports encouraged by the trade agreements program, eight clothespin plants have either closed down completely or discontinued the production of clothespins. These eight plants were located in Phillips, Maine; Glen Rock, Va.; Cloquet, Minn.; San Jose, Calif.; Richwood, W. Va.; Ellsworth, Maine; Munising, Mich.; and Spencer, Ind.—all small towns in which the loss of the employment opportunities previously afforded by the clothespin plants was particularly serious.

Only five plants remain in operation. These are located in Dixfield, Mattawaumkeag, and West Paris, Maine, and in Montpelier and Waterbury, Vt. These plants contribute materially to the economic welfare of the small towns in which they operate by providing employment to a large percentage of the employables, and by providing a market for wood which is the primary, if not sole, source of income for hundreds of farmers.

These five plants have been struggling to survive under a 20-cent rate of duty on spring clothespins and a 15-percent rate of duty on standard clothespins.

Up until about 10 years ago consumption of standard pins far exceeded consumption of spring pins. This was largely due to the fact that standard pins were considerably cheaper than spring pins, and since they served the same purpose, the average housewife bought the less expensive type. Beginning in 1947 or 1948, the trend of consumer preference changed and the percentage of standard pins to total consumption of clothespins declined rapidly—from 65 percent in 1947 to only 27 percent last year. This change resulted from two principal factors:

1. The development of more efficient assembly machinery which reduced the cost of producing spring pins, enabling domestic producers to reduce their prices, and thus decreasing the price spread between spring and standard pins.
2. The flood of imported spring pins offered at prices equivalent to the domestic price for standard pins.

For all practical purposes the price advantage which standard pins had enjoyed historically was wiped out, and housewives were able to buy imported spring pins at about the same price as they would have to pay for domestic standard pins. As a consequence, consumption of spring pins increased and consumption of standard pins declined correspondingly. Total consumption of clothespins has remained relatively stable during the past 20 years, despite increased use of automatic clothes dryers, laundromats, and so forth. Average consumption during 1947–56 was 9,643,000 gross, and during the last 5 years consumption has averaged 10,065,000 gross.

The conclusion is inescapable that increased imports of spring pins have seriously injured domestic standard pin producers, as well as domestic spring pin producers. Since the producers are one and the same, and since the ability of clothespin producers to continue to operate and to compete for the domestic market is dependent on their sales of both types of pins, any consideration of the economic impact of increased imports of spring pins necessarily involves the competitive effect of such imports on domestic sales of both types of pins.

The attached table I contains a summary of U.S. shipments, imports, and apparent consumption of both standard and spring pins during the years 1947 through 1966. From this table the committee will note that average sales by domestic producers during 1947–56 of both types of pins totaled 8,542,000 gross annually. During the last 5 years they totaled only 7,665,000 annually—a decline in annual domestic sales of 877,000 gross.

During 1947–56 imports of both types of pins averaged 1,101,000 gross annually, and during the last 5 years imports averaged 2,418,000 annually—an increase of 1,317,000 gross. Total consumption increased from an average of 9,643,000 in 1947–56 to an average during the last 5 years of 10,065,000 gross—an increase of 422,000 gross. Despite this increase in consumption, sales by domestic producers have declined by 877,000 gross annually.

In terms of percentage of imports to domestic shipments and to consumption, table I shows that imports were only 13 percent of domestic shipments in 1947–56, and during the last 5 years jumped to 32 percent. Imports during 1947–56 represented only 11 percent of domestic consumption, and during the last 5 years represented 24 percent.

The U.S. Tariff Commission has in its possession the answers to questionnaries filed by the domestic producers showing the profits and losses in connection with both spring and standard pins during the years of 1961, 1962, and 1963. These figures show that in 1961 the domestic clothespin industry suffered a loss of $279,000 on its clothespin sales. In 1962 it showed a small profit of $114,000 on total sales—an average profit of only 1½ cents per gross. In 1963 the industry again operated at a substantial loss—$97,000. Figures for later years are not available but it is believed that they would show little or no improvement since volume has declined, costs have increased, and there has been very little change in domestic prices.

From table I it must be concluded that increased imports of both spring and standard pins have caused serious injury to the domestic industry producing like and directly competitive items, and that such injury has gotten progressively worse each year despite the increase in the import duty on spring pins in 1962 referred to above.

The industry now faces a further reduction in duties as a result of the Kennedy round. The duty on spring clothespins will be reduced to 10 cents per gross and the rate on standard pins to 7½ percent ad valorem. If the industry cannot hold a fair share of the market, and cannot reflect a reasonable profit on its operations at current rates of duty, it is inconceivable that it can do so with a further reduction in such rates.

The flat veneer products and many other industries face the same problem. These industries may be small and relatively unimportant in the overall national economy, but they do make a substantial contribution by providing employment to workers in small communities where employment opportunities are few and far between.

It is recognized that the provision of a foreign market for the products of large companies, by obtaining concessions through trade agreement negotiations, will aid the national economy. However, if a single American industry, or even a single business or worker, is to be sacrificed to obtain such concessions, an effective means of compensating such sacrificed industry, business or worker should be devised. The taking of a business or of a worker's job to benefit other businesses or workers in the aid of the overall national economy, cannot be distinguished from the taking of real property for an interstate highway. In the latter case, the Constitution requires that the owner be paid "just compensation." A man's business or job may be equally as valuable to him as his real property and when his business or job is taken for the benefit of others or in order to aid the national economy, he should be compensated.

The writer doubts that Congress is prepared to take such a radical step in order to provide foreign markets for specific businesses. However, if it does permit the President to do so by sacrificing other individual businesses, it has a moral, if not a legal obligation, to compensate the sacrificed businesses and the workers displaced as a result. Until the Congress is prepared to enact laws providing for such compensation, it is submitted that effective measures for preventing any such sacrifices must be enacted.

RECOMMENDATIONS

The Trade Expansion Act of 1962 should be amended so as to reestablish the peril point and escape clause procedures contained in the former law, but with mandatory provisions under which the President would be precluded from granting any concession below the peril point and would be required to proclaim such increased duties, or to impose such import quotas or other restrictions, as may be recommended by the Tariff Commission in escape clause actions.

Senate bill 1891, which is presently pending before the committee, is designed to accomplish this objective. In addition it contains a number of provisions which will ease the burden of domestic industries in proving injury and will make the adjustment provisions of the law more workable. The committee is urged to favorably consider enactment of this bill (in its recently revised form), or one containing substantially equivalent provisions.

In the event the committee concludes that the mandatory features of this type of legislation would unduly tie the hands of the President and would hamper the success of the trade agreement program, the committee is urged to consider as an alternative a requirement that the President take the action recommended by the Tariff Commission in peril point and escape clause proceedings, unless he files within a specified period, with the Senate Committee on Finance and with the House Ways and Means Committee, the reasons why he feels that he must grant a concession below the peril point, or that the escape clause recommendations in a particular case should not be effectuated.

It could further be provided that unless the Senate Committee on Finance and the House Ways and Means Committee both adopted resolutions within a specified period of time approving the action recommended by the President, the President would be required to adhere to the peril point, or would be required to put into effect the recommendations of the Commission, as the case may be.

This procedure would have the advantage of requiring the Congress, acting through the Senate Committee on Finance and the House Ways and Means Committee, to take affirmative action only if the reasons advanced warranted disregarding the Commission's recommendations, with the consequent risk of sacrificing a domestic industry.

Moreover, such a procedure would not put the President in a strait-jacket, since in any case in which he felt that the action recommended by the Commission would be detrimental to the best interests of the United States, he could ask the Senate Committee on Finance and the House Ways and Means Committee to approve some other action. The administration should have no concern that such committees would not approve the President's recommendations if the reasons advanced were sound and justified action other than that recommended by the Commission.

If the Senate Committee on Finance and the House Ways and Means Committee are reluctant to accept the responsibility of making these decisions, another alternative is to provide for affirmative approval of either or both Houses of Congress. Congress is in a much better position to understand the effect which particular duty concessions, or refusal to increase duties as recommended by the Tariff Commission, will have on the domestic producers and small towns, than the State Department or the President.

CONCLUSION

The Congress has given the President the power to decree the destruction of small companies and small communities, in order to provide a market for the products of other companies. The far-reaching effects of such a policy on the domestic economy cannot be described or even imagined. It is hoped that this committee will recommend changes in the powers of the President needed to assure domestic workers and industries of reasonable and practicable protection against injury, and effective compensation and assistance if their jobs and businesses are sacrificed for the overall welfare of the country.

Respectfully submitted.

Richard A. Tilden, Tilden & Leventritt, New York, N.Y.; on behalf of Diamond National Corp., New York, N.Y.: Forster Manufacturing Co., Inc., Wilton, Maine; Hardwood Products Co., Guilford, Maine; National Clothespin Co., Montpelier, Vt.; Penley Bros., West Paris, Maine; Solon Manufacturing Co., Solon, Maine; The Demeritt Co., Waterbury, Vt.

TABLE I.—SPRING AND STANDARD CLOTHESPINS

SUMMARY OF U.S. SHIPMENTS, IMPORTS AND APPARENT CONSUMPTION, 1947-66

Year	Domestic shipments			Imports			Domestic consumption			Percentage standard	Percentage imports					
											To shipments			To consumption		
	Spring	Standard	Total	Spring	Standard	Total	Spring	Standard	Total		Spring	Standard	Total	Spring	Standard	Total
1947	2,692	6,617	9,309	876	70	946	3,569	6,688	10,257	65	33.0	1.0	10	25	1.0	9
1948	2,832	5,950	8,782	1,064	10	1,074	3,897	5,960	9,857	60	38.0	(1)	12	27	(1)	10
1949	3,060	5,777	8,837	733	(2)	733	3,794	5,777	9,571	60	24.0	(1)	8	19	(1)	8
1950	3,898	6,774	10,672	984	(2)	984	4,883	6,774	11,657	59	25.0	(1)	9	20	(1)	9
1951	2,906	4,761	7,667	1,252	16	1,268	4,158	4,778	8,936	53	43.0	(1)	17	30	(1)	14
1952	2,894	4,997	7,891	790	2	792	3,684	5,000	8,684	57	27.0	(1)	10	21	(1)	9
1953	2,967	4,793	7,760	926	1	927	3,893	4,795	8,688	55	31.0	(1)	12	24	(1)	11
1954	3,069	4,406	7,475	1,165	(2)	1,165	4,235	4,406	8,641	51	38.0	(1)	15	28	(1)	13
1955	3,537	4,912	8,449	1,483	37	1,520	5,020	4,949	9,969	50	42.0	1.0	18	30	1.0	15
1956	3,731	4,857	8,588	1,558	44	1,602	5,280	4,902	10,182	48	42.0	1.0	19	29	1.0	15
1957	3,291	[3] 3,555	[3] 6,846	1,966	80	2,046	5,258	[3] 3,636	[3] 8,894	[3] 41	60.0	[3] 2.0	[3] 30	37	[3] 2.0	[3] 23
1958	3,779	3,910	7,689	1,701	157	1,867	5,490	4,068	9,558	42	45.0	4.0	24	31	3.8	20
1959	4,295	3,743	8,038	2,166	210	2,376	6,461	3,953	10,414	38	53.0	5.8	29	35	5.5	23
1960	4,264	3,471	7,735	1,986	345	2,331	6,250	3,816	10,066	38	47.0	10.0	30	31	9.2	23
1961	4,565	3,534	8,099	2,024	361	2,385	6,589	3,895	10,484	37	44.0	10.2	29	31	9.2	23
1962	4,559	3,146	7,705	2,528	331	2,859	7,087	3,477	10,564	33	55.0	10.5	37	36	9.5	27
1963	4,687	2,829	7,516	1,897	279	2,176	6,584	3,108	9,692	32	40.0	9.8	29	29	9.0	22
1964	4,970	2,895	7,865	2,019	365	2,384	6,989	3,260	10,249	32	40.6	12.6	30	29	11.2	23
1965	5,029	2,649	7,678	2,234	235	2,469	7,263	2,884	10,147	28	44.0	8.9	32	31	8.1	24
1966	5,081	2,481	7,562	2,016	187	2,203	7,023	2,651	9,674	27	40.0	7.5	29	28	7.0	23
1947-56 [4]	3,158	5,384	8,542	1,083	18	1,101	4,241	5,402	9,643	55	34.0	(1)	13	25	(1)	11
1957-61 [4]	4,039	3,642	7,681	1,970	231	2,201	6,009	3,874	9,883	39	48.0	6.3	29	33	6.0	22
1962-66 [4]	4,865	2,800	7,665	2,139	279	2,418	6,989	3,076	10,065	31	44.0	10.0	32	31	9.0	24

[1] Less than 1.
[2] Less than 1,000.
[3] Incomplete.
[4] Average.

Preliminary Statement by Glass Crafts of America and the Illuminating & Allied Glassware Manufacturers Association on the Impact of Imports on the American Handmade Glassware Industry

(NOTE.—These two organizations numerically embrace two-thirds of all major companies engaged in the manufacture of handcrafted glassware in America and, volumewise, they are estimated to produce between 80 and 90 percent of all such handcrafted glasswares.)

It is the earnest desire of the American handcrafted glassware industry to cooperate with, and to assist, the committee, in every way possible, in the important work of its proposed legislative oversight review of U.S. trade policy. The ever-increasing influx of imports of handmade glassware over the past 20 years has brought about a very serious erosion of the domestic industry. The story of this industry, in this respect, has been told many times before, but it will bear repetition here because there has been no change, except for further deterioration, of the domestic industry in the past several years.

To illustrate briefly the reasons for, and the intensity of, our interest, I should like to point out that in 1950 wage and employment surveys, conducted for this industry through my office, covered 39 companies operating 40 plants. Those 39 companies included all of the major producers of handmade glassware in America. The surveys included the collection of such data as the number of workers employed, total hours those employees worked, total earnings, average rates per hour, etc.

Ten years later, in 1961, we reviewed the happenings of the 1950–60 decade. As of January 1, 1961, 15 of the companies which were operating in 1950 were out of production. Those 15 companies alone, in 1950, had employed 3,080 workmen as compared to the total employment of 4,[illegible]4 hourly paid workmen in the companies which remained in operation when the 1961 survey was taken. The loss of those companies represented a loss of approximately 4½ million man-hours of work per year, and a loss of approximately 42 percent of America's oldest and one of its most vital industries.

The primary reason for the loss of these companies was the inability of their respective managements to compete with low-wage products from abroad. This same problem continues with greater intensity today. In 1965 we had 23 companies reporting a total of 4,690 employees who worked a total of 7,738,141 hours. This means that we have regained only 46 in the number employed during these past 5 years. Moreover, those employees worked almost one-half million less hours in 1965 than in 1961.

This is not too difficult to understand when we consider that imports of table and art glassware have increased each of the past 5 years, reaching record levels in 1965 and indicating new higher levels in this current year. According to a report issued by the Business and Defense Services Administration of the U.S. Department of Commerce in February of 1966, it was estimated that imports of table and art glassware alone would reach $20.5 million in 1965 (imports were valued at $5½ million in 1950 and $11½ million in 1960), and this estimate is based on foreign value, country of origin, and does not include U.S. import duties, ocean freight, and marine insurance. The first 6 months of 1966, according to the U. S. Department of Commerce data on imports of table and art glassware, indicate that the trend continued upward with a foreign value, country of origin, of $23.7 million as compared to $20.5 million in 1965.

The first 6 months of 1967 compared to the first 6 months of 1966 show the following gains:

Total imports $11,525,890, or a gain of 6.5 percent over the January to June period of 1966.

Typical of the gains shown by the leading exporters to this country would be Italy with a 10-percent gain in 1965, West Germany 25.4 percent, and Japan 30 percent.

Other countries indicating a sizable increase (although somewhat lower volume than the first three named above) are the United Kingdom up 45.2 percent and Ireland up 46.4 percent. We attach a copy of the 1966–67 January to June comparison.

Handmade glassware was the principal 1965 glass import and supplied more than 50 percent of the domestic market.

Imports from Soviet bloc countries accounted for 11 percent of the total ($2.1 million—an increase of 25 percent in the first months of 1965).

As of May 31, 1966, over 14 countries have increased the value and quantities of shipments of glassware to the United States. Korea, with a 330-percent increase, leads the parade followed by:

	Percent		Percent
Spain	94.7	Belgium	21.1
Ireland	41.5	Italy	10.7
Denmark	28.0	East Germany	8.8
Bulgaria	24.0	Czechoslovakia	8.5
Japan	22.1	Rumania	1.0
West Germany	21.8		

The above data, released by the Consumer Durable Goods Division of the U.S. Department of Commerce, indicate a 10.4-percent increase in total value of table and art glassware for the period ending May 31, 1966. Shipments were valued at $8,892,023 or $835,891 more than for the same period in 1965.

Now the industry is informed that it must grid for greater onslaughts, particularly from Japan which supplied 27.7 percent of the total imports last year.

A glass industry publication recently reported:

> A sweeping invasion of 8,000 units of glassware consisting primarily of tumblers and brandy glasses valued at approximately $16,700 is now being spearheaded at the American market. Nippon Toki Co., Ltd., producers of Noritake China, has already started stateside export of its newly added crystal glassware line. The firm began production of the line some 5 years ago, with this being the first overseas shipment.
>
> (NOTE.—This ware is already on the American market.)

As we have already indicated, the drastic decline of the domestic handmade glassware industry has been brought about primarily because it has been impossible for American manufacturers to compete in their own market with similar products made in foreign countries which enjoy an overwhelming advantage in labor costs.

The average hourly rate paid to skilled glassworkers in America today is $3.39 per hour. Add to this figure current fringe benefits and the total cost to the employer is somewhere around $3.93 per hour. To the supporting or so-called miscellaneous help in the glass industry, the average rate is $2.43 per hour. Add to this fringe benefits currently in effect and we come up with a wage of $2.82 per hour. (Approximately 60 to 75 cents of every cost dollar goes to labor.)

We have not been able to get complete up-to-date information on labor rates in the glass industry in foreign countries, but we believe it is safe to assume that rates for glassworkers in those countries will not vary greatly from the figures reported and applicable to all manufacturing industries in those countries (see chart enclosed). The enclosed chart will illustrate just how formidable is the task facing the American glass manufacturers, using the same tools, techniques, and equipment, but paying average wage costs which, in some cases, are 20 to 30 times similar costs paid by their foreign counterpart. For example, our latest information indicates that the average monthly wage for middle school (high school) graduates in Japan is 13,820 yen: a Japanese yen is now worth about three-tenths of a cent in U.S. money. Thus, that Japanese worker's wage is about $13.89 per month, as compared to a wage of approximately $451 paid to a similar worker in the glass industry in America.

J. Raymond Price.

U.S. DEPARTMENT OF COMMERCE, BUSINESS AND DEFENSE SERVICES ADMINISTRATION

TABLE AND ART GLASSWARE: U.S. IMPORTS FOR CONSUMPTION BY COUNTRY OF ORIGIN, JANUARY-JUNE 1966 AND 1967

[Quantity in number; foreign value in U.S. dollars]

Country of origin	1966 (January-June)		1967 (January-June)	
	Quantity	Value	Quantity	Value
Canada	8,852	29,987	170,002	29,329
Mexico	3,198,205	584,444	2,039,141	417,789−23.9
Argentina	37	2,114	44	571
Sweden	1,238,871	857,800	1,032,767	844,894− 1.5
Norway	20,523	23,413	12,886	13,297
Finland	77,041	44,258	172,275	82,333
Denmark	160,919	65,096	90,884	38,673
United Kingdom	209,529	330,227	332,841	479,347+45.2
Ireland	207,829	464,228	279,304	679,427+46.4
Netherlands	147,811	116,156	103,172	113,191
Belgium	381,405	269,233	325,431	290,508
France	2,639,886	888,403	2,923,008	901,941+ 1.5
West Germany	2,837,505	1,585,702	2,887,765	2,007,302+26.6
East Germany	115,554	161,940	121,109	192,812
Austria	113,246	74,111	114,667	107,432
Czechoslovakia	1,448,226	583,032	1,103,171	527,084− 9.6
Hungary	326,209	77,926	293,083	71,208
Switzerland	38,051	28,386	15,786	14,327
Poland	717,565	338,267	564,497	339,296
Spain	82,562	29,381	87,542	30,108
Portugal	764,778	170,255	519,155	145,304
Italy	6,758,247	2,891,545	5,901,173	2,685,840− 7.1
Yugoslovia	353,002	68,098	108,912	25,630
Rumania	493,938	70,762	387,469	61,997
Bulgaria	657,380	59,354	659,520	63,997
Turkey	186,029	25,774	159,655	30,669
Israel	149	779	754	3,249
India	24	389	19,769	8,241
Pakistan	....	....	3,067	4,610
Korea, Republic of	944,028	49,072	611,452	42,537
Hong Kong	119,536	5,327	213,656	18,864
Taiwan	43,141	2,691	267,479	29,281
Japan	5,657,081	904,088	7,121,388	1,176,752+30.0
Nansei and Nanpo Islands	29,398	15,295	34,038	16,441
Australia	....	....	214	1,035
Egypt	....	....	3,255	683
Other countries	5,272	3,833	....	....
Total	29,991,918	10,831,366	28,630,231	11,525,890+ 6.4

U.S. DEPARTMENT OF COMMERCE, BUSINESS AND DEFENSE SERVICES ADMINISTRATION
TABLE AND ART GLASSWARE: U.S. IMPORTS FOR CONSUMPTION, BY KIND, FOR JANUARY-JUNE 1966-67

[Quantity in number; foreign value in U.S. dollars]

TSUSA No.	Description	1966 (January-June) Quantity	1966 (January-June) Value	1967 (January-June) Quantity	1967 (January-June) Value	Percent change
	Articles chiefly used in the household or elsewhere for preparing, serving, or storing food or beverages, or food or beverage ingredients; smokers' articles, household articles, and art and ornamental articles, all the foregoing not specially provided for: by weight over 24 percent leadcontaining monoxide:					
546.11	Valued not over $1 each	275,889	130,939	284,756	122,869	-6.2
546.13	Valued over $1 but not over $3 each	478,803	849,820	650,157	1,188,245	+39.8
546.17	Valued over $3 each	126,431	668,102	183,727	1,014,188	+51.8
	Glassware (venetian type) decorated prior to its solidification:					
	Valued not over $1 each:					
546.21	Smokers' articles	156,051	53,260	77,211	35,249	-33.8
546.23	Other	80,886	26,331	23,494	13,117	-50.2
546.25	Valued over $1 each	123,006	196,975	119,643	188,469	-4.3
546.35	Bubble glassware	5,240,428	1,553,830	4,449,629	1,445,367	-7.0
546.38	Glassware pressed and toughened (specially tempered)	1,154,061	185,903	962,255	97,380	-47.6
	Other glassware:					
	Valued not over $1 each:					
546.41	Smokers' articles	619,557	245,169	717,718	253,067	+3.2
546.45	Perfume bottles fitted with ground glass stoppers	133,319	48,477	127,103	37,690	-22.3
546.51	Other	20,005,596	3,885,187	19,528,615	3,878,371	-0.2
546.53	Valued over $1 not over $3	1,240,632	1,880,159	1,326,952	1,990,725	+5.9
	Valued over $3 each:					
546.55	Cut or engraved	174,573	581,244	150,839	780,693	+34.3
546.57	Other	182,686	525,970	78,232	480,460	-8.7
	Total	29,991,918	10,831,366	28,680,331	11,525,890	+6.4

Note: Prepared in Consumer Durables Division, August 1967.

Source: U.S. Department of Commerce official statistics.

AVERAGE HOURLY EARNINGS, INCLUDING FRINGE BENEFITS, IN MANUFACTURING IN THE UNITED STATES AND 12 FOREIGN COUNTRIES

[Production workers, male and female, unless otherwise noted]

Country	Earnings	Supplemental benefits as percent of earnings	Earnings plus fringe benefits
United States	$2.64	16	$3.06
Canada	1.98	16	2.30
Austria	.54	60	.86
Belgium	.85	31	1.11
France	[1].61	51	.92
Italy	.64	74	1.11
Netherlands	[1].70	30	.91
Norway [1]	1.36	31	1.78
Sweden	1.52	15	1.75
Switzerland [1]	1.11	15	1.28
West Germany	1.02	44	1.47
United Kingdom [1]	1.17	14	1.33
Japan	.47	15	.54

[1] France, wage rates; Netherlands, estimated; Norway, men. Includes mining and quarrying. Average hourly earnings or female workers amount to $0.98. Fringe benefits bring this figure up to $1.28; Switzerland, men. Average hourly earnings for female workers amount to $0.70. Fringe benefits bring this figure to $0.81; United Kingdom, men. Average hourly earnings for female workers amount to $0.67. Fringe benefits bring this figure to $0.76.

General note.: Date covered for above averaeg earnings is for specified months in calendar 1965 except for the following: Italy, December 1964; Netherlands, April 1964; Switzerland, October 1964; Japan, average for calendar 1964. In the case of computing Japanese earnings the calendar year is shown rather than a more recent monthly period because the former incorporates the 2 traditional mid- and end-year bonuses which amount approximately each to a full month's wages.

Source: Division of Foreign Labor Conditions, Branch of International Comparisons, U.S. Department of Labor. Feb. 8, 1966.

Statement Submitted by the Canned Meat Importers' Association on U.S. Trade Policy With Respect to South American Beef

(Tariff Schedule items 107.50, 107.55, and 107.6040)

SUMMARY

Quota restrictions should not be extended to Tariff schedule items 107.50, 107.55, and 107.6040. These items consist of canned beef, most of which is corned beef, and cooked frozen beef. Ninety-five percent of our imports of such items originate in Argentina, Brazil, Paraguay, and Uruguay.

I. Quantitative restrictions should not be extended to canned and cooked frozen beef for the following reasons:

(1) Canned and cooked frozen beef imported from Argentina, Brazil, Paraguay, and Uruguay are not produced commercially in the United States.

(2) These products do not displace sales of domestic beef since they are manufactured from grades of beef in short supply and in growing demand in the United States.

(3) The imposition of quotas on these products would cause special injury to lower income consumers.

(4) The imposition of quota restrictions on these products would run directly counter to the announced trade policies of the United States, especially as they apply to Latin America.

Such quotas, in sum, could only injure domestic processors and lower income consumers and needlessly impair our trade relations, with no countervailing benefit to domestic cattle producers.

II. Present ad valorem tariffs on these products should be changed to equivalent cents-per-pound specific tariffs, the type of tariff already applied to comparable products such as canned luncheon meat.

STATEMENT

This statement will set forth reasons for the rejection of recent proposals to extend import restrictions for the first time to the various classes of beef purchased from South America, all of which are canned or cooked prior to importation. The statement will also discuss the present ad valorem tariffs on these beef imports and propose that an equivalent cents-per-pound rate be applied to such imports, as is already the case with respect to comparable products such as canned luncheon meat.

Since the general case for and against quantitative restrictions has been and will be presented by many private parties and agencies of the U.S. Government, The Canned Meat Importers' Association will restrict itself to its area of expertise in considering the impact quantitative restrictions would have on those few beef products imported from South America. These imports represent less than six-tenths of 1 percent of domestic beef and veal consumption, or 124 million pounds out of a total of 21 billion pounds of domestic consumption.[1]

[1] 1967 Agricultural Statistics (USDA), table 528. See app. 1.

The products in question are covered by tariff schedule items 107.50, 107.55, and 107.6040.

Tariff schedule item [1]	Tariff description	General description	Uses in United States	Percent of beef imports from South America in 1966
107.50	Beef prepared or preserved in airtight containers.	Canned beef, principally corned beef.	Retail sales; also used by U.S. producers in corned beef hash.	72
107.55 and 107.6040..	Other beef and veal; prepared and processed.	Cooked frozen beef...	Processed by U.S. producers into frozen dinners, frozen meat pies, soups, etc.	25

[1] 1966 TSUSA imports (Bureau of the Census), table 1. See app. 2. The remaining 3 percent of beef imports from South America is accounted for by dried beef (107.45), beef sausages (107.20 and 107.2520) and offal (107.75). These products are not discussed in the text of the statement because they are imported in insignificant quantities; there is prima facie no need to restrict their import by quotas. This statement is also limited to a discussion of beef imports from South America since veal imports are negligible.

Approximately 95 percent of all imports under these tariff schedule items originate in Argentina, Brazil, Paraguay, and Uruguay.[2]

I. Quota restrictions should not be extended to canned and cooked frozen beef

The principal objections to quantitative restrictions on these imports can be stated very briefly:

(1) Canned and cooked frozen beef are not produced commercially in the United States.

(2) These products do not displace the sale of domestic beef since they are manufactured from grades of beef in short supply and in growing demand in the United States.

(3) The imposition of quota restrictions on these products would cause special injury to lower income consumers.

(4) The imposition of quota restrictions on these products would run directly counter to the announced trade policies of the United States, especially as they apply to Latin America.

(1) *Beef products imported from Argentina, Brazil, Paraguay, and Uruguay are not produced commercially in the United States.*—None of the beef products imported from South America which are here under discussion are commercially produced in the United States. There is, therefore, no domestic product to be protected by the imposition of quotas.

Canned corned beef is the single largest item, accounting for over two-thirds of these imports, and South America is virtually our sole source of supply.[3] It is highly nutritious, versatile, and economical; and for good reason is a standard ready-to-eat favorite. It is particularly popular among lower income families, whether for consumption at home or at work in the factory or field.

Domestic processors use canned corned beef as a basic ingredient in the manufacture of canned corned beef hash, long a favorite dish of

[2] 1966 TSUSA imports (Bureau of the Census), table 1. See app. 2.

[3] In 1966 approximately one-half of 1 percent of such imports came from areas other than South America. Data from 1966 TSUSA Imports (Bureau of the Census), table 1. See app. 2.

Americans, children and adults alike. Corned beef hash is an important item in the menus of schools, restaurants, hospitals and many other charitable institutions.

Cooked frozen beef accounts for virtually all the balance of the beef imports from South America. It has long played an important role in the domestic production of soups and has in the past 3 years become increasingly important to the growing frozen food industry in products such as frozen dinners and pies.

In summary, U.S. manufacturers of canned corned beef hash, frozen beef dinners, beef pies, and other similar products have become dependent upon the South American beef imports because this type of beef is not available in sufficient quantities from the domestic industry.

To impose quotas on these imports does not protect any domestic production, but simply denies American consumers and food processors basic commodities upon which they depend. Any such quota would cause market disruption and lead to underemployment of workers in these domestic industries and tend to cause economic waste in American capital investment, both in the United States and South America, in the productive facilities engaged in the manufacture of these basic commodities.

(2) *These products do not displace sales of domestic beef since they are manufactured from grades of beef in short supply in the United States.*—Production of beef is in general divided into two basic categories, "table beef" and "manufacturing beef". "Table beef," derived from feed lot (grain-fed) cattle, is the well-marbled beef that goes to the family table and restaurants.

As a result of our growing population and higher income, the production of feed lot table beef has increased from 9.6 to 15.4 billion pounds from 1956 to 1966, an increase of 60 percent. Despite this increased production, the average price for choice steers has increased over the same period from $22.30 to $26.29 per hundred pounds, an increase of 18 percent.[4]

The beef products imported from South America are produced with leaner grass-fed beef, that is, the manufacturing type. These products have found a place in the United States market as a result not of price competition but of a domestic demand for manufacturing beef that by far exceeds the supply offered by the domestic industry which has diverted its own production from manufacturing beef to feed lot beef, a more profitable outlet for its weaner calves.

The decline in the production of manufacturing beef (cows and bulls) in the United States is also attributable to two additional factors:

(1) The decline in dairy herds because of increased production of the average cow as a result of advances in technology; and

(2) The relative stability in the herds of bulls, which reflects the increase in the use of artificial insemination.

The decline in the domestic production of manufacturing beef has taken place at a time when the consumer's demand for it has increased

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[4] 1967 Agricultural Statistics (USDA), table 464. See app. 3. Data relating to production from 1956 to 1963 is from the U.S. Tariff Commission report, "Beef and Beef Products," T.C. Publications 128 (June 1964); data for subsequent years supplied by the Tariff Commission. See app. 4.

drastically, which demand has been reflected in the continually rising price of manufacturing beef.[5]

The declining supply in domestic manufacturing beef has been graphically described by Dr. DeGraff, president of the American Meat Institute:

> In 1955 when our population was 165 million persons, we had a domestic output of 4.5 billion pounds of cow bull beef [i.e., manufacturing beef]. This amounted to 27 pounds per capita. In 1963, with a population of 190 million people people, we had a domestic production of 2.8 billion pounds of cow and bull meat—or 14 pounds per capita—almost a 50-percent decline on a per capita basis. Even with 1.5 billion pounds of manufacturing-type beef imported last year, we still had an aggregate supply (domestic plus imported) of 0.5 billion pounds less than the aggregate in 1955—and 15 percent less per person of our population * * *[6]

Domestic manufacturing beef production in 1966 had still not attained the level of production in 1956 and continued to be available only on a cyclical basis, contrary to the needs of food processors.[7]

(3) *The imposition of quota restrictions on these products would cause special injury to lower income consumers.*—Quota restrictions on South American beef would not benefit the domestic beef cattle industry, which is incapable of meeting the demand for manufacturing beef. They would affect the consumer who can least afford to pay the price of such restrictions. A consumer who cannot buy canned corned beef certainly will not buy steak.

Corned beef hash, frozen dinners, frozen meat pies, soups—all products for which domestic processors utilize South American beef—are staple foods which contribute to a balanced diet at economy prices. To restrict imports of a basic commodity used in the manufacture of these products will not further the interests of domestic cattle raisers who offer no comparable substitute. The consumer who can least afford it, both in terms of income and nutrition, should not be required to assume a burden which serves no purpose.

(4) *The imposition of quota restrictions on these products would run directly counter to the announced trade policies of the United States, especially as they apply to Latin America.*—The United States has long encouraged the economic development of Latin America as evidenced in the recent GATT (General Agreement on Trade and Tariffs) negotiations and in the OAS (Organization of American States) and the Alliance for Progress. Even the security of the United States and the Western Hemisphere is dependent upon economies capable of substantial growth while controlling inflation.[8]

At the close of the Punta del Este Conference, the Presidents of the member states of the OAS, including President Johnson, agreed

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[5] The average domestic prices for manufacturing beef comparable to the grades imported from South America were considerably higher in 1966 than in 1956: prices increased 50 percent for utility grade beef steers and 44 percent for commercial cows. 1967 Agricultural Statistics (USDA), table 464. See app. 3.

[6] Speech delivered by Dr. DeGraff on March 5, 1964, before the 16th National Livestock Conference in Omaha, Nebr., as reported in J. Russell Ives, "Livestock and Meat Economy of the United States," pp. 161–162 (American Meat Institute Center of Continuing Education, 1966).

[7] Data relating to production from 1956 to 1963 is from the U.S. Tariff Commission report, "Beef and Beef Products," T.C. Publications 128 (June 1964); data for subsequent years supplied by the Tariff Commission. See app. 4.

[8] A recent study prepared for the Subcommittee on American Republics Affairs of the Committee on Foreign Relaions of the U.S. Senate has examined the seriousness of inflation in Latin America and found that proper trade policies can aid in the solution of this problem. R. F. Mikesell, "Survey of the Alliance for Progress—Inflation in Latin America: A Study" (Sept. 25, 1967), passim.

"to refrain from introducing or increasing tariff or nontariff barriers that affect exports of developing countries, taking into account the interests of Latin America." In addition the Presidents of the member states promised "to provide incentives and make available financial resources for the industrialization of agricultural production, especially through * * * the promotion of exports of processed agricultural products."[9]

The introduction of any quota restriction on classifications of meat over 95 percent of which are imported from South America would indicate a complete reversal of this policy, which was announced as recently as April 1967. Nor would there be any logic in reducing tariffs on certain of the meat classifications which are the subject of this statement (as in fact will be done by virtue of the June 1967 negotiations on GATT) if at the same time we are to impose a quota on imports of the identical products.

From the point of view of foreign trade rather than aid, it is clearly advantageous for the United States to encourage private investment in the countries of South America rather than to make additional outright grants. Yet, when the countries in question do not ask for foreign aid dollars but only request a chance to compete freely in the U.S. market, the United States if it adopted the proposed quotas would deny these developing countries free access to its markets and reverse its traditional position of encouraging self-help and private investment rather than foreign aid.

In each of Argentina, Brazil, Paraguay, and Uruguay, the cattle business plays a significant role in the national economy. These countries have been encouraged to make substantial investments in equipment and modernization of plants to process beef to meet the requirements of the U.S. Government. The curtailment of the present exports of beef from these countries would run directly counter to trade policies the United States has long encouraged and would result in a serious blow to their economies. At the very least, the imposition of such quotas would result in the curtailment of U.S. exports to these South American countries.

Canned and cooked beef, which as stated before are not produced commercially in the United States and therefore do not displace domestic products, have never been under quota. Any quotas on these products—the traditional beef exports from South America to this country—could only injure domestic processors and lower income consumers, and needlessly impair our trade relations with no countervailing benefit to domestic cattle producers.

[9] "Declaration of the Presidents of America," secs. III. 5 and IV, 7 (Apr. 14, 1967), published in the Department of State Bulletin, vol. LVI, No. 1454, pp. 717, 718 (May 8, 1967).

II. Present ad valorem tariffs on these products should be changed to equivalent "cents per pound" specific tariffs, the type of tariff already applied to comparable products such as canned luncheon meat

The present tariff on canned corned beef under item 107.50 is 15 percent ad valorem and the tariff on almost all cooked frozen beef under item 107.6040 is 10 percent ad valorem.[10] Since these imports are homogeneous items which do not vary substantially in quality and which are packed by weight, the application of a specific tariff assessed against weight would be the most straightforward and by far the simplest way to collect duties. Such a specific tariff is ideally suited for products which are uniform, whose relevant measure is quantity, and for which the quantity is readily ascertainable. A specific tariff would permit canned and cooked meat importers to calculate their costs before selling their product. Because of a delay of as much as 2 years in reaching a final appraisement, importers of these products have had to conduct their business at a serious commercial disadvantage in that they have been required to sell and deliver merchandise without knowing a significant component of its cost.

Domestic cattlemen could not be harmed by a change to specific tariffs since such a change would only affect the administration and not the substance of the tariff. Specific tariffs have proved completely workable in the case of canned luncheon meat (tariff schedule item 107.35). This product, which appears on the grocer's shelf next to canned corned beef in the same size (12 ounce) container, is subject to a specific tariff of 3 cents per pound. Importers of canned corned beef, who frequently are confronted with problems of proof in ad valorem determinations, suffer an unfair competitive disadvantage from this disparity in treatment.

In the interest of efficiency and lower costs in tariff administration and of fairer competition among importers of similar products, the association advocates that a specific tariff comparable to the applicable ad valorem rates be applied to tariff schedule items 107.50 and 107.6040, consisting principally of canned corned beef and cooked frozen beef.

The Canned Meat Importers' Association (International Packers, Ltd., Chicago, Ill.; The Tupman Thurlow Co., Inc.. New York, N.Y.; Transmundo Co., Inc., New York, N.Y.; Hygrade Food Products Corp., Detroit, Mich.; Sampco Inc., Chicago, Ill,; Red Line Commercial Co., Inc., New York, N.Y.; C.A.P. Sales Corp., New York, N.Y.; Berns & Koppstein Inc., New York, N.Y.; International Products Corp., Washington, D.C.; Charles A. Sayous Inc., New York, N.Y.).

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[10] Tariff schedule item 107.50 is to be reduced in five annual stages from 15 percent ad valorem to 7.5 percent ad valorem pursuant to the GATT Kennedy round negotiations. Office of the Special Representative for Trade Negotiations, "GATT 1964–67 Trade Conference: Report on U.S. Trade Negotiations," vol. II, pt. 1, p. 7. The proposed equivalent specific tariff should also reflect a reduction of 50 percent over the same period.

TABLE 528.—MEATS AND LARD: PRODUCTION AND CIVILIAN CONSUMPTION, UNITED STATES, 1909-66

Year	Beef			Veal			Lamb and mutton		
	Production	Consumption		Production	Consumption		Production	Consumption	
		Total	Per capita		Total	Per capita		Total	Per capita
	Million pounds	Million pounds	Pounds	Million pounds	Million pounds	Pounds	Million pounds	Million pounds	Pounds
1909	6,915	6,713	74.2	660	660	7.3	608	606	6.7
1910	6,647	6,508	70.4	667	667	7.2	597	696	6.5
1911	6,549	6,426	68.5	666	666	7.1	693	690	6.3
1912	6,234	6,153	64.6	662	662	6.9	735	729	7.7
1913	6,182	6,157	63.3	608	609	6.3	706	701	7.2
1914	6,017	6,144	62.0	569	572	5.8	693	708	7.1
1915	6,075	5,668	56.4	590	591	5.9	605	612	6.1
1916	6,460	6,003	58.9	655	656	6.4	585	595	5.8
1917	7,239	6,687	64.7	744	745	7.2	463	463	4.5
1918	7,726	7,167	68.5	760	761	7.3	506	499	4.8
1919	6,756	6,462	61.5	819	824	7.8	590	598	5.7
1920	6,308	6,293	59.1	842	852	8.0	538	578	5.4
1921	6,022	6,024	55.5	820	824	7.6	639	662	6.1
1922	6,588	6,503	59.1	852	858	7.8	553	565	5.1
1923	6,721	6,671	59.6	916	919	8.2	588	592	5.3
1924	6,877	6,786	59.5	972	977	8.6	597	596	5.2
1925	6,878	6,888	59.5	989	993	8.6	603	605	5.2
1926	7,089	7,074	60.3	955	959	8.2	639	637	5.4
1927	6,395	6,484	54.5	867	875	7.4	629	631	5.3
1928	5,771	5,872	48.7	773	781	6.5	663	662	5.5
1929	5,871	6,048	49.7	761	766	6.3	682	686	5.6
1930	5,917	6,021	48.9	792	794	6.4	825	824	6.7
1931	6,009	6,025	48.6	823	824	6.6	885	886	7.1
1932	5,789	5,830	46.7	822	822	6.6	884	882	7.1
1933	6,440	6,469	51.5	891	891	7.1	852	849	6.8
1934	8,345	8,066	63.8	1,248	1,182	9.4	851	798	6.3
1935	6,608	6,770	53.2	1,023	1,087	8.5	877	923	7.3
1936	7,358	7,742	60.5	1,075	1,075	8.4	854	849	6.6
1937	6,798	7,107	55.2	1,108	1,108	8.6	852	857	6.6
1938	6,908	7,058	54.4	994	994	7.6	897	894	6.9
1939	7,011	7,159	54.7	991	991	7.6	872	869	6.6
1940	7,175	7,257	54.9	981	981	7.4	876	873	6.6
1941	8,082	8,021	60.9	1,036	1,005	7.6	923	901	6.8
1942	8,843	8,049	61.2	1,151	1,084	8.2	1,042	950	7.2
1943	8,571	6,860	53.3	1,167	1,059	8.2	1,104	830	6.4
1944	9,112	7,146	55.6	1,738	1,594	12.4	1,024	857	6.7
1945	10,276	7,665	59.4	1,664	1,534	11.9	1,054	943	7.3
1946	9,373	8,533	61.6	1,443	1,384	10.0	963	923	6.7
1947	10,432	9,916	69.6	1,605	1,545	10.8	799	762	5.3
1948	9,075	9,163	63.1	1,423	1,384	9.5	747	733	5.1
1949	9,439	9,439	63.9	1,334	1,310	8.9	603	609	4.1
1950	9,534	9,529	63.4	1,230	1,206	8.0	597	596	4.0
1951	8,837	8,472	56.1	1,059	1,003	6.6	521	517	3.4
1952	9,650	9,548	62.2	1,169	1,099	7.2	648	640	4.2
1953	12,407	12,113	77.6	1,546	1,485	9.5	729	735	4.7
1954	12,963	12,743	80.1	1,647	1,591	10.0	734	730	4.6
1955	13,569	13,313	82.0	1,578	1,531	9.4	758	753	4.6
1956	14,462	14,121	85.4	1,632	1,572	9.5	741	735	4.5
1957	14,202	14,242	84.6	1,526	1,481	8.8	707	709	4.2
1958	13,330	13,786	80.5	1,186	1,150	6.7	688	719	4.2
1959	13,580	14,202	81.4	1,008	990	5.7	738	830	4.8
1960	14,728	15,122	85.2	1,109	1,093	6.2	768	852	4.8
1961	15,300	15,875	88.0	1,044	1,021	5.7	832	923	5.1
1962	15,298	16,300	89.1	1,015	1,003	5.5	808	949	5.2
1963	16,428	17,577	94.6	929	913	4.9	770	908	4.9
1964	18,429	18,879	100.1	1,013	990	5.3	715	795	4.2
1965	18,699	19,032	99.6	1,020	992	5.2	651	716	3.8
1966	19,694	20,108	103.8	910	881	4.5	650	771	4.0

Appendix 2

TABLE. 1—COMMODITY BY COUNTRY

Schedule 1. Animal and vegetable products

TSUSA No.	Commodity, unit of quantity, and country of origin	Net quantity (pounds)	Value (dollars)
106.8000	Edible meat offal, fresh, chilled, or frozen, not over 20 cents per pound:		
	Canada	419,636	63,250
	Mexico	152,109	14,964
	Guatemala	26,233	3,478
	Honduras	41,836	6,152
	Nicaragua	131,681	18,398
	Costa Rica	13,752	2,174
	Haiti	17,300	2,407
	Gaza Strip	56,000	6,725
	New Zealand	112,000	13,451
	Total	970,547	130,999
106.8500	Edible meat offal, fresh, chilled, or frozen, over 20 cents per pound:		
	Canada	1,181,598	388,428
	Mexico	16,319	4,766
	Guatemala	6,807	2,008
	Honduras	89,146	23,684
	Nicaragua	9,003	2,655
	Costa Rica	56,315	16,503
	Australia	183,680	87,530
	New Zealand	811,773	414,708
	O PW AF	6,600	4,335
	Total	2,361,241	944,617
107.1000	Fresh pork sausages:		
	Canada	339,800	183,529
	Japan	3,024	1,663
	Total	342,824	185,192
107.1500	Pork sausage (except fresh):		
	Canada	491,864	457,125
	Argentina	46,779	19,164
	Denmark	503,705	284,712
	Netherlands	71,842	68,875
	West Germany	8,187	4,223
	Austria	10,525	11,919
	Spain	9,131	10,296
	Italy	1,189,482	1,033,124
	Yugoslavia	2,160	1,404
	Other country	1,050	796
	Total	2,334,725	1,891,638
107.2000	Sausages, beef, in airtight containers:		
	Brazil	97,446	28,656
	Paraguay	72,000	28,300
	Uruguay	1,958,723	413,712
	Argentina	1,048,217	350,019
	Denmark	6,900	3,491
	Other country	350	507
	Total	3,183,636	824,685
107.2520	Beef sausage (except in airtight containers):		
	Haiti	16,499	6,781
	Uruguay	54,000	11,308
	Denmark	44,114	24,894
	Netherlands	65,756	46,790
	West Germany	7,132	5,167
	Other country	2,500	750
	Total	190,001	95,690

TABLE 1.—COMMODITY BY COUNTRY—Continued

Schedule 1. Animal and vegetable products—Continued

TSUSA No.	Commodity, unit of quantity, and country of origin	Net quantity (pounds)	Value (dollars)
107.2540	Sausages (except pork and beef sausages):		
	Canada	34,287	28,074
	Brazil	4,800	2,431
	Sweden	7,750	3,623
	Norway	1,014	1,021
	Denmark	5,399,751	2,609,363
	Netherlands	10,662	12,355
	Belgium	8,505	6,381
	West Germany	366,363	299,799
	East Germany	1,800	1,209
	Austria	11,540	13,746
	Poland	7,200	2,844
	Italy	134,992	148,520
	Other country	2,713	1,915
	Total	5,990,837	3,131,281
107.3020	Porks, hams, and shoulders, prepared or preserved (except boned, cooked, and canned):		
	Canada	1,026,275	850,770
	Denmark	36,610	30,783
	Ireland	2,062	1,293
	Netherlands	68,048	86,323
	France	1,208	3,024
	West Germany	176,611	247,046
	Switzerland	1,458	2,632
	Italy	290,094	471,284
	Australia	3,622	3,106
	Other country	230	620
	Total	1,606,218	1,696,881
170.3040	Bacon, prepared or preserved (except cooked, boned, and canned):		
	Canada	3,155,293	3,301,721
	Denmark	2,600	1,327
	Ireland	174,680	104,948
	Yugoslavia	5,513	2,303
	Greece	19,541	17,998
	Turkey	36,353	27,702
	Lebanon	7,346	9,066
	Rhodesia	1,431	1,090
	Other country	420	556
	Total	3,403,177	3,466,711
107.3060	Pork, not specifically provided for, prepared or preserved (excluding boned, cooked, and canned):		
	Canada	338,423	189,508
	Denmark	5,131	1,839
	West Germany	11,967	16,114
	Italy	28,394	37,511
	Australia	5,591	34,602
	Total	389,506	279,574
107.3520	Pork hams and shoulders, boned, cooked in airtight containers:		
	Canada	2,450,851	2,351,983
	El Salvador	28,800	17,137
	Sweden	19,668	16,210
	Finland	27,540	18,648
	Denmark	87,702,479	69,822,687
	United Kingdom	79,350	59,239
	Netherlands	59,179,116	43,586,259
	Belgium	33,123	19,857
	France	5,820	5,984
	West Germany	1,283,382	1,069,697
	East Germany	69,180	57,578
	Czechoslovakia	1,672,336	987,298
	Hungary	4,800	3,249
	Switzerland	862	1,792
	Poland	38,879,023	27,896,931
	Spain	6,474	5,613
	Portugal	71,856	51,021
	Italy	28,988	31,986
	Yugoslavia	6,596,690	4,661,932
	Turkey	5,273	3,995
	Japan	48,190	29,261
	Libya	36,465	25,210
	Other country	656	605
	Total	198,230,922	150,724,172

TABLE 1.—COMMODITY BY COUNTRY—Continued

Schedule 1. Animal and vegetable products—Continued

TSUSA No.	Commodity, unit of quantity, and country of origin	Net quantity (pounds)	Value (dollars)
107.3540	Pork bacon boned and cooked and packed in airtight containers:		
	Canada	26,132	19,306
	Denmark	16,321,191	8,232,752
	Ireland	1,775	1,138
	Netherlands	611,743	340,063
	West Germany	199,997	120,332
	Poland	85,194	51,418
	Yugoslavia	2,226	1,552
	Total	17,248,258	8,766,561
107.3560	Pork, not elsewhere specified, boned and cooked and packed in airtight containers:		
	Canada	6,472	5,805
	Salvador	14,400	3,547
	Sweden	18,777	6,095
	Denmark	12,373,556	4,475,301
	Netherlands	5,114,901	1,777,449
	West Germany	117,612	40,165
	Czechoslovakia	358,320	213,479
	Hungary	4,800	3,677
	Poland	12,643,411	8,142,979
	Portugal	5,220	3,813
	Italy	3,441	6,595
	Yugoslavia	2,130,528	1,422,823
	Pakistan	9,600	5,341
	Libya	10,680	7,800
	Total	32,811,718	16,114,869
107.4500	Beef or veal, pickled or cured, valued over 30 cents per pound:		
	Canada	11,361	17,761
	Mexico	3,872	5,121
	Guatemala	59,058	35,430
	Nicaragua	112,150	76,657
	Haiti	137,419	78,323
	Brazil	110,230	57,100
	Argentina	41,787	20,893
	Denmark	16,422	6,679
	Switzerland	3,460	7,012
	Total	495,751	304,976
107.5000	Beef (except sausage) prepared or preserved in airtight containers:		
	Canada	102,076	62,646
	Bolivia	59,544	15,763
	Chile	3,675	1,662
	Brazil	14,017,234	5,131,125
	Paraguay	14,058,691	5,530,566
	Uruguay	8,947,274	3,078,499
	Argentina	52,824,642	20,756,189
	Norway	4,320	1,087
	Denmark	9,000	2,853
	United Kingdom	6,736	3,738
	Ireland	27,720	10,025
	Netherlands	18,000	5,400
	West Germany	2,100	1,515
	Czechoslovakia	44,974	16,386
	Poland	82,824	29,518
	Malaysia	71,850	25,588
	Japan	38,685	20,151
	Australia	78,444	37,205
	Other country	1,303	1,247
	Total	90,399,092	34,731,163
107.5500	Beef and veal, prepared or preserved, not specifically provided for, valued not over 30 cents per pound:		
	Canada	30,000	2,850
	Other country	700	644
	Total	30,700	3,494

TABLE 1.—COMMODITY BY COUNTRY—Continued

Schedule 1. Animal and vegetable products—Continued

TSUSA No.	Commodity, unit of quantity, and country of origin	Net quantity (pounds)	Value (dollars)
107.6020	Beef and veal, prepared, not preserved (except frozen), valued over 30 cents per pound:		
	Canada	1,609,653	701,576
	Nicaragua	5,378	5,486
	Argentina	3,730,624	1,985,133
	Australia	271,082	121,126
	New Zealand	68,394	53,387
	Other country	342	258
	Total	5,685,473	2,866,966
107.6040	Beef and veal, preserved (except frozen), valued over 30 cents per pound:		
	Canada	72,996	34,014
	Brazil	4,113,262	2,379,206
	Argentina	22,812,647	12,688,731
	Denmark	60,150	22,462
	France	1,847	1,762
	Australia	339,308	1,564,087
	Other country	3,184	1,863
	Total	30,403,394	16,692,125
107.6500	Frog meat, prepared or preserved:		
	Japan (total)	13,397	17,281
107.7000	Meat and edible offal, not elsewhere specified, prepared or preserved, not over 30 cents per pound:		
	Canada	27,180	3,790
	Mexico	7,550	1,965
	Norway	8,820	2,151
	Denmark	2,766,604	737,514
	Netherlands	36,000	10,103
	Poland	256,860	64,106
	Other country	9,657	1,852
	Total	3,112,671	821,481
107.7500	Meat and edible offal, not elsewhere specified, prepared or preserved, over 30 cents per pound:		
	Canada	37,515	13,448
	Mexico	8,560	3,466
	Jamaica	3,900	1,406
	Dominican Republic	3,761	1,504
	Uruguay	26,532	8,616
	Argentina	158,567	49,063
	Sweden	81,585	30,199
	Norway	68,321	28,269
	Denmark	12,415,846	4,169,679
	United Kingdom	3,514	2,691
	Netherlands	76,128	32,956
	Belgium	5,585	6,612
	France	723,687	678,389
	West Germany	518,814	190,408
	East Germany	28,026	10,200
	Switzerland	26,992	26,939
	Poland	64,800	23,235
	Turkey	2,496	1,460
	Hong Kong	5,144	8,705
	Japan	33,285	17,045
	Australia	681,601	292,380
	New Zealand	34,663	27,649
	British Western Pacific Islands	2,570	6,128
	Total	15,011,892	5,630,447
107.8000	Meat extract, including fluid:		
	Canada	24,928	27,594
	Brazil	65,952	277,020
	Paraguay	5,824	20,944
	Uruguay	18,984	79,763
	Argentina	413,780	1,101,404
	Denmark	5,400	3,494
	Netherlands	35,175	38,813
	Australia	389,274	2,631,497
	New Zealand	34,440	89,717
	Other Country	220	469
	Total	993,977	4,270,715

TABLE 1.—COMMODITY BY COUNTRY—Continued

Schedule 1. Animal and vegetable products—Continued

TSUSA No.	Commodity, unit of quantity, and country of origin	Net quantity (pounds)	Value (dollars)
110.1005	Smelts, fresh, chilled, or frozen, but not otherwise preserved:		
	Canada	9,034,253	1,460,272
	Brazil	13,750	1,238
	Italy	12,160	2,797
	Japan	3,600	1,116
	Total	9,063,763	1,465,423
110.1010	Albacore, whole, fresh, chilled, or frozen, but not otherwise preserved:		
	Canada	66,258	11,896
	Trinidad	1,019,215	146,042
	Netherland Antilles	2,504,620	619,475
	French West Indies	493,000	120,349
	Spain	354,059	65,490
	Portugal	11,220	2,917
	Malaysia	9,006,112	2,043,320
	Singapore	578,000	133,952
	Republic of Korea	1,763,080	357,158
	Taiwan	1,418,323	308,939
	Japan	70,912,255	15,821,148
	British Western Pacific Islands	15,510,366	3,420,860
	Trust Territory of the Pacific Islands	199,946	38,751
	Canary Islands	5,108,337	1,125,909
	Senegal	567,398	139,013
	Sierra Leone	717,443	143,488
	Ivory Coast	5,407,219	1,129,269
	Ghana	1,090,000	239,800
	Madeira	362,899	85,740
	Liberia	738,740	147,748
	Mauritania	1,531,971	413,640
	Republic of South Africa	2,532,000	506,400
	Total	121,892,461	27,021,304
110.1015	Albacore (except whole, fresh, or frozen, but not otherwise preserved):		
	Spain	1,444,434	198,610
	Japan	2,414,773	409,310
	Total	3,859,207	607,920
110.1020	Yellowfin, whole, fresh, chilled or frozen, but not otherwise preserved:		
	Canada	1,390	1,120
	Panama	390,000	180,980
	Jamaica	500,000	75,000
	Ecuador	2,246,262	332,422
	Peru	7,239,685	1,205,569
	Chile	412,000	62,419
	France	331,548	33,155
	Malaysia	738,138	154,318
	Taiwan	105,637	23,066
	Japan	4,411,761	616,545
	Canary Islands	1,926,679	472,624
	Senegal	174,284	17,426
	Sierra Leone	2,483,871	370,895
	Ivory Coast	207,490	43,338
	Other Country	10,931	1,365
	Total	21,179,676	3,590,242
110.1025	Yellowfin, fresh, chilled, or frozen, eviscerated, not beheaded:		
	Northern Antilles	1,338,460	325,530
	French West Indies	111,000	22,862
	Peru	8,540	1,814
	Chile	310,000	40,189
	Portugal	313,060	79,831
	Malaysia	9,777,978	2,105,508
	Indonesia	200,000	45,726
	Philippines	1,492,995	280,289
	Korea	290,000	49,300
	Taiwan	2,547,984	558,057
	Japan	67,367,149	15,023,694
	Australia	8,024	1,400
	British Western Pacific Islands	4,113,092	862,822
	Trust Territory of the Pacific Islands	94,382	10,865
	Canary Islands	747,961	183,371
	Sierra Leone	123,330	21,080
	Ivory Coast	1,325,655	266,432
	Ghana	596,000	119,200
	Liberia	171,280	29,974

Note: Due to a classification error, imports totaling $1,985,133 credited to Argentina in classification 107.6020 should appear in classification 107.6040.

APPENDIX 3

TABLE 464.—CATTLE AND CALVES: AVERAGE PRICE PER 100 POUNDS, BY GRADES, AT CHICAGO, 1945-66

Year	Beef steers							Cows, commercial	Veal calves, choice and prime
	Prime	Choice	Good	Standard	Commercial	Utility	All grades		
1945	$17.30	$16.00	$14.12	......	......	$11.73	$16.18	$13.65	$15.12
1946	20.24	19.32	17.36	......	......	13.75	19.16	14.62	16.87
1947	30.64	26.22	21.76	......	......	18.04	25.83	17.84	24.98
1948	35.24	30.96	26.31	......	......	22.16	30.88	22.64	29.02
1949	28.65	26.07	23.17	......	......	19.77	25.80	18.41	27.64
1950	32.43	29.68	26.08	......	......	22.86	29.35	21.48	31.08
1951	38.11	35.96	33.37	......	$30.97	28.31	35.72	27.76	37.19
1952	35.17	33.18	30.10	......	26.39	22.70	32.38	21.74	34.42
1953	26.56	24.14	21.56	......	18.74	15.77	23.62	13.92	25.04
1954	27.53	24.66	21.81	......	18.32	15.27	24.23	13.28	23.07
1955	23.62	23.16	21.14	......	17.62	14.79	22.59	12.98	24.80
1956	25.45	22.30	19.39	$17.68	15.47	14.20	22.00	12.72	23.62
1957	26.19	23.83	21.66	18.82	19.16	16.53	23.48	14.83	25.93
1958	28.92	27.42	25.85	23.89	23.35	21.91	27.09	19.76	32.20
1959	29.32	27.83	26.69	24.82	23.16	22.32	27.53	19.11	......
1960	27.82	26.24	24.80	22.07	21.79	19.82	25.93	16.21	28.07
1961	26.08	24.65	23.46	21.30	22.25	19.68	24.46	16.07	......
1962	29.81	27.67	25.51	22.70	21.87	20.77	27.20	15.89	......
1963	24.89	23.96	23.01	20.65	20.59	18.91	23.79	15.11	......
1964	24.10	23.12	21.91	18.57	17.11	16.92	22.86	13.57	......
1965	27.71	26.19	24.16	21.17	21.58	19.18	25.81	14.58	......
1966	27.11	26.29	25.32	23.24	24.00	21.27	26.17	18.31	......

APPENDIX 4

The following tabulation presents estimates of the domestic commercial production of meat from steers and heifers (used primarily as fresh table beef) and meat from cows and bulls (manufacturing beef), annual average 1950–52 and annual 1953–63 (in billions of pounds): [1]

	Meat from steers and heifers	Meat from cows and bulls
Average: 1950–52	5.9	3.0
Annual:		
1953	8.2	3.7
1954	8.4	4.1
1955	8.7	4.4
1956	9.6	4.4
1957	9.7	4.1
1958	9.7	3.2
1959	10.3	2.9
1960	11.3	3.0
1961	12.1	2.8
1962	11.9	2.9
1963	13.2	2.8
Data supplied by Tariff Commission:		
1964	14.6	3.4
1965	14.0	4.3
1966	15.4	4.1

[1] From U.S. Tariff Commission, "Beef and Beef Products," TC Publication 128, June 1964, pp. 40–41.

Statement of the National Milk Producers Federation

(By E. M. Norton, Secretary)

SUMMARY

The National Milk Producers Federation represents dairy farmers and the cooperative dairy plants which they own. It is concerned with the effect of dairy imports on dairy farmers, dairy plants, and the agricultural program for dairying.

Congress has authorized a dairy program designed to prevent the collapse of this impotant segment of the national economy. It is designed also to assure adequate supplies of an essential food produced from sources within our own shores which can be depended upon in times of emergency.

Neither this important agricultural program, nor the dairy industry in this country, as we know it today, can exist under present conditions of world trade without effective import controls.

Beneficial foreign trade does not result from imports of dairy products already in surplus supply and which we do not need. Such imports are adding millions of dollars of wasted cost to the support program, undermining the Nation's agricultural production and markets, and resulting in loss of opportunities for our own people.

The problem is price differences due to higher living standards and higher wage rates in this country. Domestic prices are less than 90 percent of parity. The support price for butter in New York is 67¼ cents per pound. This represents a butterfat value of about 84 cents per pound. Butterfat for export to the United States has been priced recently in Europe at about 25 cents per pound. Tariffs and shipping costs are less than 10 cents per pound. The export subsidy on butterfat imports has been about 53 cents a pound, more than double the sale price of the butterfat. In some cases the export subsidy has run as high as 65 cents per pound.

Import controls on dairy products under present laws have been characterized by repeated evasion and subterfuge by foreign nations and the importers.

New legislation is needed to provide positive and effective import quotas. The proposed Dairy Import Act of 1967 would end evasion and subterfuge and would add dependability and respectability to our dairy import policy.

Tariffs have been rendered obsolete by currency manipulation, inflation, and export subsidies. Quotas are effective and fair, because they provide a definitely known import level to which foreign nations, domestic producers, and domestic markets can adjust.

Our whole foreign trade policy should be reviewed and reevaluated. The European Economic Community has rendered earlier concepts obsolete.

Very substantial differences in living standards, wage levels, and prices between different countries make general across-the-board concepts of free trade idealistic and impractical. The United States, at the top level, is least likely to benefit from such policies. On the contrary, we cannot drop down to world averages without disastrous consequences to our economy.

A new and thorough look at the foreign trade picture, and a reevaluation of our foreign trade policies, is long overdue. Congress should assert its constitutional right and responsibility to supervise and direct our foreign trade programs.

We compliment this committee on its foresight in initiating this review.

Statement

THE FEDERATION

The National Milk Producers Federation is a national farm organization. It represents dairy farmers and the dairy cooperative associations which they own and operate.

Some of these cooperatives are bargaining associations. They enable farmers, by acting together, to bargain more effectively for the sale of raw milk to processors and handlers.

In other cooperatives, farmers have banded together to build and operate their own dairy plants. Through these plants, they process, on a cost basis, the milk produced on their farms and market it in the form of finished dairy products.

Practically every form of dairy product produced in any substantial volume in the United States is produced and marketed by dairy cooperative plants represented by the federation.

The federation is, therefore, directly concerned with the adverse effect of excessive dairy imports on American dairy farmers and on the supply of milk produced in this country. We are also directly concerned with the effect of excessive imports on dairy plants operated in this country and with the effect of such imports on the domestic market for dairy products.

OUR AGRICULTURAL PROGRAMS

There are presently in effect in this country important agricultural programs authorized by Congress, including one for milk and dairy products. Under this program, prices paid to farmers for milk are supported at levels ranging between 75 and 90 percent of parity. This is accomplished by removing surplus supplies from the market through purchases made by the Commodity Credit Corporation.

Parity is a formula for measuring the relationship between the prices farmers receive for the commodities they sell as compared with the prices farmers pay for the things they buy.

One of the objectives of the dairy program is to maintain the purchasing power of dairy farmers as an important factor in the national economy.

Another objective, of great importance to the security of the Nation and to its general welfare, is to assure adequate supplies of essential foods produced from sources within our own shores. We would be most foolhardy to rely on an overseas source of supply of dairy products which could not be depended upon in times of emergency.

THE IMPORTANCE OF IMPORT CONTROLS

Neither this important agricultural program, nor the American dairy industry, as we know it today, can exist under present conditions of world trade without effective import controls.

PRINCIPLES OF FOREIGN TRADE

We have no quarrel with the principle that foreign trade should be expanded, provided such trade is beneficial and not destructive.

Broad general principles of free trade, however idealistic they may sound in the abstract, are often impractical and unrealistic when applied to specific commodities. This is particularly true when they are considered in the light of the adverse conditions which prevail today in world trade.

Beneficial foreign trade does not result to the United States from excessive imports of dairy products which are already in surplus supply and which we do not need. Such imports burden the support program with millions of dollars of wasted and unnecessary cost, undermine the Nation's agricultural production and markets, and result in loss of opportunities for our own people.

This country is committed to a high standard of living, high price levels, high wage rates, and the maintenance of agricultural prices at levels which will protect the purchasing power of farmers. As a result of these policies, our agricultural prices, in many cases, even though still below parity, are far above world price levels.

As long as this condition exists, import controls will be necessary to prevent world surpluses from being drawn to our more attractive stabilized markets. The same price differences make export price adjustments necessary if we are to retain a fair share of the world agricultural market.

PRICE DIFFERENCES

Butter is supported at a price of 67¼ cents per pound in New York under the price-support program. This represents a price of less than 90 percent of parity for American dairy farmers. At the same time, butter has been available in Europe for export to the United States at about 20 cents per pound. The product came in as butterfat-sugar mixtures in evasion of the quota on butterfat imports. Shipping charges run about 3 or 4 cents per pound and the tariff on such mixtures is about 4 or 5 cents per pound. Furthermore, there is a profit on the sugar ingredient, which also was imported in evasion of the sugar quota.

In our statement before the U.S. Tariff Commission in May of this year, we quoted figures showing that the American price for butterfat was more than three times as high as the European export price and that the American sugar price was about two times the European price.

The export subsidy used by foreign nations to force these products into the American market in heavy volume was reported recently at about 43 cents a pound for butter and about 53 cents a pound for butterfat. Thus the export subsidy is more than double the sale price of the product. We have been informed that the export subsidy on butterfat for export to the United States from Germany for the period April 17 through May 14, 1967, was about 65 cents per pound.

These are matters which cannot be ignored without disastrous consequences to our own country. Other countries have been much more astute at recognizing the realities of foreign trade and in protecting their agricultural programs and their own people against a destructive level of imports than has the United States.

REAPPRAISAL NEEDED

A reappraisal of our foreign trade policies by Congress in a more practical and realistic light is long overdue. The European Common Market has sharpened the need for such a review by rendering obsolete earlier concepts of foreign trade, particularly in the agricultural field.

Aside from this, the extremely wide variations in prices, wages, costs, and other factors which exist between different countries make the general application of free trade policies impractical.

We believe Congress is becoming increasingly aware of the fact that our foreign trade policies are seriously out of line with realities. The large number of Members of Congress who have introduced import control bills so indicates. For example, as of November 1, 1967, 59 Senators and 198 Members of the House had introduced legislation to provide more effective quotas on dairy imports.

Import bills on other commodities also have an impressive number of sponsors in both the Senate and the House.

The Dent bill, H.R. 478, passed the House by a vote of 340 to 29.

We compliment the Senate Finance Committee on its foresight in initiating this proceeding to take a new look at foreign trade policies and to explore the need for import quotas. We are grateful for this opportunity to present the basic, practical facts which make more effective import controls on dairy products necessary.

DAIRY IMPORT ACT OF 1967

The federation helped develop and is strongly supporting the proposed Dairy Import Act of 1967. As indicated above, this legislation has been introduced by 59 Senators and 198 Members of the House of Representatives.

It would provide a fair and practical approach to the dairy import problem. Furthermore, it would be effective, and it would put a stop to the long history of evasion and subterfuge which importers and foreign nations have engaged in under our present laws. It would be efficient, because it would be self-activating at the prescribed level of imports and would bypass the present time-consuming and unsatisfactory proceedings before the U.S. Tariff Commission.

Basically, the Dairy Import Act would limit imports by quotas to the average level imported during the historical base period of 1961–65. The years 1966 and 1967 would not be included in the base period, because these were not normal import years.

Both 1966 and 1967 were characterized by a great flood of evasion-type imports. These were primarily butterfat-sugar mixtures and Colby cheese. Neither of these products are normal historical imports. The butterfat-sugar mixtures were imported in open and flagrant evasion of import controls on butterfat and on sugar. The Colby cheese, practically identical with Cheddar cheese and used for the same purpose, was used to evade the import quota on Cheddar cheese.

Limiting total dairy product imports to the 1961–65 average is more than fair to foreign nations, because these years include relatively high levels of imports which have been steadily increasing.

The Dairy Import Act would permit foreign nations to share in future developments of the domestic market. This would be accomplished by increasing or decreasing the permitted level of imports in proportion to increases or decreases in domestic consumption.

New products could be allocated a share in the imports, but this would be done within the limits of the overall quota. In the same manner, special needs could be recognized by varying the import level of particular products within the overall quota limit.

Provision is made for emergency action and for overriding considerations of national interest to be exercised by the President.

If additional imports were authorized by the President under the emergency provisions at a time when domestic market prices were below parity, the adverse effect of the imports on the market would be offset by removing from the domestic market a corresponding quantity of dairy products by the Commodity Credit Corporation.

TARIFFS ARE OBSOLETE—QUOTAS ARE ESSENTIAL

It is our firm conviction that quotas are the most effective form of import control and also that they are the fairest to all parties concerned.

Tariffs have been rendered meaningless by currency devaluation and manipulation, by steadily increasing inflation, and by export subsidies in whatever amounts are necessary to move the product into our markets. The volume of imports which will enter under a fixed tariff is uncertain and cannot be predicted for future years.

On the other hand, when quotas are set, foreign nations know exactly what they can depend on in the American market, and they can adjust their production and marketing accordingly.

In the same manner, American producers know what the volume of imports will be, not only currently but for several years ahead, and they can make long-range plans, as they must do, if this country is to enjoy assured supplies of an essential food.

Furthermore, it is our belief that a definitely known volume of import causes less disruption of the market than would the same volume when coupled with uncertainty as to whether the imports would stop at that level or possibly go far beyond it.

NEW LEGISLATION NEEDED

We have just been through a situation where imports got completely out of hand. The effect was to drive prices to the support floor, add many millions of dollars of wasted and unnecessary cost to the support program, and demoralize and discourage American dairy farmers.

Legislation is desperately needed to prevent this from happening again. Unless Congress steps in to bring some measure of dependability and respectability to our dairy import controls, we fear another similar fiasco will result. The plans for it are already being explored by importers and foreign nations.

Import controls are presently in effect on some dairy products under section 22 of the Agricultural Adjustment Act.

This section has not been adequate, and controls under it have been weak and ineffective. It has been characterized by a long history of easy and repeated evasion of its quotas.

For example, a quota was placed on butter in an effort to regulate imports of butterfat. This was evaded by imports of butter oil. A quota was then placed on butter oil. This was evaded by imports of exylone, a product composed of butterfat to which a small percentage of sugar had been added. A quota was placed on butterfat-sugar mixtures containing 45 percent or more of butterfat. This was promptly evaded by imports of a butterfat-sugar mixture containing 44 percent of butterfat and about 55 percent sugar. A quota was then imposed under the sugar law on butterfat-sugar mixtures containing more than 25 percent of sugar. This was evaded immediately by imports of butterfat-sugar mixtures containing 24-percent sugar.

In the same manner, a quota of Cheddar cheese was evaded by imports of Colby cheese used for the same purpose as Cheddar cheese and not a normal historical import.

A quota on cheese in original loaves is evaded by simply cutting the loaves in half and then putting them back together again.

During 1966 and the first half of 1967, there was in effect a finding by the Tariff Commission that imports of butter in excess of 707,000 pounds would interfere with the support program. A butter oil quota was in effect at 1,200,000 pounds. In 1966, butterfat-sugar mixtures imported in evasion of these quotas totaled 106 million pounds. In the first half of 1967, the evasion imports were 92 million pounds, the equivalent of an annual rate of 184 million pounds. Revised figures show these imports at 99 million pounds.

During the same period, 1966 and the first half of 1967, there was in effect a finding by the Tariff Commission that imports of Cheddar cheese in excess of 2,780,100 pounds would interfere with the price support program. In 1966, Colby cheese imported in evasion of this quota totaled 46 million pounds. Colby cheese imports in the first half of 1967 were 48 million pounds, the equivalent of an annual rate of 96 million pounds. Revised figures show these imports at 54 million pounds.

That new legislation is needed to provide more permanent and effective controls is forcefully pointed up by the recent Tariff Commission hearing brought to close loopholes in previous quotas. The level of imports recommended by the Commission was unreasonable and unrealistic, and its suggested quotas left additional loopholes open for future evasion.

It was necessary for the President, after conferences with the Secretary of Agriculture and dairy leaders, to override the Commission's recommendations by establishing much lower levels of imports and by including frozen cream in the new controls.

Even so, the new controls are again weak and inconclusive, particularly with respect to evaporated or condensed milk and cream, retail size packages of butterfat-sugar mixtures, and other products.

We are concerned that the way may again have been left open for the writing of another chapter in the already too long history of "Invasion by Evasion."

Another reason section 22 controls are inadequate is that they are available only to protect certain agricultural programs. Legislation is needed not only to provide more positive controls but also to provide coverage for agricultural commodities which may not be subject to a support program.

Without such legislation, the American dairy industry can never rise above a support program, because, as soon as it becomes self-sufficient, import controls will be removed and imports will force it back into a new support program.

It is, therefore, most important to reevaluate the import control program for dairy products and to provide positive and effective controls under the proposed Dairy Import Act of 1967.

EVASION AND SUBTERFUGE

The purpose of this title is to document in greater detail the evasion and subterfuge practiced under section 22 of the Agricultural Adjustment Act and discussed generally above.

With high profits at stake, foreign nations and American importers have not hesitated to exploit every possible loophole in the orders prescribing quotas. They have been quite successful in their efforts.

For this, in most cases, they have been rewarded, not only by handsome profits, but also by being granted additional quotas based on the history of the evasion imports. In the most recent hearing, held this year, substantial increases in the import quotas were granted on the basis of the evasion imports of butterfat-sugar mixtures and Colby cheese.

On only one occasion, that of exylone, a butterfat-sugar mixture containing a high percentage of butterfat, was the evasion issue faced squarely and forthrightly. In that case, the Tariff Commission refused to recognize the subterfuge product as a normal import, and a zero quota was established.

Unfortunately, even this one bright spot is tarnished, because the exylone quota was limited to products containing 45 percent or more of butterfat, and it, in turn, was promptly evaded by imports of junex, a butterfat-sugar mixture containing 44 percent butterfat.

Beginning of section 22 quotas

Although section 22 had been enacted in 1935, and although imports had become such a serious threat that Congress had to step in to control them, it was not until 1953 that import quotas were established under section 22 on dairy products.

The congressional controls were applied for several years immediately preceding 1953 under section 104 of the Defense Production Act.

In 1953, import controls were established under section 22 at a time when a further extension of controls by Congress was pending. It is obvious that the section 22 controls would not have been provided in 1953, except for the fact that it was necessary for the administration to do so in order to defeat a further extension of controls under section 104 of the Defense Production Act. The Presidential Proclamation No. 3019, June 8, 1953, frankly recognized this and made the new controls under section 22 apply only "* * * in the event section 104 of the Defense Production Act of 1950, as amended, expires under its present terms * * *."

On the basis of this action, congressional controls under the Defense Production Act were not extended and controls were shifted to section 22 of the Agricultural Adjustment Act.

Since that time, the controls have been evaded and chiseled away to an intolerable degree, and the time has come when Congress must again step in to bring a reasonable measure of effectiveness and respectability to the dairy import policy.

Two of the products which were of initial importance to an import control program were butterfat and cheese.

The Tariff Commission found, in 1953, that imports of butterfat would imperil the support program and set a quota on butter imports of 707,000 pounds.

Butter was the obvious import item at that time. The Department of Agriculture had recommended that the import quota for butter be applied also to butter oil and to cream containing 45 percent or more of butterfat.

The Tariff Commission did not accept this recommendation and thus left open a hole in the dike through which the first great evasion of section 22 quotas was destined to take place a few years later.

The butter oil evasion

Enterprising importers and foreign nations were not long in discovering and taking advantage of the butteroil opportunity.

In 1956, butter oil imports had reached 1.8 million pounds. This was equivalent to 2.2 million pounds of butter.

In 1957, an annual quota of 1.2 million pounds of butter oil was established under section 22 (Presidential proclamation, April 15, 1957). The effect of this was to reward the importers and foreign nations with an increase in the butterfat imports equal to 1.5 million pounds of butter per year.

The exylone evasion

A way to avoid the butter oil quota had been devised by the importers before the quota was ever issued. The letter from the President setting the scope of the butter oil hearing went to the Tariff Commission November 17, 1956. In less than 2 weeks, on November 28, 1956, the first pilot shipment of exylone arrived. Exylone is butterfat with a small percentage of sugar (8.2 percent) added.

By the time the quota on butter oil was established in April of 1957, approximately 2.5 million pounds of exylone had already come in through the new break in the dike.

A month after the butter oil proclamation was signed, the President had to start a new proceeding before the Tariff Commission on exylone. Approximately 9 million pounds of exylone were entered before the shipments were stopped by a zero quota.

The exylone proclamation was limited to articles containing 45 percent or more of butterfat, thus inviting evasion by articles containing 44 percent butterfat.

The Junex evasion

Two months after the exylone proclamation was signed, the importers were working on a new evasion product containing 44 percent butterfat and about 55 percent sugar. The new product was called Junex. For several years Junex became involved in the sugar quota and imports were delayed. For the past 5 or 6 years, however, Junex has been imported in substantial quantities and has added millions of dollars of unnecessary and wasted cost to the support program.

In 1966, the butterfat imported in butterfat-sugar mixtures in evasion of the quotas was equivalent to approximately 58 million pounds of butter.

The sugar evasion

The evasion history of this product has carried over to the sugar quota.

The Secretary of Agriculture issued a sugar order in July 1966 placing a quota on imports of such mixtures containing more than 25 percent sugar (Federal Register, July 13, 1966, p. 9495).

The Secretary's order was immediately evaded by a butterfat-sugar formula containing 24 percent sugar and 44 percent butterfat.

In the first half of 1967, the butterfat imported in butterfat-sugar mixtures was equivalent to 54 million pounds of butter. This is an annual rate of 108 million pounds of butter.

None of these butterfat-sugar mixtures was a normal historical import. All of them were subterfuge products designed to evade our weak and inadequate import quotas under section 22 and under the sugar law.

The Colby cheese evasion

When import controls were transferred to section 22 in 1953, a quota was established on Cheddar cheese of 2,780,100 pounds. This quota remained in effect until July 1 of this year.

In 1958, the importers and foreign countries obtained a Bureau of Customs ruling that Colby cheese was not subject to the Cheddar cheese quota. Colby cheese is practically identical with Cheddar cheese and is used for the same purpose as Cheddar cheese. Colby cheese is an evasion product and not a normal historical import.

Following the Customs ruling, imports of 500,000 pounds came in during 1958. The import rate increased rapidly to 15 million pounds in 1961. During the period 1962–65, an attempt was made to control them under voluntary arrangements with some of the principal exporting countries and imports ranged from 10 to 14 million pounds a year.

In 1966, the voluntary arrangements broke down as prices in this country rose and foreign nations saw an opportunity to make a killing in the American market; 1966 imports totaled nearly 46 million pounds.

In the first half of 1967, Colby cheese imports were 54 million pounds, equal to an annual rate of 108 million pounds.

The split loaves evasion

The 1953 proclamation under section 22 established a quota of 9,200,100 pounds for Italian-type cows milk cheese in original loaves. The quota was increased in 1960 to 11,500,100 pounds.

This quota was originally evaded by simply cutting the loaves in half and then putting them back together again.

More recently the evasion of this quota is taking the form of consumer size cuts or grated cheese.

The 1966 imports not in original loaves had climbed to 451,000 pounds. January to March 1967 imports had jumped to 277,000 pounds, equal to an annual rate of 1,108,000 pounds.

Processed Italian-type cheese is another potential evasion of this quota.

The 1967 proclamation

Although imports of butterfat-sugar mixtures containing 44 percent butterfat and Colby cheese, both obvious evasion products, had been adding millions of dollars of wasted and unnecessary cost to the support program for many years, no action was taken to control them until 1967. The inadequate sugar regulation of 1966 cut the sugar content of some of the butterfat-sugar mixtures from 55 to 24 percent but left the butterfat content unchanged at 44 percent.

Imports got completely out of hand in 1966, particularly with respect to butterfat-sugar mixtures, Colby cheese, and frozen cream. It is estimated that total 1966 imports added approximately $29 million of unnecessary cost to the support program.

In early 1967, the situation was becoming much worse with some products running at double or more of the already heavy 1966 rate. It is estimated that total imports in the first half of 1967 added approximately $115 million of unnecessary cost to the support program. This is equivalent to an annual rate of $230 million.

It was not until April 1967 that the Tariff Commission investigation was initiated, and controls were not applied until July 1, 1967.

This was many years after the need for controls arose and more than 12 months after the situation became especially critical in the first half of 1966. It was after many millions of dollars of unnecessary cost to the price-support program had been incurred. And, most importantly, it was after half of the U.S. Senate and almost half of the House of Representatives had introduced legislation to end imports by subterfuge and establish a practical and respectable import policy.

The 1967 proclamation put a quota of 6 million pounds on Colby cheese, 2.6 million pounds on butterfat-sugar mixtures containing over 5.5 percent butterfat, 1.5 million gallons of frozen cream, and raised the Cheddar cheese quota from 2.8 to 10 million pounds.

The effect of this was to reward the Colby evasion with an increased Cheddar quota of over 7 million pounds per year plus 6 million pounds of Colby in the annual quotas. The butterfat-sugar evasion was rewarded with an annual quota of 2.6 million pounds.

Excepted from the quota on products containing over 5.5-percent butterfat are bulk shipments of evaporated or condensed milk and cream. Also excepted are consumer-sized packages of junex and exylone.

The next great evasion

The 1967 Presidential proclamation is again weak and inconclusive and is an open invitation to further evasion attempts.

The real drive for evasion may not come for another year. If Congress enacts the Dairy Import Act of 1967, there will be no further evasion, because that law would deal with the problem from a positive rather than a negative angle and would be self-activating and effective.

There are two reasons why the next evasion may not develop immediately. One is the danger that too soon an evasion may hasten the passage of the Dairy Import Act. The other is that warehouses are stocked with butterfat-sugar mixtures and Colby cheese. Some of the largest dairy companies, we understand, have accumulated imports sufficient to supply their needs for a year ahead.

Nevertheless, the groundwork for the next great evasion is already being laid.

Importers and foreign nations are quietly exploring, in the Bureau of Customs, the possibility of evading the new quotas by merely changing the form of the imported butterfat from a butterfat-sugar mixture to evaporated or condensed milk and cream.

The original request made by the Secretary of Agriculture for a quota on butterfat-sugar mixtures would have included evaporated or condensed milk or cream in the controls.

However, in the course of the Tariff Commission hearing, and in the final proclamation, a special and specific exception for evaporated or condensed milk and cream was written into the quota on articles containing over 5.5 percent of butterfat.

The effect of this exception is to leave the door wide open under this quota for unlimited imports of butterfat in the form of evaporated or condensed milk and cream.

Another major evasion possibility already being explored in the Bureau of Customs, is the importation of 5 or 10 pound bricks of butterfat-sugar mixtures under the exception in the quota for consumer size packages. The bricks would be 90 percent butterfat, could be wrapped in easily removable wrappers, and could be sold to ice cream manufacturers.

The weak and inadequate wording of the exception for consumer size packages does not require that the product be imported for the retail trade or that it be sold in retail trade. All that is required is that the product be packaged for distribution in the retail trade.

Other loopholes left open by the new proclamation are cut loaves of Italian-type cheese, processed Italian, processed Edam and Gouda, and chocolate crumb.

In view of the loopholes writen into the new proclamation, it appears quite likely that the new proclamation may be just another paper gesture, as others have been so many times in the past, which can be used to discourage Congress from enacting effective import controls but which will leave the way open for another round of evasion as soon as Congress looks the other way.

We have discussed above the destructive effect which uncontrolled imports of dairy products would have on the American dairy industry and on the agricultural programs authorized by Congress to assure adequate supplies of this essential food produced from sources within our own shores.

This is the area in which we are best qualified to comment.

We have not undertaken to deal separately with the topics suggested by the committee. As to them, we believe that the policies and procedures of the United States with respect to foreign trade are in need of a critical review and reevaluation by the Congress.

The advent of the European Economic Community, and the refusal of its member nations to abandon its programs for developing and protecting their own agriculture and industry, have rendered obsolete most of the present policies and procedures on foreign trade.

Furthermore, the concept of free trade across the board was neither practical nor realistic in the first instance, because of the tremendous trade disadvantages which the United States faces because of higher costs of production due to higher living standards and much higher wage levels.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,
Denver, Colo.

HON. RUSSELL LONG,
Chairman, Senate Committee on Finance, Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: Thank you very much for the opportunity to submit the views of the American National Cattlemen's Association to the Senate Committee on Finance regarding the U.S. trade policies.

Our position concerning the protection of the domestic livestock industry from excessive imports of meats were stated on October 20, 1967, in a presentation to the committee and will not be repeated here, although a copy of the statement is enclosed.

The American National Cattlemen's Association's views concerning development of foreign trade for U.S. livestock and livestock products were voiced in a statement to the Senate Select Committee on Small Business in 1965 during hearings on that topic. Although there have been some increases in the exports of meat, livestock products and live animals, particularly to Europe, the amounts involved have been relatively insignificant as related to the size and scope of the domestic livestock industry.

Agreements reached during the Kennedy round of negotiations, while encouraging additional exports of variety meats and some other products, did not benefit the domestic livestock industry in end. In fact, on balance, the various agreements among other countries will tend to endanger the future stability of the U.S. industry because of the consequent redirection of the intention and necessity for traditional meat exporting countries to seek other markets.

For instance, Australia and New Zealand can be expected to concentrate more of its exports toward the United States should it be unable to compete in the European Economic Community on a par with Argentina and other preferred countries.

We commend the committee for its continuing attention to foreign trade for livestock and meats. However, it is increasingly apparent that for the foreseeable future, substantial exports of livestock, meats, or livestock products, particularly beef and cattle, will be possible only at price levels considerably below the cost of domestic production.

Exporting can provide a modest "safety valve" for the beef cattle industry, but the intent of the industry is to balance supply with effective domestic demand at price levels insuring stability, profit, and incentive for making future increases in production as needed domestically. The difficulties the industry has had in coping with the erratic variations in imports of beef, veal, mutton, and goat covered by Public Law 88-482, is sufficient evidence that the industry could not long survive if even a small portion of its production was geared to uncertain export markets.

Respectfully,

C. W. McMillan.

Kirkland, Ellis, Hodson, Chaffetz & Masters,
Washington, D.C.

Subject: Compendium of papers on legislative oversight review of U.S. trade policies.

Hon. Russell B. Long,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

Dear Senator Long: The National Piano Manufacturers Association has justifiably concerned itself with the serious economic implications of the burgeoning importation of foreign-produced pianos into the United States and in this connection has filed the attached statement with the Finance Committee.[1]

The imported pianos, mainly from Japan, are produced there by workers paid as little as one-fourth the wages of workers in the U.S. piano companies. In the piano industry, skill, experience and craftsmanship are vital. There is little if any improvement in productivity obtainable from modern automated productive methods. Consequently, Japanese pianos are being imported in increasing quantities at values hundreds of dollars less than the wholesale prices of domestically produced pianos. Piano imports from Japan have increased 500 percent since 1962.

On the basis of this difference in manufacture price and in light of the already too low tariff (to be reduced from 17 to 8½ percent by the Kennedy round) it appears that the Japanese have no obstacles to their invasion of U.S. markets except their own rate of production.

Unless action is taken soon, the domestic piano industry stands to be decimated. The statutory relief presently available is ineffectual and inadequate to stop the tide of imports—it is unwieldly, difficult to establish by proof, and too long in taking effect.

The National Piano Manufacturers Association on behalf of the American piano industry strongly requests that your committee take whatever legislative action is necessary to improve the present statutes

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[1] The statement referred to appears in the committee's printed hearings on "Import Quotas Legislation," Oct. 18, 19, and 20, 1967, pt. 2, p. 1180.

and develop other statutory relief by quota, import volume increase or otherwise in order to protect the domestic industry from destruction by the rapidly escalating piano imports from Japan.

Very truly yours,

PERRY S. PATTERSON.

STATEMENT OF THE AMERICAN SPROCKET CHAIN MANUFACTURERS ASSOCIATION

SUMMARY

In a statement filed today with the Senate Finance Committee, the American Sprocket Chain Manufacturers Association urged that Congress undertake to modernize and make effective the U.S. 1921 antidumping statute. The association asked Congress to enact an amendment like that proposed by Senator Hartke of Indiana.

The association, whose headquarters are in Park Ridge, Ill., also urged Congress to take action to repudiate the international "antidumping" code negotiated as part of the Kennedy round tariff talks. That code, the association stated, would amend the existing dumping statute in precisely the wrong direction, by making it even more difficult to secure relief against unfair competition from abroad than under the present statute.

Sprocket chain is chain used for conveying or the transmission of power. After showing that domestic imports of such chain, particularly from Japan, have soared in recent years, the association noted that domestic shipments have expanded only slightly.

In particular geographic areas, where the Japanese are concentrating sales of their underpriced chain, the domestic industry has suffered particular injury, the association said.

After urging that whatever import quotas Congress might impose on steel also be extended to sprocket chain, the association analyzed the particular respects in which the present antidumping law is inadequate and pointed out how Senator Hartke's proposed amendment (S. 1726) would significantly assist domestic industries faced with unfair competition from abroad by making relief against dumped imports practically available.

STATEMENT

This statement is submitted by the American Sprocket Chain Manufacturers Association in response to the chairman's request for written comments on shortcomings in our foreign trade program and the administration of the laws applicable thereto. Our purpose is, first to bring to the committee's attention the serious problem our industry is faced with as a result of ever-increasing imports of sprocket chain and, second, to suggest at least one type of appropriate legislation (in addition to the possible legislative establishment of import quotas) which the committee should consider—modernization and improvement of anti-dumping standards and procedures.

The American Sprocket Chain Manufacturers Association is a voluntary nonprofit association whose 12 member companies operate productive facilities in Connecticut, Illinois, Indiana, Massachusetts, New

York, North Carolina, Ohio, Pennsylvania, Tennessee, and Wisconsin. These companies account for substantially all the U.S. production of sprocket chain—chain used in a wide variety of industrial and other applications for conveying or for the transmission of power. The principal categoreis of sprocket chain are roller chain, malleable chain, engineering class chain, and silent chain.

I. Injurious competition from abroad

Sprocket chain imported into the United States, other than chain classified as a component of some particular type of machine or device (such as agricultural machinery) is classified under one of three TSUS classifications—TSUS 652.12 (chain for the transmission of power of not over 2-inch pitch and containing more than three parts per pitch—valued under 40 cents per pound); TSUS 652.15 (chain of the same description but valued at 40 cents or more per pound); and TSUS 652.18 (other chain for the transmission of power). Since 1930, the applicable rates of duty in all these classifications have been steadily lowered. Beginning from a 40-percent ad valorem duty under the Tariff Act of 1930 the duty of 652.12 chain was reduced to 25 percent in 1939 and, under the Kennedy round GATT negotiations, to 12½ percent. Beginning from the original 40-percent level the duty on 652.15 chain has been reduced in steps to 6 percent under the Kennedy round negotiations. Likewise the duty on 652.18 chain has been reduced from 40 to 6 percent.

Under these continually decreasing tariffs, imports of sprocket chain—the great bulk of it being roller chain—have soared. For example, as appears from table I below and from figure 1 on the following page, the dollar value of imports in 1966 had in only 5 years increased nearly $4.5 million, or to 249 percent of their 1961 level.

TABLE I.—ANNUAL MPORTS OF CHAIN UNDER TSUS ITEMS 652.12, 652.15, AND 652.18, ALL COUNTRIES

	Dollar value of imports	Percent of 1961 level
1961	2,955,000	100
1962	3,375,000	114
1963	3,696,000	125
1964	5,234,000	177
1965	6,483,000	219
1966	7,383,000	249

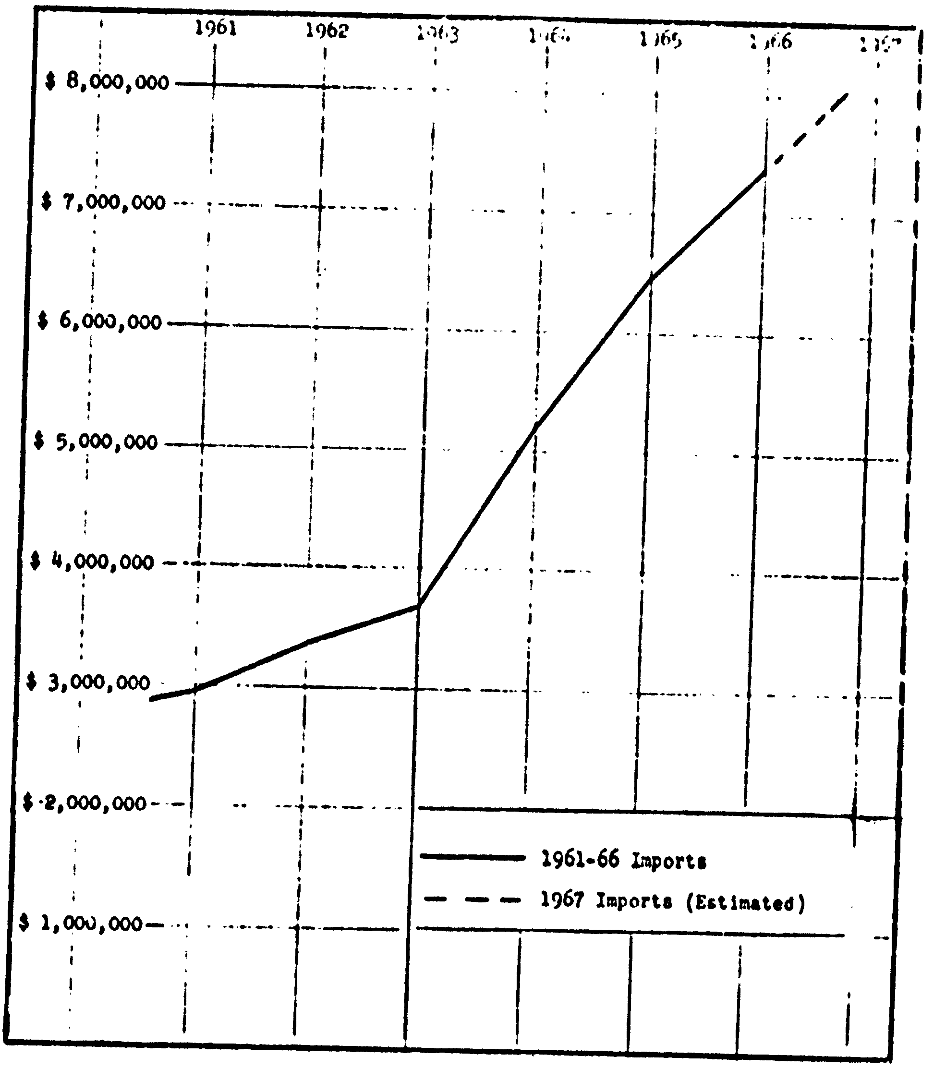
Imports of sprocket chain from Japan have climbed at an even more alarming rate. As appears from table II below and from figure 2 on the following page, the 1966 dollar value of imports had increased more than $2.8 million in 5 years, or to 384 percent of their 1961 level.

TABLE II.—ANNUAL IMPORTS OF CHAIN UNDER TSUS ITEMS 652.12, 652.15, AND 652.18, JAPAN

	Dollar value of imports	Percent of 1961 level
1961	1,000,000	100
1962	1,350,000	135
1963	1,632,000	163
1964	2,274,000	227
1965	2,944,000	294
1966	3,845,000	384

Figure 1

1961-66 IMPORTS OF CHAIN FOR THE TRANSMISSION OF POWER - ALL COUNTRIES
(TSUS Items 652.12, 652.15 and 652.18)



In analyzing these figures and evaluating their sigfinificance for the future, it is important to bear in mind that the impact of the 50-percent tariff reduction negotiated this year at Geneva has not yet been felt. The Kennedy round concessions are not scheduled to be fully in effect for 5 years.

While imports of chain—again, principally roller chain—have multiplied since 1961, domestic shipments of this product during the same period had increased only 67 percent.[1] Domestic roller chain shipments are expected actually to decline in 1967. On the basis of 8 months' data 1967 shipments will probably be only about 56 percent above 1961.

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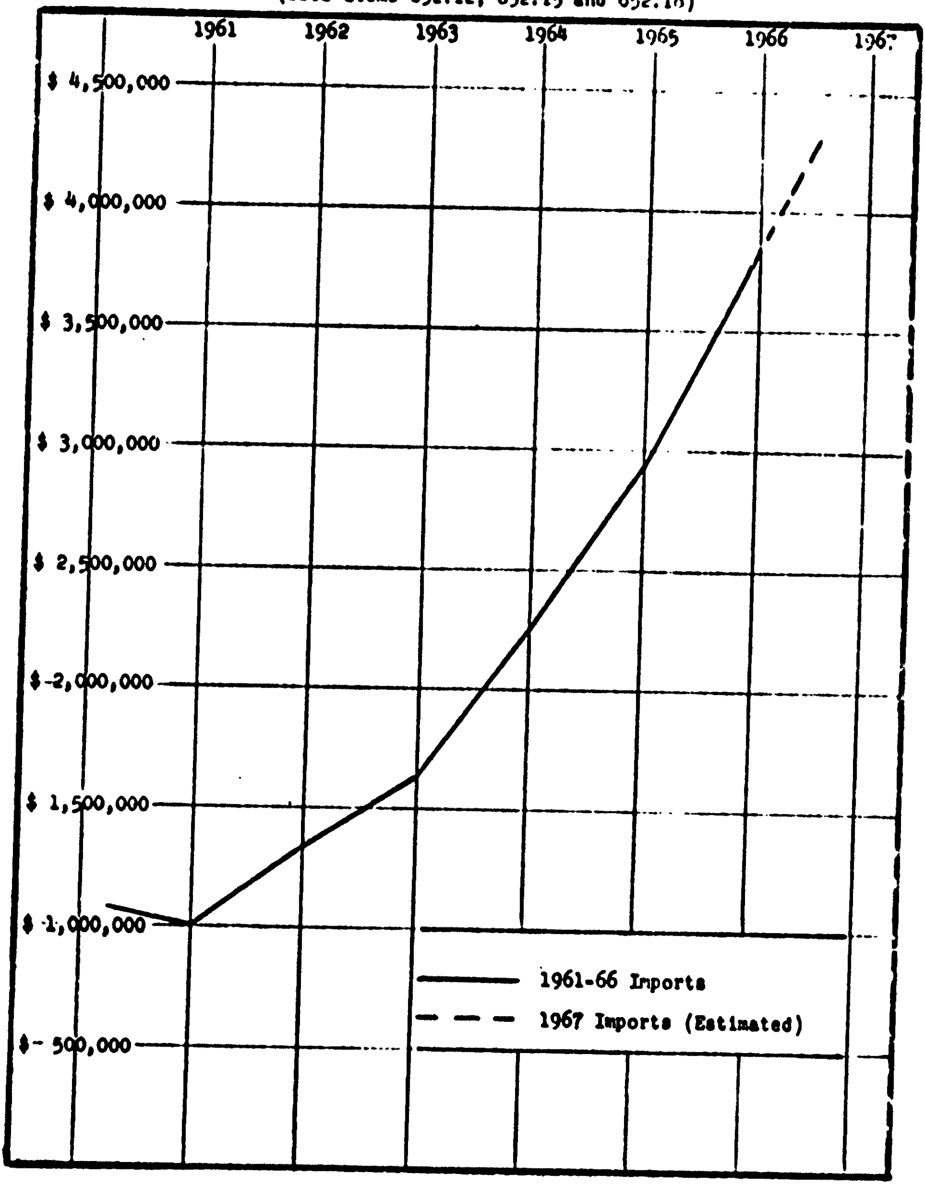
[1] Annual shipments of roller chain by domestic manufacturers in the 1960's have been as follows: 1961—$53,528,000; 1962—$58,198,000; 1963—$60,565,000; 1964—$74,382,000; 1965—$78,250,000; 1966—$89,592,000; 1967 (based on data through August)—$83,830,000.

Figure 2

1961-66 IMPORTS OF CHAIN FOR THE TRANSMISSION OF POWER - JAPAN
(TSUS Items 652.12; 652.15 and 652.18)



The ability of foreign chain, particularly from Japan, to edge out the domestic product is primarily a reflection of lower foreign wage scales, which permit foreign chain manufacturers consistently to undersell U.S. manufacturers. The foreign advantage in this regard is especially significant in small chain sizes where the manufacturing value added (manufacturing costs, excluding selling and administrative costs) to raw material costs increases from about 50 percent for 2-inch pitch chain to about 75 percent for ⅜-inch pitch chain.

The advantage enjoyed by the Japanese in producing small pitch roller chain has been pressed to the fullest possible extent. For example, in bicycle chain, a roller chain of small pitch, the Japanese takeover of the domestic market has been almost complete—so complete, in fact, as to have eliminated altogether the domestic bicycle chain industry.

The same thing could happen in other chain lines, and with far more serious implications for the country as a whole. In this connection, sprocket chain serves a variety of vital peacetime and wartime functions. It is essential to the petroleum industry, the farm equipment industry, the machine tool industry, the construction industry, and a variety of other industries where it is employed in conveying and automating equipment. The industry supplied components for a variety of major defense weapons during World War II and the Korean war and continues to be an essential supplier for manufacturers of military equipment. Sprocket chain is a necessary item in the production of missile and missile handling equipment.

Considering its problems with imports, the domestic sprocket chain industry has consistently opposed duty reductions. But in recent years it had become increasingly apparent that even if our Kennedy round negotiators had held firm on sprocket chain tariffs, general import duties could no longer be relied on, standing alone, to protect the domestic industry from the destructive effect of imports. As already noted, foreign manufacturers have completely taken over the domestic bicycle chain market. This was done despite the fact that since 1939 the duty applicable to bicycle chain has been 25 percent. Prior to the Kennedy round negotiations the duty on most other types of sprocket chain (TSUS Nos. 652.15 and 652.18) was half the bicycle chain duty, or only 12½ percent. It seems apparent that this duty, even if maintained, would in the foreseeable future have had only minimal effect on imports of these types of chain. Cut in half, as it was at Geneva, it is doubtful whether it will have any significant inhibiting effect whatsoever.

What alternative type of protection would be appropriate? One legislative approach—which we wholeheartedly endorse—is the establishment of import quotas. The committee has recently held hearings on proposals to impose import quotas on steel and certain other products. If any such bills are favorably reported, we urge that sprocket chain be included among the protected products. We believe that whatever quota formula would be found to be appropriate for steel, would be equally appropriate for chain. We are of course not as large an industry as the steel industry. But we believe that the general principles and public policies justifying import quotas for steel are equally applicable to us.

II. Need for improved antidumping procedures

Even if import quotas should be imposed, however—and of obviously greater importance if they should not be—we urge that legislation be adopted to provide the domestic industry with realistic and practically available remedies against a more specific problem we are faced with—dumping. As already noted, the bulk of chain imports are from Japan. While we have at this time no specific data to report with respect to Japanese home-market selling prices, we believe that all or a very substantial portion of Japanese chain is being sold in this country at prices below what the Japanese sell such chain for at home. We also know that Japanese penetration of particular geographic markets (particularly on the west coast) far exceeds their current nationwide penetration.

We urge that the present antidumping statute be amended to permit adequate and practically available relief against dumping, which is essentially a form of price discrimination and an unfair method of competition. A bill now pending before the Senate, S. 1726, which we fully support, would accomplish this purpose.

In order to secure relief against dumping (i.e., to secure the imposition of equalizing "special dumping duties"), under current law it is necessary, first, for the Treasury Department to find that in fact foreign manufacturers are dumping in this country and, second, for the Tariff Commission thereafter to find that such dumping has caused or is likely to cause injury to a domestic industry. A principal difficulty with the statute is that its standards are vague and are open to widely varying determinations by both the Treasury Department and the Tariff Commission. Too often narrow and irrelevant standards and legal concepts have been invoked to deny relief against dumped imports.

A crucial problem has to do with the definition of domestic industry. For example, a revised and modernized antidumping law should make it absolutely clear that, in determining whether dumping has caused or is likely to cause injury, the Tariff Commission need not weigh the demonstrated or anticipated effects of the dumping against the health of the entire domestic industry. Dumping often causes serious and sometimes fatal injury to sellers of domestic products in particular geographic areas or local markets before it becomes a dangerous competitive threat to the domestic industry considered as a whole. This is particularly true in the case of heavy products, such as chain, where transportation charges can be a significant factor in the ultimate selling price. As already noted, the inroads of Japanese chain on the domestic market are particularly concentrated on the west coast. The domestic chain industry's ability to secure relief against such regional dumping should not be impeded by the fact that Japanese imports have so far penetrated some of the eastern markets to a lesser degree than the west coast.

S. 1726 would deal with this problem by making clear that the Tariff Commission, in determining injury, can base that determination on a realistic commercial definition of the relevant market.

Another significant inadequacy in the present law is the imprecision of the concept of injury. S. 1726 would deal with this by supplying specific tests which the Tariff Commission would be required to apply. The first test—and one that would have particular application in the chain industry—is whether dumped imports account for 5 percent or more of domestic sales of the product in question, in whatever is determined to be the relevant market area. This figure derives from a series of cases under the U.S. antitrust laws where it has been held that unfair competitive practices leading to a 5-percent regional market foreclosure are unlawful. These cases provide direct support for a statutory 5-percent dumping injury test because dumping, as noted, is essentially anticompetitive and an unfair method of competition.

S. 1726 would also lay down other tests for determining injury, including whether dumping has contributed to a price decline affecting 50 percent or more of domestic sales in the relevant market area and a decline of 5 percent or more in the domestic labor force directly involved.

Another important issue in dumping cases is the degree to which preventive relief is obtainable. Relief should be available not only where injury has in fact occurred but also where injury can be expected to occur. S. 1726 would make the obtaining of such anticipatory relief a realistic possibility by providing that, once dumping is established, there need only be shown a "reasonable likelihood" of injury, not an absolute certainty.

The antidumping law should also provide that compaints be handled with dispatch. In this connection, under existing law dumping investigations have sometimes dragged on for as long as 3 years, with the dumping continuing to run its destructive course, before the Treasury Department completed its preliminary finding that dumping was in fact taking place. It has been long recognized in the law that justice delayed is justice denied and this maxim is equally applicable to administrative antidumping procedures. Under S. 1726 the Treasury Department would be expected normally to complete its investigation in 6 months.

A workable antidumping law should make clear, as S. 1726 would do, that predatory intent need not be proved as part of the domestic industry's effort to secure relief against dumping. The motive or frame of mind of the foreign manufacturer is not only nearly impossible to establish as an evidentiary matter but is irrelevant to the economic impact of his conduct. Accordingly, it should not be an issue in any dumping case as the Tariff Commission has sometimes treated it under the present statute.

Another weakness in current antidumping procedures is the tolerance which the Tariff Commission has shown toward the efforts of foreign manufacturers who dump their products in the United States to defend their anticompetitive conduct. For example, a foreign manufacturer should not be permitted to justify dumping on the ground that he is meeting the price of other imports. Under S. 1726 he could not excuse dumping except by showing that in the absense of such dumping sales by the domestic industry would not have increased.

One problem that has frequently stymied the efforts of domestic manufacturers to secure relief against dumping is their inability to prove actual foreign market prices. S. 1726 would ease this burden by providing that, in the absence of contrary proof, published or list prices would be deemed to be the prices at which foreign market sales were actually made. The bill would also exclude from the determination of the foreign selling prices of allegedly dumped products any prices that were not freely arrived at in the open market, including sales with quantity discounts not freely available to all purchasers, transactions between related parties, and exclusive dealing transactions.

In closing these brief comments on the need for a more effective antidumping law we should like to add out voice to those already raised in protest against the executive department's negotiation at Geneva of an international "antidumping" code. That code, which purports to be in implementation of article VI of the General Agreement on Tariffs and Trade, not only would amend our present antidumping law in precisely the wrong direction, by making it more difficult to get dumping relief, but is, in our view, in flagrant contravention of existing law.

The importance of being able to secure relief against dumping to protect particular geographic markets from injurious and unfair foreign competition has already been noted. The international antidumping code would appear to eliminate altogether the possibility of such relief.

The international code would also require that before relief could be obtained it would have to be shown that dumped imports were "demonstrably the principal cause of material injury or threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry." This requirement would put an almost impossible burden on any industry seeking relief and would seem to disqualify altogether an industry faced with significant economic problems in addition to unfair competition from abroad.

We urge that Congress take action against an unwarranted and probably unconstitutional intrusion on Congress' legislative jurisdiction and affirmatively repudiate the Geneva "antidumping" code. We also urge that Congress, in addition to whatever other remedial steps it believes appropriate (including the possible enactment of import quotas), strengthen our existing antidumping statute by amending it along the lines of S. 1726.

Respectfully submitted.

AMERICAN SPROCKET CHAIN MANUFACTURERS ASSOCIATION,
By J. E. COOPER,
President.
E. M. RHODES,
Chairman, Committee on Government Relations.
L. E. STYBR,
Executive Director.

Members of the American Sprocket Chain Manufacturers Association

Acme Chain Corp., Holyoke, Mass.
Atlas Chain & Precision Products Co., Inc., West Pittston, Pa.
Diamond Chain Co., Indianapolis, Ind.
Hewitt-Robins, Inc., Stamford, Conn.
    Union Chain Division, Sandusky, Ohio.
    Whitney Chain Division, Hartford, Conn.
Jeffrey Manufacturing Co., Columbus, Ohio.
    Morristown Division, Morristown, Tenn.
Link-Belt Co., Indianapolis, Ind.
Moline Malleable Iron Co., St. Charles, Ill.
Morse Chain Co., Ithaca, N.Y.
Peoria Chain Co., Peoria, Ill.
Ramsey Products Corp., Charlotte, N.C.
Rex Chainbelt, Inc., Milwaukee, Wis.
    Roller Chain Division, Springfield and Worcester, Mass.
Webster Manufacturing, Inc., Tiffin, Ohio.

Statement of U.S. Olive Producers and Importers

(By John E. Nolan, Jr., Steptoe and Johnson, attorneys)

INTRODUCTION

This statement is submitted by the California Olive Growers and Canners Industry Committee and the Green Olive Trade Association, Inc., who, together, represent nearly all of the principal independent U.S. importers of Spanish olives and virtually the entire U.S. (California) olive growing and canning industry.

The California industry grows, processes, and cans substantially all of the black olives sold in the United States. The green olive market is supplied almost exclusively (97 percent) by olives imported from Spain. Until about 2 years ago, all of these green Spanish olives were imported in large bulk containers and bottled in the United States in retail containers.

The U.S. olive industry welcomes this opportunity to draw attention to a basic defect in the law intended to protect U.S. industries from unfair competition from subsidized foreign exports.

For several years now the Spanish Government has fostered the development of a bottled export industry with a program of substantial subsidization. These subsidies take several forms. First, new packing plants are given reductions in certain internal taxes, reimbursement of up to 10 percent of investments in new facilities, and low-cost loans. Second, upon exportation, their products obtain a rebate of turnover taxes and local indirect taxes amounting to an additional 12 percent export subsidy. (See U.S. Tariff Commission, *Olives*, Report to the U.S. Senate on Investigation No. 322–51, 1967, pp. 14–15.) The established U.S. importer-bottlers who buy Spanish olives in bulk get none of these subsidies.

The direct result of these subsidies is elimination of business of long-established American bottlers. The tremendous increase in bottled imports from practically nothing until 1966 to 1.2 million pounds in the first 6 months of 1967 (double the 1966 rate) makes it evident that the continued existence of these bottlers is in jeopardy. The California olive industry is also affected by this subsidized competition. Since Spanish olives acquired substantially all of the green olive and olive oil trade several years ago, the California olive industry has been effectively limited to the ripe olive market, a market which the subsidized Spanish industry may now enter at any time.

Earlier this year, the Green Olive Trade Association requested the Treasury Department to impose countervailing duties on these subsidized Spanish exports. Treasury denied relief on the ground that rebates of turnover taxes were not "grants or bounties" within the meaning of the countervailing duty statute, section 303 of the Tariff Act of 1930, 19 U.S.C. 1303. As we will show, this ruling, which applies a long-standing interpretation of the Treasury Department, conflicts with decisions of the Supreme Court of the United States. We believe a thorough examination by the Finance Committee of this and other aspects of export subsidies is in order. In this statement we will limit ourselves to a statement of three areas of weakness in section 303 of the Tariff Act and its administration.

DISCUSSION

A. *The failure to provide relief from foreign subsidization through tax rebates*

Article VI(3) of the General Agreement on Tariffs and Trade (GATT) authorizes the imposition of countervailing duties in an amount not exceeding the "estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production, or export of * * *" a product.

The term "bounty or subsidy" is not defined in the GATT. However, article VI(4) provides that no product "shall be subject to * * * countervailing duty by reason of the exemption of such product from duties or taxes borne by a like product * * * destined for consumption in the country of origin, or by reason of the refund of such duties or taxes." "Ad article XVI" of the "Supplementary Provisions" to the GATT contains a similar provision.

The U.S. statute provides for the imposition of a countervailing duty "whenever any country * * *, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article of merchandise manufactured or produced in such country * * * and such article or merchandise is dutiable under the provisions of this chapter * * *" (19 U.S.C.A. 1303). This statute provides no exemption for grants made through tax relief, but the Treasury Department has interpreted it as if it did. (See GATT, "Antidumping and Countervailing Duties" (1958), p. 139; "Hearings before the House Committee on Ways and Means on H.R. 1535 (Customs Simplification)," Aug. 6–Sept. 19, 1951, 82d Cong., first sess., p. 16.)

The Treasury Department's interpretation of the U.S. statute conflicts with the decisions of the Supreme Court in *Nicholas & Co.* v. *United States*, 249 U.S. 34 (1919) and *Downs* v. *United States*, 187 U.S. 496 (1903). As the Supreme Court stated in *Downs* v. *United States:* "when a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever manner, or under whatever name, it is disguised, it is a bounty upon exportation" (187 U.S at 515).

The theoretical arguments advanced to justify the GATT provision and the U.S. Treasury's refusal to classify excise tax rebates as export subsidies have recently been put into serious question by various economists. For example:

> In recent years, long-established principles about the effect of "indirect" taxes on international trade have been called into question. Economists are questioning the facts and theories on which the rules about taxes in GATT and in other agreements are based. Their doubts coincide to a considerable degree with the businessman's commonsensical and untutored reaction that if his goods have to pay a tax on entry into a country while his competitor's goods are exempted from the same tax when they are exported, he is at a disadvantage * * * (William Diebold, Jr., "Future Negotiating Issues and Policies in Foreign Trade," in "Issues and Objectives of U.S. Foreign Policy," a compendium of statements submitted to the Subcommittee on Foriegn Economic Policy of the Joint Economic Committee, U.S. Congress, September 1967, pp. 3, 8–9).

The technical economic and fiscal arguments involved have been examined in a number of learned papers and speeches, and we will not attempt to discuss them here. (See, e.g., International Law Association, Report of the Committee on International Trade and Investment, Helsinki Conference, 1966, pp. 1, 20–22; Dr. Lewis E. Lloyd, "The Economics of International Trade," in "Issues and Objectives of U.S. Foreign Policy," supra at p. 131.) We commend the words of these experts to the Finance Committee's attention.

Under the protocol of provisional acceptance of the GATT, the United States is not required to follow GATT article VI to the extent it is inconsistent with U.S. legislation in effect as of October 30, 1947. Consequently, the Treasury Department could not defend its interpretation of section 303 of the Tariff Act on the ground that it is required by GATT article VI. In point of fact, Treasury's practice began long before the GATT was even drafted.

We concur with Senator Dirksen's recent statement concerning this "seeming acquiescence of the Treasury Department in the practice of European countries of subsidizing exports through the remission of internal taxes," in which he states:

> Doubtless the Treasury Department finds the practice so widespread that if it undertook to impose countervailing duties on imports which receive the benefit of such an export subsidy, it would have to include virtually all products imported from Western Europe * * *.
>
> The painful consequences of enforcing U.S. laws, however, are not a sufficient excuse for their nonadministration. The fact of the matter is that the use by other nations of practices which give them an unfair advantage in competing with American goods in the United States and foreign markets is widespread (address to Trade Relations Council of the United States, Dec. 3, 1966, reprinted in 113 Congressional Record, S1497, Feb. 3, 1967).

We urge this committee to take action to correct this situation. Not only does Treasury's nonaction deprive individual U.S. industries of benefits given them by statute, but from an overall trade standpoint in places the United States at a serious disadvantage vis-a-vis countries that happen to rely heavily on indirect taxes.

B. The apparent failure to enforce the law regarding subsidization of manufacture or production

By its express terms, section 303 of the Tariff Act (19 U.S.C. sec. 1303) authorizes the imposition of countervailing duties when there is a bounty or grant upon "manufacture or production," as well as when the bounty is directly upon exportation. This is also true of GATT article VI.

The terms "manufacture" or "production" were added to the U.S. law in 1922. There purpose was expressed by their sponsor in these plain words:

> These amendments were drafted by the Customs Division of the Treasury Department so that when the goods are manufactured for export or manufactured for home consumpiton and then exported, the regulations in this paragraph shall apply (61 Congressional Record 4132, July 20, 1921).

It is not clear whether the Treasury Department makes use of its authority to apply duties in cases of subsidies on manufacture or production, such as the Spanish subsidies on new bottling plants. The countervailing duty orders published by Treasury do not describe the bounties or grants involved which makes it "difficult, if not impossible, to analyze the administration of section 303" (report to Committee on

Ways and Means from Subcommittee on Customs, Tariffs, and Reciprocal Trade Agreements, p. 95 (1967)).

C. The lack of an adequate procedural framework for cases under section 303

The Treasury Department's regulations are very sketchy. Until recently they have provided only that interested parties may report suspected cases of subsidy to the Bureau of Customs; the Commissioner "will cause such investiation to be made as appears to be warranted" and will consider "any representations offered by foreign interests"; and if "application of the said section 303 is required, the Commissioner, with approval of the Secretary of Treasury, will issue a countervailing duty order * * *" (19 C.F.R. 16.24).

We believe that both domestic and foreign interests would be served by adoption of procedural regulation akin to the regulations which already exist under the Antidumping Act (19 C.F.R. 14.6–14.12) and by a reexamination of the scope of judicial review of countervailing duty determinations. At the present time judicial review is not available for such points as the Treasury's determination on the amount of bounty. (See *Energetic Worsted Corp. v. United States*, 224 F. Supp. 606, 615 (Cust. Ct. 1963).)

In this regard, we welcome the Treasury's very recent amendment to the customs regulations so as to provide for published notices which will announce investigations of suspected subsidies and will invite comments (32 F.R. 13276, Sept. 20, 1967).

CONCLUSION

If the law is to be enforced effectively, Congress should clarify its meaning and direct Treasury to provide a better procedural framework for conducting negotiations. It should also work to convert GATT article VI into a more meaningful deterrent to unfair subsidization of exports. As presently written and interpreted, the U.S. statute has been useful mainly to Government officials who cite it as an excuse for refusing American industries' requests for other types of relief from unfair foreign subsidization of exports.

AMERICAN MARITIME ASSOCIATION,
New York, N.Y.

Mr. TOM VAIL,
Chief Counsel, Senate Finance Committee, New Senate Office Building, Washintgon, D.C.

DEAR MR. VAIL: In accordance with the Senate Finance Committee's invitation to interested parties, to submit papers on all aspects of U.S. trade structure and administration, including customs administration, prior to November 1, the American Merchant Marine Institute and the American Maritime Association jointly submit for your consideration a statement dealing with the present 50 percent ad valorem duty on the cost of repairing American-flag merchant ships abroad, as well as a one-page summary of this statement.

The AMMI and AMA would welcome the opportuinty of jointly sending a representative to testify on this matter if and when hearings on U.S. trade and tariff policies are conducted by the committee.

Sincerely,

RALPH E. CASEY,
President, American Merchant Marine Institute.
ALFRED MASKIN,
Director of Research and Legislation, American Maritime Association.

STATEMENT OF AMERICAN MERCHANT MARINE INSTITUTE AND AMERICAN MARITIME ASSOCIATION ON DUTIES ON SHIP REPAIRS MADE ABROAD

SUMMARY

Present law provides for remission of the 50 percent ad valorem duty, on the cost of all labor and material used in making ship repairs abroad, only when such repairs are necessitated by stress of weather or a casualty due to conditions similar to stress of weather.

This requirement, fortified by the restrictive interpretation which the Treasury Department has placed upon it, not only requires a shipowner voluminously to document and establish beyond reasonable doubt that repairs were necessitated by stress of weather or a casualty such as grounding, collision, explosion, or fire, but precludes a shipowner from obtaining remission of duty when repairs are required in order to maintain the vessel in a seaworthy condition and provide protection against actions for damages which could result from injury, loss of life, or loss of cargo.

Equally important is the fact that even in instances in which repairs can be proved to be due to a casualty within the present interpretation of the law, the administrative procedure for obtaining remission is so long, tedious, and costly as to discourage many shipowners from seeking relief.

To rectify the conditions set forth above, and improve the competitive position of the American merchant fleet, the American Merchant Marine Institute, and the American Maritime Association urge that the present law be amended to provide for the remission of duties when repairs are made to assure a vessel's seaworthiness, and that administrative procedures be simplified to provide for such remission upon the filing of a simple declaration stating that repairs were made for seaworthiness.

STATEMENT

One of the pressing problems facing the American people and the American Government, in this time of international crisis, is the problem of restoring the size, strength, and prestige of the American-flag merchant marine.

The United States, at the end of World War II, was the greatest maritime power the world had ever known. Today we rank sixth among the maritime nations of the world. Our merchant fleet, which numbered almost 5,000 vessels at the end of the war, now numbers less than

1,000, and the carriage of our own cargoes, about 43 percent during the early postwar years, has since declined to 7 percent.

Meanwhile, the U.S.S.R. is building up its merchant fleet with awesome speed, while Japan and other nations are also putting into effect ambitious programs for expanding their commercial maritime capabilities.

The condition of the American merchant marine has been of great concern, not only to maritime management and labor, but to the Government as well, and all of these elements have been seeking, in recent years, to formulate a maritime program which will check the decline of the fleet and put it back on the road to recovery.

In the face of these efforts, however, American shipowners continue to be subject to legal requirements which, by adding to their costs of operation, intensify their competitive disadvantage vis-a-vis foreign-flag vessels.

Such a requirement is that which provides for remission of the 50 percent ad valorem duty, on the cost of all labor and material used in making ship repairs abroad, only when such repairs are necessitated by stress of weather or other casualty (19 U.S.C. 258(1)).

In practice, the Treasury Department has adhered to a strict interpretation of this provision and has cited as precedent the case of *International Navigation Co., Inc.* v. *United States*, 38 Cust. Ct. 5 (1957), in which the court, in granting the Government's motion to dismiss the plaintiff's claim that damage was caused by a casualty, commented that "* * * it may be noted that in a case in which the jurisdiction of the court was not discussed, *Dollar Steamship Line, Inc., Ltd.* v. *United States*, 5 Cust. Ct. 23, C.D. 362, the court pointed out that the term 'casualty' is used in the statute in conjunction with the phrase 'stress of weather' and that a casualty similar to 'stress of weather' would be of necessity a happening that comes with the violence of the turbulent forces of nature."

This restrictive interpretation not only requires a shipowner voluminously to document and establish beyond reasonable doubt that repairs were necessitated by stress of weather or a casualty such as grounding, collision, explosion, or fire, but precludes a shipowner from obtaining remission of duty when repairs are required in order to maintain the vessel in a seaworthy condition and provide protection against actions for damages which could result from injury, loss of life, or loss of cargo.

This is a particularly grave problem for the owners of ships which are out of the States for a year or more and connot return to this country for inspection.

Equally important is the fact that even in instances in which repairs can be proved to be due to a casualty within the presently interpreted meaning of the law, the administrative procedure for obtaining remission is so long, tedious, and costly as to discourage many shipowners from seeking relief.

The following examples may serve to illustrate this point:

(1) As a result of a fire which caused severe damage to her boilers on December 12, 1962, while en route from the U.S. gulf to India, the SS *Panoceanic Faith*, operated by the Panoceanic Tankers Corp., was obliged to make emergency repairs at Bombay in

January-February 1963, at a cost of $17,467.72 (vessel repair entry No. V-688, dated Mar. 23, 1963). Application for relief from duties was denied by the Bureau of Customs at Galveston on February 12, 1964, and the company—on March 9, 1964—petitioned the Commissioner of Customs in Washington for review of the decision. It was not until February of 1965, however, that the duty on the cost of repairs was remitted.

(2) In January, 1963, the SS *Green Island*, operated by the Central Gulf Steamship Corp., was obliged to make emergency repairs to her starboard boiler in Bombay, at a cost of $535.50 (vessel repair entry No. 11447, dated Feb. 17, 1963). Remission of duties was sought on June 12, 1963, denied by the collector of customs at New York on September 11, 1963, and denied again by the Bureau of Customs on November 29, 1963, and by the Acting Commissioner of Customs on February 3, 1964. It was not until after an appeal to the Assistant Secretary of the Treasury, on February 10, 1964, that remission was finally obtained, on April 15, 1964.

(3) The SS *Santore*, operated by the Ore Navigation Corp., was temporarily repaired at Split, Yugoslavia, in April 1962, at a cost of $4,950, following damage to her rudder area when the vessel struck a submerged object (vessel repair entry V-B-53 dated May 16, 1962). Remission was denied by the collector of customs at Port Arthur and appealed to the Deputy Commissioner in Washington, but the matter was not successfully resolved until February 1963.

(4) The S/T *Anne Marie*, operated by the Commerce Tankers Corp., was repaired in Turkey in August 1961, at a cost of $1,344, (vessel repair entry P-10, dated Sept. 14, 1961). Remission was not obtained until the Secretary of the Treasury overruled the Customs Bureau on October 9, 1963.

It should be noted that in all of the above cases the repairs made were only those necessary to make the vessel temporarily seaworthy and enable her to return to the States for permanent repairs; yet in all cases remission of duties was made only after long and costly delays.

To rectify the conditions set forth above, the American Merchant Marine Institute and the American Maritime Association jointly submit, for your consideration, the following recommendations:

(1) When the Tariff Act of 1930 was being enacted, the House of Representatives amended section 3115 as it appeared in section 466, Tariff Act of 1922, to provide that the Secretary of the Treasury might remit duties upon evidence "that such equipment or parts thereof or repair parts or materials were purchased, or that such expenses of repairs were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers * * *" This wording was deleted by the Senate Finance Committee and should be restored to provide for the remission of duties when repairs are made to assure seaworthiness, as well as when repairs are made because of stress of weather or other casualty.

(2) Administrative procedures should be simplified to facilitate the approval of remissions by providing treatment for shipowners equal to that now accorded to international airlines of American registry—i.e., the filing of a simple declaration stating that repairs were made to assure the vessel's seaworthiness.

In view of the urgent need which now exists for strengthening the American merchant marine and improving its competitive position, the American Merchant Marine Institute and the American Maritime Association respectfully urge that steps be taken to implement the above recommendations.

Statement Submitted by the Corset & Brassiere Association of America

INVESTIGATION OF THE ECONOMIC CONDITION OF THE U.S. TEXTILE AND APPAREL INDUSTRIES

This statement is submitted by the Corset & Brassiere Association of America, the national manufacturing trade association of the U.S. industry.

The members of the association firmly believe, based upon their experience, that the ever-rising tide of imports from low-wage countries has had a notable impact upon the corset and brassiere industry and that unless immediate corrective action is taken to control the level of imports, the domestic market will continue to be disrupted and American manufacturers dislocated. The association's members are committed to the view that the corrective action should be in the form of country-by-country, product category by product category import quotas. In urging the adoption of such import quotas, we do not wish to prohibit imports into the United States but rather to control and regulate their orderly flow.

The products manufactured by the corsets, brassieres, and allied products industry consist basically of brassieres, girdles, and corsets, garter belts and other similar body-supporting garments. In 1966, the total quantity of industry products shipped was 29,699,000 dozen, having a total wholesale value of $647,458,000. The largest general product category consisted of brassieres, of which 20,575,000 dozen were shipped for a wholesale value of $338,803,000.

Under constant pressure from domestic and foreign competition, the number of firms in the industry has been declining substantially. In 1954, there were 424 companies, including manufacturers, jobbers and contractors, having an aggregate of 491 establishments. By 1963, the most recent year for which this data is available, the number of companies and establishments had dwindled to 296 and 351, respectively, a decline of 128 firms and 140 establishments.

The relative size of these remaining establishments is small. In 1963, 177, or more than half, had less than 50 workers; 117, or one-third of the total number of establishments, had less than 20 workers. Only seven establishments employed between 500 and 999 workers, while only three had more than 1,000 workers.

Accompanying the decline in the number of firms and establishments, employment in the industry has been steadily diminishing, as shown by the following Census Bureau statistics:

Year	All employees	Production workers
1956	44,007	39,012
1958	37,808	31,653
1962	42,682	36,000
1963	37,144	31,394
1964	39,013	32,907
1965	36,093	29,444

Under the stimulus of substantial tariff reductions and the absence of effective import controls, brassiere imports, particularly imports of the lower priced lines from low-wage countries, have soared phenomenally. In 1955, total imports of brassieres were only $438,000; in 1966, brassiere imports amounted to $9,898,000. As a result, in 1966, brassiere imports represented nearly 13 percent by quantity of the entire domestic brassiere production. The constantly rising flood of cheap brassiere imports is graphically shown by the following table of imports from 1955 to 1966:

U.S. IMPORTS OF BRASSIERES

Year	Quantity (dozens)	Value (dollars)
1955	NA	438,700
1956	NA	2,260,000
1957	NA	3,658,400
1958	1,962,600	5,302,300
1959	2,819,700	7,008,500
1960	2,462,700	6,300,200
1961	2,627,300	7,633,500
1962	2,842,125	8,938,031
1963	2,610,467	8,412,682
1964	2,846,272	9,454,910
1965	2,607,553	9,016,526
1966	2,619,001	9,898,004

It has been the manufacturers of popular price brassieres which have been most seriously affected by the imports from low-wage countries. In 1966, of the 20,525,000 dozens brassieres domestically produced, the dominant type was the bandeaux style, accounting for 18,971,000 dozens, and of these the most popular low-price group was that selling at $8.50 and under per dozen at wholesale. During 1966, when 3,797,000 dozens of these popular-priced brassieres were produced in the United States and Puerto Rico, 2,619,000 dozens of low-priced brassieres, having an average import value of no more than $3.77 per dozen, were imported. These imports represented 69 percent of domestic production of this lower price category.

These cheap imports, enjoying an enormous price advantage as a result of their production at substandard wages and under substandard working conditions, succeeded in capturing a sizable share of the domestic popular-price brassiere market, to wit, 40.8 percent, thereby displacing a large portion of the volume of products which normally would be manufactured by American firms and depriving American workers of employment opportunity.

The corset, brassiere, and allied products industry is an industry of constant aggressive price competition. Apart from dislocating domestic production, the effect of these cheap imports from the low-wage countries has been to exert a steady downward pressure on prices. Since rising labor costs prevent domestic manufacturers from effectively competing with cheap imports, the American industry increasingly is being forced to abandon lower price lines and shift to producing higher priced lines. In 1961, regular strap bandeau brassieres selling at wholesale for $8.50 and under per dozen accounted for 33.6 percent of the total of such brassieres shipped; in 1966 this share had declined to 27.6 percent. Similarly, in 1961 regular strap bandeau brassieres selling at wholesale for $12.75 and under per dozen represented 57.6 percent of total production of such brassieres; by 1966 its share dropped to 51.6 percent. If this trend continues unabated, the whole popular price segment of the industry may have to be relinquished to the import trade, causing disruption to the entire domestic industry.

Existing international arrangements to restrict the imports of cotton textiles, including cotton brassieres and similar body-supporting garments, while sound in their basic principles and objectives, have not proved totally effective in protecting the domestic industry from the disruptive effects of the flood of cheap imports. This is because these agreements only cover products in which cotton constitutes more than 50 percent by weight of the fiber content and do not apply to the wide range of manmade fibers and blends thereof, which are being increasingly used in the production of brassieres and foundation garments exported to the United States.

The members of the Corset & Brassiere Association of America believe that the only effective means of coping with the mounting import problem is the prompt imposition by the United States of a system of import quotas, established on a country-by-country and product category-by-category basis. A quota should be established for each exporting country according to price lines and volume. The quota should be determined on the basis of the industry's pattern of growth in the various categories of products which it manufactures. These quotas should cover not only products predominantly made of cotton, but all textile products, whatever their fiber content.

We strongly believe that unless such a comprehensive system of import quotas is adopted, rising imports will continue to threaten the domestic corset, brassiere, and allied products industry, with serious market disruption, manufacturer dislocation, and reduction of employment opportunity.

Respectfully submitted.

JOHN C. CONOVER,
Executive Director.

FLOOR COVERING GROUP,
NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.,
New York, N.Y.

Mr. THOMAS VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: This letter is submitted in response to the announcement released by your committee on September 27, 1967, concerning a legislative oversight review of U.S. trade policies.

The Floor Covering Group, affiliated with the American Import Association, includes the principal U.S. importers of tubular rugs, and we are writing you in connection with S. 929, a bill which has been introduced to increase almost threefold the U.S. tariff on these rugs. We understand that there is a possibility that the supporters of that bill may be heard in connection with the legislative oversight investigation, and if that should occur we of course would also want the committee to give us an opportunity to present our views on the proposed legislation.

We do not know whether you will be receiving written views from the supporters of S. 929 for inclusion in the committee's proposed compendium. If you do receive such views, we would appreciate it if you would also include the following comments in the compendium. If you do not receive a paper from the supporters of the legislation, you may leave our views out of the compendium in the interest of economy.

We have never been fully apprised of the reasons why certain U.S. manufacturers feel this tariff increase would serve the national interest. It is therefore difficult for us to supply a comprehensive discussion of the matter. We will set forth certain basic views, and proceed on the assumption that we will have an opportunity to reply in detail to the specific arguments raised in support of the tariff increase.

1. The purpose of S. 929 is to change the tariff schedules so as to classify tubular rugs in the same category as braided rugs in the Tariff Schedules of the United States. This effect of this classification would be to increase the tariff from approximately 15 percent ad valorem to 42.5 percent. There is no technical or practical reason for such a change. Tubular rugs—sometimes referred to colloquially as "tubular braided rugs"– are entirely different in construction and market price from braided rugs as such. Braided rugs are made by braiding strips of fabric and sewing the resultant braid into an oval shape. Tubular rugs are made by an entirely different process: a machine wraps multicolored threads around shredded fiber material and thus produces a long tube with a core of fiber material and a covering of threads. This tube is then sewn into an ovar shape to produce the finished rug. This process does not involve braiding and thus the tubular rugs have quite properly been held by the U.S. customs courts as distinct from the braided rugs for tariff classification purposes. The only thing the two types of rugs have in common is their oval shape.

Braided rugs normally sell at a price ranging from $150 to $200 for a rug of approximately 9 feet by 12 feet. A tubular rug of the same size commonly sells for $30 to $70. It is obvious that there is no possibility of significant competition between these two types of rugs and that customers preferring one of them will do so for reasons which will not lead them to consider the other as an alternative.

For these reasons, the U.S. manufacturers of braided rugs will not benefit from an increase in the tariff on tubular rugs.

To the extent that support for S. 929 comes from U.S. manufacturers of tubular rugs, we believe the proposal also lacks any sound justification. The alert and efficient domestic manufacturers have always been able to meet the price of the imported products and have even frequently undersold the imports and driven prices down. These companies have been very busy keeping up with their orders and are apparently operating in a profitable fashion.

2. Tubular rugs are durable floor coverings which are quite inexpensive compared to other kinds of carpets and rugs. Most of the retail customers who purchase these rugs do so primarily because of the low price, and the rugs in fact supply a very adequate but inexpensive kind of floor covering for lower income families. (Needless to say, many middle-income families also select these rugs, because of style, and appreciate the low price as well.)

The proposed tariff increase would substantially increase the retail price of tubular rugs. As a result, the tariff increase would impose a hardship on the low-income families of our country, for whom decent and heathy housing is already an extremely serious problem.

3. Tubular rugs—both imported and domestically made—supply a very large and growing market in this country. As housing programs for the lower-income families make further progress, and the economic conditions of such families improve, the market for tubular rugs, with their special appeal to low-income households, will undoubtedly continue to grow. The efforts of the importers have played a very substantial role in developing the market for tubular rugs, and their efforts have unquestionably contributed to the benefit of the domestic suppliers as well.

4. The proposal for a threefold increase in the tariff on tubular rugs is obviously contrary to the entire U.S. position on foreign trade and the strenuous efforts made in recent years to expand foreign markets by reciprocal tariff reduction. At a time when foreign trade policy is the subject of such broad discussion as at present, there is obviously no need for us to elaborate on the disruption of U.S. foreign trade that would result from this tariff increase. Tubular rugs—little known in the vast and prosperous U.S. economy except among low-income families and the stores who serve them—are extremely important to the economies of the countries from which they are imported. These countries are important U.S. trading partners and political allies, and the United States constitutes by far their principal market for these articles.

The burden is clearly upon the supporters of S. 929 to demonstrate clearly and conclusively strong public interests (as distinguished from their own self interests) which justify sacrificing the important national interests described above. No such grounds have been evidenced to date and we believe any careful investigation will show that they do not exist.

Sincerely yours,

CHARLES I. ROSTOV.

Statement of the American Hardboard Association

SUMMARY

The American Hardboard Association, an association of the domestic producers of hardboard, submit the following six points as problem areas where corrective action is urgently needed:

(1) Disproportionate growth of imports of certain commodities, including hardboard, as compared with growth, or levelling off, of domestic production and shipments.

(2) Effect of Kennedy round negotiations on certain vital industries, including hardboard.

(3) Enforcement and administration of the Antidumping Act of 1921.

(4) Evident discrimination toward American hardboard in respect to the ratio of imports to domestic consumption compared with the wood industry and total U.S. industry.

(5) Need for greater cooperation between customs administration and domestic industry.

(6) Adverse effects of hardboard imports on the American economy.

The American Hardboard Association looks forward to assisting the committee in every way possible to investigate the above problem areas.

STATEMENT

The American Hardboard Association, an association of the domestic producers of hardboard, welcomes this opportunity to present to the Senate Finance Committee a status report and review of the effect of U.S. trade policies as they affect the American Hardboard Industry,[1] and to submit suggestions regarding areas where it is felt corrective measures should be considered.

Hardboard is the generic term for a hard, dense, grainless board, composed of wood, having a high tensile strength and density, and low water absorption. It is a tough, dense wood taken apart and reformed mechanically into large, wide, hard boards. Under heat and pressure, the natural cohesive substance in wood, lignin, is used to bind the fibers together. Hardboard is engineered wood that is superior in many uses. It contains none of the undesirable characteristics of wood in that it does not split, splinter, or crack; it has the desirable features of wood in being easy to work and finish; and it has unique features of its own being grainless and a thinner, wider form of wood.

Hardboard is an invented wood product, born of research aimed at developing uses for the wood residues from southern sawmills. It came from the laboratory in 1924 and was first commercially produced in 1926. Now its use has spread all over the world, and it is manufactured in a great many forested countries. It is found in some form in nearly every home, office, and factory, being used in the furniture and millwork industries, in construction and remodeling, and in the merchandising and display, transportation, education, recreation, electronics, and manufacturing industries. This uniquely versatile material, rang-

[1] A list of American manufacturers of hardboard products appears at p. 905.

ing in size up to 5 feet in width and 16 feet in length, and in thicknesses from one-twelfth to one-half inch, is made with one or both surfaces smooth, striated, grooved, tiled, embossed, or ribbed. Hardboard is also perforated, prefinished, primo-coated, and other finish patterns are or can be applied, for use in either indoor or outdoor applications.

During World War II hardboard became essential to the war effort, and literally went to war. Wherever our Armed Forces went, they slept under, walked on, ate upon, rode in, used, handled or otherwise came in contact with hardboard. It not only replaced other critical materials but became essential for its own features in tanks, trailers, aircraft, boats, trucks, hospitals, dispensaries, and laboratories.

Hardboard production uses wood in practically any form for raw material. Not only are timber logs and round wood utilized, but also sound wood material in odd-shaped chunks, slabs, and other logging residues. Extensive use is also made of wood residues from sawmills and plywood plants, thus contributing significantly to the more effective utilization of trees and to improved conservation of forest resources.

The presentation herein is based on comparisons between 1952 and 1965. The year 1952 was the first year in which the American hardboard industry became acutely aware of dumping practices by foreign producers. The year 1965 is the last year covered in the U.S. Tariff Commission's Summaries of Trade and Tariff Information, volume 1, entitled "Wood and Related Products," released in April of 1967, and in developing this statement, we have used material from the Tariff Commission's summary as a basis for observations and comparisons, where applicable.

The six major concerns which we would like to cover are as follows:

(1) Disproportionate growth of imports as compared with domestic shipments.

(2) Effect of Kennedy round negotiations on hardboard.

(3) Objections to enforcement and administration of the Antidumping Act of 1921.

(4) Evident discrimination toward American hardboard in respect to the ratio of imports to domestic consumption compared both with the wood industry and total industry.

(5) Need for greater cooperation between customs administration and domestic industry.

(6) Adverse effects on the American economy.

1. Disproportionate growth of imports as compared with domestic shipments

The hardboard industry in the United States enjoyed a healthy growth from 1952 to 1965 of 160 percent, but the 2,755-percent increase in imports was far more dramatic. The relative increase in total shipments over the 15-year span is illustrated by the following schedule: [2]

	U.S. industry	Imports
1952	1,056,988,000	20,834,393
1965	2,921,103,000	571,161,191

[2] The numbers shown are square feet, on a ⅛-inch-thickness basis. All square footages given throughout this statement are taken from figures published by the Bureau of Census, except where otherwise indicated.

Significantly, by 1965 imports had grown to where they were more than 50 percent of domestic manufacturers' shipments in 1952.

The two major foreign producers who enjoy the highest volume of imports into the United States are Sweden and Finland. Both of these nations have had not only unusually sharp volume increases since 1952 but the ratio of their imports to domestic manufacturers' sales has had a radical growth.

In 1952, 5,515,765 square feet were imported from Sweden, which was equal to approximately 0.005 percent of domestic manufacturers' shipments. By 1965, Swedish imports totaled 215,209,711 square feet, equal to 7.8 percent of domestic manufacturers' shipments.

Hardboard imported from Finland totaled 4,149,451 square feet in 1952, equal to 0.004 percent of domestic manufacturers' shipments. By 1965, Finnish imports totaled 117,408,066, equal to 4 percent of domestic manufacturers' shipments.

Imports from all countries in 1952 totaled 20,834,393, or 1.9 percent of domestic manufacturers' shipments. As listed in the previous table, this had developed to 571,161,191 in 1965, or 19 percent of domestic manufacturers' shipments.

In summary, there is every reason to believe that, even though the American hardboard industry will continue to expand, its growth will be limited by the fact that imports will increase at a faster rate. It is highly possible they will even be more accelerated as a result of the Kennedy round negotiations, and we now turn to a consideration of the effect of those negotiations on hardboard.

2. Effect of Kennedy round negotiations on hardboard

With few exceptions, the American hardboard industry is faced with almost a 50-percent decrease in tariff on hardboard, as a result of the Kennedy round negotiations. Hardboard is presently listed in part 3 of schedule 2 of the tariff schedules of the United States. It is described by an eo nomine description, "hardboard." There are four items of classifications of hardboard in the tariff schedules, three of which relate to non-face-finished hardboard, and the fourth is a basket clause for all other hardboard, including face finished. The schedule showing the present tariff rates, and the final stage of the Kennedy round concession rate is as follows:

[In percent ad valorem]

Tariff Schedule		Current rate	Concession rate, final stage
245.00	Valued not over \$48.33⅓ per short ton	15	7½
245.10	Valued over \$48.33⅓ but not over \$96.66⅔ per short ton	7½–15	7½
245.20	Valued over \$96.66⅔ per short ton	7½	7½
245.30	Other hardboard	26	15

It should be pointed out that the present low reduced duty on hardboard (\$2.72 per thousand square feet [3] on ⅛-inch standard, the bell-

[3] The present reduced rate on nonface finished hardboard (schedule 2, pt. 3, item 245.00, Tariff Classification Act of 1962) is a combination duty of \$7.25 per short ton, but not more than 15 percent a.v., nor less than 7½ percent a.v. The specific rate applies to the principal imported type hardboard, i.e., one-eighth inch standard or untreated, whenever its dutiable value is between \$18.11 and \$36.25 per thousand square feet, below \$18.11 the 15 percent a.v. rate applies and above \$36.25 the minimum 7½ percent a.v. rate becomes applicable. The duty on imported one-eighth inch hardboard (with an assumed weight of 750 pounds per thousand square feet) with a value within the aforesaid range is \$2.72 per thousand square feet.

weather grade and thickness) is but a fraction of the combined transportation and wage cost advantages of most foreign producers in reaching major U.S. hardboard markets, and is, therefore, not restrictive of imports. This is amply borne out by the facts set forth above regarding the tremendous growth in imports of hardboard.

3. Objections to enforcement and administration of the Antidumping Act of 1921

(a) Delays in enforcement of dumping findings

In 1952, as various members of the hardboard industry became increasingly concerned with the dumping practices of foreign producers, a full and thorough investigation was made, and in March 1953, a petition for a finding of dumping under the Antidumping Act of 1921 with respect to the importation of hardboard from Sweden was filed with the Secretary of the Treasury. In June 1953, a similar petition was filed in respect to Finnish hardboard. On August 26, 1954, the Acting Secretary of the Treasury made a finding of dumping with respect to hardboard from Sweden. The petition with respect to Finnish hardboard was rejected. The finding of dumping of Swedish hardboard remained in effect, at least as to some Swedish concerns, until January 8, 1964.

The validity of the finding of dumping with respect to Swedish hardboard was upheld in the *Elof Hansson* case [4] which was finally concluded in November 1961, when the U.S. Supreme Court refused to review the holding of validity of the Court of Customs and Patent Appeals. The importers made a second unsuccessful attempt to establish the invalidity of the finding as to importers other than Elof Hansson in the *Hoenig Plywood* case. After another holding of validity by the Customs Court, the importer abandoned its appeal in February 1964. However, as of November 1967, there are approximately 100 antidumping cases still pending in the Customs Court. Many of these cases were first filed in 1958.

(b) Secrecy surrounding dumping procedures and information

The American Hardboard Association objects to the secrecy maintained by Treasury in the administration of the Antidumping Act. We have consistently faced this secrecy for 14 years, in regard to imports of Swedish hardboard, not only in the obtaining of the finding of dumping, not only in the computation of dumping duties, and not only in the matter of revocation of the finding, but also in serving as amicus curiae in Customs Court litigation in assisting the Government to defend its position. Bluntly speaking, Treasury considers the domestic industry the obvious beneficiary of the Antidumping Act, simply as the general public—even when Treasury representatives could use information supplied by the domestic industry to evaluate the ex parte presentations of importers.

This can be dramatically illustrated in our unfortunately unsuccessful experience with the implementation of the Swedish hardboard dumping finding:

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[4] In the first appeal to reappraisement involving dumping duties assessed on Swedish hardboard, *Elof Hansson, Inc. v. United States,* 41 Cust. Ct. 519 (R.D. 9212) (1958), the Customs Court upheld the validity of the finding of dumping. The third division of that court, in the appellate term (43 Cust. Ct. 627 (A.R.D. 114) (1959)), reversed. In turn, the Court of Customs and Patent Appeals reversed that decision, and upheld the validity of the finding of dumping (296 F. 2d 779 (C.C.P.A. 1960)). The Supreme Court denied certiorari (368 U.S. 899).

Under that finding, dumping duties were imposed by a protracted procedure involving preparation of a master list of Swedish hardboard home market prices for each year. It was nearly a year and a half after the August 1954 finding before the master list covering 1953 and 1954 entries of Swedish hardboard was finally prepared in January 1956. It was another year and a half after that finding (i.e., in 1957) before the master list covering 1955 entries was finally prepared. No master list for 1956 entries was prepared until 1958, and such lists for 1957, 1958 and later entries were not prepared until 1963.

Moreover, the first dumping duties imposed, on 1953 and 1954 entries of Swedish hardboard, were as a result of "adjustments" watered down, token duties for the most part.

Despite this dismal record of enforcement of that finding, on August 21, 1956, five named Swedish hardboard producers were released from the finding (T.D. 54,168), and on October 1, 1956, a sixth Swedish hardboard manufacturer was also released from it (T.D. 54,199).

Faced with these circumstances in the fall of 1956, representatives of the domestic hardboard industry, in attempting to assist the Department of Justice defend the 300-odd Customs Court cases involving antidumping duties on 1953 and 1954 entries of Swedish hardboard, were told that the Commissioner of Customs had instructed the Customs Service not to disclose any facts regarding assessments of antidumping duties on Swedish hardboard to the public, and that that instruction precluded the domestic hardboard industry's attorney from learning any of the pertinent facts regarding the pending suits—either to inform the domestic industry of actions taken to enforce the finding, or otherwise.

We know of no other court procedures where confidentiality is maintained supposedly to enable an executive department, "hat in hand," to obtain the cooperation of importers or foreign concerns, which was the excuse proffered by the Treasury Department when industry representatives complained of the secrecy. This feigned lack of ability to otherwise gain the desired information is beneath the dignity of the Department or the United States. After all, no one has a vested right to import. Moreover, American citizens should have the right to know that the act is being effectively enforced. This can only be achieved by turning the light of day on the basic facts.

In view of the fact that the public interest in the Antidumping Act and its enforcement directly involves the American industry affected, it would seem that public policy dictates that the domestic industry has a legitimate interest in such cases in assisting in obtaining and producng evidence to successfully defend the pending cases. In the leading case of *C. J. Tower & Sons* v. *U.S.* (71 F. 2d 438), the imposition of dumping duties under the act was said to be for the purpose of equalizing values and putting the importer and the domestic industries upon a basis of equality so far as dumping is concerned. That purpose is wholly frustrated if the domestic industry is prevented from developing relevant evident which it believes exists and can be obtained but for lack of knowledge of the pertinent facts involved in those cases. After all, the importers brought the reappraisement cases to avoid the dumping duties, and their determination in the Customs Court will necessarily involve ulitimately a public disclosure of the pertinent facts. Under such circumstances, it is inconceivable that such facts cannot be disclosed, in preparation for trial, to those who have a direct interest in and ability to produce pertinent evidence to hold the Government in its defense of the pending cases.

It should be pointed out that the Department of Justice, unlike Treasury, has been cooperative with the domestic hardboard industry and has welcomed the latter's help.

While the act empowers the Secretary to make public the results of his initial investigation to the extent he deems necessary, that statutory discretion has no counterpart in the Department's computation of dumping duties or in Customs Court litigation involving those duties. Otherwise stated, the wall of secrecy maintained in the implementation of a finding once made has no statutory basis.

4. Evident discrimination toward American hardboard in respect to the ratio of imports to domestic consumption compared both with the wood industry and total industry

Data taken from the Trade Relations Council's computer analysis of employment output and foreign trade of U.S. manufacturing industries, 1958, 1965–66 reveals that the ratio of imports to the domestic market for all U.S. manufacturing industries was 3.5 percent in 1965. This in itself raises the need for review of current tariff duties and possible shortcomings in the applicable statutes to find the answer why an industry such as hardboard, with a 19-percent import ratio, should be placed at such an obvious disadvantage vis-a-vis imports, compared to American industry as a whole.

Further studies of a comparison of hardboard imports within its own wood and related products industry indicates an unexplainable discrimination against hardboard and points up that present tariff schedules are in need of review.

Wood and related products in the United States represent a $10.2 billion industry, in value of shipments. In its Summaries of Trade and Tariff Information, released in April of this year, the U.S. Tariff Commission reported the total value of wood and related products imports in 1965 as $630 million. This is a ratio of consumption to the domestic market of 6 percent, which means that foreign woods are encroaching on that percentage of potential sales that could be enjoyed by domestic producers.

The situation for hardboard is much more serious, because imports of this material had a ratio of consumption in 1965 of 19 percent. Significantly, the total dollar valuation of hardboard imports in 1965 was almost double that of the combined total of five related industries, namely—softwood plywood, softwood veneer, particleboard, insulation board, and gypsum board.

The value of hardboard imports in 1965 was in excess of $17 million, an amount which easily could have supported four additional plants in the United States.

5. Need for greater cooperation between Customs Administration and domestic industry

Consideration should be given to a change in the law which would require American manufacturers to be notified of proposed changes in customs rulings before they become effective. As it now stands, the Bureau of Customs may issue an interpretative ruling which affects an American industry and it becomes effective immediately. The American industry involved is not advised until "after the fact." A specific illustration is a recent decision by the Bureau of Customs regarding the scope of the word "hardboard" as used in tariff schedules:

T.D. 56124(14) *Board, building. Board, medium density. Hardboard. Definitions and words and phrase: "Building boards."*—A medium density board, seven-sixteenths inch thick, consisting of fibrous wood pulp bound with resins, having a smooth finish on one surface and a screen finish on the other, produced in a manner similar to that used to produce hardboard, having a density of 36 to 38 pounds per cubic foot, a modulus of rupture of 1,900 pounds per square inch, a tensile strength of 24 pounds per square inch perpendicular to the surface, used as siding and for its insulating qualities, is classifiable under the provision for building boards not specially provided for, whether or not face finished: Other boards, of vegetable fibers (including wood fibers), in item 245.90, TSUS. Definition of "Building boards" in schedule 2, part 3, headnote 1(e) noted. Such merchandise, not being known in the trade and commerce of the United States as hardboard, is not classifiable under items 245.00, 245.10, 245.20, or 245.30. Commercial standard CS 251-63, hardboard, a recorded voluntary standard of the trade published by the U.S. Department of Commerce, noted as evidence of the meaning of the term "hardboard" in the trade and commerce of the United States. Bureau letter dated February 27, 1964 (481.33).

If the American hardboard industry had been notified of this proposed ruling, it would have had an opportunity to present its views on the matter to the Bureau of Customs. It so happens that there is a very strong case for the proposition that the product covered by the ruling is "hardboard." The arbitrariness of the ruling is illustrated by a followup to the initial ruling, which occurred when the U.S. Commercial standard was changed:

T.D. 67-52(2) *Board, building. Board, medium density. Hardboards.*—Amendment No. 1 to commercial standard CS251-63 for hardboard changes the definition for hardboard and lowers the density range from 50 to 80 pounds per cubic foot to 31 pounds per cubic foot or greater. However, the scope of eo nomine provisions is to be determined as of the date of enactment * * * and the meaning of words used in such acts is fixed at the time of enactment and does not fluctuate as the meanings of the words might subsequently vary. *Davies Turner* v. *United States*, 45 CCPA 39, C.A.D. 669. Thus, the meaning of the term "hardboard" was fixed as of the date of enactment of the Tariff Schedules of the United States, and subsequent changes in standards cannot be accepted as controlling. Accordingly T.D. 56124(14) will be followed. Bureau letter dated January 26, 1967 (481.33).

It is common knowledge that specification changes occur in an industry's products many months, and sometimes years, before those changes are reflected in a U.S. commercial standard. Yet the Bureau of Customs, not having had the benefit of a presentation by the American hardboard industry prior to the issuance of its ruling, reached a rather arbitrary result to the detriment of the American hardboard industry.

Relevant here is the fact that if the quoted rulings are permitted to stand, the tariff on the product covered by the rulings will eventually be entirely eliminated, by virtue of the Kennedy round negotiations.

Due to this procedure of permitting the issuance of customs rulings without the affected American industry being given an opportunity to be heard, it will be necessary for a manufacturer or manufacturers of hardboard to incur the considerable expense involved pursuing the "after the fact" legal remedies of a manufacturer's protest.

6. Adverse effects on the American economy

As previously reported, the value of hardboard imports now exceed $17 million. This cannot help but have an adverse effect on the American economy, since these sales could easily support four additional hardboard plants in the United States employing hundreds of people. A hardboard plant represents a capital investment of at least $5 million, which strengthens the economic health and tax base in the community in which it is located.

Furthermore, consideration should be given as to what the number of jobs provided in four plants can do. On a very conservative basis, the value of hardboard imports annually, if coverted into U.S. shipments, could do the following:

(a) Create at least 500 new jobs with personal income exceeding $3,600,000 annually.

(b) Enable the purchase of 500 automobiles.

(c) Permit purchases in retail sales exceeding $2,340,000.

(d) Support 1,665 people.

(e) Provide tax moneys for educating 365 schoolchildren.

(f) Create 420 jobs in fields other than manufacturing.

(g) Create over $500,000 annually in bank deposits, plus payment of mortgages or rent on 500 homes or apartments.

CONCLUSION

In conclusion, the American Hardboard Association asks that our foreign trade policy be studied and reviewed and necessary action taken to eliminate any disproportionate and unfair conditions for industries such as the American hardboard industry. Furthermore, it would very definitely appear that more explicit legislation is required to secure proper enforcement of any laws or agreements in respect to foreign trade. Finally, a complete review and overhaul of customs enforcement and administration in the United States is an absolute necessity.

Respectfully submitted.

J. MASON MEYER,
Executive Secretary.

Domestic Hardboard Producers

Members of American Hardboard Association:

- Abitibi Corp.
- Celotex Corp.
- Costal Products Corp.
- Evans Products Co.
- Forest Fiber Products Co.
- Georgia-Pacific Corp.
- Masonite Corp.
- Superwood Corp.
- United States Gypsum Co.
- United States Plywood-Champion Papers, Inc.
- Weyerhaeuser Co.
- Wisconsin Wood Products, Inc.

Nonmember producers:

- Anacortes Veneer.
- Armstrong Cork Co.
- Boise Cascade Corp.
- Dierks Forests, Inc.
- Pope & Talbot, Inc.
- Superior Fiber Products, Inc.

STATEMENT OF NEIL O. BRODERSON, PRESIDENT, CAP-ROC, INC., ROCHESTER, N.Y., ON BEHALF OF THE BUTTON DIVISION OF THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

Mr. Chairman and members of the committee, on behalf of the Button Division of the Society of the Plastics Industry, Inc., I am pleased to have the opportunity to submit this statement for consideration by the Senate Committee on Finance in connection with its study of U.S. foreign trade policies and practices. The particular area to which this statement is directed is item 13 of the committee's press release—tariff preferences for products of less developed countries.

By way of introduction, the Society of the Plastics Industry, Inc. (SPI) is a corporation organized under the membership corporation laws of the State of New York. It is composed of approximately 2,500 member companies and individuals who supply raw materials; process or manufacture plastics or plastics products; engineer or construct molds or similar accessory equipment for the plastics industry; and engage in the manufacture of machinery used to make plastics products or materials of all types. SPI is the major national trade association of the plastics industry, its membership being responsible for an estimated 85 to 90 percent of the total dollar volume of sales of plastics in this country.

The Society's Button Division includes companies who account for 80 percent or more of the dollar volume of American production of polyester and acrylic buttons and button blanks. In addition to being chairman of the SPI Button Division, I am president of Cap-Roc, Inc., which is a major American producer of these commodities.

At the outset, we wish to make it clear that the views expressed herein are limited exclusively to the particular commodity group of interest to our membership—buttons and button blanks. We have no intention of taking a broader position on the matter of tariff preferences for products of less developed countries beyond this. Our sole purpose in submitting this statement is to advise you that a policy of preferential tariffs for such countries, as applied to buttons and button blanks, would, without a doubt, prove most damaging, indeed, perhaps even disastrous to our domestic industry.

The American button industry is acutely import sensitive and, therefore, requires the full measure of protection now afforded by our tariffs. The "buttons without holes" tariff avoidance devices, which were twice closed by legislation, are illustrative of this fact. Between 1963 and 1967, approximately 15 button producers were forced out of business as a direct result of the "buttons without holes" tariff loopholes. Even today, the industry has yet to recover fully from the effects of these avoidance devices, and we are advised of as many as three more impending failures.

The primary reason why our industry is so sensitive to imports is that a substantial portion of button production costs are attributable to labor. With the much cheaper labor available in less-developed countries plus the added edge of a special tariff preference here, undue advantage could be taken of the domestic industry. This could be done with a relatively modest investment or no investment at all as we understand that ther are producers of buttonmaking machinery in Europe and, perhaps, Japan who might be willing to assist prospective operators in setting up production facilities. The probable net result, as applied to buttons, would be facilities dominated de facto by interests located in developed countries making convenient use of the less-developed country's cheaper labor and tariff preferences. It can hardly be argued that this would prove to be of any real, long-term economic value to the less-developed country, which we understand is one of the underlying considerations in support of a preferential tariff policy.

Apart from this, the granting of U.S. tariff preferences for buttons and button blanks produced in less-developed countries would be inconsistent with the treatment afforded those commodities by the administration in the recently concluded "Kennedy round." Recognizing the need for adequate tariff protection, our negotiators substantially spared polyester and acrylic buttons and button blanks from tariff reductions. Tariff cuts on these commodities were approximately 20 percent rather than the full 50 percent which was permissible under law. This constituted clear acknowledgment that the domestic industry requires added protection against imports even from our trading partners in GATT, most of whom are highly industrialized and have much less of a labor cost advantage. Were preferences now to be granted to less-developed countries, the relief given to buttons and button blanks in the "Kennedy round" would have proven to be an empty and meaningless gesture from the standpoint of our industry.

We trust that the views expressed in this statement will be helpful to the Senate Committee on Finance in its review of U.S. foreign trade policies and practices. On behalf of the SPI Button Division, I wish to express my appreciation for having been given the opportunity to make our views known.

Respectfully submitted.

NEIL O. BRODERSON, *Chairman.*

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
San Mateo, Calif.

Hon. RUSSELL B. LONG,
Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: In response to your September 27 release, we are more than happy to furnish the committee, through you, the following information concerning the attitude and experience of small business toward and with U.S. trade with foreign nations.

As to experience, federation economic surveys suggest that while the vast majority of small businesses, likely because of the nature of their operations, are unaffected by or indifferent to import competition and export opportunities, a substantial minority is quite involved. For instance, in our 1962 survey (membership: 174,000; responses: 56,486) we asked pointedly whether respondents were "affected" by import competition. Sixteen percent replied "yes," 73 percent "no," and 11 percent were not responsive. In our current survey (membership: 235,000; responses to date: 70,910) we ask: "Do you manufacture or sell goods for export?" Four percent of all respondents (ranging from 1 percent among retailers to 20 percent among manufacturers) have replied "yes."

While the federation has never questioned its members directly whether they are helped or harmed by foreign trade movements, it has gotten into this area peripherally. In our 1963 survey (membership: 186,362; responses: 68,167) we asked: "Has the 1962 trade law helped or harmed your business operations?" This question was asked during a period when this enactment, while a statute, had not yet begun to operate. Responses were interpreted to reflect, therefore, small business general experience with foreign trade. Suggestion was strong that among those affected the greater number are harmed, the lesser number helped. Specifically, in answer to this question 15 percent of all respondents indicated their businesses harmed, 1 percent indicated their businesses helped.

Rather interestingly, in our 1963 survey 89 percent of those who indicated their businesses harmed by import competition ascribed the harm to "price competition." The balance, 11 percent, ascribed the harm to the style or type of foreign products. Additionally, in this same survey we asked: "As an importer or exporter, have you used SBA, Commerce, State Department aids?" The pitifully small "yes" response (4 percent of those styling themselves as "importers or exporters") suggest strongly that a large number of small businesses involved in foreign trade either are unaware of these governmental helps, or do not understand them fully, or knowing and understanding them do not feel that they meet the needs of small business. As we have stated many times, this would indicate a need to publicize these programs more than has been done to date. We of the federation are trying to do our part in the news section of the Mandate. Additionally, our news department has at various times, through both print and broadcast media, called attention to the work of the Department of Commerce in seeking to assist the smaller businessman in export.

As to the attitude of small business toward international trade, responses to the Mandate polls, which experience suggests reflect generally the views of small business as a whole, indicate the following convictions:

(1) That Congress itself should exercise greater interest in and authority over international trade agreements, and that the authority of the Executive in this area be correspondingly curtailed; and

(2) That the Congress should develop mechanisms for preventing undue injury to U.S. firms through import competition, such as in proposals to require clearer marking of foreign goods to identify the country of origin; to provide adequate tariff protection, and to require that the Treasury Department complete its investigations into complaints of dumping within a shorter period of time than is now the practice.

In connection with the foregoing, it must be noted especially that members have expressed approval in many Mandate polls of measures which would base tariffs on differentials in wage costs between foreign and U.S. industries, in each line of manufacturing.

Finally, we would note that in view of our interest in foreign trade, the Senate Commerce Committee under the chairmanship of the Honorable Warren G. Magnuson, twice commissioned our vice president, Mr. George J. Burger, to act as its unofficial special consultant in investigating small business export opportunities during two trips, made at personal expense, through the EFTA and Common Market countries.

With all best wishes.

Sincerely,

C. WILSON HARDER, *President.*

INLAND ALKALOID, INC.,
Tipton, Ind.

COMMITTEE ON U.S. FOREIGN TRADE POLICY AND PRACTICES,
Washington, D.C.

GENTLEMEN: It is with the understanding that your committee has the ambitious goal of exploring all aspects of the U.S. trade structure and the administration of the trade agreements program, that we are writing.

We are a small corporation at the same location since 1917, basic in two products classified as alkaloids; namely Pilocarpine and Scopolamine. We are the only domestic manufacturer of these alkaloids. Raw materials for their manufacture are imported by us. Jaborandi leaves from which Pilocarpine is extracted is native to Brazil, South America. Duboisia from which Scopolamine is extracted is native to Australia. It is not possible to purchase these raw materials on an assayed basis, therefore, there is no guarantee as to the number of ounces of finished material that will be obtained from 1 ton of the crude drugs shipped. Normally, Jaborandi leaves yield 180 ounces to the ton. Duboisia leaves yield from 64 to 144 ounces to the ton. For briefness sake, we shall confine our remarks to Pilocarpine.

It is our understanding that it was the question of chemical tariffs that had threatened to block the 4-year effort of the Kennedy round negotiations and at the last minute the bad compromise for the United States and good compromise for Europe was made.

The lowering of the tariff on our basic products have had harmful effects on our business. It appears that we are destined to turn our domestic market over to the European suppliers. We are told that the Israeli Government pays a premium on exports. This coupled with the apparent willingness of their representatives in this country to quote at very low prices in order to establish first contacts with the trade, has caused us to lose old established accounts.

For your consideration, we think it appropriate to list below figures taken from our records covering our latest run of 45 tons of Jaborandi leaves from which a yield of 170 ounces per ton was obtained. The figures shown, we believe, would be approximate to those of the European manufacturer in regard to the cost of material and freight since they must import the same as we. Our purpose is to show the cost involved before finishing Pilocarpine to its crystalline form and specifications.

Jaborandi	$12,481.80
Ocean freight	3,652.00
Inland freight	1,759.62
Customs	44.80
Insurance	107.05
Solvents	1,467.75
Bank charges	7.80
Total	19,520.82

The total divided by the yield, known in this instance, gives us a cost of $2.551 per ounce before finishing begins which is a separate operation. During 1967 European exporters forced us to a selling price, 50 kilo quantities of $3.48 per ounce, delivered New York.

Perhaps it is too late for anything to be done to alleviate our situation, but we appreciate the fact that your committee is exploring all aspects of the trade structure and the administration of the trade agreements program. We wanted to be on record as having told the committee just how the lower tariffs have affected us.

Very truly yours,

GLENN T. BOYER,
Secretary-Treasurer.

ELSMAN, YOUNG, O'ROURKE & ROGALLE,
Detroit, Mich.

Re Public Law 480 and the small businesses.

Mr. THOMAS VAIL,
Chief Counsel, Committee on Finance,
New Senate Office Building, Washington, D.C.

DEAR MR. VAIL: This is in response to your letter to me of September 27, 1967, regarding the legislative oversight review of U.S. trade policies.

Our firm represents a small commodity exporter, mainly dealing in rice exports, and we would like your committee to consider our concern under topic 14, "Commodity Agreements."

We would like an investigation of the Public Law 480 program to determine why it is that so few companies (five or six) get, from our observation, over 90 percent of the Public Law 480 rice business and nearly equivalent amounts of other Public Law 480 commodity business. It is almost impossible for the small businessman exporter to get a share of such business, despite his efforts, as we will be glad to document and/or testify to.

The importance it seems of this is that (1) small business is being squeezed out of yet another area where it could add to a competitive economy and otherwise avoid the trend toward bigness in our society: (2) five or six large firms sharing such massive business provides too many opportunities for unfair and collusive practices to develop, as we have suspicioned and have some evidence to at least be examined by your committee, and (3) price and cost competition is threatened.

Thank you for your attention to this matter.

JAMES L. ELSMAN.

APPENDIX

U.S. SENATE,
December 12, 1967.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance,
Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: I am advised by the staff that the compendium on the administration of our trade laws will go to the printer very shortly. It occurs to me that the reason for the compendium and the purpose of the subsequent hearings should be brought into sharp focus. This could be accomplished if you would include introductory remarks along the lines of your committee announcement initiating the review. If you do include such remarks it might be helpful if following them, there appeared the memorandum that I supplied the committee on February 15 in which memorandum I briefly pointed out the need for this review.

Sincerely,

EVERETT MCKINLEY DIRKSEN.

THE NEED FOR INVESTIGATION AND PUBLIC HEARINGS BY THE SENATE FINANCE COMMITTEE BY WAY OF LEGISLATIVE OVERSIGHT OF THE ADMINISTRATION OF U.S. CUSTOMS, TARIFF, AND TRADE AGREEMENTS LEGISLATION

On January 18, 1967, the chairman of the Committee on Finance, U.S. Senate, the Honorable Russell B. Long, delivered an address before the Economic Club of New York in which he declared that "our trade policies need a thorough new look, and some hardheaded American businessmen are needed to devote a great deal of independent thought and study to the overall program."

The chairman also made a statement on the floor of the Senate on February 3 concerning our Nation's foreign trade policy in which he declared that the developments thus far in the Kennedy round and dissatisfaction with the Antidumping Act and other customs and tariff matters "are dramatic evidence of the necessity for a thoroughgoing inquiry into our foreign economic policy during the 90th Congress." The minority leader of the Senate, in an address delivered in New York on December 3, also called attention to the need for Congress to "restore some semblance of fairness and balance to our foreign trade policy and procedures."

The principal congressional attention to foreign economic policy in recent years has been centered on the delegation or extension of authority to the President to enter into trade agreements providing for a reduction in U.S. rates of duty.

A study of U.S. foreign trade data for recent years prompts the conclusion that the United States has not received actual reciprocity in trade benefits in trade agreement negotiations conducted under the auspices of the General Agreement on Tariffs and Trade. Worse, it seems clear that the Congress has been misled as to the actual status of our merchandise balance of trade.

MISLEADING REPORTS OF THE EXECUTIVE BRANCH CONCERNING THE U.S. BALANCE OF TRADE

According to reports released by the Department of Commerce on January 25, 1967, the Nation's balance-of-merchandise trade for the year 1966 showed an export surplus of $3.4 billion, based on the following figures:

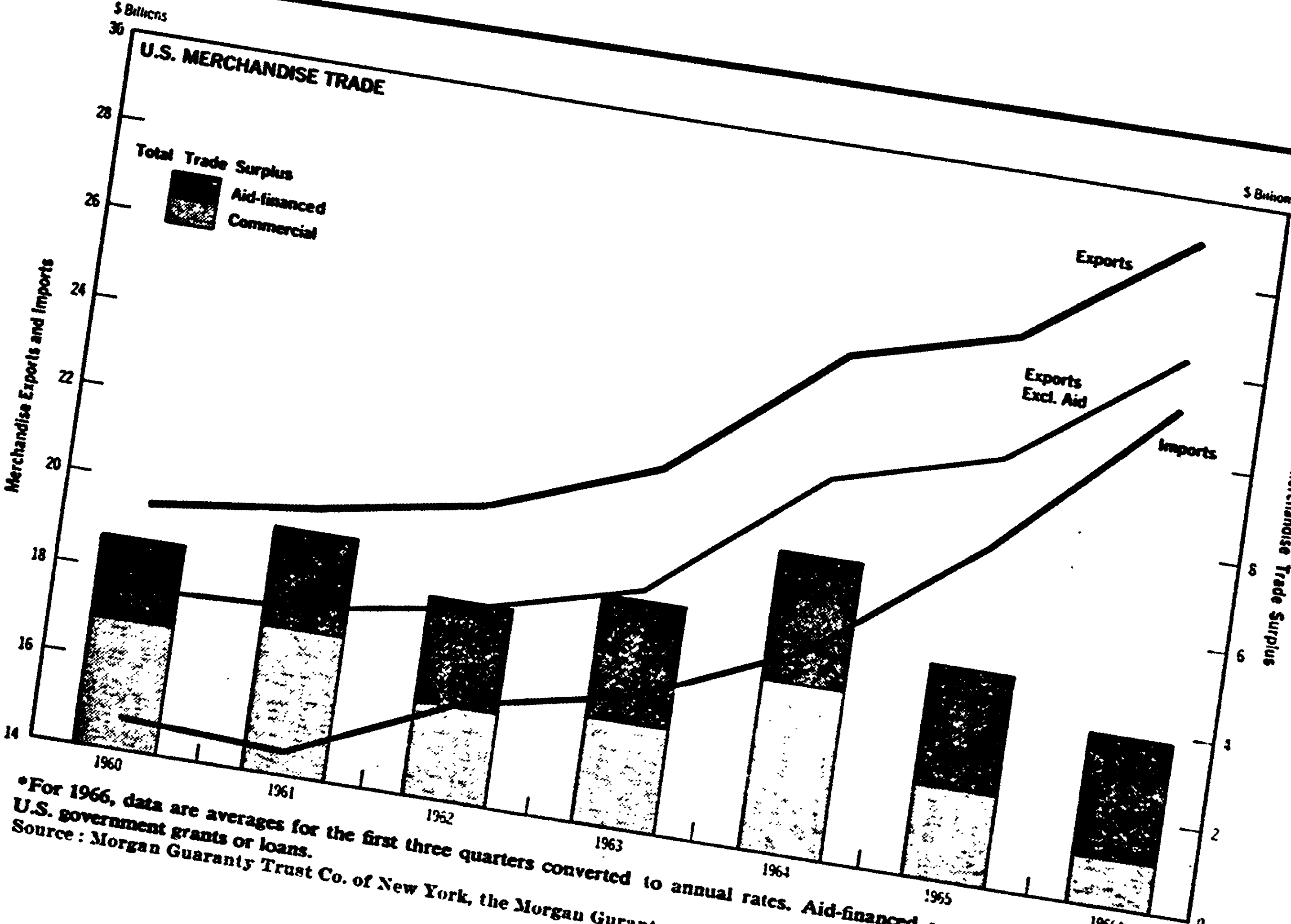
	Millions
Exports of domestic merchandise (excluding defense shipments)	$28,958.6
General imports of merchandise	25,550.3
Balance of merchandise trade	3,408.3

A substantial part of the exports, however, were noncommercial, being financed by the U.S. Government. For the first 9 months of 1966, exports financed by the U.S. Government totaled $2,214 million.[1] Estimating the fourth quarter of the year at the same rate as the first three quarters, the total of Government-financed exports for 1966 was approximately $2,952 million. This compares with $2,768 million Government-financed exports for the year 1965.

If these Government-financed exports are subtracted from the total exports reported by the Department of Commerce, the favorable trade balance, on a commercial basis, shrinks to $456 million.

The U.S. balance of trade on a commercial basis in 1966 was the lowest of the past 7 years. This is shown by the following chart:

[1] Merchandise exports financed by U.S. Government grants and capital outflows as reported by U.S. Department of Commerce, Survey of Current Business, December 1966, pp. 24, 25 (cf. line A28, p. 25).



*For 1966, data are averages for the first three quarters converted to annual rates. Aid-financed exports are those entailing U.S. government grants or loans.
Source : Morgan Guaranty Trust Co. of New York, the Morgan Guranty. Survey, January 1967.

Even the $456 million commercial export surplus figure is misleading. The practice of other nations is to record the value of their imports on a c.i.f. rather than an f.o.b. origin basis. Thus, if we are to compare the commercial balance of merchandise trade of the United States with that of other nations, our import figures should be converted to a c.i.f. basis.

On February 7, 1967, the Tariff Commission released data based on an analysis of import entry documents for the year 1965. As reported by the Commission, these data show that U.S. imports when reported on a c.i.f. basis would be equal to 110 percent of the value as reported by the Department of Commerce. If this adjustment is made to the data for the year 1966, the true commercial balance of trade of the United States for comparison with that of other nations would appear to be as follows:

	Millions
U.S. merchandise exports as reported by the Department of Commerce	$28,958.6
Less U.S. Government-financed exports	2,952.0
Commercial exports, net	26,006.6
Imports, c.i.f. (110 percent of the value as reported by the Department of Commerce)	28,105.3
U.S. balance of commercial merchandise trade	−2,098.7

Thus, it would appear that the net result of the years of trade agreement negotiations conducted by the executive branch of the Government is a steady worsening of our commercial balance of trade and, for the year 1966, an actual deficit in the order of $2 billion.

It is difficult to avoid the conclusion that our trade agreement negotiations in the past have not been reciprocal. The results appear contrary to the representations which have repeatedly been made by the executive department to the Congress in connection with foreign trade legislation. It would seem to be a matter of serious concern that the type of sweeping across-the-board reductions in duty being pursued by the United States in the Kennedy round could have an even worse effect on the trade position of the United States in future years.

Domestic industries have increasingly sought the intervention of the Congress in recent years against the disruptive effects of rapidly increasing imports, and they have called attention to the balance-of-payments consequences to the Nation of the trends of increasing imports and declining exports. The situation of these industries, including several of the Nation's basic industries, may indicate that in the administration of the customs, tariff, and trade agreements laws of the United States, there has been a lack of balance and a one-sidedness in judgment which has reduced the protective effects of our domestic customs, tariff, and trade agreements legislation for domestic industries while exaggerating or "liberalizing" the administration of these laws for the benefit of importers of foreign-produced goods.

A careful investigation of the administration of the laws in each of these vital areas, which in totality make up the legislative expression of our foreign economic policy, should be conducted and completed prior to any consideration of a renewal or enlargement of the President's authority to enter into trade agreements for the modification of U.S. duties or other customs provisions.

It would appear that the Committee on Finance may have an exceptional opportunity during the next several months to devote extended consideration to these topics. While corrective legislation in the area of customs, tariffs, and trade agreements normally originates in the House of Representatives, an extremely useful service would be rendered to the Senate and the House if the Committee on Finance could take advantage of the present opportunity to carry out its responsibility for legislative oversight of the customs, tariff, and trade agreement laws of the United States by hearing, investigating, and reporting on the administration of these laws and the necessity or desirability, if any, of administrative reform including appropriate changes in the basic legislation itself.

Such a report should prove to be of exceptional value to both Houses of Congress in connection with any attention which the committees and the Congress are called upon to give an extension of the Trade Expansion Act or replacement of the program defined by that act with some other program responsive to the present and anticipated situation in the foreign commerce of the United States.

Accordingly, it is recommended that the Committee on Finance schedule public hearings on, and authorize appropriate staff investigation of, the following topics:

1. The prenegotiations safeguards of the Trade Expansion Act (19 U.S.C. secs. 1814–1845): Repeal of congressional policy by administrative fiat

The Trade Expansion Act repealed the "peril point" provision of the trade agreements legislation under which the Tariff Commission as a prerequisite to trade agreement negotiations prior to the Kennedy round investigated, determined, and reported to the President the extent to which the rates of duty on articles to be considered in the negotiations could be reduced without causing or threatening serious injury to domestic industries.

To allay the concern of domestic industries and Members of the Congress concerned with their welfare, there was set forth in the Trade Expansion Act an elaborate procedure for public hearings and Tariff Commission advice to the President concerning the probable economic effect of modifications in U.S. duties. The President was required to receive and consider such advice prior to entering into trade agreement negotiations.

Notwithstanding these provisions and the assurances which accompanied their enactment, the administration participated in a meeting of the Ministers of the GATT member countries in May of 1963 and agreed to a resolution providing for linear (across-the-board) reductions in duty of 50 percent on all industrial products subject only to a *bare minimum of exceptions*, which exceptions were subject to confrontation and justification, and excusable only on the grounds of overriding national interests.

This commitment was made by the executive branch approximately 1 year prior to the date upon which the Tariff Commission's report of the probable economic effect of reductions in duty was submitted to the President. This commitment was renewed at the meeting of Ministers in May of 1964 at about the time the President received the Commission's report, but clearly well in advance of the date on which he or his delegates could have seriously studied and evaluated the Commission's advice.

U.S. negotiators have publicly stated that the U.S. "exceptions" list was indeed kept to a "bare minimum," and that the United States expected to reduce this "bare minimum" even further in the course of the negotiations. Evidently, therefore, the policy of careful evaluation and selectivity in the determination of articles to be placed in the negotiations, understood and intended by the Congress as a prerequisite to negotiations, has been ignored, or taken so lightly as to amount to a virtual dead letter in the Trade Expansion Act.

2. Tariff adjustment (19 U.S.C. secs. 1901, 1902, 1981, 1982): The total inoperativeness of the escape clause

At the urging of the executive branch, the Congress repealed the escape clause provision of the trade agreements legislation under which Presidents Truman, Eisenhower, and Kennedy had made a few highly selective withdrawals of tariff concessions found by the Tariff Commission to have caused or threatened serious injury to domestic industries, and substituted in its stead the so-called adjustment assistance provision of the TEA.

Under the 1962 act, such assistance might take the form of tariff adjustment, assistance to workers in the form of extended periods of unemployment compensation and retraining and relocation allowances, or tax incentives or loans to firms requiring such help in order to transfer their activities to other lines of endeavor. The criteria for relief in any case was the same, a finding by the Tariff Commission that due in major part to a tariff concession imports had increased and were a major factor in causing or threatening serious injury to a domestic industry, group of workers, or firm.

Thus far in 19 cases, involving nine industries, five groups of workers, and five firms, the Tariff Commission has uniformly refused to make the necessary findings and administration officials have acknowledged that the criteria of the act impose too severe a standard.

3. Cancellation of past escape clause relief [19 U.S.C. sec. 1981(c)(1)(A)]: Has Administrative Policy Made a Sham of Factfiding?

When the Trade Expansion Act became law, there were in effect a handful of cases in which tariff concessions had been wholly or partially withdrawn to correct the serious injury which domestic industires had suffered under rising imports. The executive branch has now canceled in whole or part all of these escape clause actions except two textile cases as a part of or prelude to the negotiations in the Kennedy round.

The following industries are the victim of decisions which appear to have been based solely on negotiating policy rather than an objective consideration of the economic merits of the industry's case: clinical thermometers, stainless steel flatware, lead and zinc, flat glass, and jeweled watches.

4. The National Security Amendment (19 U.S.C. sec. 1862): The total inoperativeness of the Finance Committee's particular remedy

In the Trade Agreements Extension Act of 1955, the Committee on Finance fashioned a particular remedy to permit the regulation of imports affecting basic industries in a manner consistent with the national security. This amendment was carried forward in the subsequent Extension Act of 1958.

More than 20 cases have been brought before the Office of Emergency Planning (and its predecessor agencies), made the investigating agency by the statute. In only one, petroleum and petroleum products, acted upon during the Eisenhower administration, has relief been granted. Though import competition has been found to be significant in the case of a number of industries suffering economic distress, the Office of Emergency Planning has in each instance "explained away" either the national security importance of these basic industries or of the imports as a contributing cause of the industry's distress. One case, textiles and textile manufactures, remains undecided after nearly 6 years.

In some instances the Director of the Office of Emergency Planning has cited the opinion of the State Department that import restrictions would affect the national security interests of the United States as seen in the international relations of the United States as a reason for denying relief.

Whereas the Finance Committee intended the national security provision as a remedy applicable to a number of basic industries, it has been converted through the policy imperatives of the executive branch into virtually a dead letter of the law.

5. Tariff Commission investigations and reports of the customs laws of the United States, tariff relations of the United States and other countries, cost of production and other facts pertaining to competition between domestic and foreign products in the principal markets of the United States (1019 U.S.C. sec. 1332)

The Tariff Commission was established as a quasi-legislative body which would, through its investigations and reports, inform and assist the Congress in its consideration of tariff and trade legislation. To this end the Congress directed the Commission in section 332 of the Tariff Act of 1930 to carry out on a continuing basis a variety of investigations and to make reports thereon to the Congress on a variety of topics.

These relate to the effect of customs laws on the industry and labor of the United States, practices of foreign countries through commercial treaties, preferential provisions, economic alliances, export bounties, and preferential transportation rates, and dumping which affect competition between U.S. and foreign industries; costs of production of U.S.- and foreign-produced articles including the import costs of articles competitive with U.S. production, and other facts bearing on competition between articles of U.S. and foreign origins in U.S. markets.

There has been little attention by the Commission to these responsibilities in recent years. As a result, the Congress has been disabled in considering customs, tariff, and trade agreement legislation. Not in recent years have the chairman or members of the Tariff Commission been interrogated by the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives. Information submitted in the name of the Commission to these committees has frequently been in the form of unsigned memorandums which may not in fact represent the carefully considered judgment of the

Commission's staff of industry specialists and of the Commissioners themselves.

In particular, the Commission's continuing responsibilities to investigate and report on the topics specified in section 332 as a means of keeping the cognizant committees of the Congress fully informed of developments in customs, tariff, trade agreements, and foreign trade practices and competitive conditions between U.S. and foreign industries relating thereto have not been carried out. This makes it difficult for the committees to become knowledgeable in these matters and to keep abreast of significant changes in the relationship of U.S. and foreign industries and the position of the United States in world trade.

The Congress has been placed in the position of reacting to initiatives from the executive branch or foreign countries and industries rather than being forehanded with legislation which would enable the United States to deal effectively with developments in world trade. The acute disparity between the growth rate of U.S. imports and U.S. exports and the sharp decline in the balance of trade of the United States, especially in trade conducted on a commercial basis, is one consequence of this situation.

The rules for and manner of administration of customs valuation and of the basic remedies, such as antidumping and countervailing duties which are designed to prevent the circumvention or avoidance of the amount of duties intended by the Congress as revenue and domestic protection measures, have fully as great an impact on total duties collected as the numerical level of the rate of duty itself. Problems of administration in the customs valuation, antidumping, and countervailing duties areas match the seriousness of the negative record of administration of the tariff adjustment provisions of the Trade Expansion Act in recent years.

1. The Antidumping Act (19 U.S.C. sec. 160 et seq.): The quality of its administration and appropriate amendments to make the act a more effective deterrent against unfair practices in the import trade

Under the leadership of the then Senator Humphrey, a large number of the Members of the Senate have in recent years requested substantial amendments in the substance and procedure of the Antidumping Act. In the 89th Congress, S. 2045, introduced by Mr. Hartke for himself and 31 other Senators, is representative of this effort.

2. The Countervailing Duties Statute (19 U.S.C. sec. 1303): Its nonadministration and the need for legislative direction to restore the act as a check against the subsidization of exports by foreign countries

The principal way in which foreign countries now pay or bestow, directly or indirectly, bounties or grants upon the production or export of articles imported into the United States is through the remission of the so-called value added or turnover taxes used by those governments as a principal means of raising tax revenues. By interpretation the Treasury Department is refraining from imposing countervailing duties in such instances contrary to the ruling of the United States Supreme Court in *Downs* v. *United States*, 187 U.S. 496, which held that a tax imposed upon the production of a commodity which is remitted upon the exportation of this commodity is, by whatever name the practice may be disguised, tantamount to a bounty upon exportation subject to countervailing duties.

3. Customs valuation (19 U.S.C. secs. 1401a, 1402): Eleven years' experience under the so-called simplification of customs valuation rules; the need to reestablish valuation rules designed to check undervaluation

Eleven years ago the Congress enacted the Customs Simplification Act of 1956 on the urging of the executive branch. Two basic changes were made: the use of the higher of foreign (home market) or export value was eliminated as the primary valuation basis, export value becoming the principal valuation base; and the terms used in defining the various valuation bases were themselves defined.

The use prior to 1956 of the higher of foreign or export value as the primary valuation base accomplished three important results: It was an automatic check against undervaluation; it provided the customs service with a continuous body of foreign price information, thereby facilitating the administration of the Antidumping Act; and it prevented foreign exporters from achieving a measure of control over the actual amount of duties collected in the United States since the price they charged for exports to the United States became the basis of valuation for customs purposes only where such price was higher than the internal market price.

(In other words, prior to 1956 it was more difficult for foreign exporters to manipulate both the home market and export price in order to predetermine U.S. duty collections than the situation which obtained after 1956 in which the exporter's actual price on goods sold to the United States tended to become the principal basis for customs valuation.)

When the Customs Simplification Act of 1956 was considered in the Senate, the then majority leader, Senator Lyndon Johnson, in presenting and explaining the bill, stated that "Treasury representatives advised the committee that there would likely be more effective enforcement of the antidumping law" under the new act because "foreign value information would continue to be required on customs invoices" so that there would be available "the information needed to initiate full-scale investigations whenever dumping was indicated." (Congressional Record, July 18, 1956, p. 12064.)

Unfortunately, following the enactment of the Customs Simplification Act of 1956, the administration of the Antidumping Act appears virtually to have collapsed inasmuch as there have been very few instances in which antidumping duties have been imposed notwithstanding many hundreds of complaints. In fact, there have been less than a dozen cases in which antidumping duties have actually been imposed out of several hundred complaints filed since 1956.

Equally disturbing in the opinion of domestic industries is the probability that customs personnel at the ports have, under pressure of the mounting workload of the sharply rising number of import transactions, settled into an administrative practice in which the price appearing on the commercial invoice covering the goods imported is accepted as evidence of the export value for customs valuation and duty purposes. This value is oftentimes significantly lower than home market prices which, under the definition of foreign value applicable prior to 1956, would as evidence of "foreign value" represent the basis for customs valuation for duty purposes.

Thus it is strongly feared that domestic industries are being injured not only by the nonadministration of the Antidumping Act, but also by the reduction in the amounts of duties collected as a result of the acceptance of deflated prices as a basis for customs valuation under the export value rule.

For the past 11 years domestic industries have suffered a reduction in duty as a result of the change in customs valuation rules (in addition to the reductions in duty flowing from the tariff cuts carried out under the trade agreements program), without any real protection from dumping which a differential in price between home market and export prices classically entails.

EVERETT MCKINLEY DIRKSEN.

February 15, 1967.

[From the Weekly Compilation of Presidential Documents, Mar. 27, 1967]

THE PRESIDENT'S SPECIAL TRADE REPRESENTATIVE

STATEMENT BY THE PRESIDENT ON THE SWEARING IN OF AMBASSADOR WILLIAM ROTH, MARCH 24, 1967

The fortunes of the Kennedy round will greatly influence the future of international trade. Agreement by the United States and other trading nations on tariff reductions providing new opportunities and stimulation for productive enterprises everywhere will open the path to a world economy of abundance.

On the other hand, if such reductions cannot be managed, if narrow special interests prevail, divisive forces may gain the upper hand, with grave damage to the economic and political fabric of the world community.

William Roth combines all the assets this Nation should bring to bear on so important a problem.

He was Governor Herter's deputy for more than 3 years. He has had a part in every step on this long road. He knows his fellow negotiators, and they know and respect him.

Ambassador Roth has just returned from Geneva, where he reports that agreement has been reached on a timetable for bringing negotiations to a successful conclusion. This is good news for all nations. The world may be certain that the United States will be ready to move as quickly and imaginatively as our partners.

Successful conclusion of the Kennedy round will not mark the end of the drive toward trade liberalization. Ambassador Roth will begin preparations for a long-range study of our foreign trade policy. He will recommend such legislative and other measures as may be required.

Ambassador Roth will focus this study on ways of improving the trade positions of the developing countries as well as further reduction of trade barriers between industrialized nations.

A Public Advisory Committee will assist Ambassador Roth and will consult with Members of the Congress and other interested and knowledgeable people both here and abroad.

NOTE: Ambassador Roth was sworn in shortly after 11:30 a.m., on March 24, in the President's Office at the White House.

[From the Department of State Bulletin, Jan. 1, 1968]

THE FUTURE WORK PROGRAM OF GATT

(By William M. Roth, Special Representative for Trade Negotiations) [1]

Five months after the completion of the Kennedy round, it seems strange to be here in Geneva again discussing our mutual problems in trade. But perhaps it is not so strange when we appreciate the two-fold nature of our pilgrimage. We are here first to celebrate the past and secondly to map the future.

The past is the expanding flow of trade throughout the world under the aegis of the GATT. The past is a series of trade negotiations which has immeasurably reduced the barriers to world commerce. But above all else, the past is the leadership of Eric Wyndham White, the Director General of this great institution.

A great deal has already been said both in this room and others about the achievements and contributions of the Director General. Let me add as simply and shortly that I would like to record the deep gratitude of the U.S. Government to Eric Wyndham White for all that he has done both for our country and for the world over the period of his devoted service. Let me say on a personal basis—as many of my colleagues here could do as well—that without his firm hand, his intuitive sense of timing, and his magical compromises, the Kennedy round in those last desperate days and hours could have failed—and failed miserably.

So much for the past. The Director General would be the first, I believe, to say, Leave off praising our history, let us discuss the present and more particularly the future—both immediate and in the longer run. GATT after all should be the place to work. What, therefore, is our future?

First, we must take all practical measures to implement fully the results of the Kennedy round.[2] In this respect I can report that the United States administration intends, within the near future, to send the American Selling Price package to the Congress for its consideration. We have now signed the International Grains Arrangement and are this week readying that for consideration by the United States Senate.

On July 1 we expect to implement new regulations consonant with the recently negotiated antidumping code. Finally, this coming January 1, we expect to implement the first stage of the Kennedy round concessions and to implement without staging concessions on a number of products of interest to the developing countries.

It is essential that all our negotiating partners also move ahead to full implementation as rapidly as possible.

But there is another aspect to implementation—the negative side. This is the need for all contracting parties firmly to resist the internal pressures each of us face for restrictive trade measures. These pres-

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[1] Made from the special ministerial meeting at the 24th session of the Contracting Parties to the General Agreement on Tariffs and Trade at Geneva on November 23.

[2] For a summary of the Kennedy round agreements, see BULLETIN of July 24, 1967, p. 95.

sures exist in the United States, as you know full well: but it is, as I hope you also know, the firm policy of the President and his administration to oppose these efforts strenuously, firmly, and continually. As you probably have noted in the press within recent weeks, enlightened and influential industrial and agricultural groups are already mobilizing strongly in support of our position. But I would mislead you if I did not acknowledge that we shall continue to face a difficult period in coming months and indeed throughout 1968.

I am convinced that we can win this battle for expanding world trade. We believe that the American people will not permit the destruction of a trade policy which has benefited them so well for so many years. But we are not alone in facing such internal pressures. Protectionism is endemic in all countries. All governments must be equally firm in resisting the demands of special interests. The trade of my country has suffered in recent months from restrictive devices in other countries. Trade protectionism, like many sicknesses, is highly contagious.

Now for the longer future: We all recognize, I believe, that no major country is prepared so shortly after the Kennedy round to embark on a major trade initiative. Neither do we believe, however, that we can cease the pursuit of expanding world commerce. In my country, therefore, we have already initiated a trade policy study to gain better understanding of the remaining problems we face. Others are undoubtedly doing the same. Our work in the GATT in the months ahead accordingly should be directed toward complementing and phasing together these individual national efforts. We need a live and active forum in which our individual trade concerns can be examined in their global context.

The question we all must study are varied and complex. Let me mention a few. First: nontariff barriers. As tariffs are reduced, these barriers take on an increasing significance. Indeed, they are already a matter of sharp concern to most of us.

We think the first need is for an inventory of these restrictions. We do not yet have sufficient understanding of their scope, their significance, and their intricate workings. But a useful examination will require positive effort by all nations, because many of these restrictions relate to basic national policies and practices. When this inventory is complete, the contracting parties should analyze their trade effects and examine various possible negotiating techniques which might be applied to them. In the U.S. preparation of such an inventory is already underway.

Agriculture is another area of major and increasing concern to us. It is widely recognized that trade liberalization in agriculture has lagged behind that in industry and that the problems we face are complex and have deep social and political content. In most countries farm incomes are only half those received by workers in other economic sectors. To boost incomes, governments intervene with price and income support policies, and this in turn has a serious impact on trade. We know it will not be easy to deal with problems involving sensitive elements of national policy. Nevertheless, they must be tackled. We therefore support the idea of establishing an agriculture committee.

But there are also immediate and specific problems before us. The Governments of New Zealand, Australia, and Denmark have mentioned one of them;[3] and there are others as well. These critical matters pose a challenge which the GATT cannot ignore. We must find new ways and perhaps more flexible means of dealing with them as they occur. But I also believe that solutions to individual problems must be sought in the light of our longer range goals.

In placing the emphasis I have on nontariff barriers and on agriculture, I do not mean to imply that import duties on industrial products are no longer a problem. That is definitely not the case. There are still many products on which tariffs are serious obstacles to trade. Before the next step forward, we must analyze the level and structure of tariffs which will remain after the Kennedy round. But we shall also explore new techniques with energy and imagination, including the possibility of dismantling tariff and other trade barriers within individual industrial sectors on a worldwide basis.

Another serious problem area is the relationship of countervailing duties and subsidies. The United States has already raised this question in the plenary under agenda item 16. At that time, we emphasized that it was essential to undertake a broad-ranging examination of all aids to exports along with countervailing duties, since one could not be considered in isolation from the other. We are very much concerned about the consequences of conflicting policies and practices in this area, both in agriculture and industry. This broad and complex area of fiscal adjustment is filled with danger for all of us where practices conflict. If order is to be brought into this field, we must have a clear idea of the nature and effects of these rapidly expanding practices, their relation to one another and to the rules by which we carry on our trade.

Finally, GATT must now work—and work hard—to find new ways to help the developing countries expand their export earnings. The developing countries will, of course, realize substantial benefits from the Kennedy round, especially as their exports of semimanufacturers and manufactures begin to expand. But, their main problem at this time, and for several years ahead, must be in the area of exports of primary products. Difficult as it may be, the developed countries must work, must work to provide expanded opportunities in their markets.

In this connection, we must also recognize that the problem of expanding exports of the developing countries is by no means only a problem of eliminating barriers to trade. Equally as important is the need for developing countries to produce at competitive prices the kind of products for which there is a demand in world markets and to market these products effectively. The GATT International Trade Center, working with UNCTAD [United Nations Conference on Trade and Development], can play a very constructive role in the marketing area, and we strongly support the work of the Center.

Later, after further broad discussions in other forums among interested countries, the GATT will be called upon to deal with the possibility of a general system of preferential access to developed countries for the exports of developing countries. My nation has joined with a number of others to explore the feasibility of such a preference system and of some of the principles which might be embodied in it. Eventual

[3] Trademark in dairy products.

consideration of such a system of general preferences by the GATT will be one of the important tasks before us.

The work of the GATT will not, however, be confined only to the issues we can now foresee. New problems will undoubtedly arise from time to time, and we shall have to work together on them. One possible difficulty may arise out of the plan of some of the important trading countries in Europe to make significant changes in their tax systems. These will increase their border tax adjustments. We are seriously concerned, as we have indicated before, that these adjustments in certain cases adversely affect our exports. Should these fears prove in fact to be justified, we would expect to take up this matter in accordance with normal GATT procedure. If it becomes evident in the coming months that there is a general multilateral problem here, it might then become advisable for the contracting parties to give this kind of problem their attention.

There are of course basic continuing questions which require perhaps an even broader outlook than we have traditionally taken in the GATT. For example, the expansion of world trade must be accompanied by continuing improvement in the income of workers and in the working conditions of labor. We must recognize that unreasonable labor conditions, particularly in production for exports, create serious difficulties in international trade. This is an area which the contracting parties might wish to explore jointly with the International Labor Organization.

So much then for the future work of GATT. If there is perhaps an underlying theme that may be developing in our consultations over the last several days, it is that the trading nations of the world must press ahead patiently and imaginatively into an even broader expansion of world commerce. To do this, we need, both within our individual countries and within the GATT, to analyze in general and in specific terms the complex and deeply rooted barriers to trade that still exist. We must not use the words "general studies" to mask a failure to grapple with immediate and specific problems. Neither, however, can we forget that underlying the various complexities of trade there lie basic questions of policies that must be understood to be improved.

We learned, I think, in the Kennedy round how much intensive work was necessary before those final months of negotiations. Let us build then on that experience and do our work thoroughly and well in a positive and constructive spirit, so that the world may hold what it has now gained and move forward with new vigor in the years ahead.

[From the Federal Register, Dec. 15, 1967]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Docket No. 67-4]

FUTURE OF U.S. FOREIGN TRADE POLICY

NOTICE OF PUBLIC HEARING

Timetable. A. Requests to present oral testimony must be received by Friday, March 8, 1968.

B. Written briefs must be received by Friday, March 15, 1968.

C. Hearing begins Monday, March 25, 1968.

1. *Notice of public hearing.* Pursuant to section 3(b) (3) of Directive No. 1 of the Office of the Special Representative for Trade Negotiations (48 CFR 2023(b) (3)) and upon its own motion pursuant to section 2(d) of its regulations (48 CFR 211.2(d)), the Trade Information Committee (hereinafter referred to as the Committee) has ordered a public hearing to be held concerning the future of U.S. foreign policy.

2. *Subject matter of public hearing.* At the direction of the President, the Office of the Special Representative for Trade Negotiations is conducting a comprehensive study of U.S. foreign trade policy and will recommend such legislative and other measures as may be required. This study is focusing on ways to further expand trade among industrialized and developing countries.

The Office will seek the views and assistance of members of Congress, of representatives of industry, agriculture, and labor, and of other interested parties. The views of foreign governments will also be taken into account.

The hearing to be held by the Committee is for the purpose of providing a full and detailed exposition of [illegible] views on all aspects of U.S. foreign trade policy. The following list of topics is illustrative of those on which interested [illegible] views.

(a) *General.* (1) The [illegible] United States in world trade and the prospects for [illegible].

(2) Foreign trade and U.S. foreign [illegible].

(3) Foreign trade and U.S. [illegible].

(b) *Trade of the [illegible]* [illegible] of post Kennedy Round tariffs [illegible] States and of the other major industrialized [illegible].

(2) The impact on trade of [illegible] and programs in the United States and in the [illegible] and consuming countries.

(3) The impact of regional [illegible] trading arrangements.

(4) East West trade.

(c) *Measures that may [illegible] trade.* (1) Quantitative restrictions.

(2) Licensing.

(3) State trading and state monopolies.

(4) Government procurement policies and practices.

(5) Variable import levy systems.

(6) Customs classification and valuation practices.

(7) Documentation and customs procedures.

(8) Border tax adjustments.

(9) Subsidies and countervailing duties.

(10) Internal restrictions affecting marketing and distribution.

(11) Restrictive business practices.

(12) Sanitary, safety, health, and similar restrictions.

(d) *Future trade negotiations.* (1) Item-by-item negotiations.

(2) Linear negotiations.

(3) Sector (industry or commodity group) negotiations.

(4) Tariff harmonization.

(5) Participation in free trade areas.

(6) Nontariff barrier negotiations.

(e) *Trade policies particularly affecting the developing countries.*

(1) Tariff preferences.

(2) Commodity arrangements.

(3) Regional integration.

(4) Tariff structures and their effect on the exports of the developing countries.

(5) Relationship between trade policies and economic development.

(f) *Problems of adjustment.* (1) Impact of imports.

(2) Disparate labor standards.

(3) Adjustment assistance.

(4) "Escape clause" relief.

(g) *Trade promotion.* (1) Export incentives.

(2) Export financing.

(3) Export programs (such as trade fairs and trade missions).

(h) *Administration of trade policy.* (1) Organization and administration of U.S. trade policy.

(2) The roles of the General Agreement on Tariffs and Trade, the Organization for Economic Cooperation and Development, and the United Nations Conference on Trade and Development.

This list is illustrative and interested parties are invited to submit views on any matter relating to U.S. foreign trade policy or to the trade policies of other countries, which in their judgment should be considered.

In order to have maximum utility, submissions should be specific and should include relevant statistics and their source. To the maximum extent possible, information on nontariff barriers should refer to specific instances and countries and should give all details, including an assessment of their impact on trade. Any applicable statutes or regulations should be cited Confidential material may be submitted in accordance with paragraph 6 below.

3. *Time and place of public hearing.* The public hearing will commence in Washington, D.C., on Monday, March 25, 1968.

4. *Requests to present oral testimony.* All requests to present oral testimony must be received by the Chairman of the Committee not later than Friday, March 8, 1968.

Requests to present oral testimony must conform with the regulations of the Committee (48 CFR Part 211). Requests shall be submitted in an original and three copies and must include the following information:

(a) The name, address, and telephone number of the party submitting the requests;

(b) The name, address, telephone number, and official position of the person submitting the request on behalf of the party referred to in subparagraph (a):

(c) A list of the topics on which the party intends to submit views and a brief indication of the interest of, and the position to be taken by, the party;

(d) The name, address, and telephone number of the person or persons who will present oral testimony; and

(e) The amount of time desired for the presentation of oral testimony.

In order to facilitate the scheduling of the hearing it is especially important that each party making a request to present oral testimony specify the topics on which it is desired to submit views.

Each party whose request is granted will be notified of the date on which he is scheduled to appear, the amount of time allotted for his presentation, and the place of the hearing. The Committee reserves the right to restrict the time allotted for the presentation of oral testimony. Any party whose request is denied will be notified of the reasons therefor.

5. *Submission of written briefs.* Any interested party may submit a written brief to the Committee concerning the subject matter of the public hearing. Each party presenting oral testimony must submit a brief. All briefs must be received not later than Friday, March 15, 1968.

6. *Information exempt from public inspection.* Parties are encouraged to support their briefs with all available information, including material that may be of a confidential nature. In this regard, parties are referred to sections 7 and 8 of the regulations of the Committee (48 CFR 211.7 and 211.8) for the provisions concerning information exempt from public inspection. These regulations will be provided upon request.

Requests to present oral testimony should contain no confidential information, and any requests marked "For Official Use Only", or similarly marked, will not be accepted. In addition, every written brief must present in nonconfidential form, on separate pages, a statement of the party's position and supporting arguments.

7. *Public inspection of written materials.* Subject to the regulations of the Committee, and in particular sections 7 and 8 (48 CFR 211.7 and 211.8), all written materials filed with the Committee in connection with the hearing will be open to public inspection, by appointment, at the office of the Chairman, Room 729, 1800 G Street NW., Washington. D.C., 20506. Transcripts of the hearing will also be available for inspection, but not for reproduction. Transcripts may be purchased from the official reporter.

8. *Communications.* All communications with regard to the hearing should be addressed to: Chairman, Trade Information Committee, Office of the Special Representative for Trade Negotiations, Room 729, 1800 G Street NW., Washington, D.C. 20506.

LOUIS C. KRAUTHOFF II,
Chairman.

[F.R. Doc. 67-14624; Filed, Dec. 14, 1967; 8:50 a.m.]

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