S. HRG. 98-1222

# TELECOMMUNICATIONS TRADE ACT OF 1984

## HEARING

BEFORE THE

## SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

## COMMITTEE ON FINANCE

## UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 12, 1984

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# TELECOMMUNICATIONS TRADE ACT OF 1984

WEDNESDAY, SEPTEMBER 12, 1984

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

The committee met, pursuant to notice, at 9:36 a.m., in room SD-215, Dirksen Senate Office Building, Hon. John C. Danforth (chairman) presiding.

Present: Senators Danforth and Long.

[The press release announcing the hearing follows:]

[Press release No. 84-167, Aug. 15, 1984]

TELECOMMUNICATIONS TRADE ACT OF 1984

Senator John C. Danforth (R., MO), Chairman of the Subcommittee on International Trade, announced today that the Subcommittee would hold a hearing on a bill introduced by him, S. 2618, the Telecommunications Trade Act of 1984.

The hearing will be held on Wednesday, September 12, 1984, at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building.

This hearing follows one held by the Subcommittee on June 26, 1984, at which members received extensive testimony regarding the potentially far-reaching consequences for U.S. international trade precipitated by the restructuring of the Bell System. "As several witnesses testified," Senator Danforth said, "the AT&T divestiture decisions were made without regard for their trade consequences. The result is that the United States has unilaterally thrown its doors open to imports of telecommunications products from countries which have closed their markets to U.S. exports."

Senator Danforth pointed out that the purposes of the bill are to establish a negotiating framework within which U.S. negotiators will seek increased reciprocal trade in telecommunications products, and to revise the current tariff nomenclature applicable to imports of such articles in order to clarify and to facilitate data collection on trade in this sector. Witnesses at the hearing are asked to direct their testimony particularly to title I of the bill. Title I would authorize negotiations for trade agreements to harmonize, to reduce, or to eliminate barriers to trade in telecommunications products, and it would authorize the termination, withdrawal, or suspension of U.S. tariff rates on such products.

Senator DANFORTH. This is a hearing on S. 2618, the Telecommunications Trade Act of 1984, and we are happy to have three panels appearing today. The first panel consists of John J. McDonnell, Jr., group vice president, Telecommunications Group, Electronic Industries Association, and Mr. John Morgan, assistant to executive vice president, Legislation/Government Agencies, Communications Workers of America. Gentlemen.

Mr. McDonnell, thank you for being with us.

STATEMENT OF JOHN J. McDONNELL, JR., GROUP VICE PRESIDENT, TELECOMMUNICATIONS GROUP, ELECTRONIC INDUSTRIES ASSOCIATION, WASHINGTON, DC

Mr. McDONNELL. Good morning. Mr. Chairman, I am John J. McDonnell, Jr., group vice president of the Telecommunications Group of the Electronic Industries Association. I am testifying today on behalf of the Telecommunications Group which represents companies which account for 85 percent of U.S. production of telecommunications equipment. I appreciate this opportunity to appear before your subcommittee today. As I indicated in my testimony before this committee on June 26, the Telecommunications Group has endorsed the Telecommunications Trade Act of 1984. I reiterate that endorsement today.

It has come as something of a surprise to me that our support of this bill has been reported in some quarters as support by the U.S. telecommunications equipment industry for protectionist legislation. Our industry, as a group, are opposed to the erection of domestic barriers and foreign barriers as any industry group or association you are likely to encounter. We support this legislation because we want to open markets—not close them. Before this morning is over, you will hear a great deal of testimony I am sure about the implications of your bill, vis-a-vis GATT, and that is an issue that I would like to address at the very beginning of our testimony. First of all, we also support the principles of GATT. Unfortunately, we feel very strongly that GATT does not support the telecommunications industry.

And let me be very specific. There have been a number of negotiations on GATT including one in the late 1970's where we produced the agreement on the Government procurement code. In that agreement, virtually all of the signatories to GATT unilaterally withhold the telecommunications industry from the multilateral agreements that functioned under GATT. In other words, they closed their markets. Now, this had the net effect of closing 75 to 80 percent of the market for telecommunications equipment in those countries that took that position. It includes all of our major trading partners including Japan and the European Community. And it is this type of situation that caused us to negotiate the NTT agreement because the telecommunications industry had virtually been excluded from the principles of GATT.

Now, the NTT agreement has been functioning for several years, and it is this type of agreement that we hope your legislation will encourage other countries to emulate. This does not mean that we are completely happy with the results of the NTT agreement. As our written testimony will support, the results have been less than gratifying. This does not mean that this was not a good-faith attempt on the part of the Japanese and the American Governments to open up trade.

There are a variety of reasons why it has not achieved the results that we both had desired. Some of those reasons have to do with NTT's continued preferential treatment of their traditional suppliers, and other reasons are that our own manufacturers have been reluctant to enter the Japanese market to make the investment because many of them still perceive it as closed. Now, EIA is

working with our domestic manufacturers and with NTT to try to overcome this reluctance on the part of our American manufacturers to bid, and of course, we are also encouraging NTT to use more American equipment as they go out on procurement. However, that situation does not exist in the European Community.

In fact, Europe seems to be going in just the other direction. Not only do we not have the equivalent of an NTT agreement, all of the statements from the European Community would indicate that the intent to broaden the coverage of the closed market to include equipment which might be considered data processing and might be considered communications—some of the newer information technologies such as Teletex and Videotex. It is in this environment that we feel that we have no alternative but to seek legislation such as the Telecommunications Trade Act of 1984 if for no other reason than to give the executive branch of the Government the leverage to negotiate the same kind of open markets in these foreign countries that we have gratuitously offered in our own country. I would also like to address some of the issues raised by title II. There is a great deal of concern on the part of our cousins in the computer industry because some of the equipment which has been traditionally viewed as data processing has been included in the version of title II which appears in the bill, and we support that concern. It turns out that data communications is one of the few areas that is a gray area between computers and telecommunications, and it is one of the few areas—since it came along later in the game—where foreign entities have treated it basically as computer equipment in many instances, but some countries have treated it as telecommunications equipment and have subjected it to the same restrictions as they have subjected the traditional telephone, telex, and telegraphic procurements.

However, we feel that this might be a good time to accelerate our participation in the harmonized commodity code system. Perhaps that is an alternative which might be used in lieu of the title II that is inherent in your bill, is to accelerate this international agreement which is scheduled to be introduced in 1987, and perhaps we can use this as a vehicle to bring that forward in time. Thank you very much.

Senator DANFORTH. Thank you, sir. Mr. Morgan.

[Mr. McDonnell's prepared written statement follows:]

STATEMENT OF JOHN J. McDONNELL
Group Vice President
Telecommunications Group
on behalf of the
Telecommunications Group of the
ELECTRONIC INDUSTRIES ASSOCIATION

Mr. Chairman, I am John J. McDonnell, Group Vice President of the Telecommunications Group of the Electronic Industries Association. I am testifying today on behalf of the Telecommunications Group, which represents companies which account for 85 percent of U.S. production of telecommunications equipment. I appreciate this opportunity to appear before your Subcommittee today.

As I indicated in my testimony before the Subcommittee on June 26, the Telecommunications Group has endorsed S.2618, the Telecommunications Trade Act of 1984. I reiterate that endorsement today.

It has come as something of a surprise to me that our support of this bill has been reported, in some quarters, as support by the U.S. telecommunications equipment industry for protectionist legislation. The U.S. telecommunications equipment suppliers, as a group, are as opposed to the erection of domestic and foreign market barriers as any industry group or association one is likely to encounter in this country or overseas. We support this legislation because we want to open markets, not close them.

## The Need for Open World Markets

Our member companies support free trade and open markets for reasons which are admittedly based on self-interest. Those companies are highly competitive and are best able to thrive and grow in an environment of open competition in which they can bring their technical and innovative abilities to bear most

effectively. The U.S. International Trade Commission recently found that the U.S. telecommunications equipment industry is currently the world leader technologically.[1] The industry has an enviable record of product innovation and growth; the number of companies in the U.S. market has increased from under 380 in 1978 to 550 in 1983; and capital expenditures by this industry have been heavy and have increased significantly in recent years.[2] The problems of lagging investment, declining productivity and inadequate innovation that have afflicted some U.S. industries are largely absent in this sector. For U.S. telecommunications equipment producers, open world markets do not spell decline, but expanded opportunities and growth.

If we lived in Adam Smith's ideal world, characterized by laissez-faire competition and open markets, the outlook for the U.S. industry would be bright indeed, given its current technological leadership. Unfortunately we are, at present, a long way from that ideal. While our own telecommunications market is now open to foreign suppliers, the markets of most nations with indigenous telecommunications equipment industries are largely closed to U.S. telecommunications exports. This is especially true with respect to the more sophisticated "core" product types, such as advanced transmission and switching equipment, where our firms enjoy their greatest strength.

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1/ U.S.I.T.C. study, p. xii.

2/ U.S.I.T.C. study, pp. x-xi.

Closed foreign markets are a serious concern for our industry several reasons. To begin with, of course, market barriers deny U.S. firms export opportunities -- and this translates into foregone revenues and opportunities for expanded U.S. employment. Equally important, however, is the fact that closed markets afford foreign producers an advantage in competing with U.S. firms worldwide. A protected domestic base provides foreign producers with assured sales volume which enables them to lower their costs through scale and learning economies and by stabilizing their production runs. That fact, coupled with the price subsidies that often accompany domestic protection, makes foreign producers more price competitive in those equipment markets which are open, such as the United States and the developing countries. We are concerned that if the markets of our foreign competitors remain closed at a time when our own market has been opened up, the result is likely to be a competitive imbalance which will lead to a dramatic deterioration of our trade balance. Unfortunately, there are disturbing signs that this is already occurring.

## The Deteriorating Balance of Trade

The U.S. balance of trade in telecommunications equipment turned negative in 1983, and there is every indication that 1984 will see a sectoral trade deficit of unprecedented proportions. According to the recent U.S.I.T.C. study, U.S. equipment exports virtually stopped growing after 1982, showing virtually no year-over-year growth in 1983. At the same time, import growth in

1983 was dramatic, increasing by over 80 percent.[3] According to the U.S.I.T.C. study, in one year the U.S. slid from a trade surplus of $301 million to a deficit of $549 million,[4] with a substantially worse performance likely in 1984. Given the overall technological superiority and dynamism of the U.S. industry, these trends can only be regarded as extraordinary. The overvalued dollar has clearly played a part in the sectoral deficit. However, an equally important, if not more important factor has been the imbalance in market opportunities between U.S. and foreign firms.

At present our largest single trading partner in telecommunications equipment is Japan, and the current sectoral deficit is largely attributable to our bilateral trade balance with Japan. The Telecommunications Group recently acquired customs statistics prepared by Japan's Ministry of Finance with respect to bilateral U.S.-Japan trade in telecommunications equipment through 1983. These figures include telephone, telegraph and switching equipment, parts, facsimile and wireless equipment. As a result, they do not correspond precisely with U.S. Commerce Department trade statistics for telecommunications equipment. Nevertheless, the story which emerges from these numbers is substantially the same as that which may be drawn from Commerce Department statistics -- and that story is disturbing.

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3/ U.S.I.T.C. Study, Table 4, p. 19.

4/ Ibid.

Table 1 depicts the overall bilateral balance of trade between the U.S. and Japan in telecommunications equipment. Japanese exports to the U.S., which have been increasing rapidly since 1979, showed a dramatic jump in 1983, increasing to nearly $1 billion -- and that increase occurred before the effect of the AT&T divestiture was felt. Based on reports we have received this year of activity in the U.S. market and on U.S. Commerce Department forecasts, we estimate that the volume of Japanese exports to the U.S. will show a dramatic increase in 1984 over 1983's record levels.

At the same time, Japanese imports of U.S. telecommunications equipment have shown only slow growth. While Ministry of Finance figures for 1983 were not available, Japanese imports of U.S. equipment in 1982 were under $120 million, and based on Commerce Department data we do not believe that this figure will show a significant increase in 1983 or in 1984.

Tables 2,3 and 4 provide a further breakdown of these figures, and indicate that the trade imbalance is occurring across a wide range of product areas. In some product categories, such as telephone exchanges, Japan imports virtually no U.S. products, while its exports to the U.S. are growing dramatically. Even in carrier and transmission equipment, where U.S. producers are traditionally strong competitively, U.S. exports to Japan have been stagnant while Japanese exports to the U.S. have doubled every year since 1981. The one bright spot in this picture is

Table 1

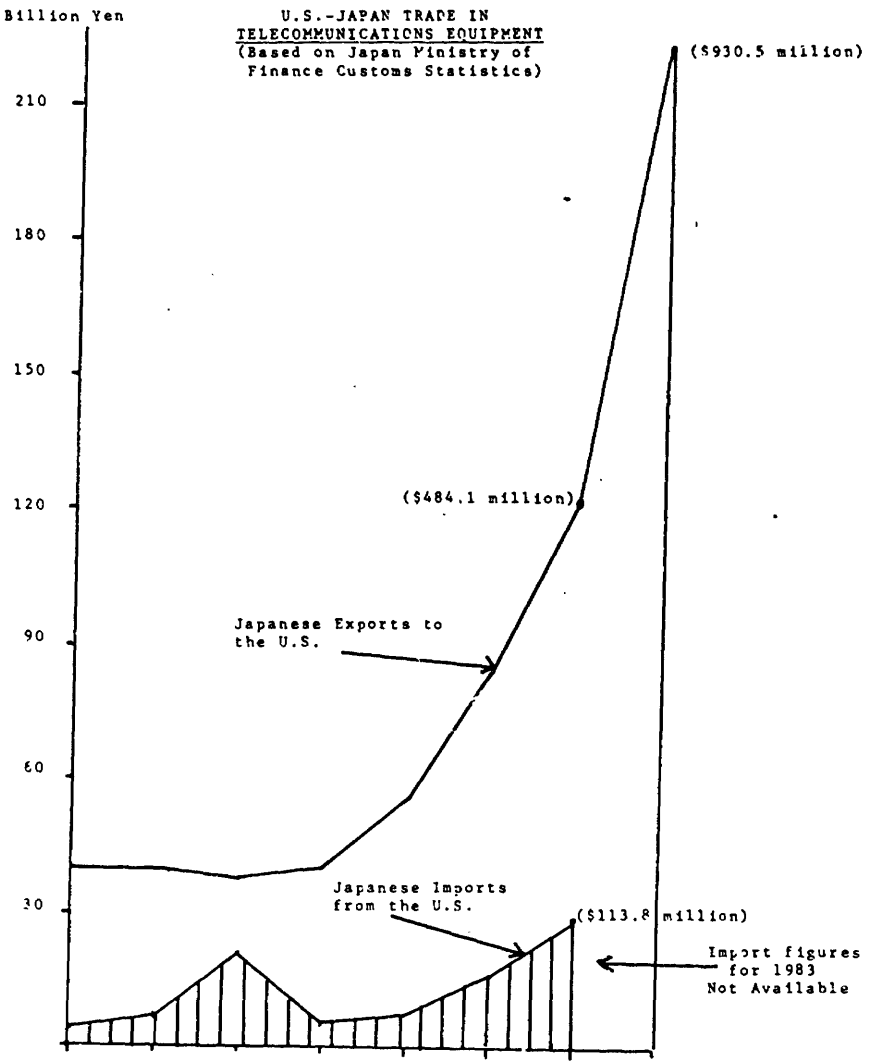
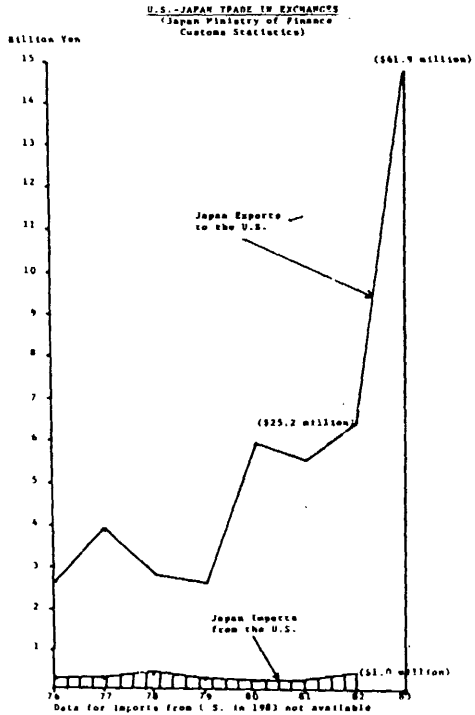

Billion Yen
U.S.-JAPAN TRADE IN
TELECOMMUNICATIONS EQUIPMENT
(Based on Japan Ministry of
Finance Customs Statistics)
210
180
150
120
90
60
30
($930.5 million)
($484.1 million)
Japanese Exports to
the U.S.
Japanese Imports
from the U.S.
($113.8 million)
Import figures
for 1983
Not Available

Table 2


U.S.-JAPAN TRADE IN EXCHANGES
(Japan Ministry of Finance Customs Statistics)
Billion Yen
($41.9 million)
Japan Exports to the U.S.
($25.2 million)
Japan Imports from the U.S.
($1.0 million)
Data for imports from U. S. in 1983 not available

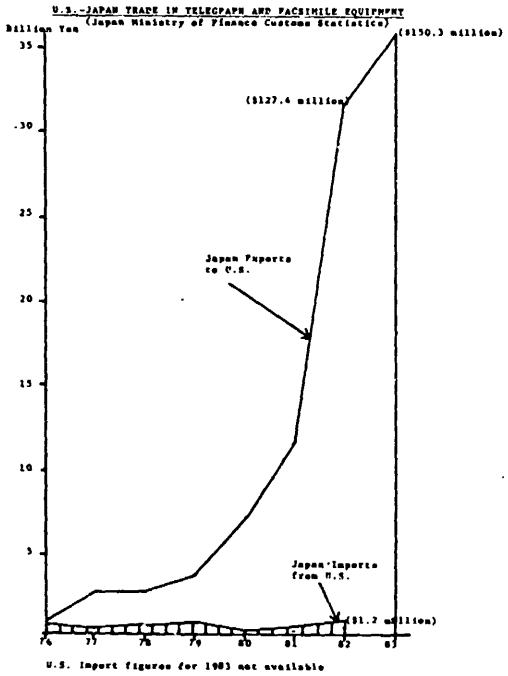
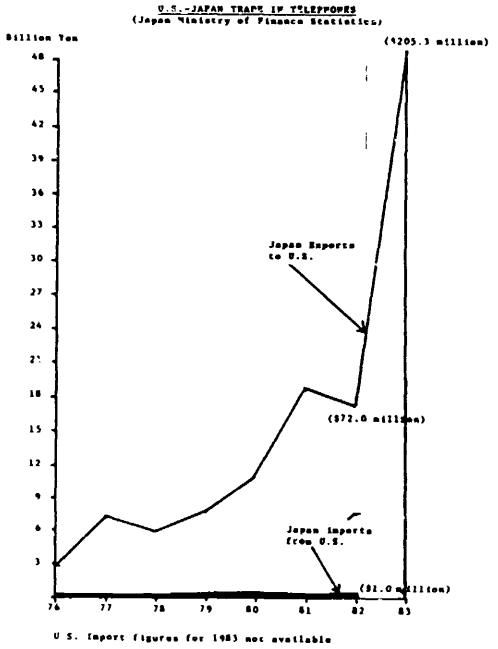

U.S.-JAPAN TRADE IN TELEGRAPH AND FACSIMILE EQUIPMENT
(Japan Ministry of Finance Customs Statistics)
Billion Yen
($150.3 million)
($127.4 million)
Japan Exports to U.S.
Japan Imports from U.S.
($1.2 million)
U.S. import figures for 1983 not available

Table 3


U.S.-JAPAN TRADE IN TELEPHONES
(Japan Ministry of Finance Statistics)
Billion Yen
($205.3 million)
Japan Exports to U.S.
($72.0 million)
Japan Imports from U.S.
($1.0 million)
U.S. import figures for 1983 not available

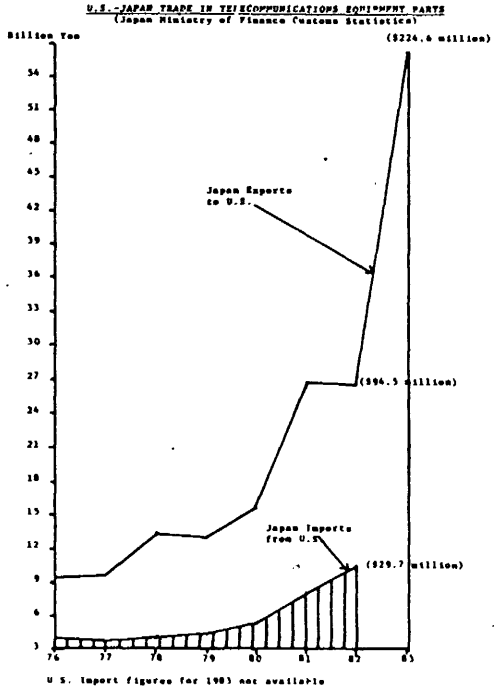
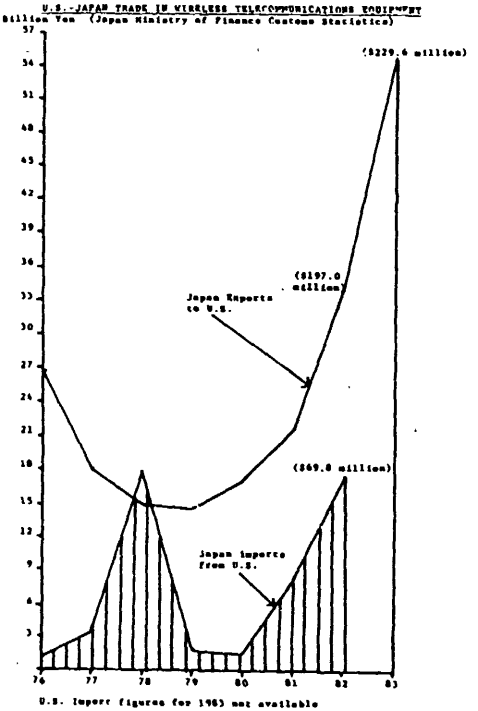
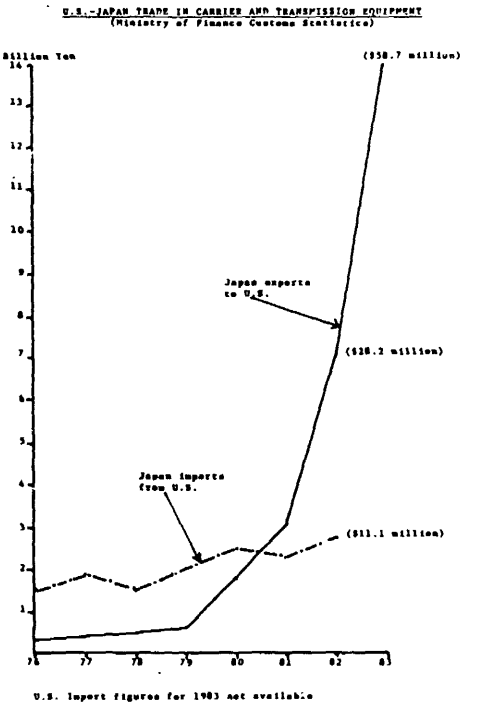

U.S.-JAPAN TRADE IN TELECOMMUNICATIONS EQUIPMENT PARTS
(Japan Ministry of Finance Customs Statistics)
Billion Yen
($224.6 million)
Japan Exports to U.S.
($96.5 million)
Japan Imports from U.S.
($29.7 million)
U.S. import figures for 1983 not available

Table 4




U.S. import figures for 1983 not available




U.S. import figures for 1983 not available

wireless equipment, where U.S. producers, while trailing Japan in sales volume by a wide margin, have nevertheless been able to increase their exports to Japan significantly since 1980.

The U.S.I.T.C. study concluded that Japan has had the most closed market for telecommunications equipment,[5/] and the history of U.S. efforts to open the Japanese market is one with which this Subcommittee is familiar. Recently, Japan's primary buyer of telecommunications equipment, Nippon Telephone and Telegraph (NTT) has undertaken a number of measures designed to expand its procurement of U.S.-made equipment. While we acknowledge and encourage those measures, the opening of the Japanese market has been a slow process. Last year, when Japanese exports of telecommunications equipment to the U.S. approached $1 billion, NTT procured an estimated $19 million in telecommunications equipment from U.S. firms pursuant to its three-track procurement procedures. The volume of NTT's purchases of telecommunications equipment was virtually the same in 1983 as in 1982, showing no year-over-year growth (Table 5). (NTT has also purchased a substantial quantity of non-telecommunications products from U.S. firms, such as computers, magnetic tape, and paper). Unfortunately, we have indications that NTT's 1984 purchases of U.S.-made telecommunications equipment will not significantly exceed 1983 levels.

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5/ U.S.I.T.C. study, p. 44.

TABLE 5

NTT Procurement of Telecommunications Equipment from U.S. Firms 1981-83
($ million)

| Item | 1981 | 1982 | 1983 |
|---|---|---|---|
| Telecommunications Equipment | | | |
| - Track I | 0 | 5.0 | 0.5 |
| - Tracks II and IIA | 0 | 3.6 | 0.9 |
| - Tracks III and IIIA | 0 | 11.3 | 17.6 |
| - Total | 0 | 19.9 | 19.0 |
| Other products | $17.2 | 14.6 | 40.7 |
| Grand total | $17.2 | $34.5 | $59.7 |

Product Breakdown of NTT Telecommunications Procurement
($ million)

| 1982 | Item | Amount |
|---|---|---|
| Track I: | Digital PBX | $5.0 |
| Tracks II and IIA: | Echo Canceller | 3.6 |
| Tracks III and IIIA: | Pocket pagers, headset connector, multiplexer | 11.3 |
| **1983** | | |
| Track I: | Modem | $0.5 |
| Tracks II and IIA: | Data Communications Software | 0.9 |
| Tracks III and IIIA: | Pocket pager | 13.7 |
| | Multiplexer | 1.8 |
| | Microwave antenna | 0.2 |
| | Telephone | 1.9 |

The Japanese telecommunications market is opening, but at a painfully slow rate. It is interesting, in fact, to contrast the response of the U.S. market to the AT&T divestiture -- with many of the former Bell operating companies rushing to establish relations with foreign suppliers -- with the progress to date of foreign equipment suppliers in the Japanese market. We are concerned that the opening of the Japanese market will continue to prove a difficult and protracted process which stretches out over many years; meanwhile, Japanese firms are currently making rapid inroads in U.S. firms' markets while continuing to enjoy the advantage of a stable domestic base.

The problem of access to foreign telecommunications equipment markets is not limited to Japan, however -- it is global in scope. The markets of most of our European competitors, for example, are closed to most U.S.-made products. With a few exceptions, such as the United Kingdom, the public telephone authorities in those nations (the "PTTs") procure almost all of their equipment from domestic suppliers. Such preferential procurement is in fact an important element in European government efforts to promote the international competitiveness of their telecommunications industries. Last year the French Minister of Posts and Telecommunications indicated that procurement by the French PTT had enabled France to establish an internationally competitive telecommunications industry and was

the "linchpin" of French electronics industry development policy.[6]

The Europeans have come to recognize that because their individual national telecommunications markets are comparatively small, there is a limit to the economies of scale which can be achieved through preferential procurement on a purely national basis. Accordingly, this spring the European Commission launched an initiative to establish a Communitywide telecommunications action program, an important aspect of which is to harmonize standards and to open national markets within the Community so that European producers will enjoy a continental-size market, with corresponding economies of scale.[7] The Telecommunications Group is extremely concerned that under this new system, U.S. products will be excluded from the Communitywide market as they are now excluded, to a large degree, from the markets of the individual member states. At the same time, the competitive advantages which European producers enjoy as a result of protection will be greatly enhanced through the establishment of a much larger common internal market.

## The Need for Negotiating Leverage

Through the breakup of the Bell system, we have completed the opening of the U.S. telecommunications equipment market, a process that has been under way for many years. The opening of

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6/ L'Usine Nouvelle, June 16, 1983.

7/ EC Commission, Communication from the Commission on Telecommunications, COM (84) 277 final, May 18, 1984.

our market has been a unilateral process; it has occurred as a result of domestic judicial and regulatory decisions unrelated to U.S. trade policy and not linked to reciprocal market opening measures in other nations. Unfortunately, by unilaterally opening our own market, we have lost the principal source of leverage which might have been used to secure access to foreign telecommunications equipment markets. Our market is now open, foreign markets remain largely closed, and we have no readily identifiable means of rectifying this imbalance in market opportunities.

I do not expect that our trading partners will be persuaded, by the force of our arguments alone, of the wisdom of opening their markets to us. Most foreign countries perceive that their interest continues to lie in protecting their indigenous suppliers against competing U.S.-made products. If the U.S. is to make any headway, some form of substantive leverage will be required.

The Telecommunications Group does not view this legislation as a device for establishing domestic market protection for the telecommunications industry and would, I believe, oppose any legislation which had protection as its fundamental goal. Many of our member companies utilize foreign-made components to produce their equipment and would themselves be adversely affected by restrictions on telecommunications equipment imports. At the same time, many of these same companies are heavily export-oriented, and other U.S. companies which at present primarily supply the domestic market could significantly expand their operations through exports if foreign market

barriers were reduced. We recognize that the prospect of restrictions on U.S. imports is probably the most effective source of leverage for achieving this goal. We have therefore endorsed this legislation as a market opening mechanism.

## Title I Provisions

Title I of the bill contains a negotiating mandate to the President to seek bilateral agreements with our trading partners which would eliminate barriers to sales of U.S. telecommunications equipment in their markets. Congressional review and approval of these agreements would be conducted pursuant to the fast-track procedures of Section 102 of the Trade Act of 1974. The U.S. market would remain open for a three-year period, during which time the President would seek to negotiate reciprocal market access agreements with our trading partners. However, following enactment of the legislation, the President would be directed to "unbind" the tariff on telecommunications equipment -- that is, to end the U.S. GATT commitment to hold tariffs at levels negotiated in multilateral tariff negotiations. This would serve notice on our trading partners of our concern over this issue, and would provide an impetus to the President's negotiating efforts. If at the end of three years, no market access agreement had been concluded with a particular country, the U.S. tariff would increase to the "column 2" level, in most cases 35% ad valorem.

The Telecommunications Group is committed to the multilateral system of trade rules represented by the General

Agreement on Tariffs and Trade (GATT) and its satellite agreements. We believe that the use of the unbinding mechanism would not be inconsistent, in this situation, with the principles underlying the GATT. The GATT is a contract among nations pursuant to which the contracting parties seek mutual benefits through reciprocal tariff concessions. In telecommunications, the U.S. can legitimately take the position that it is being denied the benefit for which it has contracted. Notwithstanding reciprocal tariff reductions, most foreign telecommunications equipment markets in developed countries remain closed to U.S. products. These markets are dominated by government PTTs that favor domestic suppliers. Under such circumstances reductions in foreign tariffs have virtually no effect in increasing sales opportunities for U.S. firms. Significantly, when the multilateral Agreement on Government Procurement was negotiated in the 1970s, most signatories made an express exception from the Agreement for their PTTs with respect to telecommunications equipment. While we endorse the system created by the GATT and its satellite agreements, most of our trading partners have chosen to exclude telecommunications equipment from the scope of some of the key market-opening mechanisms that have been developed within the GATT framework. The United States, in contrast with foreign protectionism, has unilaterally granted increased market opportunities for which our trading partners have neither bargained nor paid.

Because of foreign non-tariff barriers, the net result of the MTN tariff reductions, in this sector, is a deterioration of

the U.S. balance of trade for reasons unrelated to the relative competitiveness of U.S. producers. Under such circumstances, the GATT provides mechanisms through which a contracting party can withdraw tariff concessions, subject to a requirement of compensation to injured parties.

We recognize the concerns of other U.S. high technology industries with respect to this legislation. Many of these sectors, such as the computer, semiconductor, and data processing industries, enjoy considerably more open access to foreign markets than our own industry. These industries may be concerned that actions taken pursuant to this legislation might result in foreign actions which could diminish their own access to foreign markets. This is not the intention of this legislation, and need not be its result. It is designed to bring about a greater openness of foreign markets to telecommunications trade, and I believe that will be its actual result.

Our industry faces an immediate problem which poses a considerable threat to its future. In substantial contrast to the computer, data processing and other high technology sectors, foreign markets in developed countries are substantially closed to our products. With the restructuring of AT&T, U.S. imports are increasing dramatically, and the sectoral balance of trade is deteriorating in an unprecedented fashion. We believe that legislation is necessary to address this problem. We remain open to suggestions as to the most effective means of achieving an opening of markets. The Telecommunications Group would support modifications of the bill for this purpose.

## Title II Provisions

Title II of this legislation would establish a new system of tariff classification for telecommunications equipment imports. There is no question that the tariff schedules in this sector need to be revised. The current categories are obsolete, and many telecommunications products are included in categories that consist prinmarily of non-telecommunications products. As a result, it is extremely difficult to obtain an accurate picture of U.S. trade in telecommunications equipment. The Telecommunications Group has recently submitted to the U.S. Department of Commerce proposals for the reorganization of the tariff schedules to permit reporting of telecommunications trade data in a more accurate and meaningful fashion. Our proposed amendments to the tariffs schedules would expand existing TSUS categories to permit a more detailed breakdown of product subcategories within those categories. In addition, recognizing the need for improved trade data reporting in this sector, consideration should be given to the proposal by the Computer and Business Equipment Manufacturers Association to accelerate the adoption of the Harmonized Commodity Code System with respect to telecommunications products.

I note that as Title II is currently drafted, automatic data processing systems peripherals and parts,[8/] would apparently be included in the definition of telecommunications equipment,

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8/ TSUS items 676.15, 676.30, and 676.52.

although such products are generally not considered telecommunications equipment. This has given rise to some concern by producers of data processing equipment that their products might ultimately be embraced by the tariff unbinding and duty increase provisions in the legislation. This problem can be averted simply by excluding these items from the legislation.

## Conclusion

I represent a U.S. industry which is a world leader technologically, which has invested heavily in modernization and innovation, and which has continued to spawn new companies and new jobs. At the same time, this industry is headed for serious difficulties if the trade and market access issues which I have addressed today are not resolved. A trading order in which our market is open and those of our trading partners remain closed is inconsistent with the economic well-being of this industry and contrary to the principles of free trade which underlie this country's trade policy. This legislation addresses the current disparity in market access opportunities which exists in this sector, and we believe that it offers the prospect of a more open and more truly competitive world market for telecommunications equipment.

STATEMENT OF JOHN MORGAN, ASSISTANT TO EXECUTIVE VICE PRESIDENT, LEGISLATION/GOVERNMENT AGENCIES, COMMUNICATIONS WORKERS OF AMERICA, WASHINGTON, DC

Mr. MORGAN. Mr. Chairman, John Morgan, Communications Workers. Thank you for letting me come here today. Communications Workers of America [CWA] does take encouragement from S. 2618, recognizing that the U.S. telecommunications equipment market is now subject to what we see as an unfair degree of foreign competition. We suggest a number of measures to strengthen, to ensure that our trading partners understand the need to open their domestic markets to U.S.-produced goods. We support a greatly strengthened version of your bill. Telecommunications equipment made in this country is of the highest quality, representing the world's most advanced technology. That is without dispute. We raise the point because of the usual putdown of goods made in the United States, as stated by the foreign sellers, that American goods are always of poorer quality. We do not accept the foreign superman myth, Mr. Chairman. Attached to my remarks is an extended critique detailing some problem areas we have perceived. In summary form, our suggestions:

First, given the massive record showing the trade imbalance in telecommunications goods, the act should provide for only 90 days for the processes leading to Presidential determination of harm to the industry—not the 3 years. We figure 3 years is far too long. From census and ITC statistics, we have figures that show imports of the goods for the first 7 months of 1984 total $8.6 billion, which is a startling figure. Exports in the same period: $2.78 billion, according to the same ITC and census figures. Second, we would impose the tariffs on imported goods from protectionist nations immediately on a Presidential determination. Third, we would put the burden of proof on foreign suppliers to demonstrate that their offerings will not damage the domestic industry. Fourth, we would promptly use all existing laws and sanctions against foreign abusive practices—protectionist if you wish—which would include prompt collection of antidumping fines, et cetera. And here I am going back to the 1971 color TV dumping fines which eventually were collected, 10 or 11 years later, at around 8 percent, 10 percent of the assessment. We would suggest, as No. 5, to sharpen up your proposed section 181, negotiating objectives. We would prohibit performance requirements and other restrictions on U.S. companies' export activities.

We would also impose the 35-percent duty on telecommunications goods produced offshore by U.S.-based companies. Despite bearing American trademarks, such goods should not escape being considered foreign made. Finally, I want to note that within AT&T technologies, there is in 1984 an announced job reduction of 43,000, which represents about 20 percent of the work force of that unit, and these are not economic abstractions, Mr. Chairman. They are American men and women. Many of the women are heads of families. These are Hispanics and blacks and some of these are people with seniority going back to 1957-60. Many are not pension-eligible. We are not talking about units—we are talking about people

who have been paying their taxes and supporting this country for quite a long time.

And the benefits of free trade just do not seem to come through to people like these, especially when they are about to lose their livelihoods. And we believe the Congress simply has to act soon. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you very much.

[Mr. Morgan's prepared written statement follows:]

Statement of

**John Morgan**

Assistant to Executive Vice President

Communications Workers of America

Before the

Subcommittee on International Trade

Committee on Finance, U.S. Senate

September 12, 1984

The Communications Workers of America takes encouragement from S. 2618, which recognizes that the United States telecommunications equipment market is now subject to an unfair degree of foreign competition. We suggest a number of measures to strengthen the bill, to ensure that our trading partners understand the need to open their domestic markets to U.S.-produced goods. We will unstintingly support a greatly strengthened version of S. 2618.

Telecommunications equipment made in our country is of the highest quality, representing the world's most advanced technology; this is undisputed. We raise this point because the usual put-down of goods made in the United States, stated by foreign sellers, is that American goods are always of poor quality. We do not accept the "foreign superman" myth.

Attached to these summary remarks is the CWA "Critique of S. 2618," detailing the problem areas we have perceived. Here are our major suggestions, in summary form:

1. Given the massive record showing trade imbalance in telecommunications goods, the Act should provide for only 90 days --- not 3 years --- for the processes leading to a Presidential determination of harm to the industry. From Census and

ITC statistics, we have learned that imports of telecommunications goods for the first 7 months of 1984 totaled $8.684 billion, with exports in the same period at $2.78 billion. The post-divestiture bonanza for foreign producers is indeed real.

2. Impose the 35% tariffs on imported goods from protectionist nations immediately upon the Presidential determination; allow suspension and refund of duties upon showing of abolition of protectionist practices.

3. Place the burden of proof on foreign suppliers to demonstrate that their offerings will not damage the domestic industry; current practice unfortunately places the burden of proof on Americans to show that imports unduly burden the domestic industry.

4. Promptly use all existing law sanctions against foreign protectionism.

5. Sharpen up proposed Section 181 negotiating objectives to direct the President's actions, not allowing sweeping judgments to be made by the Executive Branch.

6. Prohibit performance requirements and other restrictions on U.S. companies' export activities, to include resisting offshore sourcing rules. We very actively oppose any U.S. policy encouraging domestic companies' investing offshore to serve foreign markets; no U.S. jobs result.

7. Impose the 35% duty on telecommunications goods produced offshore by U.S.-based companies; despite bearing American company trademarks, such goods should not escape being treated as all other foreign-made equipment.

8. Ensure that duties are actually collected, as set out in law.

Chairman Danforth and other sponsors of S. 2618 have correctly perceived that the AT&T divestiture has removed a major non-tariff barrier to the U. S. telecommunications equipment market, without any corresponding leverage to prevent foreign providers from capturing a major share of our country's market.

We are facing a 43,000-job cut within AT&T Technologies in 1984, due to slow business. Upon divestiture, the regional Bell Operating Companies have gone heavily into procuring foreign-made goods. Let me expand on the 43,000: these are not merely economic abstractions. They are American men and women, with sizeable numbers of them blacks and Hispanics; a large number of the women are heads of families. Only a minority are pension-eligible. Net credited service of these American men and women extends back to 1957 to 1960. AT&T has announced plans to establish perhaps 26,000 new jobs; we are informed that these are to be entry level, concentrated in only a few areas such as Denver and Orlando. These 43,000 American men and women have been paying U.S. taxes and supporting their families; they are not at all gratified about the "benefits" of "free trade" in telecommunications goods. The foreign companies and their employees are not contributing to the U.S. Treasury.

We believe the Congress must act soon, to ensure that the United States retains a telecommunications manufacturing base; we have seen the unfortunate examples in shoes, color TV, steel, autos and machine tools, and do not want to see our industry similarly burdened as a result of our own government's action. The American telecommunications equipment industry is not subject to criticism for letting its plant and technology atrophy. We have a modern industry, which must be preserved.

## CWA CRITIQUE OF S. 2618

S. 2618, the "Telecommunications Trade Act of 1984" (Title I) and the "Telecommunications Product Classification Act" (Title II), offers a starting point in solving a major domestic economic problem --- the threat of loss of domestic production of telecommunictions equipment. The sponsors (Senators Danforth, Lautenberg, Heinz and Bradley) correctly note that the divestiture of AT&T has removed a major non-tariff barrier in the domestic telecommunications market without any corresponding leverage to prevent foreign providers from capturing a major share of the United States market--- following other industries' pattern.

Chairman Danforth has characterized the telecommunications market restructuring, caused almost entirely by the heavy hand of government, as "... a trade disaster in the making," and a "... unilateral giveaway of the U.S. market to foreign suppliers."

S. 2618 recognizes the disadvantage to American producers occasioned by the AT&T breakup, correctly noting that this opening of our market to foreign suppliers was not matched by any reciprocal steps on the part of foreign governments. As a consequence, our market is likely to be overwhelmed by imports from countries whose telecommunications industries are both protected and subsidized. The International Trade Commission's Report No. 1542, to the Committee on Finance, notes that 80.6% of the world's 317 million telephones (excluding the United

States) are government-operated (p. 49), and that other nations have policies favoring their domestic equipment makers.

This bill, as stated in the first paragraph, is a starting point; to achieve the worthy aims of its sponsors, S. 2618 requires much strengthening and realignment, to show the President and our trading partners that "free trade" must be reciprocal, or else the trade is not free. Several specific suggestions as to how to strengthen the bill are set out below.

In general, the bill seeks to address U.S. trade problems through an emphasis on exports; this approach certainly has not proven effective, as demonstrated in the first 3 years of the so-called "open procurement" in Nippon Telegraph & Telephone Public Corporation (NTT). In order to deal with the extemely unbalanced, distorted trade situation, S. 2618 grants negotiating authority to the President --- on an entirely discretionary basis --- to seek reduction of foreign tariff and non-tariff barriers, to compensate for the trade-liberalizing effects of the AT&T divestiture. As leverage, Title II of S. 2618 provides for an increase in U.S. imports duties to 35%, if agreements on U.S. firms' access to foreign markets are not reached within the 3-year period allowed. Import duties should be imposed immediately, not several years from now.

Foreign governments, many of which own and operate their domestic telephone systems, would be allowed for 3 years to continue their protectionism while their envoys simultaneously would be complaining about U.S. "protectionism." In his June 26 testimony before this Committee, Commerce Department Under Secretary for International Trade Lionel Olmer pointed out the

massive barriers maintained by the European Community and Japan. In his view, France has barriers against U.S.-made equipment imports far surpassing those of Japan. Unfortunately, Secretary Olmer was unable to provide any help to this Committee except to recognize that a major problem exists and must be solved. Given the record of trade negotiations, agreements usually come at deadline, when the pressure is on U.S. negotiators. While perhaps moving in the right directions, S. 2618 has the issues reversed: before any action could be taken here, the 3-year period would be run out; foreign providers could capture a sizeable piece of the U.S. market, driving out many domestic companies and products. Whether the actions contemplated would be effective remedies is wholly uncertain.

Specific Problems in S. 2618, and needed Corrections.

Section 102(2), in the Findings, imposes the burden of proof on U.S. interests to show that certain foreign practices "...adversely affect United States exports of telecommunications equipment and services." Since a comma does not appear on line 7, p. 2, immediately before the word "which," only some --- not all --- of the foreign "restrictive import practices and discriminatory procurement practies" are covered. All restrictions must be strongly resisted and countered by the proper U.S. policies. The loophole created by the non-existence of the comma on line 7 infuses massive uncertainty in enforcement.

Section 102(5) says the United States "... should avoid granting improved access..." to our market, if U.S. producers

do not have "... reciprocal foreign market access...." "Access," in the context of a foreign market, is a highly imprecise term; NTT and the Japanese Government, for a key example, have contended that the NTT market is "open," despite 1981-84 performance demonstrating the contradictory. Currently, foreign manufacturers have unlimited access to the U.S. market. What is meant by "improved" access to the domestic market, as cited in the fifth Finding, is entirely unclear. This Finding would more appropriately call for imposing restrictions to counter foreign protectionism and restrictions.

Section 103, adding a new Section 181, sets out the negotiating objectives in the context of exports of U.S. telecommunications goods, by multilateral or bilateral agreements. The words "substantially equivalent to the competitive opportunities provided by the United States" as a result of market restructuring allow for sweeping judgments to be made by the Executive Branch, without appropriate guidance from the Congress. Another objective here is "to avoid uncompensated reductions" in U.S. barriers; again, the U.S. market has no barriers and had none prior to divestiture. The verb "avoid" is weak; the verbs "prevent" or "terminate" would strengthen the proposed Subsection (a) of the new Section 181.

Section 103 of the bill, in the new 181(b), would have the President "take into account" several factors including "(B) restrictions on services and investment related to trade in telecommunications products...." Performance requirements and over-use of standards must be set out as restrictions which the United States will not tolerate. We very actively oppose any

United States Government policy which encourages domestic companies to make offshore investment in manufacturing facilities to serve foreign markets. The key purpose of S. 2618 --- to encourage exports of U.S.-produced goods --- is 100% negated by policies which do not clearly discourage such offshore sourcing of exports.

Proposed Section 182, granting authority to negotiate, grants unlimited power to the President to determine whether foreign duties, import restrictions or barriers "... unduly burden and restrict the foreign trade of the United States in telecommunications products... or adversely affect the United States economy...." Clearly, a President can ignore any foreign practices on grounds they do not "unduly" burden and restrict U.S. trade.

If the President does make such determination, then he may enter into bilateral or multilateral agreements to correct such trade practices. Other nations can be expected to resist entering into realistic negotiations, since the act of entry carries with it the tacit admission of protectionist practices. This authority is granted for 3 years following enactment; assuming final passage sometime in early to mid-1986, in the 99th Congress, the President then has 90 days for consultations on unbinding of tariffs. Thus, any remedial action could begin as late as the end of 1989. By that time, the "lock" on the U.S. market by foreign providers will have become secure. We have serious reservations about bilateral agreements' effectiveness. For example, if the United States and Singapore governments executed such an agreement, the result

would be near-zero sales of U.S. goods there, since the equipment makers in Singapore have adequate production capacity. Stated another way, agreements with other nations must lead to results. The multilateral approach offers the opportunity to cope with the problem on an overall basis, especially with the major producing and consuming nations involved.

The Congress can be clearly perceived as serious about this problem by setting a very tight time limit on the new Section 182 telecommunications trade negotiating authority. Given the massive public record already on hand --- including that compiled by the ITC in its recent inquiry (ITC Report No. 1542, on Investigation No. 332-172) --- a 90-day period for a Presidential determination is entirely adequate. The time for talking about these problems certainly has ended. The time to act is now. The situation is urgent.

On June 26, when this Committee received testimony from numerous witnesses on the problems S. 2618 aims at addressing, the passage in the statement of ITC Chairman Paula Stern on projected business volume was of great interest to CWA. She said the trade balance is to remain negative, growing from $650 million in 1983 to $3 billion in 1993, predicting that "Low cost foreign manufacturers, primarily in the Far East --- such as Japan and Taiwan --- are expected to continue to gain market share in the United States..." because of price considerations favoring foreign providers. She said the growth of imports would go from $2 billion in 1983 to $5.4 billion in 1993, while exports will grow from $1.3 billion to $2.5 billion in the same

period. Chairman Stern predicted that "Nevertheless, U.S. firms are expected to get around many import barriers by increasing offshore production in target markets and forming joint ventures or marketing agreements."

This last quotation from the ITC Chair should cause a shock wave in the Congress, because it means that domestic manufacturing employment is simply written off. Offshore production of goods by U.S. firms does not in any way enhance our country's job opportunities. The goods produced bear American trademarks and no value added Stateside. An export-promotion policy with that result will merely add to our trade imbalance problems, since inevitably the offshore products also will find their way into our domestic industry. Such products should be treated as of foreign origin. A key improvement of S. 2618 would be stringent control on admission of such offshore-produced goods. We support the appropriate restrictions.

The TC study said U.S. producers' share of the domestic equipment market declined from 97%to 89.2% in the 1978-83 period --- the time in which government-dictated "deregulation" was setting in -- but a period without the so-called "benefits" of the AT&T divestiture. In this period, imports have shot up about 300%. In this same period, U.S. exports of telecommunications equipment showed a 79% increase--- but that percentage increase is of limited scope, since by 1983, U.S. exports were only 3.7% of all foreign consumption.

The "free-traders" will continue to try to cloud the picture and say there is no problem. CWA recognizes their

motivations and wants to note that on August 27, AT&T Technologies, the new entity to which the former Western Electric Co. has been joined, announced its plans to cut an added 11,000 positions from its workforce of 225,000. About 75% of the job cuts will be in union-represented positions involved with the manufacture, distribution, installation and repair of what formerly was Western Electric equipment. This AT&T reaction results in part from the decisions of the divested Bell Operating Companies to buy and furnish equipment other than that of AT&T/Western Electric. In his testimony for the Electronic Industries Assn., Group Vice President John J. McDonnell provided the Committee a breakdown of the array of new BOC suppliers (Table 3). Much of this equipment is of foreign origin.

The 11,000-job cut thus means that a total of 43,000 positions either have been eliminated or are targeted for elimination in 1984. Earlier announcements have concerned the closures of 4 AT&T/Western plants, at Baltimore, Kearney, New Jersey, Chicago (Hawthorne Works) and Indianapolis. These heavy job cuts are extremely serious, requiring urgent action.

In view of these cutbacks in what had been the world's largest telecommunications equipment maker, it is very difficult to discern the "benefits" of "free trade."

CWA takes a mixed view of Title II of S. 2618, in which the "Column 2" rates of tariffs could be increased to 35% on imported telecommunications equipment. Tariffs at the 35% level undoubtedly would remove much of the price advantage of foreign-made goods. Earlier I suggested immediate imposition

of the 35% imports duties. The duties would go on at the beginning of the 90-day period of consultation set forth in your Section 183; such duties could be easily suspended and any necessary refunds made upon the exporting nation's abolition of its protectionist postures and genuine opening of its domestic telecommunications market --- genuine, not sham. The immediate imposition of such tariffs would inject a sense of great urgency in our trading partners, leading to rapid resolution of the trade imbalance and protectionist problems. A highly beneficial aspect of Title II is its refining of the categories of equipment to be considered as telecommunications goods. For many years, the Tariff Schedules of the United States (TSUS) have been hopelessly obsolete. The ITC's efforts at redefining such equipment categories and nomenclature are to be commended. We understand some refinements to the new categories are being suggested. The down side of setting new and considerably higher tariffs is that we strongly doubt that any President would allow them to take effect; thus these would be empty threats of penalties without credibility. The $300 million of dumping fines, assessed in 1971 in the color TV case with very little actually collected, shows the lack of will to enforce the law in the face of clear violation.

Much discussion of international trade here in the United States appears to us to be cast in some unrealistic terms. Often we hear pronouncements cast in the context of the post-World War II era. It is now 39 years since that devastating war ended; the world is well beyond the "post-war era."

Without obligation of any kind, the United States in the 1940's and 1950's undertook to rebuild the industrial bases of Germany, Japan and other nations; those nations got modern plant, thanks to abundant American generosity.

It is necessary for our government to confront the "bogeyman" of "retaliation" against the United States for tightening up its trade policies. Without proof demanded, some "free-traders" will publicly state that Japan and other trading partners will quit buying U.S.-produced farm products. Such statements are based on the assumption the listener or reader is ignorant of the facts: other nations would not wish to set off the political firestorm which would follow such attempts to retaliate. Leaders of other nations are sufficiently sensitive as to know the realities.

S. 2618 should be transformed into a strong vehicle to carry a message that the United States will not allow its telecommunications industry to go the way of shoes, color TV, steel, autos and machine tools. The limited remedies for steel and autos are not sufficient for the long run, and many in the Congress understand that.

The Congress possesses sufficient power under Article I, Section 8 of the Constitution to regulate foreign commerce. The Congress must protect its powers, to prevent the Executive Branch from transforming trade --- which is a domestic employment and business issue --- into a solely foreign policy issue.

Chairman Danforth noted that the United States is constantly trying to resolve last year's trade problems; his aim is to

have a forward-looking trade policy and to resolve telecommunications trade problems before they become unmanageable.

In CWA's view, the next 10 to 12 months are most critical. The necessary action can and should be taken to tighten S. 2618 and enact it so that the United States is No. 1 in the telecommunications equipment business in 1989. Merely cosmetic action will ensure loss of market.

Trade statistics from July 1984 show the trade deficit emergency is growing. The chief economist of the National Association of Manufacturers termed the $14.1 billion trade deficit in July "an economic disaster," predicting it would be $140 billion for the year--- an intolerable and unsuscainable level. We agree. From Census and ITC statistics, we have learned that telecommunications goods imports for the first 7 months of 1984 were $8.684 billion, far overshadowing U.S. exports of $2.78 billion in that same period. We hope the Congress recognizes the dimensions of this problem.

Senator DANFORTH. Senator Long.

Senator LONG. No questions. Thank you for a good statement.

Senator DANFORTH. Gentlemen, just to review the facts briefly. The point of the bill is to recognize that with AT&T divestiture, the U.S. market for telephone equipment has been greatly opened to other countries, but no longer are the Bell companies captive customers to Western Electric. They will be able to buy on a worldwide basis. And this process, I think, is already beginning although it is going to take a while before it really gets into f ll swing.

The effect of AT&T divestiture is identical to a unilateral trade concession, that is, the United States has through divestiture opened up its market to other countries. By contrast, the markets of other countries for this kind of equipment are pretty much closed. We did enter into an agreement with the Japanese that has borne some fruit—not nearly as much as we would like. The Europeans are notoriously protectionist in this kind of equipment. And therefore, the theory of the bill is that if we are going to have trade in telecommunications, that trade should be two-way, not just one-way. The United States should be selling as well as buying. It is not fair for the United States to be a purchaser and to be precluded from selling. In the real world of international trade anytime that the United States opens up a market it should be the result of a deal. Other countries let us come in because they are getting something for it. In this case, we have already given them what they want. We have given them access to our market because of AT&T divestiture. Therefore, we have no bargaining chip. We have nothing to negotiate with. There is no reason for them to

open up their markets. This bill is not intended to be protectionist. This bill is intended for the one simple purpose of creating something with which we can bargain, and for authorizing the President to enter into these negotiations so that we can make sales. Now, is in your opinion the factual basis for the bill in fact correct? Is the theory well founded?

Mr. McDONNELL. Senator, of course, I believe that the theory is very well founded, which is why we support the bill. We totally agree that right now the executive branch is powerless to negotiate agreements similar to the NTT agreement. In fact, on that basis, we might almost say the NTT agreement. Of course, it was negotiated prior to AT&T divestiture, and under a great deal of pressure from other segments of the U.S. industry, such as automobiles, so there was an incentive, of course, for the Japanese in a good faith gesture to open up their procurement market via the NTT agreement. But those pressures simply don't exist anyplace else in the world, and the executive branch is powerless because, as you have indicated, our chips have already been removed from the board. So, they are playing a game without chips.

Senator DANFORTH. Mr. Morgan, do you agree?

Mr. MORGAN. Mr. Chairman, I agree with you and your statement and your question and with Mr. McDonnell—I'm sorry—it's a little early in the morning—not enough coffee to jump-start the heart. [Laughter.]

As a matter of fact, in Mr. McDonnell's testimony in June before this committee, he cited—I believe he used a table 3—which showed the way the Bell operating companies post-divestiture were going quite far afield from their traditional purchasing for equipment. And the second point on that is that in April, before the ITC, the Rohm Corp. noted the same happening within the old Bell System as far as going offshore for buying material.

We do agree that some form of leverage must be picked up by the Congress and by the executive branch in order to change long-standing habits in our trading partners.

Senator DANFORTH. Time is of the essence, isn't it, in passing this? Time is of the essence for the reason that, let's suppose that tariffs do have to be increased, we can assume that there may end up being some compensation. Of course, we hope the tariffs aren't increased. We hope that this will work. But to the extent that there is compensation, that would be increased if our market was already going just full-blast for imports, wouldn't it?

Mr. McDONNELL. Senator, in table 4 of the written testimony, there is a graphic depiction that we have already run out of time. Yesterday was too late. The negative balance was crossed with Japan in 1980-81. The negative of balance of trade was crossed with the rest of the world last year. And every indication is that the trend is accelerating, and frankly, just getting increased tariffs on the imports doesn't really do very much for our industry. It may fatten the coffers of the U.S. Treasury, but it doesn't improve the performance of our telecommunications industry.

Senator DANFORTH. We have been, of course, trying to get the administration to take a position on this bill, and they haven't done it. And it would be nice if they could appear before the Finance Committee and state a position. But sometimes there are differ-

ences of opinion within the administration, and I understand that. But, Mr. Morgan, you don't think the bill is strong enough. You would rather have it tightened up, but I would hope that, for the sake of trying to get our team in harness, we could support this bill. Maybe you would like it to be a little tougher than it is, but I think it is pretty good in its present version. Maybe it could be improved, and we will certainly be open to that when the bill is marked up. But for the time being, I think it is really important to have concentrated attention and to try to build the sort of constituency and concensus behind this type of approach so that we can get something passed.

Mr. MORGAN. Yes, Mr. Chairman. We see the urgency as such that 3 years would be far too long. If you take a look at the calendar, assume first of all passage not in the 98th Congress. You go into the 99th. It would take probably by mid-1986 for the passage. Three years later would then be agreement. And trade negotiations almost always are consummated at the very end of the process. We are talking about 2 years and 50 weeks later. We could expect that there might be some agreement. Then, add on that 90 days for the Presidential determination. We are talking about close to 1989: By that time, we may not have very much left. That's why this sense of urgency within my statement.

Senator LONG. Could I just ask a question, Mr. Chairman?

Senator DANFORTH. Yes.

Senator LONG. It seems to me that nobody can complain about the need of a level playing field. And generally speaking, the American concept is that it is not fair to ask anybody to compete on something that is not, in effect, a level playing field. Now, when I look at the problems that face us in the trading world today, I find that our tax system differs from that of our trading partners. Most European countries and Japan collect most of the revenue to finance their Governments by taxes on consumption—in most cases by a value-added tax. Now, that tax is rebated on their exports. When our imports head in their direction, then the tax is imposed at the border. Now, we have a tax that has a similar impact. The tax is levied on the payroll, but as far as the businessman is concerned, whether we regard this as a tax on the employer or whether you regard it as a tax on the employee, or both, in any event, he has to pay them the money in order to have the money with which to pay them the tax. So, both the employer part and the employee part of the Social Security tax is a cost of doing business to the employer. And if he is not able to pass that cost on to the public as a part of his cost of doing business, then he is out of business—he can't survive. Now, we don't rebate that. In fact, under the general agreement on tariff and trade—back at a time when we were rich enough and everybody else was poor and we had a favorable balance with the world—our people agreed that we could not rebate that Social Security tax and could not treat that as valuated taxes. That one item is worth about 15 percentage points on the exports headed in our direction, and there is no offset anywhere. Isn't that right Mr. McDonnell?

Mr. MCDONNELL. That is absolutely right, Senator. And not only that, but there is a disparity in the numbers as well. The value added tax in Europe varies from country to country, but on our

particular products can represent anywhere from 18 to 32 percent whereas, even if you take both the employers' contribution and the employees' contributions to Social Security, it is a number far less than either of those numbers.

Senator LONG. About 15 percent?

Mr. MCDONNELL. That is correct. So, the disparity is even greater. Even if we got the rebate of those taxes, we would still not be commensurate with the European taxation.

Senator LONG. Now, let's go to the next point. Because of the high interest rates that exist in this country resulting from the big budget deficit, our dollar is overvalued. Now, you can argue about how much it is overvalued, but if you are talking about the Japanese who are a very laudable and talented competitor, I should think that the dollar is overvalued by the yen by at least 25 percentage points. Where would you put it, Mr. McDonnell?

Mr. MCDONNELL. Again, I am no economist, but from what I read in the financial journals, 20 to 30 percent is the range that everybody seems to feel that the dollar is overvalued, vis-a-vis the yen.

Senator LONG. Do you agree with that, Mr. Morgan?

Mr. MORGAN. I do, Mr. Chairman. We have had in several of the trade-policy coalitions we belong to, we have had some people in discussing at length the dollar overvalue situation.

Senator LONG. Now, you add the 25 points to the 15 points—that works out to 40 points, or 40 percent. I don't care whether you are thinking in terms of adding the cost dollars, but in any event, that 40 points advantage is enough to kill you in trading with another country unless you have some arrangement to offset some of that, I would think.

Mr. MCDONNELL. Right. Absolutely.

Senator LONG. Now, when we're competing with the Japanese, their wage scale is lower than ours. Is that not correct?

Mr. MCDONNELL. Senator, it has been increasing. They no longer have the tremendous wage advantage. In fact, I think the Japanese are tending to go offshore themselves in some instances to markets like Korea and so forth. So, while their wage scales are still lower than those in the United States, they have tended to come up over the past couple of years.

Senator LONG. You think they are lower, even now, though on the average?

Mr. MCDONNELL. Yes, sir.

Senator LONG. All right. But you mentioned the point that I was going to get to beyond that. The Koreans are emerging here as a very effective and welcome competitor, a welcome trade partner in the free world. We helped to save democracy in Korea, and we welcome them into the world of international trade competition. But their wage scale is far below that of Japan and far below ours, so their wage cost would be less than half of our wage cost to do the same job, I would think. Is that about the size of it?

Mr. MCDONNELL. I would say it would even be less than half, plus they also benefit from the GSP. I mean, most of the equipment that comes in from Korea, we treat them as a most favored trading partner, as we do several other countries, so they are not even subject to some of the same tariffs that the Japanese and the Europeans would be subject to.

Senator LONG. All right. So, here we are running what looks like about $140 billion trade deficit this year which certainly is something we can't afford. And we have the prospect of its getting a great deal worse unless we do something about some of the problems, I would think. Now, just before I came here, I talked to a businessman—a member of the American Business Conference—he told me his firm is moving plants overseas. And they are moving their plants overseas because of the kinds of problems we are discussing here. He made the point—and I think it is correct—that any country that becomes a mere service country permitting their manufacturing activities to get away from them without manufacturing some of their own commodities, experiences a very drastic decline in living standards—it is a declining country when they no longer manufacture essential products except for their own use.

Now, isn't that part of what we have to face if we don't insist that our people have a fair opportunity to compete?

Mr. MCDONNELL. Senator, you are hitting a very serious problem because the cat is already out of the barn in terms of the electronics industry. Unless the piece of equipment can be very highly automated—meaning we have eliminated labor costs—basically any product that would retail under $300 virtually had to be made offshore if there is any labor content to speak of in that product. And that is why the consumer electronics industry has already headed south, and we just don't want to see the telecommunications industry on that same road.

Senator LONG. Thank you very much.

Senator DANFORTH. Gentlemen, thank you very much. Next we have Mr. Randall Tobias, vice president of AT&T, and Mr. John F. Mitchell, president, Motorola.

Mr. Tobias, thank you for being with us.

## STATEMENT OF RANDALL L. TOBIAS, SENIOR VICE PRESIDENT, AT&T, NEW YORK, NY

Mr. TOBIAS. Thank you, Mr. Chairman. I am Randy Tobias, and I am senior vice president of AT&T, and Mr. Chairman, we really welcome this opportunity to participate in these hearings on S. 2618, and I want to commend you and the members of this subcommittee for recognizing the inequities of international trade in telecommunications and in taking steps to address those inequities. I think your interest in this subject is extraordinarily timely, and we certainly appreciate that initiative. AT&T supports the central objective of S. 2618 to promote open world trade in telecommunications equipment, and we believe that certain modifications to the bill would enhance the central objective of this legislation by at the some time helping to ensure that it does not unduly hamper current U.S. trade activities in telecommunications. The key provision of the bill is that, upon enactment, existing trade agreements with foreign nations would all be suspended. And while domestic telecommunications manufacturers have been virtually precluded from selling equipment in a number of major foreign markets, some U.S. companies have developed significant activity in some other nations. Because of those successes, we recommend that S. 2618 not suspend all existing foreign trade agreements, but instead the bill

should allow a more focused approach aimed at negotiating new trade agreements with those foreign nations whose telecommunications markets are not now fully accessible to U.S. vendors. We also suggest that the bill should not prescribe any single remedy to be applied if satisfactory new trade agreements are not negotiated. The higher tariff rates prescribed under the bill represent a substantial move away from the most-favored-nation principle of the general agreement on tariffs and trade. We believe that U.S. negotiators should have the flexibility to tailor both the standards of acceptability for trade agreements and the remedies available. An alternative to a single specific penalty established by the bill might be a provision requiring the President to exercise any of a variety of remedies as deemed appropriate in each case. These remedies could be initiated under section 301 of the 1974 Trade Act, such as raising tariff levels, restricting imports, or increasing quotas after proper investigation of each case individually.

Finally, we recommend that the 3-year period for negotiating new telecommunications trade agreements be reduced so as to ensure more prompt attention to the development of these new agreements. And the administration should be required to report periodicially to the Congress on progress being made in opening telecommunications markets throughout the world. These reports should include trading partners legislative and policymaking activities regarding greater procurement of U.S. telecommunications products in both the public and private sectors of foreign economies.

In addition to the issues specifically addressed directly in this bill, there is another concern that we have regarding international trade and telecommunications. It relates to the concept of the American tradition of a level playing field that Senator Long was speaking of earlier. It has to do with the handicaps that domestic telecommunications policy has imposed on this country's international trade position, by way of the structural separation requirements applied selectively to AT&T by the FCC's second computer inquiry or CI II. While foreign firms are permitted essentially uninhibited participation in our domestic U.S. markets, CI II requires AT&T to operate its unregulated customer premise equipment and enhance services businesses in those same U.S. markets with a number of restrictions.

The order was issued in 1980 when AT&T still owned the local Bell operating companies for reasons that related to that ownership. As everyone knows, we divested the BOC's this year, and the order is now inappropriate. And it is counterproductive in that the rules impede AT&T in competing effectively in the U.S. market against foreign suppliers. The structural separations rules impose costly duplication of effort. Foreign firms are able to adapt technology from various parts of their businesses with complete flexibility while we are restrained by CI II from doing that. And there are a number of other problems that make it really easier for foreign competitors to operate at peak efficiency in the U.S. market than it is for us. We have petitioned the FCC for relief from these restrictions. The Commission has called for comments from interested parties, and individual customers writing to the FCC have almost uniformly supported our position. Not surprisingly, our competitors

have not. I bring this matter to your attention simply to make you aware that we are working hard to seek removal of regulatory restrictions that worsen the very problems that you are responding to in S. 2618. Again, I want to thank the chairman and the members of the subcommittee for the opportunity to share with you AT&T's views on reducing barriers in telecommunications trade internationally, and we look forward to working with you and the committee in achieving this very important goal.

Senator DANFORTH. Thank you, sir. Mr. Mitchell.

[Mr. Tobias' prepared written statement follows:]

Statement of

Randall L. Tobias

On Behalf Of

AMERICAN TELEPHONE & TELEGRAPH COMPANY

## EXECUTIVE SUMMARY

AT&T supports the central objective of S. 2618: to promote open world trade in telecommunications equipment. However, we believe that certain modifications to the bill are required in order to avoid unduly hampering current U.S. trade activities in telecommunications and enhance the central objective of the legislation.

A key provision of S. 2618 is that, upon the bill's enactment, existing trade agreements with all foreign nations are suspended. While domestic telecommunications manufacturers have been virtually precluded from selling equipment in a number of major markets, some U.S. telecommunications industry members have had significant activity in other nations.

We recommend that S. 2618 not suspend all existing foreign trade agreements. Instead, the bill should allow a focused approach aimed at negotiating new trade agreements with foreign nations whose telecommunications markets are not now fully accessible to U.S. vendors because of any combination of tariff and non-tariff barriers.

We also suggest that the bill not prescribe any single remedy to be applied if satisfactory new trade agreements are not negotiated. The higher tariff rates prescribed by S. 2618 represent a substantial move away from the Most Favored Nation principle of the General Agreement on Tariffs and Trade...and this would threaten the basic understanding by which the international trade of the United States has been conducted for decades. As an alternative, the President should initiated action under Section 301 of the 1974 Trade Act if satisfactory trade agreements are not negotiated.

Finally, we recommend that the three-year period for negotiating new telecommunications trade agreements be reduced so as to ensure prompt attention to the need for new agreements. The Administration should be required to report to Congress on its progress in these negotiations.

Another concern we have regarding trade in telecommunications has to do with the internal handicaps that domestic communications policy has imposed on AT&T...specifically, the structural separations requirements applied selectively to AT&T among U.S. manufacturers by the Federal Communications Commission's Second Computer Inquiry (CI-II).

CI-II keeps us from organizing most efficiently to meet competition in domestic and foreign markets, while our competitors are free to organize any way they choose and for their greatest advantage. We have petitioned the FCC for relief from outdated CI-II restrictions, which were imposed four years before the divestiture of the Bell Operating Companies by AT&T. We ask your support in our efforts to remove these regulatory restrictions that worsen the very problem which S. 2618 addresses.

My name is Randall L. Tobias and I am a Senior Vice President at AT&T.

We welcome the opportunity to participate in these hearings on S. 2618, "The Telecommunications Trade Act of 1984." This subcommittee should be commended for its initiative in examining the inequities in international telecommunications trade, and taking steps to resolve those inequities.

AT&T supports the central objective of S. 2618: to promote open world trade in telecommunications equipment. The bill would require newly negotiated trade agreements between the U.S. and its major trading partners. These agreements would seek to assure competitive market opportunities for sales of U.S. telecommunications equipment that are substantially equivalent to the competitive opportunities provided in the U.S. market.

It is my view that certain modifications to S. 2618 are required to avoid unduly hampering current U.S. trade activities in telecommunications and enhance the central objective of this legislation.

In addition, inequitable trade practices by foreign nations are not the only impediments to our ability to compete on a fair basis both here in the U.S. and abroad. A significant factor in that regard is the outdated rules that have been

imposed selectively on AT&T by domestic communications policy. The structural separation requirements ordered in 1980 by the Federal Communications Commission (FCC) under its Computer Inquiry II decision keep us from organizing most effectively to meet the needs of our customers, who are free to choose from a variety of foreign and domestic suppliers of telecommunications equipment.

On January 1 of this year, a new AT&T--one quarter of our former size--went into business. That business is meeting customer needs--worldwide--for the electronic movement and management of information. The market in which we are competing is a truly global one, and all aspects of our business--research and development, manufacturing, marketing, distribution, and services--demand a global perspective.

The worldwide information market is growing rapidly. The U.S. Department of Commerce estimates that global demand for information products and services will more than double during this decade, to about $400 billion.

Today's world market for information equipment alone is about $60 billion, with about $35 billion of that outside the United States.

Here at home, information equipment industries have been leading U.S. economic growth and expanding at a rate far greater than manufacturing as a whole over the last ten years. The annual growth rate has been 8 percent for telecommunications equipment; 10 percent for electronic components; and 18 percent for computers. All U.S. manufacturing expanded by only 1.2 percent a year during the same period.

Growth in the information business is occurring amid intense competition. For example, more than 2,300 U.S. companies produce a variety of telecommunications products. Hundreds of companies offer domestic and international telecommunications services. Some 1,000 privately owned microwave communications systems span more than a quarter million miles.

Competition from foreign firms is also growing. In A.D. Little Co.'s review of the top 25 worldwide telecommunications equipment suppliers, 16 were foreign owned.

Like the communications industry itself, the international marketplace is vital, expanding, interactive. It affords major business opportunities, and, from our perspective, provides financial and technological incentives that complement our domestic business and contribute to the American economy.

Some perceive open international trade as a threat. We see it as an opportunity.

We first entered the international marketplace late in the last century: our first sales of telephone equipment outside the U.S. were made in 1881. By the 1920s, AT&T, through the International Western Electric Company, was one of the largest multinational communications manufacturers in the world. But we decided to concentrate our attention on the domestic marketplace--serving the needs of the Bell Operating Companies nationwide--and sold our international business in 1925...to a company that became ITT.

We did not totally exit the world telecommunications market, of course. AT&T Long Lines--now part of AT&T Communications--continued to work with overseas carriers to provide network services worldwide and to manage international call handling in the U.S.

During the downturns in the domestic economy in the mid 1970s, we resumed marketing overseas for the first time in some 50 years. In 1980, we decided to expand these efforts and established AT&T International, a wholly owned subsidiary of AT&T.

AT&T remains committed to high technology manufacture in the United States. Our manufacturing arm is AT&T Technologies, Inc., formerly called Western Electric. A new AT&T Technologies, Inc. plant in Orlando, Florida, to manufacture integrated circuits used in computerized equipment, is just

coming on line. We are also making major expansions and improvements to our facilities in Allentown, Pennsylvania, and Kansas City, Missouri, as well as a number of other plants.

In certain other areas, AT&T Technologies, Inc., must downsize its operations in order to reduce its costs in the face of strong competitive pressures.

A key financial benefit for a company participating in international trade is that the expanded sales base that results from marketing overseas helps support research and development programs. From R&D flow the technological innovations that provide new products and services for U.S. consumers and allow us to compete with foreign manufacturers--both at home and overseas.

Research and development also results in efficiency improvements, which help keep down the prices of products and services for all customers in the U.S. economy--including business customers. Thus, advances in high technology industries, such as telecommunications, provide cost advantages for all U.S. industry...from high-tech to "smokestack" to small business companies.

The success of U.S. companies in the international trade arena clearly is critical to maintaining continued growth in the domestic economy. Because from this success comes jobs.

As the Joint Economic Committee has reported, 4 of every 5 new manufacturing jobs in the United States in recent years have resulted from production for export. Today, 1 of every 8 manufacturing jobs involves exports. Additional U.S. jobs originate from international trade in services; the U.S. generates 20 percent of the world trade in services.

We expect that our export activities will help preserve and expand the job prospects of our American workers and offer continued opportunities to many of our approximately 80,000 suppliers throughout the country.

Of course, the same economic benefits experienced by U.S. companies and the U.S. economy through international trade are realized by foreign producers who sell overseas and by their national economies.

A very important market to these overseas producers is the U.S. market. Our market is a large one, and it is a fast-growing one--especially for telecommunications equipment. Last year, total imports of telecommunications equipment nearly doubled--from $649 million in 1982 to $1.2 billion in 1983. These imports have already reached $862 million this year.

U.S. export growth is not keeping pace with the increase in imports. The U.S. economy as a whole has been running a trade deficit for the past 8 years; that deficit is

expected to pass the $100 billion mark in 1984. The U.S. balance of trade in telecommunications equipment turned negative last year--on a deficit of $412 million.

The problems U.S. telecommunications companies face in competing with foreign producers both here at home and overseas are similar in many respects to the difficulties of other U.S. industries. Yet, because telecommunications is recognized by many foreign governments as a potential high-growth, high-employment industry and so is "targeted" by these governments for special assistance, the obstacles we encounter to open trade are often unique. So I will speak from a telecommunications viewpoint.

The U.S. domestic market for telecommunications equipment is a virtual free-trade zone for foreign competitors. Foreign competitors are taking full advantage of the fundamental shift in the telecommunications industry that has been occurring over the past 25 years, a shift from pervasive economic regulation to reliance on unregulated marketplace competition.

Foreign telecommunications providers have easy entry to the U.S. marketplace.

Minimal tariffs are applied to telecommunications goods entering the U.S., and there are no non-tariff barriers on goods or investments.

Examples of foreign telecommunications companies finding unrestricted access to American markets are many.

Nippon Electric Co., Japan's leading producer of telecommunications equipment and small business communications systems, operates 7 subsidiaries and 30 sales offices in the United States. They manufacture private branch exchange systems (PBX's) in Texas, electronic components in California, and computers in Massachusetts.

Northern Telecom, the Canadian telecommunications company, has more capital invested in the U.S. than in Canada. The U.S. sales of Northern Telecom last year accounted for more than half the company's total revenue.

L. M. Ericsson, the Swedish telecommunications company, operates 10 subsidiaries in the U.S. More than 90 percent of Ericsson's total sales are made outside of Sweden.

Fujitsu, the leading manufacturer of general purpose computers in Japan, has 4 subsidiaries in the U.S. Fujitsu manufactures microelectronic components and optical electronics equipment in California, and fiber optics systems in Texas.

I should stress that these examples are not offered as a call to restrict foreign investment or participation in the U.S. domestic telecommunications market. What they do indicate

is the extent to which the absence of non-tariff trade barriers in the U.S. provides easy entry for foreign telecommunications suppliers, who compete with domestic suppliers.

S. 2618, "The Telecommunications Trade Act of 1984," correctly points up the anomaly of a U.S. telecommunications marketplace that is open to all comers, while in many markets abroad U.S. competitors face significant trade barriers.

Traditional trade barriers--involving quotas and tariffs--are still being used, especially in developing countries. But most trade barriers to telecommunications imports in developed countries are non-tariff. They include:

--home supplier preference in procurement;
--lengthy and restrictive procurement approval procedures;
--local content requirements;
--and actions that limit or deny foreign investments by limiting equity participation

These kinds of non-tariff trade barriers have handicapped U.S. telecommunications producers in their sales efforts in Japan, Canada, and the European Economic Community nations. In these countries, telecommunications has become a "targeted industry" whose growth is promoted by the government

through subsidies, government loans, special tax treatment, and joint ventures between government and home telecommunications companies.

Although most Americans recognize the inequities in international trade practices, they remain squarely behind the principle of open trade, as indicated by a Harris poll last year. Of those polled, 81 percent said that American people should have the chance to buy foreign products at reasonable prices. And 89 percent called on U.S. business to make better products more efficiently to compete in the world, rather than depend on trade barriers to limit foreign competitors.

We agree that protectionist barriers in the long term are self defeating: they reflect each country's weaknesses--not its strengths.

While AT&T supports the goal of open trade expressed in S. 2618, we believe that certain modifications to the bill are necessary to achieve this objective.

A key provision in S. 2618 is that, upon enactment, existing trade agreements with all foreign nations are suspended. While domestic telecommunications manufacturers have been virtually precluded from selling equipment in some major markets, some U.S. telecommunications industry members have had significant activity in other nations. AT&T, for example, has

been active in Saudi Arabia, Egypt, Korea, and Taiwan. In addition, our relationships with the European Economic Community and Japan are improving, albeit not to the extent that we would prefer.

As a result, U.S. business has understandable concerns that an across-the-board suspension of all trade agreements (along with the pending threat of an automatic import tariff barrier, as proposed by the bill) will damage U.S. direct foreign sales activities.

The thrust of S. 2618, as we understand it, is that at the end of the three-year suspension period, the higher tariffs would go into effect only for those trading partners who have not negotiated new trade agreements with the U.S. in order to assure competitive foreign market opportunities for U.S. telecommunications equipment companies that are substantially equivalent to the competitive opportunities in the U.S. market.

However, the Most Favored Nation provision of the General Agreement on Tariffs and Trade (GATT) stipulates that if tariff rates for a product are raised for one country, they must be raised for all countries. No nation has ever set aside trading agreements established under GATT to the extent that would result from S. 2618.

Abandoning these principles, which are at the heart of the General Agreement on Tariffs and Trade, would threaten the basic understandings by which international trade of the United States has been conducted for decades.

If you would find it useful (and because I am not the resident expert at AT&T on GATT provisions), a more detailed technical analysis of GATT-related issues can be provided at a later date.

We recommend that S. 2618 not suspend all existing foreign trade agreements, but allow a focused approach aimed at negotiating new trade agreements with foreign nations whose telecommunications markets are not now fully accessible to U.S. vendors because of any combination of tariff and non-tariff barriers (primarily involving the EEC, Canada, and Japan).

Second, the bill should not prescribe any single remedy to be applied if satisfactory new trade agreements are not negotiated. U.S. negotiators should have the flexibility to tailor both the standards of acceptability for trade agreements and the remedies available in the event of foreign intransigence.

An alternative to a specific penalty established by S. 2618 might be a provision requiring the President to exercise whatever remedies are deemed necessary and would be initiated under Section 301 of the 1974 Trade Act, i.e., raising tariff levels, restricting imports, increasing quotas, after proper investigation of the matter.

Third, the three-year negotiating period should be reduced so as to ensure prompt attention to the need for new telecommunications trade agreements. Along this line, the Administration should be required to report to Congress on progress made in opening telecommunications markets throughout the world. This annual report, which would assist Congress in its oversight responsibilities, could include the status of trading partners' legislative and policymaking activities regarding greater procurement of U.S. telecommunications products in both the public and private sectors of foreign economies.

For example, the report might include an analysis of acquisitions made by Nippon Telegraph and Telephone Company (NTT) as a result of the recent NTT procurement agreement, as well as the status of the NTT privatization legislation pending in the Japanese Diet.

Finally, as regards Title I provisions of the bill, AT&T is concerned about the possible impact of S. 2618 on relationships among international telecommunications service partners, such as between AT&T Communications and the foreign

telecommunications agencies. In our view, S. 2618 should be clarified to explicitly exclude jointly provided services and limit its focus to product markets.

However, even if S. 2618 language is clarified regarding jointly provided telecommunications services, the danger remains that these services could be affected by the political process begun under S. 2618. A foreign government may, for example, decide to include jointly provided services in any reciprocal treatment it deems necessary.

When we view the international trade situation in telecommunications equipment, we see two serious problems. One is the restrictive and self-defeating trade barriers erected by other nations that only serve to retard growth in world telecommunications trade. The second problem has to do with the internal handicaps that domestic communications policy has imposed on AT&T...specifically, the structural separation requirements applied selectively to AT&T among manufacturers by the FCC's Second Computer Inquiry (CI II).

CI II requires AT&T Information Systems, which provides unregulated customer premises equipment and enhanced services, to operate on a fully separated basis from all other parts of AT&T.

The order was issued in 1980, when AT&T still owned the Bell Operating Companies; we divested the BOCs this year, and the order is now inappropriate and counterproductive.

CI II structural separation rules work to the further advantage of foreign suppliers by handicapping AT&T, a major U.S. telecommunications supplier.

The CI II rules impede AT&T in competing effectively in the U.S. market against foreign suppliers in three important ways.

First, the structural separations rules impose costs of duplication of effort that are estimated to be in excess of one billion dollars per year for the AT&T Technologies sector. This alone gives foreign competitors a 6-8 percent cost advantage over AT&T products in both domestic and foreign markets.

The indirect costs for AT&T of structural separation are even greater. For example, possible new products, services, or applications are sometimes not even explored because of the chance that they will be delayed by CI II in getting to market...or, even worse, that they may not ever be able to reach the marketplace. As another example, a large proportion of our business decisions are complicated and delayed by the need to conform those decisions to the complicated rules of CI II.

Second, foreign firms are able to adapt technology from any part of their businesses for use in customer premises equipment, such as telephones and computer terminals. If software (computer instructions) is involved, we have CI II obstacles in doing this.

As an example, it is possible for us to take a digital central office switch and modify the software for it to serve a very large PBX (an electronic switchboard used by business customers to route calls internally). But CI II puts obstacles in the way of transferring the software to AT&T Information Systems, which is the only marketing organization through which we are permitted to offer such a system to an end user. We recently lost a $70 million sale to a U.S. customer who selected just this type of modified switch made by a foreign firm...while we were still working our way through CI II rules.

Third, a multinational customer typically wants to operate its U.S. and foreign branches as one system--and expects its telecommunications supplier's domestic and international operations to cooperate in meeting these worldwide telecommunications needs. Yet, CI II needlessly obstructs AT&T Information Systems and AT&T International in this regard.

Structural separation inhibits AT&T from capitalizing effectively on the innovations of AT&T Bell Laboratories. In some cases, we even have to describe our technology before we can

introduce it in the marketplace. This gives our foreign competitors a chance to catch up without incurring the same R&D costs and risks as we experienced.

In sum, current domestic communications policy has opened wide the door to the U.S. telecommunications market for any and all competitors. Significantly, federal regulatory policy restricts the ability of one of this country's major telecommunications suppliers--AT&T--to compete equitably not only at home but abroad. This trend merely serves to exacerbate the nation's first deficit in telecommunications trade, a deficit that is widening.

While this issue certainly is not subject to treatment in this legislation, it is critical to a thorough examination of the problems associated with inequities in international telecommunications trade.

We have petitioned the FCC for relief from outdated CI II restrictions, and the Commission received comments from interested parties. Not surprisingly, our competitors want the restrictions retained. But individual customers writing to the FCC have almost uniformly supported our position. We ask your support in our efforts to remove regulatory restrictions that worsen the very problems to which you are responding in S. 2618.

I would like to thank the Chairman and members of the Subcommittee for the opportunity to share with you AT&T's views on reducing barriers to trade in telecommunications. We will gladly work with you to achieve this important goal.

## STATEMENT OF JOHN F. MITCHELL, PRESIDENT, MOTOROLA, INC., SCHAUMBURG, IL

Mr. MITCHELL. Good morning, and thank you for the opportunity to appear today and testify on this important legislation, Senate bill 2618.

We need a level playing field in our industry if we are going to be successful in international competition. A level playing field really doesn't exist today in our industry. The FCC and the courts have opened the U.S. market. The FCC opened the wireless market in the United States many years ago, and the courts now have opened the wired market. Imports have surged into the United States, and a great question occurs to many of us, that is, will telecommunications follow the route of steel, television, and machine tools? As a case in point, I would like to discuss the cellular mobile telephone, as this is an example of a developing high tech market where the U.S. industry has made the primary investment over the last 15 years. AT&T and Motorola have been leaders in this effort. We, as a company, have invested over $150 million. The market has been opened to foreign interests for almost 10 years. Foreign companies have participated in the development phases of this system. Other industrial markets remain closed, except for the United Kingdom—the U.K. has opened their market for both fixed and mobile equipment.

We have been successful in moving into the Japanese market to a very limited extent as a result of the NTT agreement. We have achieved an order for 200 or 300 mobile units this year and several thousand next year in that market. In the United States, in the first 10 months of this new market, Japanese firms outnumber U.S. firms by three to one. Many firms have adapted an old strategy—cut the price. The price in the U.S. market is now and has been running in many situations at half the price in the Japanese market. Several of these competitors are tooling up for over 100 percent of the expected market in the next year.

The fixed infrastructure in this market remains open here in the United States and closed in most other countries of the world, except for the U.K. As a result, we see Swedish and Canadian firms moving into the U.S. fixed equipment market, and as a result of the FCC action, creating seven operating companies and two systems in every city, there are a whole host of independent customers. There are thousands of customers in the U.S. market whereas in most other markets of the world, there is only one customer, and that is the Government. Even in Canada and the U.K.—which have created two systems—one of those systems is the Government.

Developing countries are open, and Motorola has achieved success in these markets—Hong Kong, Israel, Korea—and we will be bidding on others. The real problem boils down to the Government's involvement in other markets and the ownership and operation of the telephone system. I could expand this scenario in other products in the wireless world, such as two-way radio and paging. There are similar impediments to access in other markets in these product areas.

U.S. Government must be involved and be aggressively involved now to open the other markets of the world. Just talking may hurt

more than it may help. We are beginning to convince our trading partners that we are carefree on trade. In some cases, we have convinced them for a long time that we aren't really serious about trade inequities. The NTT Agreement, for instance, has been very good for Motorola. We have one-sixth of the paging business in Japan as a result of that access, and we may achieve a seventh of the car telephone business in that country. But it hasn't been good for the trade baiance in telecommunications in the general U.S. market.

The U.S. Government must help open these markets and S. 2618 is an excellent vehicle to get started in this direction. In addition, there are other problems with our trade imbalances in telecommunications. We must work hard on the exchange rate. I was here earlier this year and talked on that subject. The U.S. Government is ignoring the problem of the strong dollar and its devastating effect in our manufacturing sector. We hear often about the strong dollar brings in low priced imports and holds down inflation. But take this reasoning to the limit. Then all manufacturing will move offshore—and American companies are moving their manufacturing process offshore little by little—and more and more every day. What will we have in this country when we find only service and Government jobs in the United States? In that limited condition, will we really have prosperity along with our low inflation?

Senator DANFORTH. Thank you very much.

[Mr. Mitchell's prepared written statement follows:]

SUMMARY STATEMENT OF
JOHN F. MITCHELL
PRESIDENT, MOTOROLA, INC.

COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE

September 12, 1984

We strongly support the primary objective of S. 2618 of obtaining substantially equivalent competitive opportunities in foreign countries to those provided in the U.S. market today. That situation currently does not exist with respect to almost all of our major competitor countries that have a substantial domestic market. While a number of these countries are moving to open their markets, they have far to go to match the access their firms are afforded in the U.S. market. Recent deregulation decisions by the FCC, the AT&T divestiture, the introduction of significant new telecommunications technologies like cellular radio and a seriously overvalued dollar have combined to give foreign firms unprecedented opportunities to participate in the U.S. market.

It is untenable in the long run for U.S. firms to compete in significantly smaller share of the global market than our major competitors. The result is likely to be a significant erosion in the U.S. industry's international competitive position.

Cellular technology was developed first in the United States by Motorola and AT&T. Motorola has invested over $150 million developing all the fixed, mobile and portable equipment in a cellular system.

In the mid-70's, AT&T invited domestic and foreign suppliers to participate in developing cellular technologies. As a consequence, of this and the prolonged and open FCC regulatory process, those foreign suppliers are thoroughly knowledgeable of the U.S. market and in a position to supply it.

In stark constrast, U.S. firms have been either severely limited or precluded from participating in many major foreign cellular markets in the industrial countries which have local production.

In the United States, cellular systems began operating on a commercial basis in November 1983. After only 10 months, foreign firms (primarily Japanese) have established a major position in mobile equipment for this explosive new market.

The heart of the problem of access to foreign telecommunications markets is the dominant role of governments in those markets.

Given the pattern, the U.S. Government must play an active and aggressive role in protecting the interests of private U.S. firms. To effectively do it we must be able to use the leverage of access to the U.S. market, which represents one-third of the world market. S. 2618 provides a mechanism for effective negotiations by the U.S. Government to obtain a level of business in foreign markets commensurate with the competitiveness of the U.S. telecommunications industry.

Where government entities control the telecommunications market the U.S. Government should negotiate procurement targets and specific priority product areas for such purchases.

In closing, I urge your prompt favorable consideration of S. 2618.

STATEMENT OF

JOHN F. MITCHELL
PRESIDENT, MOTOROLA, INC.

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today. I am also the current Chairman of the EIA Telecommunications Group.

We strongly support the primary objective of S. 2618 of obtaining substantially equivalent competitive opportunities in foreign countries to those provided in the U.S. market today. That situation currently does not exist with respect to almost all of our major competitor countries that have a substantial domestic market. While a number of these countries are moving to open their markets, they have far to go to match the access their firms are afforded in the U.S. market. Recent deregulation decisions by the FCC, the AT&T divestiture, the introduction of significant new telecommunications technologies like cellular radio and a seriously overvalued dollar have combined to give foreign firms unprecedented opportunities to participate in the U.S. market. The result is evident in increased import penetration over the last 2 years -- from under 5% in 1981 to close to 11% in 1983.

I am not appearing before you to ask for legislation to stem the tide of imports but rather for legislation that will provide strong negotiating leverage to persuade our major competitor countries to purchase from us on a competitive basis. The U.S. telecommunications industry today is world leader in technology and has demonstrated its competence to compete worldwide, where opportunities are available. However, it will be difficult for the U.S. industry to maintain its position unless it can sell freely into competitor markets. It is untenable in the long run for U.S. firms to compete in significantly smaller share of the global market

than our major competitors. The result is likely to be a significant erosion in the U.S. industry's international competitive position.

Some have speculated that the situation could become a repeat of steel, consumer electronics, and autos. I hope not, but without significant and immediate improvements in U.S. access to major foreign markets, such an outcome is not inconceivable. That is why legislation like S. 2618 is urgently needed.

In his appearance before your subcommittee on June 26, Jack McDonnell of EIA documented the serious erosion in the U.S. telecommunications trade position and he is adding additional documentation today. From 1978 to 1983 imports grew six times faster than exports, with imports actually exceeding exports for the first time in 1983. These trends intensified in the first half of 1984, as the ATT divestiture takes effect. In his testimony to you on June 26, E. Wayne Weeks of AT&T testified that for network products such as switching and transmission systems, he projected that foreign sales would increase 30% in 1984 and could grow 300% over the next five years. That represents an additional $4-5 billion annually by the end of the period.

These numbers are impressive but they may actually understate the problem. As a case in point, I would like to take a few minutes to describe my company's experiences in cellular radio, which illustrates the nature of our open market compared to the variety of semi-open to closed markets elsewhere in the world.

Cellular radio is a technology, developed over the last 15 years, which promises to revolutionize mobile communications. In areas served by cellular networks, users can call anywhere in the world from their car or portable phones. Such service will be invaluable to millions of people in business and government in a wide variety of uses.

Cellular technology was developed first in the United States by Motorola and AT&T. Motorola has invested over $150 million developing all the fixed, mobile and portable equipment in a cellular system.

In the mid-70's, AT&T invited domestic and foreign suppliers to participate in developing cellular technologies. As a consequence, of this and the prolonged and open FCC regulatory process, those foreign suppliers are thoroughly knowledgeable of the U.S. market and in a position to supply it.

In stark constrast, U.S. firms have been either severely limited or precluded from participating in many major foreign cellular markets in the industrial countries which have local production (with the notable exceptions of the U.K. and the Netherlands). The French and Germans are designing a system unlike any other in the world and even U.S. firms who manufacture in those countries will apparently be denied the opportunity to participate. We have recently been told informally by a Canadian customer that we will be excluded from their fixed equipment market.

In Japan, which has been operating cellular systems since 1979, no U.S. firms were permitted to supply equipment until mid-1984.

Motorola has recently been awarded a small volume of car telephone units. No foreign supplier of network equipment have been permitted in the existing system although Motorola was invited to participate in the advanced development of the next generation system. U.S. firms are in a catch-up position where the government owned NTT determines who may participate and to what extent in the Japanese market.

Japanese firms and any other interested foreign producers were invited into the U.S. market 10 years before the first equipment was sold and have the opportunity to sell to a multitude of customers on competitive basis. In the United States, cellular systems began operating on a commercial basis in November 1983. After only 10 months, foreign firms (primarily Japanese) have established a major position in mobile equipment for this explosive new market.

Japanese firms have a large percentage of the subscriber car telephone market and have reportedly built capacity to supply 100% of the market next year. They outnumber U.S. suppliers by almost 3 to 1. Several Japanese firms have been extremely aggressive in cutting prices. Their first step was to cut prices to levels less than half those prevailing in other major world markets. This resulted in a general lowering of world market prices as other firms defended against the Japanese firms' actions. Such prices deny U.S. firms the opportunity to recover the substantial investments made in this new technology.

Under the FCC's decision to establish two competitive systems per city and award one to the wireline carriers and one to the independent cariers, and since the Court decision to create seven regional Bell operating companies, there is a long list of potential customers for fixed equipment in the U.S. cellular market -- unlike any other country in the world. Canada will have two systems, but there will be just two customers nationwide. In the other markets there will be, as with other telephone systems, only one customer. The U.S. market for fixed equipment is also, thus, wide open and a variety of foreign firms including Swedish and Canadian companies have captured significant orders for citywide systems in various American cities.

It is ironic that although industrial countries are largely closed, the developing countries have relatively open markets for products such as cellular radio since they do not have a local industry to protect. There will be some early implementation of systems close to the American standard in these countries in the very near future with a reasonable number provided by companies such as Motorola. We expect to supply systems in Hong Kong, Israel and Korea, and bid on other countries' systems.

It may be too late for legislation like S. 2618 to be meaningful in opening markets for cellular radio equipment, but it certainly can help in other areas.

The heart of the problem of access to foreign telecommunications markets is the dominant role of governments in those markets. In

Sweden, public entities control over 90 percent of equipment purchases. They control 70-80 percent in France, Germany and Australia. In Japan, NTT represents 40 percent of the overall market, but has a monopoly on key products.

Given the pattern, the U.S. Government must play an active and aggressive role in protecting the interests of private U.S. firms. To effectively do it we must be able to use the leverage of access to the U.S. market, which represents one-third of the world market. S. 2618 provides a mechanism for effective negotiations by the U.S. Government to obtain a level of business in foreign markets commensurate with the competitiveness of the U.S. telecommunications industry.

In setting objectives for such negotiations, we believe that the focus should be on results, not mechanisms. The U.S. experience with the NTT Agreement shows why this is necessary. That agreement has brought about significant changes in NTT's procedures and, we believe, sincere efforts by NTT's management to include U.S. firms as suppliers.

Yet despite these changes and the efforts made, according to data developed by USTR, NTT purchased only $19 million of telecommunication equipment last year. That represents an improvement -- from zero in 1981 -- but is still inconsequential. NTT announced purchases of U.S. equipment in excess of $150 million

in FY 1983, however, the bulk of equipment NTT has announced is either nontelecommunications (e.g., Cray Computer) or will be shipped later.

Where government entities control the telecommunications market the U.S. Government should negotiate procurement targets and specific priority product areas for such purchases. Only in this manner can we ensure that bureaucratic and political influence will not frustrate administrative reforms negotiated in good faith.

The almost inevitable consequence of protected home markets is that foreign firms will dump their exports. Within the last 3 years there have been several U.S. dumping cases involving communications equipment, all of which have found dumping by margins in excess of 20 percent and in some cases as high as 110 percent. Until foreign markets are opened there is good reason to suspect that most of the telecommunications equipment exported from these countries to the United States is being sold at less than fair value in the U.S. market. As the volumes of such equipment increase rapidly and U.S. firms are injured, it is quite possible that U.S. telecommunications imports may become subject to widespread antidumping actions. Such litigation is costly to all parties involved, creates serious international tensions, and can ultimately restrict import competition in the U.S. market. It would be far more preferable for consumers in other countries to receive the benefits of market competition from U.S. firms. However, if

their governments are unwilling to permit that, the U.S. Government should act affirmatively to ensure injurious dumping does not occur in this country, rather than be buried in litigation.

Let me divert from discussions of telecommunications trade for a moment to observe that while foreign market access is crucial to the success of our industry, the grossly overvalued dollar threatens the success of almost all U.S. industries that face international competition. The U.S. is already a high cost region for manufacturing but with a dollar overvalued by at least 20%, it is almost untenable to manufacture internationally tradeable goods here. In addition to billions of dollars on lost exports, the U.S. is losing millions of jobs. I testified in June before the Finance Committee on this vital national problem and suggested an import surcharge as a means of raising revenues to reduce the federal budget deficit. I would urge you to give the highest priority to considering and acting on this and other steps as rapidly as possible. If we cannot solve the dollar problem, improved foreign market access and unfair trade practice remedies will be of limited value.

In closing, I urge your prompt favorable consideration of S. 2618. The longer you take to pass such legislation the less useful it will be. Not only will the compensation bill for suspending tariff bindings become unmanageably large but also foreign producers will establish such a strong position in the U.S. market that U.S. producers will be unable to exploit new opportunities in foreign markets and U.S. customers will become dependent on them.

Senator DANFORTH. Senator Long.

Senator LONG. Yes. It is my understanding that Western Electric has a very successful plant in Shreveport, LA, where you manufacture telephones. Are you familiar with that plant?

Mr. TOBIAS. Yes, Senator. Prior to coming to my current job, I was president of AT&T Consumer Products, and the plant in Shreveport is now part of that operation, so I am very familiar with it.

Senator LONG. Let me ask you about the efficiency of that plant. Is that a very efficient operation?

Mr. TOBIAS. Yes, sir. It is. It is probably one of the most efficient operations that we have. We have invested a great deal of capital in that plant in the last couple of years in terms of automating much of that manufacturing operation.

Senator LONG. Now, in that same community, I think part of it is because of the success of that plant there, General Motors looked at that community and decided that they would put an assembly plant—light trucks. And I know that when the Japanese came over to see what we have in the United States—they elected to go to Shreveport, LA, and show them that assembly plant that they have at Shreveport. Obviously, they picked that plant because they thought it was probably one of the most efficient and productive plants anywhere to be found in America. And I think your studies indicate that that's one of the most efficient assembly plants that assembles electronic telephonic equipment anywhere in the world, don't you?

Mr. TOBIAS. Yes, sir, it is.

Senator LONG. Now, how do your wage rates there compare with the wage rates, let's say, in Korea?

Mr. TOBIAS. The wage rates there—I am not specifically conversant on the precise level—but our wage rates there are higher than they are in Korea.

Senator LONG. Do you have any idea as to how your wage rates compare with what the rates are in that you would be competing in the market for manufacturing that type of thing?

Mr. TOBIAS. Our wage rates in that facility, I am sure, are higher than they are in a number of locations—offshore locations—where products are produced with which we compete.

Senator LONG. Would you undertake to get that information and provide it for the record? I would like to have that.

Mr. TOBIAS. Yes, sir. We would be happy to do that, Senator.

[Subsequent information was received and follows:]

AT&T

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295 North Maple Avenue
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Phone (201) 221-7800

October 31, 1984

Senator Russell B. Long
Russell Senate Office Building
Room 225
Washington, D.C. 20510

Dear Senator Long:

At the international telecommunications trade hearings of September 12, 1984, you requested that AT&T provide the Subcommittee on International Trade with a comparison of the labor rates in several Far East countries versus the rate in AT&T's facility in Shreveport, Louisiana. The attachment to this letter provides a listing of base labor rates in Hong Kong, Taiwan, Singapore, Korea and Japan along with the factory-wide average base labor rate in the Shreveport plant.

A comparison of base labor rates does provide some insight into product cost differences; however, productivity levels must also be considered to accurately compare the full impact of labor costs on any product line. Variation in work rules and practices, worker productivity and the level of automation directly affect the amount of labor required and therefore total and per unit labor costs. For example, when a large capital/dollar investment is made in new equipment to increase the level of automation, the resulting increase in productivity will reduce both labor input and costs per unit produced. However, such per unit savings, attributable to the higher productivity associated with the advanced technology in the U.S., are not always sufficient to fully offset the impact of the lower labor rates of the Far East countries on the total product cost. We would hope through continued higher productivity and with the cooperation of the U.S. Government and our unions we can be competitive from both a cost and total perspective with offshore manufacturers while continuing to pay substantially higher wages.

It is hoped that this information complies satisfactorily with your request. We would be pleased to discuss with you any further information that you may request on this matter. In this regard, we cordially invite you to visit our facility in Shreveport, later this year, at which time we can have further discussions on the subject.

Very truly yours,

Attachment

ATTACHMENT

BASE WAGES*

| | Labor Rate Per Hour ($ U.S.) |
|---|---|
| Hong Kong (1) | $1.05 |
| Taiwan (Female) (1) | .85 |
| Singapore (Female) (2) | 1.67 |
| Korea (3) | 1.20 |
| Japan (4) | 4.80 |
| AT&T (Shreveport) | 8.70 |

(1) Based on data from suppliers in Taiwan.

(2) Based on our experience with a supplier in Singapore.

(3) Based on our experience with a supplier in Korea.

(4) Electronics industry average supplied by Fuji Bank.

* Rates are for the telecommunications and electronics industries, and do not include any security accruals (i.e., fringes, holidays, etc.).

Senator LONG. Now, in addition, these factors that I have discussed—the differences in the tax system and the difference in the value of the currencies—isn't that pretty much of a worldwide problem as far as your competition is concerned, is it not?

Mr. TOBIAS. Yes, sir. It certainly is.

Senator LONG. And is it not true that those are problems that are beyond your control? You have no way of doing anything about that. That has to do with decisions made by this Government.

Mr. TOBIAS. That is correct.

Senator LONG. And those decisions have been made without reference to your business, and really it is beyond your power to do anything about it.

Mr. TOBIAS. Other than to bring the matter to the attention of people who are making those decisions, yes, it is, but directly in terms of the way we manage the business, those are problems that are very difficult to deal with.

Senator LONG. And as I understand it, basically all you are really asking for is the benefit of a level playing field to compete with others in your line of expertise.

Mr. TOBIAS. That is precisely correct. We are simply seeking recognition that, particularly in the telecommunications market, in order to be strategically successful, you can no longer look at just the domestic market. You really have to look at the entire world and the need to have the economies of scale associated with competing on a worldwide basis. And we are very willing and anxious to compete. We are certainly not seeking any restraints on that in this country. We are seeking the opportunity to compete openly and fairly all around the world.

Senator LONG. Mr. Mitchell, in your situation, if you want to provide the benefit of a level playing field in competing in the areas that Motorola is a manufacturer, would your great corporation not be forced to go overseas and try to do more and more of that manufacturing overseas because you can't compete effectively here?

Mr. MITCHELL. That has been going on for many years. We have almost half of our personnel offshore although only 25 percent of the market in 1984 will be in the international arena. At one point, we were as high as 33 percent, but because of the problems with the dollar in competing overseas, and access to markets, and the high growth of the U.S. market in recent years, why, of course, the international portion of the business has moved onward—only 25 percent—and yet we have a large portion of our population overseas.

It started out with low-cost labor and then mechanized facility operated in lower cost areas, and we now see R&D movement overseas. So, at some point, we will be forced to put the majority of even our high technology expertise in lower cost areas of the world because of the realities of the way the market is structured and the way the currency is.

Senator LONG. What tends to happen in this country is that we tend to let things go from bad to worse and continue to do business as usual and do nothing about it until a situation gets so bad that somebody says, "yee God, this is horrible. Now, we have got to do something about it." Then, you see how long has this been going on, and you look back and the trend has been developing for years.

They usually don't come to us, though, until they are practically out of business. I hope you are here in time for us to do something in time to help you. How long has this trend been going on now?

Mr. MITCHELL. The movement of our currencies in an unfavorable direction has been going on since 1979—1979 or 1978, in that period. We were competing against the yen at about 180 to the dollar when it worked itself all the way up about 1 year ago to 270—it is back down around 240. It came down into the 230's when the U.S. Government made a vigorous attempt to make a more rational exchange rate with the yen, but it is now drifting up again. So, we see big problems competing against that kind of situation. When you talk about are we here too late? While we have been working on the cellular market, for instance, for over 15 years, there has been a long, long delay in the FCC proceedings with several decisions going back and forth and changing the original rules as to who would offer the service and how and who could manufacture and who could provide service and what have you. Those proceedings are always open, and foreign manufacturers, such as the Japanese, could participate. Six of them participated in a test system in Chicago. So, they were totally ready when the market opened. The market only opened with the first system in Chicago in November of last year, and we already see the Japanese firms alone taking a major portion of this market. They have the United States outnumbered, and when you say are we too late, it is difficult to raise the flag until you have been injured under our trade laws, but once you have been injured the damage can be severe. Now, we have pursued actions in the telecommunications area in dumping. When the Japanese retaliated as a result of the NTT agreement opening up the paging market in Japan, prices were cut 2 to 1 in the United States by firms who were just coming into the market. When we took that to the Trade Commission, they found a favorable decision and imposed very high tariffs as a result of duties coming into this country—dumping duties—they were over 80 percent. It was a move that took some years, but it was promptly taken on our part when the problem was visible.

But we can't keep pecking away at this thing with trade action after trade action. I think we need some kind of a level playing field across all of telecommunications. It really is a unique industry, with other governments running the market in other countries.

Senator LONG. Thank you so much.

Senator DANFORTH. Gentlemen, Senator Long understands these things, but I am just a humble lawyer from the Midwest. And I am not sure that I really understand telecommunications or what it is or what it does. But from what I do understand, this is not some antiquated buggy-whip type operation that is holding onto the past. When we talk about telecommunications, it is my understanding that we are talking about the cutting edge of American technology—all the advantages of know-how that we have prided ourselves on forever, and we are talking about the future. Therefore, as goes the telecommunications industry, so goes the future of our ability to create jobs and to provide a good standard for them and for the American people. We believe, as I understand it, that we are as good as anybody in the world. We have the know-how, we have the

trained people, we have the scientists and engineers. We have the greatest ability to produce the best product of anybody in the world. All we want is a reasonable chance to sell to other countries.

I would like each of you to first, if you would, reflect on my comments, and second, to describe for us the ease or the difficulty that we have today in selling what America produces in other markets. We have an agreement with the Japanese. We are supposed to be able to sell telecommunications equipment. Is that working well? Are the European markets really open or closed, or what is the situation with the respect to access of other markets? And what is the situation in the United States with respect to the access that they have to our markets? So, that is really I guess, a three-part question. Is this the cutting edge, and are we as capable as anybody else in the world or more capable in this area? Do we have a fair opportunity to sell in their markets? And to what extent is our market open to them?

Mr. TOBIAS. Senator, I think the opening part of your question is very, very much right on target. What we are dealing with here is an issue that is much bigger than just the specifics of the telecommunications industry itself. We are dealing with something that is increasingly becoming the very heart of the infrastructure of this country and this country's future—the ability of people to obtain information and manage their businesses and manage their lives and exchange this information—is fundamental to the ability of this country to move forward in the ways that you suggest. And I could not agree more with what you say.

With respect to the second part of your question, we have been working at AT&T for some time, after having been largely out of the international business for some time. For the last few years, we have been working very hard at developing an international presence because we recognize the fact that to be successful in these businesses, you really must approach it on a worldwide basis. We have had some success in some countries. In many countries, we have not. In many countries, there has been a lot of talk, a lot of discussion, but not a lot of specific progress. And we very much need to make that progress if we are going to have the kind of success that you suggest. At the same time, we have through a variety of policy activities that have taken place in this country in the last few years, we have done what you suggested earlier. That is, we have essentially opened the market in this country in a way that makes it possible for foreign competitors to enter this market with essentially no restrictions whatsoever. And the irony is, in the case of AT&T, that at the same time we are here discussing the need to level the playing field in other countries, we are dealing with a situation here where from AT&T's perspective, we are making it easier for foreign competitors to enter this market than we are making it for AT&T to compete in this market. And that contribute to what we are talking about here.

Senator DANFORTH. Mr. Mitchell.

Mr. MITCHELL. Let me add that you are absolutely correct when you say that this is a key to manufacturing high technology products in America. If we are not able to succeed in high technology areas, we are going to have a desperate time because clearly high

technology products will move to markets that have cost or other advantage.

The U.K. system was wide open. Why was it wide open? They chose to go early with an American-like system, not unlike the Japanese system, and they chose not to wait for their own normally preferred suppliers in that market to develop the system. So, with wide open competition, Motorola won. We won in Hong Kong and Korea, and we expect to win in other countries where there is no local industry that is being protected and the market is open for infrastructure.

We have done the same with two-way radio and paging. But when we sell into countries that have telephone systems operated by a Government-owned entity and preferred local suppliers then there is a limited number of local companies allowed to participate in those markets. There is a targetting effort in some of those markets to develop a highly capable, local group of companies—in some cases, only one, two, or three companies in each country—that have served the local market and use the local markets in a sheltered sense to export to the world. So, we find a very, very unique circumstance in telecommunications. In the general two-way radio business, there are other kinds of impediments. Certifying a radio for sale in the U.S. business market is easy. You send a certification document to the FCC, and if you haven't heard from the Commission in 30 days, you are approved. In other countries, there is an arduous certification process. You must submit documents and product, and it must be retested by the local government.

And as you can imagine, the difficulty of that approval process increases with the sophistication and ironically with the positive trade balance of the country.

Senator DANFORTH. This is why you say, as I understand it, in your testimony that what we should negotiate is procurement targets.

Mr. MITCHELL. That is correct.

Senator DANFORTH. It is not enough for another country to say all right, we are going to let a product in. We want to find out exactly what they are buying and how much they buy.

Mr. MITCHELL. That is correct. You know, when we signed the NTT agreement, it opened the market. In several cases, for one, American suppliers, and then it also opened the market for several more Japanese suppliers. They might have started out with two or three suppliers, and ended up with four or five or six Japanese suppliers and one American supplier, and they split the market six or seven ways. In the United States, any foreign manufacturer can come into the market and take whatever position they can earn in that market. They can price aggressively. They have relative immunity to our antidumping laws. Except for a few exceptions, they are able to move into this market from a sheltered market at home and take whatever position that they can earn. They are not relegated by the Government or by the customer to a sixth or a seventh of the market. So, even when the agreement was reached, the results may not look anything like the intention of the agreement.

I think the intention of this bill is to correct the imbalance and to find some kind of a rational target level.

Clearly, this has got to vary from country to country and from expertise to expertise, but it really means more than just a piece of paper that says a market is open now and new suppliers must jump through all these other hoops and over all these other fences and maybe they will qualify.

Senator DANFORTH. Yes. You know, the rationale of the free trade philosophy is that we should seek a policy of comparative advantage. That is, the United States should be able to produce and sell what it best produces and likewise other countries. If that rationale for free trade is correct, if that is to be followed, it seems to me that the least we should have is the ability to sell what we make better than anybody else, and that is telecommunications. And yet, one of the witnesses on the last panel, Mr. Morgan, said that people are losing their jobs. And it would seem to me that this should be the great growth area in America, and that we should be pushing that. And I think that, far from this being protectionist, it is very difficult for those of us who really are committed to free trade to be able to carry our argument. If we can't create a situation where what we make better than anybody else in the world can be sold anywhere else in the world—it is a ridiculous situation. And I agree with Senator Long. I have gone through Western Electric plants in Missouri, and I don't know what I am looking at—I am no engineer—but from everything I have been told and from every understanding I have, this really is a very, very good product. And it should be encouraged. So, I hope we can continue to work together on this legislation, and we will certainly review the suggestions you have made and the suggestions other witnesses have made and will make. Hopefully, we will hear from the administration, but I think time is of the essence here. I mean, if we can't keep our advantage in telecommunications, what are our aims in trade?

Mr. TOBIAS. Senator, that really is one of the very, very critical issues, and I think we have only to look at what has happened in the recent 12, 18, 24 months to recognize that if we look into the future, we really can't wait to get these problems resolved.

Senator DANFORTH. Right. Thank you both very much.

Finally, we have Mr. Edmund Fitzgerald, chairman of the board, Northern Telecom, Inc., Mr. Stanton Anderson, on behalf of the Communications Industries Association of Japan, Ms. Joan Spero, senior vice president, International Corporate Affairs and Communications, American Express Co., and Mr. Loren Sorensen, Manager, Export Services, Varian Associates, on behalf of the American Electronics Association.

Mr. Fitzgerald, I understand that you are on the lamb, so to speak. So, if you would proceed, and then any question we have for you, we will direct to you immediately, and you will be free to leave.

## STATEMENT OF EDMUND B. FITZGERALD, CHAIRMAN OF THE BOARD, NORTHERN TELECOM, INC., WASHINGTON, DC

Mr. FITZGERALD. Thank you very much, Senator. My name is Edmund Fitzgerald. I am chairman of the board of Northern Tele-

com, Inc., of Nashville, TN, and I am president of Northern Telecom Ltd. of Toronto, ON.

Northern Telecom employs about 18,000 people in the United States in 14 plants and 14 R&D facilities and numerous sales and services offices. We have a $1.5 billion investment in the United States, and we are the second largest domestic producer of telecommunications exceeded only by the AT&T technologies manufacturing arm of AT&T. We are the pioneer and the world's largest supplier of fully digital telecommunications systems. As much as anyone, Northern Telecom would benefit from open market access throughout the world. We have consistently spoken out for an open telecommunications marketplace, and we support the principle of general trade reciprocity. We generally welcome your objective to achieve global open market access, and we are very anxious to work with you, but we do not support reciprocity on a narrow, sectorial product or country basis.

So, let me briefly explain the issues before us, and let me outline a suggestion for their resolution. First, we believe that open market objectives can best be achieved through the established international trading mechanisms. Second, as a trade principle, reciprocity should not be sought through threats to raise tariffs and other restrictions. There are too many reactive policy options available to other nations that negate this strategy. It would most likely lead to retaliatory acts by our trading partners. Third, problems of definition and interpretation also become acute under sectorial reciprocity. Trade bureaucrats would be faced with an exceedingly complex and uncertain task of interpreting market statistics and the extent of reciprocal trade.

Finally, sectorial trade reciprocity fails to address the key investment issues, and this is the central issue of concern to businessman, and that is equal opportunity to invest in and operate on both sides of a trading partnership.

Now, given these realities, what should we do? In my opinion, we need a two-tiered U.S. trade strategy. The critical first tier is a proactive U.S. business community dedicated to global markets and willing to commit the company resources to be successful. And I cannot overemphasize the importance of this priority for private sector action. I believe that closer examination of many of our current trade problems would reveal that successful non-North American producers have dedicated substantially more time, financial and human resources to the development of the U.S. market than U.S. producers have devoted to developing offshore markets.

The second tier of this national approach would be a proactive Government policy, fully committed to an aggressive open market negotiating strategy through existing mechanisms and embodying the approach in your former bill, Senator, S. 144. Equally important, fully committed to domestic policies, such as your efforts to make permanent the 25 percent R&D tax credit which encourages technical innovation and international competitiveness. And I would like to add that I would also support Senator Long's statements about the importance of fiscal and monetary policies that would get rid of our deficits and would give us—and I don't buy the term "overvalued dollar" because a dollar is valued at what it is valued at—but it's a strong dollar, and it is too strong for our trad-

ing purposes. I believe this two-tiered approach would achieve our objectives. Now, in my opinion, technological change, not deregulation, is the real driving force behind the evolution of world telecommunications.

It is a process which has been underway for decades, but it has accelerated in recent years. The threat of a tariff increase could never have been as persuasive as the internal demand created by telecommunications users who see artificial barriers standing in the way of their abilities to innovate and improve their own productivity. I believe that the deregulation and liberalization of telecommunications equipment markets is virtually certain to occur around the world in the very near-term future because people the world over are becoming to recognize the full benefits of new telecommunications technology. It is easier for a nation to create trade barriers and to inhibit technological change than the reverse. But the United States has always set an example in encouraging competition in technological development. I hope that it will continue to so do. It won't be easy, but it is certainly the right thing to do. At Northern Telecom, we are very appreciative of your committee's interest in opening world markets. We believe the most effective way to achieve our shared objective would be to motivate and provide incentives for technological change. Our trading partners would recognize that in their own interests, to open their markets to the most innovative telecommunications producers who can serve their needs is, in fact, in their own best interests. Thank you very much.

Senator DANFORTH. Thank you.

[Mr. Fitzgerald's prepared written statement follows:]

Statement of
Edmund B. Fitzgerald
Chairman of the Board
Northern Telecom Inc.

Thank you, Mr. Chairman, for your interest in enhancing trade opportunities for United States telecommunications equipment manufacturers and for giving Northern Telecom an opportunity to participate in the debate.

I am Edmund B. Fitzgerald, Chairman of the Board of Northern Telecom Inc. of Nashville, Tennessee, and President of Northern Telecom Limited of Mississauga, Ontario. I am currently a member of the National Security Telecommunications Advisory Committee to President Reagan and Chairman of the Committee for Economic Development here in Washington, D.C. My complete biography is included as an appendix to this statement.

Northern Telecom, whose 1984 sales revenues are expected to exceed $3.4 billion, is unusual in that it is a bi-national, North American corporation. Almost two thirds of our global sales revenues will be generated in the U.S. this year, and our U.S. $1.5 billion investment base is the largest we have in any country. We employ 17,000 people in our fourteen U.S. manufacturing plants, fourteen research and development facilities and in more than 100 sales and service offices. Our major U.S. installations with their

associated product categories are shown in Appendix B to this statement. In 1983 Northern Telecom exported almost $100 million of products from our U.S. facilities.

Northern Telecom's major shareholder is Bell Canada Enterprises, Inc. (BCE) of Montreal, Quebec, which owns 52 percent of our shares. Additionally, BCE, Inc. owns 100 percent of Bell Canada, the major operating telephone company in the provinces of Ontario and Quebec, 47 percent of TransCanada Pipelines, and a group of major printing and publishing companies in Canada and the U.S. The ownership of the 48 percent of Northern Telecom's shares not held by BCE, Inc. is split almost equally between U.S. and Canadian investors. Thus if the criterion of a 20 percent interest constituting foreign ownership, as previously proposed in S. 898, were ever to become law in both the U.S. and Canada, Northern Telecom would find itself in the unusual position of a North American, bi-national corporation regarded as "foreign" in the two countries from which it derives nearly 90 percent of its global revenues and which contain almost 100 percent of its ownership.

Northern Telecom is the second largest manufacturer of telecommunications equipment in the United States and in North America. (Second only to AT&T Technologies, formerly known as Western Electric, the manufacturing arm of AT&T.) We are the sixth largest in the world. We pioneered the development of digital switching and transmission equipment, and are now the world's largest supplier of fully digital telecommunications systems. Our future is heavily dependent on the future of the telecommunications industry in North America and particularly in the United States.

We believe that our employment, our capital investment, our R&D spending, our domestic production and our commitment to the U.S. marketplace qualify Northern Telecom Inc. to be characterized as a U.S. producer of telecommunications equipment. In point of fact, the International Trade Commission, the U.S. Department of State, the Export-Import Bank, and the U.S. Commerce Department all regard Northern Telecom as a domestic U.S. equipment manufacturer.

While the vast majority of our domestic U.S. production is produced for domestic use, Northern Telecom Inc. exported almost $100 million of electronic office systems and telecommunications equipment last year. Northern Telecom is unquestionably one of the most aggressive international marketers in the U.S. telecommunications equipment industry. We are a competitive supplier in the global marketplace even when selling against favored national equipment producers in protected markets. Let me cite just three examples:

In Japan, we recently began shipping the first of 60,000 telephone sets, becoming the first North American company to sell residential sets to Nippon Telegraph & Telephone (NTT). Late last year, following an international competition, NTT announced it had awarded its first contract for a digital central office telephone switch to a non-Japanese supplier, Northern Telecom. Earlier this year, NTT announced that, again following an international competition, they have chosen to buy digital private branch exchanges (PBXs) from two U.S. companies, one of which is Northern Telecom.

During the past year, we have sold our first three PBXs in China and now have commitments for two digital central office switches. We hope this is the beginning of a long, mutually beneficial relationship with that country.

We have just delivered our first DMS central office switch in South America to Peru.

As much as any company on earth, Northern Telecom would benefit from open market access throughout the world. We have consistently and frequently spoken out for an open telecommunications marketplace, and we support generally the principle of general trade reciprocity in our overall trade relations. However, we do not support reciprocity on a sectoral product by product or country by country basis. We genuinely welcome your objective to achieve global open market access. We recognize that you are sincerely motivated to seek a worthy objective. We are seeking the same objective, and we would welcome the opportunity to work with you to establish an open market for telecommunications

equipment worldwide. But we cannot support the concept of reciprocity when it is applied only to a single product sector like telecommunications equipment.

We believe that open market objectives should be sought by the U.S. and other countries through existing international trade treaties, agreements, and laws. All of the components for a successful strategy to open world markets are in place today. The laws of the U.S. and the many international agreements to which the U.S. is now a party offer a strong launching base from which to pursue open market objectives. We need a strong U.S. negotiating posture, and we need to apply determined, patient, and persistent pressure on our trading partners to fully comply with existing international trade agreements. But we do not need another law. What we need is a government with a willingness to join with U.S. industries in making it possible for these industries to compete in the global marketplace.

I have spent much of my working life selling electro-mechanical and electronic products in the international marketplace. Customers abroad are the same as our customers in the U.S. They like to be sold. And government authorities in other nations are much like our government executives. They do not like to be threatened. I believe the threat of tariff increases on telecommunications equipment can do nothing to achieve open market access for U.S. produced equipment. Rather it will most likely lead to retaliatory acts by our trading partners.

Your proposal unbinds our U.S. tariff structure in favor of negotiated trade agreements on telecommunications equipment. If we undertake to base U.S. tariff rates for narrow product categories on our government's perception of market access, we are certain to set protectionist forces in motion throughout the world. It would not be difficult for common market nations, for example, to find numerous products on which they perceive the U.S. to be more restrictive.

Domestic pressures in other countries would be in the direction of matching higher duties abroad, so that retaliatory actions would spiral. The net result would be that market access in each sector would, in effect, be determined worldwide by the country with the most restrictive policies.

Through the Multilateral Trade Negotiations (MTN) and General Agreement on Tariffs and Trade (GATT), we have for years developed and supported trade policies which promote fair trade through a common set of acceptable international trading rules. Sectoral reciprocity would most assuredly be perceived by the rest of the world as inimical to the goal of commonality which we have pursued for the past four decades. General trade reciprocity has meant in the past that there would be among trading nations an overall balance of benefit resulting from negotiations for the liberalization of trade. It is the result of positive and constructive negotiations between nations. Reciprocity

as a trade principle should not be sought through threats to raise tariffs and other restrictions.

A fully open world trading system cannot be based on attempts to achieve balanced trade by product sector only. Governments may and frequently do attempt to balance sectoral trade through favored national tax and procurement policies, favored export financing, government subsidization, or by manipulating exchange rates. Fair trade will not be achieved simply by raising or lowering tariff barriers for a selected product sector because nations which wish to protect favored national industries need hardly rely on tariffs to meet their protectionist objectives.

We believe reciprocity legislation will be perceived by our global trading partners as a U.S. protectionist move. If successful, it would undoubtedly lead to other U.S. protectionist measures for other product categories, which

would inevitably lead to retaliatory trade legislation in capitals around the world.

Under these circumstances, sectoral reciprocity legislation would more likely produce closed or restricted markets for our products rather than open markets.

We need also to remember that within North America about two percent of telephones are owned by the government. Outside of North America some 96 percent of all telephones are government owned. National interests and national defense and trade strategies have compelled some nations to establish telecommunications as a key national industry. Where there is government ownership there is almost certain to be regulated competition under conditions of national sovereignty. The threat of an increased U.S. tariff is not likely to create the desired actions on the policies of nations committed to the protection of telecommunications as a strategic national industry.

The problems of definition and interpretation also become acute under sectoral reciprocity. It is not easy to define reciprocity if we mean it to be an instrument to bring about fair trade. Does telecommunications equipment reciprocity mean, for example, that trading partners can each sell as much as they can in each other's market? Or does it mean that each shall sell an equal amount in each other's market? Trade officials under your reciprocal proposal would be charged with interpreting market opportunities and the existence or lack of reciprocal trade. Trade bureaucrats both here and in other nations could bring all trade and investment to a halt if reciprocity were not found to exist in one product category and nations attempted to spread reciprocity provisions throughout their industrial economies.

We simply do not believe it would be possible in today's fragile trading world to restrict reciprocity provisions to telecommunications equipment alone. Every trade segment

and every product category has its protectionists and its champions. Telecommunications equipment might generally be the first industry to be reciprocally unbound but nearly every other industry would surely attempt to follow behind.

If every nation restricted its reciprocal provisions to only telecommunications equipment, our trade bureaucrats might keep the telecommunications books balanced, but they would also disrupt competition and attract political discord from non-selected product sectors--particularly from product sectors supplying components to the reciprocal sector.

Another difficulty with the trade reciprocity legislation by product category is that the sectoral approach deals only with trade conditions and fails to address key investment issues. Product sectoral agreements do not necessarily impact the types of investment restrictions which make it difficult for corporations to locate and operate manufacturing and R&D facilities in other countries.

Sectoral trade reciprocity contributes little to facilitating trade unless the approach includes a free and equal opportunity for producers to invest in and operate on both sides of the trading partnership.

What we need in the United States, in our opinion, is a national two tiered strategy.

The first tier would be a proactive U.S. business community dedicated to opening up global markets and willing to commit sufficient company resources and company marketing efforts to the global marketplace. This priority for private sector action cannot be overemphasized. I am well aware of the clamor over the penetration of North American markets by non-North American producers. However, I believe that closer examination of the situation will reveal that these non-North American producers have dedicated substantially greater time, financial and human resources to the development of the North American market than North

American producers have dedicated to developing non-North American markets. In many cases the charge of "closed market" is made when the real problem is the lack of adequate market development.

I currently regard the limiting factor in Northern Telecom's penetration of the market in Japan not to be an unwillingness on the part of Nippon Telegraph and Telephone to buy from us, but rather our capacity to recruit and train Japanese speaking telecommunications engineers and sales personnel, our capacity to produce documentation in the Japanese language and format, and our capacity to make modifications to our equipment to make it compatible with the Japanese network. In other words, our success in penetrating the Japanese market does not relate solely to trade barriers but to our ability to serve our customer, NTT, in a manner equivalent to that offered by their current indigenous suppliers.

I believe that there are personnel within NTT who recognize Northern Telecom's position of world leadership in digital telecommunications. However, we will not be able to achieve market advantage from this technological leverage if we fail to be as comfortable to deal with as NTT's current vendors. This syndrome is not exclusive to Japan. We encounter it with every operating telephone company with which we deal in North America and throughout the world.

The second tier of this national strategy would be a proactive government fully committed to an aggressive open market negotiating strategy and fully committed to domestic policies which would provide incentives to domestic producers who are willing to aggressively sell their products in the international marketplace. We need domestic policies and international trade policies which support and encourage U.S. exports and U.S. exporters. We need to encourage technical innovation and international competitiveness so that our customers and prospective

customers around the world are sure they are trading with innovative leaders when they specify U.S. equipment; and we need to be able to assure our non-North American customers that U.S. producers are a stable source of supply.

Regrettably, one of the significant factors faced by U.S. producers is the reputation we have in the world as uncertain sources of service, parts, and supplies--primarily because of our government's restrictive export controls program and variable trade and foreign policies. Our unfortunate reputation as uncertain suppliers--which is, of course, fueled by our global competitors--is a government policy-induced uncertainty.

Of course, we need opportunities to market U.S. telecommunications equipment on a global basis, but we need more than a government willing to negotiate open markets. We need equally a government willing to create a climate which supports technologically superior companies as they seek

to expand and market abroad. For in all our discussions on trade, trade policy, domestic policy, or market access, we must never overlook the fact that the U.S. needs technical innovation to assure our continued economic success domestically and heighten our capacity for success internationally.

Recalling the recent International Trade Commission's study on telecommunications trade, and this committee's interest in the January 1 reorganization of the Bell System, the impact on global telecommunications of divestiture and deregulation will be profound. However, in my opinion the AT&T divestiture is but a single milestone in the accelerating process of change in the telecommunications industry--a process which has been under way for decades and not just since January 1. Technological change, particularly in the last decade, is the real driving force behind world telecommunications.

Perhaps the most significant result of the reorganization of the Bell System will be the new spirit of competition which is encouraging new technology up and down the telecommunications spectrum. New technology will do more than legislation and more than regulation to open presently closed world markets, because telecommunications users throughout the world will demand the ability to benefit from innovation. User pressure in other nations will lead telephone administrations and other government authorities to lower market barriers, because to do otherwise would doom their societies to live in the backwaters of what has become known as the Information Age or as Northern Telecom calls it, "the Intelligent Universe."

The threat of a tariff increase could never be as persuasive as the internal demand created by a user community which sees artificial barriers standing in the way of their own abilities to innovate and improve productivity. I believe that the deregulation and liberalization of tele-

communications equipment markets is virtually certain to occur around the world--not immediately, but in the relatively near-term future, because people the world over are coming to recognize that they cannot afford the economic costs of denying themselves the full benefits of new technology.

The societal infrastructure of every nation will be dependent in the future on information and communications technology. Telecommunications users in other countries are already beginning to recognize that competition drives innovation and innovation provides new opportunities. Users in other countries have only recently begun to urge their own national authorities to open their equipment markets and systems to new competition. Other countries are beginning to move in the direction of liberalization--witness the recent moves in the United Kingdom and Japan. It is a trend that I am certain will continue because technology will force it. We need to encourage a world trading system which recognizes the enormous costs of hindering technology, and

we need government authorities willing to look at the source of innovation without an undue regard for nationality. In the U.S. we too need the best that technology has to offer. Other nations' users must surely feel the same way.

We all face new challenges, but our greatest challenge in the U.S. will be to maintain our global technological advantage. Divestiture and deregulation in the U.S. have set a positive example for other nations at a time when telecommunications technologies are global, and are evolving constantly at an accelerating pace. They are in fact defining the total information structure of the nation and the world. The telecommunications network has become the backbone of modern society, and virtually every nation on earth is devoting considerable resources to their telecommunications and information sectors. And therein lies the significant challenge in the political and regulatory arena. We in the private sector must constantly translate innovation into new network and system

applications. Government leaders have the task of promoting their national interests without thwarting the dynamics of technological change.

We can continue in the U.S. and in North America to provide the world's best telecommunications and information systems, but in the current world environment we cannot afford to embrace government policies which are linked to a NIH (not invented here) mentality. American industry must be able to take advantage of the full potential of the telecommunications infrastructure. So too must our trading partners. The convergence of communications and information systems and technologies means that system distinctions--even global system distinctions--are essentially artificial. The pace of technological change makes it essential that government executives throughout the world avoid artificial trade barriers which would deny the benefits of that change to their own societies. Technology tends to move faster than our legislative,

regulatory, or governmental processes, but government executives do have the power to significantly enhance or inhibit evolving technology.

Sectoral trade reciprocity would inhibit technological change by creating artificial barriers or quotas that would exclude innovative products from some world sources and deny to our people the opportunity to be competitive.

For four decades the U.S. has been setting an example of trade freedom for other nations to emulate. It is frequently a burden for the U.S. to set an example, but it is an honorable burden. It is easy for a nation to create trade barriers and it is easy for a nation to inhibit technological change. I would hope that the U.S. would continue to encourage competition and encourage the development of new technology. Other nations are going to have no choice but to follow the lead of technology which will make it increasingly difficult for them to restrict

or close their markets. I hope that the U.S. will continue to set an open market example for other nations. Surely it will not be easy, but it will be the right thing to do.

In summary, Senator Danforth, we at Northern Telecom deeply appreciate your interest in opening world markets. It is an objective we share. We believe the most effective way to achieve our shared objective would be to motivate and provide incentives for technological change, which would induce our trading partners in their own interest to open their markets to the most innovative producers of their equipment needs.

## APPENDIX A

### EDMUND B. FITZGERALD

Edmund B. Fitzgerald, 58, is chairman of the board of Northern Telecom Inc. and president of Northern Telecom Limited, Mississauga (Toronto), Ontario. He was appointed to these positions on May 1, 1982. He is also a member of the Board of Directors, Northern Telecom Limited.

Prior to this position, Mr. Fitzgerald was president, Northern Telecom Inc., Nashville, Tennessee, the company's U. S. subsidiary. He joined Northern Telecom in May, 1980. Previously he had been chairman and chief executive officer of a U. S. high-technology company, Cutler-Hammer Inc., Milwaukee. Following a merger of Cutler-Hammer and Eaton Corporation, Cleveland, he was vice-chairman and chief operating officer, industrial products, Eaton Corporation. Mr. Fitzgerald is a trustee of the Northwestern Mutual Life Insurance Co., and is a director of the Koppers Co. He is a co-founder of the Milwaukee Brewers major league baseball team and, until recently, served as its chairman.

Mr. Fitzgerald is chairman of the Committee for Economic Development, Washington, D.C., and he is a member of President Reagan's National Security Telecommunications Advisory Committee, the Council of SRI-International, the Advisory Board of the Johns Hopkins School of International Studies, and a former president of the National Electrical Manufacturers Association. He served for three years as vice-chairman of the Industry Advisory Council of the Department of Defense.

APPENDIX B

Northern Telecom Inc.
Manufacturing Plants (14)

| Location | Principal products manufactured |
|---|---|
| CALIFORNIA | |
| San Diego | Integrated circuits |
| Santa Clara | Electronic and digital PABXs |
| FLORIDA | |
| West Palm Beach | Printed circuit boards |
| West Palm Beach | Hybrid components |
| GEORGIA | |
| Atlanta | Transmission equipment |
| ILLINOIS | |
| Morton Grove | Outside plant |
| MINNESOTA | |
| Minnetonka | Data terminals |
| NEW HAMPSHIRE | |
| Concord | Test equipment |
| NEW JERSEY | |
| Moorestown | Test equipment |
| NORTH CAROLINA | |
| Morrisville | Switching |
| Creedmoor | Switching |
| Durham | Switching |
| TENNESSEE | |
| Nashville | Telephone sets |
| TEXAS | |
| Richardson | Network systems |

Senator DANFORTH. Senator Long, do you have a question for Mr. Fitzgerald?

Senator LONG. No.

Senator DANFORTH. You don't think that is wishful thinking?

Mr. FITZGERALD. No, sir. I do not think it is wishful thinking. I can show you examples certainly in the United Kingdom and in Japan where it is becoming evident today, and I think even in the countries of continental Europe, which probably are the most closed today, you will see that large multinational institutions are beginning to pressure their telephone authorities to get the same rights to have private networks and international networks that their competitors in North America have. I think the financial institutions are a good example. Many of the large banks in continental Europe with whom we deal are really putting pressure on their telephone administrations to get the same privileges that they see Citicorp and Bankers Trust and those people in the United States because, in the banking business, information and time is how you make your money, and they don't like deeding the advantage of a better communications system to their competitors whose home base is the United States. And that to me is the most effective pressure when you get the internal users pushing their governments, rather than having our Government threatening their governments.

Senator DANFORTH. Right, but generally speaking, trade barriers don't come down because of internal pressure, do they? They come down because there is an agreement negotiated among countries or between countries. We don't rely solely on the good offices and good will of our trading partners to allow in U.S. products. We have in telecommunications enjoyed a comparative advantage—at least that is my understanding—and yet we have not had access to their markets regardless of the quality of our products.

Mr. FITZGERALD. Certainly the United States is a preeminent factor in the telecommunications business. I would not say it is the sole preeminent buyer in the world any more. Now, I don't think it has to be solely, Senator. I think the pressure of our Government coupled with internal pressures can be very effective. I think you will see deregulation and opening of the customer premise equipment market more quickly than you will see the backbone national networks, which are Government owned, but I think you will see chipping away from the bottom of that national public network, just as the way it started in this country really with the Carter——

Senator DANFORTH. Is that going to be a long process, or is that going to be a fast process?

Mr. FITZGERALD. Fast and long is a relative term, but I think between now and the end of this decade, you are going to see a significant change, and as was said earlier, I don't know that a tariff proposal is capable of providing much of a change before the end of this decade either.

Senator DANFORTH. Thank you very much, Mr. Fitzgerald. I hope you make your other appointment.

Mr. FITZGERALD. Thank you very much.

Senator DANFORTH. Mr. Anderson.

STATEMENT OF STANTON D. ANDERSON, ESQUIRE, ANDERSON, HIBEY, NAUHEIM & BLAIR, WASHINGTON, DC, ON BEHALF OF THE COMMUNICATION INDUSTRIES ASSOCIATION OF JAPAN

Mr. ANDERSON. Thank you, Mr. Chairman. I am here to testify today on behalf of the Communications Industries Association of Japan. CIAJ is the leading organization of communications equipment manufacturers in Japan and is comprised of more than 200 corporations which manufacture a full range of telecommunications equipment for the Japanese market and for export to world markets. CIAJ fully shares the objective of an open international trading system in telecommunications equipment sought by the sponsors of 2618.

We are concerned, however, about the means by which the bill would seek to accomplish this objective. We believe that the principle of sectorial reciprocity embraced by the bill could ultimately result in more restrictive instead of less restrictive trade in telecommunications equipment marketplaces. In embracing a sectorial reciprocity standard, the bill would have the President judge the fairness of foreign market access in telecommunications equipment in accordance with access afforded foreigners in the U.S. market. Such an approach, if adopted by our trading partners and other sectors, could result in an international trading system which each nation accords differing treatment to imports depending on their source. We would have a product-by-product country-by-country balancing of trade flows, and a turning away from the international agreements and framework negotiated under the GATT. Access under such a system would be the consistency and comprehensiveness now afforded under the principle of MFN treatment. The danger of proceeding down the path proposed in the bill in our view is that the threat of unbinding U.S. tariffs on telecommunications equipment would be a highly visible action which would tend to legitimize the use of article 28 for this purpose.

U.S. trading partners seeking to protect their own emerging high technology industries would eagerly follow the U.S. lead. A succession of actions by our trading partners to unbind in areas such as computers, telecommunications, and other emerging sectors could easily follow. We question whether such an action is in the interest of the United States, let alone the world trading system. With respect to Japan, regulatory changes are now underway in the Japanese market, and these changes should provide U.S. telecommunications producers with new opportunities for sales in the years ahead. The deregulation of the Japanese market will result in the establishment of new networks, common carriers and service companies. As in the case of deregulation in the United States, these new carriers and service companies will be sensitive to quality, reliability, technology, and cost, and will look to foreign sources of competitive equipment. For example, a number of Japanese firms are expected to enter the long distance telephone service market in Japan, and there are indications that these firms will purchase U.S. satellite equipment to service their long distance markets. The emerging private or non-NTT segment of the Japanese telecommunications market is now open to competition by U.S. firms. Legislation pending in the Japanese Diet would deregulate the value-

added networks and would not discriminate between domestic and foreign participants. We are not aware of any pending legislation or law in the telecommunications area which would favor Japanese over American firms, although like the United States, Japan would maintain restrictions on foreign ownership of broadcast radio and common carrier licenses. We view the passage of S. 2618 as an obstacle to the progress in telecommunications trade, which has been achieved through cooperation between the United States and Japanese Governments. Progress has been made in increased U.S. participation in NTT's procurement programs, and solutions have been found to issue such as the U.S. participation of the value added networks. The citizens of both our countries have benefitted greatly from the relationship that has developed between the two countries in telecommunications trade. Continued bilateral collaboration will ensure that these benefits increase in the future. Thank you.

Senator DANFORTH. Thank you, sir. Ms. Spero.

[Mr. Anderson's prepared written statement follows:]

Statement of
Stanton D. Anderson
On Behalf of
Communications Industries Association of Japan
Before the Senate Finance Committee
Subcommittee on Trade

Mr. Chairman and Members of the Committee:

My testimony is presented on behalf of the Communication Industries Association of Japan (CIA-J). CIA-J is the leading organization of communications equipment manufacturers in Japan, and is comprised of more than 200 corporations which manufacture a full range of telecommunications equipment for the Japanese market and for export to world markets.

CIA-J fully shares the objective of an open international trading system in telecommunictions sought by the sponsors of S. 2618. We are concerned, however, about the means by which the Bill would seek to accomplish this objective. We believe that the principle of sectoral reciprocity embraced by the Bill could ultimately result in more restrictive, instead of less restrictive, trade in the telecommunications equipment marketplace.

The United States has long been the world leader in promoting more liberalized trading practices and negotiating reductions in barriers to international trade. Through such leadership, the United States has adhered to the principle of global rather than sectoral reciprocity. While all nations are

tempted by the lure of sectoral reciprocity, the United States has recognized that such an approach would undermine the multilateral approach to international trade.

In embracing a sectoral reciprocity standard, S. 2618 would have the Administration judge the fairness of foreign market access in telecommunications in accord with access afforded foreigners in the U.S. market. Such an approach, if adopted by our trading partners in other sectors could result in an international trading system in which each nation accords differing treatment to imports depending on their source. We would have a product-by-product, country-by-country balancing of trade flows, and a complete rejection of the international agreements and framework negotiated under the GATT. Absent under such a system would be the consistency and comprehensiveness now afforded under the principle of Most Favored Nation treatment.

The threat of unilateral restrictions imposed under the Bill would be an invitation to other nations to follow the U.S. lead toward sectoral reciprocity. This could easily result in the unraveling of gains achieved in prior trade negotiations.

The use of Article 28 to unbind tariffs on telecommunications equipment, and thereby protect the U.S. telecommunications equipment industry, is a departure from the use of Article 28 intended by the framers of the GATT. This view is apparently shared by the Office of the U.S. Trade Representative which flatly opposed the use of Article 28 by the European Economic Community (EEC) last year to unbind its tariff

on digital audio disc players, and thus protect an emerging EEC industry before imports of the item became a factor. The U.S. Government also has vigorously opposed an EEC proposal to unbind the tariff on corn gluten feed and citrus pellets on the grounds that this is a misuse of Article 28 and a protectionist action.

The danger in proceeding down the path proposed in S. 2618 is that the threat of unbinding U.S. tariffs on telecommunications equipment would be a highly visible action which would tend to legitimize the use of Article 28 for this purpose. U.S. trading partners seeking to protect their own emerging high technology industries would eagerly follow the U.S. lead. A succession of actions by U.S. trading partners to unbind in areas such as computers, telecommunications, and other emerging sectors, could easily follow. We question whether such action is in the interest of the United States, let alone the world trading system.

The Bill would mandate an increase in U.S. tariffs on telecommunications equipment from approximately 15 percent to approximately 35 percent where new bilateral agreements governing telecommunications trade are not concluded. In those instances, the U.S. will be required under GATT rules to compensate its trading partners for trade lost as a result of the unbinding and the subsequent increase in U.S. tariff rates. It has been suggested by the sponsors of the Bill that the compensation owed by the United States to those trading partners would be minimal because of the relatively low trade levels in telecommunications

equipment in the pre-AT&T divestiture period and the fact that foreign countries never expected or paid for the divestiture. However, we disagree with this analysis and believe that the U.S. Government could owe a significant level of compensation to those trading partners faced with increased tariff rates.

It is established GATT practice that unilateral action (e.g., divestiture of AT&T) taken by a signatory which in some fashion enhances the value of a previously negotiated tariff concession does not give rise to a claim by that signatory that it should be compensated for such unilateral action. Similarly, where signatories have unbound a tariff concession, compensation has been calculated on the basis of the full amount of trade lost as a result of the unbinding, notwithstanding the fact that much of the trade itself may have resulted from an internal development (e.g., divestiture of AT&T) which had not been bargained or paid for when the concession was negotiated.

Although we hesitate to speculate on the precise level of compensation which might be owed by the United States to its trading partners, we believe that it could be significant in view of current trade levels. U.S. trading partners, in seeking compensation, will surely impose tariffs or barriers on products which are on a similar fast growth trend line as the telecommunications products unbound by the United States. Hence, it is quite possible that the U.S. will suffer retaliation with respect to its high technology or agricultural exports.

With respect to Japan, over the past three years, tremendous progress has been made in liberalizing the Japanese telecommunications market and this progress will continue. Since January, 1981, procurement by Nippon Telephone & Telegraph Public Corporation (NTT), has been in accord with the GATT Procurement Code and the bilateral agreement governing such procurements between the Governments of Japan and the United States. As a result of the renewal of the bilateral agreement in January, 1984, NTT is taking a series of steps specifically directed toward increasing U.S. participation in NTT procurement and research and development programs.

Since 1981, NTT procurement and research and development programs have been open to U.S. firms. The programs have been nondiscriminatory, and thus do not favor Japanese over American companies. There has been a steady improvement in the participation of U.S. firms in NTT's research and development programs. While U.S. sales of telecommunications equipment to NTT have not yet reached their full potential, there are positive indications of increased U.S. exports.

Regulatory changes under way in the Japanese market, should provide U.S. telecommunications producers with new opportunities in the Japanese telecommunications market in the years ahead. The deregulation of the Japanese market will result in the establishment of new networks, common carriers and service companies. As in the case of deregulation in the United States, the new carriers and service companies will be sensitive to

quality, reliability, technology and cost and will look to foreign sources of competitive equipment. For example, a number of Japanese firms are expected to enter the long distance telephone service market in Japan shortly after deregulation occurs, and there are indications that these firms will purchase U.S. satellites to service the long distance market.

Traditional equipment supplier relationships may be unbound as competition intensifies among suppliers, creating new opportunities for U.S. firms. Deregulation of the Japanese market, therefore, will mirror to a great extent the deregulation of the U.S. market in terms of the opportunities created for foreign sources of supply.

The emerging private, or non-NTT, segment of the Japanese telecommunications equipment market is now completely open to competition by U.S. firms. Legislation pending in the Japanese Diet would deregulate Value Added Networks and would not discriminate between domestic and foreign participants. We are not aware of any pending legislation or law in the telecommunications area which would favor Japanese over American firms, although, like the United States, Japan will maintain restrictions on foreign ownership of broadcast, radio and common carrier licenses. It is our understanding that Japanese law governing ownership of such licenses will mirror the restrictions set forth in U.S. law under Section 310 of the Communications Act of 1934, as amended.

We are aware of concerns regarding the future prospects of U.S. firms in Japan's market as deregulation continues. Japan is obligated, as is the United States, under Article III of the GATT not to impose laws or regulations which discriminate between imported and domestic products. Clearly, if any government imposed barriers to U.S. equipment exports were found to exist, the U.S. Government could seek redress through GATT Article 23 and the dispute settlement process.

Hence safeguards exist under the GATT for ensuring access for U.S. telecommunications equipment firms in the emerging private segment of the market. For the public or the NTT side of the market, nondiscriminatory treatment is ensured under the Procurement Code and NTT Agreement.

We view S. 2618 as an obstacle to the progress in telecommunications trade which has been achieved through cooperation between the U.S. and Japanese Governments. The U.S.-Japan bilateral relationship in telecommunications trade is improving, despite the current imbalance in trade flows. Through increased cooperation between both sides, solutions can be found to bilateral trade difficulties. Progress has been made to encourage increased U.S. participation in NTT's procurement programs, and solutions have been found to issues such as U.S. participation in Value Added Networks. The citizens of both the U.S. and Japan have benefited greatly from the relationship that has developed between the two countries in telecommunications trade. Continued bilateral cooperation will ensure that those benefits increase in the future.

STATEMENT OF JOAN E. SPERO, SENIOR VICE PRESIDENT, INTERNATIONAL CORPORATE AFFAIRS AND COMMUNICATIONS, AMERICAN EXPRESS CO., NEW YORK, NY

Ms. SPERO. Mr. Chairman, Senator Long. My name is Joan Spero, and I am senior vice president for international corporate affairs at American Express Co. I want to thank you for this opportunity to present an international business users' view on U.S. international and telecommunications trade policy. Let me begin, Mr. Chairman, by commending you for your efforts to help American business deal with foreign trade barriers. And as a representative of an international services company, I would also like to take this opportunity to applaud your efforts ard the efforts of this committee to promote comprehensive legislation to liberalize international trade, including trade and services in S. 144. Mr. Chairman, my company wholeheartedly agrees on the need for positive action to liberalize international trade in telecommunications. My main point today is that this legislation does not go far enough because it leaves out a major group of players in international telecommunications—the users of telecommunications. They are the many highly competitive, rapidly growing American companies whose ability to export their goods and services and thus to create economic growth and jobs at home depends heavily on telecommunications. As S. 2618 correctly suggests, the deregulation of the U.S. telecommunications market has created an imbalance in international telecommunications trade between the highly regulated telecommunications monopolies abroad and the more competitive U.S. telecommunications industries.

We users of telecommunications products, services, and facilities abroad have had to deal with that imbalance every day for years. Many governments have found that regulation of the telecommunications infrastructure through their PTT monopolies provides an especially convenient mechanism for nontariff protectionism against a wide variety of foreign goods and services industries. Privacy and availability of leased lines. Limited choice of equipment. Exclusion from access to telecommunications networks. Performance requirements. All of these significantly reduce a foreign firm's commercial competitiveness and thus can serve as a very effective nontariff trade barrier. Foreign firms like mine facing these barriers have little recourse, especially in the absence of any internationally agreed rules or U.S. remedies that could deal with this kind of protectionism. This unpredictable policy environment makes it extremely difficult for American companies to make the kinds of plans and investments, costly and long term, that are necessary to keep pace with international competition. U.S. legislation in the telecommunications field, including S. 2618, should address this imbalance. The Congress should provide the Government with a mandate that would give prominence to users problems and would highlight the need for appropriate U.S. Government action. For example, the reference in S. 2618 to services using telecommunications needs to be clarified, and this reference should be included in all of the operative parts of the bill. Legislation should provide the negotiating authority to enable the executive branch to reach bilateral and multilateral agreements that address user con-

cerns. And U.S. policy should provide for remedies through domestic law that mandates Government action and gives Government the tools for action. Extension of S. 2618 to address concerns of users as well as suppliers would contribute significantly to these ends. Thank you.

Senator DANFORTH. Thank you. Mr. Sorensen.

[Ms. Spero's prepared written statement follows:]

STATEMENT

OF

Joan E. Spero
Senior Vice President
International Corporate Affairs
American Express Company

Mr. Chairman and distinguished members. My name is Joan Spero and I am Senior Vice President for International Corporate Affairs at American Express Company. I want to express my appreciation for this opportunity to present the views of my company -- a major user of telecommunications around the world -- on the subject of international telecommunications policy.

First of all, I want to commend you, Mr. Chairman, for your continuing efforts to address the growing problem of barriers to trade. While we have some concern about approaching telecommunications trade issues through sectoral reciprocity measures, we wholeheartedly share your view that meaningful steps must be taken to encourage the negotiation of bilateral and multilateral regimes to liberalize trade in the telecommunications field. We also believe that such action should be taken as soon as possible, before rapidly expanding barriers to trade in telecommunications, information and related services lead to a further deterioration of the overall international trading system. Your initiative is particularly timely, since recent deregulation of the U.S. telecommunications market could significantly alter our country's trade performance and negotiating position vis a vis telecommunications monopolies abroad.

Indeed, we believe that the scope of S. 2618 should be extended even further. In the past, public discussion of international telecommunications issues has traditionally been limited to addressing the problems of only two groups: the carriers or companies that operate the world's vast communications systems, and the manufacturers of the equipment and software that make the systems possible. The carriers and manufacturers, however, represent only the tip of the proverbial iceberg. The submerged part of the iceberg, which is of course much larger, represents the users of those facilities.

Who does this vast number of telecommunications users include? Banks, insurance companies, accounting firms, and travel service organizations all are users. My own company uses telecommunications for the delivery of financial, travel and information services. All our principal businesses -- insurance, payment systems, asset management, international banking and securities -- must move information across national borders with speed, accuracy, reliability and security. We could not function without rapid, unhindered global communications. For example:

- We process 350 million American Express Card transactions annually;

- We authorize 250,000 of those transactions each day from throughout the world within an average response time of 5 seconds;

- We verify and replace lost or stolen Travelers Cheques sold by more than 100,000 banks and other selling outlets around the world;

- We access reservation systems and travel service data bases from offices in more than 125 countries;

- We complete 56 million insurance premiums and claim transactions annually;

- We execute approximately $10 billion a day in international banking transactions, in the form of money transfers, letters of credit and foreign exchange transactions; and

- We respond virtually instantaneously to 500,000 daily messages directing high-speed trading in securities, commodities, bonds, Treasury bills and a host of other items.

This diversity of services and networks relies on every form of communications media: private leased lines as well as public data networks; cable, microwave and satellite transmission, and, soon, experimentally, optical fiber. Telex and voice communications play major roles in addition to on-line data transmission. In the future, however, private integrated networks will carry both voice and data traffic. For American Express the cost of developing, operating and maintaining these information processing systems and communications networks ranges between $300 and $400 million annually. Among major international companies this expenditure is hardly atypical.

Nor are financial services companies like mine alone as users of international telecommunications. American-based international firms involved in engineering and construction, transportation, management consulting, accounting and many other services also rely heavily on international communication. And increasingly, American goods-producing firms also depend on high-speed data flows for the coordination of production and marketing, for planning, accounting and financial management; for inventory control and sales coordination; for employee systems, including payroll, personnel and human resource planning; and for the communication of complex engineering and design computations.

The fact is, telecommunications and international data transmission are the life blood of my company, as well as many other companies that represent some of the highest growth sectors in the American economy. International telecommunications has made it possible for services to become a major component of United States exports, and these services, in turn, have facilitated the export of American-made goods. International telecommunications is thus directly and inextricably linked to jobs and economic growth in the United States.

Because we business users rely so heavily on telecommunications, many governments have found that regulation of the telecommunications infrastructure provides an especially convenient mechanism for protectionism against a wide variety of foreign goods and services producing industries that use telecommunications facilities. As S. 2618 recognizes, deregulation of the U.S. telecommunications market has created an imbalance that could have negative consequences for the U.S. telecommunications suppliers. However, we users of technology have had to deal with this imbalance every day for years.

Outside of the U.S., almost all national telecommunications systems are operated as government owned or controlled post, telephone and telegraph monopolies, the "PTTs". Likewise,

suppliers of telecommunications equipment and related products and services are often owned by, or at least highly dependent on, the telecommunications monopoly. While there are significant moves toward deregulation in the United Kingdom and Japan, in most countries the telecommunications monopolies are well entrenched, economically and politically. Therefore these government monopolies are readily able to implement policies that redirect or obstruct our business information flows without much opposition. And foreign firms facing these barriers have little recourse, especially in the absence of any internationally agreed principles or procedures to deal with this kind of protectionism. Moreover, because these barriers are often arbitrary and outside of the existing trading regime, American companies are faced with an uncertain and unpredictable policy environment in many countries that makes it difficult to make the necessary plans and major new investments needed to keep pace with the changing technology and the competitive environment.

How do telecommunications monopolies use regulation to the disadvantage of U.S. companies selling or producing goods and services abroad? One way is by simply using their monopoly powers to raise the cost of telecommunications facilities and services to arbitrarily high levels. Because foreign companies, especially services companies, must rely more

heavily on telecommunications than their domestic counterparts, the increased cost imposed by such telecommunications barriers can significantly reduce foreign firms' commercial competitiveness. Another way of raising costs and hampering foreign competition is by limiting users' choice of equipment or services, thus forcing the foreign company to establish a global telecommunications system that is a veritable "patchwork quilt" of equipment and facilities. Such requirements can eliminate opportunities for economies of scale in equipment procurement and can compromise the system's optimum technical efficiency. Goverments may also limit foreign competition by imposing unreasonable, arbitrary or discriminatory technical requirements for access to the national telecommunications system. Or, foreign companies' access to specialized private and public telecommunications networks may be severely limited or barred outright.

Let me give you some more specific examples of how such barriers work:

Restrictions on leased lines: Companies rely heavily on the use of private telecommunications lines leased from the PTTs at a fixed price that does not vary with the volume of usage. Such privately leased lines are cost effective for heavy business users and enable such users to develop

telecommunications systems that are suited to their particular business needs. PTTs can use their monopoly control to restrict or eliminate use of private leased lines or to eliminate fixed rate pricing. As a result, foreign service companies and other foreign telecommunications users must incur higher costs for transmitting and processing data in their home country or elsewhere abroad. Elimination of leased lines can also reduce the user's flexibility in setting up a telecommunications system and can thus impose serious constraints on that user's business. For example, American Express experience in Germany indicates that the forced use of the less efficient public network would unacceptably delay transmissions that are essential to our business. Japan, Germany, and Italy, among others, have used some form of restriction on the use of leased lines.

Barriers to access to specialized networks: An extremely important new trade barrier in the telecommunications field has emerged in the form of limits on foreign companies' access to specialized telecommunications networks. For example, automatic teller machine networks are being established in many countries, by government controlled and private banks, often in cooperation with the national telecommunications authority. These machines are fast becoming a major outlet for banking and other financial services. However, all too frequently, foreign

companies are excluded from plugging in to these automatic teller machine networks and are thus effectively barred from competing in that market. Another important new commercial application of new telecommunications and data processing technologies is the "point-of-sale" network, which provides individual retail establishments with the means to communicate directly with the data bank of a charge card company in order to verify and process customers charges. If foreign card companies are excluded from the point-of-sale network, or if they are not allowed to be involved in crucial decisions concerning the establishment and administration of the network, they cannot hope to be able to provide competitive services in that country.

These new specialized telecommunications systems are literally becoming the electronic highways of the future. To sell our products abroad, and to develop and market new products, our companies cannot be barred from access.

Performance requirements: Governments may explicitly prohibit companies from transmitting data abroad for storage or processing. Such requirements may be imposed for the expressed purpose of protecting the domestic data processing industry or for other reasons, such as banking regulation. American Express has had to adjust its telecommunications and data

processing systems to meet such requirements in both Canada and Brazil.

Hardware/software procurement: As the current draft of S. 2618 would acknowledge, PTTs often force foreign companies to purchase domestically-made telecommunications or data processing equipment or software. Or they may impose discriminatory or unnecessary standards and approval procedures for such equipment. This protection keeps the cost of such materials high. It also keeps the business users from choosing systems that best meet that users' particular business requirements. And it prevents international companies from harmonizing their global information systems, thus placing foreign-based companies at a competitive disadvantage. Brazil, France, Japan and the Federal Republic of Germany, among others, use and/or plan to use such restrictions.

As you can see, restrictive telecommunications policies abroad have a negative impact not only on U.S. telecommunications equipment suppliers, but also can harm U.S. business performance on the world market in virtually every industry.

So how do we propose to address the problem? As a long range goal, the most effective way of dealing with the trade effects of telecommunications regulation should be on a multilateral

basis, through the General Agreement on Trade and Tariffs -- the GATT. For example, we would like to see these telecommunications user issues addressed in a new GATT code for services that would cover trade in information and information-related services. Existing GATT codes, for example the Subsidies Code and the Standards Code, could also be extended to information services and telecommunications products. GATT principles, such as national treatment and most-favored-nation, could be extended to cover information and telecommunications policies, and GATT appeals and dispute settlement procedures could also be extended to information services.

In addition, an international regime could provide for new principles to deal with trade problems faced by telecommunications users, principles such as:

- cost-based pricing for leased lines and other telecommunications facilities,

- the right of foreign companies to "plug in" to public and private specialized telecommunications networks,

- the right of presence for foreign companies providing information and information related services, and

- o the right of "nonestablishment" to ensure that foreign companies can provide information and other services via telecommunications, without having to locate facilities in the host country.

These are long-range goals, of course. In the short and long run what we really need is effective action by the U.S. Government. At present, the principle of "free flow of information" on which U.S. policy is based is too often simply that -- a principle, without teeth and without force in domestic and international law and practice. For this principle to become a reality, we need to develop a clear and consistent new U.S. policy for international telecommunications and information that recognizes the problems faced by international telecommunications users. In the absence of an international regime, and as an integral part of any regime that will be developed in the future, this policy must enable our government to act on users' behalf, when appropriate, in dealing with other governments and government agencies.

U.S. policy should provide for negotiating authority to enable the Executive Branch to reach bilateral and multilateral agreements to provide competitive opportunities not only for telecommunications products, as S. 2618 envisages, but also for

users of telecommunications. While the draft bill does refer briefly to services using telecommunications products, this reference is somewhat unclear and incomplete.

Finally, U.S. policy should also provide for remedies for discriminatory treatment, through domestic law that mandates government action and gives government the tools for action. Business users currently have few if any remedies to counter arbitrary and discriminatory actions in the area of telecommunications and information.

To create such a U.S. policy we need a clear mandate from Congress. Extension of S.2618 to address not only the concerns of telecommunications equipment suppliers, but also to clearly recognize the interests of U.S. telecommunications users, would go a long way toward providing this mandate. It would give prominence to a serious problem and would highlight the need for U.S. government action. More directly, it would give the government negotiating authority to reach bilateral multilateral arrangements that would encourage liberalization of trade in the new information age.

To conclude, Mr. Chairman, U.S economic strength in the future will depend on information intensive production in both the services and manufacturing sectors. U.S. government action is

essential in the long run if we are to promote trade, jobs and growth in these economic sectors that offer the most promise for the United States in the future. Moreover, action in this area is also crucial if we are to avoid further deterioration of the international trading system. As information-related industries become a more and more important component of overall economic activity and job creation in many countries, the failure to address the problem of telecommunications barriers to trade will erode the overall multilateral trading system. Countries will be less likely to give up protection of those sectors in which they no longer hold a comparative advantage if they are prevented from competing internationally in the new information sectors in which they do have an advantage. Ultimately, the effect of continued barriers in the information sector will diminish economic efficiency and productivity in the world economy as a whole.

## STATEMENT OF LOREN SORENSEN, MANAGER, EXPORT SERVICES, VARIAN ASSOCIATES, PALO ALTO, CA, ON BEHALF OF THE AMERICAN ELECTRONICS ASSOCIATION, WASHINGTON, DC

Mr. SORENSEN. My name is Loren Sorensen. I am export services manager at Varian Associates. I am appearing here on behalf of the American Electronics Association—in high technology endeavors. I chair the AEA international committee and want to thank you for the opportunity to appear before this distinguished committee. We believe that the issue that you are addressing in S. 2618 is a vital one for the American electronics industries. We appreciate the leadership you are exercising in raising this issue. The American Electronics Association endorses the objective of S. 2618 to provide a competitive market opportunity for American companies in foreign telecommunications markets. We believe that free trade has provided significant economic benefits. Bringing telecommunications equipment and services under GATT rules would be an important expansion of GATT coverage. Serious negotiations to open world telecommunications markets, however, are unlikely to conclude successfully unless the United States provides substantial incentives for such negotiations. Your bill offers an approach to developing the leverage needed. We support several of your specific proposals, such as the granting of authority to eliminate or reduce U.S. telecommunications duties as part of a package that offers the United States real access to foreign markets. Additionally, we support your emphasis on the need to update U.S. telecommunications trade nomenclature. Other proposals in your bill need further reflection. We believe there are also a number of other bargaining chips that should be considered. Negotiations under the procure-

ment code are slated to conclude in mid-1985. As incentives to gain coverage of foreign postal, telephone, and telegraph systems, the United States could offer to include the approximate $4 billion in entity coverage that was excluded from our Tokyo round commitments. We could also offer to include Federal grant aids to the States under our procurement code commitments. These grants, which include such activities as our highway program, are not covered by the procurement code and frequently contain "Buy America" provisions. The United States could also consider conditioning maintenance of some special benefits offered to foreign suppliers on openness of the foreign recipients market. For example, developing countries that are becoming increasingly competitive in telecommunications could be required to have open access of their own telecommunications market as conditions for continuing to receive GSP benefits.

Under the new generalized preference system that has been marked up by the Senate Finance Committee, the administration could have significant leverage for this approach. The United States could also condition procurement of satellites and components by agencies such as NASA to reciprocal access by supplying countries for our satellite producers. U.S. telecommunications exporters often face foreign competition in developing countries that is supported by Government-subsidized export credits. The U.S. Eximbank should be required to match whatever credit terms are offered by other countries in the telecommunications area. We believe that it is now imperative that the administration develop a coherent and well articulated policy for international telecommunications trade. At present, telecommunications functions are scattered among a wide range of agencies. We believe that an interagency committee should be established with a mandate to vigorously promote trade access in other countries. Thank you.

[Mr. Sorensen's prepared written statement follows:]

Oral Statement of

Loren Sorensen, Manager, Export Services

Varian Associates

for

THE AMERICAN ELECTRONICS ASSOCIATION

Subcommittee on International Trade

Committee of Finance

September 12, 1984

Mr. Chairman, thank you for the opportunity to appear before this distinguished Subcommittee this morning.

We believe that the issue that you are addressing in S.2618, "The Telecommunications Trade Act of 1984," is a vital one for the American electronics industries. We appreciate the leadership you are exercising in raising this issue.

The American Electronics Association (AEA) endorses the objective of S.2618 to provide competitive market opportunities for American companies in foreign telecommunications markets. We believe that free trade has provided significant economic benefits for the United States, and indeed for all the trading nations that are parties to the GATT. Bringing telecommunications equipment and services under the GATT rules and codes would be an important expansion of the scope of GATT coverage.

Serious negotiations to open world telecommunications markets, however, are unlikely to conclude successfully unless the United States provides substantial incentives for such negotiations. Your bill offers an approach to developing the leverage needed for negotiations. We support several of your specific proposals, such as the granting of authority to eliminate or reduce U.S. telecommunications duties as part of a package that offers the U.S. real access to foreign markets. Additionally, we support your emphasis on the need to update U.S. telecommunications trade nomenclature. Other proposals in your bill will need further reflection.

We believe there are also a number of other bargaining chips that should be considered. As you know, negotiations under the procurement code are slated to conclude in mid-1985. As incentives to gain coverage of foreign postal, telephone, and telegraph systems, the U.S. could offer to cover some or all of the approximate $4 billion in entity coverage that was excluded from our Tokyo Round commitments. We could also offer to include Federal grant aids to the states under our procurement code commitments. These grants, which include such activities as our highway programs, are not covered by the procurement code, and frequently contain Buy America provisions giving U.S. suppliers a significant margin of preference. For those countries that agreed to a genuine opening up of their telecommunications market, the United States could agree not to impose these provisions.

As additional bargaining leverage, the United States could consider conditioning maintenance of some special benefits offered to foreign suppliers on openness of the foreign recipient's market. For example, Brazil and Korea, and other developing countries that are becoming increasingly competitive in telecommunications, could be required to have open access of their own telecommunications markets as a condition for continuing to receive GSP benefits. Under the new generalized preference system that has been marked up by the Senate Finance Committee, the Administration could have significant leverage for this approach.

The United States could also condition procurement of satellites and components by agencies such as NASA to reciprocal access by supplying countries for our satellite producers.

In addition to the problem of lack of access to many developed country markets, U.S. telecommunications exporters often face foreign competition in developing countries that is supported by government subsidized export credits. These developing countries represent approximately 25 percent of total world telecommunications consumption. The U.S. Eximbank should be required to match whatever credit terms are offered by other countries in the telecommunications area.

Above and beyond these specific steps, we believe that it is now imperative that the Administration develop a coherent and well

articulated policy for international telecommunications trade. At present, telecommunications functions are scattered among a wide range of agencies, including the FCC, Departments of State and Commerce, NASA, Eximbank, AID, USTR, and others. We believe that an interagency committee should be established with a mandate to vigorously promote trade access in other countries.

Senator Danforth, we hope that the issues you have raised will promote a full and vigorous debate. To assist in this process, we will submit, in the next several weeks, a full statement for the record expanding some of these ideas. We look forward to working closely with your Subcommittee, the Administration and other trade groups to develop such a program. Thank you.

Senator DANFORTH. Thank you all very much. You have added a good perspective—several of them—to the committee's understanding. Mr. Sorensen, with respect to the issue of satellite procurement, what is the status of Japan's policy on the purchase of foreign satellites?

Mr. SORENSEN. It is still rather cloudy. On April 27, there was a Japanese trade package that offered the prospect that the procurement system may well become open to purchase foreign satellites. Then, in July, the Japan Times had a quote by the Director of Science and Technology Agency that by the end of the century, Japan would have 50 satellites up, not 1 of which would be of foreign manufacture. Under those circumstances, we think it is still rather murky and needs to be explored further and sorted out. If this would continue along these lines, then we have to consider I think the fact that NASA procurement should likewise maybe not be purchasing Japanese components, or major components and parts.

Senator DANFORTH. Do you agree with that, Mr. Anderson?

Mr. ANDERSON. Not totally. It is my understanding, Mr. Chairman, that there are continuing discussions going on on a Government-to-Government basis, but there are plans currently underway by the consortium of new companies that are being formed to buy U.S. satellites for use in their new companies and will be formed once deregulation of the Japanese market takes place early next year.

Senator DANFORTH. As I understand, Mr. Anderson, you don't think that the United States particularly needs leverage to get into the Japanese market. You think that the Japanese will feel that it is in their best interests to open up their markets and do business with the United States.

Mr. ANDERSON. Mr. Chairman, I think that is obviously a complicated question, and it would be my judgment that we, as a Government, have a great deal of leverage currently in Japan, and there

is a great deal of cognizance on behalf of Japanese officials about the need for dealing with their significant trade surplus.

Senator DANFORTH. Then why does it keep getting bigger?

Mr. ANDERSON. I think there are lots of reasons for that, and particularly in the telecommunications area. I think there are several reasons. One obviously is that I think U.S. companies until very recently have focused their efforts on the U.S. market. It is a bigger market. It is a faster growing market, and that is where they focus their marketing efforts. Second, I think it is clear that Japan's market generically is always tough to crack, and it takes time and takes effort. Last, I think it is clear that in the past NTT has dominated the Japanese market, and they made domestic purchases. That is beginning to change. And as a result of that change, I think you will see that now the private sector market in Japan is about the same size as the NTT market. It is growing much faster than the NTT side or the so-called public side. So, I think in the future you will see that segment growing even more rapidly, and our ability to market there increasing.

Senator DANFORTH. Ms. Spero, you referred specifically to services and I was delighted to hear your comments about S. 144, which is now in H.R. 3398. I think it is going to come to the floor of the Senate again this afternoon after a hiatus of about 6 months, and I don't know what is going to happen, but it now contains a number of other features, some 60-odd specific trade measures, as well as addressing your question on services. But I think that you have made a very good point in that clearly trade in services is absolutely essential, and we have to consider that in anything that we do.

Ms. SPERO. We would like to see it moved soon, Senator.

Senator DANFORTH. Thank you all very much. That concludes the hearing.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

[The following communications were made a part of the hearing record:]

TESTIMONY

OF

EUGENE J. MILOSH

PRESIDENT

OF THE

AMERICAN ASSOCIATION

OF

EXPORTERS AND IMPORTERS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ON

S.2618, THE TELECOMMUNICATIONS TRADE ACT OF 1984

The American Association of Exporters and Importers represents over 1200 company-members engaged in the export, import and distribution of goods between the United States and countries throughout the world. The multitude of products sold by AAEI member companies range from chemicals, electronics, textiles and apparel, machinery, footwear and food to automobiles, wines and specialty items. In addition, many organizations serving the trade community -- customs brokers, freight forwarders, banks, attorneys and insurance firms -- are active members of AAEI.

Among our members are domestic manufacturers and U.S. subsidiaries of foreign companies engaged in the manufacture, import, export, and distribution of telecommunication products. As an Association we have committed ourselves to promoting liberalized trade and opposing protectionism on behalf of U.S. businesses. That we are submitting these comments speaks to the concerns of the international trade community regarding passage of S.2618.

Allow us to state, for the record, that AAEI continues to support the liberalization of trade and applauds the goal of S.2618. The further opening of foreign markets would benefit world trade, including trade in the telecommunications field. We must emphasize that although the Telecommunications Trade Act of 1984 (TTA) may be a method to increase access to foreign markets, it is a method totally inconsistent with established U.S. practice and policies. The Act, if passed, will send a less-than-subtle message to our trading partners that the U.S. policy is now "fair trade", with "fair trade" being defined unilaterally by the U.S..

It is true that many of our trading partners' telecommunication markets may be characterized as less than totally free markets. But the Tokyo and Kennedy Rounds of the GATT and the NTT aggreement initiated methods to increase access to foreign markets. While progress in expanding trade under these agreements may not be as rapid as some would hope, the agreements still are an important and viable tool in the effort to liberalize trade even further. It is also true that the United States has been a staunch advocate of multilateral liberalization of trade and in fact, is now advocating a new round of multilateral negotiations under the GATT. It is contradictory to support and possibly pass a bill that while allowing for multilateral negotiations is founded on sectoral reciprocity.

The "General Negotiating Objective(s)" of the bill found in Sections 181(a)(1) and (a)(2) raise two issues. One, although multilateral agreements are mentioned in §181(a)(1) and in §182(a), the bill, de facto, operates far from the standard of treatment contained in the MFN clause of the GATT.1 Once the President determines that "the foreign trade of the [U.S.] in telecommunications products" is "'unduly burdened and restricted'" or the U.S. economy is adversely affected by "any duties, import restrictions, or barriers to (or other distortions of) international trade..." or is likely to be adversely affected by the foregoing, he or she may enter into negotiations with foreign countries. The failure of the negotiations to bring about an agreement triggers a mandatory increase in the duty rate to the column 2 rates contained in Title II of the TTA, said increase to take effect three years after the bill's enactment date. The bill can use the barriers erected by one foreign country as the lever to suspend any or all trade agreements regarding telecommunication products, and eventually hike the duty rate of the telecommunication product or products for which negotiations have begun. The raise in duty affects everyone who imports that product into the U.S., regardless of the country and of that country's trade practices.

The second issue raised by the negotiating objectives is the inclusion of the standard of "substantially equivalent to the competitive opportunities provided by the United States..."(hereinafter referred to as SECO). The application of such a standard, as detailed by the TTA, demands the unilateral loosening of trade barriers by a foreign country to ensure the non-application of U.S. sanctions. The SECO standard is found in other trade legislation but in the context of agreements already entered into force.[2] The purpose then, of S.2618, appears to be the stripping of the right of access to U.S. markets from foreign producers. This definition of reciprocity is not envisioned by the GATT. GATT Article XXVIII(bis) states that tariff negotiations should be entered into on "a reciprocal and mutually advantageous basis,"[3] not under the threat of unilaterally imposed sanctions.

The notion of sectoral reciprocity embraced by the TTA of 1984 allows for a "cross-over" from tariffs to non-tariff barriers (NTBs) by the withdrawl of staged tariff reductions to address perceived NTB's. Agreements to date, including the GATT, have focused on the lowering of tariff barriers. In our judgment, the TTA illegitimately appeals to GATT authority for the President to use negotiations as leverage to unbind tariff reduction agreements and to raise the duties on foreign telecommunication products. The unbinding and raising would be to address perceived NTB's restricting access of U.S. telecommunication products or related services into a foreign market.

The TTA also misinterprets the spirit of the GATT as it relates to the issue of compensation. The sponsors of the bill assert that the bill is GATT-compatible because it allows for the granting of compensation (TTA§183(c)).

In reality, the TTA is presenting an argument to the GATT as to what compensation should be. GATT is the arbiter of compensation,[4] using its own means to evaluate the compensation owed; GATT does not use the unilateral formulas of the country that will have to pay compensation.

The compensation formula espoused in S.2618,§183 states that the compensation will be measured from the date the President determines there are restrictions to U.S. telecomunications exports to the date the unbinding of trade agreements is declared, not the date three years after enactment of the TTA when the unbinding suspension is lifted and the tariffs mandatorily jump to Column 2 rates. The sponsors of the bill have stated that the barriers to U.S. trade are already in place and that due to the AT&T divesture, the U.S. Telecommunications market has already been restructured.[5] The practical effect is that the time from which to measure compensation has already started running and will end when the President announces the intention to act under §182 of the TTA. This formula would limit the compensation for the damage done to our trading partner(s) to a static amount which would not reflect the long-term damage brought on by the implementation of Column 2 rates. This formula does not have to be accepted to the GATT to measure compensation, it can only be presented as our nation's argument to lower the amount of compensation owed to other countries.

The bill, S.2618, according to its sponsors, is founded on the premise that the AT&T divestiture was a "unilateral concession". "Concessions" under the GATT are negotiated for, or made pursuant to an agreement.[6] The concessions we have made over the years to other GATT partners have been paid for by them in the form of lower tariffs on their imports including telecommunications products from us.

Consequently, duties on foreign telecommunication products can be raised in two ways under the GATT, but in both cases compensation would have to be paid to other countries.[7]

The bill implies that either the U.S. is not competitive in telecommunications products or that if we are competitive in telecommunications products we will lose out because of the unfair trade practices of other suppliers. The fact is that the United States is the leader in the telecommunications field.[8] If unfair trade practices are the case then existing laws on unfair trade are the answer, not this bill.

The TTA's sponsors are aware that the U.S. telecommunications industry is not being injured at present, but say they are looking five to ten years down the road.[9] The absence of any sort of injury test in this legislation is a serious flaw and a bad precedent for any type of trade remedy legislation. If S.2618 is passed, other special interest groups can be expected to draft bills for their relief on the assumption that an increased market share for a foreign producer/supplier may occur. Trade laws which protect an uninjured, vibrant industry could well be the first domino falling toward world-wide contraction of commerce.

Before continuing the examination of the TTA it is best to reemphasize a number of points. While the goal of liberalising world trade, in this case by negotiating to open up foreign markets is a worthy one, it is best attained through constructive, multilateral negotiations. Unilateral sanctions in international trade will not lead to a thriving world economy. Legislation that allows for no discretion and protects an admittedly healthy industry should not be implemented by a country which has been and is a leader in world trade.

AAEI is willing and eager to help this Committee in its quest to promote competition in and expand trade. Such expansion would benefit all manufacturers, distributors, importers and exporters of telecommunication products. But S.2618 is not the answer.

"Services and investment" are areas not covered by the GATT, although their inclusion has been called for by some of the major industrialized countries, including the U.S..[10] But this bill, as drafted, is not specifically limited to telecommunications services and investment and telecommunication products. Section 181(b)(1)(B) speaks of "barriers to United States exports of telecommunication products, including... restrictions on services and investment related to trade in telecommunications products" (emphasis added) as a factor to be taken into account when negotiating. Section 181(a)(1) states a U.S. negotiating objective as "to provide competitive opportunities for (U.S.) exports of telecommunication products (including services using such products)." (emphasis added). Combining the above with the definition of telecommunication products found in section 181(a)(1),[11] "services using such products" are any services which possess phones, which considerably broadens the scope of the TTA. Since the U.S. is on record as supporting multilateral negotiations for services,[12] it would be inconsistent to include services and investment per se under the GATT framework by unilateral declaration.

Another way in which passage of S.2618 would be inconsistent with U.S. policy is the Act's possible abrogation of the U.S.'s GSP program. The GSP program is designed to aid lesser developed countries. If the program is either renewed or extended this year, and S.2618 is passed, an inconsistency will arise. Potentially, if the U.S., under the TTA, enters negotiations with a GSP-eligible country over telecommunication products and an agreement cannot be reached, that country will move from duty-free status to an over 35% duty rate for telecommunication products. GSP helps to promote and strengthen world trade.

Not only does it provide needed currency for beneficiary countries to help pay off their debts, but GSP also provides a competitive advantage to U.S. exports. The TTA of 1984 would undercut the GSP program by establishing a new quid-pro-quo for our help to less-developed nations.

Section 184(2) describes telecommunication products as those "for which uncompensated reductions in barriers to importation have occurred as a result of judicial and regulatory orders intended to increase competition in U.S. telecommunication services and products."(emphasis added). The specific courts or agencies are not defined. Quite possibly, a state court or state agency order could be used to implement the TTA of 1984. We do not think that the Congress would wish to delegate its constitutional authority to regulate interstate commerce to the executive or judicial branches, or to the states. Nonetheless, the possibility of the usurpation of Congress' authority, if S.2618 was passed, is real.

As shown above, Title I of the TTA of 1984 appears inconsistent with prior United States' practices and policies. Vague standards and definitions contained in the bill only add to the detrimental effect[13] passage of the bill would have on world trade.

Title II of the TTA amends the Tariff Schedules of the United States (TSUS) to update the nomenclature for telecommunication products. AAEI applauds and endorses the initiative of the bill's sponsors and of the ITC[14] in bringing nomenclature which is twenty years out of date into step with the present technology. Telecommunications technology is still rapidly changing and it is of the utmost importance that the U.S.' laws keep pace. The proposed nomenclature of Title II is an important and worthy effort.

The propósed implementation of Title II does raise a concern for the members of AAEI. The TSUS is in the midst of conversion into the Harmonized Commodity Coding System (HS). AAEI has been working for some years with the Government on this formidable task. As the HS, in all probability, will be implemented in 1987, the connsonance of the HS and the proposed Title II nomenclature becomes an important issue. It appears that Title II and the HS do not use the same language. For example, items 684.57, 684.58, 684.59, 684.65, 684.66 and 684.67 in the proposed nomenclature of Title II replaces items 684.62 and 684.64 of the present TSUS. TSUS items 684.62, 684.64 and their statistical annotations are converted into HS heading 8517 with subsequent break-outs in the HS. The proposed nomenclature divides "Switching Apparatus" into one, "Telephone switching apparatus (including private branch exchange and key system switching apparatus) (684.57) and two, "Other: Switching apparatus and parts thereof" (684.65). The Harmonized System defines the product as, "Telephone or Telegraph switching apparatus: Telephone switching apparatus..., or other...(HS 8517.30, 8517.30.10, 8517.30.50). The HS has a separate breakout for "Teleprinters, including Teletypewriters...(8517.20). The proposed nomenclature of Title II includes teleprinters and teletypewriters under the broader category of "Terminal Apparatus..."(684.66). The HS also uses language not found in Title II such as "Line telephonic or telegraphic electrical apparatus...," "carriercurrent line systems" and lists items not in Title II, "such as Intercom systems"(8517.81.10). The inconsistencies shown by this example highlight the necessity of a careful review of the proposed nomenclature occuring before new tariff schedule breakouts are introduced into the present schedule.

What this means for the industry if S.2618 is passed, or even if only the nomenclature is changed in accordance with the ITC report,[15] is two major changes of doing day-to-day business within three years. The inefficiency and confusion of such a situation requires that the HS be taken into consideration now.

AAEI is prepared to work with Congress and the Government to ensure the compatability of the TSUS with the Harmonized System. AAEI recognizes that the nomenclature for the telecommunications industry must be updated, but it should be updated in the most efficient manner possible.

One possible alternative to Title II and a way to avoid changing the TSUS nomenclature twice within three years, is to incorporate and add the proposed Title II nomenclature as statistical annotations to the present TSUS. This alternative would be consistent with the purposes of Title II and the ITC Report as enunciated by Senators Dole[16] and Danforth.[17] An orderly transition into the HS would benefit manufacturers, distributors, exporters and importers of telecommunication products as well as the U.S. Customs Service.

Conclusion

The American Association of Exporters and Importers supports the further expansion of world trade. However, AAEI believes that this goal can be attained through existing trade laws and multilateral negotiations.

As shown above, Title I of S.2618 is inconsistent with established U.S. policies and procedures. Forcing trading partners to negotiate under the threat of unprecedented, mandatory tariff increases is not the notion of reciprocity contained in the GATT. Protection of a healthy and growing industry at the expense of world trade and world traders has not been and must not be viewed as the banner under which the United States does business. While Title II of S.2618 is a positive and extremely important step toward modernizing the TSUS, it should be given careful review and made consistent with the HS.

AAEI reiterates its willingness and readiness to help the Committee in every way possible to expand world trade. AAEI stands firm in its belief that such expansion should be achieved through positive multilateral efforts, and not through well-intentioned but flawed legislation such as S.2618, the Telecommunications Trade Act of 1984.

## APPENDIX

1. General Agreement on Tariffs and Trade, Article I, 61 stat.(5)(6), T.I.A.S. 1700 (1948).

2. Section 126(b) of the Trade Act of 1974, 19 U.S.C.§2136(b)(1975) reads as follows:

   (b) The President shall determine, after the conclusion of all negotiations entered into under this chapter or at the end of the 5 year period beginning on January 3, 1975, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements entered into under this chapter which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under this chapter, for commerce of such country in the United States. (emphasis added)

3. GATT, supra note 1, Article XXVIII(bis)

4. GATT, supra note 1, Article XXVIII.

5. 130 Cong. Rec. 55140(daily ed. May 1, 1984)(Statement of Sen. Danforth)

6. GATT, supra note 1, Article XXVIII

7. Duties can be raised under article XIX(escape clause) or article XXVIII (open-season provision) of the GATT but compensation would have to be paid to other countries. It might possibly be argued that compensation is not due since much of this trade is new technology that was "not contemplated" in the tariff items on which the earlier concessions were granted. Even if this thesis could be sustained in part, it would ill behoove the U.S. to make the claim since we historically have argued for and benefitted from the opposite side of the argument. This is bound to the case so long as the U.S. remains on the cutting edge of new technology.

   Section 183(c) of the TTA which provides a formula for compensation states that for purposes of section 123 of the Trade Act of 1974 (compensation Authority) the unbinding of trade agreements shall be treated as an action under the section entitled "Import relief" (Section 203) of the Trade Act of 1974. This bill, S.2618, ignores the fact that §203 of the Trade Act of 1974 is triggered by a preliminary finding of injury by the ITC, has a five-year ceiling on import relief and a 50% ad valorem ceiling on increasing a rate of duty.

8. CHANGES IN THE U.S. TELECOMMUNICATIONS INDUSTRY AND THE IMPACT ON U.S. TELECOMMUNICATIONS TRADE, Report to the Committee on Finance, United States Senate on Investigation No. 332-172 under Section 332 of the Tariff Act of 1930, USITC PUBLICATION 1542 (June, 1984),p.xii.

9. See supra, note 5.

10. U.S. NATIONAL STUDY ON TRADE IN SERVICES, A Submission by the United States Government to the General Agreement on Tariffs and Trade, The Office of the United States Trade Representative, (December, 1983).

11. Section 184 reads as follows:

For purposes of this chapter, the term 'telecommunications products' means any equipment, instruments, components, parts or other property-

(1) which is designed for incorporation in, connection to, or interconnection with telephone, telegraph, and related telecommunications networks, and
(2) for which uncompensated reductions in barriers to importation have occured as a result of judicial and regulatory orders intended to increase competition in U.S. telecommunications services and products.

12. See supra, note 10.

13. A number of standards and words are unquantifiable and vague in S.2618: Section 182(a)(1)(A)(ii) gives the President the power to act if there is anything which would "adversely affect the United States economy." What qualifies as an "adverse affect"? At the end of three years who judges and how, whether an agreement is reached or negotiations have failed? What is the actual date of the AT&T divestiture, is it the date of consent decree in 1982, the effective date, January 1, 1984 or the point in between when divestiture actually began? What qualifies as "an uncompensated reduction in barriers," (Secs. 181(2), 184(2))or for that matter what qualifies as a "barrier?" If no agreement is reached, do the duty rates jump to column 2 permanently?

The definition in Section 184 of telecommunication products includes "components". Many of the domestic manufacturers that this bill is designed to aid manufacture their components abroad and could see the duty rates on these components hikes to column 2 rates should negotiations fail. While such wording may be easily corrected, it is an example of the flaws inherent in S.2618.

These "loopholes" should be addressed before this legislation is considered further.

14. See supra, note 8 at 112-40.

15. Id.

16. Letter from Senator Dole to Alfred E. Eckes, Chairman of the United States International Trade Commission, contained in, ITC Report, supra note 8 at 98.

17. See supra, note 5 at S5141-5142.

CBEMA

STATEMENT OF THE

COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

to the

SUBCOMMITTEE ON INTERNATIONAL TRADE
of the
SENATE FINANCE COMMITTEE

on the

TELECOMMUNICATIONS TRADE ACT OF 1984

S.2618

September 12, 1984

Computer and Business Equipment Manufacturers Association

311 First Street, N.W. • Washington, D.C. 20001 • 202-737-8888

CBEMA

Statement of the
Computer and Business Equipment Manufacturers Association
on

S.2618

Telecommunications Trade Act of 1984 (Title I)
Telecommunications Product Classification Act (Title II)

The following comments have been prepared in response to the request of the Subcommittee on International Trade of the Senate Finance Committee for public comment on Title II of S.2618. Because Title II is directly related to the provisions of Title I of this important legislation, CBEMA has decided to preface its views on the classification and nomenclature changes in Title II with a summary of its position on the issues raised by Title I. (A more detailed analysis of these issues is contained in the Annex to this paper.)

Summary

CBEMA has been a leading advocate of measures to ensure the elimination of barriers to international trade in high technology products and services. The international market for telecommunications products is an important and growing market for many U.S. high technology companies and CBEMA has been and will continue to be enthusiastically supportive of efforts to eliminate governmental barriers to the free flow of goods and services in this sector. For this reason, CBEMA endorses the objective of S.2618 to the extent that this legislation is aimed at facilitating efforts to negotiate the reduction and elimination of such barriers.

CBEMA's commitment to an open trading system involves a dedication to the multilateral system of rules and policies embodied in the General Agreement on Tariffs and Trade (GATT). This system has served the world well by providing a framework for the successful negotiation of agreements to reduce and eliminate tariff and nontariff barriers to trade. CBEMA's respect for this system requires that it call attention to those aspects of S.2618 that would involve the United States in the unilateral abrogation of its international obligations. CBEMA believes that those aspects of the legislation are not only unnecessary but are also likely to be harmful to the objective of further trade liberalization.

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Provisions of S.2618

S.2618 is divided into two titles:

- Title I, the Telecommunications Trade Act of 1984, mandates the President to negotiate agreements aimed at opening foreign markets to U.S. telecommunications exports. To provide negotiating leverage, the bill would automatically increase U.S. duties on telecommunications products if such agreements are not concluded within three years.

- Title II, the Telecommunications Products Classification Act, would promulgate a new tariff classification system for telecommunications products, a change that would also affect data processing systems, peripherals and parts.

Analysis and Comment

A. Title I -- Telecommunication Trade Act of 1984

The provisions of Title I would authorize and direct the President to conclude trade agreements providing for the harmonization, reduction or elimination of barriers to trade in telecommunications products.

- Any agreements so concluded must be submitted to Congress for its approval under the "fast track" procedures of Section 102 of the Trade Act of 1974.

- Agreements may be concluded on either a multilateral or bilateral basis and the benefits of any agreements may be limited solely to the signatories of such agreements (i.e., non-MFN application).

For the most part, this negotiating mandate is a positive step toward the opening of foreign markets that CBEMA seeks. However, CBEMA believes that expanding the scope of negotiations beyond telecommunications would avoid the negative implications of narrow sectoral reciprocity and enhance the likelihood of successful results by increasing the number of possible tradeoffs that could be made. Broad negotiating authority would also improve the chances of a multilateral agreement, thereby avoiding the prospects of non-MFN application of any agreement, an outcome that would likely violate one of the most fundamental principles in the GATT.

The other provisions of Title I are aimed at providing leverage to bring U.S. trading partners to the negotiating table by creating the prospect of dramatic increases in U.S. tariffs on all telecommunications products. This would be accomplished in two stages.

- First, within 90 days of enactment, the President would be required to terminate, withdraw or suspend current U.S. internationally-negotiated tariff concessions on telecommunications products.

- The increased tariffs or other increased import restrictions resulting from such action will take effect three years after the bill is enacted into law, unless an agreement or agreements are reached which reduce barriers in overseas markets to U.S. telecommunications products.

CBEMA's basic concern about these provisions is that they could well impair, rather than enhance, the prospects for successful negotiations. The abandonment by the United States of trade agreement obligations in a major product sector would seriously risk the unraveling of the complex web of trade concessions that have been painstakingly negotiated in the GATT over the last thirty-six years. Although compensation authority is available in the statute, other countries might choose to retaliate in kind by withdrawing concessions affecting U.S. exports in areas where the United States is especially competitive, such as other high technology areas, or agriculture.

The legislation seeks to mitigate these risks by relying on those provisions of the GATT which establish a mechanism to allow contracting parties to withdraw concessions previously negotiated. Proponents of the legislation believe that this action is the only leverage available to bring U.S. trading partners to the negotiating table. CBEMA believes that the assumptions underlying this conclusion deserve more careful consideration.

- The current tariff concessions bound under the GATT represent the results of seven major rounds of tariff negotiations covering a span of almost forty years. Any unilateral action to abandon those concessions would impair the rights of many of our important trading partners.

- The GATT procedures governing unbinding require time, flexibility and a willingness to grant compensation. If compensation agreements are not negotiated, other countries are entitled to retaliate by unbinding and raising their duties. The mandatory requirements and strict time limits in the legislation are not sensitive to these GATT rules and the authority to provide compensation may well be inadequate or unavailable in practice.

- The stated purpose of the legislation is to avoid any windfall benefits to U.S. trading partners of the AT&T divestiture. There is no GATT precedent to support this position and the scope of the legislation goes well beyond those products implicated in the AT&T divestiture to products that have been subject to competitive bidding for some time now.

The attached annex provides a more detailed discussion of these and other important GATT-related issues.

CBEMA companies are acutely sensitive to trade policies that threaten their access to worldwide markets, because the ability to compete on a global scale is the key to the continued competitiveness of the U.S. data processing industry. For this reason, CBEMA believes that the negotiating mandate for a new round of trade negotiations should follow more closely the formula that has been successful in the past. Just such a negotiating formula has been included in the International Trade and Investment Act (originally S.144, currently Title III of H.R.3398). This legislation is not only well positioned for enactment this year but also represents the culmination of several years of effort to fashion a negotiating proposal that has the support of a broad spectrum of American commercial interests.

B. Title II -- Telecommunications Classification Act

The provisions of Title II would promulgate a new tariff classification scheme for imported telecommunications products. The purpose of this section is to improve the data available from U.S. import statistics to better understand international competition in this important sector. This objective would be accomplished by creating new five digit tariff classifications designed to segregate more specifically telecommunication items from other products in the Tariff Schedule of the United States (TSUS). Although ostensibly trade neutral, this new classification scheme would also lay the groundwork for the tariff unbinding proposal in Title I.

In CBEMA's view, there is considerable merit to the position that the tariff schedules are out of date with current technology and out of synch with prevailing international customs practice. However, this is a generic problem not limited simply to telecommunications products. For this reason, CBEMA has actively supported the domestic and international efforts to achieve agreement on a common system of customs classifications that would provide suitable trade statistics. Many years of effort have culminated in the Harmonized Commodity Code System (HCCS) which is scheduled for adoption in the United States by January 1, 1987.

In CBEMA's view, the provisions of Title II should be replaced with language that incorporates those portions of the HCCS dealing with telecommunications products. This change would allow the United States to adopt in advance those portions of the HCCS dealing with such products to the extent there is an immediate need to improve the tariff classification and statistical system in that regard.

Adoption of the HCCS would also avoid the confusion created by Title II by the proposed inclusion of TSUS items 676.15, 676.30 and 676.52 in this title. These items are automatic data processing systems, peripherals and parts, products that are not properly considered telecommunications products. Like many other products not covered by Title II, such as audio recorders, data processing equipment is capable of interconnection with the international telecommunications network.

CBEMA strongly opposes the inclusion of data processing equipment in this legislation in the context of telecommunications products. By including all data processing equipment capable of connection to a telegraphic or telephonic system, the new classification system poses major administrative problems for Customs and importers because of the difficulty of applying this standard in an environment of rapidly evolving technology and the tendency for most data processing equipment to be designed to allow electronic communications. Furthermore, by defining the telecommunications import market widely, the new classification system has the effect of subsuming the interests of the data processing industry both for the purpose of collecting trade statistics and, more importantly, for purposes of the unbinding and duty increase proposals in the bill.

The inclusion of computer systems, peripherals and parts in this legislation goes well beyond the stated purpose of the bill, which is to address the impact of the AT&T divestiture and the resulting opening of the Bell Operating Companies' telecommunication equipment market. Procurement of data processing

equipment by the pre-divestiture AT&T was not formally addressed in the divestiture proceedings because AT&T and its affilitate companies were already engaged in open competitive procurement of data processing equipment. It is ill considered, therefore, to include data processing equipment within the scope of this legislation.

Conclusion

CBEMA is pleased to lend its support and encouragement to efforts to expand foreign markets to U.S. exports of telecommunications products and believes that our trading partners can and will take steps to open their markets further. In this regard, CBEMA endorses the objective of S.2618.

However, CBEMA believes that there are a number of alternatives that are preferable to the unilateral withdrawal of GATT concessions as a means of promoting such efforts. Specifically, CBEMA has, and will continue, to press vigorously for the negotiating mandate contained in the International Trade and Investment Act, sponsored by Senators Danforth and Bentsen and cosponsored by some 42 other Senators. Equally important, this legislation is actively supported by a broad coalition of U.S. commercial interests, from agriculture to services and high technology.

This important legislation takes the kind of approach that has been successful in the past in drawing our trading partners to the negotiating table by covering a broad range of products and services and offering a forward looking approach to trade liberalization. Complemented by the existing array of trade remedies currently in effect under U.S. law, this legislation would give the President the tools he needs to deal with telecommunications trade problems.

Enactment of the International Trade and Investment Act would also provide a needed stimulus to the international initiatives currently being pursued by the President to launch a new round of multilateral trade negotiations. The United States should not relinquish its leadership in promoting international trade liberalization. Only a national commitment, supported by a Congressional mandate, can make this effort the priority that it should be.

In the meantime, every effort should be made to implement the results of past negotiating efforts. Title II of S.2618 should be replaced by language incorporating the Harmonized Commodity Code System of Customs classification. This system has been negotiated at considerable expense and effort to bring the United States into conformity with international practice and will greatly improve our import and export statistics while substantially easing the burden of compliance for U.S. industries that compete internationally.

## APPENDIX

## THE GATT COMPATIBILITY OF THE NEGOTIATING AUTHORITY AND THE UNBINDING PROVISIONS OF THE TELECOMMUNICATIONS TRADE ACT OF 1984

Senator Danforth introduced legislation on May 1, 1984, proposing the enactment of the "Telecommunications Trade Act of 1984." S. 2618, 98th Cong., 2d Sess. (1984). The stated objectives of the bill are to open up overseas markets to U.S. telecommunications products, services and investment, and to avoid reductions in barriers to telecommunications imports in the United States without compensation. S. 2618 at § 181(a).

The bill promotes these objectives with a carrot-and-stick approach. First, the bill grants the President the authority to negotiate trade agreements which provide for the harmonization, reduction, or elimination of barriers to U.S. trade in telecommunications products. This includes authority to negotiate the reduction or elimination of current U.S. tariff and non-tariff barriers on such products. S. 2618 at § 182. In conjunction, the bill requires the President to terminate, withdraw, or suspend current U.S. tariff concessions[1/] on telecommunications products as early as 90 days after passage of the Act.[2/] The increased tariffs or other increased import restrictions resulting from such action will take effect three years after the bill is enacted into law, unless an agreement or

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1/ The bill also requires the President to terminate, withdraw or suspend any U.S. agreement with respect to other import restrictions. S. 2618 at § 182.

2/ See n.20, infra.

agreements are reached which reduce barriers in overseas markets to U.S. telecommunications products. S. 2618 at § 183(b).[3/]

If acceptable agreements are not concluded in three years, the duties on products entering under the telecommunications classifications contained in the bill would increase to the column 2 rate of duty. For most products, this would mean an increase from approximately 5 percent ad valorem to 35 percent ad valorem.[4/] See S. 2618 at §§ 183, 202. Should these tariff increases go into effect, the bill authorizes the President to lower U.S. tariffs on other products, if necessary to compensate our trading partners. S. 2618 at § 183(c); Trade Act of 1974 § 123, 19 U.S.C. § 2133.

In order to enable the President to increase the duties with respect only to U.S. telecommunications products, and to secure better data on U.S. imports of telecommunications products, Title II of the Danforth bill amends the Tariff Schedules of the United States (TSUS) to provide classifications specifically for telecommunications products. S. 2618 at § 202.[5/]

Three elements of the bill have significant international policy ramifications: (1) the grant of authority to negotiate

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3/ Any agreement would be subject to the approval of Congress. Congress would give accelerated consideration to the agreement in accordance with the "fast-tract" procedures provided in §102 and §151 of the Trade Act of 1974.

4/ The duty on optical fiber bundles would increase to 65 percent ad valorem, and the duty on optical fibers and optical fiber cable would increase to 85 percent ad valorem.

5/ The proposed changes in classification are intended to be "rate neutral," i.e., the new headings and subheadings are not intended to affect the current rate of duty.

agreements which provide for the harmonization, reduction, or elimination of barriers to U.S. trade in telecommunications products; (2) the mandate to unbind current U.S. tariff concessions; and (3) the authority to grant compensation, if necessary, for tariff increases resulting from unbinding.

I. THE AUTHORITY TO NEGOTIATE TRADE AGREEMENTS

Section 182 of the Telecommunications Trade Act of 1984 would grant the President the authority to negotiate multilateral or bilateral trade agreements "which provide for the harmonization, reduction, or elimination of" duties, import restrictions, or other barriers or distortions to U.S. trade in telecommunications products. S. 2618 at § 182.[6/] This authority is intended to serve two objectives:

> (1) to obtain multilateral and bilateral agreements that would provide competitive opportunities for U.S. exports...which are substantially equivalent to the competitive opportunities provided by the United States after the restructuring of the U.S. market for telecommunications; and
>
> (2) to avoid uncompensated reductions in barriers to foreign access to the U.S. market.

S. 2618 at § 181(a).

A. Sectoral Reciprocity

To the extent the bill authorizes the President to enter into agreements which provide for the reduction and/or elimination of barriers to trade, section 182 is fully consonant

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6/ The bill also provides that the President can enter into agreements which provide for the prohibition of or limitations on such barriers to U.S. trade. S. 2618 at § 182.

with the General Agreement on Tariffs and Trade (GATT). One of the primary purposes of the GATT is to promote "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." GATT Preamble. However, questions are likely to be raised regarding the sectoral reciprocity approach implied in stated objectives for this negotiating authority. The problem with sectoral reciprocity is that it implies a product-by-product, country-by-country balancing of trade. When such proposals were advanced in the past, they generated considerable concern that the United States was abandoning its traditional view that reciprocity should be viewed on an overall basis, recognizing that cross-sectoral trade-offs have been made over the years in successive rounds of trade negotiations.

The purpose of a sectoral reciprocity approach is to create leverage in negotiations by linking continued access to the U.S. market in a particular sector to the elimination of barriers to access abroad. The problem this creates is that it severely limits the possible trade-offs that can be made to achieve an agreement. This tactic can be effective in certain circumstances and with particular countries. As a matter of policy, one should consider whether it is advisable in this context.

B. Non-MFN Application of An Agreement

Although the preferred result of the telecommunications bill would be a multilateral agreement applied on a Most-Favored-

Nation (MFN) basis,[7] at least with respect to the signatories of the agreement, section 182(b) of the bill provides the President with the authority to enter into multilateral or bilateral agreements that would not be applied on an MFN basis.[8] S. 2618 at § 182(b) (incorporating 19 U.S.C. § 2112(f)).

Non-MFN application of an agreement would be in violation of the MFN obligations of Article I of the GATT. Thus, the United States would have to seek a waiver of its obligations under Article XXV:5. If the United States were not successful in securing a waiver, any contracting party to the GATT which was not granted MFN treatment could make a claim under Article XXIII that its benefits under the GATT were being nullified or impaired. The resolution of such a dispute would depend upon negotiations between the United States and the party concerned. However, such a dispute could technically result in the GATT-

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[7] The basic MFN obligation of the GATT requires that the contracting parties grant treatment to the products of any contracting party which is no less favorable than that accorded to the products of any other country. GATT Art. 1.

[8] In light of the fact that one of the stated objectives of the telecommunications bill is to "avoid uncompensated reductions in barriers to foreign access to the United States," the bill does not appear to anticipate that any bilateral agreement would be applied on an MFN basis.

The United States could enter into a bilateral agreement regarding telecommunications tariffs outside the auspices of the GATT. The MFN clause of Article I of the GATT would nonetheless require the United States to extend any benefits of that agreement to all the contracting parties. However, the tariffs negotiated in such an agreement would not appear in the GATT Schedules, and no other country would have compensation rights should the United States terminate or modify the agreement. See J. Jackson, World Trade and the Law of GATT 221, 237 (1969).

sanctioned suspension by the complaining party of concessions vis-a-vis the United States. GATT Art. XXIII:2. (This provision has never in the history of the GATT resulted in such retaliation, but the possibility nevertheless is present that it would be invoked and utilized.)

II. THE MANDATE TO UNBIND

Section 183(a) of the proposed Telecommunications Trade Act of 1984 requires that the President, "after not more than 90 days of consultations with the appropriate foreign countries or instrumentalities," terminate, withdraw or suspend ("unbind") U.S. tariff concessions with respect to telecommunications products.9/ This mandate to unbind U.S. tariff concessions presents potential problems for U.S. compliance with its GATT obligations. Moreover, this provision could have far-reaching impact on other U.S. industries, U.S. relations with its major trading partners, and the fabric of the GATT system.

A. The Significance of A Binding

An appreciation of the significance and the ramifications of unbinding requires an understanding of the significance of binding under the GATT as well as GATT-sanctioned procedures for unbinding. The GATT was in its origin a tariff agreement, and today its primary significance remains in the area of tariff negotiations. K. Damm, The GATT Law and International

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9/ The bill also requires that the President terminate, withdraw or suspend all or part of any agreement with respect to U.S. import restrictions on telecommunications products.

Organization 17 (1970). The central obligation of the GATT centers around the tariff concessions made by the contracting parties. J. Jackson, World Trade and the Law of GATT 201 (1969). All other obligations contained in the GATT are designed either to reinforce or protect the value of the tariff concessions. Id. at 204.

Tariff concessions can take the form of (1) agreements to lower a duty to a stated level; (2) agreements not to raise a duty above its present level; or (3) agreements not to raise a duty above a specified higher level. GATT Art. XXVIII bis; K. Dam, GATT Law and International Economic Organization 31 (1970).[10/] The term "binding" connotes a tariff concession and the basic GATT obligations that attach to it.

The GATT imposes two fundamental obligations with respect to bound duties. First, the contracting parties are required not to impose duties on a particular item above the level reflected in the GATT Schedules.[11/] GATT Art. II:1. Thus, items listed in the GATT Schedules are "bound" at the scheduled rate of duty. With certain exceptions provided in the GATT, the obligation not to raise a duty above the bound level extends to the imposition of any charges which would have the effect of raising a bound

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10/ Under the GATT system, tariff concessions are reached through continued negotiations and renegotiations between the contracting parties to the GATT.

11/ Duties for particular items agreed to by the contracting parties are listed in Schedules annexed to the GATT. Each contracting party has a Schedule. By operation of Art. II:7 of the GATT, these Schedules are made an integral part of the Agreement.

duty above the agreed-upon level. See GATT Art. II:1, XIX, XXV. Second, the contracting parties to the GATT are required to apply a bound MFN rate of duty on a particular item to all contracting parties, not only to the contracting party or parties with whom the tariff negotiations were negotiated. GATT Art. II:1(a), I.[12/] The current tariff concessions bound under the GATT represent the results of seven major rounds of tariff negotiations covering a span of forty years.

B. Procedures for Unbinding Tariff Concessions Under the GATT

Article XXVIII of the GATT provides that contracting parties can withdraw or modify ("unbind") operative tariff concessions under certain circumstances, if compensating concessions are made. Specifically, under Article XXVIII, a contracting party can withdraw or modify a tariff concession during "open season," by reserving the right to unbind in advance, or in "special circumstances." This flexibility was built into the GATT to encourage governments to make concessions that would not be made if concessions were permanent and irrevocable.

1. Open Season

Every three years, or after some other "bound period" agreed upon by the contracting parties, there is an "open season" during

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12/ The tariff concessions contained in Part I of a country's GATT Schedule must be extended to all contracting parties pursuant to the MFN obligation. Part II of each country's GATT Schedule contains GATT-sanctioned preferential arrangements which are exempted from the MFN obligation. The United States has no products listed in Part II of its Schedule.

which any contracting party can modify or withdraw any tariff concession previously made, without securing authorization or approval for its action. A contracting party wishing to modify or withdraw a concession (an applicant) during an open season should notify the Contracting Parties[13/] not earlier than six months nor later than three months prior to the beginning of a new "bound period."[14/] The current bound period ends on December 31, 1984. Thus, we are currently in a period of notification, should the United States want to exercise its rights to unbind any tariff concessions during an open season.

To conform with GATT requirements, an applicant must negotiate with two categories of contracting parties--the party or parties with whom the affected concessions were initially negotiated, and the parties determined by the Contracting Parties to have a "principal supplying interest" [15/] (collectively the

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13/ The term "Contracting Parties," when spelled with initial capital letters, refers to the members of the GATT acting as a whole in the capacity of an institutional body. Otherwise, "contracting parties" is intended to refer to the members of the GATT in their individual capacities.

14/ The three-year periods begin on January 1, 1958. The right of the contracting party to withdraw or modify concessions begins on the first day of each three-year period. GATT Art. XXVIII:1.

15/ A party with a "principal supplying interest" is defined in the interpretive notes to the GATT as a party which "has had, over a reasonable period of time prior to the [unbinding] negotiations, a larger share in the market of the applicant contracting party than a contracting party with which the concession was initially negotiated or would, in the judgment of the Contracting Parties, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party." GATT Annex I, Ad Art. XXVIII, para. 1 n.4. Notwithstanding this definition, the Contracting Parties may

(Continued)

"parties primarily concerned"). The applicant must also consult with any contracting party determined to have a "substantial interest" in the concession or concessions under consideration.16/ The goal of the negotiations is to reach an agreement which will maintain an overall level of concessions no less favorable than that provided for prior to the withdrawal of modification of the concession in question. GATT Art. XXVIII:2. This may be accomplished by granting concessions on other products equivalent to the concessions withdrawn on the product or products in issue.

If an agreement cannot be reached between the applicant and the parties primarily concerned by the end of the bound period, the applicant is free to take the action which it proposed. GATT Art. XXVIII:3(a). However, if the applicant takes such action, the parties with "initial negotiating rights," "principal supplying interests," and "substantial interests" (collectively the "parties with compensation rights") in the concession are entitled to withdraw substantially equivalent concessions initially

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determine that a contracting party has a principal supplying interest "if the concession in question affects trade which constitutes a major part of the total exports of such contracting party." Id. at n.5.

16/ The term "substantial interest" is not precisely defined. However, the interpretative notes to Article XXVIII state that the term is intended to cover only those parties which have, or would have had in the absence of discriminatory treatment, "a significant share in the market of the contracting party seeking to modify or withdraw the concession." GATT Annex I, Ad Art. XXVIII, para. 1 n.7. For purposes of simplicity, the "parties primarily concerned" and the parties with a "substantial interest" will be collectively referred to as the "parties with compensation rights."

negotiated with the applicant. GATT Art. XXVIII:3(a).[17] In addition, if the applicant reaches an agreement with the parties primarily concerned, but a party with a substantial interest is not satisfied, the party with the substantial interest is nonetheless entitled to withdraw substantially equivalent concessions initially negotiated with the applicant.[18]

2. Reserving The Right to Unbind Tariffs Under Article XXVIII:5

A party may also elect during any "bound period" to reserve the right to unbind its tariff concessions at any time during the bound period following the one during which the applicant gives notice of such intent. GATT Art. XXVIII:5. If the party elects to reserve this right, other contracting parties have the right, during the same period, to modify or withdraw concessions initially negotiated with the applicant party. GATT Art. XXVIII:5.

The United States, the EEC, Canada and Japan reserved the right during the last bound period to unbind any tariff concessions for the duration of the current period. It is unclear as yet whether the United States will elect to exercise its rights under Article XXVIII:5 for the next bound period, begin-

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17/ The parties with compensation rights must withdraw substantially equivalent concessions not later than six months after the applicant withdraws or modifies its concessions. GATT Art. XXVIII:3(a).

18/ Thus, although an applicant is only required to consult with a party with a substantial interest, there is little difference, as a practical matter, between the rights of a party with a substantial interest in a concession and those of the parties "primarily concerned." See J. Jackson, World Trade and the Law of GATT 233 (1969).

ning January 1, 1985. However, if the EEC does, it is expected that the United States will follow suit. Although a contracting party can elect to reserve its rights under Article XXVIII:5 at any time prior to the beginning of the next period, the practice has been to notify the Contracting Parties shortly before the beginning of the following period.[19/]

3. Special Circumstances

At any time, a contracting party can seek authorization from the Contracting Parties to enter into negotiations for modification or withdrawal of a concession because of "special circumstances." GATT Art. XXVIII:4. Although "special circumstances" are not defined in the GATT, the notes to Article XXVIII:4 provide that the Contracting Parties shall authorize negotiations for modification or withdrawal of concessions whenever "special circumstances" are alleged, unless the Contracting Parties believe that such negotiations would result in or substantially contribute to such an increase in tariff levels as to threaten the stability of the Schedules to the GATT or lead to undue disturbance of international trade. GATT Annex I, Ad Art. XXVIII, para. 4.

Like the procedures used for unbinding during an open season, a party applying for withdrawal or modification on the basis of "special circumstances" must negotiate with the contracting parties primarily concerned and consult with any

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19/ For example, the United States notified the GATT of its intent to reserve its rights under Article XXVIII:5 for the current period on Dec. 15, 1981.

contracting party found to have a substantial interest in the concession. In addition, if an agreement is reached between the applicant and the parties primarily concerned, any party with a substantial interest has the same right as it would in an open season to withdraw substantially equivalent concessions.

However, there are significant differences in rights and procedures between unbinding during an open season and unbinding under "special circumstances." Although the notes to Article XXVIII indicate that authorization should be granted liberally, the right to unbind in "special circumstances" is nonetheless subject to the authorization of the Contracting Parties. Moreover, if an agreement cannot be reached, the applicant does not have an unconditional right to withdraw or modify the concessions in question. The applicant must first refer the matter to the Contracting Parties, who will submit their views with the aim of achieving a settlement. If no settlement is reached after the Contracting Parties are consulted, the applicant is entitled to unbind,[20] unless the Contracting Parties find that the applicant has "unreasonably failed to offer adequate compensation." GATT Art. XXVIII:4(d). Lastly, a time limit of 60 days is imposed on the negotiations, unless the Contracting Parties prescribe otherwise.

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[20] As in open season, if an applicant unbinds in the absence of agreement, the parties with compensation rights are entitled to withdraw substantially equivalent concessions.

C. The GATT Compatibility of the Mandate to Unbind

If the Telecommunications Trade Act of 1984 is enacted into law during an open season or during a period in which the United States has reserved its rights to unbind (a "reserved period"), the President would be able to unbind in accordance with GATT procedure. In either an open season or a reserved period, a contracting party is entitled to unbind after notification and negotiation with the parties primarily concerned, whether or not the Contracting Parties approve. However, if the President is required to unbind under the procedure for "special circumstances," there are a number of situations in which the telecommunications bill would require the President to take action in violation of the GATT.

First, the authorization of the Contracting Parties is required to initiate the process of unbinding in "special circumstances." If the Contracting Parties declined to grant such authorization, the legislation would nonetheless require the President to unbind in violation of U.S. obligations under the GATT. Although "special circumstances" authorization has been granted liberally in the past, the interpretative notes to Article XXVIII:4 state that approval should be denied if the Contracting Parties--

> consider this would result in, or contribute substantially towards, such an increase in tariff levels as to threaten the stability of the Schedules to this Agreement or lead to undue disturbance of international trade.

GATT Annex I, Ad Art. XXVIII, para. 4.

There is always a risk that the Contracting Parties will not grant authorization, and an across-the-board withdrawal of the U.S. tariff concessions on telecommunications products could very well be a situation which the Contracting Parties would find threatening to the stability of the Schedules to the GATT and/or international trade. The U.S. tariff concessions on telecommunications products involve a broad range of products accounting for two billion dollars in trade. An unbinding of this magnitude is unprecedented in the history of the GATT.

Second, in "special circumstances," if a negotiated settlement is not reached with the parties primarily concerned, and the Contracting Parties find that the applicant has "unreasonably failed to offer adequate compensation," the applicant is not entitled to unbind. GATT Art. XXVIII:4(d). In assessing whether the United States had offered meaningful compensation prior to unbinding, the Contracting Parties could take into consideration the extremely short time limit imposed on unbinding negotiations by the telecommunications bill. If the Contracting Parties find that the United States did not offer adequate compensation, the legislation would again force the President into action in violation of the GATT.

Third, if the bill is clarified to mean that the President must unbind within 90 days after its enactment into law,21/ the

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21/ The language of the bill requires the President to unbind U.S. tariff concessions on telecommunications products within 90 days after he begins consultations with the appropriate trading partners, not within 90 days after enactment of the bill into law. However, a press release from Senator Danforth's office issued when the bill was

(Continued)

President most likely would not be able to comply with the process required for unbinding under "special circumstances."

When authorization to unbind under "special circumstances" is requested, the Contracting Parties have 30 days in which to make a decision. GATT Annex I, Ad Art. XXVIII, para. 4. Then, the parties have 60 days in which to negotiate.22/ If an agreement is not reached within 60 days, which is highly likely in this case, the matter must be submitted to the Contracting Parties for their views. The Contracting Parties have 30 days in which to submit their views.23/ Thus, the process of unbinding under special circumstances would take 120 days in the absence of any delays, whereas the President would have to unbind within 90 days after enactment of the bill.24/ Unbinding under such cir-

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introduced indicates that Senator Danforth may have intended that the President unbind the tariff concessions within 90 days after the enactment of the bill. The press release states:

> Upon enactment, tariff bindings on U.S. imports of telecommunications equipment negotiated in previous GATT trade rounds shall be removed.

Senator Danforth Press Release (May 1, 1984).

22/ An applicant can seek and the Contracting Parties can authorize a longer period of negotiation. The interpretative notes to Art. XXVIII:4 indicate that a 60-day negotiation period will likely be inadequate where, as here, the case would involve "negotiations for the modification or withdrawal of a larger number of items, and in such cases, therefore, it would be appropriate for the Contracting Parties to prescribe a longer period." GATT Annex I, Ad Art. XXVIII, para. 4 n.3. Although U.S. representatives would not ask for a longer period, it is theoretically possible that parties with a vested interest in the concessions might.

23/ The Contracting Parties can take a longer amount of time if the applicant agrees. GATT Annex I, Ad Art. XXVIII, para. 4 n.4.

24/ Theoretically, the Contracting Parties could take less than (Continued)

cumstances would not only be outside the prescribed process, but would also evidence disinterest in the views of the Contracting Parties.

If the statute is interpreted to mean that the President must unbind only within 90 days after negotiations begin rather than 90 days after enactment of the bill, it is possible that the President could unbind under "special circumstances" in compliance with the procedural requirements of the GATT. However, to accomplish this, the process would have to go smoothly at each step. The Contracting Parties would have to authorize negotiations and acquiesce in a unilateral unbinding, if no agreement were reached. Moreover, all steps of the process would have to be completed in a timely manner.25/

In sum, the mandate to unbind in the Danforth bill could be executed in compliance with GATT procedure if the bill is enacted during an open season or during a period when the United States has reserved its right to unbind. However, if the President is required to unbind under "special circumstances," the Danforth mandate would more likely than not force the United States to unbind in violation of the procedure required by the GATT.

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30 days to authorize "special circumstances" negotiations, and less than 30 days to submit their views on settlement. In addition, the negotiating parties theoretically could take less then 60 days to settle the issue of compensation. However, each step would likely take the maximum time allowed.

25/ If the 90-day time limit in the Danforth bill is clarified to apply only to the length of negotiations with the parties primarily concerned, it is possible that the President could wait for an open season to initiate the process of unbinding.

III. COMPENSATION AUTHORITY

Although the telecommunications legislation intends that the actual tariff increases would be used only as a last resort, the bill nonetheless provides for that event. The President is authorized both to increase tariffs and to negotiate compensation for such increases with the requisite trading partners. Section 183(c) of the bill, by incorporation of section 123 of the Trade Act of 1974, provides the President--

> (1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions.

19 U.S.C. § 2133(a)(1). Thus, the President would be authorized to lower tariffs on other products as compensation for the increased tariffs on telecommunications tariffs.

If compensation were to be negotiated, the central issue would be the amount of compensation to which our major trading partners would be entitled. The explanation of the bill which was provided upon its introduction in the Senate states that "U.S. negotiators would be expected to cite low pre-divestiture trade levels and involve 'reasonable expectations' arguments (re: AT&T divestiture) to minimize compensation in GATT Article XXVIII negotiations." 130 Cong. Rec. S5144 (daily ed. May 1, 1984). The sponsors of the bill anticipated that "low pre-divestiture trade levels and the fact that foreign countries never expected or paid for AT&T divestiture in trade terms should make the cost [of compensation] minimal." 130 Cong. Rec. S5144 (daily ed. May 1, 1984).

The GATT does not provide a method for calculating compensation. The GATT provides only general principles upon which compensation negotiations would proceed. Article XXVIII:2 provides that--

> In negotiations and consultations for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.

GATT Art. XXVIII:2. In addition, the interpretative notes to Article XXVIII state that an applicant should not have to pay compensation or suffer retaliation--

> greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party.

GATT Annex I, Ad Art. XXVIII, para. 1 n.6.

Lastly, within the GATT framework, the primary concern is the extent to which each side has legally committed itself, rather than the extent of the actual injury suffered. See Walker, Dispute Settlement: The Chicken War, 58 Am J. Int'l L. 680 (1964). Accordingly, paragraph 3 of Article XXVIII provides that if the applicant unbinds in the absence of an agreement on compensation, the parties with compensation rights can withdraw "substantially equivalent concessions initially negotiated" with the applicant. GATT Art. XXVIII:3.

The actual valuation of concessions or their withdrawal is largely a matter for negotiation. No hard and fast rules apply,

and little precedent has developed. In practice, during trade negotiations, a rough measure of a concession's value is generally obtained by multiplying the quantity of the goods imported over the most recent representative period by the dollar amount saved by the tariff reduction. J. Jackson, World Trade and the Law of GATT 241 (1969). This same starting point would presumably be used to calculate the compensation due upon the withdrawal or modification of a tariff concession. However, other factors are taken into account, such as the impact that the change in tariff levels will have on imports.

In the case at hand, a large volume of trade is involved, even if one considers only the level of trade at the time of the AT&T divestiture. In addition, the United States would be proposing an increase in its tariffs of 600 percent or more, from the approximately 4 to 5 percent level negotiated at the Multilateral Trade Negotiations (MTN) to 35 percent and higher. Our trading partners would argue that the level of trade that would have occurred in the future in the absence of U.S. protective measures should be taken into account in calculating compensatory adjustments. It is difficult to assess at this time what level of compensation our trading partners would find satisfactory, but if one used the traditional trade coverage analysis, the United States would be called upon to lower tariffs across a broad range of products to come up with an adequate compensation package.

In light of the magnitude of trade involved and the sensitivity of the issue to our major trading partners, it is possible that neither a telecommunications trade agreement nor

compensation agreements would be concluded within the three-year time frame provided in the bill. If the United States were to raise its tariffs on telecommunications products to 35 percent or more at that time, our trading partners have the option to take retaliatory action. Under the GATT, they would be entitled to withdraw "substantially equivalent concessions initially negotiated" with the United States. In the case of such unilateral action, the determination of what constitutes "substantially equivalent concessions" would be initially in the hands of the trading partner entitled to compensation. If the United States were dissatisfied with the compensatory actions taken by our trading partners, its sole recourse under the GATT would be to make a claim that its rights under the GATT were being nullified or impaired, within the meaning of Article XXIII.

The prospect of a round of competitive withdrawals of concessions poses significant risks of very serious trade hostilities. Other countries might be inclined to raise duties on those items that would create the greatest domestic reaction in the United States. For example, the EC might well take the occasion to withdraw its concession on soybeans which has been a source of considerable unease in the Community as U.S. exports have increased over the years. The results need not be seen in apocalyptic terms. Nonetheless, the failure of the negotiating process would present foreign countries the opportunity to impose protection which could be very harmful to U.S. trading interests.

COALITION FOR
INTERNATIONAL
TRADE
EQUITY

September 5, 1984

The Honorable John Danforth
Chairman
Senate Finance International
Trade Subcommittee
497 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Danforth:

The purpose of this letter is to convey the Coalition for International Trade Equity's (CITE) general support of the objectives of the Telecommunications Trade Act of 1984 (S. 2618) without taking a position on the specific language or details of the bill. A list of the CITE members is on the back of this letter.

Many of CITE's members are directly involved in the telecommunications business or are major suppliers to the industry. Whether directly or indirectly involved in this industry, all the member companies of CITE are concerned with the international trade distortions caused by the increasing involvement of other governments in the business process. This latter point is directly addressed by S. 2618.

The member companies of CITE have common characteristics -- they have a high-tech orientation, they are profitable and currently competitive. In spite of these positive characteristics, they are very unsure about the future they face in their businesses absent a US public policy response that reflects current international trading realities. We believe S. 2618 is a step in that direction.

Sincerely,

Richard M. Brennan
Executive Director

RMB:mcn

cc: All members of the Senate Finance Committee

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COALITION FOR
INTERNATIONAL
TRADE
EQUITY

AUGUST 3, 1984

## CURRENT CITE MEMBERS

BMC INDUSTRIES
CINCINNATI MILACRON
CONTROL DATA CORPORATION
CORNING GLASS WORKS
DATA GENERAL
DUPONT/CONOCO
GTE
HARRIS CORPORATION
HOUDAILLE INDUSTRIES
MONSANTO
MOTOROLA
TEXTON
TIMEX
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STATEMENT OF

UNITED STATES TELECOMMUNICATIONS SUPPLIERS ASSOCIATION

The United States Telecommunications Suppliers Association (USTSA) is a national trade association, headquartered in Chicago, Illinois, with a membership of approximately 650 manufacturers and suppliers of telecommunications equipment. Located throughout the United States, this membership constitutes the vast majority of United States telecommunications equipment manufacturers, large and small.

USTSA supports S.2618, The Telecommunications Trade Act of 1984. It does so because the bill correctly identifies a significant problem of concern to United States telecommunications equipment suppliers. S.2618 addresses the problem in a manner which we find reasonable and consistent with our commitment to open, unhindered and competitive world trade in telecommunications products.*

The United States is the largest single market in the world for telecommunications equipment. It is also the most

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*USTSA expresses this commitment in a variety of ways, such as: sponsorship of Intelexpo, an international exposition of equipment once each four years, held in the United States and open to manufacturers from all countries; co-sponsorship of the United States pavilion once each four years at Telecom, the exposition held in Geneva, Switzerland, by the International Telecommunication Union; conduct and cosponsorship twice each year of the largest telecommunications equipment trade shows in the United States, exhibiting domestic and foreign products and services; and periodic visits abroad by USTSA officers and staff to encourage increased opportunities for United States companies in the context of bilateral business activities.

exciting. The divestiture of AT&T and the creation of independent holding companies with very large equipment requirements has created competitive opportunities of unprecedented dimensions. These opportunities exist for domestic and foreign concerns alike.*

If, in other nations, sales opportunities were available to domestic and foreign companies in a setting of equality similar to that in the United States, we would not now be moved by the current and currently projected imbalances in telecommunications equipment trade** to petition our government for action of the kind provided in the bill.

This is not the case. Elsewhere, telecommunications service is usually provided by a governmental authority. Where an indigenous equipment industry exists, domestic manufacturers are frequently favored and protected through closed or restrictive procurement practices, including standards setting, approval procedures, announced preference or even specific limitations. The problem is particularly acute in certain countries in Europe and South America. A 1983 study prepared for

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* Information on trade in telecommunications equipment, insofar as available, is well known. We will not, therefore, repeat statistics reflected in the International Trade Commission Report (USITC Publication 1542) or the statements of others to the committee.

**See footnote * above.

the National Telecommunications and Information Administration found that "despite encouraging instances, there does not seem to be appreciable international movement toward a truly competitive environment in telecommunication and information markets."*

Our concern is that, absent action, the situation abroad will not change. Furthermore, the understandable tendency of developing nations to seek technology and promote the establishment and success of domestic industry may in the future extend the problem.

Lack of the assured domestic markets of their competitors disadvantages United States companies in more than the protected home markets. It stretches the disadvantages to third nations where all producers seek to sell. Unlike others, American telecommunications equipment manufacturers are unable to compete in the world from atop the supportive shoulder of a shielding, protecting government.

USTSA members do not ask for the erection of barriers to trade. We do not seek protection. We believe our borders should remain open to foreign companies who wish to export or invest here. Many of our members are active international traders who profit from such opportunities as exist and believe they have much to gain from an open, free opportunity to compete with others in world markets.

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*NTIA, Telecommunication Policies In Seventeen Countries: Prospects For Future Competitive Access at 19.

We support S.2618 because its principal goal is to achieve the elimination of barriers which unduly burden and restrict United States trade abroad in telecommunications products through the vehicle of bilateral and multilateral negotiations. Tariff unbinding may be the consequence of failure to reach trade barrier removing agreement.

We do not suppose that increases in tariffs are likely adequately to redress the wrongs imposed on our industry by barriers to trade.* Except for consumer products, telecommunications products are purchased because of quality, availability and sureness of supply. Price considerations are likely to be of lesser importance, but not insignificant. Nor is it at all clear that tariff related price increases in consumer telephone products will make the difference.

We view the bill, however, as signalling to the world the intention of our government to act in three directions: (1) to

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*Other factors, of course, seriously impair the ability of United States manufacturers to compete abroad, and affect our ever growing trade imbalance. The exchange rate of the dollar is often cited, particularly with reference to consumer products. It has an impact on the competitiveness of other products as well.

Many USTSA members have stressed the inadequacy - or lack of - government financing as a serious deterrent, particularly for small American vendors.

We acknowledge also the duty of our industry to increase its efforts in seeking out foreign markets and increasing its skills as international trader.

negotiate in good faith for the establishment and maintenance of markets open to competition on a basis of equality; (2) to provide a substantial incentive towards the successful conclusion of negotiations; and (3) to assess a cost to the maintenance abroad of barriers to trade in telecommunications equipment, which may ultimately be increased.

We are not unmindful of the dangers in seeking solutions to international trade problems on a sectoral basis. Yet there is little reason to cling to a dogma respected more in theory than practice. The United States/Japanese Agreement on Purchases by the Nippon Telegraph and Telephone Public Corporation (the "NTT Agreement"), which we have supported and continue to support, is an example of a meaningful bilateral arrangement which deals with a problem on a sectoral basis. That countries have refused to bring their telecommunications industries under the Agreement on Government Procurement is an example of sectoral protection which stubbornly refuses to promote the benefits of a nonsectoral multilateral arrangement.*

*There are other examples of sectoral agreements and actions both in the United States and abroad. Among others, one may recall the exclusions from duty-free treatment in the Carribean Basin Economic Recovery Act (leather products, footwear, canned tuna and petroleum products); and trade in textiles, meat, steel and other products.

Equity in international trade is certainly a principal of no lesser importance than that which would shun all pursuit of sectoral reciprocity. Furthermore, when the sector under consideration is not one which seeks protection, nor an unprofitable, stagnating, inefficient or obsolete industry, but rather one which, like our telecommunications industry, is acknowledged to be growing, profitable, efficient and creative, the principle of equity in trade appeals all the more to one's sense of logic and fairness.

Our support for S.2618 is not inconsistent with our support for the NTT Agreement. We have sought to promote the NTT Agreement by providing a forum for NTT to interpret its procurement procedures to United States vendors; and by testifying before other Congressional and governmental committees. We wish to repeat our view that NTT has proceeded in good faith to adjust its procedures to attract United States suppliers; that increased purchases by NTT are required to prove the soundness of the accord; that the annual reviews provided for in the agreement should be undertaken diligently and with the cooperation of the private sector; and that our members must approach this business opportunity with sensitivity to the purchaser's needs, methods and concerns. We look forward to continuing efforts, in cooperation with NTT and others, to increase American exports to the large and important Japanese market.

We are concerned, however, for the future of the NTT Agreement, and access to the Japanese market, if NTT is "privatized" as expected in 1985. We urge the two governments

to announce the continued viability of the NTT Agreement after privatization.*. Privatization will also bring competition in telecommunications services to Japan. Efforts must be made by our government and the private sector to assure full access to all competing service suppliers in Japan by United States manufacturers. S.2618 may play an important role in this process, just as the NTT Agreement furnishes an instructive example of one kind of bilateral agreement which negotiations will hopefully achieve.

We believe that the three year period now provided for in S.2618 does not adequately take into account the rapidly changing contour of our telecommunications industry. Change - deregulation and divestiture - is the product of dynamic forces, especially technological progress, which move with startling rapidity. We therefore urge that the bill be modified to provide for a phased in tariff unbinding over a maximum of three years, commencing at the end of a one year suspension.

We recognize that the Act does not provide a standard by which to measure the adequacy of a bilateral or multilateral agreement when negotiated, nor the level of performance which one might find satisfactory. We think it unlikely that one

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*The Japanese government is expected to retain ownership of a considerable portion of NTT after privatization. NTT, on the other hand, may be permitted to market telecommunications equipment in competition with Japanese and other suppliers. The Japan Economic Journal, July 24, 1984, p.1, col. 4. The makeup and volume of NTT procurement should change and increase.

standard can be fashioned which will be uniformly applicable to all countries. The nature, cause and degree of market closure varies. We, therefore, suggest that such measurements are best made by the executive branch with the cooperation of industry experts.

We also believe that the definition of telecommunications equipment in the Act should be broad and inclusive, covering at least all switching, transmission and customer premises equipment and their components. We understand that other related industries have expressed reluctance about the inclusion of certain computer products in the definition. We urge the committee to convene a body of industry advisers, in which we are prepared to participate, to resolve the definitional problem in a prompt, mutually beneficial manner.*

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*The announcement of the September 12, 1984 hearing asks witnesses to direct testimony to Title I of the bill. We have, therefore, not commented on Title II. We support Title II, and are prepared to cooperate with the committee in such efforts as are required for its completion.

We hope that S.2618 will receive the prompt approval of the Congress. In its implementation, we shall also request our counterparts elsewhere in the world - private sector telecommunications equipment manufacturers - to urge upon their respective governments the conclusion of international agreements leading to unhindered access by all suppliers to all domestic markets.

Respectfully submitted,

UNITED STATES TELECOMMUNICATIONS SUPPLIERS ASSOCIATION

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September 12, 1984

Roderick A. DeArment, Esq.
Chief Counsel & Staff Director
Committee on Finance
United States Senate
Dirksen Building, Room 219
Washington, D.C. 20510

Dear Mr. DeArment:

We are writing on behalf of our client, SIECOR Corporation, a major manufacturer of fiber optic cable, in reference to the Telecommunications Trade Act of 1984 (S. 2618). We wish to propose a minor amendment to the bill to clarify the proposed breakouts in the Tariff Schedules of the United States (TSUS) relating to optical fiber and fiber optic cable.

As presently constructed, the bill creates two new categories in the TSUS covering optical fiber and fiber optic cable. The categories do not, however, make the critical distinction between fibers and cables capable of carrying voice, data and image transmissions and those fibers and groups of fibers intended for other uses, such as medical instrumentation.

The bill proposes to amend the TSUS to insert a superior heading:

> "Optical fibers, optical fiber bundles, and optical fiber cables; all the foregoing whether mounted or not mounted.

and two subordinate headings:

> "707.90 Optical fiber bundles" and
>
> "707.92 Optical fibers and optical fiber cables." (p. 12, line 16).

Use of the single term "optical fiber" or "optical fibers" either alone or coupled with the words "bundles" or "cables" suggests that all optical fibers are the same and that the only distinction that is material depends upon the configuration of the optical fibers in bundles or cables. In fact, the physical properties and performance characteristics of fibers used for voice, data and/or image transmissions are vastly different from the physical properties and performance characteristics of other optical fibers that are used primarily for illumination purposes in medical instruments and the like. In order to avoid confusion, it would be useful to define optical fibers and optical cables used for voice, data and image telecommunications with greater precision.

We propose that section 202(a)(4)(A) of S. 2618 be amended to read as follows:

| | |
|---|---|
| | Optical fibers and optical fiber cable used for voice, data and image transmissions, whether mounted or not mounted, and optical fiber bundles. |
| 707.90 | Optical fiber used for transmission of voice, data and image communications at wavelengths of 800 nanometers and longer..... |
| 707.92 | Fiber optic cable containing optical fibers used for transmission of voice, data and image communications at wavelengths of 800 nanometers and longer..... |
| 707.94 | Other..... |

The need of the U.S. fiber optics industry for more accurate import statistics was highlighted in a recent competitive assessment of the industry prepared by the U.S. Department of Commerce. The report recommends that the domestic industry improve its statistics gathering capability so that it might better understand its position in relation to foreign producers. Discrete classification of fibers and cables capable of transmitting voice and data communications is of paramount importance in gathering accurate statistics on imports of these items. These statistics will, in turn, allow domestic producers to assess the impact of imports on the U.S. telecommunications equipment market, and to avail themselves of any remedies under current trade laws.

Several countries have targeted high technology products for increased export promotion. In the fiber optics area, this thrust has been most notable in the case of Japan. If these promotional efforts are successful, import penetration can be expected to grow rapidly over the next several years. This possibility further underscores the need for accurate data on imports.

We applaud the intent of the bill, promotion of equity in trade in telecommunications equipment; and we feel that the suggested amendments will further this goal. If you wish to discuss these changes further, do not hesitate to call.

Sincerely,

PAUL D. CULLEN
K. MICHAEL O'CONNELL
Counsel to SIECOR

# TESTIMONY OF MATSUSHITA ELECTRIC CORPORATION OF AMERICA

## ON S. 2618

## SENATE FINANCE COMMITTEE

September 12, 1984

Mr. Chairman:

We welcome the opportunity to submit written testimony regarding Section II of S. 2618, The Telecommunications Product Classification Act.

As we understand it, the objective of this measure is to develop more precise nomenclature for incorporation into the Tariff Schedules of the United States Annotated ("TSUSA") for the purpose of monitoring trade in telecommunications products. The goal is to enable the United States to more accurately measure import consumption for these telecommunications products and improve its data collection.

It is our understanding that the work of the International Trade Commission in its June 18, 1984 report, respecting a section 332 investigation, was to develop:

> Proposed trade nomenclature (both import and export) which would assure an adequate information base on telecommunications equipment for future analysis of trade trends.

Further, in implementation of this goal, the legislation's principal sponsor, Senator Danforth stated in his May 1, 1984 remarks to the Senate that:

> Title II of the act sets out new tariff nomenclature for telecommunications equipment to clarify and facilitate data collection on trade in this section.

* * *

> Title II of the legislation, the Telecommunications Product Classification Act, establishes new tariff nomenclature for telecommunications equipment. Without changing current tariff rates, it is designed to facilitate data collection on trade in such equipment--correcting a major flaw in the U.S. tariff schedules--(TSUS)--attributable to hopelessly out-of-date definitions.
>
> * * *
>
> The fact that our tariff nomenclature has not kept up with technological improvements in communications means that it is now virtually impossible to find adequate statistics to measure trade in telecommunications. For example, in 1983 over $1 billion in telephone equipment entered the United States under three general tariff annotations: "switching equipment," "telephone instruments," and "other."
>
> Clearly, better trade statistics are needed to measure U.S. imports and exports of telecommunications equipment. Title II of this act provides a means of accomplishing this.

From these statements and others heard by the Committee in its June 26, 1984 hearings, it is clear that the objective of Title II is to ensure that the United States can gather accurate statistical information so that it can measure the types of telecommunications products which are being imported. We strongly support this goal and encourage the Committee's efforts. We would also encourage efforts to gather similarly valid and useful data regarding industrial output and exports.

However, we believe that the goal of obtaining accurate trade statistics concerning importation of telecommunications products can be accomplished through other methods. Two which might ultimately prove less disruptive and would not require immediate legislative consideration are (1) incorporation and adoption of the "Harmonized Code" and (2) the addition of "Statistical Annotations" to the existing Tariff Schedules.

As the Committee is well aware, serious efforts have been devoted by both public and private sector sources, to adoption of the Harmonized Commodity Code System (HCSS). This tariff classification system, designed to unify international methods, could be implemented as early as January 1, 1987. Those, within the private sector, who have international interests could work within a single system and increase efficiency markedly. Further, intergovernmental cooperation and enforcement activities could be greatly strengthened. Therefore, if changes in the TSUSA are truly required, they could best be made to conform to and have identical language with the language contained in the Harmonized Code for telecommunications products.

In the event that the HCSS is not currently acceptable for public policy purposes, and our suggestions which follow are not appropriate, we suggest that several specific changes be made in the proposed language of Title II. As has been noted, Title II uses the same language on several occasions with different headings. That language is as follows:

> ...designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks.

Unfortunately, whether or not an item is "designed for" a connection to certain apparatus is often a factual issue which is not easy to determine. Accordingly, rather than making design the criteria, we believe a better criteria would be that the merchandise is "chiefly used" for connection to such devices.

In a similar vein is the problem with certain language in the International Trade Commission's (ITC's) report to Congress. In that report, the ITC states at p. 126 that telecommunications apparatus is intended to embrace products which are:

> capable of use with (or attachment to) telecommunications systems or networks.

Though the language "capability of use" is not found in Title II, this language is extremely broad and would be impossible to enforce since mere capability rather than actual use would be controlling. As this report has been frequently cited in hearings to date we believe that Congress should make clear that the statute is designed to encompass merchandise which is designed for or chiefly used with telecommunications networks and systems and does not include equipment which is merely capable of such use.

However, Mr. Chairman, it is our belief that the Committee's immediate purpose could be accomplished without reference to either the HCSS or other important alterations in the TSUSA. We suggest that the simplest and most demonstrably efficient procedure would be to rely upon existing methods commonly employed for ensurance of accurate trade data collection. This would entail the addition of "statistical annotations" to the existing Tariff Schedules.

In order to fully explain this method, we have attached as Attachment 1 a copy of page 6-142 from the Tariff Schedules of the United States Annotated (TSUSA) as a random illustration. On the left side of that page there is a column marked "Item". Underneath that column are various 5-digit item numbers, such as item number 680.14 which covers "Taps, cocks, valves and similar devices... Hand-operated and check, and parts thereof: of copper.

The very next column next to Item number is entitled "Stat. Suffix". In that column, there are two digits such as "20", "30", etc. Suffix 20 relates to "check" valves. Therefore, item 680.1420 relates to taps, cocks and valves of the "check" type. This "stat. suffix" along with merchandise descriptions is described as a "statistical annotation".

Statistical annotations are not part of the legal text of the Tariff Schedules of the United States. Nevertheless, as the Committee is well aware, importers are required by law, when filing customs entries, to provide for statistical purposes the information outlined in Attachment 2, which specifically includes:

> "The statistical reporting number under which the articles are classifiable."

The statistical reporting number is the 7-digit number which is formed by combining the 5-digit item number with the appropriate 2-digit statistical suffix. Thus, upon all entries of

merchandise, the importer is required to report the statistical annotation number of the imported merchandise which enables the Bureau of the Census to collect accurate information on imports.

This system of utilizing statistical annotations to enable the gathering of statistical information upon imports works perfectly well for numerous categories of products. The only reason why there exists a perceived lack of adequate statistics regarding telecommunications products is that insufficient statistical annotations for telecommunications products have been added to the Tariff Schedules.

For example, under the current TSUSA, there may be some telecommunications products which are currently classified under the 5-digit TSUSA item for "office machines" (item 676.30) (see Attachment 3) and there may be some classifiable under the 5-digit item for "accounting, computing and other data processing machines" (item 676.15). (See Attachment 3). Under each of these 5-digit numbers, there are currently several different statistical annotations (2-digit additions) which describe different types of office machines and different types of accounting, computing and data processing machines. The current statistical annotation may be for "calculating machines specially constructed for multiplying and dividing" or for "photocopying machines". It is readily apparent from examination of Attachment 3 that these statistical annotations are written with sufficient specificity to enable the

collection of accurate trade statistics, which is the goal of Title II. However, under the current items 676.15 and 676.30, there are no statistical annotations for telecommunications products, such as those designed for connection to telegraphic or telephonic apparatus. Therefore, only inadequate trade statistics are available for such products.

Under the proposed legislation, (S. 2618), this established method of using statistical annotations to achieve specificity is overlooked and instead, Title II changes the statutory language itself under both items 676.15, and 676.30 by adding two new 5-digit item numbers (item 676.13 and 676.28). These two item numbers would provide for office machines (item 676.13) or accounting, computing and other data processing machines (item 676.28) which were "designed for connection to telegraphic or telephone apparatus or instruments or to telegraphic or telephonic networks". This has the effect of changing the current tariff classifications of some imported merchandise. However, the very same results, i.e. accurate statistical gathering, could be achieved by keeping the current 5-digit tariff classifications (items 676.15 and 676.30) and simply adding statistical annotations under them which would cover merchandise which was "designed for connection to telegraphic or telephone apparatus or instruments or to telegraphic or telephonic networks".

As you know, the method of adding these statistical annotations is quite simple. In section 484(e) of the Tariff Act of 1930 (19 USC §1484(e) (Attachment 4), Congress specifically authorized and directed the Secretary of the Treasury, the Secretary of Commerce and the International Trade Commission to "establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States..." The statute also requires all import entry forms to specify these detailed enumerations which are established for statistical purposes. Pursuant to the authority given in Section 484(e), a "Committee for Statistical Annotation of Tariff Schedules" exists consisting of three members, one from the Customs Service (Treasury Department) one from the Census Bureau (Commerce Department) and one from the International Trade Commission. Proposals to add statistical annotations to the TSUSA are submitted to the committee which evaluates the need for the annotations and decides whether to incorporate the annotation into the Tariff Schedules.

Thus, a simple and effective mechanism for adding annotations which allow for accurate statistical reporting is established and authorized by statute. There is therefore no need for Congress to change the statute itself when the less drastic method of providing for statistical annotations is provided for. In fact, passage of S. 2618 would set a precedent of having Congress become

involved in changing statutory language whenever there is a need for better statistical information. This would eliminate the existing effective mechanism of utilizing the Committee for Statistical Annotations of Tariff Schedules and would create the burdensome precedent of Congressional involvement for simple problems regarding statistical reporting.

If Title II's extensive changes to the TSUSA were adopted, we believe that there would be significant disadvantages both to the public and to private importers, even when no change of duty rate is involved. As it stands now, both importers and the Customs Service are familiar with the existing classifications of imports by particular importers. Customs brokers have instructions from both their client/importers and from the Customs Service as to the correct item numbers to place upon the entry documents. Changing these classifications by creating new and different item numbers inevitably leads to uncertainty regarding how to classify the import. This uncertainty is not just temporary in nature. Whenever changes are made in tariff categories, it is inevitable that the changes will lead to classification discussions with the Customs Service, which means the necessity of meeting with Customs and even requiring the filing of formal protests against Customs' classification actions. When new items are added, Customs officials in various ports throughout the country may, in good faith, take different positions regarding where the merchandise should be classified, whereas these questions are now settled.

This uncertainty as to how to enter the merchandise and the ultimate duty rate and classification is obviously deleterious to both finished product importers, either U.S. or overseas based, and those wishing to incorporate items into larger systems. Further, it will unnecessarily create the need for time-consuming retraining of Customs officials.

To summarize, as the purpose of Title II is to enable collection of trade data concerning imports of telecommunications devices, we believe there is in existence an established and simple method of ensuring accurate and complete collection of import data. This system will not necessitate any change of classifications, and not burden importers or the public. Thus, MECA urges Congress to utilize the existing Committee for Statistical Annotation of Tariff Schedules in order to add new statistical annotations without changing the statute itself. However, in the event that Congress decides that it must make further changes to the statutory classifications found in the TSUSA, we believe that incorporation of the HCSS will, ultimately, provide greater benefit, with less disruption than other methods under consideration.

| GSP | Item | Stat. Suf-fix | Articles | Units of Quantity | Rates of Duty 1 | Rates of Duty LDDC | Rates of Duty 2 |
|---|---|---|---|---|---|---|---|
| | | | Molds of types used for metal (except ingot molds), for metallic carbides, for glass, for mineral materials, or for rubber or plastics materials (con.): | | | | |
| A | 680.13 | | Other | ..... | 4.5% ad val. | 3.9% ad val. | 35% ad val. |
| | | 05 | Injection, including die cast dies | No. | | | |
| | | 10 | Compression (compaction) | No. | | | |
| | | 15 | Blow | No. | | | |
| | | 20 | Gravity pour (permanent) | No. | | | |
| | | 25 | Other | No. | | | |
| | | | Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof: | | | | |
| | | | Hand-operated and check, and parts thereof: | | | | |
| A | 680.14 | | Of copper | ..... | 7% ad val. | 5.6% ad val. | 67% ad val. |
| | | 10 | Under 125 pounds working pressure | Lb. | | | |
| | | | 125 pounds working pressure and over: | | | | |
| | | 20 | Check | Lb. | | | |
| | | 30 | Gate | Lb. | | | |
| | | 40 | Globe | Lb. | | | |
| | | 50 | Plug | Lb. | | | |
| | | 60 | Ball | Lb. | | | |
| | | 70 | Butterfly | Lb. | | | |
| | | 80 | Other | Lb. | | | |
| | 680.16 | 00 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Lb. | Free | | |
| A | 680.17 | | Of iron or steel | ..... | 9.5% ad val. | 8% ad val. | 45% ad val. |
| | | | Of iron or steel containing over 2.5 percent carbon by weight: | | | | |
| | | 05 | Check | Lb. | | | |
| | | 10 | Gate | Lb. | | | |
| | | 15 | Globe | Lb. | | | |
| | | 18 | Plug | Lb. | | | |
| | | 25 | Ball | Lb. | | | |
| | | 30 | Butterfly | Lb. | | | |
| | | 35 | Other | Lb. | | | |
| | | | Other: | | | | |
| | | 42 | Check | Lb. | | | |
| | | 45 | Gate | Lb. | | | |
| | | 50 | Globe | Lb. | | | |
| | | 55 | Plug | Lb. | | | |
| | | 60 | Ball | Lb. | | | |
| | | 65 | Butterfly | Lb. | | | |
| | | 68 | Other | Lb. | | | |
| | 680.18 | 00 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Lb. | Free | | |
| A | 680.19 | 10 | Other | Lb. | 6.9% ad val. | 4.6% ad val. | 65% ad val. |
| | 680.24 | 00 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Lb. | Free | | |

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

(d) if two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules;

(e) in the absence of special language or context which otherwise requires --

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

(ii) a tariff classification controlled by the actual use to which an imported article is put in the United States is satisfied only if such use is intended at the time of importation, the article is so used, and proof thereof is furnished within 3 years after the date the article is entered;

(f) an article is in chief value of a material if such material exceeds in value each other single component material of the article;

(g) a headnote provision which enumerates articles not included in a schedule, part, or subpart is not necessarily exhaustive, and the absence of a particular article from such headnote provision shall not be given weight in determining the relative specificity of competing provisions which describe such article;

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

11. Issuance of Rules and Regulations. The Secretary of the Treasury is hereby authorized to issue rules and regulations governing the admission of articles under the provisions of the schedules. The allowance of an importer's claim for classification, under any of the provisions of the schedules which provide for total or partial relief from duty or other import restrictions on the basis of facts which are not determinable from an examination of the article itself in its condition as imported, is dependent upon his complying with any rules or regulations which may be issued pursuant to this headnote.

12. The Secretary of the Treasury is authorized to prescribe methods of analysing, testing, sampling, weighing, gauging, measuring, or other methods of ascertainment whenever he finds that such methods are necessary to determine the physical, chemical, or other properties or characteristics of articles for purposes of any law administered by the Customs Service.

General statistical headnotes:

1. Statistical Requirements for Imported Articles.

(a) Persons making customs entry or withdrawal of articles imported into the customs territory of the United States shall complete the entry summary or withdrawal forms, as provided herein and in regulations issued pursuant to law, to provide for statistical purposes information as follows:

(i) the number of the Customs district and of the port where the articles are being entered for consumption or warehouse, as shown in Statistical Annex A of these schedules;

(ii) the name and flag of the vessel or the name of the airline, or in the case of shipment by other than vessel or air, the means of transportation by which the articles first arrived in the United States;

(iii) the foreign port of lading;

(iv) the United States port of unlading for vessel and air shipments;

(v) the date of importation;

(vi) the country of origin of the articles expressed in terms of the designation therefor in Statistical Annex B of these schedules;

(vii) the country of exportation expressed in terms of the designation therefor in Statistical Annex B of these schedules;

(viii) the date of exportation;

(ix) a description of the articles in sufficient detail to permit the classification thereof under the proper statistical reporting number in these schedules;

(x) the statistical reporting number under which the articles are classifiable; the symbol "A" placed as a prefix to the statistical reporting number when claiming duty-free treatment for an article under the Generalized System of Preferences; the symbol "C" placed as a prefix to the statistical reporting number when claiming duty-free treatment for an article under the Caribbean Basin Economic Recovery Act (CBERA);

(xi) gross weight in pounds for the articles covered by each reporting number when imported in vessels or aircraft;

(xii) the net quantity in the units specified herein for the classification involved;

(xiii) the U.S. dollar value in accordance with the definition of section 402 of the Tariff Act of 1930, as amended, for all merchandise including that free of duty or dutiable at specific rates;

(xiv) the purchase price (i.e., the actual transaction value), in U.S. dollars, of imported merchandise plus, when not included in such price, all charges, costs, and expenses incurred in placing such merchandise alongside the carrier at the port of exportation in the country of exportation (or, in the case of merchandise not acquired by purchase, e.g., acquired on consignment, lease, or as gifts, the equivalent of such price, charges, costs, and expenses);

(xv) in addition to the value required under subparagraph (xiv), if the merchandise was acquired in a transaction between related parties, the equivalent of arm's-length value therefor, in U.S. dollars, plus, when not included in such value, all charges, costs, and expenses incurred in placing such merchandise alongside the carrier at the port of exportation in the country of exportation.

| GSP | Item | Stat. Suffix | Articles | Units of Quantity | Rates of Duty 1 | Rates of Duty LDDC | Rates of Duty 2 |
|---|---|---|---|---|---|---|---|
| | | | Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism: | | | | |
| A | 676.15 | | Accounting, computing, and other data-processing machines | | 4.5% ad val. | 3.9% ad val. | 35% ad val. |
| | | | With CRT: | | | | |
| | | 10 | Color | No. | | | |
| | | 20 | Other | No. | | | |
| | | 30 | Other | No. | | | |
| | 676.16 | 00 | If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6) | No | Free | | 35% ad val. |
| A* | 676.20 | | Calculating machines specially constructed for multiplying and dividing | | 4.2% ad val. | 3.7% ad val. | 35% ad val. |
| | | | Electronic machines employing solid-state circuitry in the calculating mechanism: | | | | |
| | | 11 | Hand-held or pocket type | No. | | | |
| | | | Other: | | | | |
| | | 15 | Display only | No. | | | |
| | | 17 | Other | No. | | | |
| | | 19 | Other | No. | | | |
| A | 676.22 | 00 | Cash registers | No | 1.9% ad val. | Free | 35% ad val. |
| A | 676.23 | | Adding machines | | 4.9% ad val. | 4.2% ad val. | 35% ad val. |
| | | 10 | Electric | No. | | | |
| | | 50 | Nonelectric | No. | | | |
| A | 676.25 | 00 | Other | No | 4.5% ad val. | 3.9% ad val. | 35% ad val. |
| A* | 676.30 | | Office machines not specially provided for | | 4.2% ad val. | 3.7% ad val. | 35% ad val. |
| | | | Office copying machines: | | | | |
| | | | Electrostatic copying machines: | | | | |
| | | 10 | Operating by reproducing the original image directly onto the copy material as in coated paper copiers (direct process) | No. | | | |
| | | 12 | Operating by reproducing the original image by transferring from an intermediate onto the copy material as in plain paper copiers (indirect process) | No. | | | |
| | | | Other: | | | | |
| | | 16 | Photocopying machines | No. | | | |
| | | 19 | Other | No. | | | |
| | | | Data-processing machines: | | | | |
| | | | With CRT: | | | | |
| | | 33 | Color | No. | | | |
| | | 36 | Other | No. | | | |
| | | 39 | Other | No. | | | |
| | | 50 | Other | No. | | | |
| | 676.31 | 00 | If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6) | No | Free | | 35% ad val. |
| | | | Parts of the foregoing: | | | | |
| A | 676.50 | 00 | Typewriter parts | X | 6.1% ad val. | 4% ad val. | 45% ad val. |
| A* | 676.52 | | Other | | 4.5% ad val | 3.9% ad val. | 35% ad val. |
| | | 10 | Parts of calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism | X | | | |
| | | 30 | Parts of automatic data-processing machines and units thereof | X | | | |
| | | 50 | Parts for photocopying equipment | X | | | |
| | | 70 | Other | X | | | |

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

**Statistical enumeration**

(e) The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

**Packages included**

(f) If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 1552 of this title may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.

**Statement of cost of production**

(g) Under such regulations as the Secretary of the Treasury may prescribe, the appropriate customs officer may require a verified statement from the manufacturer or producer showing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.

**Entry on carrier's certificate**

(h) Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consign-