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UNITED STATES NEGOTIATING OBJECTIVES FOR THE WTO SEATTLE MINISTERIAL MEETING

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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UNITED STATES NEGOTIATING OBJECTIVES FOR THE WTO SEATTLE MINISTERIAL MEETING

THURSDAY, AUGUST 5, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:20 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
July 8, 1999
No. TR–13

Contact: (202) 225–1721

Crane Announces Hearing on United States Negotiating Objectives for the WTO Seattle Ministerial Meeting

Congressman Philip M. Crane (R–IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on United States negotiating objectives for the upcoming World Trade Organization (WTO) Ministerial. The hearing will take place on Thursday, August 5, 1999, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.

Oral testimony at the hearing will be from both invited and public witnesses. Invited witnesses will include Ambassador Susan Esserman, Deputy United States Trade Representative. Also, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Uruguay Round was the eighth round or series of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). The agreements reached at the end of 1994 during the Uruguay Round were noteworthy in that they greatly expanded coverage of GATT rules beyond manufactured goods trade to include agricultural trade, services trade, trade-related investment measures, intellectual property rights, and textiles.

One of the most visible accomplishments of this multilateral round was to establish the WTO to administer the GATT agreements and to settle disputes among WTO members. The Uruguay Round agreement also calls for the resumption of negotiations by the year 2000 to further liberalize trade in agriculture and services, as well as examine government procurement practices and enforcement of intellectual property rights. The negotiations will begin formally at the WTO Ministerial conference to be hosted by the United States in Seattle, Washington, from November 30 through December 4, 1999. It will be the largest trade event ever held in the United States and will bring together representatives of the 133 member countries of the WTO. The members will consider the procedures and substance of the so-called "built-in" WTO agenda, as well as other issues such as transparency and possible reforms to the dispute settlement system.

In announcing the hearing, Chairman Crane said: "The Seattle Ministerial meeting represents a much needed opportunity for U.S. workers and businesses. It holds the promise of renewing momentum to reduce the continuing barriers facing U.S. agricultural, goods, and services exports. It is important that Congress monitor the development of United States negotiating objectives for the Seattle Ministerial, as well as the adequacy of logistical and other preparations for this historic event."

FOCUS OF THE HEARING:

The focus of the hearing will be to examine United States preparations for the Seattle Ministerial Meeting. Testimony will be received on specific objectives for the negotiations, the outlook for a successful meeting, and the anticipated impact of launching a new round of WTO negotiations on jobs, wages, economic opportunity, and the future competitiveness of U.S. manufacturers and service providers.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Pete Davila at (202) 225–1721 no later than the close of business, Monday, July 26, 1999. The telephone request should be followed by a formal written request to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee on Trade staff at (202) 225–6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, of their prepared statement for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than Tuesday, August 3, 1999. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the close of business, Thursday, August 19, 1999, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "HTTP://WWW.HOUSE.GOV/WAYS__MEANS/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

—

Chairman CRANE. We are going to have a series of interruptions today with a heavy legislative schedule, and so I think it is essential that we commence. Our first panel consists of our colleagues, Jerry Weller, Xavier Becerra, Ralph Regula, Dan Miller and Jack Quinn.

But before you fellows testify, I want to welcome everyone here this morning. The Trade Subcommittee meeting today is to consider the U.S. negotiating objectives for the WTO, World Trade Organization, ministerial meeting that will be held in Seattle, Washington, from November 30 until December 3 of this year, and the Trade Subcommittee intends to be out there for part of that ministerial meeting before heading to the Far East.

Today, we intend to have an open give-and-take regarding what U.S. priorities should be for this important meeting, the first of its kind to be held in the United States. As my colleagues know, I am a strong supporter of the WTO. I think I can speak for most of my colleagues here when I say that we are fully supportive of achieving a successful launch of a new round of world trade negotiations in Seattle.

A consensus seems to have emerged among our trading partners that the new round should be concluded within 3 years, by the end of 2002. While comfortable with the shorter timeframe, I recognize that these will be tough negotiations given the intractable problems that the U.S. and other countries have with Europe and Japan in the agriculture and other sectors.

Since its establishment in 1995, the WTO has functioned effectively, aiding our efforts to ensure that job-creating U.S. exports are receiving fair access to 134 nations around the world. As the world's greatest exporter, the best engine for our impressive eco-

nomic growth has been expanding international trade under the oversight of the WTO.

Almost 12 million U.S. jobs are supported by exports. When we increase exports in particular, we are increasing the number of high-wage, high-tech jobs in cities and towns across America.

The U.S. wins with fair rules that are promoted by an institution that has the moral authority to ensure that they are followed. Americans instinctively understand principles of fair play, and I believe overall support for the WTO will build as understanding grows about how this institution promotes economic growth worldwide. The high visibility of the meeting in Seattle creates a great opportunity to expand appreciation of this important institution.

The dispute settlement mechanisms of the WTO have in general worked in our favor. Of the cases brought by the U.S., we have won or favorably settled 22 and lost only two. We must assure, however, that our trading partners, particularly the European Union, come into compliance quickly when the WTO rules against them. Despite our tremendous record in the WTO, I am very concerned about the recent decision against the U.S. foreign sales corporation provision. We will hold a hearing in the Ways and Means Committee in the fall to discuss this issue.

With that, I want to recognize the Ranking Member of the Subcommittee and thank him for helping us assemble such a distinguished set of witnesses for our discussion today.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. And before I start with my opening statement, I would like to apologize on behalf of I would think all the Members and surely those on the Democratic side. This hearing as it turns out is being held at the same time as the floor action on the tax bill, and so some of us will be ducking in and out, and I will be leaving after this to participate in the debate and come back as soon as I can.

And, again, many of the Members will be in and out and we are sorry that this hearing is being punctuated. There is also, for Democrats, a third event going on at this very same time and as I look around, it is only Xavier and I who are not there.

Mr. Chairman, thank you for calling today's hearing, on the important subject of the upcoming WTO ministerial meeting to be held in Seattle later this year. It promises to be a historic situation marking the launch of the next round of world trade negotiations. It will be the largest trade event ever held in and hosted by the United States.

In any major undertaking, the first steps are often critical ones. They define the shape of the endeavor. They give direction to the task at hand. This will be especially so in Seattle as the 134 countries initiate a new effort to develop rules that will govern the course of trade in the next millennium. As host of the ministerial, the United States will have an opportunity, indeed a responsibility, to place its mark on the new round of trade negotiations. It is of the utmost importance, therefore, that the administration, in consultation with Congress, clearly identify its goals for the new round and state those goals definitively in Seattle.

I know our witnesses today will describe a range of issues that they consider to be priorities for the ministerial meeting and I look

forward to hearing those views. In the interest of helping to get the discussion going, let me suggest three areas that should be high on our negotiators "to do" list at the ministerial and throughout the next round.

First, the administration should use the ministerial and other meetings to emphasize the importance of full compliance by Members with their WTO obligations. The mechanism for pursuit of that goal should continue to include the WTO's trade policy review mechanism, TPRM. It should be bolstered by requiring governments to set target dates for coming into compliance with particular commitments and make nonconfidential versions of information collected during the TPRM process available to members in dispute settlement proceedings.

Second, the United States should have as a principal goal in the next round the development of rules concerning transparency in policies and practices affecting foreign producers ability to get goods and services to customers. This should include rules and the publication of laws, regulations, rules and administrative and judicial decisions. Further, the United States should seek rules requiring defendant governments in dispute settlement proceedings to cooperate in the disclosure of evidence of government actions except where there is a clear threat to national security.

Third, the ministerial and the next round of negotiations should be the occasion for recognizing—and many of you have heard me say this before—that trade policy is more than just about lowering tariffs and eliminating traditional nontariff barriers, as important as that is. As the world economy has become more integrated, and indeed it has, issues once considered to be beyond the scope of trade policy are now very much a part of trade dynamics. Those issues include the ways in which countries regulate or fail to regulate their labor markets.

Accordingly, the United States should, among other things, support negotiating objectives that include the development of rules that ensure adherence to trade and labor standards.

Next, support the establishment of a working group in the WTO on the impact of labor market standards on trade.

And fourth, support development of ongoing institutional linkages between the WTO and ILO on trade labor market issues.

I would welcome comment on these suggestions during today's hearings, and I look forward to hearing the proposals specifically coming from our witnesses. Thank you.

Mr. Chairman, if you would excuse me for a few minutes. If they will call me in turn on the floor, I will be right back.

[The opening statement of Mr. Ramstad follows:]

Statement of Hon. Jim Ramstad, a Representative in Congress from the State of Minnesota

Mr. Chairman, thank you for calling this important hearing today to discuss our negotiating objectives at the upcoming Seattle Ministerial Meeting.

It is critical that we prepare an aggressive, strategic plan for achieving our objectives at the upcoming Ministerial. Seattle will host the largest trade event ever held in the U.S., and we must ensure that it is also the most successful for achieving greater trade liberalization for American workers, consumers, manufacturers, farmers and service providers.

I want to pay special attention to market access for U.S. agriculture commodities and value-added foods. We all know the current problems that face farmers, but the truth is that American farmers have been disproportionately hit by foreign trade

barriers for many years—despite being the largest single positive contributor to the US trade balance!

Agriculture is a difficult sector to address, but it is part of the "build-in" agenda and deserves significant attention. We must make sure not only that these discussions begin. We must also ensure they are substantive, aggressive and fruitful. American farmers deserve our best effort.

We will never accomplish our goals if nations are allowed to cling to old, market-distorting, protection-driven programs and practices. Countries with the most blatant and arduous trade barriers for U.S. agriculture exports, such as the European Union, will fight any and all efforts to make real progress in knocking down these unfair, anti-trade practices. They will try to protect them and keep them in the "blue box." This cannot be tolerated!

We must also structure our approach at these meetings to set ourselves up for the greatest gains for agriculture as possible. I believe we should adhere to the Uruguay Round framework, which provides for a comprehensive, formula-based negotiation without exceptions. We should pursue conclusion with a single undertaking encompassing all sectors.

Mr. Chairman, thanks again for calling this hearing. I look forward to hearing from our witnesses today about the necessary elements for launching a comprehensive, successful round of multilateral trade negotiations in Seattle.

—

Chairman CRANE. All right. Thank you, we will proceed in the order I presented you.

Mr. Weller.

STATEMENT OF HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. WELLER. Thank you, Mr. Chairman. Thank you for the opportunity to testify today. I would like to reintroduce to the Trade Subcommittee an issue that I brought before the Full Committee during the markup of the Financial Freedom Act of 1999. This issue involves the loss of 20,000 American film industry jobs from runaway film production. I want to raise this issue to urge that our domestic film industry be given a seat at the table at the WTO talks in Seattle to address the cultural content issue and its relationship to runaway film production.

The problem with runaway film production is a growing national issue which directly impacts thousands of American workers from New York to Florida, Washington to California, and Illinois to Texas. During the Committee discussion on the Financial Freedom Act, I offered an amendment which I later withdrew to introduce a wage-based tax credit and creative financing tax incentives to counter loss of film production jobs to Canada.

Remember the film "Coming to America"? Unfortunately, it seems that filmmaking jobs are now running from America. In fact, a one-time Presidential candidate once referred to that "giant sucking sound" of jobs heading south. Well, that giant sucking sound is really the sound of 20,000 film industry jobs heading north to Canada.

A recent study commissioned by the Directors Guild of America and the Screen Actors Guild shows that in 1993 over $10 billion in economic activity was lost to runaway economic film and television production. This is more than five-fold since the beginning of this decade. In the last 4 years alone, Texas has shown a 31 percent decrease in direct production revenues, while my State of Illi-

nois is down nearly 20 percent. Nationally, this has resulted in a loss of 20,000 jobs.

In looking at the small businesses and jobs lost by this phenomenon, we are not just talking about directors and actors; rather, we are talking about the small businesses that support the film industry and make America great. These include caterers, hotel and motel operators, restaurants and bars, rental equipment businesses, electricians, set construction workers and many others involved in this vitally important and culturally indigenous economic activity. Over the years this industry has been a leading exporter and driver of small business job creation.

Mr. Chairman, this is a constituent issue which we should take seriously. This is also a constituent issue for you and other Members of the Subcommittee. I come from a district which includes Joliet, Elwood and Calumet City, the home of Joliet Jake and Elwood Blues, which I often refer as the "Blues Brothers" district. Last year, my constituents and I were stunned when they decided to make the film "Blues Brothers 2000," they chose to film it in Toronto rather than Chicago. Even more embarrassing was the fact that the Canadian filmmakers were calling the Chicago Film Commission to ask them how to best portray Chicago.

With my statement I have included the Directors Guild and Screen Actors Guild study explaining the reasons why the film industry is moving out of the country, and they have concluded that one of the many reasons is the tax incentives offered in other countries like Canada, Australia and the United Kingdom, which we do not have here in the United States. Canada alone offers Federal and provincial tax credits between 22 and 46 percent of labor costs. These incentives are enough to make any business consider relocating, particularly when savings from filming in Canada can mean a dollar savings overall.

The United States shouldn't be put in a competitive disadvantage by tax incentives offered abroad. Rather we need to level the playingfield for the small businesses impacted by the runaway production and create jobs in America, for Americans.

Related to this is an issue of Canadian cultural content policy. The Canadian government has given certain "cultural industries" special treatment. This policy has been implemented in large part by Canadian legislation as well as some foreign trade issues such as tariffs, taxes, foreign investment restrictions and content requirements that discriminate against U.S. cultural industries. Canada has consistently protected its cultural industries.

This has been discussed and negotiated in the past. I believe that it must be addressed in Seattle with the backdrop of the issue of runaway film production. We have a situation in which thousands of U.S. jobs are being lured to Canada and other countries through favorable tax treatment, while at the same time cultural policies established by the Canadians and others discriminate against U.S. interests thereby creating a double hit to industries like our domestic film production.

Mr. Chairman, even if the problem of runaway production had not become so great, the Canadian insistence on maintaining cultural content rules and regulations ought to be put on the table at the Seattle WTO talks. However, simple fairness requires response

by the United States to the increasing efforts by Canada to attract production away from the United States. So long as these efforts continue, the U.S. must address the Canadian cultural content rules. Canada cannot unilaterally decide to invite in our productions jobs, but close the door on American domestic productions.

Mr. Chairman, with the problem of runaway film production in mind, I ask that the issue of cultural content be placed on the table and addressed at the WTO talks in Seattle. Let's be honest about this issue of runaway production. It is all about jobs. The average film industry worker earns $26,000 a year. This Congress has given great attention, and the right kind of attention, to the loss of 10,000 steel industry jobs over the past year. The film industry has lost over 20,000 jobs in the past year, and most of those jobs have emigrated north. It is time to address this problem and save U.S. jobs.

Mr. Chairman, thank you for the opportunity to testify. I look forward to addressing any questions you may have.

[The prepared statement follows:]

Statement of the Hon. Jerry Weller, a Representative in Congress from the State of Illinois

Mr. Chairman,

Thank you for this opportunity to testify here today. I want to reintroduce to the Subcommittee an issue that I brought before the full Committee during the markup of the Financial Freedom Act of 1999. The issue is the loss of 20,000 American film industry jobs from runaway film production. I want to raise this issue to urge that our domestic film industry be given a seat at the table at the WTO talks in Seattle to address the cultural content issue and its relationship to runaway film production.

The problem with runaway film production is a growing National issue which directly impacts thousands of working Americans from New York to Florida; Washington to California, Illinois to Texas. During the committee discussion on the Financial Freedom Act, I offered an amendment to introduce a wage based tax credit and creative financing tax incentives to counter the loss of film production jobs to Canada.

Remember the film "Coming to America?" Unfortunately, its seems that film making jobs are now running from America. In fact, a one time Presidential candidate once referred to that giant sucking sound of jobs heading south—well that giant sucking sound is really the sound of 20,000 film jobs heading north to Canada.

A recent study commissioned by the Director's Guild of America and the Screen Actors Guild shows that in 1998 over $10 billion was lost to runaway economic film and television production. This is more than fivefold since the beginning of the decade. In the last four years, Texas has shown a 31% decrease in direct production revenues, while my state Illinois is down nearly 20%. This has resulted in a loss of 20,000 jobs nationally.

In looking at the small businesses and jobs lost by this phenomena, we are not just talking about directors and actors, rather we are talking about the small businesses that support the film industry and make America great. This includes: caterers, hotel and motel operators, restaurants and bars, rental equipment businesses, electricians, set construction workers and many others involved in this vitally important and culturally indigenous economic activity. Over the years, this industry has been a leading exporter and driver of small business job creation.

Mr. Chairman this is a constituent issue which we should take seriously. This is a constituent issue for you too. I come from a district which includes Joliet, Elwood and Calumet City, the home of Joliet Jake and Elwood Blues, which I often refer to as the "Blues Brothers" district. Last year, my constituents and I were stunned when they decided to make the film "Blues Brothers 2000," they choose to film it in Toronto rather than Chicago. Embarrassing was the fact that the Canadian filmmakers were calling the Chicago film commission to ask them how to best portray Chicago.

With my statement, I have included the Directors Guild and Screen Actors Guild study explaining the reasons why the film industry is moving out of the country, and they have concluded that one of the main reasons is the tax incentives offered

in other countries like Canada, Australia and the U.K. which we do not have in the United States. Canada alone offers federal and provincial tax credits of between 22% and 46% of labor costs. Those incentives are enough to make any business relocate. Particularly when savings from filming in Canada can mean a dollar savings overall.

The United States should not be put at a competitive disadvantage by tax incentives offered abroad. Rather we need to level the playing field for the small businesses impacted by runaway production and create jobs in America, for Americans.

Related to this there is an issue of Canadian cultural content policy. The Canadian Government has given certain "cultural industries" special treatment. This policy has been implemented in large part through Canadian legislation, as well as some foreign trade through tariffs, taxes, foreign investment restrictions and content requirements that discriminate against U.S. cultural industries. Canada has consistently protected its cultural industries.

This has been discussed and negotiated in the past. I believe that it must be addressed in Seattle with the backdrop of the issue of runaway film production. We have a situation in which thousands of U.S. jobs are being lured to Canada and other countries through favorable tax treatment. While at the same time, cultural policies established by the Canadians and others discriminate against U.S. interests thereby creating a double hit to industries like domestic film production.

Mr. Chairman, with the problem of runaway film production in mind, I ask that the issue of cultural content be placed on the table and addressed at the WTO talks in Seattle. Lets be honest about this issue of runaway production—its all about jobs. The average film industry worker earns $26,000 a year. This Congress has given great attention to the loss of 10,000 steel industry jobs over the past year. The film industry has lost 20,000 jobs and most of those jobs have emigrated north. It is time to address the problem and save U.S. jobs.

Thank you Mr. Chairman.

—

Chairman CRANE. Thank you.

Mr. Becerra. Wait. One thing before you start, Xavier. Try and keep your oral testimony to 5 minutes or less and all written statements will be made a part of the permanent record.

STATEMENT OF HON. XAVIER BECERRA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BECERRA. Thank you, Mr. Chairman, and thank you to the Members of the Subcommittee, my fellow Subcommittee Members. Let me also begin by thanking my colleague, Mr. Weller, for having raised this issue of runaway productions as we start to develop and negotiate objectives for the upcoming World Trade Organization ministerial in Seattle.

This issue may not have quite the direct connection that you might think in terms of the ministerial that we are about to embark upon in Seattle, but it certainly does relate to trade. Jobs are leaving communities across the Nation and production companies are choosing more and more to film outside not just of California, but outside of this country. Whether it is New York, North Carolina, Illinois, Washington State, Texas, Oregon, Maryland, Michigan, Wisconsin, all of these States along with California and others have been able to attract substantial production in the past. But unfortunately we are seeing more and more that these sites are being abandoned for places abroad.

Mr. Weller mentioned that already we can talk about the 20,000 jobs that have been lost, some $10.3 billion in economic loss to the United States in 1998 alone as a result of these fleeing productions.

Now, we are not talking about the movie stars who make the million dollar salaries. We are talking about the ordinary working

people who build sets, provide lighting, cater food, operate hotels, and work in other capacities directly or indirectly in support of production of movies and television programs. The average film industry worker makes about $26,000 a year.

Although a number of factors have caused productions to leave the United States, it is clear that government tax credits by other countries do have an impact. In Canada, since 1996, we have seen that nation offer to those production companies that come into their country 11 percent tax credits for labor costs and production costs. When you add up what the provincial governments also provide you have somewhere between 22 percent to 46 percent savings of their labor expenditures for production companies going into Canada. There are other things they do as well. They provide duty free import of stage props, special effects equipment, other things that give these production companies a rather large break.

Now, I raise this issue today because, as Mr. Weller has said, there is a disconnect, perhaps a little, between what the U.S. is accepting in terms of Canadian insistence upon its cultural content laws while at the same time it is aggressively targeting U.S. jobs. For instance, only 40 percent of films aired on Canadian television can be produced in other countries. The Disney Channel and HBO are not allowed to have their own channels in Canada due to laws designed to protect Canadian competitors.

At the same time, it is not uncommon for Canadian government officials to fly to Los Angeles, New York, and other U.S. production centers to attend events and to meet directly with film and television producers to advertise their incentive structure. For example, representatives of Revenue Canada—that is the Canadian IRS—attended a recent "Location 99" show in Los Angeles in order to promote Canadian incentives.

I know the Office of U.S. Trade Representative will be testifying today and we are looking forward to addressing this issue with her a little further and we encourage Ambassador Barshefsky to try to limit this content exception. We know that she has tried in the past to try to eliminate it and we appreciate that.

In 1996, the motion picture and television industry made $27.5 billion in contributions simply to the State of California's economy. If you add up the rest of the other 49 States you will find that the impact of this industry is tremendous. Canada is now the second largest exporter of television programming, following the United States. In 1998, Toronto became the third busiest production center in the world after Los Angeles and New York. And Vancouver now ranks fourth.

If we do not engage on this issue, we will find that we have irreversibly and irretrievably lost jobs in this country because we have failed to act in a timely manner. We certainly don't want to have to constantly go to the floor of the House to do what we did yesterday to try to support the steel industry.

I would hope that we would move quickly. While we may not be dealing directly with this issue through the ministerial in Seattle, it is a good time to talk about cultural content and other factors that do in the end cost U.S. jobs.

Mr. Chairman, I thank you and the Members of this Subcommittee for the attention.

[The prepared statement follows:]

Statement of the Hon. Xavier Becerra, a Representative in Congress from the State of California

Let me begin by thanking Chairman Crane, Ranking Democrat Levin, and my fellow Subcommittee Members for affording me the opportunity to testify here this morning. I want to also commend my colleague Mr. Weller, for raising the issue of runaway productions as we start to develop our negotiating objectives for the upcoming World Trade Organization Ministerial in Seattle.

Jobs are leaving communities across the nation as production companies choose to film abroad rather than filming in California, New York, North Carolina, Illinois, Washington state, Texas, Oregon, Maryland, Michigan, or Wisconsin, as they had in the past. In 1998, the U.S. suffered a $10.3 billion economic loss because of productions moving to other countries. Last year runaway productions accounted for the loss of 20,000 U.S. jobs.

It is important to note that job loss resulting from runaway productions affects ordinary working people who build sets, provide lighting, cater food, operate hotels, wait tables in restaurants and bars, and work in other capacities that directly and indirectly support the production of movies and television programs. The average film industry worker makes about $26,000 a year.

Although a number of factors have caused productions to leave, it is clear that government tax credits in other countries have played an integral role in the exodus of U.S. production companies. Countries like Canada recognize the benefits that U.S. movie and television production companies can bring to local economies. Since 1996 Canada has offered federal rebates that equal 11% of spending for all Canadian labor involved in a production. Many provincial governments supplement these incentives, creating a total savings of 22% to 46% on Canadian labor expenditures. Moreover, as of January 1998, wardrobe, stage props, special effects equipment, and photographic equipment, of U.S. origin, used in the production of feature films, t.v. movies, or t.v. series are imported duty-free.

I raise this issue today because there is a disconnect between the U.S. accepting Canada's insistence upon its cultural content laws while at the same time it aggressively targets U.S. jobs. For instance, only 40% of films aired on Canadian television can be produced in other countries. The Disney Channel and HBO are not allowed to have their own channels in Canada due to laws designed to protect Canadian competitors. At the same time, it is not uncommon for Canadian government officials and film commission representatives to fly to Los Angeles, New York City, or other U.S. production centers to attend events or meet directly with film and television producers to advertise their incentive structure. For example, representatives of Revenue Canada (the Canadian IRS) attended a recent "Location 99" show in Los Angeles in order to promote Canadian incentives.

The Office of the U.S. Trade Representative will be testifying in the next panel and I look forward to further developing the discussion on cultural content laws at that time. Three years ago the Trade Representative attempted to persuade Canada to drop cultural content restrictions, but unfortunately did not succeed. I encourage Ms. Barshefsky to redouble her efforts in this endeavor. In the past, the issue of cultural exemptions was more narrowly focused on whether a clear violation of free trade should be granted an exception. I think that the answer was "NO" then, and I think it is "NO" today.

However, the unfairness of the exception is even more dramatic today. The recent study commissioned by the Directors Guild of America and Screen Actors Guild demonstrates how the runaway productions problem has escalated since the last round of trade talks. Consequently, the U.S. must fight harder than ever to eliminate the cultural content restriction and open up the Canadian markets to all productions.

In 1996, the motion picture and television industry made a $27.5 billion contribution to California's economy—$14.2 billion in economic activity was generated in Los Angeles alone. The industry is integral to sustaining our economic prosperity not only due to jobs created by the entertainment industry but also because it spurs growth in related sectors such as the fashion and apparel industry, furniture manufacturing, multi-media industry, and tourism.

Canada is now the second-largest exporter of television programming, following the U.S. In 1998, Toronto became the third busiest production center in the world, after Los Angeles and New York, with Vancouver ranking fourth. If we do not engage on this issue, we will find that we have irretrievably lost U.S. jobs because we failed to act in a timely manner.

—

Chairman CRANE. Thank you. Mr. Regula.

STATEMENT OF HON. RALPH REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. REGULA. Thank you, Mr. Chairman. And I will summarize my remarks. I think there is a lot of synergy between what is happening on the floor today and this hearing, because we will hear a lot of speeches during the debate that we have a surplus, the economy is strong, and therefore we should give some of the money back to the taxpayers. That strong economy is predicated on both free and fair trade. And I think you might call this a quality of life hearing as much as a trade hearing, because if we are to have a strong economy prospectively and generate all of those surpluses we are hearing about out in the future, it is going to have to depend on a strong economy with jobs, with an opportunity to trade. And obviously a free flow of trade internationally is a very strong bulwark against the reduction in the economy.

I just noticed in the paper today that South America generally has had some diminution in their economy overall, and that will affect us, as we found out with Asia when the Asian economy got sick and we got the flu in a backhanded way.

So I commend you for what you are doing. But let me say also that we put a lot of effort into the Uruguay round. I was involved as cochairman of the Steel Caucus in getting protection of our antidumping laws, and the antidumping laws go to the question of fairness as well as the freedom in our trade relationships.

I am concerned that there is a group in the WTO that wants to reopen the question of antidumping rules and thereby weaken the U.S. trade laws. I commend Ambassador Barshefsky for ensuring that the WTO working group on the Interaction between Trade and Competition Policy focuses its attention on significant, well-defined international competition policy and not include trade remedy instruments.

I would just have one simple message as they look at the WTO rules: leave the dumping rules alone. If anything, strengthen them, but do not tamper with them and do not respond to some countries that want greater access to our country. We had a debate last night on the steel issue and obviously we heard that over and over again that there have been predatory practices that tend to circumvent our antidumping laws.

We do have an enormously open marketplace, and I think we are a model for the rest of the world, but as part of this we need protection against unfair trade practices. I certainly advocate WTO consistent reforms to the trade laws, including reforming the injury standard for section 201 cases to the injury standard provided in WTO's safeguards agreement. The U.S. currently has a higher injury standard than is required by WTO rules. This change would allow industry and labor to use section 201 more effectively.

We constantly hear the statement that the industry and labor should use the laws that we have rather than seek additional protection that perhaps goes in excess of our current law. I have to smile, I see President William McKinley's picture up here, who was

a former Chairman of Ways and Means, and he built his first run as a Member of this body on the protective tariff and that was the keystone of his first campaign. And yet if you read the speech in Buffalo after he had been inaugurated for a second term and he said we are in a world trade situation and we have to open markets and we have to trade with the world. So he really did a substantial reversal on the issue of trade.

Those statements he made in Buffalo are certainly very relevant today and I think you have an enormous challenge as a Subcommittee to give recommendations to our negotiators in Seattle to ensure that our industry and our Nation is in a free trade environment, but also a fair trade environment. And I thank you for the opportunity to be here.

[The prepared statement of Mr. Regula follows:]

Statement of the Hon. Ralph Regula, a Representative in Congress from the State of Ohio

Mr. Chairman and Members of the Trade Subcommittee, thank you for the opportunity to present testimony regarding the U.S. negotiating objectives for the WTO Seattle Ministerial Meeting. As you are well aware, the Seattle Ministerial will convene this November in order to launch and set the negotiating parameters for a new "round" of multilateral trade negotiations.

U.S. Trade Representative Charlene Barshefsky testified earlier this year before the Commerce, Justice, State Appropriations Subcommittee that the agenda for these meetings should include such issues as broad reductions in tariffs, the elimination of export subsidies and further reductions in trade-distorting domestic supports linked to production. I further understand that these trade talks will focus more directly on reshaping WTO rules on agriculture, services and intellectual property. The question remains, what other issues will be added to the list of items subject to negotiation.

While I support market opening efforts, I would like to stress that maintaining free trade depends on maintaining fair trade. In this regard, I believe that it is imperative that the United States hold firm against reopening the WTO's antidumping rules.

As a veteran of the Uruguay Round negotiations, I remind everyone that the current WTO antidumping rules were agreed to only with great difficulty. I personally participated in many meetings and worked closely with industry, labor and administration officials to ensure that U.S. trade laws were not adversely impacted or significantly weakened during the Uruguay Round.

I am concerned that there continues to be a group of countries that seek to reopen the WTO antidumping rules and call for a weakening of the U.S. trade laws. Most recently, there were efforts in the WTO Working Group on the Interaction between Trade and Competition Policy to weaken our trade laws. I commend the U.S. Trade Representative for ensuring that this working group focuses its attention on significant, well-define international competition policy issues that do not include trade remedy instruments.

Effective antidumping rules are a cornerstone of an open market policy. The United States now has one of the most open markets in the global marketplace. But, there must be some protection against unfair trading practices if we are going to make our markets available to all our trading partners. We still face many trading partners that have not reciprocated by fully opening their markets. So it is only fair that our domestic industries have some protection against dumped and subsidized imports.

A case in point is the recent steel import surge that occurred in 1998, with imports still continuing at higher than average rates in 1999. The U.S. industry and labor have sought redress through our unfair trade laws and as these cases move through the process, we are now seeing some relief provided to slow the rate of dumped and subsidized steel imports. But, even under expedited procedures, the process has been long and costly for domestic steel manufacturers and American steel workers. For this reason alone, it is imperative that our U.S. trade laws are not weakened.

I would further advocate several WTO-consistent reforms to the U.S. trade laws, including conforming the injury standard for Section 201 cases to the injury standard provided in the WTO Safeguards Agreement. The U.S. currently has a higher

injury standard. This would allow industry and labor to use Section 201 more effectively to counter import surges. I also support the provisions of H.R. 1505 introduced by Rep. Phil English which would strengthen our trade laws in a manner consistent with our international obligations.

I would like to close by saying that there have been no major problems with WTO Members' implementation of the antidumping agreement, and certainly non that justify reopening the agreement itself. While continued monitoring of how the Uruguay Round rules are being implemented makes sense, that is very different from re-negotiating those rules. The United States should be very clear about this distinction, and should be careful not to agree to anything under the "implementation" rubric that will in practice lead to reopening the antidumping agreements.

Thank you again for the opportunity to testify before the Subcommittee regarding the importance of maintaining strong and effective U.S. trade laws as a way to ensure that there is truly a "level playing field" as we work to open more markets throughout the world.

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Chairman CRANE. We thank you, and harking back to the McKinley example, McKinley pushed through the most protectionist tariff measure in the history of this country in 1890 and that brought on what was called the "Panic of '93," Grover Cleveland took the blame for that and he was not responsible for that stupid piece of legislation and he began immediately dismantling it and made the observation at the time that when you put those walls around the country, you are inflicting the greatest injury on that man who earns his daily bread with the sweat of his brow.

Now, our good friends on the other side of the aisle are ones who have that great free-trade tradition throughout their history until post World War II. We hope they will start coming back to the fold. And Republicans learned the hard way as McKinley did. But we are lifting the blinders too.

Mr. NEAL. Mr. Chairman, I would hope that you would point out what party Mr. McKinley belonged to.

Chairman CRANE. Republican. And Cleveland was a good free-trade Democrat.

My colleague Dan Miller is our next witness.

STATEMENT OF HON. DAN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MILLER. Thank you, Mr. Chairman. One of our major goals as we approach the negotiations in Seattle is to open up markets and bring down barriers to our products, especially for our farmers around the world. But when we approach this, we need to have clean hands. If we are asking other countries to open their products, we cannot be protective of our products and we have one that stands out like a sore thumb and that is the sugar program, because that is a very heavily protected program in this country.

It is designed where the Federal Government forces the price of sugar to be about four times the world price. The price of sugar in the United States is about 23 cents a pound. The world price according to the paper this morning is about 6 cents a pound. This is very much an anti-free-market program that is due to expire in 2002, so we need to make sure that it is not allowed to continue certainly past that date.

Let me briefly describe the program. The program is designed, since we cannot grow enough sugar in the United States we must

import some sugar, that we control the total supply and force the price up. And what the Federal Government does is through a nonrecourse loan program, and the loan program is in the 18- to 22-cent range, depending on the type of sugar, and we cannot lose any money on this nonrecourse loan, they have to maintain a price above 22 cents. That is the reason the price stays at 23 cents a pound approximately. And we have a quota system with countries—this is a very strange program—so we have 40 countries in the world that are allowed to sell sugar to the United States. Now, 10 of these countries cannot each grow enough sugar for their own consumption. And it is amazing, big countries that grow a large amount of sugar such as Australia, they sell it to everybody in the world for 6 cents a pound but not to the United States. They sell it to us for 23 cents a pound. It makes no economic sense.

And then we have 10 countries that cannot even grow enough for their own consumption and they are buying it from countries like Australia and then selling it to us and making this profit. It is a strange program and does not belong in our free enterprise system in this country. It is very much anticonsumer. The GAO study shows the cost of this program as at least $1 billion a year. It kills jobs in this country. Let me describe some of the jobs that are hurt.

First of all, refineries. Sugar refineries cannot get enough sugar and they have been closing for the past decade because of this program. We have lost over 10 sugar refineries. These are good high paying union jobs, by the way. But we have the users of sugar. One is Bob's Candies down in Georgia. It is a candy cane company where sugar is a major cost of its production. It has to pay the 23 cents for its sugar, but its competitors in Canada only pay 6 cents for sugar. It cannot compete. It is having to shift its jobs overseas to be able to be competitive in the sugar cane business. This is a company that has been around for three generations.

In yesterday's Hill Magazine, there was a case in Michigan, Congressman Dingell's district, of a company that is a $35 million a year company with 60 employees and it was importing some type of sugar syrup from Canada and the trade people say you are importing that because all you want is the sugar out of it. Well, all they are going to do is shut down that company and move those jobs from Detroit.

This is very much an antijob program and anti-free-market program. It is an embarrassment really to us I think because we have had articles in Time Magazine and Reader's Digest and the "Fleecing of America" on television explaining how we allow this to continue. And if we are going to be people that believe in the free market system, we need to make sure that we say, hey, we are willing to allow all of our products to compete in the world market, and if we are going to expect Canada and Japan and China and other ones to come to the table and to negotiate in the same way with clean hands.

So I say we need to have clean hands when we negotiate and we need to make sure that as this program expires in 2002 we don't allow it to be reauthorized, because it is going to be difficult for our negotiators to be in there seeking a fair deal. And I would like to submit my official statement for the record and also a recent GAO

report that was just released this week analyzing the entire sugar program, and I thank you, Mr. Chairman.

[The prepared statement of Mr. Miller follows:]

Statement of the Hon. Dan Miller, a Representative in Congress from the State of Florida

Chairman Crane, Ranking Member Levin, Distinguished Colleagues:

Thank you for allowing me to testify about the important WTO ministerial meeting that will take place in Seattle later this year. I feel this is "fish or cut bait" time for the United States in seeking free and fair trade and to truly help our farmers and industry. I applaud this committee for holding this important hearing.

Much of the financial hardship being experienced by our nation's farmers is due to contraction of overseas markets for U.S. agricultural exports. What I want to stress to you today is the importance of having the United States Trade Representative enter into the Seattle Round with "clean hands" in order to change that troublesome trend. Ostensibly, Seattle is an opportunity to knock down barriers to trades and allow American industry a greater opportunity to export into other countries. This would result in greater incomes for U.S. farmers and businesses. The sugar program undermines our trade objectives and is colliding with efforts to help small farmers.

The Seattle meeting is the best opportunity to be pro-U.S. farmer if we have the courage to knock down barriers. If every country is allowed to exempt politically well connected commodities from trade negotiations by taking them off the table before they enter the room, then there can be no progress on free trade. For example, if the United States continues to knock out foreign sugar, then Canada can justify kicking out United States dairy and Europe can knock out US oilseed crops, and so on. Seattle must not allow this protectionist and wasteful cycle to continue. Quite simply, our negotiators must decide whether it is more important to preserve an outdated sugar program than to open markets for competitive American farm products. Remember the US sugar program hurts more people than it helps.

I would like to concentrate my remarks on how the domestic sugar program hurts our economy and hampers the competitiveness of many important American industries. As you know, I have been very active in reforming the sugar program and I have introduced H.R. 1850 to phase out this program.

Through price supports, the sugar program keeps the price of sugar in the United States artificially high. By tightly limiting the amount of sugar that may be imported into the United States, and subsidizing the operations of sugar producers through federal loans, the sugar program forces the price of domestic sugar to be at least twice as high as the price of sugar on the world market.

While this is a sweet deal for sugar producers, it leaves a sour taste in the mouths of taxpayers, consumers, American workers, and the environment. The GAO estimates that the sugar program costs consumers more than $1 billion every year in higher prices for food and table sugar. Jobs for American workers have been eliminated because of sugar refineries that have been forced to shut down and because of companies relocating overseas where sugar is cheaper. A more recent GAO study shows that domestic users incur a cost of $200 million annually for each penny in excess of the estimated price needed to avoid forfeitures. This does not even address the higher costs forced on users by the inflated prices of the program.

The environment is damaged by sugar production in Florida. The subsidized production of sugar in Florida results in phosphorous-laden run-off flowing into the Everglades, which contributes to the destruction of this fragile ecosystem. Amazingly, the federal government continues to subsidize sugar producers, even as Congress participates in a multi-billion dollar project to repair the damage done to the Everglades. Recently, the Army Corps of Engineers announced a long-awaited and ambitious plan to save the Everglades.

For the past several Congresses I have introduced amendments to the Agriculture Appropriations Bill as well as stand alone legislation to reform the federal sugar program. This year I introduced H.R. 1850 with Congressman George Miller (D–CA). H.R. 1850 has the support of national taxpayer, consumer, and environmental advocacy groups. It has also been co-sponsored by Trade subcommittee Chairman Crane and subcommittee members Clay Shaw and Jim Ramstad.

As my time is limited let me concentrate on several troublesome aspects of this program. Specifically, how the sugar program costs consumers over $1 billion dollars a year and benefits a select few sugar producers. Moreover, I will discuss how the sugar program kills U.S. sugar refinery and manufacturing jobs.

COSTS TO TAXPAYERS

In 1993, the GAO has estimated that the present sugar program costs over $1 billion per year in higher prices for table sugar and food. This cost has been confirmed by Public Voice for Food and Health Policy. I believe this cost is probably higher today due to the disparity of world sugar prices and the US sugar program price. Not only do higher costs affect the prices paid at the cash register, they affect the taxpayer in the costs of government. Higher food costs mean higher entitlement spending under Food Stamps or other government programs such as school lunches and Meals on Wheels. It is a regressive form of corporate welfare benefitting a select few producers while making every consumer pay more at the cash register to justify this program.

The U.S. Department of Commerce has noted that the "effect of the sugar program is similar to a regressive sales tax, which hits lower-income families harder than upper income families." If you support regressive taxation, then I guess you have no problem with the U.S. sugar program. If you do not favor taxing the poor more heavily, however, you should favor changes in our sugar policies.

Finally, the flight of businesses out of the country due to the high domestic cost of sugar results in lost revenue at the local, state and federal levels. Although no calculation of this lost revenue is currently available, it is significant in light of the many thousands of displaced workers.

BENEFIT TO A SELECT FEW

The GAO reported that 42% of the sugar programs benefits went to just 1 % of the sugar producers in 1991 and 33 big sugar barons each received more than $1 million in extra revenues under the program. One producer even received $65 million in one year.

Time Magazine did a story last November on the Fanjul family that outlined how the U.S. sugar subsidy has helped propel this family into the ranks of the multimillionaires. I commend it to your reading as it fairly captures how the sugar program helps a few well connected folks while sacrificing the good of the rest of the country.

I must emphasize this because you will hear; "Don't kick farmers when they are down" or "the family farm needs support, not a kick in the teeth." Great sound bites, but totally inappropriate with the sugar program. Sugar plantations are not family farms in the normal sense of that phrase. In 1995, the USDA compared the noncash economic benefits that accrue to farmers of various commodities thanks to government action. Wheat gets $23 per acre in government benefits, cotton farmers $87 per acre. Sugar gets $472 per acre. Moreover this artificially high price per acre of sugar acreage complicates efforts to restore the Everglades by creating an economic incentive to utilize more Everglades for sugar farming. And all this benefit goes to a select few sugar barons.

So when our trade representatives defend the US sugar program in global trade talks, they are defending the Fanjuls, the politically well connected, the select few, but definitely not the average family farmer hurt by the contraction of overseas markets. The USTR must not protect a few folks who are profiting from an overpriced subsidy program at the expense of cattlemen, corn growers and other important American commodities. Nor must the USTR protect the select few sugar barons at the expense of the many important domestic users of sugar such as candy makers and refineries which are important US industries.

JOBS LOST

The two main American industries adversely affected by our sugar program are sugar refineries and manufacturers of products that utilize sugar.

Often, sugar refineries are unable to find a consistent and adequate supply of sugar to operate year round. The variations create economic inefficiencies and waste which result in these facilities being unable to stay in business. Moreover, refineries process sugar and require sugar cane and beet to operate. Needless to say, buying this raw material in the United States is overly expensive when compared to the world price. Why would a company buy large quantities of sugar cane at $ .22 per pound when they can buy at $.045 per pound in a foreign nation and take advantage of other favorable economic factors such as labor costs and government regulation? Defending the status quo will only send more jobs overseas.

Accordingly, it is not hard to see why our sugar system is sending refinery jobs overseas. As recently as 1981 there were 23 sugar refineries in the United States. Today, there are only 11 refineries. Over 3,500 jobs have been lost by closures at the refineries due to a sugar program that only benefits a select few.

Similarly, manufacturers of products that rely on sugar are greatly affected by the present sugar subsidy. Ask any businessman would they rather buy sugar at 22 cents per pound or at 4.5 cents per pound and they would all agree they would like the cheaper sugar. Even with a duty that raises the cost to over 19 cents per pound when sugar is brought into America, businessmen know that 19 cents is cheaper than 22 cents. And businessmen know that they need to pack up and leave the United States if they want to get that cheaper sugar. Also, the incentive remains to move operations overseas if the company is pursuing an aggressive export strategy.

I think the best example of the present sugar program driving jobs out of America is the story of Bob's Candies. Bob's Candies was the largest producer of candy canes in America. Candy canes are a very cyclical industry and are made to be a low cost candy. However, the U.S. sugar program throws large roadblocks in the way of domestic candy makers. Accordingly, Bob's Candies moved to Jamaica where sugar is much cheaper. The president of Bob's Candies recently told Reader's Digest that the company would save more than $2 million a year in raw materials if the sugar program was scrapped. This savings would enable the company to keep jobs in America and lower retail prices. Unfortunately, it just makes good business sense to go overseas to get cheaper sugar to make candy. How many Bob's Candy Canes will this Committee tolerate?

Also, the Committee should note that the cost of our sugar program was a main reason why Coke and other soda companies do not use sugar in soft drinks. Sugar got too expensive. The program priced sugar out of the lucrative soft drink industry. Instead, soft drinks now use high fructose corn syrup (HFCS) which does not have the high costs and economic inefficiencies of the sugar program.

Finally, I ask this committee to keep in mind the fact the sugar industry is not large in comparison to other aspects of the economy. According to USDA data there are between 40,000 and 70,000 jobs directly related to the sugar program. This is a small number compared to the 520,000 jobs in the food processing industry or the thousands of lost Everglades related tourist jobs. Congress and our trade representatives must not blindly protect a small special interest sugar program at the expense of the greater good.

The U.S. sugar protection program and its implementation causes odd distortions in the world wide import and export of sugar that are utterly inconsistent with free trade and free markets. According to the GAO study on the sugar program released just this week, the United States allocates import levels to some 40 trading partner countries in a manner that bears little relationship to the realities of supply and demand.

For example, Brazil and the Philippines are both "allowed" by the USTR to import approximately the same tonnage of sugar under this bizarre quota system despite the fact that Brazil produces 21 times more sugar (5,215,000 tons) than the Philippines (249,000 tons). Furthermore, 10 of the 40 countries who are given sugar quota allocations by the United States to import sugar here are actually net importers of sugar themselves. 11 of the 40 countries who receive an allocation have average worldwide export levels that are less than their U.S. allocation level.

Can such a system really be consistent with our free trade message? How would the United States react if one of our trading partners gave American corn farmers a quota level that was the same as that of Honduras? Would we take seriously another country's admonitions about free trade if that country allocated imports of American beef at the same low level as those of Liberia? These are the questions that naturally flow from examination of our sugar program and I hope that our trade representatives at Seattle do not feel compelled to expend valuable credibility defending such an archaic and economically inefficient system that does not advance the overall interests of the United States.

Put another way, the Seattle meeting must be the forum for the United States to effectuate the greater good. Many more American jobs and consumers need cheaper sugar and many more non-sugar farmers need our trade policy to be freed from the millstone of our domestic sugar subsidy. If the Seattle Ministerial is successful, the USTR can save American jobs in refining and manufacturing of anything that uses sugar. Also, the USTR will save the taxpayers billions of dollars.

Again, I thank you Mr. Chairman for not only allowing me to testify but for your continued leadership on the efforts to end the sugar subsidy. It is in America's best interests to get rid of foreign and domestic subsidies like our sugar program and I am appreciate all the efforts this subcommittee will undertake to accomplish this goal.

—

Chairman CRANE. And without objection, so ordered with regard to your request.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. I appreciate the testimony. It is enlightening. I just have two or three questions I would like to ask Mr. Weller. The Canadians are obviously concerned about their cultural heritage and feel sometimes overwhelmed about their proximity to the United States, so just to try to sort of depersonalize this thing and get into the guts I would like to ask you two or three questions.

First of all, what is really the practical impact here of the Canadian cultural content rules? And second, does the United States prohibit broadcast distribution or sale of Canadian-produced programming? And third, really do the Canadian cultural context rules have a real impact on employment of actors and directors and things like that? You might want to turn to those questions.

Mr. WELLER. Sure, Mr. Houghton, and thank you for your questions and I also want to thank you on behalf of all of us interested in the question of runaway production for your commitment to work with us and later this year conduct a hearing on the issue of runaway production with the Oversight Subcommittee. I thank you for your commitment to do that.

When it comes to the impact of the Canadian cultural content rules, it could have a profound impact on U.S. producers of television and motion pictures. There is a recent Law Review article by publishers of Syracuse University Law Review. They noted that certain cable channels like the Disney Channel are prohibited as a result of cultural content rules enforced by the Canadian government. And the irony of this is that similar prohibitions have caused and forced many Canadian citizens who are interested in obtaining these channels to buy U.S. satellite dishes on the black market.

And, moreover, Canada mandates that private stations must have a 60-percent Canadian content measured over the broadcast day and 50 percent over the evening hours, while the Canadian government-owned CBC must have 60-percent Canadian content at all times. It does have a very big impact on American film production as well as American television production.

You had also asked whether or not the United States prohibits broadcast distribution or sale of Canadian-produced programs. Not at all. The United States of course has a free market for Canadian products. And not only do we permit their programming, but many Canadian television shows and television stars have been very successful. Let me list some of those. SCTV, Due South, and Road to Avalon, and performers like Rick Moranis, Dan Ackroyd, Jim Carrey, and Michael J. Fox have all been very successful in the United States precisely because we give our consumers the freedom and the right to choose the type of program that they want to watch and not have that enforced by the government.

You had also asked if the Canadian cultural content rules have an impact on the employment of U.S. actors, directors and technical crews and others, and they do have an impact. Canada has adopted a point system that must be satisfied if a production is to

achieve the cultural content designation. Under the point system six of 10 creative production positions must be performed by Canadians. In addition 75 percent of all expenditures have to be made to Canadians. Thus U.S. citizens are cut out of the action. They are cut out of the broad number of jobs in Canadian cultural content production. And of course Canada has those opportunities for the promises of wage rebates and tax incentives as well.

That is really one of the key reasons why it is so important that the issue of runaway production as well as cultural content be addressed at the Seattle talks because it is having a real impact on an industry which is so important to the United States. Domestic film production is indigenous to our Nation. We have lost 20,000 jobs. Most of those have emigrated north as a result of not only the Canadian content rules but the vast array of incentives, particularly tax incentives, that the Canadians are offering to American film producers to relocate and go north.

So thank you for those questions. They are important and basic questions.

Mr. HOUGHTON. Thank you. Mr. Chairman, do I have just a minute more? I would like to ask Mr. Regula a question on 301. We are very concerned about 301 and also section 201. Clearly there are people that want to change that. Do you really hear the drums beating pretty loudly on that focusing on the ministerial in Seattle?

Mr. REGULA. Well, I think this Subcommittee should address those issues. I believe Mr. English has a bill that tries to reflect the experience we have had and proposes some trade law changes. To summarize what I think will be the situation in Seattle is an effort by countries to change WTO rules to make it easier to dump into our markets. I think in anticipation of that, we want to hold firm because our laws are working. If anything, strengthen them and streamline them to make it easier for demostic companies to bring actions.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Mr. Weller, is it your belief that what the Canadians are doing is legal under existing trade law?

Mr. WELLER. We certainly believe there is some legitimate questions that should be raised. We believe that they are using their cultural content rules to put the United States at a great disadvantage, particularly when it comes to film production. When you think about it, the average film production has about $25 million in economic impact. The average film industry worker makes $26,000 a year. We have lost 20,000 jobs, most of which have gone north because of Canadian tax incentives as well as the Canadian content rules. And when cable channels that you and I have the opportunity just through freedom of choice if we have cable at home, Disney, HBO, are prohibited as a result of cultural content, something is wrong and we should raise that issue and it should be put on the table.

Mr. NEAL. The U.S. film industry still remain a net exporter. Is it your understanding that they would be reluctant to bring a case?

Mr. WELLER. I can't speak specifically for the U.S. film industry. I will let them speak for themselves. But our belief is that there are abuses that do need to be raised. We have seen a growth in

film production, but if you see how those jobs have grown, more and more of them are shifting to Canada. And we have seen in my city of Chicago, and I imagine if you look at the economic impact in the Boston area you have probably seen an impact as well, in Chicago we have seen a 20-percent reduction in the amount of production activity as a result of runaway production. In Texas, which has been extremely hard hit, almost a third of their film production has been lost and runaway production has clearly been identified.

And I would urge you to take a look at the monitor study that was done by the Directors Guild and the Screen Actors Guild, which we would be happy to provide you a copy of, which numbers the impacts in the communities such as Boston and Chicago. It is not just a Hollywood issue.

Mr. NEAL. Thank you, Mr. Weller. Thank you, Mr. Chairman.

Chairman CRANE. Next, Mr. Foley.

Mr. FOLEY. Thank you, Mr. Chairman. Mr. Chairman, I want to thank Congressman Weller and Congressman Becerra for focusing on the runaway production issue. In the House Entertainment Task Force we are going to be doing, we hope, extensive study and have extensive dialog on the issue and I think you raise some very, very important points and I would like to ask you both, if you can in the brief time, to comment on some of the incentives that Canada provides as a tax motivation to bring films to Canada. First Mr. Weller and then Mr. Becerra.

Mr. WELLER. Sure. And Mr. Foley, of course I want to thank you for your leadership and involvement on this issue. Folks a lot of times when they think of the film industry and movies and television production they always think of Hollywood and this is not just a Hollywood issue. This is a constituent issue for me in Illinois and I know it is for you in Florida and for Mr. Becerra in California, but it impacts dozens of urban areas, rural areas as well as many, many States have found domestic film production to be a job generator and a job creator.

In fact, in Illinois we had 55 productions that were either fully or partially filmed in Illinois. So we are one of those States that recognizes the importance of the film industry.

However, we have a challenge, and the Canadian government, both the Federal and provincial governments, have been very, very aggressive in offering financial incentives to television as well as film production. And these include wage credits, as well as other forms of tax subsidies which could reimburse in some provinces up to 40 percent of the cost of the production. Now from the standpoint of any businessperson if they could find a way to reduce costs by 40 percent, they are going to consider that other area to do business.

So my belief is that we really need to work in a bipartisan way to find ways of reducing the cost of production in the United States and keep these jobs here. As I noted in my testimony in this Congress in the last 9 years, and I represent an area with significant amount of steel production so it is an issue I am very concerned about, but we have lost 10,000 steel jobs in the past year and this Congress has given a tremendous amount of attention to that issue. But unfortunately the administration nor Congress have paid little attention to the issue that needs to be on the radar

screen and that is the issue of runaway production. When you have lost 20,000 jobs, that is serious. That is twice as many jobs as have been lost in the steel industry alone.

So clearly the tax incentives as well as the weaker Canadian dollar have contributed to the loss of jobs that have headed north.

Mr. BECERRA. Good question, and thank you again for the role you are playing in this as well. Certainly Florida should be very concerned because it is one of the States that does have major production facilities and sites. More specifically, because I think Mr. Weller did a very good job of answering the questions, if the government in Canada provides an 11 percent rebate—they don't call it a tax credit, they call it a rebate—on all production costs that are related to labor. So someone who works there, you pay that person a salary, you get to reduce that in your costs by 11 percent. The Federal Government in Canada will give you back 11 percent. On top of that the provincial governments provide a number of incentives, rebates, tax credits. So you can get anywhere from 22 up to 46 percent of a rebate, tax credit, whatever you would like to call it, an incentive to do business.

On top of that, Canada is now offering to production companies from abroad from other countries like the United States duty-free import of its stage facilities, of its production equipment, its photographic equipment, special effects equipment. All of this now gets to come in without any charge for importation. So they are saving quite a bit of money when they go to a place like Canada.

We need to do something to make sure we have a level playingfield.

Mr. FOLEY. Thank you very much and I thank you both for your hard work on this and hopefully, and I know Mr. Weller has asked Mr. Houghton to potentially have some hearings in depth in a variety of locations and I look forward to working with both of you. If I may, Mr. Miller, I cannot escape without a conversation on sugar. I didn't expect one today, but I might as well jump in.

The price of sugar has remained stable without question in the last 9 years. There has been no increase in the wholesale price of sugar. Why then can you explain the price of the finished product going up so dramatically? There doesn't seem to be a nexus between the cost of sugar and the end retail price.

Mr. MILLER. Basic economics 101 said that—you are talking about if we went to the world market 6 cents a pound you would not see a price change in products. But that is only one component of the price and I think you would see price changes in things that have high content of sugar. There is no justification for us to be paying 23 cents a pound for sugar in the United States and 6 cents a pound in Canada. How can we compete? It is the same way we can't compete when they have incentives for products like that.

But the most important thing is to have the ability to have clean hands. We are protecting one product and when we go there and try to open up markets for dairy products and what have you, it is not a fair field.

Mr. FOLEY. My time has expired, but I would love to continue the dialog. I am sure we will have a chance on the floor.

Chairman CRANE. Gentlemen, we appreciate your participation today, and that concludes this panel.

We now welcome our next panel, our witness, Hon. Susan G. Esserman, Deputy U.S. Trade Representative and you may proceed when ready. And we would also ask you to try and keep oral testimony in the neighborhood of 5 minutes and all written testimony will be made a part of the permanent record. Proceed when ready.

STATEMENT OF HON. SUSAN ESSERMAN, DEPUTY UNITED STATES TRADE REPRESENTATIVE

Ms. ESSERMAN. Thank you, Mr. Chairman, Members of the Subcommittee. I very much appreciate this opportunity to testify on the important issue of the U.S. agenda at the World Trade Organization.

In 4 months, Ambassador Barshefsky will open the WTO's third ministerial conference in Seattle. This will be the largest trade event ever held in America, bringing trade ministers, business executives and citizen groups to Seattle from all over the world. It will highlight to the world our economic achievements and focus public attention as never before on the role that trade plays in the longest peacetime expansion in American history.

We also expect at the ministerial to launch a new round of international trade negotiations. This round builds upon 50 years of bipartisan American commitment to a fair, open, and free international economy capped by the conclusion of the Uruguay round, which created the WTO in 1994. In the 5 years since, the WTO has fully proven its value to the United States and the world. For example, Americans have taken greater advantage of a more open world economy by increasing exports by over $200 billion, contributing to the economic growth we have enjoyed and helping us gain high-skill, high-wage jobs.

The WTO's strong dispute mechanism has strengthened our ability to ensure compliance with trade agreements and has resulted in tangible gains for American companies and workers and the WTO has been vital to our ability to address the financial crisis as its rules-based system has helped to prevent the outbreak of a cycle of protection and retaliation which would have hurt the United States as the world's largest exporter as much as any other country in the world.

As we look to a new round, we see immense promise to go further and as President Clinton has stated, to create a world trading system attuned to both the pace and scope of the new world economy and to the enduring values which give direction and meaning to our lives.

We are now consulting with this Subcommittee, Members of Congress, interested Americans in business, agriculture, NGOs and others, about the objectives for the round.

I am going to very briefly outline our core objectives. Our view is that the core of the negotiating agenda should address market access concerns, including tariffs, nontariff measures, subsidies and other measures, with benchmarks to ensure that the negotiations stay on schedule. These broad-based markets access negotiations would lead to immense new business and job opportunities for our workers, companies and farmers.

The agenda and its results must unquestionably be broad enough to create a political consensus by addressing the market access pri-

orities of all members. It also must be manageable enough to be completed within 3 years and avoid raising major compliance problems afterward.

This market access agenda would have four substantial components: Of course, at the core of the negotiating agenda is agriculture and here we seek elimination of export subsidies, reduction of trade-reducing supports, lower tariffs and better administration of tariff rates, quotas, disciplines on state trading enterprises, improved market access for least developed countries, and ensuring that trade in agricultural biotechnology products is based on transparent, predictable and timely processes.

The second core element is service. Our objective here would include liberalizing a broad range of services, ensuring that the WTO rules anticipate the development of new technologies, and developing disciplines to ensure transparency and good governance on regulation of services.

Third, industrial goods where broad market access negotiation would buildupon the accelerated tariff liberalization initiative. Here we seek to reduce existing tariff disparities, use applied rates as the basis of negotiation, address nontariff and other measures affecting market access and, as in agriculture, improved market access for the least developed WTO members.

Fourth, we will pursue trade facilitation negotiations which would remove customs impediments so that exports expeditiously reach customers in foreign markets. We intend to expand on this base by pursuing work in several areas. For example, a special priority will be creating a trade environment that promotes the unimpeded development of electronic commerce.

Second, we will seek to ensure that trade liberalization promotes and supports sustainable development. This will include identifying and pursuing areas such as the elimination of tariffs on environmental technologies and the elimination of fishery subsidies that both distort trade and harm the environment.

We will use the WTO's Trade and Environment Committee to examine the environmental implications of negotiations as they proceed. We will seek institutional reforms to open up the WTO and we have made a commitment to conduct an environmental review of the round.

Third, the relationship between trade and labor will be a high priority. As President Clinton has said, we must put a human face on the global economy, giving working people everywhere a stake in its success, equipping them all to reap its rewards, and provide for their families the basic conditions of a just society.

The WTO has a role to play in this area, including ensuring respect for core labor standards. Our goal here is to ensure that the WTO reaps the broadest benefits for the largest possible number of working people in all nations. To this end, and consistent with the Uruguay round Agreements Act, we have called for the establishment of a work program to address trade issues relating to labor standards.

Finally, the past 5 years revealed areas in which institutional reforms would further strengthen the WTO and its base of public support. A special focus here will be ensuring that the WTO more

fully reflects the basic values of transparency, accessibility and responsiveness to citizens.

Before ending my remarks, Mr. Chairman, let me very briefly review the areas we are seeking to conclude by Seattle which we will help to build momentum for a successful round. We expect the accession to the WTO of a number of countries. We are especially pleased by the progress we have made with the transition economies as their integration into the world economy will help their reform and democratization policies succeed.

We expect to conclude the ongoing review of the WTO's dispute settlement mechanism with a focus here on ensuring timely compliance with panel decisions and greater transparency. We will seek to extend the current standstill on application of tariffs to electronic transmissions. We will also seek to conclude a multilateral agreement on transparency in government procurement promoting new opportunities around the world and reducing the potential for bribery and corruption. And finally we will be working toward consensus on the accelerated tariff liberalization initiative and on an expansion of the information technology agreement.

Mr. Chairman, these are ambitious goals in the short term for the round but they are goals fully in the tradition of the 50 years of bipartisan commitment to American leadership in world trade. The task before us now is to bring this work forward into the next century.

Thank you very much.

[The prepared statement follows:]

Statement of the Hon. Susan Esserman, Deputy United States Trade Representative

AMERICAN GOALS IN THE TRADING SYSTEM

Mr. Chairman, Congressman Levin, Members of the Subcommittee:

Thank you very much for inviting me to testify today on the U.S. agenda at the World Trade Organization.

This November 30th, the United States will host the World Trade Organization's Ministerial Conference in Seattle. The Ministerial will be the largest trade event ever held in the United States, bringing heads of government, trade ministers, business leaders and non-governmental associations from around the world and focusing public attention as never before on the role trade plays in American prosperity. Ambassador Barshefsky will have the honor of chairing this meeting.

At the Ministerial, we also expect to launch a new Round of international trade negotiations, which President Clinton called for in his State of the Union Address. This has the potential to create significant new opportunities for American workers, businesses, and farm and ranch families. We also seek to improve the WTO itself, to make the organization more transparent, responsive, and accessible to citizens. And we can ensure that its work supports and complements efforts to protect the environment, improve the lives of workers, reduce hunger and improve health.

We are now building the necessary consensus internationally for an agenda with broad support in the U.S. and worldwide. And with the Ministerial just four months away, the Trade Subcommittee has chosen an ideal time to review the United States' stake in the trading system and our goals for its future. As we prepare for the Ministerial and the Round, we look forward to continuing to work closely with the Subcommittee and with other Members of Congress to develop the strategy and objectives that will yield the best results for our country and for the world. Today I would like to review for you our stake in the world trading system; the consultations we have undertaken in preparation for the Ministerial; and the results we hope to achieve at Seattle and in the Round.

U.S. Stake in the Trading System

The United States is now the world's largest exporter and importer, carrying on over $2 trillion worth of goods and services trade each year. The jobs of millions of American workers, the incomes of farm families, and the prospects for many of America's businesses depend on open and stable markets worldwide.

This is the foundation of the leading role we have taken in the development of the trading system for over fifty years, since the creation of the General Agreement on Tariffs and Trade in 1948. Throughout these decades, Republican and Democratic Administrations, working in partnership with Congress, have concluded eight negotiating Rounds. Each successive Round, culminating in the Uruguay Round which created the WTO, has opened markets for Americans, and helped to advance basic principles of rule of law, transparency and fair play in the world economy.

Since the Uruguay Round's conclusion in 1994, Americans have taken full advantage of these benefits.

- With the opening of world markets, American exports have risen by well over $200 billion, contributing to the rapid economic growth we have enjoyed, and the continuation of the longest peacetime expansion in America's history. This has also helped us to gain high-skill, high-wage jobs, reverse a 20-year period of decline in wages, and in fact increase wages by 6% in real terms.
- The strong dispute settlement system created by the Uruguay Round has allowed us to improve significantly our enforcement of the trading rules. Since the creation of the WTO, we have filed more cases than any other member, and have a very strong record of favorable settling or prevailing in the cases we have filed.
- And the trading system has been vital to our ability to address the financial crisis. The commitments WTO members have made have helped to ensure that, with 40% of the world in recession, and six major economies contracting by 6% or more, we at least so far have seen no broad reversion to protectionism. This is a tribute to the strength of the trading system we have helped to build. It has prevented enormous economic damage to our national economy, our farmers and our working people; ensured that affected countries have the markets essential to recovery; and helped avert the political tensions that can arise when economic crisis leads to trade conflicts.

The Work Ahead

Despite these achievements, however, much work remains ahead. The trading system can be made more effective in removing trade barriers, more transparent and accessible in its own workings, and broadened to include nations now outside. With the Ministerial and Round, we will address issues such as the following:

- World trade barriers remain high in many areas, including in several crucially important sectors in which U.S. producers are the world leaders. Agriculture and services are crucially important examples; in industrial goods, we often face significant trade barriers, subsidies and other practices overseas which a new Round can address.
- Our leadership in the scientific and technological revolution creates new challenges and opportunities for the trading system to address. Electronic commerce and the growth of the Internet as a medium for trade is an especially important example.
- Membership in the WTO can make a major contribution to reform in the transition economies—that is, the nations in Europe and Asia moving away from communist systems. As successful reformers and WTO members such as Poland, the Czech Republic and Hungary have observed, WTO membership on commercially meaningful grounds helps to integrate transition economies into world trade and make the reforms necessary to create market-based economies, thus promoting long-term growth and liberalization.
- The results of future WTO agreements can contribute to the world's efforts to reduce hunger, protect the environment, improve the lives of workers, promote health and nutrition, support financial stability, fight bribery and corruption, and promote transparency and good governance worldwide.

The balance of my testimony today will review our WTO agenda in four areas: ensuring implementation of the Members' present commitments; developing the agenda for a successful Ministerial and a new Round; encouraging the accession, on commercially meaningful grounds, of new members; and the specific steps that can advance the broader vision and yield immediate results for the U.S. and world economies.

I. Compliance With Agreements

First of all, we are working to ensure full compliance with existing agreements. We have met our commitments on time and in full, and we expect our trading partners to do the same.

No matter what the new agenda will be, a fundamental component of our trade policy will remain the effective implementation of existing agreements. We have made this point clear to our partners in Geneva, and in this regard, 1999 is an especially important year. By January 1, 2000, WTO Members must meet Uruguay Round commitments under the Agreements on Intellectual Property, TRIMs, Subsidies, and Customs Valuation. In succeeding years, final liberalization commitments under the Agreement on Clothing and Textiles as well as certain aspects of the TRIPS and Subsidies Agreement will phase in. Likewise, Uruguay Round tariff commitments will soon be realized in full.

These commitments represent the balance of concessions which allowed completion of the Uruguay Round and have helped realize its benefits since then. The credibility of any future negotiations depends on their implementation. To ensure implementation, we use all methods available. This includes use of dispute settlement and U.S. trade laws when necessary, but also a commitment to the technical assistance programs that allow some of the developing countries to gain the capacity to meet complex demands in areas such as services, agriculture and intellectual property. In our recent submissions to the WTO General Council, therefore, we have proposed methods to address legitimate problems with compliance now and in the context of new negotiations, and ways to make technical assistance programs more effective in promoting full integration into the world economy.

We also are encouraging those WTO Members which have not ratified the Basic Telecommunications and Financial Services Agreements to do so as soon as possible. This will not only open markets to U.S. Providers, but ensure that all Members can benefit from their commitments and that they can win the benefits of competition, transparency and technological progress these Agreements offer.

II. Developing an Agenda for the New Round

As we address compliance issues, we are also developing the agenda for the new negotiating Round President Clinton called for in the State of the Union Address, to be launched at the Ministerial in Seattle.

Our work in this regard has its foundation in a series of domestic consultations with a wide range of interested groups and individuals: Congress, business groups, agriculture, labor organizations, academics, environmental groups, state and local government, and others. This has included many individual meetings; Trade Policy Staff Committee hearings in Atlanta, Detroit, Los Angeles, Chicago, as well as Washington DC, to gather ideas on priorities and objectives; and a series of Listening Sessions jointly with the Department of Agriculture on the agricultural agenda, traveling to Indiana, Florida, Minnesota, Tennessee, Texas, California, Washington, Nebraska, Delaware, Vermont, Iowa and Montana to hear directly from farmers, ranchers and others. We have also, of course, met frequently with our trading partners at the WTO in Geneva, and in meetings such as the US-Africa Ministerial, FTAA conferences, the US-EU Summit, the Quad meeting in Tokyo and others to review their priorities, exchange views and develop consensus.

Given our consultations and conversations to date, we believe the agenda should take the following shape:

- The core of the agenda should address market access concerns including agriculture, services and industrial goods, with benchmarks to ensure that the negotiations remain on schedule for completion within three years.
- The agenda should also pay special attention to areas in which trade policy can encourage technological progress, notably in electronic commerce.
- This agenda should support and complement efforts to improve worldwide environmental protection, and ensure that trade policy yields the maximum benefit for the broadest range of workers.
- This negotiating agenda should be complemented and balanced by a work-program to address areas in which consensus does not yet exist for negotiations; and by a series of measures to reform the WTO, with a special focus on transparency and citizen access.

We can decide on the precise structure for negotiations once consensus on the agenda is achieved. It is clear, however, that the agenda and final result must unquestionably be broad enough to create a political consensus by addressing the market access priorities of all Members. At the same time, we should ensure that it is manageable enough to complete within three years and avoid raising major compliance problems afterwards.

Specifically, our ideas would include the following:

1. Market Access

Market access negotiations, as the core of the negotiations, should cover the built-in agenda of agriculture and services, and also address non-agricultural goods.

In *agriculture*, in liberalizing trade we have the potential to create broader opportunities for American farm and ranch families, fight hunger and promote nutrition worldwide through ensuring the broadest possible supplies of food at market prices, and help to protect the land and water by guaranteeing the right to use modern science and reduce trade-distorting measures which increase pressure on land, water and habitat. To secure this opportunity, we would set the following objectives:

- Completely eliminate, and prohibit for the future, all remaining export subsidies as defined in the Agreement on Agriculture.
- Substantially reduce trade-distorting supports and strengthen rules that ensure all production-related support is subject to discipline, while preserving criteria-based "green box" policies that support agriculture while minimizing distortion to trade;
- Lower tariff rates and bind them, including but not limited to zero/zero initiatives;
- Improve administration of tariff-rate-quotas;
- Strengthen disciplines on the operation of state trading enterprises;
- Improve market access through a variety of means to the benefit of least-developed Members by all other WTO Members; and
- Address disciplines to ensure trade in agricultural biotechnology products is based on transparent, predictable and timely processes.

In *services*, American industries are the most competitive in the world, as demonstrated by our $258 billion in services exports last year. The Uruguay Round has created an important set of rules, but in many cases, actual sector-by-sector market-opening commitments simply preserved the status quo. Effective market access and removal of restrictions will allow U.S. providers to export more efficiently, and help address many broader issues worldwide. Examples include improving the efficiency of infrastructure sectors including communications, power, transport and distribution; improving environmental protection services; easing commerce in goods, thus creating new opportunities for manufacturers and agricultural producers; and helping to foster financial stability through competition and transparency in financial sectors. To realize these opportunities, objectives would include:

- Liberalize restrictions in a broad range of services sectors;
- Ensure that GATS rules anticipate the development of new technologies;
- Prevent discrimination against particular modes of delivering services, such as electronic commerce or rights of establishment; and
- Develop disciplines to ensure transparency and good governance in regulations of services.

In *industrial goods,* further market-opening will help Americans promote high-wage, high-skill jobs and create economies of scale that allow U.S. firms to invest more in research and development and become more competitive. Here, broad market access negotiations in the next Round would build upon the Accelerated Tariff Liberalization initiative, which calls for the early liberalization of eight specific sectors and which we hope to complete by the time of the Ministerial, through objectives including:

- Reduce existing tariff disparities;
- Provide recognition to Members for bound tariff reductions made as part of recent autonomous liberalization measures, and for WTO measures.
- Use of applied rates as the basis for negotiation, and incorporation of procedures to address non-tariff and other measures affecting market access; and
- Improve market access for least developed WTO Members by all other Members, through a variety of means.

2. Additional Issues

Most delegations agree that negotiations should be completed within three years. Given this reality, and in order to find an appropriate balance of interests and a convergence of views, certain issues might be appropriate for a forward work-program that would help Members, including ourselves, more fully understand the implications of newer topics and build consensus for the future. In addition, several broader issues will inform our work on the core market access issues. Issues to address would include:

a. Electronic Commerce

For example, one of the most exciting commercial developments of recent years has been the adaptation of new information and communications technologies, notably the Internet, to trade. This has very important implications for reducing the cost of goods to consumers, improving the efficiency of companies, and for speeding growth in developing regions, as Internet access greatly reduces the obstacles entrepreneurs, artisans and small businesses face in finding customers and managing paperwork.

It is critical that the WTO act now to ensure that artificial barriers do not delay or block the benefits of this new method of conducting trade. We have therefore promoted a broad electronic commerce agenda at the WTO and elsewhere, including a work-program to ensure technological neutrality in the development of WTO rules, and capacity-building efforts to ensure that developing countries have access to the Internet. We are encouraged that most WTO members agree that all e-commerce activities are covered by the traditional WTO disciplines of transparency, non-discrimination and no unnecessary obstacles to trade. As I will note later, our top immediate priority is to ensure that cyber-space remains duty-free—that is, that countries do not apply tariffs to electronic transmissions.

b. Sustainable Development and Committee on Trade and Environment

In all these areas, we intend to take special care to ensure that trade liberalization promotes and supports sustainable development. In particular, we will pursue trade liberalization in a manner that is fully consistent with and supportive of this Administration's strong commitment to protection of the environment. This means a number of things.

First, it means that we must consider the environmental implications of the negotiations from start to finish. In this connection, President Clinton has committed to an environmental review of the likely consequences of the Round and we have called on other countries to do likewise. In the same vein, we have proposed using the WTO's Trade and Environment Committee to discuss the environmental implications of negotiations as they proceed.

Second, it underscores the importance of institutional reforms to ensure that the public can see the WTO and its processes, notably dispute settlement, in action and contribute to its work. Stakeholders have an important role to play in helping to assess the environmental implications of the new round.

Third, it means pursuing trade liberalization in a way that is supportive of high environmental standards. This means, among other things, that the WTO must continue to recognize the right of Members to take science based measures to achieve those levels of health, safety and environmental protection that they deem appropriate—even when such levels of protection are higher than those provided by international standards.

Fourth, it means that we have a responsibility for identifying and pursuing "win-win" opportunities where opening markets and reducing or eliminating subsidies hold promise for yielding direct environmental benefits. Examples we have identified thus far include elimination of tariffs on environmental goods through the Accelerated Tariff Liberalization initiative; liberalization of trade in environmental services; elimination of fishery subsidies that contribute to overcapacity; and continued liberalization in the agriculture sector.

Fifth, it means that we will promote strengthened cooperation between the WTO and other international organizations dealing with environmental matters. In this connection, we are pleased that discussions are going on right now between the WTO and the United Nations Environment Program on increasing cooperation.

We have tabled a number of proposals to advance these objectives. Also, we are carefully examining the proposals put forward by other countries on trade and environment. In addition, as we look at other proposals from other countries that are not trade and environment proposals per se, we will be considering how they relate to the environment. In all of this work, we welcome the input of this Committee and all stakeholders.

c. Trade and Labor

Likewise, the relationship between trade and labor is an especially important priority. As President Clinton said to the ILO Conference in June:

"We must put a human face on the global economy, giving working people everywhere a stake in its success, equipping them all to reap its rewards, providing for their families the basic conditions of a just society."

Trade policy has a role to play in the realization of this vision, and development of the trading system must come together with efforts to ensure respect for core

labor standards, and our goal is to ensure that the WTO brings the broadest benefits for the largest possible number of working people in all nations.

In the Declaration issued at the WTO's First Ministerial Conference in Singapore, WTO members renewed their commitment to the observance of core labor standards. This was the first time such a group of Trade Ministers had formally addressed labor standards. While this was an important first step, we believe that more attention to the intersection of trade and core labor standards is warranted as governments and industries wrestle with the complex issues of globalization and adjustment, and that the WTO has a role to play in the process. We are continuing to consult with Congress and the labor community in the U.S., as well as with WTO members who share our interest, on contributions the WTO can make to the goal.

In January, we submitted a proposal for the establishment of a work-program in the WTO to address trade issues relating to labor standards, and areas in which Members of the WTO would benefit from further information and analysis on this relationship and developments in the ILO. In addition, we will seek enhance institutional links between the ILO and the WTO through mutual observer status, to help facilitate collaboration on issues of concern to both organizations. We will consult with the Subcommittee on these matters in the months ahead.

Work at the WTO on these issues is, of course, part of a broader effort centered on the International Labor Organization, which with the President's leadership recently concluded a landmark Convention on the Elimination of the Worst Forms of Child Labor. This builds on a June 1998 Declaration on Fundamental Principles and Rights covering core labor standards as well as a follow-up mechanism. In support of this work, the President announced in his 1999 State of the Union address a Core Labor Standards and Social Safety Net Initiative, including a budget request for $25 million for multilateral assistance to be provided through the ILO, to help countries provide basic labor protections and improve working conditions. We also, of course, make use of the labor policy tools in our trade statutes, notably the labor conditionality under the Generalized System of Preferences, to promote respect for core labor standards.

3. Institutional Reform

The past five years of experience with the WTO have also revealed areas in which the institution can be further strengthened. We thus seek to ensure that the WTO more fully reflects the basic values of transparency, accessibility and responsiveness to citizens; ensure that its work and that of international organizations in related fields are mutually supportive and promotes as much as possible the larger vision of a more prosperous, sustainable and just world economy; and strengthen public support for the WTO. Our proposals here include:

Institutional Reforms that can strengthen transparency, and build public support for the WTO by:

- Improving means for stakeholder contacts with delegations and the WTO; and
- Enhancing transparency in procedures to the maximum extent possible.

Capacity-building, to ensure that the WTO's less advanced members can implement commitments, use dispute settlement effectively and take maximum advantage of market access opportunities. This plan is based on our close consultation with our partners in Geneva to ensure that technical assistance and capacity-building programs meet their actual needs and practical experience. This is to our advantage, as it will help these countries grow and become better markets for U.S. goods and services. Specific areas here would include:

- Improve cooperation, coordination and effectiveness among international organizations in identifying and delivering technical assistance;
- Build upon and expand the "Integrated Framework" concept adopted to help least developed countries implement commitments;
- Ensure the most effective use of resources on technical assistance programs;
- Strengthen capacity-building in regulatory and other infrastructure needs; and
- Explore a development partner program for the least-developed nations.

Trade Facilitation, which will ensure that U.S. small and medium-sized businesses as well as less developed economies can take full advantage of the market-opening commitments created by the Round. Here, objectives would include:

- Clarifying and strengthening the transparency requirements of WTO Agreements; and
- Helping to improve customs procedures, so as to increase transparency and facilitate more rapid release of goods, ensuring that our exports reach foreign markets more rapidly.

III. Toward the Ministerial

In the months ahead, we will be working with our trading partners to develop consensus on the negotiating agenda (including issues of timing, and benchmarks to ensure that the negotiations begin and end promptly), preparing logistically for a successful meeting in Seattle, and continue to consult with the Subcommittee and Congress as a whole on specific negotiating objectives in each area. At the same time, we also hope to reach consensus on several initiatives which would both help build the foundation of a successful Round, and take advantage of existing opportunities to open markets and reform the WTO. They would include:

1. Accessions

First, the accession of new WTO Members, on commercially meaningful grounds, is a major endeavor and critical for the creation of a fair, open and prosperous world economy.

Since 1995, seven new Members have joined: Bulgaria, Ecuador, Kyrgyzstan, Latvia, Mongolia, Panama and Slovenia, with Estonia soon to follow. With 31 more accession applicants, we look forward to further accessions on a similar basis in the months ahead. Georgia just completed its working party process and a number of others may soon follow, in advance of the Seattle meeting. Already this year, we have completed bilateral negotiations with Taiwan and made significant progress on the accessions of Albania, Armenia, China, Croatia, Jordan, Lithuania, Moldova and Oman. We have also held important and fruitful meetings with Russia, Saudi Arabia and Ukraine.

Our hope is that a number of these applicants will have completed their accessions by November. Clearly, however, not all of the applicants will complete their accession processes by the Ministerial and the opening of the new Round. In these cases, as was the case in the Uruguay Round, we would work with Congress and our trading partners to develop an acceptable formula under which these economies could be involved in the new negotiations while moving ahead with accession.

2. Dispute Settlement Review

Second, to promote American rights and interests, and to ensure the credibility of the WTO as an institution, a dispute settlement system that helps to ensure compliance with WTO agreements, provides clarity in areas of dispute, and is open to public observers is of great importance.

Our experience thus far with dispute settlement has been generally positive: we have used the system more than any other WTO member, with many successful results. The European Union's failure to implement panel results in two cases, however, has been very troubling, and we hope to ensure that in the future, losing parties comply or face penalties in a more timely fashion. Likewise, we believe the system can be more responsive to citizen concerns in a number of ways.

Thus, in the ongoing Dispute Settlement Review at the WTO, we are seeking greater transparency and ensuring timely implementation of panel findings. We are particularly interested in providing for earlier circulation of information on panel reports, making parties' submissions to panels public, allowing for submission of amicus briefs and opening the hearings to observers from the public. Our hope is to conclude this work by the Ministerial.

3. Electronic Commerce

As I noted earlier, we have begun a long-term work program in the WTO to ensure the unimpeded development of electronic commerce. In the immediate future, our priority is to avoid the imposition of tariffs on electronic commerce. No WTO member now considers electronic transmissions as imports subject to customs duties—a policy affirmed when we led in securing in last May's "standstill" on e-commerce tariffs. We are working to secure consensus on extending this policy by the Ministerial, which would help us prevent the imposition of an enormous new burden on this new method of trade.

4. Accelerated Tariff Liberalization and Information Technology Agreement II

Fourth, we hope to achieve agreements which expand market access opportunities in areas of interest to U.S. producers and to our trading partners by the time of the Ministerial. The two areas of special concentration include:

- *Accelerated Tariff Liberalization*—Eliminating or harmonizing tariffs in chemicals; energy equipment; environmental goods; fish and fishery products; gems and jewelry; medical equipment and scientific instruments; toys; and forest products; and

• *ITA II*—An "Information Technology Agreement II" adding new products (e.g. radar equipment, computer accessories, consumer electronics and printed circuit boards) to the sectors already covered by the first ITA.

5. Collaboration with Other International Organizations

Fifth, we are working toward making the WTO more able to collaborate with international institutions to support economic stability and stability through mutual observer status, joint research programs when appropriate, and other specific initiatives. Such organizations would include the World Bank, the International Monetary Fund, the International Labor Organization, the UN Environmental Program, the UN Development Program, the OECD, UNCTAD, and others.

6. Transparency

Sixth, specific measures to improve transparency, both as an institutional matter within the WTO, and in governance worldwide. The two priorities for the months ahead include:

• *WTO*—The WTO should ensure maximum understanding and access to meetings and procedures, consistent with the government-to-government character of the institution. As I noted earlier, dispute settlement is a special focus for this work. Essential goals include such additional measures as more rapid publication of panel reports, and more rapid de-restriction of documents.

• *Transparency in Government Procurement*—The WTO can also help to promote transparency and good governance worldwide. In this regard, an agreement on transparency in procurement would create more predictable and competitive bidding, which would reduce opportunities for bribery and corruption, and help ensure more effective allocation of resources.

7. Recognizing Stakeholder Interests

Seventh and finally, it is clear that the interest in the WTO and its work of civil society organizations (including businesses, labor organizations, agricultural producers, women's organizations, environmental groups, academic associations and others) is growing. Likewise, delegations and WTO staff will benefit from hearing a broad range of opinions and views on the development of trade policy. We are thus working toward consensus on methods for such stakeholder organizations to observe meetings as appropriate, and share views as delegations develop policy.

CONCLUSION

In summary, Mr. Chairman, the United States in the months ahead has a remarkable opportunity.

Our predecessors in ten Administrations and twenty-five Congresses have left us a legacy of bipartisan commitment and achievement in creating a fair and open world trading system. As a result of their work, American workers are more productive, American companies more competitive and American families more prosperous than ever before.

In the years ahead, we can do the same for the next generation, if we work together to ensure that the WTO is adapted to address new areas of commere, persistent trade barriers, and the concerns of our citizens. As host and Chair of the Seattle Ministerial Conference, we have a keen responsibility to help create and bring to completion the agenda that will realize this vision. We look forward to working in partnership with the Members of this Committee to do so.

Thank you very much.

—

Chairman CRANE. Thank you, Ms. Esserman. How does the administration foresee the issue of labor being addressed in the upcoming WTO ministerial?

Ms. ESSERMAN. Mr. Chairman, we are working on this issue in a number of ways, and we have been consulting broadly on the issue with the labor community, with your Subcommittee, and other Members of Congress. Let me outline how we see it to date, but I will tell you that we are still in the process of formulating our ideas here.

First, as I said, we think it is very important that the WTO ensure the maximum benefits for the largest number of people, working people in the world. And there are a number of things that we are thinking about to support that goal. First, we think it is important that the WTO have a better labor perspective and to that end we support International Labor Organization observership.

Also, the United States on a routine basis raises, in all the reviews of individual countries—the reviews of their trade regimes—we raise to the attention of the WTO these countries' compliance with core labor standards.

Third, we have been working and trying to expand the base of countries that share our perspective on the importance of respect for core labor standards.

And fourth, we have indicated to the WTO that we intend to pursue a work program on the relationship between trade and labor as called for in the Uruguay Round Agreements Act.

Chairman CRANE. There is strong support in the U.S. agriculture community for treating the negotiations as a single undertaking that encompasses all sectors and this group suggests that a comprehensive set of concessions has to be on the table in order to achieve the reforms we are seeking in agriculture from our trading partners. Many U.S. industrial and service sectors on the other hand want to negotiate, in effect, "early harvests" on some issues. How does USTR propose to reconcile these two divergent approaches to the overall structure of the negotiations and is there a way to assure both groups that their interests will not be compromised?

Ms. ESSERMAN. Mr. Chairman, I do believe there is a way to ensure both groups that their interests will not be compromised. Here is how we are approaching this issue.

First, we have said repeatedly, Ambassador Barshefsky has said repeatedly, it is most important that as we shape the structure of these negotiations, we first decide appropriate subjects for negotiation. Once we decide the subjects for negotiation, then we will determine how all of these subject areas will be negotiated.

In other words—let me just say, basically we envision that the core of the negotiations will be market access. And here what we would envision is that at the end, we would have a broad basis of areas for concessions so that there would be a sufficiently attractive package for all of these groups. The way in which we believe we can fit the interests of both groups is that we are pursuing early results for the eight sectors involved in the accelerated tariff liberalization initiative and here we believe that the way to bridge the gap is that the ultimate final implementation of the results with respect to these eight sectors would be contingent on the completion of an overall broad package at end of the round.

Chairman CRANE. It has come to my attention that U.S. businesses, particularly accounting firms, are being handicapped by national laws and procedures which restrict their ability to get the right people to the right place at the right time. I was pleased to see mention a movement of natural persons as an area ripe for negotiation in your recently tabled services paper. Can you elaborate on our plans to proceed on this important issue in the upcoming round of negotiations?

Ms. ESSERMAN. At this point, let me just say that that is a broad area for pursuit in the services negotiation. At this point I don't have further details about it, but I would be happy to follow up with you on this issue.

Chairman CRANE. Thank you. And finally, if we are serious about reducing trade barriers we will have to acknowledge that it is a reciprocal proposition and we cannot start by taking whole industries off the table. If we do, other countries will do likewise. And our opportunities to open foreign markets will be gone. Does the administration agree that our peak tariffs on agricultural products are subject to negotiation in the Seattle Round? And why isn't a formula approach to tariff cuts the fairest way to proceed?

Ms. ESSERMAN. Let me just say that we have not just determined the best way to proceed. Obviously, we want to achieve the maximum benefits for our exporting community, and so we haven't determined, given the fact that overall our tariffs are lower, substantially lower than other countries' tariffs, whether or not a formula approach would be the best way to proceed.

Chairman CRANE. Thank you very much. Mr. Levin.

Mr. LEVIN. Thank you. Welcome. Your testimony did touch this more comprehensively than you had a chance to recite here, because of time, on issues of compliance and transparency. And I just want to urge, as you know, that there be some considerable emphasis on these issues. They are part of the ongoing or not yet ongoing discussions with China and WTO. And there are immense problems of transparency of compliance that need to be resolved in that economy and operating in that economy. And I do think that our WTO accession agreements have to address these issues.

Also, though, there has to be a regimen within the WTO on compliance and transparency that applies to everybody, including new members and emerging economies where transparency often is pretty opaque. So I welcome your emphasis on those areas.

Mr. Crane raised the issue of the role of labor in Seattle. So I just want to say a few words about that and you can comment if you want. You said the issue of labor will be a high priority, and I hope everyone hears that. It may be a bit confusing when you say the core of the negotiations is market access. It is not clear to me how you put those two together plus your other high priorities, and maybe there needs to be some attention, further attention to the language that is used. But let me say just a word so we all understand what is involved, you cited the President in his statement at the ILO about people everywhere having a stake in the progress in providing everywhere that families have the basic benefits of a just society. The President has repeated elsewhere in his talk about a leveling up, not a leveling down. I think everybody should understand what is at stake in terms of U.S. policy is indeed a concern about the workers everywhere but a primary concern about people who work in this country, and the labor market issue relates globally, but also primarily to the impact of trade agreements on Americans.

So I hope you will continue your consultations. I hope you will be direct. It is the only way we are going to have enough discussion so we prepare for Seattle. It gets a little fuzzy when you talk about a work program. I don't think anybody or most people know what

that means. I believe there needs to be a hard fight to set up a working group that relates to the labor market issues that are vital increasingly within the trade equation. And we just all have to discuss it and prepare for that and be prepared to make a hard fight at Seattle. As you say, it is a high priority and when anybody says it is a high priority, the test of it is how hard they fight for it.

I don't know if you want to respond. There are lots of other parts of your testimony and we are eager to consult and, more than consult, discuss these issues with you as well as China-WTO if the negotiations recommence.

I want to end by just emphasizing there isn't much time for a major round. We have only a few months now to fully get ready and August isn't, except for some of you and maybe some of us, the busiest work period. So I wish you good luck and I just hope that you will be clear and direct. And if there is controversy, let's try to have it energize us instead of freezing us in place. End of question.

Chairman CRANE. Mr. Houghton.

Do you want to respond?

Ms. ESSERMAN. I would just say, Congressman Levin, I very much appreciate your remarks and we certainly share your concern and interest in this issue and we look forward to working with you and other Members of the Subcommittee to make sure the goals and the initiatives in this area are concrete.

Mr. LEVIN. Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you very much. Well, Ms. Esserman, you do a great job. It is wonderful to have you here. Thanks very much for your testimony. I really have two basic questions. One is in terms of 301. Is there any thought of the administration reopening any of the antidumping and implementing provisions that were negotiated in the Uruguay Round in Seattle? Then, maybe could you take a crack at that. Then I got another question.

Ms. ESSERMAN. I can answer that very clearly. The United States is firm that it is not appropriate to have antidumping as a subject for negotiation in the next round.

Mr. HOUGHTON. OK. Well, that is good. Now, the Secretary, looking at your testimony, it seems to me that it is working up toward the Seattle Ministerial Conference. There is really a set of two categories: one is the housekeeping, the other is the content. Housekeeping meaning accessions, dispute, settlement review, collaboration, transparency, recognizing the stakeholder interest, things like that.

Now, they may be most important but it would seem to me in terms of the overall thrust of trying to generate business for the United States, that the accelerated tariff liberalization and electronic commerce are going to be really, really critical. You talk about market access. You know, it seems to me that we talk market access and many of the people that we sell to or import from talk market access, but there is no sort of monitoring. You obviously can see this in terms of our current account deficit. So when we are talking about things that produce more business, produce more jobs, produce more opportunities, is there any way to monitor that market access so that we really know where we are going?

Ms. ESSERMAN. Actually now that the WTO is a full institution there is a much greater ability to monitor countries' compliance with commitments. Perhaps the most visible way in which we enforce the commitments is by filing dispute settlement cases. But there are also each—there are a number of formal Committees in the WTO which serve as a forum for raising concerns, about whether a member has complied with their commitment, to try to foster compliance, to resolve an issue before a dispute settlement needs to happen. And there is also a way to monitor compliance with commitments, for example, whether or not countries are reducing tariffs according to their commitments, whether or not they are providing the true commitments that they signed onto in the services agreement.

So there is a vehicle for doing that now that the WTO is a full institution.

Mr. HOUGHTON. Yeah, but there are nontariff barriers, such as in the distribution systems, so that if you take a look at the raw numbers in terms of products imported let's say from *x* country and exported and it is going the wrong way for us and it is going to be a long time until another ministerial and you have all these Committees that you have got to go to, isn't there a sort of simple index that we can use to say, hey, you know, this isn't really quite what we had in mind?

Ms. ESSERMAN. You mean a sort of formula for addressing some of the things?

Mr. HOUGHTON. Yeah.

Ms. ESSERMAN. We are working on some of these issues. These are the very things that we are focusing on in this next round. A big area for the new round, as I mentioned, is services. And here particularly in the distribution area there are a number of barriers to our ability to effectively sell and have effective distribution in foreign markets, and that is going to be a high priority for us and we will think very carefully about your question.

Mr. HOUGHTON. Thanks very much. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Will there be a direct opportunity for labor and business to present their recommendations to the ministers at the gathering?

Ms. ESSERMAN. For labor? I am sorry.

Mr. NEAL. Will there be a direct opportunity for labor and business groups and other vital groups as well to present their recommendations and perhaps policy suggestions to the ministers?

Ms. ESSERMAN. Yes. First of all, there is an extensive and elaborate process here in the United States in which we consult and receive advice both written and with extensive meetings here on a ongoing basis. But we do think it is very important for members of the civil society to have direct access to the ministers, not only just to provide submissions but we had an experiment in the WTO this year in doing just that. We had a high-level meeting on trade and the environment in which members of the civil society not only presented their submissions but also had a chance to present their views publicly to the 135 member governments. We are also contemplating doing the very same thing on a range of issues the day before the ministerial begins in Seattle.

Mr. NEAL. I see. Now, is there considerable amount of prepping that has to occur for the other member nations?

Ms. ESSERMAN. Is there a considerable amount of?

Mr. NEAL. Prepping. Do you have to prepare them for the kinds of questions that they might get from labor and environmental groups, for example?

Ms. ESSERMAN. No, I think that there is a fair, there is a fair amount of attention and interest to this issue, but I guess the answer is no and yes. Yes, in the sense that, as you may know, many governments around the world, countries around the world do not share our interest in labor. So there is a great deal of work that needs to be done. And we are going to talk to other governments about the importance of including the labor perspective more broadly into the WTO.

Mr. NEAL. So you are suggesting, then, that this is going to be a direct participation, this won't be filtered through?

Ms. ESSERMAN. We are seeking to include mechanisms for direct participation, for venues for direct participation by labor groups, by environmental groups, so that they have a chance to directly provide their views to the ministers in the WTO. This is something that we have been urging on the other countries in the WTO. They don't necessarily share our interest in doing this, but we very, very strongly advocated doing it in the environmental area. We think it was a successful meeting and we are going to continue to advocate doing that in other areas as well.

Mr. NEAL. So this would be for labor, environmental and business groups; they would all have that opportunity?

Ms. ESSERMAN. Yes, business groups, consumer groups, members of society and businesses.

Mr. NEAL. Thank you.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. And welcome, Ambassador Esserman. It is delightful to have you with us. We think you are doing a fine job and appreciate it very much. And I might add my invitation to others that Mr. McDermott and I have extended to everybody to come to Seattle in the fall and we are hopeful that this Subcommittee will be there in some form. We look forward to being involved as closely as we can be to make it successful.

I am concerned about the recent FSC, Foreign Sales Corporation ruling. And I am very concerned about its impact on American business in making us less competitive, which after all was the reason for starting the FSC provisions in the first place. I am wondering, I am interested in knowing what you think will be the effect of the loss of FSC on industries that are important to me, the high-tech industry, for example, agriculture, that is an important industry to us in Washington State. And I am wondering what you plan to do, whether you are going to appeal, but I wonder first if you would give us some sense of what you believe the impact would be.

Ms. ESSERMAN. Well, I do think it is premature to determine the impact of this. First, we did receive a report that was unfavorable to us. It is not finalized yet. So this is the first step in the process. We think the panel that made—that wrote that report was plain

wrong. So we are looking very carefully at all of our options and including appeal, which we are looking at quite seriously. Especially, given the importance of the issue. But it is really premature to assess the impact because there are many more steps still in the process. Certainly we share your concern about the decision and the importance of this.

Ms. DUNN. You mentioned earlier that you were working toward the accession of several countries to the WTO. I have not heard a discussion of that before because we are all so focused on China I believe right now and the Republic of China and the PRC and their accession. Could you give us some sense of what is happening with other nations and what you expect to see in terms of accession of other nations at the fall WTO?

Ms. ESSERMAN. Yes. China does receive a huge amount of attention here, but meanwhile we have been making a lot of progress. A number of eastern—central European countries have been making a lot of progress in their accessions and we may see about 8 to 10 accessions by the time of the ministerial, including Baltic countries, Albania, Georgia, Armenia, and others so we view this as a very important development because here this great number of countries are making the very significant reforms that are necessary to transform their economies into market economies.

Ms. DUNN. And that is so helpful because they will be living under the rules from then on. It will be very useful to us since we have been so forthright and open to other nations.

Let me ask you one other question. You had mentioned in response to Congressman Crane's question that you were going to continue negotiating on accelerated tariff reduction but any results might take effect sometime later, I thought is what you said. We are concerned on behalf of certain industries. I represent the forest products industry, for example, who have been working on this issue for years and really would like to see it move along. I am wondering if you could clarify that for me so that I could pass along to them the sense of the USTR.

Ms. ESSERMAN. Absolutely. The accelerated tariff liberalization initiative is a very important priority for us. The President moved forward on this in 1997 in Vancouver and we have been pursuing it since. And last year at the APEC leaders meeting it was determined this issue would go into the WTO to see conclusion in 1999 and we are continuing to work on that. It is very important to seek early results in these areas.

As you know, there have been concerns that Chairman Crane mentioned among the agricultural community and, working with the agricultural community and those interested in these sectors, we believe that we have come up with an approach that addresses the interests of these sectors as well as the agricultural community. And here there would be an implementation of results, provisionally, for example a lowering of tariffs early, but the final implementation would be contingent and a part of the overall package at the end of the round. And that is how we see fitting the two together.

Ms. DUNN. Good. Thank you very much. I might just say, Mr. Chairman, when we were in New Zealand last December we had the opportunity to sit down with Mike Moore, who will be the new

head of the WTO, and New Zealand was a very, very strong partner with us at APEC and supported our position completely on this. So I think that makes it more hopeful.

Thank you very much.

Ms. ESSERMAN. Might I just add right there, if I could, just to say, number one, New Zealand is very active in this initiative that is so important to us, but also just to say how delighted we are that we have Mike Moore as the Director General of the WTO. I know that you had expressed your views on the importance of having him here. He, I think, will be terrific for the WTO, for the United States, because he appreciates the importance of trade liberalization to our future prosperity. He has a common touch. I think he will be a very effective advocate of trade to our people and the world, and I think he understands very much the importance of the American market.

Chairman CRANE. To which I will add amen.

Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Ambassador Esserman, thank you for being with us. In your testimony you make mention that one of your goals is to reduce existing tariff disparities in industrial goods. I don't think there is any sector, at least in the American economy, that was required to make greater concessions under the Uruguay round than the textile and apparel industry.

And I know the President, I have some of his quotes here that he has made with regard to that in November of 1993. The President said, and I quote, "I do recognize and appreciate that the U.S. textile and apparel sector has been asked to make substantial concessions under the Uruguay round." he went on to say that the U.S. will, quote, "insist that our willingness to phase out textile quotas be linked directly to the achievement of effective market access in individual countries by removal of nontariff barriers and lowering tariffs."

I understand that countries—Pakistan, for example, are asking that we accelerate the removal of some of our barriers, yet in some areas, Brazil, Argentina, Pakistan, India, we have the most difficult time getting some of our products into those countries. Given the concessions that this sector of our economy has made, don't you—let me ask you, have you taken a posture, any position with regard to textile and apparel industry? Are you going to try to protect those industries from further concessions being made in this ministerial and what are you planning to do to try to open up those other markets that are out there for our U.S. textile and apparel products?

Ms. ESSERMAN. You are quite right, Congressman, that there have been a number of these countries calling for us to accelerate our liberalization of our expiration of the quotas in textiles and we have made quite clear that that is simply not in the cards. We will not be doing that. And at the same time we have raised concerns about the lack of openness of their market, for example, India in particular. And so, we have very much been clear on this issue in Geneva.

Mr. BECERRA. So I take that as a clear sign you will do what you can to protect the industry as it is and also open up those markets

that agree they would participate in the free trade of those products.

Ms. ESSERMAN. We are going to be pursuing opening up these markets and we have no interest in accelerating the expiration of these quotas.

Mr. BECERRA. Thank you for that. I don't know if you heard all of the testimony by Members of Congress, but Congressman Weller and I focused on the issue of cultural content rules. Can you tell me if this is at all an issue that you are planning to address at the ministerial in Seattle, the whole issue of cultural content? I know it is a big issue with Canada, obviously France, other countries as well. Give me the Trade Representative's position at this stage on that issue.

Ms. ESSERMAN. Let me just say generally that the issue of culture is a big and important issue and we need to work together to ensure that we are most effectively addressing the issue. Of course all countries have a right to preserve their cultural heritage, but what we are concerned about is when those measures are just a disguised form of protectionism.

Mr. BECERRA. Are you planning to raise that though in Seattle?

Ms. ESSERMAN. We are going to be raising and addressing these issues and we want to work with you to make sure that we are addressing your specific issue. Canada last week in Geneva raised the issue of culture. It wasn't quite in the form of a proposal, we are not sure what it is; but let me just say that we are going to be applying the standard that I just indicated. But we would like to work with you to make sure that we are fully addressing your concerns.

Mr. BECERRA. One last question, I know we need to run for a vote, the TRIPs agreement, the trade-related aspects of intellectual property rights agreement, I know that some countries have asked to reopen that and I know that we have in the year 2002 an opportunity to do just that. Are you planning to reopen any type of negotiation on TRIPs before 2002?

Ms. ESSERMAN. At this point we don't envision reopening the TRIPs agreement. Our most important objective here is to ensure that other countries comply with their obligations here. That is very important to us. We have been working closely with industry, with our trading partners around the world, not just to wait till when their commitments come due but to work in advance of that to ensure that we have the maximum of opportunity for countries to be meeting their commitments in this important area.

Mr. BECERRA. Please be sure to let us know if you are at all thinking of opening that up before 2002 because that would concern a number of us who don't see enough progress. And a final question, if I could ask, with regard to some of the World Intellectual Property Organization, WIPO agreements that were reached to try to provide protections for intellectual property, I know a number of countries have not ratified some of those various agreements. Are you going to try to push to see if we can encourage countries to see if we can ratify those quickly?

Ms. ESSERMAN. Yes, we are very much doing that.

Mr. BECERRA. Thank you very much.

Chairman CRANE. Ms. Esserman, I apologize because we don't control the procedure over there on the floor, but this is the second bells and so the Subcommittee will stand in recess subject to call of the Chair. I urge colleagues to run over there, vote, and run right back. We will be right back.

[Recess.]

Chairman CRANE. We apologize, Ms. Esserman, for the interruption. I will now yield to our distinguished colleague from Minnesota, Mr. Ramstad.

Mr. RAMSTAD. Thank you very much, Mr. Chairman, and thank you, Madam Ambassador, for your testimony and for the good job you are doing.

Earlier Mr. Levin stressed the need to have fighters for America's interest at the WTO Round in Seattle. I can assure you Minnesota will be well represented with fighters, our delegation will be headed by our Governor, Governor Jesse Ventura, and he is a fighter in every sense of the word. And like our Governor, all Minnesotans are concerned that our farmers get a fair break, which means significant liberalization for the agricultural sector.

I am sure you are familiar with the recent study done by the Dutch Agriculture Ministry in preparation for the Seattle Ministerial meeting?

Ms. ESSERMAN. I am not familiar with the specifics of that.

Mr. RAMSTAD. This study concluded that dairy compacts in our country undermine our position for reduced trade barriers for dairy products and that if the United States erects barriers like the Northeast Interstate Dairy Compact within our country, then we have no standing to negotiate reduction of agriculture trade barriers elsewhere. The Northeast Interstate Compact expires on September 30 of this year and unfortunately there are some in Congress who want it to continue to the detriment of efficient dairy farmers in our country by passing a bill, H.R. 1402, This would be a death sentence for our dairy farmers.

I would like to first of all, Mr. Chairman, submit this letter for the record from Governors Ventura and Tommy Thompson of Wisconsin opposing, strongly opposing, H.R. 1402.

Chairman CRANE. Without objection so ordered.

[The information follows:]

STATE OF MINNESOTA
GOVERNOR JESSE VENTURA

STATE OF WISCONSIN
GOVERNOR TOMMY G. THOMPSON

July 14, 1999

Chairman Phil Crane
Subcommittee on Trade
Committee of Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Crane:

We are writing on behalf of dairy farmers in the Upper Midwest to ask that the Ways and Means Subcommittee on Trade consider the bill H.R. 1402 before the August recess. We are concerned that this bill violates international trade agreements and that its passage will be detrimental to the United States' negotiations at the World Trade Organization (WTO) negotiations in Seattle.

The Dutch Ministry of Agriculture recently released a report (attached) that analyzed U.S. federal dairy policy, concluding that our federal dairy policy violates the WTO rules. The European Union plans to bring this up as a negotiating tool during the trade talks.

We believe that the passage of H.R. 1402, which virtually legislates the present dairy milk marketing order system, will put the United States at a disadvantage at the WTO talks.

Mr. Chairman, we believe, as you do, in free and fair trade. We want to ensure that dairy farmers are able to compete in open markets worldwide. We hope that your Subcommittee would consider holding hearings on H.R. 1402.

Sincerely,

Jesse Ventura
Governor of Minnesota

Tommy Thompson
Governor of Wisconsin

Cc: Speaker Hastert
Minnesota and Wisconsin Congressional Delegation

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Director, International Issues
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JANET A. NUZUM
Vice President & General Counsel
International Dairy Foods Association

July 29, 1999

Dear Congressman:

Consumers for World Trade, a national, nonprofit, nonpartisan organization representing consumers' interests in open markets and expanded trade, wishes to express its strong concerns over dairy legislation which may be considered soon on the House floor.

H.R. 1402, sponsored by Representative Roy Blunt (R-MO) and reported recently by the Committee on Agriculture, would reverse market-oriented reforms to domestic dairy policy, increase consumer costs for milk and dairy products, and undermine our internationl trade interests in expanding global markets. We urge you to oppose this legislation if it comes to the House floor.

U.S. dairy policy is admittedly complex. Even our foreign competitors, however, have identified the irony embodied in this bill. A recent report by the Dutch dairy industry suggests that U.S. dairy policy is domestically focused and moving towards increased support and market intervention. These moves will make it more difficult, and less important the Dutch suggest, for additional market-oriented reforms in the upcoming trade negotiations in the World Trade Organization (WTO). The Dutch point out that the pending dairy bills moving through Congress will likely lead to further price and supply distortions on world dairy markets, which may place the United States at risk of violating its WTO obligations. U.S. commitment to more open agricultural trade is being called into question.

Unfortunately, many dairy markets around the world are characterized by highly protectionist regimes of support and trade barriers. That is why the upcoming WTO negotiations are so critical. Opening up dairy and other agricultural markets globally and eliminating the distortions that flow from protectionist agricultural policies are important goals of the

upcoming WTO negotiations. These reforms will benefit consumers and U.S. dairy producers alike. However, legislation to increase federally-mandated milk prices, cross-subsidize manufactured dairy products, and extend domestic price supports will seriously undermine U.S. credibility in these negotiations and diminish our ability to achieve our WTO objectives. How, for example, can we hope to convince our trading partners in the European Union to reform significantly their Common Agricultural Policy and maintain open markets for agricultural products if we ourselves do not lead the way in agricultural trade liberalization.

The United States needs to act responsibly and demonstrate a genuine commitment to more open markets and expanded trade. Increasing protection for dairy farmers in certain regions of the United States is against the interests of a more profitable national industry, and against the interests of all consumers of dairy products. Please vote against H.R. 1402.

Doreen L. Brown
President
Consumers for World Trade

—

Mr. RAMSTAD. Madam Ambassador, let me just ask you this: You don't believe, do you, that it is in our best interest to continue with this Northeast Compact?

The USDA has already testified in opposition to the legislation in front of the Agriculture Committee. I think it is a fair question. It just seems to me if we let it expire we will be on solid footing going into the agriculture negotiations.

Ms. ESSERMAN. Well, I would of course never agree with our agriculture—never disagree with our Agriculture Department.

Mr. RAMSTAD. You never disagree.

Ms. ESSERMAN. Would not disagree with our Agriculture Department. I understand that Secretary Glickman has, if I understand it correctly, has opposed the market ordering aspect of this particular package but not the support aspect of it. And from that standpoint, we have looked at the support aspect of it. By itself it does not violate international trade obligations.

Mr. RAMSTAD. So you don't agree with the Dutch Ministry of Agriculture, the Dutch study that really concluded our Federal dairy policy violates the WTO rules? That is their bottom line.

Ms. ESSERMAN. As I said, I have not even seen this study and I would be loathe to disagree—loathe to agree with the conclusion of a study that I have never seen.

Mr. RAMSTAD. I will be happy to share that with you as well as with Members of the Subcommittee.

Thank you for your very candid, straightforward answer that you share Senator Glickman's opposition to continuing this compact.

For my remaining minutes, could you just elaborate about how provisional implementation works and is it realistic?

Ms. ESSERMAN. I do think it is realistic. I think this is a good way to ensure that we are securing the goals of our agriculture community and also ensuring that we serve the interests of our industrial base. First, as I said at the outset, it is critically important to succeed that we have a broad package at the end of the day, at

the conclusion of the round to ensure that all of our interests are served and that our agriculture community's interests are served.

The accelerated tariff liberalization initiative includes initiatives that fully were pursued in the Uruguay round and in fact in the Uruguay Round Agreements Act there is direction to us to continue to pursue early liberalization in these areas. So we are going to continue to pursue results, early results. We believe the way to meld the interest is they would be achieved on a provisional basis, on a provisional early basis, and then made permanent at the end of the round, so that these industries continue to have a stake in the negotiations until the final day, which is very important to our agriculture community.

Mr. RAMSTAD. Thank you, Madam Ambassador.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and, Ambassador Esserman, thank you for your testimony today. I told you in advance what my question was going to be but let me lead up to it by saying as a free trader and someone who strongly supports an effective WTO, I share the ambitious agenda you have for the ministerial and for the new round and indeed hope to work with you to make that possible. It includes improving the WTO as you stated in your testimony.

You have also said that the first step is to ensure compliance with existing agreements, and I think that is fine. I would go one step before that and say we need to ensure compliance with existing dispute resolutions, the settlements that we have already entered into that are not yet being implemented where we still don't have relief for U.S. industry. Again as a free trader and someone who is very interested in accession of China to the WTO and in the viability of the WTO system, I am very concerned about the fact that we are not ensuring just that those agreements that we have made since the last round are being implemented, but that indeed the dispute resolutions are being taken seriously. With the beef and banana cases, taken together, with the Europeans we have about $300 million in retaliation now against the European Union, and many on the Hill frankly think we have achieved a victory, and it is off a lot of people's radar screens. That concerns me because in fact we have absolutely no relief in sight for the U.S. industries affected. In the banana case, as you know, there is a possibility of that but the Europeans have continued to put forward regimes that are even more illegal along the lines of the WTO illegal regime that was already determined as such by two GATT panels and WTO. In the beef case, heads of state are going around saying we will never comply.

So I guess my focus would be to be sure that this system works, the standard of success is going to be whether U.S. industry receives the relief that is due them under international trading rules, and as you and I have talked about in the past and I have talked to your predecessors about this, I feel strongly that in order for us to have the free trade caucus here on the Hill prevail on a number of issues, including WTO accession issues but also on fast track and other issues, we have to show the current system works.

I would ask you today if that is your agency's standard of success and, if so, what can we do to increase the likelihood that with that standard of success measurable relief will indeed be provided to U.S. companies in these and other cases.

Ms. ESSERMAN. Congressman, well, I share your views about the problems of compliance, compliance not only with agreements but compliance with dispute panel rulings. I also share your view that the ultimate test of success is getting results for our industry. And to that end, we are deeply disappointed by the European Union's behavior in both of these disputes. I might say that they are alone in how they have responded to dispute settlement panel rulings. Even Japan has complied with dispute settlement panel rulings. So while we do believe we need to amend the dispute settlement mechanism and we are working intensely on it now because the banana episode certainly showed that we needed to make some improvements, the big problem is Europe and not more than the dispute settlement system itself.

Let me just talk about bananas and beef and a little bit about the reform. I do believe that the combined effect of the retaliation in the two cases is starting to have effect. And by effect, I mean that the private sector interests, that upon which the retaliation is imposed, the 100 percent duties, are now beginning to feel the pinch and they recognize that there are consequences if their government does not comply with panel rulings, and we have gotten a number of indications that that is so. And that is the point of having retaliation, so that—you cannot have retaliation, as we all know, because that does not bring the benefits to the industry, but to put maximum pressure on the government ultimately to comply, and that is what our goal is here.

Mr. PORTMAN. Again I would restate in a slightly different way what I said earlier, which is if these cases cannot be resolved fairly with our allies, admittedly the Europeans have been the most flagrant violators, then it is hard for many of my colleagues on the Hill to understand how we can ever expect a country like China or other countries that we like to see accede to the WTO comply with similar rulings. I would hope that these cases they are precedent cases certainly for agriculture, and I would argue for the WTO dispute settlement system in general, continue to be a top focus of USTR.

I commend you for your success in the litigation but now it is a question of implementation. I encourage you to turn up the heat and be sure that these two cases are resolved and others that are outstanding. As you said earlier, the Europeans are one country that has most commonly been out of compliance with these cases. It is important to note and get on the record that the U.S. has indeed complied every time the United States has been found in violation of a WTO ruling.

Ms. ESSERMAN. Let me assure you that this remains a top priority for us because retaliation is not the answer. In addition, we are also working to reform the dispute settlement mechanism itself because we do not want a country as Europe did to seek to exploit ambiguities in the rulings. What we are now seeking is to have a clarity about the procedure that should be employed if a country is questioning whether or not another country has truly taken ef-

fective compliance measures consistent with the panel ruling. So here we are setting up very clear procedures and we are also seeking to take time, shorten the—take time out of the early phases of the dispute settlement process. So we are working at bottom to secure more effective compliance rules.

Mr. PORTMAN. I know I am over my time, I apologize, but the finality of the rulings is very important. I know we have talked about the endless loop before. I was going to talk about that with a later panel, but I know USTR has also focused on that. If we are going to glue up the WTO we have to have finality in these cases so countries cannot continue to endlessly elongate the litigation.

Ms. ESSERMAN. Right. Finality is what we are trying to achieve here.

Chairman CRANE. Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. Good afternoon, Ambassador. Appreciate the opportunity to talk with you. Earlier when I testified before this Subcommittee I raised the issue of the loss of domestic film industry jobs and economic impact of the issue of runaway production, a study done by the Directors Guild and Screen Actors Guild which was recently released, and you may not have seen that yet, but they estimate, according to the study, that we have lost about 125,000 domestic film industry jobs over the last decade. The problem is accelerating. We have lost 20,000 film production jobs in the United States last year and if it continues to escalate at the current trend we could see as many as 35,000, 36,000 jobs lost next year.

So representing the Chicago area and concerned about in other communities around this country where film production is an important part of our economy, I believe that the issue of runaway production particularly, as well as the cultural content issue, should be on the table at the upcoming Seattle Round. And I guess what are you familiar—to begin with, let me just ask, are you familiar with the cultural content issue?

Ms. ESSERMAN. I am familiar to some degree with this issue.

Mr. WELLER. Well, do you believe that the Canadian cultural content rules, are they designed to solely protect Canadian culture or do you believe that to some extent these rules are more designed to protect Canadian jobs or actually create additional jobs and attract them from the United States?

Ms. ESSERMAN. Well, Congressman, we certainly understand a country's right to take legitimate measures to promote their culture, but we do have concerns about measures such as some of these that are really economic protection in disguise. I don't know all of the particulars in this area. But as I mentioned to Congressman Becerra earlier, we would be pleased to work with you to make sure we have this fully on the agenda in a way that serves the interests of this sector.

I know there are a number of factors here that have contributed to the runaway jobs, including the incentives, also wage rates and exchange rates, which are a little bit more difficult to address, as I know you must appreciate. But we want to work with you to make sure we have a full appreciation and we are most fully achieving what we can for this sector.

Mr. WELLER. Ambassador, it appears when the television stations in any of the networks that serve Canada are required to have at least 60 percent of their programming be Canadian cultural content, that it makes it very difficult for American-produced television as well as films to be shown in Canada. At the same time they turn right around and through some very aggressive financial incentives are working to attract our jobs.

Let me ask you: Is it your view that the cultural content rules, that Canada is applying them fairly? Obviously I think we all want to protect the culture of the individual countries. And personally representing Chicago area, having Blues Brothers 2000 filmed in Canada had an impact on our culture because Blues Brothers are part of our culture in Chicago. But do you believe that the rules as the Canadian Government is currently administering them, are they applied fairly and evenly across the board?

Ms. ESSERMAN. Congressman, I am not familiar with all the particulars here, but we have a number of concerns about the protective effect of these rules, culture rules in Canada.

Mr. WELLER. Are you familiar with the point system that they use to qualify for tax incentives?

Ms. ESSERMAN. I am not familiar with the specific figures of it, but I would be delighted to become familiar to make sure we are fully looking at that issue.

Mr. WELLER. I welcome the opportunity to sit down with you relatively soon to discuss this issue. Clearly it is a major economic issue not only in Chicago but nationally. We have spent a lot of attention over the last 9 to 12 months talking about the loss of the steel industry jobs. We have lost 10,000 steel industry jobs in the past year, we have lost twice as many film industry jobs. It is clearly an issue that must be on the table.

I look forward to working with you and look forward to sitting down with you shortly. Thank you, Ambassador. Thank you, Mr. Chairman.

Chairman CRANE. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. Ambassador Esserman, welcome, and your comments as always are thoughtful and useful. I wanted to pursue a line of questioning that Mr. Houghton had opened up where I would welcome your elaboration. And I want to start by reading a couple of lines from an article that was published yesterday in Korea. "Seoul will join forces with Japan, India, Brazil and the Association of Southeast Asian Nations to revise the antidumping agreement of the World Trade Organization and thus eradicate the possibility of abuses by the world's main trading nations, a foreign affairs trade ministry industry official said yesterday. The antidumping agreement is one of the hottest issues under discussion in the process of launching the so-called new round negotiations."

Now, given your comment to Mr. Houghton that the administration would resist reopening the antidumping agreement, may I ask, given the effort that is being made here by some of those countries that certainly in the case of steel have clearly been identified as being involved in dumping on our domestic market, what is the administration's plan to prevent the Seattle Round from resulting in a weakening of our rules against unfair trade and given the com-

mitment of these countries to try to make this one of the focuses of the Seattle Round? How committed is the administration and what is the administration's strategy for heading off this result?

Ms. ESSERMAN. Congressman English, let me assure you that we are very committed to head this off. I am quite aware of the determination of Japan and Korea and some of the ASEAN countries. But what I would like to do is have—I think I do have an opportunity to meet with you tomorrow. I would like to use that occasion to go into our strategy, which is quite detailed, but I would share it with you privately rather than have our trading partners have a chance to hear that.

Mr. ENGLISH. I will certainly take that opportunity and I will take that as a very positive response on your part and I look forward to that meeting.

On a separate issue, obviously we are in the process of a negotiation with China that will eventually lead to the resolution of their accession into the WTO. But separately, we have had a negotiation with the government in place on Taiwan. And it seems that Taiwan is in a more advanced place for being considered as a candidate for WTO membership. On Taiwanese accession, do you feel it is possible that the WTO could consider Taiwan for membership without creating a sovereignty issue with China?

And let me express in my view, Taiwan should be considered separately from China. And if Taiwan is in a position for WTO membership, my hope is that they will be considered. Can you comment on Taiwanese accession in and the administration's view of this issue.

Ms. ESSERMAN. It is true that at this moment that the Taiwan accession is more advanced than the China accession. And we—there was a working party or meeting in Geneva last week I believe or last Friday on the Taiwanese accession. Let me simply say that we are going to continue to work with Taiwan on its accession and you know we look to the successful accession of both Taiwan and China.

Mr. ENGLISH. Outstanding.

Mr. Chairman, that concludes my questioning. Again, Ambassador, I thank you for the opportunity to pursue this line.

There are many of us in Congress who are very concerned that the Seattle Round may become a focus for an effort to water down some of the basic protections that we are able to provide under current WTO rules for domestic industries that are the target specifically of unfair trade practices. Mr. Cardin and I have legislation which we hope the administration will favorably consider over time to strengthen our existing laws in America to allow remedies to our domestic companies and workers in some of these situations.

We welcome your examination of that legislation which is WTO consistent, and I look forward to our dialog.

Ms. ESSERMAN. Thank you.

Chairman CRANE. Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman. And Ambassador, always great to see you. You know, we know that free trade depends upon fair trade. And I think we reflect, we study, we realize we have got to have or need a WTO to make sure we have fairness, and we assure compliance.

And I look forward to the Seattle round on November 30. I think we have tremendous opportunities and I am a person who wants to see those opportunities made available for the next generation in the 21st century and there is no question our maintaining and sustaining a strong economic growth depends on our being in the trade arena. I got a couple questions and I would like to ask you. Because I think the WTO's credibility is at stake. I have—I don't apologize but I have become obnoxious about the beef deal. I know I have. I pound the table, I have shouted, I have jumped up and down and got out of character because I think we have not fulfilled our commitment to that particular industry. And I think we slighted that situation.

And let me say I am not a negotiator, I guess I could say maybe I have been a horse trader to a certain extent, but 10 years ago we realized that the European Union on banning the beef hormones on our beef coming into that country, they held us at bay for 10 years. Then we go through all the appeals. And then basically finally said, well, after that period of time, looking through $900 million possible tariffs, we said there is $205 million penalty, or $205 million that your shop, USTR said, hey, we are going to finally come up with European Union, the WTO. I will put it that way. The WTO finally said $116 million. That is nearly $90 million that we sent there. And I didn't hear no screaming, no position being discussed about that. That is an 84-percent reduction. That is a win in anyone's position on someone else's part. I think we got to have stronger teeth.

And this is where I want to go to your point. You stated "European Union's failure to implement panel results in two cases, however, has been troubling and we hope to ensure that the future losing parties comply to face penalties in a more timely fashion."

Ambassador, "we hope to ensure." What are we doing to put some teeth in it? "We hope" is feeble. It is wimpish if I can say that. What are we doing? I think we have to be strong if we are—if we are going to put some backbone behind the WTO on this stuff. I have high hopes of Mike Moore from New Zealand. In fact, I am going to New Zealand during August and we will be meeting some folks down there on trade. But what are we doing there when you say "we hope"?

Ms. ESSERMAN. Well, Congressman, I regret that you said the word "hope." we are working with great resolve to try to achieve results in two ways. First, as I mentioned to Congressman Portman, to correct, to amend the dispute settlement rules so there is clarity in dealing with the situation like Europe where a country is not seeking to comply but seeking to drag its feet. So we are trying to set up rules where there will be a time certain where countries pay the consequences for failure to implement panel rulings. So we are changing the rules.

And second, on beef, we share your disappointment in that retaliation is not the end that we are seeking for the beef industry. However, the retaliation, as I mentioned to Congressman Portman, is now starting to have its effect. There are many, many producers in Europe who are now feeling the effects of this retaliation, which is, after all, 100 percent of the value of a product. We impose 100 percent retaliation.

These companies are feeling the effect of the retaliation. And now the government is forced to see the consequences of its failure to come in compliance. I am not saying that we are there yet, but we—and we don't feel that we are there yet, not at all, because there is no result here. We share your frustration.

Mr. WATKINS. Let me if I could, Mr. Chairman, could you provide us instead of saying—instead of saying hoping, could you provide us those steps that you are planning on taking and recommending and also about the—you said ensuring timely implementation? Also what we are going to be doing to try to ensure timely implementations? Can you provide it for me and also the Subcommittee?

Ms. ESSERMAN. I would be pleased to do that.

Mr. WATKINS. I wonder about us saying we are not going to take up antidumping discussions at the Seattle WTO meeting because it is an issue in the steel industry, it is an issue in the oil industry, it is an issue now with Mexico, saying maybe going to put 215-percent tariffs on some agriculture going into Mexico. How can we say, stand idly by and say we are not going to discuss that or have that on the agenda there. That is one question. And who is handling the antidumping in your shop at the USTR in the discussion so I can discuss some things with them?

Ms. ESSERMAN. I am, and I would be delighted to discuss those issues with you. We believe that it is very important to the United States' interests to have strong and effective antidumping laws. And the purpose of Japan and Korea and the ASEAN countries is to weaken those disciplines. I think we have seen in the course of this steel crisis how incredibly important it is to have strong and effective rulings against unfair trade. It is the basis upon which we can move forward boldly to open up our markets.

So that is the basis for the position. I would be pleased to come and talk to you.

Mr. WATKINS. I would welcome that. I say this in high hopes also, for the future for the WTO, try and make sure that we have free and fair trade around. I try to confront it in a positive way, because I want it to work. I want us to make sure we assure our industries across—whether it is bananas or beef, the other aspects of it, make sure that we know that we are making the fairness a major issue by making sure they follow what we have agreed to.

So, again, I will say in a very positive way, I hope and I know that we have got to be there. I want to, I am pushing that. I want a 21st century globally competitive economy. Build a trading center in Oklahoma.

I want to make sure that we are out in front leading because our future if we are going to be an economic power has to be out there in trade.

Thank you for the job you are doing.

Ms. ESSERMAN. Thank you.

Chairman CRANE. Let me thank you, Madam Ambassador. We appreciate your patience. We apologize for the disruption during your appearance today.

With that, we will excuse you and welcome our next panel.

[Questions submitted by Chairman Crane and Ambassador Barshefsky's responses follow:]

Questions Submitted for the record By Congressman Philip M. Crane for Ambassador Charlene Barshefsky

QUESTION 1: As you know, I am concerned about using the WTO to deal with labor issues that are not related to trade and for which there is no national or international consensus. Please detail the Administration's plan to handle labor issues at the Seattle Ministerial.

Answer 1:

The implementing legislation for the Uruguay round requires the President to seek the establishment of a WTO Working Party on trade and labor standards. We sought to accomplish this at the Singapore Ministerial meeting but were not successful. At Seattle we again will attempt to obtain the establishment of a Working Group on Trade and Labor. The purpose of this Group is to have a serious examination—through discussion and analysis—of a number of trade related labor topics. We believe that the International Labor Organization, the World Bank, the International Monetary Fund, and the United Nations Conference on Trade and Development should collaborate on this work. In this regard, we also feel that the ILO should be given observer status at the ILO. The Working Group would prepare a report for submission to the next WTO Ministerial.

We recognize that ILO is the preeminent international labor organization. It has energetic, new leadership, and it has negotiated significant agreements in the past year involving core labor standards and exploitative child labor. However, there are important issues involving the relationship between trade and labor that require consideration at the international level, and the ILO is not equipped to undertake this review. On the other hand, the WTO, working with other international institutions, can make a valuable contribution to the understanding of these issues. Our WTO proposal outlines six trade related labor issues; these are all issues that can benefit from the WTO's comparative advantage as the international community attempts to understand them better. We have proposed a constructive and supportive role for the WTO in the labor area.

QUESTION 2: DURING THE AUGUST 5TH TRADE SUBCOMMITTEE HEARING, I INDICATED THAT I WAS CONCERNED THAT U.S. BUSINESSES WERE BEING HANDICAPPED BY NATIONAL LAWS AND PROCEDURES THAT RESTRICT THEIR ABILITY TO GET THE RIGHT PEOPLE TO THE RIGHT PLACE AT THE RIGHT TIME. I WAS PLEASED TO SEE MENTION OF "MOVEMENT OF NATURAL PERSONS" AS AN AREA RIPE FOR NEGOTIATIONS IN YOUR RECENTLY TABLED SERVICES PAPER. I WOULD APPRECIATE AN EXPLANATION OF YOUR PLANS TO PROCEED ON THIS IMPORTANT ISSUE IN THE UPCOMING ROUND OF NEGOTIATIONS WHICH WILL BE LAUNCHED IN SEATTLE.

Answer 2:

To maintain their competitiveness in foreign markets, U.S. services companies often require the ability to bring along their top personnel to manage operations and perform specialized tasks overseas. Some U.S. companies also perform short-term consultancy or other work requiring brief visits. The WTO General Agreement on Trade in Services (GATS) recognizes this by creating a category for temporary entry of "natural persons" as service suppliers. Further, there is work underway in the GATS to promote greater transparency in government regulation, an area that U.S. companies have identified as a particular problem with respect to such temporary entry

in foreign countries.

We are working with U.S. companies to help ensure that in the next services negotiations, our companies will have greater freedom to move these top-level, specialized personnel as needs arise.

QUESTION 3: AT THE HEARING A REPRESENTATIVE OF THE INTERNATIONAL INSURANCE COUNCIL DISCUSSED PRO-COMPETITIVE REGULATORY PRINCIPLES (COPY ATTACHED) THAT HIS GROUP HAS SUGGESTED. I AM INTERESTED WHETHER YOU VIEW THESE PRINCIPLES AS A POSSIBLE BASIS FOR DEVELOPING UNITED STATES NEGOTIATING OBJECTIVES FOR THIS IMPORTANT INDUSTRY. I AM ALSO INTERESTED IN YOUR VIEWS ON THESE PRINCIPLES AND THE EXTENT TO WHICH YOU INTEND TO PURSUE THEM IN THE NEXT ROUND OF SERVICES NEGOTIATIONS.

Answer 3:

The U.S. Trade Representative's Office already has been giving close attention to these principles promoted by several representatives of the U.S. insurance community and has drawn from them in formulating U.S. objectives for the "GATS 2000" negotiations. The U.S. negotiating proposal includes major issues identified by the U.S. financial services industry, such as improving market access and national treatment; promoting transparency and fairness of domestic regulatory regimes, with appropriate regard for the prudential clause; and review of whether existing definitions include all important commercial activities. Like many in industry, the U.S. believes that these issues have to be examined as a package to guarantee open and meaningful market access for financial services providers. We intend to pursue these issues vigorously and through the use of all possible negotiating approaches in the upcoming round of services negotiations.

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That is Mr. John Pepper, Chairman of Procter & Gamble in Cincinnati and Chairman also of the President's Advisory Committee on Trade Policy and Negotiations; Ernest Micek, Chairman, Cargill, Inc., Minneapolis, on behalf of the Emergency Committee for American Trade; Dean O'Hare, President and chief executive officer, Chubb Corp. and Chairman of the Coalition of Service Industries; Dean Kleckner, President of the American Farm Bureau Federation; John Dillon, chairman of the board and chief executive officer, International Paper Co.; Mark Van Putten, President and chief executive officer, National Wildlife Federation.

And let me apologize to all of you gentlemen for the kind of chaotic day we are experiencing. As you sit down here, we are in the midst of our tax bill on the floor, which is kind of a hot topic, and that accounts for many of our Members being tied up over there during the debate. But the other thing is I realized as some of you have tight time constraints, and so for everyone's benefit, if you are on a tight time constraint or you have flights to catch, at any time, excuse yourself, and we understand your situation, too.

And now I would like to yield to my distinguished colleague, Mr. Portman, first, to welcome Mr. Pepper, his constituent.

Mr. PORTMAN. Thank you, Mr. Chairman. I will be brief just to welcome John Pepper, who has been a voice of reason on free trade, and has not only done this, Mr. Chairman, in terms of policy over the years, being one of the leading advocates of explaining the benefits of free trade and did it through business practices, but also in the last 30 years deeply involved in our community back home. He has a passion for youth and helping them, as shown through his work in education and antidrug efforts—he is on the board of the Coalition for a Drug-Free Cincinnati with me—and his work on racial cooperation and dialog. And I welcome him this morning—this afternoon, now, and look forward to his testimony.

Chairman CRANE. And next I would like to yield to our distinguished colleague from Minneapolis, Mr. Ramstad, to welcome his constituent Mr. Micek.

Mr. RAMSTAD. Thank you, Mr. Chairman. I will be brief. It is a pleasure to extend a special welcome to my good friend Ernie Micek, chairman of Cargill and also chairman of the Emergency Committee for American Trade, ECAT.

I want to thank you again, Ernie, for appearing once again before the Subcommittee, and for your important leadership in helping us knock down tariff and nontariff barriers to USA exports. Nobody

has been a better corporate citizen than Cargill, not only in Minnesota, but worldwide, and nobody has been a more impressive, more committed chief executive officer than you have. So thank you for all that you are doing and for your leadership, and welcome again to the Subcommittee.

Chairman CRANE. And I would just like to ask one question, because I heard a rumor, Mr. Kleckner. I know you are from Park Ridge. Is it true that Hillary Clinton used to babysit you when you were a toddler?

Mr. KLECKNER. I don't know, Mr. Chairman. She did go to school in Park Ridge, and as I look out my office window, I look down the street to where she was born and raised just two blocks away.

Chairman CRANE. John Wayne Gacy another two blocks. They are both from Henry Hyde's district. That is why I raised the question, because it is right next door to me.

Mr. LEVIN. I have nobody to introduce.

Chairman CRANE. Now, gentlemen, if you will proceed in the order that I introduced you on the schedule here.

Mr. Pepper.

STATEMENT OF JOHN E. PEPPER, CHAIRMAN, PROCTER & GAMBLE COMPANY, CINCINNATI, OHIO, AND CHAIRMAN, PRESIDENT'S ADVISORY COMMITTEE ON TRADE POLICY AND NEGOTIATIONS

Mr. PEPPER. Thank you, Mr. Chairman. And thank you, Rob.

As the Chairman indicated, I appear here today as the Chairman of the President's Advisory Committee on Trade Policy and Negotiations, ACTPN as we call it. I accepted this role a year ago because I feel very strongly that forging a consensus and taking action to take greater advantage of trade liberalization is critical to this country's future, is critical to the growth of the economy and the growth of jobs. We all know the importance of the WTO Ministerial that is coming up in terms of furthering trade liberalization.

My convictions on this for years have rested on two simple things: One, we have got far lower tariffs and lower barriers than anybody else, and if we can get other people down to our area, it is going to help us greatly, and if we don't, we are going to suffer, as we are suffering right now, for example, as Chile's 11 percent duty is being reduced for Mexico and Canada and not for us; as we see an increasing amount of trade between Brazil and Argentina that we are not taking part of because of MERCOSUR.

And the other fundamental here, of course, is that the overwhelming part of this world's population lies outside of this country, and we need to ship more products to it, and we can if we have a level playingfield.

As we went into ACTPN this year, and recognizing the WTO, we decided we would focus 100 percent of our time on advising Charlene Barshefsky and Sue Esserman on that agenda. We will comment today on three of those aspects: Market access, particularly agriculture; the new economy, particularly e-commerce; and the role of trade and labor. You will hear from Dean Kleckner and Dean O'Hare on two of those. I will be brief.

On market access, as 60 percent of the world trade will soon be covered by regional free trade and customs union agreements, ACTPN supports a bold initiative to bring those efforts into the WTO. We also support a broad market access package. Tariff and nontariff barriers in all industrials should be dramatically reduced and export subsidies eliminated.

There is no more important element in the next WTO Round then Agriculture. Dean will talk to that. I would just highlight here the particular focus we have brought to the issue of biotechnology. The USTR's goal is to ensure that access to new agricultural technologies, specifically GMOs, genetically modified organisms, are not restricted by protectionism and unfounded fear. And this represents a huge risk to U.S. agriculture, indeed to the world's populations.

While there is, I can tell you, general agreement among the ACTPN members not to reopen the current sanitary and phytosanitary standards, and we think that is very important. There is a working group that has been charged with defining the issues in SPS that present problems to some of our members and determine how these problems could be addressed. Dean will talk about that in a minute.

The ACTPN Services Working Group has urged USTR to adopt broad liberalization and market access in a range of sectors, including audiovisual services, telecommunications, travel, tourism and others. We have recommended to the USTR that they adopt a negative list schedule as the most effective negotiating strategy. Dean O'Hare, CEO of the Chubb Corp. and a member of ACTPN, will comment on this in a moment.

We spent a lot of time in the last 9 months on the subject of the new economy, and particularly e-commerce. We have concluded that especially since e-commerce is in its infancy, governments must resist the urge to regulate or impose tariffs or nontariff barriers. Clearly avoidance of harm should be the guidance here, avoidance of mischief. We should allow technology to follow market forces as it matures.

The evaluation of e-commerce in the last year has led our members to recognize that e-commerce is only one element of an incredibly fundamental change in the global economy, that of IT, information technology. Internet usage is doubling every 100 days. Computers' power is doubling every 18 months. By 2006, one-half of the U.S. work force will be employed in industries that are either major producers or users of IT products. IT growth is already stretching existing trade agreements, and it is going to raise many new unforeseen issues.

Make no mistake, this is an area where the United States is leading. IT as a percentage of gross domestic product is 5.3 percent in this country compared to 2.9 percent in Europe. Fortunately, Lew Gerstner of IBM has agreed to chair an ACTPN task force on IT which will deal with this rapidly changing technology and make appropriate recommendations for policy not just for the WTO, but on a continuing basis.

Charlene Barshefsky has asked that an IT task force consider presenting an education forum for the trade ministers on IT issues in Seattle. We think that is a good idea.

A priority without consensus right now in ACTPN is the controversial role of labor and trade. In Procter & Gamble we refer to controversial issues like this as "mooses on the table." They are issues that people are reluctant to deal with head on, that they tend to talk past each other on and where there are legitimate competing agendas.

ACTPN members John Sweeney and Tom Donahue of the Chamber of Commerce have agreed to lead the examination of conflicts that have often arisen between labor leadership and the advocates of trade liberalization. They will be presenting their conclusions at our September 28 ACTPN meeting. We are hopeful that there will be common ground that we can find on some issues such as the elimination of forced labor, exploitive child labor, respect for ILO labor standards and the importance of transparency in the resolution agreements.

Finally, I would simply note that there has been heavy emphasis in the ACTPN on what has been stressed here by you gentlemen today, the importance of assuring compliance and accountability with agreements and with resolution rulings. If the WTO is not delivering on what it has agreed, we have a failed system. And I would assure you that in our discussions, the energy we have seen around this from Sue Esserman and Charlene Barshefsky has been intense.

In conclusion, let me just express my conviction here that each one of us must take ownership of this if we are to be successful in Seattle and take advantage of the enormous opportunities that this country has through a successful round. P&G along with 140 organizations have formed the U.S. Alliance for Trade Expansion, a coalition to bring together a lot of different efforts to promote the benefits of a rule-based trading system for all Americans.

As Members of the Trade Subcommittee, I would respectfully suggest that each of you has a vital role to play. Your education of other Members as well as your constituents about the importance of the ministerial and free trade certainly must go alongside what we in industry do to tell our members about its importance. I cannot imagine a higher stakes issue than what we are talking about here or a higher stakes event than the WTO Ministerial. Thank you very much.

Chairman CRANE. Thank you, Mr. Pepper.

[The prepared statement follows:]

Statement of John E. Pepper, Chairman, Procter & Gamble Company, Cincinnati, Ohio, and Chairman, President's Advisory Committee on Trade Policy and Negotiations

Mr. Chairman and distinguished members of the Trade Subcommittee, I am John E. Pepper, Chairman of The Procter & Gamble Company. I appear today as Chairman of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN).

This is an organization that was created by the Trade Act of 1974. It consists of approximately 45 members who are appointed by the President and represent business, labor, industry, agriculture, services, retailers, environment and consumer interests. The ACTPN is charged with advising the President and USTR on trade matters.

Let me begin by saying that I accepted the role as Chairman of ACTPN because I feel passionately that unless the U.S. sets an example by forging a consensus on many of the controversial issues related to trade policy, this country will jeopardize its role as a global leader. While the views of our ACTPN members on specific components of the negotiating objectives for the WTO Ministerial are diverse, we are

all in agreement that the U.S. has a unique opportunity to provide leadership in bringing together the 133 representatives of the WTO member countries. Success will bring enormous benefits to the world economy. Failure would be a blow to our common prosperity. We must not let that happen.

As host of the WTO Ministerial, the U.S. plays a key role in establishing the agenda for trade liberalization over the next decade. Why is this important? Over one-third of U.S. economic growth since 1992 has resulted from trade. Americans by nature believe in playing by the rules. If we can bring those rules to the rest of the world and establish a level playing field, U.S. companies will be able to send our products to other countries and make our strong economy even stronger. If not, American firms and workers will be placed at a competitive disadvantage. ACTPN members are concerned that our trading partners are concluding preferential trade agreements without us. Already, Chile's 11% tariff is being reduced unilaterally for both Mexico and Canada, but not for the U.S. MERCOSUR countries are progressively eliminating tariff rates among member countries. Virtually all trade between Brazil and Argentina now enjoys a duty-free status. With 95% of the world's population living outside the U.S., the vast majority of growth potential for American industry—growth that provides American jobs—comes not from the U.S., but the rest of the world.

To support our U.S. negotiators in the challenges confronting them at Seattle, Ambassador Barshefsky has engaged the ACTPN in three key areas—market access, the new economy, and the role of trade and labor. I'd like to briefly comment on our policy recommendations in these areas.

MARKET ACCESS

As 60% of world trade will soon be covered by regional free trade and customs union agreements, ACTPN supports a bold initiative to bring these efforts into the WTO.

ACTPN also supports a broad market access package, such as that negotiated in the Uruguay Round. To be specific, tariff and non-tariff barriers in all industrial sectors should be dramatically reduced, and export subsidies eliminated. Obviously, we'll continue to battle our European friends over their $60 billion in agriculture trade-distorting subsidies, but like Vince Lombardi, I believe "winning becomes a habit."

• *Agriculture*

U.S. farmers lead the world in productivity and efficiency, sustaining our health and quality of life at home and aiding a hungry world abroad. As agriculture is certain to be a key element of the next WTO Round, the ACTPN has focused our energy on agricultural products of modern biotechnology and the U.S. Trade Agenda. USTR's goal is to insure that access to new agricultural technologies is not restricted by protectionism and fear. While there was general agreement among ACTPN members not to reopen the current sanitary and phyto sanitary (SPS) standards, a working group has been charged with defining the issues in SPS that present problems to some of our members and determine how these problems should be addressed. Dean Kleckner, President of the American Farm Bureau Federation and a long-time member of ACTPN, will elaborate more on this in his testimony.

• *Services*

In 1998 U.S. services exports were $260.3 billion, while imports were $180.8 billion, producing a trade in services surplus of $79.4 billion. Services comprise nearly 30% of U.S. exports. Additionally, in 1998 U.S. service exports supported about four million U.S. jobs—jobs both in services and manufacturing sectors.

The ACTPN Services Working Group urged USTR to adopt broad liberalization and market access in a range of sectors including, but not limited to, audio visual services, telecommunications, travel, tourism and others. The Working Group also recommended to USTR that they adopt a negative list schedule as the most effective negotiating strategy and one which would speed market access. Dean O'Hare, CEO of Chubb Corporation and a member of ACTPN, will comment in more detail on the services agenda.

THE NEW ECONOMY

Since 1994, the ACTPN has produced five reports on the WTO. This morning, I want to review the most recent report—on the subject of e-commerce—and share with you the context of ongoing ACTPN discussions on the "new economy" which is so critical to America's future.

• *E-Commerce*

At our June 10, 1999 meeting, ACTPN finalized a report led by Hewlett-Packard's Lew Platt that dealt with a variety of electronic commerce issues.

ACTPN opposes the classification of electronic commerce as a good or service. While it still believes that substantive regulation of electronic commerce should be left to the member countries and other international organizations, it advocates the adoption of WTO rules on transparency notification and review of domestic regulation. Our key message is, e-commerce is in its infancy and governments need to resist the urge to regulate. We should allow technology to follow market forces as it matures.

• *Information Technology*

ACTPN's evaluation of e-commerce led our members to recognize that e-commerce is only one element of a fundamental change in the global economy—that of information technology (IT).

Lew Gerstner of IBM reported to ACTPN members that computing power has been doubling every eighteen months for the past 30 years, with a parallel geometric decline in prices. Internet usage doubles every 100 days. By 2006 almost half of the U.S. work force will be employed by industries that are either major producers or users of IT products and services.

IT's explosive growth is already stretching existing trade agreements, and is certain to raise new, unforeseen issues. And make no mistake—the U.S. is leading the creation of this new economy. IT spending as a percentage of GDP in the U.S. in 1998 was 5.3%. By comparison, Europe was 2.9% and Japan was 3.5%, which is where the U.S. was in 1990. Our trade policy must reflect this rapidly growing global marketplace.

An ACTPN Task Force was established to make recommendations to USTR on how to ensure we remain in a leadership position to deal with this rapidly changing technology. I'm pleased to report that Lew Gerstner has agreed to chair this important effort.

Charlene Barshefsky has also requested that the IT Task Force consider presenting educational forums for trade ministers on IT issues at Seattle. I personally think this is a terrific idea and a meaningful role for ACTPN to play at the Ministerial.

TRADE & LABOR

A priority for which there is no consensus in ACTPN, but one that must be addressed if we are to make progress in trade policy, is the controversial role of labor and trade. In Procter & Gamble, we refer to controversial issues as "moose on table." These are issues that no one wants to deal with head on as there are always competing agendas. Unfortunately, unless leadership focuses on the moose, these issues never get resolved. ACTPN members, John Sweeney of the AFL-CIO and Tom Donahue of the COC have assumed leadership for our group in clarifying trade and labor issues and in establishing a framework for resolving these concerns through U.S. trade policy. Their goal is to present issues upon which there is and is not agreement at our September 28, 1999, ACTPN Meeting. I remain hopeful that there will be some areas of mutual agreement and progress. Global growth can and should be accompanied by safer workplaces, elimination of forced labor and exploitive child labor and respect for core labor standards. The WTO, in particular, can work in more coordination with the International Labor Organization on some of these issues. While developing countries are expected to argue against inclusion of any work on trade and labor in the WTO, our U.S. negotiators have a unique opportunity to deliver results in this important area.

CONCLUSION

In conclusion, let me say that each of us here today must assume ownership if the U.S. is to be successful in Seattle. My Company, Procter & Gamble, along with the Coalition of Service Industries, the American Farm Bureau Federation, and over 140 other organizations, have led the formation of the U.S. Alliance for Trade Expansion. The mission of this coalition is to promote the benefits of a rules-based trading system for all Americans and support U.S. Leadership at the Seattle Ministerial.

As Members of the Trade Subcommittee, each of you also has a vital role to play at the WTO. Your education of other Members of Congress and your own constituents about the importance of the Ministerial and what it means to the future of this great country is paramount. Congress as a whole must build on their recent trade

successes including passage of the Africa Growth and Opportunity Act, CBI, China NTR and Vietnam NTR. Bipartisan support for GSP renewal and permanent NTR for China (if an agreement is reached) should follow. We must support our U.S. negotiators. They will be working around the clock to build a better future for you, me and for our children.

Tom Friedman writes in his book, *The Lexus and the Olive Tree*, that globalization is everything and its opposite. We are a nation that is not afraid to go to the moon, but also still loves to come home for Little League. We are a nation that invented both cyberspace and the backyard barbecue. We can never take this for granted. For globalization to be sustainable, America must be at its best—today, tomorrow, all the time. That is our challenge and our responsibility.

Thank you.

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Chairman CRANE. Mr. Micek.

STATEMENT OF ERNEST S. MICEK, CHAIRMAN, CARGILL, INCORPORATED, MINNEAPOLIS, MINNESOTA, AND CHAIRMAN, THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. MICEK. Thank you, Mr. Chairman. I am testifying today before the Trade Subcommittee as Chairman of the Emergency Committee for American Trade, which is comprised of the heads of major American companies with global operations who represent all principal sectors of the U.S. economy.

ECAT believes that in order to have a successful Seattle WTO Ministerial, the focus of the meeting must be kept on the launch of a new comprehensive round of trade negotiations. These negotiations should enhance market access for the industrial, agricultural and service sectors, and ensure that WTO rules accomodate the development of new technologies key to the U.S. economic growth in the 21st century.

While building a positive trade-expanding agenda for the ministerial and a new round is critical, we will not be successful with that agenda here at home unless we also build a consensus in support of trade expansion among American workers and their families. This means that we must demonstrate how trade liberalization improves the lives of Americans and helps all economies meet basic human needs.

ECAT believes that one way to increase trade's contribution to human well-being is to make eliminating barriers to trade in food a central negotiating objective in the agenda coming from the Seattle Ministerial.

Toward this end, ECAT is launching a Food Chain Coalition. The coalition will promote the reduction or elimination of major barriers to trade at all levels of the food production and distribution chain. Putting food prominently among negotiating priorities will increase food security, accelerate economic development, and promote a sustainable environment. This new paradigm also can help to achieve the critical consensus necessary to support open trade policies.

Before outlining our specific Food Chain Coalition proposal, I will briefly discuss ECAT's overall recommendations for the Seattle WTO Ministerial agenda and new WTO Round.

The United States must take the lead in crafting an agenda for the WTO Ministerial and for a new round that is focused on trade liberalization. The agenda must avoid globally divisive issues such

as nontrade-related labor or environmental matters or competition policy on which there is not yet a broad-based consensus within the WTO.

The United States needs to recognize the ways in which trade liberalization contributes to resolving some of these problems and to building consensus for cooperation. For example, the elimination of barriers to food trade that ECAT is proposing also yields environmental benefits by encouraging agricultural practices that promote production in advantaged areas while lessening demands on environmentally fragile lands.

In order to provide a positive foundation for continuing liberalization in a WTO new round, ECAT believes that the United States should urge that WTO members adopt a standstill commitment on trade-restrictive measures at the ministerial. The ministerial agenda also should include a renewed effort to broaden WTO membership to include those emerging economies that are not yet subject to WTO rules, particularly China.

In order to ensure that the new WTO Round negotiations promote trade expansion, ECAT recommends that the formulation of the agenda be guided by the following general principles:

One, the focus of the negotiations should be trade liberalization. A new round agenda should be as comprehensive as possible. All WTO members should be required to adhere to new round agreements once they are finalized. A new round should be completed expeditiously according to an agreed-on timetable.

The United States should seek maximum liberalization through improved market access with as few exceptions as possible. New round negotiations should not weaken existing WTO agreements or create opportunities for the imposition of new trade restrictive measures. A new round should also promote full implementation and compliance with existing WTO agreements.

Trade liberalization objectives that address basic human needs should be a focus of the WTO negotiations. ECAT believes that these principles, which are set out in greater detail in our written statement, can effectively guide the formulation of U.S. objectives for a new round.

ECAT has formed a Food Chain Coalition to promote the elimination of major barriers to food trade affecting the agricultural, manufacturing, and service sectors within the WTO. There are several reasons ECAT has chosen to take this unusual step. First, ECAT has learned from its trade education focus group research that supporters of global trade expansion must demonstrate the importance of trade to the daily lives of American workers and their families to enjoy their support for liberalization. One of the most compelling ways that we can emphasize the human dimension of global trade liberalization is by eliminating barriers to food trade.

Second, the Food Trade Coalition can build on the momentum within APEC for an open food system by extending its trade liberalization objectives to the WTO.

Third, the Food Chain Coalition captures the growing interest in agrifood trade liberalization. That interest extends well beyond farmers to people who supply them with seed, chemicals, fertilizer equipment and capital. It also applies to those who handle, trans-

port, process, finance, and market food products. By using the elimination of barriers to trade and investment at all levels of the food chain as an organizing principle, the Food Chain Coalition seeks to create cross-sectoral alliances in support of common negotiating priorities. These priorities include eliminating export subsidies, zeroing out tariffs and eliminating investment restrictions.

Focusing on the shared interests in economic development and liberalization enables businesses and governments to build a new set of alliances and common interests. This will increase the potential for success in new round negotiations. In terms of the new WTO new round, the coalition urges the United States to seek zero-for-zero tariff harmonization on agrifood products wherever possible and on related industrial products such as engines and engine systems.

In conclusion, ECAT, looks forward to continuing to work with you, Mr. Chairman, and other Trade Subcommittee Members on negotiating objectives for the new round, and in particular, our Food Chain Coalition project. I appreciate the opportunity to present our views. Thank you very much.

[The prepared statement follows:]

Statement of Ernest S. Micek, Chairman, Cargill, Incorporated, Minneapolis, Minnesota, and Chairman, Emergency Committee for American Trade

INTRODUCTION

I am Ernie Micek, Chairman of Cargill, Incorporated. Cargill is a privately held agribusiness company founded over 130 years ago in Iowa. Today the company is headquartered in Minneapolis, Minnesota, and our 80,000 employees are engaged in marketing, processing, and distributing agricultural, food, financial, and industrial commodities throughout the world.

I am testifying before the Trade Subcommittee today as Chairman of the Emergency Committee for American Trade, comprised of the heads of major American companies with global operations who represent all principal sectors of the U.S. economy. The annual sales of ECAT companies total over one trillion dollars, and the companies employ approximately four million men and women.

ECAT believes that in order to have a successful Seattle WTO ministerial the focus of the meeting must be kept on trade expansion through the launching of a new, comprehensive round of trade negotiations. The ministerial should lay out an agenda for the new round that enhances market access for traditional industrial and agricultural products, while accommodating WTO rules to the development of new technologies that will be key to U.S. economic growth in the twenty-first century, such as biotechnology and electronic or e-commerce. The agenda also should strengthen the rules of the global trading system.

While building a positive, trade-expanding agenda for the ministerial and the new round are critical, we will not be successful with that agenda here at home unless we also maintain our efforts to build a consensus in support of trade expansion among American workers and their families. This means that we must make the case that trade liberalization improves the lives of American workers and their families and helps all economies meet basic human needs.

ECAT believes that one way to increase trade's contribution to human well-being is to make eliminating barriers to trade in food a central negotiating objective in the agenda coming forth from the Seattle ministerial. Toward this end, ECAT is launching a "Food Chain Coalition" that will promote the reduction or elimination of major barriers to trade at all levels of the food production and distribution chain. Putting food prominently among negotiating priorities will increase food security, accelerate economic development, and promote a sustainable environment. This new paradigm also can help to achieve the critical consensus necessary to support open trade policies.

The ECAT food chain concept builds on the idea of an open food system that has gained support within the Asia Pacific Economic Council (APEC) and extends it to the WTO. A study by the U.S. Department of Agriculture has concluded that two-

thirds of the welfare gains from trade liberalization within APEC comes from the agri-food sector alone. Given the many global distortions to agri-food trade, there are similar benefits to come from an "open food" initiative within the WTO.

Before outlining our specific Food Chain Coalition proposal, I will present ECAT's recommendations for the Seattle WTO ministerial agenda and new WTO round.

LAUNCHING A NEW TRADE ROUND AT THE SEATTLE WTO MINISTERIAL SEATTLE WTO MINISTERIAL OBJECTIVES

As we approach the millennium, we must ensure that U.S. trade and investment remain the powerful engines of economic growth that have helped to produce the longest period of peacetime economic expansion in American history and the lowest unemployment rate in 30 years. With 96 percent of the world's customers outside of the United States, the future growth of the American economy depends on expanding world markets. Just as ECAT member companies recognize that they must be global firms to thrive, the United States must maintain its preeminence as a global economy to continue to prosper into the next century.

To accomplish this, the United States must take the lead in crafting an agenda for the Seattle WTO ministerial and for a new round that is focused on trade liberalization. That agenda should avoid globally divisive issues, such as non-trade-related labor or environment matters or competition policy, on which there is not yet a broad-based consensus within the WTO. That is not to say that these issues are unimportant. It is merely to recognize that, if contentious issues dominate the ministerial, confidence in the global trading system and U.S. leadership will be undermined.

The United States needs to recognize and articulate the ways in which trade liberalization contributes to resolving some of these problems and to building consensus for cooperation. For example, the elimination of trade-distorting agricultural subsidies and the reduction of tariffs on environmental goods and services reduce harm to the environment, while speeding the spread of technologies that enable countries to be efficient and to be environmental stewards. The elimination of barriers to food trade that ECAT is proposing also yields environmental benefits by encouraging agricultural practices that promote production in advantaged areas while lessening demands on environmentally fragile lands. On labor issues, the United States is pursuing an appropriate course in increasing its support for the ILO and focusing its efforts to achieve a forum on global labor issues within that organization.

ECAT also has some other specific recommendations for the ministerial. The United States could help in maintaining an open and transparent economy by urging that WTO members adopt a standstill commitment on trade-restrictive measures. Such a commitment would safeguard the liberalization achieved under the Uruguay Round and subsequent sectoral negotiations while preventing backsliding. It also would provide a positive foundation for continuing liberalization in the context of a new round. As the largest and most open economy in the world, the United States is in the best position to call for such a commitment. Indeed, the WTO Secretariat, in a recent highly laudatory report on U.S. trade policies, noted the critical role that the United States plays in serving as a positive role model for other WTO member countries by maintaining open markets. It also cited the key role of the United States in helping to restore global economic stability in the wake of the Asian financial crisis and the breakdown of the Russian economy.

To be successful, the ministerial agenda also should include a renewed effort to broaden WTO membership to include those emerging economies that are not yet subject to WTO rules. China, the largest emerging economy in the world, must be brought into the multilateral trading system. Its admission to the WTO on the basis of a commercially-acceptable protocol of accession should be given top priority. The high degree of financial instability in Asia and the slowdown in the global economy make it more critical than ever that China become subject to WTO rules and a participant in liberalization initiatives.

Reaching an agreement on sectoral market-access initiatives, such as the negotiations on the eight sectors covered under the Accelerated Tariff Liberalization (ATL) negotiations, at the time of the ministerial would help to make it a success and would provide momentum for even broader liberalization negotiations in a new round. ECAT particularly supports efforts under the ATL initiative to eliminate tariffs on chemicals, toys, medical equipment and scientific instruments, and forestry products. Similarly, progress at the ministerial in negotiations to remove non-tariff barriers in the information technology sector is important and would also promote a successful meeting.

U.S. business has a significant role to play in ensuring the success of the ministerial by encouraging the adoption of a positive agenda and making the case for the contributions of the WTO in continuing trade liberalization. ECAT supports the work of the Alliance for U.S. Trade, an ad hoc coalition of U.S. business associations and companies that is coordinating business support for ministerial activities, and similar efforts by other groups.

A WTO ministerial that produces a trade-expanding agenda backed by consensus will send a strong signal to global markets about the strength and vitality of the open trading system. A ministerial that endorses an expansion of the open trading system will encourage emerging economies to stay the course on trade liberalization. Success in advancing a trade-liberalizing agenda at the Seattle meeting will help to reinforce U.S. domestic support for the WTO by demonstrating that the WTO continues to advance American interests in promoting greater market access for U.S. goods, services, and agriculture. A clearly articulated trade liberalizing agenda also will build support for renewal of trade-negotiating authority.

THE WTO NEW ROUND AGENDA

In order to ensure that the new WTO round negotiations promote trade expansion, ECAT recommends that the formulation of the agenda be guided by the following principles:

- The focus of the negotiations should be trade liberalization. Progress on non-trade related labor and environmental issues should be pursued in other appropriate international fora.
- A new round agenda should be as comprehensive as possible in order to generate the greatest interest among WTO member countries and to maximize the opportunity for liberalization. A round should encompass the built-in agenda of agriculture and services, as well as industrial tariffs, customs facilitation, transparency in government procurement, and other new areas. However, the agenda should not open areas on which there is little consensus or likelihood of progress.
- In keeping with the legal framework of the multilateral WTO agreements, all WTO members should be required to adhere to new round agreements once they are finalized.
- A new round should be completed expeditiously according to an agreed timetable. Consideration should be given to allowing for provisional implementation of agreements concluded in advance of the agreed deadline but with leverage retained to ensure that progress is made across all areas, including difficult ones.
- The United States should seek maximum liberalization in market-access negotiations with bound reductions in tariff and non-tariff barriers to agricultural and industrial products and in the services sector, with as few exceptions as possible. The negotiations on industrial products should cover as many sectors as possible.
- New round negotiations should not weaken existing WTO agreements or create opportunities for the imposition of new trade-restrictive measures or discriminatory treatment, particularly with respect to new areas such as biotechnology and e-commerce.
- A new round should promote full implementation of and compliance with existing WTO agreements. WTO members should consider the provision of additional technical assistance to developing countries to promote this goal.
- The United States should align U.S. negotiating objectives with promoting higher U.S. and global living standards. Trade liberalization objectives that address basic human needs should be a focus of the WTO negotiations.

ECAT believes that these principles can effectively guide the formulation of U.S. objectives for a new round and can help maximize the benefits of the negotiations to the U.S. agricultural, manufacturing, and services sectors. ECAT's views on the major areas that should be included in a new round are provided below.

Agriculture

The agriculture negotiations should aim to secure substantial, progressive reductions in support and protection, including deep cuts in bound tariff rates and the elimination of export subsidies. Negotiations should reduce average tariff bindings over six years by 50 percent from current levels. Tariff peaks should be reduced to levels that will not prohibit imports. Negotiations should clarify that tariff-rate quotas are transitional measures and provide for their phase-out. Sectoral zero-for-zero tariff agreements should also be encouraged.

The agriculture negotiations should seek further reductions in trade-distorting domestic supports, both by reducing support levels and by shifting to less trade-distorting support mechanisms. The United States also should seek to eliminate the

monopoly control of state-trading entities (STEs) and strengthen WTO rules to ensure that agricultural trade is conducted on commercial terms.

As outlined in greater detail in the section of our testimony describing our Food Chain Coalition proposal, ECAT believes that the Seattle ministerial declaration should build on the initiative being developed within APEC and establish a global "open food system." To this end, the ministerial declaration should include language establishing a "WTO Working Party on the Creation of an Open Food System."

General Agreement on Trade in Services (GATS)

The United States should pursue new negotiations to liberalize trade in services, particularly financial services, as part of a new round. The negotiations should seek to broaden and deepen the liberalization commitments under the GATS. Further liberalization of services trade will enhance global growth, assist developing countries in obtaining the necessary infrastructure to sustain development, and help restore investor confidence in global markets.

The services negotiations should also include a review of regulatory regimes in order to promote the creation of transparent, impartial, and pro-competitive regulatory regimes in local markets. The creation of such regimes is essential to make the GATS national treatment and market-access commitments meaningful.

In seeking expanded liberalization commitments, the United States should aim to limit reservations to the greatest degree possible. In particular, it should seek commitments to ensure national treatment and the right of establishment, eliminate restrictions on cross-border transactions, promote pro-competitive regulatory reform, and remove obstacles to the free movement of business personnel.

Market-Access Negotiations

A new round should include market-access negotiations to remove tariff and non-tariff barriers in a wide range of industrial sectors. The tariff negotiations on industrial products should include new zero-for-zero tariff initiatives on small engines and other industrial products. The negotiations should also seek the elimination of tariff peaks and so-called "nuisance" tariffs of five percent or less.

The market-access negotiations should include efforts to achieve tariff reductions in the eight ATL sectors to the extent such reductions have not been finalized by the time of the ministerial. As was recently endorsed by the APEC Ministers, the market-access negotiations should cover the six additional sectors identified in APEC for further liberalization, particularly food products.

Textile and apparel tariffs, which remain very high relative to other industrial products, also should be included in market-access negotiations, with the goal of seeking further reductions before the termination of textile and apparel quotas in 2005. Finally, the negotiations should encompass efforts to broaden membership in the Chemical Tariff Harmonization Agreement (CTHA), with the understanding that no further reductions in chemical tariffs should be considered until all major chemical-producing nations are fully committed to the CTHA.

Trade Facilitation

ECAT strongly supports the inclusion of business-facilitation issues on the ministerial agenda. The United States should seek a WTO agreement on trade facilitation that would encompass the adoption of a binding WTO agreement based on the rules contained in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), a work program on trade facilitation, and a commitment to simplify rules of origin. The United States should encourage the WTO to focus its trade-facilitation efforts on customs procedures and advocate the establishment of a WTO working group on the harmonization and simplification of customs procedures. The United States also should support the simplification and harmonization of non-preferential rules of origin, so that they no longer create unnecessary trade impediments.

TRIPs Agreement

The United States should ensure that the full implementation of the TRIPs agreement remains a priority under the WTO built-in agenda. It should resist any effort by developing countries to extend the year 2000 deadline for their implementation of the agreement and support the provision of technical assistance to developing countries to facilitate implementation. It also should oppose the extension of the moratorium on the application of WTO dispute settlement to intellectual property cases in which there is no direct violation of the TRIPs agreement.

The United States should oppose efforts to expand Article 27.3 of the TRIPs agreement, which provides that WTO members may deny the patentability of certain plants and animals. Under the WTO built-in agenda, this provision is to be re-

viewed four years after the date of entry into force of the WTO agreement. The review was originally intended to provide the opportunity to eliminate or narrow the exclusion. Some WTO members are now advocating that the review be used as the occasion to broaden the exception based on concerns about the increasing use of biotechnology in agriculture and other areas. While the United States may not now be able to succeed in eliminating the exception, it should nonetheless continue to oppose any expansion of the exclusion.

ECAT also believes that strict enforcement of the TRIPs agreement should remain a priority, particularly in the areas of piracy of computer software, music CDs, and violations of the trademarks of U.S.-branded products such as apparel.

Government Procurement

ECAT supports U.S. efforts to bring more countries into the WTO Procurement Agreement, to broaden its coverage, and to negotiate an agreement on transparency in procurement. The United States should seek to conclude an agreement on transparency by the time of the ministerial. It should include requirements regarding the transparency of procurement laws and regulations, adequate notice of bidding opportunities, use of objective criteria in preparing bid specifications and in evaluating bids, adequate dispute settlement, and WTO notification of preference levels.

The transparency provisions of the Government Procurement Agreement should be harmonized with the text of a new transparency agreement.

Sanitary and Phytosanitary Standards (SPS) Agreement

The Uruguay Round produced a strong agreement on sanitary and phytosanitary standards that requires such standards be based on sound science. This agreement should be rigorously enforced and should not be reopened in the course of new round negotiations. The WTO rules should continue to require that governments base regulations on the best scientific information available and not impose an unattainable "zero-risk" standard. The United States should oppose any effort to allow SPS standards to be imposed on any basis other than the current sound science requirement, as it would substantially weaken the agreement and create the opportunity for WTO members to use health and safety regulations to create new trade barriers.

Dispute Settlement

While the WTO dispute settlement process has overall been a strong enforcement mechanism for WTO rules and market-access commitments, the process can be strengthened. For example, procedural reforms in the areas of expediting the timetable for the dispute settlement panel process and implementation of panel and appellate body reports should be considered.

E-Commerce

E-commerce is an increasingly important venue for international trade throughout all sectors of the economy. It is imperative that WTO rules address trade barriers and other trade-related aspects of e-commerce. ECAT believes that a top priority for the Seattle ministerial should be to make the current standstill regarding tariffs on electronic transmissions permanent.

ECAT's Food Chain Coalition

Objectives

ECAT has formed a Food Chain Coalition to promote the elimination of major barriers to food trade affecting the agricultural, manufacturing, and services sectors within the WTO. The Coalition has three primary objectives: 1) providing a framework for focusing on a key area in which trade liberalization meets basic human needs; 2) extending the trade liberalization component of the APEC Food System concept into the WTO; and 3) creating greater leverage to pursue improved market access and other goals in a new round by facilitating a cross alliance of interests organized around barriers to food production and distribution. There are several reasons ECAT has chosen to take this unusual step.

First, ECAT has learned from its TradeWorks trade education focus group research that supporters of global trade expansion must demonstrate the importance of trade to the daily lives of American workers and their families to enjoy their support for liberalization. This theme is echoed in the Administration's call for putting a "human face" on trade. One of the most compelling ways that we can emphasize the human dimension of global trade liberalization is by eliminating barriers to food trade. This will make food supplies more secure, stabilize prices in world markets, and improve access to needed foodstuffs.

Second, the Food Chain Coalition can build on the momentum within APEC for an open food system by extending its trade-liberalization objectives to the WTO. The Information Technology Agreement and the current Accelerated Tariff Liberalization negotiations provide ample precedent for the incorporation of APEC initiatives into the WTO system.

Third, the Food Chain Coalition expresses the broad interest in agri-food trade liberalization. That interest extends well beyond farmers to the people who supply them with seeds, chemicals, fertilizer, equipment, and capital and to those who handle, transport, process, finance, and market food products. In using the elimination of barriers to trade and investment at all levels of the food chain as an organizing principle, the Food Chain Coalition seeks to create cross-sectoral alliances in support of common negotiating priorities, such as eliminating export subsidies, zeroing out tariffs, and eliminating investment restrictions. The Food Chain Coalition also enables business to express its shared stake in open markets. People must be well and reliably fed before they can become regular customers for other goods and services. Focusing on the shared interests in economic development and liberalization enables businesses and governments to build a new set of alliances and common interests that will increase the potential for success in new round negotiations.

The Coalition covers a broad spectrum of issues—ranging from traditional agricultural tariff, quota, and, export subsidy matters to the intellectual property, regulatory, labeling, and import-restriction questions raised by a new generation of biotechnology products. It covers agri-food products themselves, as well as equipment, machinery, financial services, and other inputs that go into a modern food system.

By reaching outside the traditional core of companies and groups involved in agricultural trade issues to equipment, chemical, pharmaceutical, apparel, financial, and other industries that are increasingly affected by food issues, the Coalition will garner broader domestic and international support for its priority negotiating objectives. The Food Chain Coalition also will focus attention on issues that directly affect the welfare and health of hundreds of millions of people now joining the global economy, thereby putting a "human face" on trade.

Priorities for the WTO Ministerial

The 1999 WTO ministerial provides an historic opportunity for the United States to shape the world trade agenda into the next century and to lay the foundation in particular for global liberalization of food trade. To that end, the Coalition supports the inclusion of language in the ministerial declaration establishing a WTO "Working Party on the Creation of an Open Food System."

The Coalition would like to see the working party examine not only traditional liberalization initiatives, but also other issues, such as achieving food security through a principle of non-discrimination, that are integral to meeting the challenge of providing the world's growing population affordable, abundant, nutritious, and environmentally sustainable food supplies. Among the novel issues to be addressed should be providing technical assistance to developing countries on rural development strategies, sanitary and phytosanitary standards issues, and the use of trade and financial risk tools to enhance food security.

Priorities for the WTO New Round

The Coalition sees this broader, more integrated strategy as critical to achieving its fundamental goal in this historically sensitive area—more open markets for the products and services involved in the production and distribution of food. In particular, the Coalition urges the United States to seek "zero-for-zero" tariff harmonization on agri-food products wherever possible. The Coalition also supports the initiation of "zero-for-zero" tariff negotiations on engines and engine systems and the expansion of the existing "zero-for-zero" tariff agreements for construction and agricultural equipment to include a greater number of WTO member countries. The Coalition also believes that the elimination of agricultural export subsidies should be a priority in a new round.

Conclusion

The Trade Subcommittee's hearing today is a vitally important part of the overall effort that must be made by the Administration, the Congress, and the U.S. business community to work together to forge a trade-expanding agenda for the Seattle WTO ministerial and a new WTO round. ECAT looks forward to continuing to work with you, Mr. Chairman, and other Trade Subcommittee members on negotiating objectives for the new round and in particular on our Food Chain Coalition project.

I appreciate the opportunity to present ECAT's views and would be happy to answer any questions subcommittee members may have.

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Chairman CRANE. Thank you, Mr. Micek.

And next Mr. O'Hare.

STATEMENT OF DEAN R. O'HARE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CHUBB CORPORATION, WARREN, NEW JERSEY, AND CHAIRMAN, COALITION OF SERVICE INDUSTRIES

Mr. O'HARE. Mr. Chairman and Members of the Subcommittee, I am Dean O'Hare, chairman and CEO of the Chubb Corp. It is my pleasure to appear today in my capacity as chairman of the Coalition of Service Industries.

We believe that the ability of the U.S. services economy to generate new jobs and GDP depends on an aggressive trade policy that opens new markets for our businesses. In my own company, we could not maintain our U.S. employment base or survive long term if we were not expanding abroad.

The U.S. nonlife-insurance market is mature, and its growth rate is low. We now generate almost 25 percent of our premium income from outside the United States, and I expect that figure to rise substantially.

Our experience supports the point that you cannot sell services to people unless you are in the local market. Our firm's foreign operations do not cost U.S. jobs. They help to maintain our employment base in the United States. There is no question that U.S. service industries are among the most competitive in the world. Nonetheless, we have formidable foreign corporate rivals wanting to clean our clock. This is why we need an aggressive U.S. trade policy strongly led by both the administration and Congress, and equally strongly supported by the business community. That policy should be clearly focused on trade expansion through the WTO across a broad range of service sectors.

It also means that we must pursue tax policies that promote our competitiveness, such as the McCrery-Neal active financing bill.

In the coming negotiations, the services sector wants free, open, contestable, competitive markets for its products. These conditions can be obtained by getting our trade partners to commit to, first, ensure the right of U.S. companies to establish operations in foreign markets and to wholly own them.

Second, ensure that U.S. companies receive national treatment so that they have the same rights as domestic companies.

Third, promote procompetitive regulatory reform focused on appropriate and consistent rules as well as transparency and impartiality of regulatory administration.

Fourth, remove barriers to greater cross-border trade.

And, finally, remove obstacles to the free movement of key businesspersonnel and business information.

CSI, along with a number of other organizations, has submitted more detailed objectives to the USTR, and I ask with your permission, Mr. Chairman, that our submission be included in the record. We, and our many associated industries, will continue to work closely with our negotiators in defining precise negotiating goals.

Most importantly, CSI is organizing the first World Services Congress in Atlanta, November 1 through 3, to provide strong support for the Services 2000 negotiations. We believe that in order to complete the new round of negotiations by 2003, the content of the round must be manageable. We prefer a negotiation focused on the core items of service, agriculture, and industrial products.

With the possibility that early agreements could be reached in one or more service sectors, we would like the flexibility to put these into force so as not to lose the economic advantages they would offer.

Specific goals for the service sector include, first, extending the coverage of GATS commitments; second, exploring alternative innovative negotiating techniques to speed up services sector negotiations; third, pursuing procompetitive regulatory reform principles; and fourth, creating an open environment for the development of electronic commerce.

In short, Mr. Chairman, we have a very full plate of issues pressing for resolution in the new round. To achieve them, we believe the round must be kept short and that its content be manageable and achievable within a 3-year timeframe.

Markets move too fast to give us the luxury of a decade-long negotiation. We need greater market advice as soon as it can be negotiated.

Thank you for the opportunity to express these views.

Chairman CRANE. Thank you, Mr. O'Hare.

[The prepared statement and attachment follow:]

Statement of Dean O'Hare, Chairman and Chief Executive Officer, Chubb Corporation, Warren, New Jersey, and Chairman, Coalition of Service Industries

It is a pleasure to appear today to present the views of the Coalition of Service Industries (CSI) on US preparations for the World Trade Organization (WTO) Ministerial Meeting in Seattle, specific objectives for the negotiations, and the anticipated impact of a successful new round of WTO negotiations on jobs, wages, economic opportunity, and the future competitiveness of US service providers.

CSI was established in 1982 to create greater public awareness of the major role services industries play in our national economy; promote the expansion of business opportunities abroad for US service companies; advocate an increased focus on liberalization of trade in services in international trade negotiations; and encourage US leadership in obtaining a fair and competitive global marketplace.

CSI members include an array of US service industries including the financial, telecommunications, professional, travel, transportation and air cargo, information and information technology sectors. Included in the broader coalition of sectors with which we work are energy services, advertising, entertainment, retail distribution, and education.

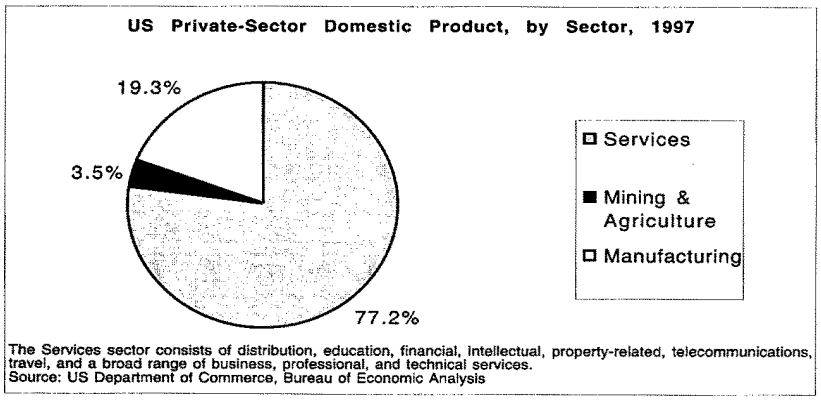
CSI has been active in multilateral trade negotiations since before the Uruguay Round and has played an aggressive advocacy role in writing the General Agreement on Trade in Services and obtaining successful WTO negotiations in telecommunications and financial services.

Today I would like to address (1) the critical importance of services and services trade liberalization to the US trade balance, jobs, innovation and competitiveness, (2) the WTO "Services 2000" negotiations as an exceptional opportunity for US services firms to expand their operations abroad, and (3) some recommendations for shaping the coming round in a way that will produce the greatest benefit for all key sectors of the US economy.

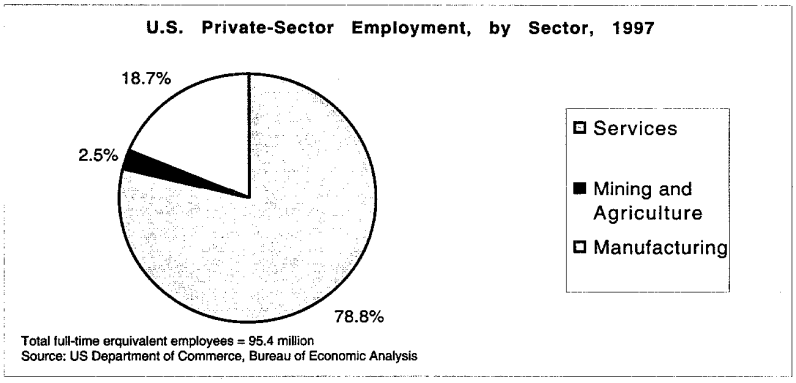
Importance of Services and Services Trade to the US Economy

Because US trade policy has in the past been dominated by concerns about trade in goods, it is always useful to remind policymakers about the key role services play now and will play in the information-based global economy.

In overall terms, the US service sector comprised 77.2 percent of US GDP, and 78.8 percent of private sector.



In 1998, the US created 2.9 million net new jobs, all in the service sector, only slightly fewer than the 3.2 million service sector jobs created in 1997.



The US is the world's largest exporter and importer of services. In 1998, US services exports were $260.3 billion, while imports were $180.8 billion, producing a trade in services surplus of $79.4 billion. Services comprise nearly 30 percent of US exports. The US recorded a services surplus of $6.9 billion in May of this year, exporting $23.0 billion while importing $16.1 billion.

US service industries are among the most competitive in the world. Our competitive advantage is immeasurably strengthened by the US ability to enrich our service products with the latest information technologies. US services companies are technology leaders whose expertise and innovation have contributed to US productivity growth across a broad range of sectors. Engagement in diverse foreign markets provides new opportunities to develop innovative services products and new technologies.

It is also important to remember that services are an integral component of trade in agricultural and manufactured products. It is up to the distribution sector to get goods from the seller to the buyer, up to the consumer credit sector to provide financing for the purchase of new goods, and up to the insurance sector to provide coverage for plants that manufacture everything from shoes to airplanes. These relationships make services important to the international competitiveness of many sectors of the US economy.

We are entering the "Third Wave" information-based economy of the 21st Century as the world's strongest competitor. This does not, however, mean that we do not have formidable rivals. In insurance, banking, telecommunications, transportation and many other fields there are strong foreign companies aching to "clean our

clock." And, although the ready availability of information and the rapid growth of new technologies enhances the competitive position of our own companies, it also readily empowers our competitors from around the globe.

This is why we need an aggressive US trade policy strongly led by both the Administration and Congress, and equally strongly supported by the business community.

We need a trade policy clearly focussed on trade expansion, which means using the WTO and the next round to obtain meaningful liberalization. This means too, that we must pursue domestic tax and regulatory policies that promote the competitiveness of our companies so that they do not enter the international arena ring carrying a competitive burden of our own making.

I would also like to point out that while U.S. trade policy has concentrated on opening world markets to U.S. companies, our tax policy has not always moved in the same direction. U.S. international tax laws are complex, cumbersome, and can stifle the competitiveness of U.S. companies doing business overseas. Because of this, international tax reform is a critical element of an effective U.S. trade policy.

As trade policy moves into the 21 Century, it seems our international tax policy still reflects the business environment of the 1960's. That is why we are encouraged by the recent language on tax deferral in the Financial Freedom Act and its Democratic substitute—this is an important first step in rationalizing our US international tax rules. CSI has championed strongly the McCrery-Neal permanent active financing bill and the provisions in H.R.2018, the International Tax Simplification for American Competitiveness Act of 1999 that provide an exception to subpart F for financial services active business foreign earnings. CSI would like to thank Chairman Archer, Congressmen Rangel, McCrery, Neal, Houghton, Levin and other members of the committee who are helping to secure an extension of deferral for America's financial services industry; this extension will foster a more equitable and competitive environment for US business in the international marketplace.

A word about jobs—US jobs. Services companies have mainly grown abroad by establishing operations in foreign markets (in GATS parlance this is Mode 3 or "commercial presence"). This has been necessary because in most service sectors you can only sell and deliver services locally. *Foreign operations do not cost jobs, in fact, they support thousands and thousands of new US jobs that wouldn't exist otherwise*.

In my own company, for example, we could not maintain our US employment base or survive long-term, if we were not expanding abroad. The US non-life insurance market is mature and its growth rate is low. We now generate almost 25% of our premium income from outside the United States, and I expect that figure to rise substantially in the future. But, our engagement abroad not only helps our business—it also serves as a bridge for many of our customers to export from the US or invest abroad.

Here are a few examples illustrating the stake of US service industries in expanded global markets.

• Travel and tourism contributed over $25 billion to the services trade surplus in 1997. This is the largest sectoral contribution to the overall services surplus. In addition, travel and tourism are estimated to support over seven million direct jobs and generate roughly $71 billion in tax revenues for federal, state and local governments.

• Business, professional and technical services is a largely unrecognized powerhouse in American trade. In 1997, we exported more than $21 billion in these services and we had a $16 billion trade surplus. These data do not include the earnings from foreign investments and foreign affiliates, which are very substantial. Trade in business, professional and technical services—such as accounting, legal, engineering, architectural and consulting services—is especially important because it frequently paves the way for trade and investment in other service and manufacturing sectors.

• Telecommunications services are an integral component of operations of all businesses, and are essential in promoting domestic and global growth. Telecommunications services provide the necessary infrastructure for the development and continued expansion of the information society and electronic commerce. An estimated $725 billion in revenue was generated in 1997, and projections for the next five years indicate that traded telecommunications services will increase at about 20 percent annually for outbound calls from the US to foreign markets.

• The information technology industry is also dependent on trade and trade expansion. The WTO estimates that over the next five years, sales over the Internet will double each year.

• The US asset management industry is the largest in the world. It is estimated that by 2002, 51% of total asset management revenue of $160 billion will come from

abroad, not the US. Today, US-domiciled investment managers manage 14% of the total of non-US retirement plan assets and 5% of non-US mutual fund assets.

• US law firms, when billing foreign clients, produce services exports. Overall US legal services exports approach $1.0 billion.

• Foreign students coming to American schools, net after scholarship and local assistance, spent $8.3 billion in the US, which is a US services export. We have a surplus in trade in education services of $7.0 billion.

• Although few doctors imagine themselves as US exporters, medical services rendered in the US to foreign citizens produced an export surplus of $0.5 billion.

• Air cargo transport accounts for well over a third of the value of the world trade in merchandise. However, restrictions on market access (including cabotage), ownership and control, the right of establishment, capacity, frequencies, intermodal operations in connection with air services, wet leasing, customs, groundhandling, the environment in particular local airport access times, all limit the ability of cargo carriers to plan their operations purely on the basis of commercial and operational considerations. A WTO framework could provide cargo carriers with clear rules addressing these problems and resulting in enhanced delivery options to the benefit of businesses, shippers and consumers worldwide.

• Energy services have received little attention in trade negotiations to date. But drastic changes in the international and domestic business climate for this industry—which in the US accounts for 1.4 million jobs and about 7% of US GDP—have shown the need for global trading rules, which can provide new, common understandings on such key matters as monopoly power, anti-competitive practices and discrimination against new market entrants, including of course US companies. Thus the energy services industry looks to the coming round as a critically important opportunity to map out a blueprint for market access and free competition in energy services.

The challenges facing many services sectors underscore the need for strong, united leadership as we enter the new round. It also means we must structure this round to make sure it is a success.

WTO "Services 2000"—the Opportunity We've Been Waiting For

The services sector has been working toward the Services 2000 negotiations for 20 years. First came the effort to convince governments that services—like goods—could be part of a trade negotiation. CSI itself was founded on the conviction that services firms needed a place in the multilateral trading system, and our founding members worked hard on behalf of the entire sector to ensure that services were included in the Uruguay Round.

In the coming negotiations, services will, for the first time, take a front seat in the negotiations as part of the required agenda. Virtually all of the services sectors can be subject to negotiation in this round. With 135 member governments now participating in its rules-based system, and with more accessions pending, the WTO and its mandated "Services 2000" negotiations gives the US services industry an unprecedented opportunity to secure meaningful services trade liberalization from our trading partners.

"Services 2000": Goals for US Industry

While previous negotiations have produced important liberalizations for service industries, all industries in the service sector face uneven implementation of past commitments and continued foreign impediments to open markets.

What the services sector wants is free, open, contestable, competitive markets for its products. These conditions can be obtained by getting our trading partners to commit to:

• Ensure the right of US companies to establish operations in foreign markets, including the right to wholly own these investments;

• Ensure that US companies get "national treatment," so that foreign investors have the same rights as domestic companies in a given market;

• Promote pro-competitive regulatory reform focused on adequacy of appropriate and consistent rules as well as transparency and impartiality of regulatory administration;

• Remove barriers to greater cross-border trade; and

• Remove obstacles to the free movement of people and business information.

CSI, along with a number of other organizations has submitted to the US Trade Representative more detailed objectives for removing trade barriers. I ask that these recommendations, covering 8 sectors, be included in the record of this hearing. These will soon be updated to include additional sections on air cargo and energy services.

We believe the coming negotiation should be completed by January 1, 2003. In terms of trade negotiations, this is short. In terms of the realities of the marketplace, it is a long time for companies that are seeking to expand their business operations abroad.

To make the most of the exceptional opportunity offered by Services 2000 it is essential that the content of the broader round be manageable so that there is a reasonable chance of completing the round by 2003. This means a negotiation focussed on the core built-in items, like services and agriculture, plus industrial products. Other elements, on which there is no broadly shared consensus among the WTO contracting parties, like an overarching agreement on international investment and competition policy, should not be attempted in this short round. Resolving these issues in the long run may well be important and useful, but they will require a different negotiating framework.

There has been a good deal of comment about the concept of the "single undertaking" and early harvests or early agreements. On the possibly slim chance that an agreement could be quickly reached in a given sector, we believe that agreement should be allowed to come into force before 2003. It would be unfair to require such an agreement be held up until the completion of the entire round; this would simply deny the companies in question and their workers the benefits of the new business opportunities the agreement would create.

EXTENDING THE COVERAGE OF GATS COMMITMENTS

The most telling criticism of the GATS is the lack of commitments to liberalize. The new negotiations must secure commitment to national treatment, market access, and cross border services in as many sectors as possible. Current exceptions are too broad, and must be honed so only the most sensitive issues are excluded.

The need to improve commitments to open trade in cross border services (mode one) and consumption abroad (mode two) is even more important if electronic commerce is to achieve its full development. Electronic commerce as a technology for the supply of services cannot begin to reach its potential without significant new market-opening commitments in virtually all industry sectors. The ability to provide services across borders is a necessary prerequisite of the robust development of electronic commerce. If the cross border supply of services is not enabled by commitments in modes one and two, electronic commerce will be constrained to narrow national markets.

INNOVATIVE NEGOTIATING TECHNIQUES

We strongly encourage the effort to speed up negotiations in the service sector by finding alternatives to the inefficient, "request/offer" method of negotiations that has been used to date.

One of these would be to adopt "horizontal" agreements that would apply to all sectors. For example, why not ask that our trading partners commit, across the board, to allow foreign companies to establish business operations freely, without special license and to permit them to be majority owned? Exceptions to this general rule would be allowed, but in attempting the general rule we would be setting a high benchmark that would take us a long way to a successful negotiation, that could be completed by the 2003 deadline.

REGULATORY REFORM

Regulations are easily used to frustrate and nullify hard won market access and national treatment commitments. Regulatory reform that is "pro-competitive" should be a major focus of the new negotiations. For example, attention needs to be given to instances where incumbent producers have dominant positions because of outdated restrictions on market entrance, product innovation, and pricing flexibility.

CSI is intent on pursuing pro-competitive regulatory reform in sectors where it makes sense, such as in insurance and perhaps other financial services sectors. This will require WTO members to make adjustments in their regulatory regimes. These changes should create a transparent framework of rules that will permit markets to operate as freely as possible while providing necessary protections, such as ensuring the safety and soundness of financial institution.

CREATING AN OPEN ENVIRONMENT FOR THE DEVELOPMENT OF ELECTRONIC COMMERCE

International trade in virtually all services sectors, particularly cross-border trade, will be conducted to an increasing extent by electronic means. Electronic com-

merce and the Internet are a new technology to facilitate trade, particularly from business-to-business. Our goal should be to preserve the free-est and most open applications of these technologies to the enhancement of all forms of trade.

We believe that the cross-border supply of services by electronic means is covered by existing GATS commitments. Countries' commitments apply to transactions whether by digital, or traditional, forms of communication.

We believe that at the Seattle Ministerial Meeting of the WTO, Governments should:

- Make permanent the moratorium on Customs Duties on Electronic Transmissions;
- Reaffirm that existing WTO disciplines and commitments apply to electronic commerce;
- Agree to refrain from enacting measures that would impede electronic commerce; and
- Agree to assess whether national measures affecting electronic commerce are pro-competitive, and eliminate regulations that impede it.

CONCLUSION

The coming negotiations are an important milestone. They offer the opportunity to move considerably beyond the status quo to make progress in opening up trade in all service industry sectors. As an important step toward "Services 2000," CSI is organizing the first World Services Congress in Atlanta on November 1–3 of this year to provide strong support for the negotiations. It is important that the 2000 negotiations not be hindered by the effort to negotiate issues that are too contentious and would make the round unmanageable. Finally, if the round is to succeed, it must have the full support of the Administration and the Congress.

Coalition of Service Industries

Response To

Federal Register Notice of August 19, 1998 [FR Doc. 98–22279]

Solicitation of Public Comment Regarding U.S. Preparations for the World Trade Organization's Ministerial Meeting, Fourth Quarter 1999

INTRODUCTION

The Coalition of Service Industries, in coordination with the Air Courier Conference of America, the Information Technology Association of America, the International Communications Association, and the United States Council for International Business is pleased to submit our recommendations to the United States Trade Representative (USTR) pursuant to the Federal Register Notice of August 19, 1998: Solicitation of Public Comment Regarding U.S. Preparations for the World Trade Organization's Ministerial Meeting, Fourth Quarter 1999. We appreciate the opportunity to provide these comments and look forward to continuing to consult with the USTR and all involved government agencies as we work toward launching and a successful conclusion of the negotiations.

Organizations which assumed primary responsibility for the initial drafting of specific portions of this submission are as follows:

I. General Issues—Coalition of Service Industries
II. Distribution—National Retail Federation
III. Express Delivery—Air Courier Conference of America
IV. Financial Services—Coalition of Service Industries
V. Health Care—U.S. Council for International Business
VI. Information Technology—Information Technology Association of America
VII. Professional and Business-Related Services—Coalition of Service Industries
VIII. Telecommunications—International Communications Association
IX. Travel and Tourism—Coalition of Service Industries

Other associations that have been involved in the process of reviewing and commenting on this submission include the Air Transportation Association of America, the American Hotel and Motel Association, The Council of Insurance Agents and Brokers, the American Bar Association, the American Consulting Engineers Council, the American Institute of Architects, the American Institute of Certified Public Accountants, the American Insurance Association, the Consumer Bankers Association, the Investment Company Institute, the American Council on Life Insurance, the National Society for Professional Engineers, and the Securities Industry Association.

I. General Issues

A. Importance of the Services 2000 Round

Multilateral trade negotiations in services are complex and have had a short history. The global trading community is only at the beginning of a process of removing complex barriers to free trade in services through negotiation.

The Services 2000 Round is, therefore, a critical element in maintaining and expanding world prosperity—the first in which we can apply lessons learned about the structure of the GATS and the difficult specialized services negotiating process. In general, the overarching objective of the United States Government in the negotiations should be to both broaden and deepen the commitments made in the GATS. Contestable markets in every sector and in every WTO member is the ultimate goal.

Trade liberalization through Services 2000 offers the main chance for a quantum leap in world prosperity. The new industrial revolution—the information revolution or the "Third Wave"—has made innovation and efficiency in the production of services integral to economic growth. Services inputs are now a central factor in competitive success in manufacturing and agriculture. Telecommunications, transportation, finance, insurance, distribution and information services underpin all forms of international trade and all aspects of global economic activity.

To maximize opportunities of Services 2000 it is essential that the format for the broader negotiations permits sufficient allocation of resources to the GATS negotiation and does not hamper reaching substantive agreements on services in a short time frame.

We believe that the following factors should come to bear toward a successful new effort in services.

- A sound basis for making substantial progress in services in the 2000 negotiations exists. Progress made in sectors such as telecommunications and financial services is due to the realization by developing economies that services are the basis for economic modernization.
- The tumultuous financial and economic stresses of the past year will lead not to retrenchment, but instead will further progress toward liberalization.
- Through several rounds of negotiations under the WTO, countries learned to negotiate within the complex GATS framework.

B. Structural and Negotiating Issues

Since its conclusion in 1994 the GATS has drawn considerable criticism because of its complex structure which facilitates obfuscation, not liberalization. In this paper, we will not elaborate on the reasons for this. Instead, the primary issue for negotiators is whether in these negotiations the failings of the GATS architecture should be addressed.

We believe the answer must be derived from the twin objectives of (1) obtaining maximum liberalization in (2) the shortest time. If improvements in the GATS structure can be made quickly and in a way that facilitates the liberalization process, then it is a worthwhile effort. Otherwise, trade liberalization should not be delayed by a concentration of resources on structural GATS reform. In our view, GATS reform is secondary to liberalization.

Classification and Dynamic Definition of Services

The existing classification of services used in the GATS is outdated and inadequate. It omits certain services and inappropriately categorizes others. It should be revised to reflect accurately the real structure of services industries in order to facilitate the removal of barriers to trade in those services. We make specific recommendations with regard to classification in the sectoral sections of this submission. However, we feel that another useful exercise would be to review the classification scheme across sectors so as to rationalize the entire structure to reduce overlap and redundancy where appropriate. This has not been undertaken as a part of this submission.

Extending the Coverage of GATS Commitments

Apart from the issues of GATS architectural reform is the need to broaden and deepen the substantive commitments to liberalization made within the GATS. The GATS lacks, for the most part, substantive commitments. The new negotiations must secure broader commitments to national treatment and market access in as many sectors as possible. Current scheduled exceptions are too broad, and must be honed so only the most sensitive issues are excluded.

Innovative Negotiating Strategies

We urge negotiators to explore options in developing generic or formulaic approaches to negotiating the liberalization of market access barriers, including negative list schedules, sectoral commitments, horizontal commitments of revised modes of supply, and other approaches which can move beyond the traditional "request-offer" format and speed the conclusion of agreements.

C. Regulatory Reform

In order to pursue meaningful services negotiations, WTO members will have to consider making adjustments to their regulatory regimes. "Regulatory reform" is a common set of principles that should be used as a guide or a test to regulations in individual sectors. Sometimes referred to as "pro-competitive" regulatory principles, they create a transparent framework of rules that permit markets to operate as freely as possible while providing necessary protections—for example in the case of the banking sector, ensuring safety and soundness.

The "Reference Paper" negotiated as part of the WTO Agreement on Basic Telecommunications is a model that should guide the development of a framework for dealing with regulatory reforms in the Services 2000 Negotiations. The regulatory principles embodied in this paper have already had an important influence on reshaping national regulatory systems towards a more market-oriented approach. The key is effective implementation of those principles—in their common, pro-competitive, open market interpretation and application. We must learn from experience. The Reference Paper, we are discovering, must be interpreted clearly and forcefully for dispute settlement to be effective in most instances. Similar initiatives in other sectors should attempt to include specific and targeted language where possible.

Regulation should ensure that consumers (users) have access to quality, reasonably-priced services that are available from reliable producers. Government's role is to promote fair competition, protecting buyers from misleading, collusive, and other anti-competitive practices. Regulation should have four central attributes:

- Adequacy: it should be sufficient to rectify serious market imperfections and thus protect the public.
- Impartiality: governments should accord no one or no group of competitors, foreign or domestic, a more favorable position than accorded other competitors.
- Least intrusive: governments should apply regulation in ways that efficiently opens that market and that least disrupt the smooth functioning of markets once opened.
- Transparency: laws and regulations should be easily available to the public, and the processes for arriving at regulations should be open and accessible to the public for comment.

There is a substantial basis of support in certain industry sectors for efforts to achieve "regulatory reform." Regulations are easily used to frustrate market access and national treatment commitments. Regulatory conflicts are often a major source of trade disputes. Countries should have an interest in regulatory reform because it is a key to reviving high growth rates. This area should be a major focus of the new negotiations, especially where incumbent producers have monopoly or residual market power as a result of their incumbency or historic position.

D. Electronic Commerce

International trade in services, particularly cross-border trade, is conducted to a large and increasing extent through electronic means. Computer technology has made many services tradable, which until recently were not. Electronic commerce and the Internet have thus added a new technological means of facilitating trade, adding digitized information flows to physical flows, much as ships increased trade over merely land-based movement of goods.

The supply of services by electronic means can take place in any of the four modes set out in the GATS framework, just as the supply of services by physical means can. Accordingly, the supply of services by electronic technology is covered by the GATS in the same way as all other means of delivery. Countries' commitments in the GATS apply to transactions whether by digital, or traditional, forms of communication.

We reject the idea that there is a class of services that can be labeled electronic commerce and thus be negotiated separately. There may be services products that result from wholly new technological applications or inventions that might be identified as electronic commerce, but these are more appropriately labeled "information technology services," or services within specific sectors. Barriers to these new forms of services can be negotiated by sector or in a separate information technology services sector.

On the other hand, it is also necessary to recognize the relationship between electronic commerce and specific industry sectors. Electronic commerce as a means of delivery cannot reach its full potential without significant commitments in virtually every industry sector. The ability to provide services across borders is a necessary prerequisite for the robust development and growth of electronic commerce. If service provision across borders is not permitted, then the ability to deliver those services electronically will be constrained and fragmented in national markets.

E. Government Procurement

Governments spend billions of dollars on procurement of services. In many countries this procurement is conducted in closed processes that work against foreign suppliers. A two-pronged effort is now under way in the WTO. One prong of this effort is to achieve agreement on transparency measures so that all WTO members can commit themselves to transparent procedures without yet making new commitments to market access and national treatment. The other is to simplify the existing Agreement on Government Procurement which has 27 signatories, including the U.S., to increase its adoption by member countries. The core of this document would remain a commitment to permit foreign bidders to receive national treatment as they compete for government awards. We understand that government procurement is a sensitive subject and that commitments in this area may need to be phased over a period of time. However, we also feel it is an important area for progress to be made. The impact of governments being able to obtain services globally is quite substantial. The possibility is to dramatically improve the services which governments provide to their citizens, and to lower costs. This will have a beneficial effect on economies and society worldwide.

We support the goal of the Quad to achieve a Transparency Agreement in 1999. In addition, we feel that there are a set of overall objectives for services which need to be achieved in this area. Whether these objectives can best be met through existing mechanisms or through the Services 2000 negotiations is of less consequence to us than the fact that they are actually achieved. Therefore, we believe that the objectives in this area should be the following:

- Insure transparency.
- Insure access to an independent appeals and dispute resolution process.
- Insure full market access and national treatment.

F. Conclusion

The Services 2000 Negotiations, thus, are an important milestone. They offer the opportunity to move considerably beyond the status quo and to make progress in all service industry sectors. It is important not to be sidetracked by architectural and negotiating structure, rather all the effort should focus on achieving further liberalization of services and the inclusion of regulatory reform and government procurement.

II. Distribution Services

A. Sector Status

The U.S. retail industry, represented by its trade association, the National Retail Federation (NRF), strongly supports negotiations at the World Trade Organization (WTO) to further liberalize trade in distribution services. A growing number of U.S. retailers recognize that there are many attractive business opportunities outside the United States. Many foreign countries have a growing middle class that increasingly demands the quality of service and broad selection of products that U.S. retailers can offer at competitive prices. At the same time, many of these countries have comparatively few retail outlets per capita.

Retail opportunities abound even in mature markets where one increasingly sees the business signs of familiar U.S. stores in many downtown and suburban shopping areas. Notwithstanding the current global economic situation, many U.S. department, specialty, discount, and mass merchandise retail companies have opened stores abroad and are looking to expand their foreign operations to meet this growing consumer demand outside the United States.

In the Uruguay Round General Agreement on Trade and Services (GATS), a number of countries agreed to include commitments in their GATS schedules to bind at least some part of trade in distribution services under the rules of the WTO. These countries include our largest trading partners—Canada, Mexico, the European Union, and Japan. Among the general categories included under distribution services:

- 33 countries scheduled commitments on retail services.
- 34 countries scheduled commitments on wholesale services.

- 23 countries scheduled commitments on franchising.
- 21 countries scheduled commitments on commercial agents.
- 2 countries scheduled under "other" distribution services.

In many instances, these scheduled concessions were rather modest and included broad exceptions.

B. Classification

The WTO Services Sectoral Classification List defines "distribution services" as encompassing retailing, wholesaling, franchising, and commission agents. This definition is, however, quite broad and somewhat vague. Therefore, negotiations at the WTO in this sector must take into consideration the entire network of activities that are necessary to support retail and other distribution services operations. For example, in the negotiations between the United States and China on China's accession to the WTO, the area of distribution services covers all activities that support retail and other distribution services operation, from the port of entry to the store, and ultimately to the customer—e.g., customs clearance, storage and warehousing services; road, rail, water, and air transportation services; marketing; after-sales services and customer support; control of distribution networks and wholesale outlets; and protection of retail trademarks. It is necessary to recognize that barriers in any of these areas will disrupt the efficient operation of the distribution chain and, in order to support successful retail and other distribution services operations, barriers in all areas supporting distribution services operations must be addressed in some manner.

C. Barriers

In many countries, opportunities for U.S. retailers and other providers of distribution services to establish and maintain and commercial presence are limited by various laws, regulations, and policies. Some countries have protected their small stores from competition by limiting the size of retail establishments and placing arbitrary and onerous restrictions on where they may locate, price they may charge, and how they may promote products. Restrictions imposed by countries to protect so-called " cultural industries" have significantly hindered the establishment of retail operations by large U.S. booksellers. U.S. direct sellers and other retail companies have been severely hampered in establishing and/or expanding business operations in countries as a result of local sourcing requirements, and tight limitations over ownership and control of distribution systems. Restrictions on investment, limitations on foreign ownership, restrictions on opening hours, constraints on the typesducts that may be sold to protect local monopolies, lack of adequate protection for retail trademarks, and the non-transparent and arbitrary application of commercial laws and regulations are further examples of barriers facing U.S. retailers. In addition, some countries have undermined the value of commitments they have already scheduled at the WTO on distribution services by including broad exceptions permitting restrictions to be imposed under a vague "economic needs test."

The reduction of such barriers to trade in distribution services warrants greater attention through specific sectoral negotiations at the WTO for several reasons. Since trade in distribution services includes wholesaling, retailing, and franchising, this sector represents the last link in the trade chain to the consumer and is, therefore, essential to a well-functioning free and open trading regime. Larger retail establishments are more likely to sell imported along with domestically-made products. Moreover, market access is only meaningful if goods can be effectively distributed at the retail level.

D. Negotiating Objectives

The U.S. retail industry strongly urges U.S. negotiators to seek the elimination of foreign restrictions to trade in distribution services. Once negotiations are underway, the United States should focus generally on:

- Obtaining commitments from as many countries as possible to bind the distribution services sector in their GATS schedules.
- Limiting as much as possible the number of exceptions taken by countries in their schedule of commitments on distribution services.
- Persuading countries to refrain from general, open-ended exceptions in their schedule of commitments on distribution services.
- Broadening and deepening the commitments from countries that have already included distribution services in their GATS schedules.
- Obtaining commitments that allow for full market access for distribution services under the principle of national treatment, rather than merely enshrining the current status quo.

E. Economic Impact

In order to achieve the goals listed above, U.S. negotiators should emphasize the economic and employment benefits that other countries would realize by opening up and liberalizing their distribution services sector. For example, the United States has no significant restrictions on the retail services. Nearly one in five American workers is employed in retail jobs that are well-paying and require a marketable set of skills. Moreover, the U.S. retail industry registered sales receipts in 1997 of more that $2.5 trillion and economic activity in the sector has a significant multiplier effect throughout the U.S. economy. Thus, the retail sector alone adds substantially to U.S. Gross Domestic Product (GDP), economic growth, higher employment, and lower inflation. In addition, the ability of the U.S. retailers to provide American consumers with a wide variety of reasonably-priced products is a substantial contributor to a high standard of living in the United States.

U.S. negotiators should impress on their foreign counterparts that, as in the United States, an open and thriving retail industry and distribution services sector generally, will be an important factor in improving the standard of living of their citizens, expanding economic activity and growth, and developing a modern consumer society. Those benefits should not be taken lightly. When U.S. retailers establish commercial operations in a foreign country, those operations:

- Provide much needed local investment.
- Create jobs for many local people, not only in the retail establishment itself, but also in the warehouses, and transportation and advertising services that support those operations.
- Allow local workers to develop business expertise and a better understanding about proper business practices in the services sector.
- Provide local consumers with a better selection of goods at lower prices that will help improve the quality of their lives.
- Make their country's retail sector and the economy as a whole more efficient.

III. Express Delivery Services

A. Sector Status

Express delivery service, as provided by companies such as DHL, Federal Express, TNT and United Parcel Service, is a relatively new and rapidly expanding industry, having evolved during the past two decades in response to the needs of global international commerce. The express transportation industry specializes in time-definite, reliable transportation services for documents, packages and freight. Express delivery has grown increasingly important to businesses needing to use time-sensitive, "just-in-time" manufacturing techniques and supply-chain logistics in order to remain internationally competitive. The express industry has revolutionized the way companies do business worldwide, enabling businesses to rely on predictable, expeditious delivery of supplies. Producers using supplies from overseas no longer need to maintain costly inventories, nor do business persons need to wait extended periods of time for important documents. In addition, consumers now have the option of receiving international shipments on an expedited basis.

Increased reliance on express shipments has propelled the industry to average annual growth rates of 20 percent for the past two decades. The industry's explosive growth is reflected in the rapid expansion of air cargo shipments: the expedited movement of cargo by air now accounts for 37 percent of the value of world trade, a share which is expected to continue to increase.

The express transportation industry is essential to the future growth of world trade and commerce, as more and more trade is centered on the type of high-value goods that are carried by our industry, such as electronics, computers and computer parts, software, optics, precision equipment, medicine, medical supplies, pharmaceuticals, aircraft and auto parts, avionics, fashions and high-value perishables. In addition, the industry encourages small and medium-sized businesses to grow by enabling them to participate in international trade. The express transportation sector, with its integrated services that provide door-to-door delivery, frees small businesses from the burdensome and costly tasks of arranging for the transportation of their goods through a myriad of unrelated and often non-communicating parties.

Express delivery operators, represented through their trade association, the Air Courier Conference of America (ACCA), strongly support free and open trade and investment worldwide. Express operators provide integrated, door-to-door delivery service for documents and packages, and customers expect value-added services like time guarantees, electronic information, brokerage services and more. Express customers are not as concerned with how their documents or parcels are moved—just that they arrive on time. This could be by plane, train, truck, van, automobile, mo-

torcycle, or even gondola. Consequently, a broad spectrum of issues affects the express industry, and includes laws and regulations in the areas of intermodal transportation, air auxiliary services, distribution, warehousing, customs, postal, telecommunications, logistics, brokerage, insurance, and freight forwarding. For this reason, barriers to international trade in the express industry can involve trade restrictions and trade distorting measures in any of these pertinent service sectors.

B. Classification

Under the Uruguay Round's Services Sectoral Classification List, express delivery services are currently classified as "courier services"—a communications service (CPC 7512), along with postal, telecommunications and audiovisual services. This classification fails to reflect the true nature of express delivery services, which provide for regular exchange of physical items over a network of locations and, as described above, incorporate transportation, communications and other services.

Express delivery services should be reclassified to more accurately reflect the nature of express operations which, at a minimum:

• Provide the business community and general public with regular (usually every business day), expedited and reliable collection, transport and delivery of physical objects across a network of geographic areas.

• have management and communication systems that monitor and ensure end-to-end quality of service; and

• Involve the operation of such offices, buildings, telecommunications facilities, computers, sorting equipment, automobiles, trucks, aircraft, and other vehicles as may be necessary to accomplish the basic function of express delivery.

A reclassification of the industry would facilitate GATS 2000 negotiations that are meaningful to the industry.

C. Barriers

As described above, barriers in any of the numerous operational areas encompassed by express operators can hinder express delivery services. Among the most persistent problems faced by the industry are inconsistent customs clearance policies that add costs and delays to express services. These barriers include:

• Restrictions on the value and weight of express shipments.

• Delays, generally of at least one day and up to 96 hours, from lengthy customs clearance procedures.

• Cargo handling restrictions that force express carriers to use local handling companies—rather than our own employees—to transport our express shipments from the baggage collection area to warehouses where they can clear local customs.

• Arbitrary revaluation of declared value of shipments by customs.

• Imposition of a variety of charges and fees for express shipments, including shipments that are transiting one country on their way to their ultimate destination.

To eliminate these and other barriers, ACCA believes that the WTO should require all members to adopt and implement the express guidelines of the World Customs Organization.

Because express operators provide integrated, door-to-door services, barriers to any element of transportation linked to these services pose a problem for the industry. Unfortunately, in markets worldwide ACCA members encounter a variety of transportation restrictions that limit—and increase the cost of—express service. For the express sector to achieve meaningful trade liberalization under the WTO, it must be accorded access to land, air and other transportation infrastructures in all markets. For Example, arbitrary operating restrictions on carriers to limit their market, such as types of equipment and vehicles that can be used, and weight or size of packages, must be prohibited.

Firms also face anti-competitive practices in many markets, particularly with respect to postal operations. Because some of the industry's operations are postal-related (e.g., the delivery of documents and small packages), express operators are frequently affected by postal policies in foreign countries. In fact, throughout the world, countries exercise varying degrees of authority over the delivery of printed matter.

Many countries have vested the national postal service with local monopolies over the pick-up and delivery of letters and documents. This often imposes unfair or unreasonable restrictions on international service, which limits the operations of international express service companies. While we are not advocating that U.S. policymakers seek the dissolution of national monopolies for domestic postal services, we do believe that the domestic monopoly claim should not be extended unfairly and unreasonably to encompass cross-border services. Unified, end-to-end administrative control makes rapid and reliable international express service possible.

U.S. negotiators should seek WTO commitments that would:

• Prohibit a foreign government from determining unilaterally the basic conditions of express service to and from the United States (market entry, price regulation, operating restrictions, and extraordinary or discriminatory taxation).

• Ensure that a foreign postal monopoly does not have an outright prohibition against the provision of international service by U.S. express delivery providers.

• Prohibit profits derived from services provided by national postal authorities from subsidizing services that compete with foreign companies.

• Prohibit taxation of private sector companies from subsidizing a national postal administration's services.

• Ensure that national postal administration's parcel and non-monopoly document services that compete directly with foreign companies would be subject to effective and impartial regulatory scrutiny to protect against illegitimate cross-subsidy.

• Ensure that a postal administration's competitive services be subject to the same laws and regulations imposed on private companies.

• Prohibit a foreign country from unilaterally selecting the U.S. express carriers that may service an international market with restricted entry.

• Prohibit a tax on bilateral services that exceeds the net cost to a legitimate local monopoly carrier.

• Prohibit discriminatory treatment of U.S. carriers.

D. Negotiating Objectives

With respect to the WTO negotiating agenda, we urge that express delivery services be a focus of the GATS 2000 Negotiations. Specifically, we advocate the negotiation of pro-competitive regulatory principles for the express sector. These principles should be legally binding on all WTO members, just as is the case for the telecommunications pro-competitive regulatory principles agreed to during the previous GATS negotiations.

ACCA has detailed a proposed set of pro-competitive regulatory principles in a separate submission to USTR. These principles would encompass liberalized customs, postal, air cargo and other policies. We look forward to working with USTR throughout the GATS 2000 process to liberalize treatment of express delivery services, thereby expediting the flow of goods globally.

IV. Financial Services

A. Benefits

Increasing competition in financial services markets through liberalization of restraints on foreign participation in financial services activities will enhance economic growth for all countries. Such liberalization will help provide developing countries with: (1) essential information and infrastructure to speed their modernization; (2) improved health, safety and retirement security for working people and; (3) the broadest range of products and services at the lowest cost for consumers. Additionally, it will help enhance investor confidence, and attract and retain private long-term direct investment. Liberalization promotes the development of modern, efficient, well-regulated financial markets.

B. Sector Status

WTO financial services negotiations provide an excellent opportunity to achieve meaningful liberalization on a global scale. By securing binding commitments by a significant number of countries of the right of foreign companies to establish and to own all or a majority share of their direct investments, the 1997 negotiations made important progress.

Even though the 1997 agreement didn't include comprehensive agreements to reduce or eliminate investment barriers for foreign financial service providers, the agreement made major progress in a number of countries. Much remains to be done in the upcoming negotiations and the 1997 Agreement serves as a strong foundation to add truly liberalizing commitments.

C. Barriers

The financial services 2000 negotiations offer an extremely important opportunity to build on this base in a number of ways:

• Further the scope of commitments by reducing the number of exceptions countries have written into their commitment schedules.

• Expand rights of establishment and ownership. While progress has been made in securing bindings of existing practice in regard to establishment and full or ma-

jority ownership, these rights should be expanded and secured from more countries that made no such commitments.

• Expand cross border trading rights. Little attention has been given to securing rights to sell financial services across borders in negotiations to date. WTO members should, where appropriate take into account the views and legitimate objectives of the regulators.

• Modernize and reform regulatory structures that frustrate trade commitment and competition. Regulatory regimes can be used to block gains made in trade negotiations by imposing unnecessary restraints on foreign financial services suppliers, and thus favoring local suppliers. Such practices prevent realization of the goal of national treatment. They are inherently anti-competitive and inefficient. These "pro-competitive regulatory reforms" should be directed at establishing fair, competitive markets by focusing on solvency and transparency to provide the most effective protection of consumers and markets.

• Achieve impartial administration of regulations. Article VI of the GATS, applying to Domestic Regulation, requires that "in sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner." It further requires each member to set up tribunals or procedures which provide prompt review and remedies for administrative decisions affecting trade in services, and it establishes that members must provide impartial review of these procedures. These requirements for reasonable, objective and impartial administration of regulations should be amplified by the establishment of principles against which regulations should be tested.

• Promote administrative and regulatory transparency. Clear and reliable information about a country's financial services laws and practices advances equitable trade and competition, reduces the possibility of manipulation, and is an essential component of a liberalizing agreement. Non-transparent regulations hamper foreign firms' ability to do business. Transparency requirements make countries more accountable for their actions and provide information needed to evaluate compliance with the agreement.

• Reduce and remove obstacles to the free movement of people. The temporary posting of key business personnel should be facilitated by creating a system of easily obtainable and renewable visas, and by easing or removal of other restrictions.

D. Classification

Should include language necessary to provide for protection and applicability for pensions, long-term care, disability income and life insurance and reinsurance.

E. Negotiating Objectives

• Foreign investors should have the right to establish through a wholly owned presence or other form of business ownership, and to operate competitively through established vehicles available to national companies.

• Foreign investors should have the same access to domestic and international markets as domestic companies. They should be treated to regulatory and other purposes on the same basis as domestic companies.

• Unnecessary restrictions on cross-border financial services businesses and consumption of services abroad should be removed, to encourage trade without requiring establishment.

• Creating a system of easily obtained and renewable permits should facilitate the temporary posting of key business personnel.

• Existing investments should be grandfathered by Member countries that did not commit to do so in the 1997 Agreement.

• Countries wishing to accede to membership in the WTO should do so on the basis of commitments to substantial financial liberalization consistent with the 1997 Financial Services Agreement and the goals set forth above, resulting in commercially meaningful access. Countries should be permitted to participate in the negotiations in a way which encourages them to make such commitments.

• Financial regulation principles leading to the development of sound, more competitive markets should be negotiated. Such regulation will foster risk management standards, transparency, product diversification and consumer choice important for public policy purposes. It will also enhance financial security for citizens, nations and the global financial system.

• Transparent laws and regulations are necessary to liberalize financial services. Clear and reliable information about a country's financial services laws and practices promotes equitable trade and competition, and reduce the possibility of manipulation.

• A notification waiting period for all new national and sub-national taxation of financial services should be established to provide industry and governments with a minimum of one year to factor changing taxation rates in technical, solvency and pricing decisions.

• Nations should commit to lock in and improve pension policies that encourage private savings for retirement, in recognition of worldwide aging populations and related pressure on government social security systems.

V. Health Care Services

A. Sector Status

There appears to be little coverage of healthcare services in current agreements between countries; therefore, these comments reflect preliminary thought process around GATS negotiations for health care services. We intend to continue to gather information and talk with businesses that are working throughout the world in the health care services sector to bring additional clarity to the submission.

There are several emerging global trends that could benefit U.S. health care service suppliers in overseas markets including the rapid growth in health care expenditures in a large number of countries. Rapidly expanding health care expenditures in many developed countries are due to an increase in their aged populations, the demographic segment that uses health care services most intensively. The entire spectrum of geriatric services, both community and institutionalization, for senior citizens should be explored. Increased health expenditures in rapidly developing economies are occurring as newly emerging middle classes demand the levels of health care previously enjoyed only in more developed economies, such as the U.S. and Western Europe.

We believe we can make much progress in the negotiations to allow the opportunity for U.S. businesses to expand into foreign health care markets. In the U.S. competition has provided reductions in the cost of health care as well as increased quality in the care that is being provided. Some types of services are consulting and training for local pharmacy management; consulting and training for health care including treatment of abusive behaviors; telemedicine; development of treatment protocols to enhance healthcare quality; sharing expertise on appropriate treatment; and, management of overseas health care institutions.

According to official statistics from the U.S. Department of Commerce, in 1996 U.S. receipts of health care services amounted to $872 million. This number was 2 percentage points less than the average annual export growth rate of nearly 6 percent for health care services during 1991–1995. U.S. cross-border imports of health care services amounted to an estimated $550 million in 1996. U.S. receipts and payments for health care services accounted for less than 1 percent of such cross-border trade in all service industries in l996. The U.S. cross-border trade surplus in health care services was $322 million in 1996.

B. Classification

Below are the health care entries from the WTO's Services Sectoral Classification List (W–120) with reference numbers to the UN's Central Product Classification (CPC) numbers. In current practice, many WTO members do not use the CPC references in their scheduled commitments; practices may vary per sector. While the W–120 and CPC classifications provide a reasonable start toward definition of the health care services that should be covered in this negotiation, we need flexibility. We do not want to be locked into only these specific existing classifications. For example, we need flexibility to include some services which may not be captured by these definitions. We also recognize that some of these services may be included as parts of goods negotiations or in the definitions of other service sectors. We will continue our work to provide negotiators with the most detailed and comprehensive description of the health care services we are now providing or which we will want to provide.

WTO Services Sectoral Classification List (W–120)

Sectors and Sub-Sectors

1. Business Services
2. A. Professional Services
   h. Medical and Dental Services 9312
   i. Veterinary Services 932
   j. Services provided by midwives, nurses, physiotherapists and para-medical personnel 93191

8. Health Related and Social Services
   A. Hospital Services 9311
   B. Other Human Health Services 9319

C. Barriers

Historically, health care services in many foreign countries have largely been the responsibility of the public sector. This public ownership of health care has made it difficult for U.S. private-sector health care providers to market in foreign countries. In addition, there are substantive differences in emerging markets vs. OECD countries. In most emerging markets there are few barriers to these services but barriers can be erected in the future as laws and regulations are enacted absent commitments in writing. Existing regulations are by and large not a problem in emerging markets.

However, existing regulations do present serious barriers in OECD countries, including:

- Restricting licensing of health care professionals.
- Excessive privacy and confidentiality regulations.
- Lack of transparency in the OECD countries' regulations.
- Difficulty processing permits for work and for facilities.

D. Negotiating Objectives

Three general objectives are to encourage more privatization, to promote pro-competitive regulatory reform, and to obtain liberalization. Specific objectives are:

- Transparent licensing of health care professionals and facilities, which do not place unnecessary or discriminatory burdens on U.S. providers.
- Obtain market access and national treatment commitments allowing provisions of all health care services cross border.
- Allow majority foreign ownership of health care facilities.
- Obtain a commitment for the cross-border provision and transfer of health care information.
- Seek inclusion of health care in WTO government procurement disciplines.
- Strengthen international co-operation to promote pro-competitive regulatory reform across countries.
- Negotiate Mutual Recognition Agreements (MRAs) for licensing of professionals and cooperative agreements on regulation of facilities.
- Develop principles to guide regulators so as to minimize unnecessary costs on trade and investment in the health care sector.
- Simplify regulations and provide transparency for movement of personnel, both professionals and patients.

VI. Information Technology Services

A. Sector Status

The information services industry has a vital interest in the successful conclusion of the World Trade Organization (WTO) 2000 Services negotiations. Information technology, while a service industry itself, is critical to the success of the other services industries, which, in turn provide a substantial market for information services. As the services sector thrives, so will the information services sector.

While substantive commitments by many countries in the area of value-added services (information services) are included in the General Agreement on Trade in Services (GATS), some commitments are weak, while others are non-existent. The 2000 negotiations provide an opportunity to broaden and deepen the current commitments.

Recent international agreements affecting information technology services have opened related sectors, such as basic and enhanced telecommunications and offered protection and trade liberalization in other sectors (Trade-related Intellectual Property—TRIPS, and the Information Technology Agreement—ITA).

GATS Annex on Telecommunications and the WTO Agreement on Basic Telecommunications Services

The Enhanced Telecommunications Annex provides substantial commitments for information technology services and for access to telecommunications networks for the provision of such services. Examples of services covered under this Annex are electronic mail, on-line information and database retrieval, code and protocol conversion, data processing, and electronic data interchange. While a number of countries listed significant limitations with regard to foreign ownership and the required use

of public networks, on the whole, the provision of information technology services is relatively open and burden-free.

The 1997 WTO Agreement on Basic Telecommunications Services (GBT) and its reference paper on pro-competitive regulatory principles is an integral element of providing a liberalized environment for trade in information technology services. Under a very broad and essentially open-ended definition employed for the negotiations, basic telecommunications are considered any telecommunications transport networks or services and the schedules of commitments cover a wide variety of services fitting this definition. Some examples of basic telecommunications include: voice telephone services, packet-switched data transmission services; circuit-switched data transmission services, telex, telegraph, facsimile and private leased circuit services, analog/digital cellular/mobile telephone services, mobile data service, paging, personal communications services, satellite-based mobile services, fixed satellite services, VSAT services, gateway earthstation services, teleconferencing, video transport and trunked radio system services. Categories of service included: local, long distance, international, wire-based, radio based, resale, facilities-based, for public use, and for non-public use (closed user groups).

The agreement, which opened trade in the $600 billion global basic telecommunications market, will promote competition in world telecommunications markets, spur innovation and competition-based pricing and speed the delivery of robust information products and services to consumers everywhere. Ultimately, we believe the agreement will expand the market not only for telecommunications, but for other information service providers as well.

The GBT commitments are a key element in securing the infrastructure for trade in information services. Together with the agreement on enhanced telecommunications services, we believe many of the basic elements to secure access to infrastructure over which information technology services thrive, are subject to existing liberalization commitments. It is our understanding that the GATS Annex on Enhanced Telecommunications Services and the GBT cover the delivery of services electronically. We urge the USTR to enforce these existing commitments, expand commitments from those who made limited commitments, and seek new commitments from those who have not signed on to the GBT.

Information Technology Agreement (ITA)

Concluded in December 1996, the ITA provides for the elimination of customs duties and other charges on information technology products through equal annual tariff reductions and covers five main categories of IT products: computers, telecommunications products, semiconductors, semiconductor manufacturing equipment, software, and scientific instruments. The tariff reductions, which are scheduled to begin on July 1, 1997 and to conclude on January 1, 2000, are to be implemented by signatories on a most-favored-nation (MFN) basis.

The ITA will open up global trade in a wide array of information technology products, valued at over $500 billion, and spur growth of the global information infrastructure. The USTR estimates that the ITA will provide a competitive boost of 1.8 million jobs in the U.S.

The agreement will bring significant benefits to software and telecommunications companies. The agreement includes a broad definition of software products, which covers multimedia and interactive software and "Nuisance tariffs" on software (tariffs below 3%) will be eliminated as soon as July 1, 1997. The agreement also covers a wide array of telecommunications equipment and products, including fiber optic cable.

The ITA, while a goods-based (rather than services-based) agreement, is essential to the liberalization of trade in information technology services, as it provides the means to deliver IT services. We urge the USTR to work with its trading partners in the WTO to expand commitments made in the ITA.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Adequate and effective protection and enforcement of intellectual property rights is a critical element in fostering the growth of IT globally. As electronic commerce continues to grow it will become increasingly important that commitments to protect intellectual property are enforced. In many countries, both developed and developing, civil and administrative procedures do not meet the enforcement standards set forth in Part III of the TRIPS agreement. As more and more software is being sold over the Internet, adequate and effective IPR enforcement becomes even more important.

We recommend the USTR press other WTO members to meet the enforcement obligations outlined in Part III of the TRIPS Agreement.

B. Classification

Sector Classifications and Sub-Sectors (CPC Codes)

The emerging convergence between telecommunications services, broadcasting, audiovisual services and information technology services has made clear distinctions between sector classifications increasingly difficult. For example, a barrier that restricts the number of foreign produced films from being broadcast or foreign publications from being distributed may affect both broadcasters who deliver films over the Internet as well as the Internet Service Provider who runs the network over which the films/publications are delivered.

We strongly encourage the USTR to review these classifications in a dialogue with the various industry sectors involved. We also encourage the USTR to begin informal discussions on this topic with their trading partners.

Expanded Information Technology Services

Information technology has become so prevalent in the provision of many services that the services themselves are being considered information technology services. Call centers, for example, are so dependent on the underlying information technology that they are provided by many information technology providers as a routine service offering. Customer loyalty programs, order fulfillment functions, remote monitoring services, remote inventory services and remote maintenance and repair services are examples of such services. Some involve physical functions while others such as remote monitoring are performed entirely electronically. Current computer and related services section of the CPC (listed immediately below) is somewhat limited given the rapid advances in this dynamic sector.

CPC Computer and Related Services:

- Consultancy services related to the installation of computer hardware (841)
- Software implementation services (842)
- Data processing services (843)
- Data base services (844)
- Other (845 + 849)

The USTR should expand the definition of information technology services. We recommend a number of services be included and the category be changed to information technology services. We recommend the USTR consider the classification revised CPC scheme below.

Information Technology Services:

- Consultancy services related to the installation of computer hardware
- Software implementation services
- Data processing services
- Data base services
- Management consulting
- Services related to management consulting
- Customer services
- Other

C. Barriers

The private sector has been the driving force behind the rapid growth, innovation, and development of information technology services, the Internet and electronic commerce. Despite this rapid growth, a few barriers remain. Elimination of these barriers must be industry led and market driven. Consistent with the U.S. Administration's Framework for Global Electronic Commerce, we strongly recommend that the USTR continue to recognize the course of industry leadership and self-regulation

Barriers also remain with regard to the current commitments of some countries. Restrictions on foreign ownership and requirements for local partners of varying descriptions hamper the ability to provide information technology services seamlessly. In addition, requirements to use public networks and restrictions on the use of leased lines also provide barriers to true global market access. Finally, national treatment is not a reality in every country.

Practices in government procurement vary dramatically across the globe and offer considerable barriers to the provision of information technology services to governments. They range from many of the OECD nations which have, both on paper and in practice, highly organized and wholly transparent processes, to nations which conduct procurement entirely behind closed doors. Likewise, a number of nations have very open procurement markets while others are closed both to foreign firms and to those firms not in favor, regardless of capability. Finally, there is the same

range of conduct regarding the ethics of procurement, with many "clean" systems and just as many in which bribery and corruption are the norm.

The greatest barrier to the continued development of the information technology industry globally, however, is the lack of market access and national treatment in the industry sectors which information technology serves. If the financial services industry is not permitted to sell mutual funds across borders, then the capability of the information technology services industry to provide that service electronically is moot. For the information technology services industry to reach its full potential to deliver benefits to individuals as well as entire economies, the markets in every other industry sector must be opened and liberalized.

D. Negotiating Objectives

We urge the USTR to set the following negotiating objectives:

- Expand the coverage of existing agreements in information technology related and enabling areas such as the Enhanced Telecommunications Annex, the Basic Telecommunications Services Agreement, and the Information Technology Agreement.
- Develop a consensual view of and acceptance of the modes of supply as applied to information technology services in the section above.
- Expand the definition of information technology services.
- Insure information technology services can be performed and delivered without establishment.
- Achieve full market access and national treatment for information technology services and for services in a broad range of other sectors.
- Seek commitments in government information technology services procurement for full market access, national treatment, transparency, access to independent appeals, and dispute resolution processes.

VII. Professional & Business-Related Services

A. Sector Status

Professional and business-related services are those services for which the provider requires specialized, technical knowledge—acquired through post-secondary education or equivalent training or experience—which is adapted and applied to the specific needs of business clients. Many of these services are performed by licensed professionals for which the right to practice is controlled by the government and/or professional bodies. These licensed professions tend to be more regulated than commercial services because the license holders are authorized to practice restricted activities in return for which they are expected to assume public interest responsibilities. Examples include accountancy, architecture, engineering and law. Other business-related services share common characteristics with the professions, such as high levels of human and intellectual capital input and close interaction between the provider and the client, but generally are not highly regulated or controlled by licenses granted by government or professional bodies. Examples include management and business, including computer-related, consulting services. Thus, this discussion topic overlaps, with some extent, with the section on information technology services. [Please note that this section addresses the licensed professions most closely associated with services provided to businesses and, thus, does not cover medical doctors, dentists, nurses, pharmacists, beauticians, etc. The medical professions are covered in the "Health Services" section].

Statistics on trade in services are notoriously poor, so it is difficult to know the volume of trade in professional and business-related services worldwide. In the U.S. balance-of-payments category of "business, professional and technical services," U.S. providers exported $17.6 billion in 1996 and $21.3 billion in 1997. Imports were valued at approximately one-quarter of these amounts. There is reason to believe, however, that these numbers substantially understate the level of international business in this sector, because they do not include data on earnings from foreign investments and foreign affiliates, especially with respect to "accounting" firms and information technology companies. Nor do they include fees generated by mobile service providers, such as lawyers, architects, engineers and consultants, who serve temporarily in foreign countries but are paid at home.

Professional and business-related services received substantial coverage in the schedules of commitments under the General Agreement in Trade in Services (GATS).

- More than 60 WTO member governments have made commitments in accountancy and related services, accounting for approximately 90 percent of the world market measured by gross revenues. Virtually all these commitments confirmed the status quo with respect to market access and national treatment.

• More than 40 WTO member governments made commitments on architectural services, and just fewer than 30 made commitments on urban planning and landscape architectural services.

• More than 50 WTO member governments made commitments on engineering services.

• More than 40 WTO member governments have made commitments in one or more aspects of legal services. The commitments mostly cover advisory services on international and home country law. The commitments are mostly in the nature of a standstill and do not achieve the American bar's objectives on Foreign Legal Consultants or rules for examinations in foreign jurisdictions.

• More than 60 WTO member governments also made commitments in computer-related services an management consultancy, also accounting for about 90 percent of the world market measured by gross revenues. Again, the commitments largely confirmed the status quo, which for the most part is relatively free of trade restriction and discriminatory regulation.

It should also be noted that the WTO and the GATS have created an international legal umbrella over substantial work initiated by the professions themselves in the areas of mutual recognition and standards. Two examples follow:

• The International Union of Architects (UIA) Professional Practice Commission has produced the "UIA Accord on Recommended International Standards of Professionalism in Architectural Practice." The American Institute of Architects and the Architectural Society of China serve as the Commissions' joint secretariat. The document was initially adopted by the UIA's 91 national member sections in July 1996. A revised and expanded edition, including recommended policy guidelines, will be presented for adoption at the XXI UIA Assembly in June 1999 in Beijing. A primary objective of this document is to allow member sections to more easily negotiate bilateral mutual recognition agreements (MRAs).

• The American Institute of Certified Public Accountants (AICPA) strongly supports the work of the International Federation of Accountants and the International Accounting Standards Committee in developing a body of widely-accepted international accounting and auditing standards and international guidelines on ethics. In addition, the AICPA has joined with the National Association of State Boards of Accountancy to complete MRAs with the Canadian Institute of Chartered Accountants and the Institute of Chartered Accountants in Australia. Additional discussions are continuing with other professional bodies in Australia, England, Ireland, Mexico and Scotland.

B. Classification

The professional and business-related services covered by this paper are found in the following categories listed in the World Trade Organization's (WTO) "Services Sectoral Classification List."

Business Services
Professional Services
Legal services
Accounting, auditing and bookkeeping services
Taxation services
Architectural services
Engineering services
Integrated engineering services
Computer and Related Services
Consultancy services related to the installation of computer hardware
Software implementation services
Other Business Services
Management consulting services
Services related to management consulting

CSI recommends that the U.S. Trade Representative seek the inclusion of several additional classifications of professional and business-related services in the specific commitments made by member governments. These are:

• Actuarial services.
• Counseling in business transactions.
• Participation in the governance of business organizations.
• Mediation, arbitration and similar non-judicial dispute resolution services.
• Public advocacy and lobbying.

In the area of computer-related services, the "Information Technology" section of this paper makes a number of useful recommendations.

C. Barriers

International trade in professional and business-related services in conducted both by individuals who have met specified professional qualification requirements or have specialized business knowledge and by firms owned by and/or employing these individuals. Professional and business-related services are rendered in all four modes of delivery contemplated by the GATS. They may be provided across borders by professionals travelling to another country or communicating electronically with clients there. More typically, the services are provided by locally-established firms affiliated with others abroad through ownership, contract or cooperative agreement. And in some cases they are provided to foreign consumers visiting the provider's home jurisdiction.

The impediments to trade in professional and business-related services stem from regulations intended to protect local providers from competition and, probably more importantly, from domestic regulations intended to protect defined national interests. Most professions are enveloped in national and/or sub-national systems of regulation, which were developed to respond to particular circumstances and political demands. These distinct systems have persisted even as the globalization of markets has accelerated and, thus, have given rise to trade and investment barriers.

Impediments to Professional Firms

• Restrictions on the movement of capital and investment, such as foreign equity limits, screening of investments and the application of economic needs tests, and reserving ownership to locally-qualified professionals.
• Restrictions on making current payments, such as profit remittances and the payment of royalties and fees across borders.
• Restrictions on the types of business structures permitted.
• Numerical, geographic or other restrictions on the establishment of branch offices.
• Requirements to employ only local people and professionals or the use of quotas to limit intra-firm transfers.
• Inadequate protection on intellectual property, such as software, practice methodologies and training materials, as well as restriction on the use of international firm names.

Impediments on Individual Professionals

• Onerous professional qualification requirements, such as citizenship, permanent and/or prior residency, local university degrees, and excessively long experience requirements, and administering qualification examinations in languages other than the WTO working languages.
• The use of different technical standards or standards of practice in each national and/or sub-national jurisdiction.
• Difficulties in obtaining visas and work permits.

Impediments Affecting both Firms and Individuals

• The lack of transparency in the regulatory process, including the failure to make laws and regulations available, closed decision-making processes, the lack of opportunity to comment before rules are adopted, and the absence of appeal processes.
• Local establishment requirements.
• Rules either requiring or prohibiting relationship between foreign and local professionals or professional firms.
• Customs duties on professional documents, project models, training materials, promotional publications, and software.
• Scope-of-practice limitations that may prohibit the provision of selected or multiple services to clients.
• The assignment of contract by government agencies, the mandatory rotation of providers, and "Buy National" policies.
• Prohibitions on advertising professional services.
• Reciprocity laws or regulatory requirements.

D. Benefits of Liberalization

Professional and business-related services are part of the intellectual capital infrastructure essential to the operation of modern economies. For example:
• Accounting and auditing services are critical to management control of enterprises and provide the assurance that underlies efficient capital markets.
• Architectural and engineering services are essential to the creation of modern business structures and processes.

• Legal services make possible effective relations between buyers and sellers and among business partners, as well as help to protect the investments and property of national of one country transferred to another.

• Consulting services provide valuable management know-how, competitive insight, and advice on modernizing and reengineering business enterprises.

Liberalization of trade and investment in this sector makes available to business users state-of-the-art inputs to their production processes. Moreover, the international operation of professional and business-related service providers are important conduits for transferring state-of-the-art technology and training, which has ripple effects throughout the host economies. And many professional services firms provide international networks by which host country services can be exported.

F. Negotiating Objectives

• U.S. negotiators should press governments that have not made specific commitments on professional services to do so. The goal should be that all 132 WTO member governments apply the GATS rules to professional and business-related services. Some significant markets, such as India, Indonesia and the Philippines, are now missing.

• U.S. negotiators should press other governments to remove as many of the "exceptions" in their scheduled commitments as possible. The aim should be full application of the market access and national treatment rules to professional services.

• U.S. negotiators should champion "freedom of association" for U.S. and foreign professionals, seeking to eliminate requirements or prohibitions of professional associations in partnership or in other forms of "corporate" practice.

• U.S. negotiators should work for an agreement on business mobility (temporary entry of business people), which would remove the visa requirements and red tape for qualified professionals entering another WTO member country for specific, temporary assignments.

• U.S. negotiators should work for horizontal disciplines on domestic regulation of professional and business-related services under GATS Article VI that go beyond the disciplines developed for the accountancy sector. In particular, they should seek a meaningful "necessity test" under which onerous regulations could be challenged as "more burdensome than necessary, transparency rules that allow interested parties to comment in advance on proposed legislation, and pro-competitive regulatory structures.

• U.S. negotiators should seek an extension of the principles of the Agreement on Technical Barriers to Trade to service industries and professions.

• With respect specifically to legal services, U.S. negotiators should focus on two objectives: (1) adoption of the concept of "foreign legal consultants" whereby lawyers are permitted to practice their home country law (as well as third country and international law) in foreign jurisdictions; and (2) "model rules" on bar examinations that assure the exams are related the areas of law to be practices, follow transparent procedures, are based on information readily available (through training courses, etc.), and are administered in one of the working languages of the WTO.

VIII. Telecommunications

A. Sector Status

As the new millennium fast approaches, it has become obvious that telecommunications networks provide the underlying infrastructure and services upon which most of the world's information and commerce depend. It is safe to say that without a robust telecommunications infrastructure, the global economy as we know it today would simply not exist. Vice President Gore has recently recognized that not only is the telecommunications-enabled Global Information Infrastructure a vital underpinning of world trade, the GII has the capacity "to extend knowledge and prosperity to our most isolated inner cities, to the barrios, the favelas, the colonias and our most remote rural villages; to bring 21st Century learning and communication to places that don't even have phone service today; to share specialized medical technology where there are barely enough family doctors today; to strengthen democracy and freedom by putting it on-line, where it is so much harder for it to be suppressed or denied."

Privatization and liberalization of the world's telecommunications markets will provide the most efficient and effective means of insuring the global telecommunications infrastructure's growth and enhancement. As experience in a number of countries now amply demonstrates, a liberalized market leads to significant increases in infrastructure development, more and better services, and lower prices for consumers. Moreover, a liberalized, modern telecommunications system should

increase capital investment, thereby strengthening and facilitating growth of a nation's economy.

It now appears that much of the world's commerce in the future will be transacted over the Internet's network of networks. A good deal of the communications will be of the multimedia variety which will require advanced, broadband telecommunications services. Without liberalized open telecommunications markets, there will not be sufficient incentives to upgrade what is rapidly becoming in many parts of the world an inadequate, outdated telecommunications infrastructure.

WTO Agreement on Basic Telecommunications Services

The 1997 WTO Agreement on Basic Telecommunications Services (GBT), with its accompanying Reference Paper, truly represents a watershed event not only for the telecommunications industry, but also for the entire world economy. Seventy countries participated and agreed to move in varying degrees toward full, technology-neutral, liberalization of their telecommunications sectors through market access, foreign investment and adoption of pro-competitive regulatory principles.

The GBT was a landmark agreement in a number of ways. It was the first successful sectoral negotiation—the agreement dealt only with telecommunications. Changes in agriculture import quotas, for instance, could not be traded for concessions in telecommunications, insuring that all benefits of the agreement accrue to telecommunications alone. In addition, a Reference Paper containing pro-competitive regulatory principles was developed and was incorporated into a majority of the countries' offers. This Reference Paper legally binds the countries into "how" they will implement many parts of the agreement. Thus, promulgation of regulations in accordance with the Reference Paper's principles must be considered an integral part of a country's implementation of the GBT.

Under a very broad and essentially open-ended definition employed for the negotiations, basic telecommunications was considered any telecommunications transport network or services and the schedules of commitments cover a wide variety of services fitting this definition. Some examples of basic telecommunications include: voice telephone services, packet-switched data transmission services; circuit-switched data transmission services, telex, telegraph, facsimile and private leased circuit services, analog/digital cellular/mobile telephone services, mobile data service, paging, personal communications services, satellite-based mobile services, fixed satellite services, VSAT services, gateway earth station services, teleconferencing, video transport and trunked radio system services. Categories of service included: local, long distance, international, wire-based, radio based, resale, facilities-based, for public use, and for non-public use (closed user groups). As discussed below, some rethinking of these categories of facilities and services may be in order.

In sum, the GBT and accompanying Reference Paper represents a tremendous first step toward the ultimate goal of a fully open, competitive telecommunications market worldwide. A good deal of work remains to be done, however. In addition, it is important that new negotiations do not provide for countries to re-evaluate or back away from existing commitments. New negotiations should build on existing commitments.

B. Classification

Sector Classifications and Sub-Sectors (CPC Codes):

Clearly, telecommunications market developments of the past few years warrant a reexamination of the applicability of the Standard Classification System last revised in 1991. It may be appropriate for countries to agree to a standardized set of services that are independent of the particular technology used to provide those services.

C. Barriers

Although a monopoly telecommunications environment provided a fairly reliable, working telephone system which served the world well for almost 100 years, most of the rapid technological developments of the past two decades have resulted from the increasingly competitive marketplace in a number of countries. Experience has shown that the more open the market, in terms of free entry and exit and the number of competitors present, the more robust the competition and the better the result for consumers.

Unfortunately, even in the wake of the GBT, most of the world's telecommunications markets still contain barriers that restrict access, curtail the scope of the playing field, or tilt it in a variety of ways. In accordance with their GBT commitments, many countries already have privatized their national telecommunications carriers, and others plan to do so in the near future. Privatization is an important step toward introducing competition into markets, but privatization by itself will not

produce an open and fair competitive environment. Whether the incumbent carrier is controlled by the government or is privately held, new entrants cannot effectively compete in the market without full liberalization. In order for competition to flourish, the regulator must be completely independent of the dominant carrier and must actively implement and enforce pro-competitive principles such as those enumerated in the GBT Reference Paper.

Barriers remain even under the current commitments of some countries. Restrictions on foreign ownership and requirements for local partners of varying descriptions hamper the ability to provide telecommunications services seamlessly in these countries or worldwide. In addition, requirements to use public networks and restrictions on the use of leased lines provide barriers to true global market access. Nor is national treatment a reality in every country.

The licensing schemes of many countries pose another significant barrier to the market and to full and fair competition. Restrictions on the number of licenses awarded per geographic area, onerous qualifications for licensees, exorbitant fees, and lack of transparency in the bidding and award process must be eliminated. In many cases, the totality of these requirements effectively limits participation to a handful of large carriers and prevents smaller, perhaps more responsive or innovative carriers from participating.

Variations on the same theme are regulations which favor facilities-based providers over resellers. Many countries that have otherwise committed to liberalize their telecommunications in the GBT have adopted policies designed to encourage infrastructure investment. For example, carriers may be required to implement a certain number of switches before they are permitted to interconnect with the incumbent. These sorts of requirements, while attempting to achieve an arguably laudable goal, act as a barrier by depriving consumers in these markets of a very valuable source of supply—resellers.

As experience has shown in this country, resellers continue to play a vital role in the telecommunications marketplace. There are literally hundreds of these entities, with their numbers increasing every month. These companies are usually small by comparison with the giant facilities-based carriers, but they are able to stay ahead of their much larger competitors by constantly introducing new pricing arrangements, new services, and innovations for consumers.

Another barrier to competition in many countries is the lack of number portability. Number portability is essential in order for competition to develop because it allows customers to keep their telephone numbers when changing carriers. Where no number portability exists, residential consumers in particular are much more reluctant to shift their business away from the incumbent, even when they are offered a significant price break.

Even in the business market, the lack of portability acts as a major deterrent to competition. Businesses must incur significant expenses to reprint stationery and business cards and to inform customers, suppliers, and others that they have changed telephone numbers. For example, before portability was implemented in the domestic 800 service market, some competition did exist. However, soon after the introduction of portability, overall demand rose and prices dropped.

D. Negotiating Objectives

We urge the USTR to set the following negotiating objectives:

- Update the 1991 Standard Classification System to emphasize services rather than the technology employed to deliver the services.
- Expand and deepen the commitments of countries that agreed to partial liberalization in the GBT to include full liberalization and adoption of the Reference Paper, by a date certain in the near future.
- Schedule commitments to full liberalization and adoption of the Reference Paper, by a date certain in the near future, of countries that are WTO Members but have not made commitments under the GBT.
- Seek commitments to full liberalization and adoption of the Reference Paper by countries wishing to accede to the WTO.

IX. Travel and Tourism

A. Benefits of Liberalization

The travel and tourism industry is the word's largest industry, employing over 230 million people worldwide, and is expected to grow to almost 320 million by 2010. The travel and tourism industry is growing faster than world GDP growth. Its share of gross domestic product is expected to increase from about 11.6 percent in 1998 to 12.5 percent by 2010. The travel and tourism industry creates good jobs

spanning the spectrum from entry level to executives. It is clearly a driver of economic growth in the world. Liberalization of the industry will lead to faster industry growth, which will not only spur direct growth in the industry, but growth in related industries such as manufacturing of transportation equipment, and building and related critical infrastructure development projects. Moreover, the travel and tourism industry represents sustainable and ecologically friendly development.

B. Sector Status

In general, the tourism and travel related services sector tends not to be heavily regulated and competition tends to be vigorous. There are, however, some significant exceptions to this broad generalization.

C. Classification

This sector includes hospitality, restaurants, travel agencies, tour operators, tourist guides services and other travel related services. The industry has developed since these classifications were drawn up, and the specific services covered under these broad categories need to undergo a thorough review and analysis to ensure that all services that should be covered are included. It should also be clarified that this sector includes travel reservation services and travel-related financial services, e.g. travelers checks and certain foreign exchange services, which are distinct from those covered under the banking, insurance and securities sector. (The tourism and travel related services sector does not include air or other transportation sectors, which are covered under the transport services sector.)

D. Barriers

Two of the most prevalent types of barriers fall under the rubrics of competition and investment, which could be addressed either horizontally or on a sectoral basis. (Needless to say, this industry, like many others, has substantial investments in trademarks and intellectual property, and has an interest in the outcomes on these and other general business concerns.)

Competition

Many countries impose significant restrictions, often only against foreign firms or enforce them in ways that favor domestic firms, on marketing and promotional initiatives, including loyalty reward programs.

Investment

One hundred percent foreign ownership is often prohibited, and the form of doing business is commonly restricted or controlled. In addition, when operating through a franchise network, repatriation of profits, payment of royalties, and other similar issues frequently become problematic.

Movement of Personnel

A third horizontal issue is of particular concern to the industry, and that regards the freedom of movement for business personnel. The ability of travelers to move freely around the world is the lifeblood of the travel and tourism industry. The industry has an abiding interest in liberalizing the restrictions, not only on tourists and the industry's own management, but generally on businesses' ability to locate the proper personnel in the locations where they are most needed.

The other barriers are not covered in the general issues, though some do affect other sectors, as follows:

Privacy

Many companies in the travel industry maintain records regarding customers' travel preferences in order to serve particular needs better. Many countries are proposing, or have already enacted, onerous restrictions on the flow of this type of information. Many countries also require the disclosure of overseas spending by customers, thereby discouraging foreign travel by their citizens.

Tourist Financial Services

Many countries proscribe significant restrictions on the provision of financial services for travelers. Sale of travelers checks are often restricted to certain limited types of financial institutions, as are foreign currency exchange services even though they pose no risk to a country's financial system. Finally, access to local ATM networks is occasionally prohibited.

Taxes on Overseas Spending

Some countries penalize their citizens when they travel abroad by imposing taxes on overseas spending, often in ways that unfairly discriminate among payment products. One large South American country, for example, imposes a 2 percent transaction tax on credit and charge card spending abroad, but imposes no special taxes on cash purchases. As a large proportion of spending by international travelers is transacted through credit card payment systems, this tax discourages international travel and tourism.

E. Negotiating Objectives

The U.S. objective should be the removal of as many of these barriers as possible. Unfortunately, it is too early in the process to identify firm industry-wide priorities.

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Chairman CRANE. And next is Mr. Kleckner.

STATEMENT OF DEAN KLECKNER, PRESIDENT, AMERICAN FARM BUREAU FEDERATION, PARK RIDGE, ILLINOIS

Mr. KLECKNER. Thank you, Mr. Chairman and Members of the Subcommittee. I am Dean Kleckner, and while I office in Park Ridge, Illinois, I am a north Iowa farmer, raising corn, soybeans and hogs on that farm, and one of the four ACTPN members sitting at the table today. Now there are three of us left.

Agriculture is one of the few industries that consistently runs a trade surplus. The United States along with agriculture must be at the negotiating table in the next WTO Round with trade negotiating authority to ensure that this trade surplus continues.

U.S. agriculture is now reeling from low commodity prices. Given an abundant global supply and a stable U.S. population rate, the job of expanding existing markets and opening new export markets for agriculture is more important than ever. Agriculture's longstanding history of a trade surplus will not continue if agriculture is relegated to the sidelines as new negotiations commence.

Personally, I am concerned that agriculture will be left behind if we do not structure the negotiations properly. The next round of negotiations should encompass all sectors as a comprehensive single undertaking. By this we mean all aspects of the negotiations should be concluded simultaneously in order to get the best results for all sectors. In other words, as was said in the Uruguay round, agreeing it should be here, too, nothing is agreed to until everything is agreed to.

I have submitted for the record a copy of the Seattle Round Agriculture Committee's policy objectives for the next round. The Farm Bureau chairs this coalition, which consists of 80 agriculture organizations representing producers as we are, also processors and agribusinesses. U.S. agriculture is united in its views for the next round through this coalition. The very first principle of this coalition is that of a single undertaking.

The United States will have the greatest success in the next round of trade talks if negotiations are concluded as a single undertaking without the possibility of an "early harvest" or provisional implementation of early agreements. We are very concerned—very concerned about concluding early results for any sector, recognizing in doing so will require devoting substantial resources and will

likely sidetrack the important structural issues that need to be addressed in order for this round to be completed in 3 years.

Now, eight quick items. We have set a goal to complete the agriculture negotiations by the end of 2002, 3 years. Our producers need results in a timely manner. Two, we call for the elimination of export subsidies by all WTO members by a date certain and as soon as possible. Three, we believe that new negotiations must include a recommitment to binding agreements to resolve sanitary and phytosanitary issues based on scientific principles in accordance with the WTO Agreement on Sanitary and Phytosanitary Measures; that is, the SPS agreement. The provisions of the Uruguay round agreement are sound and do not need to be reopened, the SPS agreement.

Four, the next round should result in tariff equalization and increased market access. By requiring our trading partners to eliminate tariff barriers within specified timeframes, we need to adopt a framework that was used in the Uruguay round wherein there are no product or policy exceptions to such tariff reductions. All WTO member countries should reduce tariffs, both bound and applied, in a manner that provides commercially meaningful access on an accelerated basis.

Five, quickly here, regarding state trading enterprises, or STEs, we must impose disciplines on STEs that distort the flow of trade in world markets.

Six, and very important, Mr. Pepper mentioned this, but we must ensure market access for biotechnology products produced from GMOs, genetically modified organisms. All WTO member countries should reaffirm the principles of the WTO SPS Agreement, provisions which we believe cover trade in GMOs. And I might say six "a" here, the United States should not agree to a Working Group on Bioengineered Products at the WTO. The formation of such a group will derail the resolution of trade issues concerning bioengineered product policy and not likely result in a consensus approach.

Seven, we must end the use of all nontariff barriers to trade.

And, last, eight, our negotiators must make changes to trading practices that would facilitate and shorten its dispute resolution procedures and processes.

In summary, Mr. Chairman, we support liberalization of global agriculture markets that will result in the true reform of the current trading regime and bring about fair trade for our producers. This is our opportunity to address the trade imbalances that hamper our domestic producers from both an import and an export perspective. The U.S. must demonstrate leadership in setting the agenda for this round of trade talks and is submitting proposals for the structure of the negotiations.

Mr. Chairman, I thank you.

Chairman CRANE. Thank you.

[The prepared statement follows:]

Statement of Dean Kleckner, President, American Farm Bureau Federation, Park Ridge, Illinois

Mr. Chairman, members of the Committee, I am Dean Kleckner, president of the American Farm Bureau Federation and a hog, corn and soybean farmer from Iowa. I appreciate the opportunity to testify before you today regarding negotiating objec-

tives for agriculture in the next round of trade talks in the World Trade Organization.

The American Farm Bureau is the nation's largest organization of agricultural producers. Farm Bureau represents over 4.8 million member families in the United States and Puerto Rico. Our members produce every commodity grown in America and depend on access to customers around the world for the sale of over one-third of our production. Agriculture is one of the few U.S. industries that consistently runs a trade surplus, posting a positive balance of trade every year since 1960. The United States along with agriculture, must be at the negotiating table in the next WTO round in a meaningful way, with trade negotiating authority, to ensure that this trade surplus continues.

The ability of U.S. agriculture to gain and maintain a share of global markets depends on many factors, including obtaining strong trade agreements that are properly enforced, enhancing the administration's ability to negotiate increased market access for U.S. agriculture and building in the necessary changes to the WTO dispute settlement process to ensure timely resolution of disputes.

When Congress passed the 1996 Freedom to Farm Act, it phased out farm price supports, making U.S. agriculture more dependent on the world market. American farmers and ranchers produce an abundant supply of commodities far in excess of domestic needs and their productivity continues to increase. Exports are agriculture's source of future growth in sales and income.

As you are well aware, U.S. agriculture is reeling from low commodity prices. Given an abundant domestic supply and a stable U.S. population rate, the job of expanding existing market access and opening new export markets for agriculture is more important than ever. Agriculture's longstanding history of a balance of trade surplus will not continue if we are relegated to the sidelines as new negotiations in agriculture commence.

Moreover, global food demand is expanding rapidly and more than 95 percent of the world's consumers live outside U.S. borders. Despite significant progress in opening U.S. markets, agriculture remains one of the most protected and subsidized sectors of the world economy. In addition, U.S. agricultural producers are placed at a competitive disadvantage due to the growing number of regional trade agreements among our competitors.

U.S. leadership of the global trade liberalization agenda has paid off for American agriculture. If the United States now leaves it to others to form new trade pacts and write future rules for trade, U.S. producers, processors, and exporters will be severely disadvantaged in the competitive marketplace of the 21st century. We are counting on this administration and Congress to ensure that U.S. farmers and ranchers have a significant place at the negotiating table, armed with the tools they need, including trade negotiating authority.

WTO Ministerial

As you know, the Seattle Ministerial Conference will serve as the kickoff for the new negotiations on agriculture and other sectors in the WTO. As the host country for this ministerial, the United States and its trade policies will be in the spotlight. Given the economic turmoil and technical barriers being experienced in many of our important export markets, the launching of new negotiations to further open markets has never been more important.

The United States has an unprecedented opportunity to lead these negotiations to a successful outcome and should play a central role in influencing the debate early regarding the structure of the negotiations. Specifically, the administration should take a stand now on a number of different issues, including what sectors will be negotiated in this next round and what approach will be used for the negotiations (formula approach versus request-offer, or some combination thereof). These negotiations are too important to agriculture, and other sectors, to let other WTO member countries dictate the negotiating agenda.

Objectives for the Next Round

Higher living standards throughout the world depend upon mutually beneficial trade among nations. We urge that trade policies be developed that promote the growth in world trade.

To this end, U.S. negotiators must comprehensively address high tariffs, trade-distorting subsidies, and other restrictive trade practices in the new round of negotiations on agriculture.

The American Farm Bureau Federation supports expediting action on the next round for agriculture in the WTO. Our market is the most open in the world. We cannot sit idly by while our competitors trade openly in our market, but deny us

access to their markets on equal terms. We must begin the negotiations and conclude them as early as possible to put U.S. agricultural producers on a level playing field with the rest of the world. To this end, we have set a goal to complete the agricultural negotiations by the end of 2002 to ensure that our producers gain increased market access in a timely manner.

First and foremost, the next round of negotiations should encompass all sectors as a comprehensive, single undertaking. By this we mean that all aspects of the negotiation should be concluded simultaneously in order to get the best results for all sectors. The United States will make the greatest gain in the next round of trade talks if negotiations are concluded as a single undertaking without the possibility of an "early harvest" or provisional implementation of early agreements. As you are aware, this issue has attracted significant attention in recent weeks given the administration's desire to achieve early tariff reductions for the eight Asia Economic Pacific Cooperation (APEC) sectors. We are very concerned about concluding early results for any sector recognizing that doing so will require a substantial devotion of resources to accomplish and will likely sidetrack the important structural issues that need to be addressed in order for this round to be completed in three years.

Second, we must call for the elimination of export subsidies by all WTO member countries. Our producers cannot compete against the mountain of spending by our primary competitors, like the European Union (EU). The EU spends in excess of eight times the level of domestic and export subsidies as the United States. Data from the U.S. Department of Agriculture and the European Commission show that total EU domestic and export subsidy expenditures for 1997 exceeded $46 billion compared to $5.3 billion spent by the United States. This level of spending distorts world trade and undermines U.S. producers' competitiveness in vital export markets.

Third, we believe that the new negotiations must include a recommitment to binding agreements to resolve sanitary and phytosanitary issues based on scientific principles in accordance with the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). The provisions of the Uruguay Round SPS Agreement are sound and do not need to be reopened. The United States has successfully litigated several SPS cases that underscore the strength of this agreement. Cases have now been tried that set precedence in each of the three areas of the SPS Agreement. For example, the successful U.S. litigation of the EU beef ban strengthens the provisions regarding human health, the Japan varietal testing case underscores aspects regarding plant health, and the Australia salmon case bolsters the animal health text of the SPS Agreement. Any change to the SPS Agreement would expose the sound scientific principles now embedded in its provisions—changes that the EU would relish making to restrict rather than facilitate trade.

Fourth, the next round should result in tariff equalization and increased market access by requiring U.S. trading partners to eliminate tariff barriers within specified time frames. Our producers compete openly in their own domestic market with their foreign competitors, but are shut out of export markets due to prohibitively high tariffs. We need to correct this imbalance for our farmers and ranchers. All WTO member countries should reduce tariffs, both bound and applied, in a manner that provides commercially meaningful access on an accelerated basis.

Fifth, we must impose disciplines on state trading enterprises (STEs) that distort the flow of trade in world markets. Every effort should be made to craft an agreement that sheds light on the pricing practices of STEs and ends their discriminatory practices. Our producers have lost too many sales in third country markets due to the noncompetitive, nontransparent operations of STEs.

Sixth, we must ensure market access for biotechnology products produced from genetically modified organisms (GMOs). Significant delays and a lack of transparency in the regulatory approval process for GMOs in the EU have heightened the need for science based, transparent provisions governing bioengineered products. We cannot continue to be held hostage to the EU's nontransparent, discriminatory procedures that deny market access for our GMO products. All WTO member countries should reaffirm the principles of the WTO SPS Agreement, provisions which we believe cover trade in GMOs. Most importantly, the United States should not agree to a working group on bioengineered products in the WTO. The formation of such a group will derail the resolution of trade issues concerning bioengineered products and will not likely result in a consensus approach.

Next, we must end the use of all nontariff barriers to trade. There are several practices that have been employed by our trading partners to shut out competition in their domestic markets. These practices include, but are not limited to, domestic absorption requirements, discriminatory licensing procedures, price bands, and the administration of tariff rate quotas that prevent true competition. Provisions to ad-

dress these and other nontariff barriers should be written into the new agreement on agriculture.

Finally, our negotiators must make changes to trading practices that would facilitate and shorten dispute resolution procedures and processes. The process for a WTO dispute settlement case typically runs three years, if the WTO ruling is implemented. We have seen in both the EU banana and EU beef cases that compliance is not always assured. Our trading partners cannot be allowed to unilaterally weaken the very principles that we negotiated in the Uruguay Round Agreement. The expedited dispute settlement process for perishable agricultural products outlined in the WTO Dispute Settlement Understanding should be modified to allow the procedure to be used if the aggrieved party requests it. Currently, the WTO requires that both parties in a case agree to use this procedure. As a result, it has never been used. This simple change should be enacted promptly. Doing so would address the fundamental problem of a dispute settlement procedure that requires too much time and prevents market access for several marketing seasons before a resolution is reached.

Concerning environment and labor issues in the upcoming trade negotiations, we believe that such matters should only be addressed in a manner that facilitates rather than restricts trade. We cannot allow the economic prosperity of our nation, and that of our agricultural producers, to be used as a weapon for nations that disagree with our values.

In summary, we support liberalization in global agricultural markets that will result in true reform of the current trading regime and bring about fair trade for our producers. The United States has a tremendous opportunity before it to shape the agenda for the next round and should seize this chance to demonstrate to the world that we are committed to opening new markets for U.S. agriculture. This is our opportunity to address the trade imbalances that hamper our domestic producers, from both an import and export perspective. Given the economic turmoil being experienced in many of our important export markets, the launching of new negotiations to further open markets has never been more important.

SEATTLE ROUND AGRICULTURAL COMMITTEE (SRAC) 1999 WTO POLICY STATEMENT

The U.S. agricultural and food sector supports the launching of a comprehensive round of multilateral trade negotiations that includes all goods and services, continues to reform agricultural and food trade policy, promotes global food security through open trade, and increases trade liberalization in agriculture and food. Policy and process objectives should include:

•Conclusion with a single undertaking that encompasses all sectors (i.e., no early harvest).

•Adoption of the Uruguay Round framework for the 1999 agricultural negotiations to ensure that there are no product or policy exceptions.

•Establishment of a three-year goal for the conclusion of the negotiations (by December 2002).

•Elimination of export subsidies and tightening of rules for circumvention of export subsidies.

•Elimination of nontariff barriers to trade.

•Transitioning countries to provide an increasing portion of total domestic support for agriculture in a decoupled form, as the United States has already done under the FAIR Act.

•Commercially meaningful reduction or elimination of tariffs (bound and applied) and mutual elimination of restrictive tariff barriers on an accelerated basis. In addition, the administration of tariff-rate quotas (TRQs) must be improved.

•Elimination of State Trading Enterprises (STEs) or the adoption of disciplines that ensure operational transparency, the end of discriminatory pricing practices, and competition for STEs.

•Maintaining sound science and risk assessment as the foundation of sanitary and phytosanitary measures.

•Ensuring market access for products of biotechnology, with the regulation of these products based solely on sound science.

•Accelerating resolution of trade disputes and prompt enforcement of panel decisions.

•Providing food security for importing nations by avoiding sanctions on food exports combined with a WTO commitment not to restrict or prohibit the export of agricultural products.

•Addressing labor and environment issues in a manner that facilitates rather than restricts trade.

•Establishing WTO rules for developing countries to graduate to full WTO obligations using objective economic criteria.

Ag Processing Inc.
Agricultural Retailers Association
American Cotton Shippers Association
American Crop Protection Association
American Farm Bureau Federation
American Feed Industry Association
American Potato Trade Alliance
American Soybean Association
American Sugar Alliance
American Vintners Association
Animal Health Institute
Archer Daniels Midland Company
Biotechnology Industry Organization
Bryant Christie Inc.
Bunge Corporation
CF Industries, Inc.
California Table Grape Commission
Cargill, Incorporated
Chicago Board of Trade
Chocolate Manufacturers Association
Coalition for a Competitive Food and Agricultural System
ConAgra, Inc.
Continental Grain Company
Corn Refiners Association
Distilled Spirits Council of the United States
Farmland Industries, Inc.
Florida Phosphate Council
Food Distributors International Association
Gold Kist, Inc.
Grocery Manufacturers of America
Independent Community Bankers of America
International Dairy Foods Association
Kraft Foods
Louis Dreyfus Corporation
Monsanto Company
National Association of Animal Breeders
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen's Beef Association
National Chicken Council
National Confectioners Association of the United States
National Corn Growers Association
National Council of Farmer Cooperatives
National Cotton Council of America
National Food Processors Association
National Grain and Feed Association
National Grain Sorghum Producers Association
National Grain Trade Council
National Grange
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Renderers Association
National Sunflower Association
National Turkey Federation
North American Export Grain Association
North American Millers' Association
Northwest Horticultural Council
Pacific Northwest Grain and Feed
Pet Food Institute
Pioneer Hi-Bred International, Inc.
Ralston Purina Company
Snack Food Association
Sunkist Growers
Sweetener Users Association
The Fertilizer Institute
The IAMS Company
Transportation, Elevator, & Grain Merchants Association
USA Poultry & Egg Export Council
USA Rice Federation
U.S. Apple Association
U.S. Canola Association
U.S. Grains Council
U.S. Dairy Export Council
U.S. Meat Export Federation
U.S. Poultry & Egg Association
U.S. Rice Producers Association
U.S. Wheat Associates, Inc.
United Egg Association
United Egg Producers
Washington State Potato Commission
World Perspectives Inc.

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Chairman CRANE. Mr. Dillon.

STATEMENT OF JOHN DILLON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL PAPER, PURCHASE, NEW YORK, ON BEHALF OF THE AMERICAN FOREST & PAPER ASSOCIATION

Mr. DILLON. Thank you, Mr. Chairman. I am John Dillon of International Paper, and I am pleased to be here today representing the American Forest and Paper Association.

U.S. forest products industry accounts for $230 billion in annual sales and employs about 1.5 million Americans. Basically, as you know, wood and paper products are essential elements of our standard of living and are derived from a renewable resource, which we are committed to managing on a sustainable basis.

For our industry, the WTO Ministerial represents the last opportunity to level the competitive playingfield for our products. The U.S. market has an open door to foreign competitors in forest products, while U.S. producers must scale high tariff walls and other barriers to compete abroad. Starting with the Uruguay round, we have sought to level the playingfield through reciprocal trade elimination agreements. That objective was only partially realized. Continued disparity in market access combined with foreign capacity growth and weak demand abroad have resulted in the actual deterioration in the trade balance of our sector since the Uruguay round.

We are seeing explosive growth in forest products capacity in emerging economies like Indonesia, China, Korea and Brazil. They may claim to be developing economies, but the capacity they are building is world class, and, in fact, is finding its way in a major way into our markets.

For instance, in 1998, paper imports from Asia increased by 73 percent. In total, foreign imports of paper products increased by more than $1 billion in 1998, while U.S. exports declined by almost $350 million. This alarming trend of increase in imports has been evident throughout the decade of the nineties.

Turning to wood products, since 1994, U.S. exports of wood products have dropped by 20 percent, while imports have increased by 33 percent. In total, between 1994 and 1998, the deficit in our sector has jumped from $3 billion to over $9 billion, in excess of a tripling. The significance of these numbers is the effect on jobs. These jobs are some of the best paying in our communities. For instance, papermill jobs pay about $20 an hour, which is $7 an hour more than other manufacturing jobs. In 1998, a year of record demand for our products, paper industry employment declined by 18,000 jobs.

Our industry has made substantial capital investments to modernize our operations and compete on a global scale. At the same time our relative cost position has changed in part due to public policy affecting fiber supply, environmental costs and taxes. For example, the U.S. tax rate on corporate forestry is 55 percent compared to 22 percent in Finland and 7 percent in Indonesia.

Clearly, the WTO will not change tax or environmental policy, but it can finish the job we started with the Uruguay round. The administration has proceeded on Congress' authorization to accelerate and expand reciprocal tariff elimination. Last November, and again last month, the APEC ministers agreed to work toward an agreement accelerating tariff reductions by the WTO Ministerial in November 1999. The accelerated trade liberalization proposal would eliminate tariffs on paper products between the years 2000 and 2002, and on wood products between 2002 and 2004. An agreement on the ATL package would boost global trade and benefit producers and consumers around the world. However, that objective is threatened by the Japanese Government's continued refusal to

agree to trade elimination on wood products and by European resistance to conclude any agreement before launching a new round of negotiations.

Immediate action in Seattle is essential. Delaying the results will mean continued erosion of our competitive position in world markets. With the APEC economies prepared to lead the way in advancing the pace of tariff liberalization, an agreement on the ATL at the outset of the new round would provide important momentum for further opening global markets. The WTO must demonstrate that it is capable of eliminating barriers to trade on a continuing basis and can do so by concluding the ATL agreement in Seattle.

We urge your support and thank you for listening to our stories.

Chairman CRANE. Thank you.

[The prepared statement follows:]

Statement of John Dillon, Chairman and Chief Executive Officer, International Paper Purchase, New York, on behalf of the American Forest & Paper Association

Mr. Chairman, Members of the Committee:

I am John Dillon, Chairman and CEO of International Paper, and I am pleased to be here today representing the American Forest and Paper Association. International Paper is the largest forest products company in the world with $24 billion in annual sales, operations in nearly 50 countries and close to 100,000 employees. In addition, International Paper owns and manages nearly 7.5 million acres of forest land in the United States.

The U. S. forest products industry, which accounts for $230 billion in annual sales and employs 1.5 million American workers, comprises seven percent of manufacturing shipments. To put this in perspective, the U.S. forest products industry employs about as many people as the data processing and computer services industry. While Internet-based advertising totaled $1.9 billion in 1998, print-based advertising generated $111 billion in revenues. Basically, wood and paper products are essential elements of our standard of living—from paper for daily information to textbooks to decorative products; from packaging to keep products safe and prevent spoilage; and from lumber and panel materials used in over 90 percent of American homes to wood-based furniture and cabinetry. These products are derived from a unique renewable resource which the U.S. forest products industry is committed to managing on a sustainable basis.

For our industry, the World Trade Organization (WTO) Ministerial meeting in Seattle represents the most significant, and possibly the last, opportunity to secure our ability to participate in fast-growing global markets from a U.S. manufacturing base. For too many years, the U.S. market has provided an open door to our foreign competitors, while U.S. producers have had to scale high tariff walls and other barriers to compete in foreign markets. Our foreign competitors have used those years and those barriers to create a substantial global advantage by increasing their productive capacity and exploiting our market while denying us equivalent market opportunities.

For the last decade, beginning with the Uruguay Round, we have sought to level the playing field by pursuing a global free trade sector in forest products through reciprocal tariff elimination agreements. That objective was only partially realized in the Uruguay Round Agreement, as Japan blocked an agreement in wood products, and Europe delayed the phase-out on paper tariffs to ten years. These actions provided another decade of protection to some of our strongest competitors in global markets.

As a consequence, we have actually seen the global trade balance in the forest products sector decline since the conclusion of the Uruguay Round Agreement. In total, between 1994 and 1998 the trade deficit in our sector jumped from $3 billion to $9.4 billion, a tripling in this short time period.

On the solid wood side of the industry, global production of lumber and panel products grew about 5 percent between 1994 and 1998, while U.S. production increased only about 3 percent. Thus, the U.S. share of global lumber production has declined by 1–2 percent since 1994. At the same time, U.S. exports of wood products have dropped from $7.2 billion to $5.8 billion, or a 20 percent decline; whereas imports of lumber and wood products have grown from $10 billion to $13.3 billion, or a 33 percent increase.

On the paper side, global production of paper and paperboard has increased about 12 percent since 1994, while U.S. production has increased just 6 percent. The U.S. share of world production of paper and paperboard has declined from 30.1 percent to 28.5 percent. On a tonnage basis, U.S. exports of pulp, paper and paperboard grew 8.6 percent from 1994–1998, but dropped 9.3 percent in 1997–98, while imports increased 12 percent.

Just as we saw strong growth in European capacity in the early 1990s, we are now looking at explosive growth in forest products capacity in emerging economies such as Indonesia, China, Korea, and Brazil. And while these countries may claim to be developing economies, the capacity they are building is world-class—we are not talking about backyard paper and saw mills, but some of the largest, state-of-the-art mills in the world.

The situation has become more acute in the last two years as a consequence of the Asian financial crisis. As Asian economic growth collapsed, the rapid buildup in capacity that was anticipated to serve the rapidly growing Asian economies has resulted in increased shipments to the U.S. market. Imports of paper from Indonesia, for example, increased by 1800 percent during 1998. Imports from all Asian countries have increased 73 percent. At the same time, the reduction in demand in Asia, and lack of strong growth in the rest of the world, has resulted in diversions of products from other regions to the U.S. market—European imports are up 12 percent; Canadian imports are up 5.3 percent. In total, U.S. imports of paper and paperboard have increased by more than $1 billion in 1998, while U.S. exports have declined by $335 million.

The result has been a significant erosion in prices and profitability for U.S. producers, and consequently a reduction in U.S. production. Since the beginning of 1998, the U.S. forest products industry has indefinitely or permanently shuttered 1.4 million metric tons of market pulp and 2.1 million metric tons of paper and paperboard capacity.

The real significance of these numbers is the effect on U.S. jobs. In 1998, total paper and allied products industry employment declined by 17,800 jobs, or 2.6%—the largest single year decline since 1983. These are higher paying jobs than the manufacturing average and are most often located in rural communities that are heavily dependent on the forest products industry. At an average wage of $20.41 per hour, paper mill workers earn nearly $7.00 an hour more than all other private sector production workers, whose average hourly wage is $13.14.

Future growth opportunities for our products are highest in foreign markets where demand is expected to grow more rapidly than in the more mature markets in the U.S. and Europe. However, if we are unable to secure a market position in Asian and Latin American countries in the near future because of prohibitive market access barriers, those markets will be locked up by emerging competitors and our natural competitive advantage in this sector will have been sacrificed to unequal terms of trade set by governments.

It is for this reason that we have been so insistent on accelerating and expanding the reciprocal tariff elimination agreement from the Uruguay Round and why we are so determined to see a global agreement reached at the Seattle Ministerial. Immediate action is essential to the future success and growth of the U.S. forest products industry.

Six years ago, Fortune magazine evaluated U.S. industries on their ability to compete globally and gave only two "A" ratings: pharmaceuticals and forest products. Today, that competitive edge in the forest products sector is eroding as a consequence of public policy impacts on our domestic industry and because of the rapid expansion of foreign competitors, often with the active support of their governments.

During the 1980s and early 1990s, our industry made substantial capital investments to modernize and upgrade our equipment and operations to ensure that we would be able to compete on a global scale. In fact, in terms of net value of plant and equipment per dollar of sales, the paper industry is more than twice as capital intensive as the all-manufacturing average.

However, also during that time, our relative cost position changed, in part due to public policy actions. The 75 percent reduction in timber from public lands has resulted in increased fiber costs, which make up 30–70 percent of our production costs. At the same time, our foreign competitors often enjoy government-supplied timber concessions at below-market rates, or benefit from export restrictions which artificially reduce their cost of fiber.

Environmental compliance costs have increased significantly, both for forest management and for manufacturing processes. Last year, the Environmental Protection Agency (EPA) imposed the most costly regulation ever on a single industry—the Cluster rule—which will increase capital costs for the industry by nearly $3 billion. Costs for International Paper alone will exceed $500 million. Additional regulations

which EPA is now considering for our industry could add another $10 billion in capital costs over the next 10 years. AF&PA estimates that environmental expenses accounted for 13 percent of capital spending in the last decade, and will account for as much as 28 percent of capital spending in the next five years. Unfortunately, in many cases these expenditures produce little or no significant environmental improvement and certainly do not contribute to increased productivity or production. In addition, these costs are not shared equally by many of our foreign competitors, which face neither the scope of direct regulatory costs, nor the strict enforcement regime that exists in the U.S. We are proud of our environmental record, but there must be a reasonable balance between environmental costs and benefits, and we need to ensure that U.S. producers are not left at a competitive disadvantage because of disparate environmental requirements.

We also face a cost disadvantage as a consequence of tax policy. A recent study of comparative tax rates revealed that the U.S. forest products industry has the second highest effective tax rate on corporate forestry and timber investment when compared with any of our major foreign competitors: The U.S. tax rate is 55 percent vs. Japan at 36 percent; Finland at 22 percent; and Indonesia at 7 percent. Similarly, the effective tax rate on paper manufacturing in the U.S., at 62 percent, compares unfavorably to Japan at 57 percent; Finland at 36 percent; and Indonesia at 33 percent. In both Finland and Indonesia, almost all reforestation and silvicultural costs currently may be deducted. In the U.S., most reforestation costs must be capitalized until harvesting begins. The tax bill that the House recently approved will help somewhat, but what would really help level the competitive field for us would be a significant reduction in the corporate capital gains rate applied to timber and a permanent lifting of the cap on the amortization of reforestation expenses.

Of immediate interest to this committee and this hearing is the impact of trade policies on our industry and the opportunity presented by the upcoming ministerial to improve our competitive position. With our natural advantages in abundant fiber supply, developed infrastructure, skilled workforce, capital investments, and world-scale operations, we should enjoy a comparative, competitive advantage in world markets for our wood and paper products. However, while the U.S. market has been open to the rest of the world, the maintenance of foreign barriers to our products has significantly eroded our competitive position and threatens the future growth and success of this industry.

In previous trade negotiations, U.S. tariffs on wood and paper products have been traded away for concessions in other sectors leaving us with a big market open to foreign competition and little leverage to gain equivalent access to foreign markets.

During the Uruguay Round, we initiated and led the Zero-for-Zero Tariff Initiative, designed to provide comparable global market access opportunities in several globally competitive sectors. As noted earlier, that initiative was not fully achieved in our sector: Japan blocked agreement on reciprocal tariff elimination in wood products and Europe delayed achievement of zero tariffs on paper products for 10 years. Importantly, developing countries did not participate in the Zero-for-Zero Initiative. These countries represent the most rapidly growing markets for our products and have become significant competitors in our industry.

The situation we faced then is now compounded. In short, the distortions in market access around the world and differences in government policies affecting forest products industries are leading immediately and directly to the transfer of U.S. production and jobs to other countries. If this situation is not reversed in the near term, the opportunity for our industry to export from the U.S. to growing economies in Asia and Latin America will be lost for good as those markets are claimed by low-cost, protected competitors.

The Congress has authorized the Administration to continue to pursue acceleration and expansion of reciprocal tariff elimination in the zero-for-zero sectors as a priority matter. The Administration has worked with our trading partners in APEC to advance an accelerated tariff liberalization package for 8 sectors—including forest products—first through the Asia Pacific Economic Cooperation (APEC) forum and now through the WTO. Last November, and again last month, APEC ministers agreed to work toward an agreement by the time of the WTO Ministerial in Seattle. The Accelerated Tariff Liberalization (ATL) proposal for forest products would eliminate tariffs on paper products between 2000 and 2002 and on wood products between 2002 and 2004, with limited flexibility on end dates and end rates. In addition to forest products, the ATL package includes fish, chemicals, medical equipment, energy, toys, gems and jewelry, and environmental goods and services.

It is significant that the APEC economies agreed on the importance of advancing liberalization in these sectors. It is also important to note that China, in the WTO accession negotiations, would significantly reduce tariffs on paper and wood prod-

ucts and, on acceding to the WTO, would participate in a WTO agreement on tariff elimination.

An agreement in Seattle on the ATL sectors could produce a significant boost to global trade, benefiting producers and consumers around the world. However, that objective is threatened by the continued refusal of the Japanese government to agree to tariff elimination on wood products, and by European resistance to conclude any sectoral agreement in advance of launching a new round of multilateral trade negotiations.

Delaying results in our sector until the conclusion of a new round, at best within three years and likely to be much longer than that, will mean continued erosion of our competitive position in world markets and continued transfer of forest products jobs to other countries. This is an unacceptable outcome. It is comparable to allowing a healthy patient with a flesh wound to bleed to death because the doctors cannot agree on whether to apply a tourniquet or suture the wound.

We cannot allow the Japanese and Europeans to continue to defer results in sectors like forest products, where there is strong global competition. Both Europe and Japan have well developed forest products industries and world-class production is being built in emerging countries.

There will be some vocal opposition from groups in Seattle about the impact of globalization and world trade on people's lives. We cannot stop globalization of the world economy; we have to recognize it and adapt to it to survive and prosper. We can, however, work to ensure that the terms under which globalization occurs are at least fair for American companies and workers and that domestic and foreign barriers to production, trade, and economic growth are eliminated.

Artificial barriers that distort trade and economic development stifle not only competition, but also innovation and economically-sustainable growth, and lead to reciprocal barriers which further distort and stifle economic development and growth.

Negotiations should be based on a recognition that reciprocal open markets create economic growth and new market and job opportunities for all participants. That is the challenge and the opportunity facing the trade ministers in Seattle.

The WTO must demonstrate that it is capable of continuous progress in eliminating barriers to trade. The most tangible demonstration of that capability would be to conclude an ATL agreement at the Ministerial which would produce immediate benefits for producers and consumers around the world in these eight sectors. That would serve as a model and provide some important momentum for the launch of a new round of trade liberalization negotiations.

Conversely, failure to conclude the ATL agreement in Seattle could lead to further loss of growth opportunities in important sectors of the U.S. economy and further erosion in public support for efforts to achieve a more open world trading system.

I hope the trade ministers seize this opportunity to demonstrate the vitality and value of the World Trade Organization as a body which can and does produce meaningful economic results through eliminating trade barriers, beginning with an agreement in Seattle on the Accelerated Tariff Liberalization package.

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Chairman CRANE. And our last witness, Mr. Van Putten.

STATEMENT OF MARK VAN PUTTEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL WILDLIFE FEDERATION

Mr. VAN PUTTEN. Thank you, Mr. Chairman and Members of the Subcommittee. I appreciate this opportunity to testify on behalf of the National Wildlife Federation, America's largest not-for-profit conservation advocacy and education organization with over 4 million members and supporters in 46 States and territorial affiliates.

For nearly 10 years, NWF has been intimately involved in the development of U.S. trade policy. This makes sense to our members, who are mainstream and main street conservation activists. They understand the link between sustainable economic development and environmental protection.

This hearing marks an important crossroads in America's trade history. For too long, trade and investment agreements have been treated as if they were independent from their impact on the envi-

ronment, wildlife and natural resources. There has been an assumption that more trade is always better, leading to greater wealth and an improvement in the quality of life for all people.

But we have come to learn that liberalizing trade does not come without costs to the environment. We now recognize through firsthand experience that trade rules may restrict our ability to protect sea turtles and other imperiled species, limit bulk water exports from the Great Lakes, and provide information to consumers about the environmental impact of the products they buy.

This need not be so. The National Wildlife Federation believes that trade liberalization could be a means by which the goals of environmental protection and sustainable development are advanced, but this will require a change in the scope and direction of United States trade policy. Without this change, public confidence in trade policy will continue to erode.

As host of the WTO Ministerial meeting in November, the United States has an unprecedented opportunity to demonstrate leadership in reviewing and reforming the international trade regime so it respects and promotes these core American values. We stand ready to assist Congress and the administration in developing a negotiating agenda which fully incorporates environmental priorities with specific proposals for WTO rule reform and clarification. At the same time, I must acknowledge the National Wildlife Federation's willingness to oppose the next round of WTO negotiations if protection of the environment and democratic procedural reforms of the WTO do not emerge as key components of the future trading system.

The National Wildlife Federation has an agenda for harnessing trade liberalization in the service of advancing the American values of environmental protection, natural resource conservation, and process values such as openness and fairness in decisionmaking. In my written testimony I describe this agenda in detail, but I would just like to highlight a few of those points.

First, we must improve the WTO's deference to national standards and multilateral environmental agreements. Second, we must address the WTO prohibition on distinctions in production and process methods. Third, we must make environmental impact assessments integral to trade negotiations. And fourth, we must reform WTO procedures, especially the dispute resolution system concerning transparency and public participation.

As I said, these and other points are fully addressed in my written submission, and I welcome any questions you may have on that.

We appreciate the administration's recent statements on its agenda for integrating trade and the environment, and we urge the United States to move forward and embrace the recommendations we have made. Unless WTO nations embrace an agenda for reform to address environmental concerns, they will not earn the public support necessary for further trade liberalization.

Mr. Chairman and Members of the Subcommittee, for our members the question is not whether or not to trade, but how to craft trade and investment rules that promote a healthier environment. Trade is not an end in itself. It is a tool to achieve human aspirations, to improve standards of living and to enhance the quality of

life. Trade rules are self-defeating if they force us to trade away those things we value most highly: Clean air, clean water, safe food, wildlife, and open and living places that give meaning to our lives. Trade should be an investment in a better way of life, not a license to degrade those things on which healthy life depends. Thank you.

Chairman CRANE. Thank you, Mr. Van Putten.

[The prepared statement and attachments follow:]

Statement of Mark Van Putten, President and Chief Executive Officer, National Wildlife Federation

I am Mark Van Putten, President and CEO of the National Wildlife Federation, the United States' largest not-for-profit conservation education and advocacy organization with over four million members and supporters, ten field offices and forty-six state and territorial affiliates. For nearly ten years, our staff has been involved in the development of United States trade policy. Our members are America's mainstream and main street conservation activists who understand the link between sustainable economic development and environmental protection.

This hearing marks an important cross roads in American history. For years we have negotiated international trade and investment agreements as if they were independent from their impact on the wildlife and natural resources on which they often depend. We have assumed that "increased trade is always better," because we believed that more trade lead to greater wealth and an improvement in the quality of life for all people. To that end, United States trade policy has traditionally been dedicated to securing greater market access for United States' goods and services through the elimination of national policies of our trading partners that stood in the way of efforts to trade more and more products and services.

In many cases, increased trade is better, especially when we are talking about the needs of developing countries. Increased access to international markets allows developing countries to sell their goods and services to a growing global market. But as we better understand the impact living in a global society has on our efforts to protect the environment in a global society, we understand that liberalizing trade does not come without costs to the environment. We now understand that trade liberalization increases the pressure to turn wild spaces into farmland and, in a recent tragic example, can undermine efforts here at home to protect endangered sea turtles all over the world.

The National Wildlife Federation believes that it is time to change the scope and direction of United States trade policy. We need a policy that will promote healthy economies and cleaner environments. Acting as host to the World Trade Organization's Third Ministerial in November, we believe that the United States has an unprecedented opportunity to demonstrate its leadership on this important matter, and show the world that economically sound trade policy must respect the environment and, the communities affected by the trend toward globalization.

The WTO Ministerial represents a critical opportunity to review and reform the international trade regime so that it respects and promotes the core values of the American people. We stand prepared to assist Congress and the Administration in developing a negotiating agenda which fully incorporates environmental priorities within specific proposals for WTO rule reform and clarification. At the same time, we must respectfully acknowledge our willingness to oppose the next round of WTO negotiations if protection of the environment and democratic procedural reform of the WTO do not emerge as integral components of the future multilateral trading system.

We acknowledge and appreciate the progress made by the United States in addressing environmental concerns at the WTO High Level Symposium on Trade and Environment in March 1999 and in the United States proposals for the Seattle Ministerial agenda presented before the WTO General Council in July 1999. We welcome the Administration's attempts to improve transparency and participation of civil society at the WTO and, to encourage the elimination of environmentally-damaging subsidies in the fisheries sector. We are also moderately encouraged that the WTO dispute settlement panel jurisprudence and, in particular, the Appellate Body rulings, have recently demonstrated an improved sensitivity to the merits of environmental policy.

Despite the important United States proposals, we must reiterate our view that the positions articulated by the Administration as part of its Seattle Ministerial agenda are positive first steps. Clearly, the choice between awaiting improved jurisprudence and pursuing concrete rule reform is not necessarily an "either/or" propo-

sition. If the widespread support of NWF members and the American people for further trade liberalization is to be achieved, United States leadership and more progress needs to be made in implementing the proposed initiatives and in clarifying and modifying the current trade rules to adequately reflect the integration of environmental concerns.

I. The Relationship Between the International Trade Regime and Environmental Policy

A. Background—The Principles of the GATT/WTO Regime

The core principles of the General Agreement on Tariffs and Trade (GATT 1947)[1] and its recent successor, the World Trade Organization (WTO),[2] have important implications for environmental protection. Generally speaking, WTO rights and obligations impose certain disciplines on its signatory parties—or member nations. The following principles represent GATT's core disciplines:

Article I of the 1947 original GATT text establishes the Most-Favored-Nation principle (MFN). MFN aims to ensure that each member nation grant any privilege or advantage it provides to a product from one member immediately and unconditionally to "like products" from, or destined for, all WTO members. MFN effectively requires all member nations to treat products from all other WTO members in the same manner.

Article III establishes the National Treatment Principle, which requires members to treat any imported "like product" in the same manner as they would treat domestic "like products". GATT/WTO dispute settlement panels have traditionally defined the term "like product" narrowly so as to prohibit distinctions in products based on the manner in which they were produced, or process and production methods (PPM). At its core, National Treatment is designed to prevent the discrimination of imported products in favor of domestic products.

Article XI establishes a prohibition on quantitative restrictions and seeks to prohibit such trade actions as quotas, embargoes, and licensing schemes on imported or exported products. A WTO member country challenged with violating any of the above obligations has recourse to the GATT 1947 General Exceptions. Article XX(b) and (g) are the exceptions most frequently cited in trade disputes that involve the environment and natural resources.[3] Article XX also allows exceptions from the WTO general obligations to, *inter alia*, protect public morals, distinguish products manufactured with prison labor, exclude commodity agreements that meet certain criteria, and meet emergency shortages of supplies.

Thus, if the trade provisions of a WTO member's environmental policy are challenged as a violation of its WTO obligations, the defendant country may attempt to justify the measure as "necessary to protect human, animal or plant life or health" (Article XX(b)) or, "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." (Article XX(g)).

In addition to Article XX, the nexus between trade and the environment is frequently addressed within the context of the WTO Agreements on Technical Barriers to Trade (TBT Agreement) and the Sanitary and Phytosanitary Agreement (SPS Agreement)

The TBT Agreement seeks to ensure that the nondiscrimination and national treatment provisions of the WTO as a whole are specifically applied to the adoption of technical regulations by members.[4] The TBT Agreement emphasizes deference to international standards in the creation of regulations governing, among others, product characteristics, process and production methods, labeling, and packaging.[5]

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[1] General Agreement on Tariffs and Trade, Oct. 30 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT 1947].

[2] General Agreement on Tariffs and Trade—Multilateral Trade Negotiations (The Uruguay Round): Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Dec. 15, 1993, Multilateral Trade Negotiations (The Uruguay Round) Doc. MTN/FA, 33 I.L.M. 1 (1994) [hereinafter WTO Final Act].

[3] WTO Final Act, Article XX(b), Article XX(g)

[4] Agreement on Technical Barriers to Trade, GATT/WTO (1994). A technical regulation is defined as:

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

[5] TBT Agreement, Article 2.

The WTO SPS Agreement attempts to prevent non-tariff barriers to trade in the form of environment and health measures designed "to protect animal or plant life or health within the territory of the Member" through restrictions on invasive species, additives, pesticides, and other contaminants. In similar fashion to the TBT Agreement, the SPS Agreement places additional disciplines on WTO members so as to ensure that measures are not to be "maintained without sufficient scientific evidence," nor be maintained "if there is another measure, reasonably available. . . that achieves the appropriate level of protection and is significantly less restrictive to trade."[6]

If a dispute arises, a complaining party may request the appointment of a dispute panel to settle the disagreement. The panel hearings are between governments and are generally closed to the public and non-governmental organizations (NGOs). Panel reports are adopted within sixty days of their issuance unless a member initiates an appeal or it is the consensus of the other members not to adopt the report. If a member chooses to ignore the recommendations of a panel, the complaining member may seek compensation in the area of trade directly related to the dispute or, if necessary may cross-retaliate in another trade sector. As a result, a member country whose environmental regulation is found by a WTO dispute settlement panel to be inconsistent with WTO obligations is immediately susceptible to significant pressure to either alter the environmental law in domestic administrative processes or provide compensation to the complaining WTO member.

B. Implications for National and International Environmental Policy

The GATT/WTO trade principles have direct implications for a host of environmental laws. Any national or multilateral environmental measures attempting to accomplish their environmental objective that results in the application of trade restrictions with disproportionate impacts on different WTO members runs the risk of being in violation of the MFN principle. The trade provisions of a multilateral environmental agreement (MEA), the Montreal Protocol on Substances the Deplete the Ozone Layer, that promote different trade restrictions among WTO members based on their status as parties or non-parties to the Protocol may violate the MFN principle. Similarly, an environmental measure that attempts to distinguish products based on the environmental consequences of their production (e.g. tuna caught in a manner that harms dolphins as opposed to tuna caught without producing dolphin mortality) may violate the national treatment principle. Finally, if an environmental regulation restricts the trade in a particular product via a trade ban, the regulation in question may be declared inconsistent with Article XI's prohibition on quantitative restrictions. For example, the United States' trade restrictions on shrimp products caught in a manner that harms sea turtles were recently found to be in violation of Article XI by a WTO dispute settlement panel.

In addition to the core principles, WTO members are increasingly demonstrating a propensity to utilize the TBT and SPS Agreements to impose additional disciplines on national and international environmental policies. For example, WTO members continue to explore measures designed to discipline voluntary environmental labeling and certification programs by advocating not only adherence to the TBT Agreement but, also a list of additional principles requiring ecolabeling programs to be, inter alia, "based on sound science" and "no more trade restrictive than necessary".[7] Ecolabeling proponents remain concerned that the new disciplines inherent in the recent proposals and the principles of the TBT Agreement go well-beyond the requirements of MFN and national treatment obligations and may place WTO dispute settlement panels in the position of interpreting the substantive merits of individual and voluntary environmental labeling programs.

Similarly, the SPS Agreement requires national environmental measures to adhere to additional trade-based disciplines and allows significant deference to international standards. As a result, many national environmental and health authorities remain concerned that the SPS Agreement will allow WTO dispute settlement panels to sit in judgment of societal policy choices such as determinations relating to appropriate levels of risk and/or may defer to occasionally weaker international standards in the interest of promoting trade.

As noted earlier, when differences of opinion over national policy and its relationship to trade rules arise, member nations seek a resolution via the new dispute settlement system established in conjunction with the WTO. Thanks in large part to United States leadership in the post-WW II era, the use of tariffs to impede the flow of goods around the world has diminished considerably. As a by-product of this suc-

[6] SPS Agreement, Article 3:2 (para. 6).

[7] See, e.g., Trade and Environment Bulletin, Committee on Trade and Environment (CTE), WTO, Press/TE 023, (May 14, 1998).

cess in tariff reduction, the WTO dispute settlement system has increasingly been called upon to confront the trade-distorting effects of non-tariff barriers. Within the international trade regime, domestic and international environmental regulation is often suspected, rightly or wrongly, of rising to the level of an actionable non-tariff barrier to trade.

The WTO Dispute Settlement Understanding encourages members to enter into informal negotiations in an effort to reach a mutually agreed solution.[8] If a resolution of the matter is not forthcoming, a challenging member invoking the dispute settlement procedures is entitled to a prima facie assumption that the trade provisions of the environmental measure being challenged are inconsistent with the WTO rules. The burden of proof to rebut the charge is on the defendant member seeking to implement the environmental regulation.

In response to the preceding trade and environment linkages and in the interest of forging a new consensus on United States trade policy as we work together to develop United States negotiating objectives for Seattle, the National Wildlife Federation proffers the following recommendations as potential objectives for future United States trade initiatives.

II. Establish Appropriate and Reasonable Limits to the WTO's Influence on Legitimate National and International Environmental Measures

A. Improve WTO Deference to National Standards and Multilateral Environmental Agreements (MEAs)

Trade rules must be crafted so they do not diminish the environmental protections that nations have provided for their citizens and their natural resources. As trade negotiations and trade institutions are increasingly faced with the challenge of distinguishing national standards adopted for legitimate health and environmental purposes from those regulatory standards enacted with protectionist intent, the need to ensure appropriate deference to national decisionmakers with environmental expertise acting at the behest of their citizens intensifies.

As the recent WTO dispute settlement panel opinion regarding the United States' efforts to protect endangered sea turtles and several other environmentally-related dispute settlement decisions attest, the WTO's review of the trade-related aspects of environmental policy tends to expand rapidly into a substantive review, from a trade perspective, of the overall effectiveness of a chosen environmental policy.[9]

In addition to endangered sea turtle regulations, the WTO and GATT dispute settlement bodies have recently issued rulings on domestic laws addressing appropriate levels of protection for growth hormones in beef,[10] air quality,[11] and fuel efficiency standards.[12]

1. Sanitary and Phytosanitary Measures

WTO SPS negotiators are charged with the difficult responsibility and challenge of balancing the right of domestic regulatory authorities to determine their appropriate level of risk and the obligation to maintain measures consistent with their commitments under the WTO SPS Agreement. The next level of SPS negotiations at Seattle and beyond represent a significant opportunity for the United States and its fellow WTO partners to absorb the lessons of existing SPS Agreements in the NAFTA and Uruguay Round/WTO contexts and to create a much-improved agreement that ensures high levels of environment and health protection while facilitating trade.

A failure to seize this opportunity to establish a well-functioning SPS Agreement will undoubtedly lead to increased challenges to nondiscriminatory national environment and health protection laws which will in turn result in increased tension and instability in the international trading regime and an erosion of popular support within WTO countries for the WTO process. Accordingly, we recommend that the

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[8] Understanding on Rules and Procedures Governing the Settlement of Disputes, WTO (1994).

[9] See United States—Import Prohibition of Certain Shrimp and Shrimp Products, Final Report, WTO, WT/DS58/R, (April 6, 1998). See also, United States—Restrictions on Imports of Tuna, GATT Doc. DS29/R (June 1994) (unadopted); United States—Restrictions on Imports of Tuna, GATT Doc. DS21/R (Sept. 3, 1991) (unadopted), 30 I.L.M. 1594 (1991); Canada—Measures Affecting Exports of Unprocessed Herring and Salmon, GATT Doc. L/6268, GATT BISD 98 (35th Supp. 1988).

[10] EC Measures Concerning Meat and Meat Products (Hormones), Final Report, WTO, WT/DS48/AB/R, (January 16, 1998).

[11] United States-Standards for Reformulated and Conventional Gasoline (AB–1996–1), (March 4, 1996).

[12] United States—Taxes on Automobiles, GATT Doc. DS 31/R, at 3–4 (Sept. 29, 1994) (unadopted)

WTO negotiators seek to achieve an SPS Agreement consistent with the following principles:

Burden of Proof

The WTO SPS Agreement should explicitly place the burden of proof in establishing a violation of the SPS Agreement on the challenging party throughout the length of a dispute involving a particular country's environment and health protection measure;

International Standards as Minimum Levels of Protection and the Precautionary Principle

The WTO SPS Agreement should explicitly confirm that international standards are not to be considered maximum levels of protection in situations where a WTO country seeks to maintain a higher standard than an international standard.

As a result, SPS Agreement negotiators should insist that, at minimum, an express statement acknowledging that international standards may not be invoked to weaken higher domestic standards should be inserted into the SPS text. If modest deference to international standards is to be maintained, deference to relevant international health and environmental standards and appropriate multilateral environmental agreements (MEAs) should be incorporated into the SPS Agreement. Indeed, the SPS Agreement should expressly acknowledge the right of WTO members to invoke the Precautionary Principle (the right to take action against a potential harm even if the scientific evidence linking an activity to the harm in question is inconclusive or uncertain) in determining their appropriate levels of risk.

Deference to National Regulatory Authorities

The WTO SPS Agreement must allow for deference to national regulatory authorities in the assessment of risk and the determination of the appropriate level of SPS protection. As an appropriate starting point in considering modifications to the SPS Agreement, the United States should seek explicit language in the text of the WTO's Sanitary and Phytosanitary Agreement similar to the language contained in the Uruguay Round Statement of Administrative Action. The United States has stated that the SPS Agreement's definition of appropriate level of protection explicitly affirms the right of each government to choose its levels of protection, including a "zero risk" level if it so chooses. A government may establish its level of protection by any means available under its law, including by referendum. In the end, the choice of the appropriate level of protection is a societal value judgment. The Agreement imposes no requirement to establish a scientific basis for the chosen level of protection because the choice is not a scientific judgment.[13]

In addition, trade rules must explicitly ensure that sovereign nations may continue to adopt and maintain legitimate, nondiscriminatory protective standards for health, safety, and the environment.[14] President Clinton has stated in an address marking the 50th Anniversary of the WTO "Enhanced trade can and should enhance—not undercut—the protection of the environment. [I]nternational trade rules must permit sovereign nations to exercise their right to set protective standards for health, safety and the environment and biodiversity. Nations have a right to pursue those protections—even when they are stronger than international norms."

Accordingly, WTO negotiators should insist that an interpretative statement be incorporated into the SPS Agreement reflecting the above position so as to provide clear guidance to WTO dispute panels that any potential SPS Agreement requirement of scientific justification must not allow the substitution of a panel's scientific judgment for that of domestic regulatory authorities.

2. Allow Explicit Deference to Multilateral Environmental Agreements (MEAs)

The potential conflict between existing WTO trade rules and the use of trade measures in MEAs has to be addressed. MEAs use trade measures to promote environmental cooperation and enforcement through the use of a variety of positive and negative incentives related directly to the environmental problem at issue.[15] For example, MEAs utilize trade provisions to regulate the trade in a "target" product or substance primarily responsible for the environmental degradation—such as ozone depleting chemicals or trade in animal parts derived from endangered species.

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[13] *The Uruguay Round Agreements Act, Statement of Administrative Action* at 89.

[14] Address By President Clinton to the World Trade Organization, Geneva, Switzerland, May 18, 1998.

[15] See generally, General Agreement on Tariffs and Trade, Trade and the Environment (Feb. 12, 1992), 30.

Frequently, many of the trade provisions in MEAs require MEA parties to restrict trade in an environmentally damaging product with non-parties to the MEA. Under these circumstances, a non-party to the MEA that is a WTO member may allege a violation of their WTO MFN rights and obligations as a result of the differential treatment. In addition, trade restrictions in MEAs that encourage wholesale bans or embargoes of products may also be deemed inconsistent with Article XI's prohibition on quantitative restrictions.

The National Wildlife Federation strongly supports global efforts to negotiate and implement MEAs. In general, MEAs encourage transparency and nondiscrimination, and simultaneously discourage alternative unilateral measures that may lead to further trade tensions. Traditionally, well-supported MEAs provide certainty for business and discourage "free-riders" from attaining competitive advantages over law abiding competitors. Negative economic consequences for products not related to the environmental harm at issue are rare and the WTO Secretariat has acknowledged that "none of the existing MEAs contain provisions for discriminatory trade measures to be taken against unrelated products in the case of non-participation or defection." [16]

The United States needs to demonstrate leadership in working with other WTO members, MEA parties, and the international environmental NGO community to establish a framework in which the laudable goals of trade liberalization and multilateral environmental protection may co-exist. We pledge to work with Congress and the Administration to:

Build on the NAFTA model

The United States' commitment to multilateral environmental solutions to international environmental issues as reflected in Article 104 of NAFTA made important strides towards increased deference for MEAs addressing shared international environmental issues such as the trade in endangered species, transboundary hazardous waste, and ozone depleting chemicals.[17] We urge the United States to consider an expansion of the list of MEAs eligible to be "grandfathered" into existing trade agreements and to provide explicit guidance to WTO dispute settlement panels that trade rules should not inhibit the environmental objectives of MEAs;

Article 104: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended June 22, 1979,

b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990,

c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or

d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Enhance WTO Deference to Legitimate MEAs

The United States should seek clarification of WTO rules to allow explicit deference to the independent institutions of established environmental expertise on questions of appropriate environmental policy in the global commons. For example, the WTO should establish a formal link to the United Nations Environment Programme (UNEP) as an appropriate venue for providing initial arbitration and expertise services to the WTO in the face of a dispute involving an MEA and WTO rules.

III. Harnessing Competitive Energy to Work for the Environment

Manufacturers tend to operate using a simple but powerful logic—-produce the highest quality product while minimizing costs and seeking to operate in a multilateral rules-based system that provides as much certainty and clarity in its applicable rules as possible. The vast majority of businesses abide by the existing rules and, seek competitive environments where they know their colleagues do the same. Regrettably, some businesses try to exploit loopholes in international trade and invest-

[16] *Id.*

[17] North American Free Trade Agreement (NAFTA), Dec. 17, 992, Can.-Mex.-U.S., 32 I.L.M. 296 and 32 I.L.M. 605.

ment rules to cut costs and create competitive advantages. Trade rules that do not acknowledge limited distinctions in products based on the manner in which they are produced (PPMs) or fail to aggressively curtail the use of environmentally damaging subsidies perpetuate an uneven competitive playing field. From the perspective of law-abiding businesses, to ask producers, operating in compliance with domestic environmental laws, to compete against foreign-based companies that compete by polluting the environment or destroying natural resources is inadequate trade policy and is simply not fair.

Trade rules can be written in a way to encourage environmentally responsible behavior, and to prohibit businesses from exploiting the loop holes that exist in the current international trade framework.

The National Wildlife Federation recommends the following:

A. Address the Process and Production Methods (PPMs) Dilemma:

To promote a competitive level playing field, Congress and the Administration should work diligently to adopt appropriate criteria to ensure that legitimate environmental policies regulating production process methods are preserved from challenge in a trade dispute. Initial criteria should allow WTO members to distinguish products based on the manner in which they are produced in limited and clearly defined environmentally-related circumstances. For example, distinctions in products made with environmentally adverse consequences for the global commons (e.g. products produced with ozone depleting substances) and in measures designed to protect threatened or endangered species should be deemed consistent with WTO rules.

B. Eliminate Environmentally Perverse Subsidies and Promote Trade in Environmental Technologies:

Renewed attention and energy must be devoted to delivering eminently achievable "win-win" solutions in the trade and environment interface. For example, the elimination of perverse and environmentally damaging subsidies in natural resource sectors such as fisheries and forest products may result in positive gains for both the environment and trade. We commend the United States for its leadership in seeking enforcement of current WTO notification requirements and rules governing the elimination of subsidies in its 1999 WTO Ministerial negotiating agenda. In addition, the United States deserves credit for its efforts to place the facilitation of trade in environmental technologies on the Seattle Ministerial agenda. Admittedly, while the elimination of environmentally-damaging subsidies and improved trade in environmental clean technologies is not a panacea to the resolution of all trade and environment conflicts, progress in these areas does represent a positive step forward.

C. Conduct Environmental Assessments:

A commitment to sustainability and access to information argue forcefully for the initiation of comprehensive environmental assessments of natural resource sector liberalizations in the early stages of the trade negotiating process and upon completion of trade negotiations. The United States should build on and strive to strengthen the positive experiences associated with environmental reviews prepared for NAFTA and the Uruguay Round Agreements establishing the WTO. In addition, the United States and our OECD trading partners have agreed that "governments should examine or review trade and environmental policies with potentially significant effects on the other policy area early in their development to assess the implications for the other policy area and to identify alternative policy options for addressing concerns."[18]

The National Wildlife Federation stands committed to working with members of the Committee and the Administration in developing specific and practical environmental assessment proposals. The goal of the assessment(s), and their open public review and comment process, should be to provide accurate information on the relative environmental impact of proposed liberalization in a variety of sectors under negotiation. In instances when a potential environmental harm is identified, the assessment should suggest mitigative measures such as staggered implementation schedules and/or technical assistance to lessen the impact on the environment.

D. Negotiate Environmentally Responsible Investment Agreements:

Increased foreign investment built on a solid commitment to sustainable development can potentially lead to transfers of cleaner environmental technologies and improved capital expenditures in environmental protection infrastructure. At the same

[18] OECD Guidelines on Integrating Trade and Environment Policy, OECD, OCDE/GD(93)99, para. A, B, (June 1993).

time, poorly crafted investment rules may exacerbate the exploitation of natural resources, contribute to environmental degradation and place downward pressure on national environmental laws and regulations through closed dispute settlement processes. As a result, NWF does not support the negotiation of investment rules beyond the current Agreement on Trade-Related Investment Measures (TRIMs) as part of the Seattle WTO Ministerial Agenda. The United States should maintain its current position of not seeking multilateral investment negotiations within the WTO. In the alternative, WTO investment negotiations should, at minimum, attempt to achieve the following:

• Seek mandatory, enforceable measures in the trade agreement to prohibit the lowering of environmental standards to attract investment and an active monitoring system to ensure compliance;

• Undertake a review of the traditional "investor-to-state" principle found in numerous bilateral investment agreements with an emphasis on its compatibility with procedural openness, transparency and environmental protection efforts. Recently, in the NAFTA context, several private investors have attempted to use the investor-to-state provisions to challenge domestic regulations with potentially detrimental consequences for environmental laws. Indeed, we understand the NAFTA parties are presently engaged in such a review and we urge close coordination with WTO negotiators in this process with increased attention devoted to ensuring greater safeguards for environment and public participation in a WTO investment framework;

• WTO investment negotiations should include obligations allowing legitimate measures designed to conserve the environment, natural resources and the promotion of cooperative environmental programs to be maintained.

E. Slow Down Negotiation of the Forest Products Accelerated Tariff Liberalization (ATL) Initiative Pending the Conclusion of a Comprehensive Environmental Assessment.

The United States has announced, as part of the Seattle Ministerial Agenda, its intention to pursue accelerated tariff liberalization ("zero for zero" reciprocal tariff elimination) in the, inter alia, forest products, fisheries' products, environmental goods, and chemicals sectors. In the forest products sector, the proposed joint USTR and CEQ "written analysis" of the forest products ATL presents a significant opportunity for the United States to pause and assess carefully and thoroughly the environmental impact of the current ATL initiative on global forests. We urge the United States to utilize this analysis to promote an open and frank discussion of the ATL initiative's direct effects on such factors as consumer demand and the efficient management of worldwide forest resources. Accordingly, we recommend that USTR and CEQ work diligently to ensure the ATL initiative properly addresses potential environmental concerns before proceeding at its current rate of negotiation and implementation.

An enhanced commitment to sustainable development will require a comprehensive assessment of the potential impacts on sustainability of the proposed forest sector liberalization. We wish to emphasize that NWF has not drawn any premature conclusions to the ensuing results of a thorough assessment. Clearly, some tariff liberalization will be beneficial to the environment while tariff liberalization in other areas may produce negative consequences for the environment.

The goal of the assessment should be to identify those liberalizations likely to be less-harmful and give them a higher priority than areas of liberalization identified as detrimental to the environment. In instances when an environmental harm is a likely outcome, longer implementation timetables, technical assistance, the establishment of preventive and mitigative measures, and proffering reasonable alternative actions may merit due consideration by policymakers. An environmental assessment will also strengthen public participation in trade negotiations by making the best use of NGO and other civil society inputs and experiences involving trade liberalization impacts in certain natural resource sectors.

In addition to an assessment of the "zero for zero" reciprocal tariff elimination approach, a comprehensive analysis of the forest products ATL should explore the potential impact of experimenting with other aspects of the traditional tariff system, including inter alia:

• carefully amending the Harmonized Tariff System (HTS) to better reflect the sustainable harvesting of natural resource products. The HTS has the potential to act as an incentive to encourage the production of natural resource products in a sustainable fashion throughout the United States and the entire world;

• promote increased flexibility in the tariff system to potentially allow for a zero-tariff model in certain categories of forest products (e.g. finished wood products), while maintaining capacity to continue moderate tariffs in other categories (e.g. raw,

unprocessed logs or wood chips) if they were clearly shown to have adverse environmental and/or economic consequences.

IV. Support Cooperation on Environmental Matters Among Trading Nations

As trade liberalization leads to increased market integration, the opportunities to foster a meaningful cooperative environmental agenda through parallel environmental institutions multiply. Our own experience working with government officials in Latin America and elsewhere has helped us understand that it is not improvements in environmental protection per se that governments are reluctant to pursue. On the contrary, most government officials are trying hard to develop and implement effective national environmental regimes. What concerns them are two factors:

- In the past, some governments have regarded a number of environmental laws and regulations as thinly guised protectionism. We recognize improperly crafted environmental policies can lead to unnecessary trade tensions;
- The fear that, above and beyond trade agreement commitments, they lack the political will and/or technical resources to fully implement their own environmental laws and regulations.

A. Promote Environmental Cooperation:

The National Wildlife Federation supports the notion that trade and investment agreements create unique opportunities to further environmental cooperation among our trading partners that should not be ignored. The conceptual framework and cooperative mission of parallel environmental institutions associated with trade liberalization merits strong political and technical support in all of the United States' trade initiatives.

In the NAFTA context, the Commission for Environmental Cooperation (CEC) is the trinational environmental institution created by the North American Agreement on Environmental Cooperation (NAAEC) (NAFTA's "Environmental Side Agreement") to address continental environmental issues in the United States, Canada, and Mexico. The CEC attempts to facilitate cooperation and public participation among the NAFTA parties by addressing regional environmental concerns, helping to prevent potential trade and environmental conflicts, and promoting effective environmental enforcement in each of the NAFTA countries. To date, the CEC has been particularly effective in encouraging improved working relationships between the environmental ministers of the NAFTA parties, while at the same time, providing a valuable forum to address transboundary issues of shared environmental concern in North America.

The Border Environmental Cooperation Commission (BECC) is the certifying entity responsible for developing and evaluating border water, wastewater, and municipal solid waste (MSW) projects. BECC has comprehensive criteria to which projects must adhere in order to be considered for BECC certification. These include a project's economic viability and its sustainable development components. The NADBank, now fully funded with $450 million in equal contributions from the United States and Mexico, is a binational financial institution that may use its funds to leverage additional capital but only for those projects certified by the BECC.[19]

The BECC/NADBank have been particularly effective in facilitating the development and adoption of sustainability criteria used to evaluate potential environmental infrastructure projects; transparent decision-making processes with public participation from both nations; and capacity building and technical assistance. Despite this progress, several issues which are beyond the scope of this hearing remain a concern for some border communities seeking environmental infrastructure funding, including: interest rates on loans are too high for some communities, particularly in Mexico; without a fee-based utility system, Mexican municipalities must pioneer rate structures and fee collection; border population growth rates have increased rapidly as project development has lagged behind.

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[19] Since its inception in 1994, the BECC has certified 26 water and wastewater projects to date, with 14 projects in U.S. and 12 projects in Mexico. Of those projects, the NADBank has closed financing packages on six projects and has made recommendations for financing on another 8 projects. Total NADBank financial commitment is $408.4 million (U.S.). Although few in number, these projects represent an exponential increase in water and wastewater system construction in the border region, particularly on the Mexican side.

V. Trade Negotiations and Trade Institutions Must Become More Open and Transparent

As trade negotiations and trade institutions increasingly establish the terms of market integration and their attendant impacts on the environment, the need for meaningful public participation opportunities correspondingly increases. Public participation should be integral to any trade or investment negotiations. Such a linkage confirms the relationship between open markets and democratic principles, and provides citizens with the information they need to make sound and informed choices about policies that affect their future.

The United States has adopted a very positive approach to improving access to WTO decision makers and, ensuring that people are able to hold the WTO accountable for its actions. The National Wildlife Federation urges Congress to support this effort to infuse the WTO with the same democratic rules of accountability enjoyed by American citizens.

The National Wildlife Federation recommends:

A. Reform WTO Procedures Regarding Transparency and Participation to Ensure the WTO System Is Held Accountable to Democratic Principles:

While the United States is to be commended for its efforts over the past two years to increase public participation and transparency in several trade negotiating fora, including as part of the Administration's Seattle Ministerial agenda, further progress is within reach. For example, the United States must work diligently to increase transparency in individual sectoral WTO negotiating groups in which the United States actively participates. In the context of the Seattle Ministerial agenda, the recently proposed rebirth of the Committee on Trade and Environment (CTE), ostensibly created as a forum to identify and discuss the environmental implications of issues under negotiation in a new round, must not simply become a "mailbox" repository of NGO issues with no significant corresponding influence, nor impact on the negotiating process. Clearly, the CTE's work program must avoid repeating its previous mistakes of conducting a one-sided and imbalanced review of the trade implications of environmental policy without addressing adequately the impact of trade policy on environmental measures. In addition to any proposed new role for the CTE, the WTO should establish, as a general matter, information disclosure policies and clear mechanisms for receiving and responding to NGO participation and comments.

Improved access and accountability are especially important for people from developing countries, many of whose governments do not have permanent missions located in Geneva. Given the informal nature by which the WTO makes its decisions at present, ensuring that the interests of all people are represented at the WTO must be integral to the United States objectives for trade liberalization. For most of the world's population, the incredible acceleration of the global economy has also brought accelerated loss of wildlife and wild places. We urge the United States to devote its energy to ensuring that all future WTO procedures are open and accessible to all people.

Finally, in the interests of promoting a more open and equitable procedure for establishing and negotiating trade and investment agreements, the National Wildlife Federation has co-authored a White Paper which proposes a new form of trade negotiating authority.[20] We believe that the ideas represented in this White Paper will stimulate a public debate on how best to empower the United States government to bring home trade agreements that promote healthy economies and cleaner environments.

B. Open the Dispute Resolution Process:

In all trade regime dispute settlement fora, the United States should, at minimum, fulfill President Clinton's commitment at the WTO to open dispute settlement proceedings to public observation and pursue mandatory consideration of amicus briefs from interested NGO parties.

Conclusion

Thank you again for the opportunity to present these views. Let me conclude by saying that, for the members of the National Wildlife Federation, the question is not whether to trade, but under what rules do trade and investment serve to promote a healthier environment. Trade is a tool to achieve human aspirations, to im-

[20] Sierra Club and the National Wildlife Federation, White Paper on Alternative Trade Negotiating Authority.

prove standards of living, to enhance the quality of life. Our environment, our wild places and wild things are part of humanity's quality of life. Diminish them and you diminish the human standard of living. Trade rules are self-defeating if they force us to trade away those things we value most highly—the clean air, the clean water, the open and living places that give quality to life. Trade should be an investment in a better way of life, not a license to degrade those things on which a healthy life depends. Unless WTO member nations embrace the agenda for WTO reform proposed by environmental organizations throughout the world, we believe that they will not earn the support they need to negotiate agreements that help to convince people that trade liberalization works for them.

Center for International Environmental Law, National Wildlife Federation Sierra Club, World Wildlife Fund, Friends of the Earth Natural Resources Defense Council, Greenpeace USA Defenders of Wildlife, American Lands Alliance, Consumer's Choice Council Earthjustice Legal Defense Fund, Pacific Environment and Resources Center Community Nutrition Institute, Institute for Agriculture and Trade Policy

Dear Ambassador Esserman and Mr. Robertson:

Our organizations are deeply concerned about the Administration's development of positions for the Third Ministerial Conference of the World Trade Organization scheduled for Seattle this fall. WTO rules and procedures have been used repeatedly to attack environmental laws that our organizations have worked for decades to create, strengthen and protect. Equally important, the continued pressure to expand trade through broadened and intensified application of trade policy, without an equal effort to ensure that the right framework of environmental law and policy are in place, threatens to impede the conservation of our natural resources and the maintenance and improvement of a healthy environment. Yet while the Administration has sometimes raised general environmental concerns about trade and trade rules at the WTO—most recently at the March 1999 high level symposium on trade and environment in Geneva—it has failed to take the concrete actions needed to address those concerns effectively.

As our groups have emphasized in past communications, the Administration can fulfill President Clinton's pledge to put a "human face" on the global economy only if it combines its commitment to liberalizing trade with an equally strong commitment to environmental protection and sustainable development. We appreciate the Administration's call to improve public distribution of WTO documents, enhance public participation in WTO dispute settlement proceedings, and encourage reduction of fisheries subsidies that distort trade and encourage overfishing. These efforts fall far short, however, of the comprehensive reforms needed to ensure that the world trading system does not hinder sustainable development and environmental protection. For example, we have found unacceptable the Administration's inflexible position in recent months that no textual changes to the WTO Agreements are needed, as it indicates a reluctance to deal seriously with environmental concerns.

The WTO Ministerial Conference offers an historic opportunity for the Administration to lead the review and reform that the international trade regime needs so that it will promote, rather than undermine, environmental protection and other core values of United States citizens. We stand prepared to help the Administration seize this opportunity by developing an agenda that fully recognizes environmental priorities. If, however, the Administration misses the chance to put the WTO on a course toward sustainable development, this will undermine support for subsequent negotiations at the WTO—and for United States government authority to participate in those negotiations—and invite united environmental opposition to the results. To avoid this, the Administration must develop an environmentally beneficial agenda for the Ministerial Conference, and a comprehensive plan for environmental review and reform of the WTO, that go well beyond the proposals advanced to date.

We recognize that the trade and environment issues confronting the WTO will not be resolved at a single ministerial meeting. What we do expect, however, is that the Administration formulate a plan for achieving solutions, and that it demonstrate a commitment to that plan through constructive, open engagement with the public, with Congress, and relevant agencies. Despite the complexity of the details, the outline of the plan we need to see has three simple themes, described below. Although not every one of our organizations endorses every detail in this letter or the accompanying attachment, we are united in support of the overarching principles expressed here. We will evaluate the outcome in Seattle on this basis.

1. Stop WTO Expansion.

The Administration must avoid rushing into more negotiations on liberalization that would place the environment and environmental laws further at risk. In light

of the potential for significant environmental impacts, this is not the time to embark on further expansion of the WTO's power or the scope of its rules. Thus, we oppose the launch of negotiations within the WTO on investment liberalization, government procurement or "early harvest" of tariff reductions.

We oppose accelerated tariff reduction and other liberalization in selected sectors pending an open, participatory and balanced assessment that includes formulation of mitigating measures. Our concern is intensified with respect to environmentally sensitive natural resource sectors, such as forest and fish products. Forests and fisheries are in crisis both nationally and globally. Prioritizing liberalization in these sectors is reckless, when we know that regulations and incentives for sustainable harvesting and commerce are grossly inadequate around the world.

Multilateral investment rules beyond the current Agreement on Trade-Related Investment Measures (TRIMs) should not be the subject of negotiations at the WTO. We are concerned that the United States government may be shifting its position to support partial negotiations on investment under WTO auspices.

2. Reform WTO Rules and Procedures.

The WTO as it exists today urgently needs reform. The Administration must secure commitment to the reforms needed to ensure that existing WTO procedures and rules affirm, rather than hinder, environmental protection.

In broad terms, the WTO's limits of jurisdiction need to be defined more clearly, so that the WTO stays within its recognized realm of trade policy, and does not stray into the field of environmental regulation. Equally important, the WTO's decision-making must be transparent and must involve public scrutiny and input. Achieving these goals will require major changes in both the rules and the procedures for formulating, interpreting, applying and enforcing those rules. These changes must also be reflected in any negotiations that are launched in Seattle.

Substantively, both existing and future WTO rules must be written and interpreted so that they accord proper deference to national and international standards that serve legitimate environmental objectives. Procedurally, the terms of reference of each WTO working group or institutionalized body must provide for consideration of significant impacts on environment and sustainable development, and there must be mechanisms to ensure compliance.

3. Assess Impacts.

The Administration must provide for an assessment of the environmental impacts of proposed multilateral trade and trade policy. The fundamental question is whether the framework of laws, policies and institutions is in place to ensure that additional multilateral steps to liberalize trade will lead to environmentally and socially beneficial outcomes. If not, then the assessment must formulate needed institutional, legal and policy changes before moving forward with further talks on liberalization.

This assessment process must begin immediately. It must be open and transparent, global in scope, and conducted through a balanced, impartial process. It should be carried out in cooperation with our trading partners. A forward-looking review must be complemented by a retrospective review of past and current impacts of existing policy. The reference point for the assessment must be the procedures and criteria developed under the National Environmental Policy Act.

The statement attached to this letter provides further details on our organizations' bases for our positions and our suggestions for addressing these areas of concern. We appreciate recent overtures from the Administration that indicate openness to a more substantive dialogue, and look forward to the chance to discuss our positions further with you and your staff.

Sincerely yours,

DAVID R. DOWNES
Center for International Environmental Law

On behalf of:
Jake Caldwell, National Wildlife Federation
Dan Seligman, Sierra Club
David Schorr, World Wildlife Fund
Andrea Durbin, Friends of the Earth
Justin Ward, Natural Resources Defense Council
Scott Paul, Greenpeace USA
Rina Rodriguez, Defenders of Wildlife and Community Nutrition Institute
Antonia Juhasz, American Lands Alliance
Cameron Griffith, Consumer's Choice Council
Martin Wagner, Earthjustice Legal Defense Fund

Kristin Dawkins, Institute for Agriculture and Trade Policy
Doug Norlen, Pacific Environment and Resources Center
cc: Ambassador Stuart Eizenstat, Under Secretary for Economic and Business Affairs,Department of State
Frank E. Loy, Under Secretary for Global Affairs, Department of State
George T. Frampton, Jr., Acting Chair, Council for Environmental Quality Frederick Montgomery, Assistant US Trade Representative for Policy Coordination, Chairman of Interagency Trade Policy Staff Committee
Attachment

Center for International Environmental Law, National Wildlife Federation Sierra Club, World Wildlife Fund, Friends of the Earth, Natural Resources Defense Council, Greenpeace USA, Defenders of Wildlife, American Lands Alliance, Consumer's Choice Council, Earthjustice Legal Defense Fund, Pacific Environment and Resources Center, Community Nutrition Institute Institute for Agriculture and Trade Policy

THE WORLD TRADE ORGANIZATION AND ENVIRONMENT TECHNICAL STATEMENT BY UNITED STATES ENVIRONMENTAL ORGANIZATIONS

This statement provides further detail on the concerns and recommendations regarding environmental issues outlined in the July 16 letter from several United States environmental groups.[1] Part I details our opposition to further expansion of the World Trade Organization (WTO) at this time. Part II identifies specific reforms needed to WTO rules and procedures. Part III outlines procedural and substantive elements of the environmental assessment of existing and proposed multilateral trade agreements.

I. NO WTO EXPANSION

The Administration must avoid rushing into more negotiations on liberalization that would place the environment and environmental laws further at risk. In light of the potential for significant environmental impacts, this is not the time to embark on further expansion of the WTO's power or the scope of its rules. Thus, we oppose the launch of negotiations within the WTO on investment liberalization, government procurement or accelerated sectoral liberalization, including "early harvest" of tariff reductions.

We oppose the Administration's effort to accelerate liberalization, especially in environmentally sensitive sectors such as forest products, in the absence of a careful and public assessment of the potential environmental impacts (see Part III.3 below). Aiming to reach agreement on further liberalization at the Seattle meeting itself—as the Administration proposes to do with reduction of tariffs on forest products—flies directly in the face of the Administration's commitment to review the environmental impacts of liberalization, because the schedule is too short to do a thorough assessment of effects and policy alternatives.

As we have repeatedly stated, multilateral investment rules beyond the current Agreement on Trade-Related Investment Measures (TRIMs) should not be the subject of negotiations at the WTO. Our objections to an investment agreement in the WTO go beyond the issues of establishing rights to sue for lost profits and investor-to-state dispute resolution. We are also concerned that enforceable rights to national treatment and most favored nation status could pry open environmentally sensitive sectors in markets where regulatory frameworks are inadequate to manage the increased environmental pressures that would result. If unaccompanied by strong frameworks of environmental and labor rights, application of the principles of national treatment and most favoured nation could also increase "industrial flight" by companies seeking to avoid costs of compliance with labor and environmental requirements.

In light of these objections, we are concerned that the Administration seems to be considering support for partial negotiations under WTO auspices. Prior to the negotiation of any investment rules in any forum, an over-arching international framework is needed to ensure that international investments promote sustainable development consistent with the needs of host countries and to guarantee that the envi-

[1] Several of our groups have elaborated our concerns in detail in a October 16, 1998 response to the USTR's Federal Register request for input regarding US preparations for the Seattle ministerial, as well as in the Transatlantic Environmental Dialogue statement delivered to governments at the recent G–8 summit. The comments in this document are intended to summarize and complement these earlier statements and express the collective views of our respective organizations; however, not every signatory necessarily subscribes to the details of each formulation.

ronment is protected. The development of such a framework and any subsequent investment agreement should take place within the United Nations system. Any such agreement must include investor obligations with respect to environmental and community protection.

II. Reform WTO Rules and Procedures

In its Communiqué from Cologne in June, the G–8 stated that "environmental consideration should be taken fully into account in the upcoming round of WTO negotiations." We are pleased to hear the United States join other industrialized countries in this ambitious commitment. Unfortunately, the United States' proposals to date have been entirely inadequate to the task. To make significant progress, the Administration will need to make positive proposals on both substantive and procedural rules, including existing rules of the WTO as well as the terms of reference for any further negotiations launched at Seattle. The Administration will need to make a clear political statement that affirms environmental values and define a clear process involving the right mix of agencies and other partners for achieving progress on a range of issues.

Substantively, the Administration will need to take action to ensure that the scope of WTO rules is limited to trade policy and does not intrude into matters that come under environmental law and policy. WTO rules must provide for deference to international and national environmental standards (Part II.1), and protect the consumer's right to know (Part II.2). At the same time, WTO rules can and should be applied so that they encourage the elimination of environmentally damaging subsidies that also distort trade (Part II.3). Procedurally, the Administration must take steps to ensure that all WTO forums take environmental implications of their work into account (II.4), and that their operations become transparent and accountable (II.5).

1. WTO Deference To International And National Environmental Standards And Institutions

WTO rules need to be reformed so that they stay within the bounds of trade policy and do not intrude into areas within the jurisdiction of environmental institutions and regulations. We are pleased to learn that the Administration now seems to agree that ad hoc dispute settlement decisions alone are not a solution to the impact that WTO rules as currently interpreted may have on measures to protect the environment. United States leadership of a multilateral approach to a number of issues is needed to ensure that WTO forums—including the Dispute Settlement Body—and WTO rules consistently defer to regulations and other measures adopted by international and national institutions, including measures based on the precautionary principle.

In the absence of such consistency, there is a serious risk that these institutions will be impeded from pursuing legitimate environmental objectives through negative interpretations advanced by trade policy-makers, ad hoc challenges, and the threat of adverse decisions in WTO dispute settlement. Of particular concern are the GATT, the TBT Agreement and the SPS Agreement; also relevant are the TRIPS Agreement as well as agreements on subsidies and agriculture.

Seattle is a critical opportunity for the United States to send a clear signal that trade policy must be developed and applied consistently with environmental principles, and to define a process and terms of reference for achieving agreement on how to ensure that WTO rules do not interfere with environmental measures. That process should aim at the following specific outcomes.

a. Burden and Standard of Proof. Ensuring that the complaining party in a WTO dispute settlement proceeding has the burden to show the lack of an adequate basis for challenged local or national environmental and health regulations, and that WTO decision-makers employ a deferential standard of review, perhaps along the lines of Article 17.6 of the Anti-Dumping Agreement.

b. SPS. Ensuring that the provisions of the SPS Agreement:

i. Do not interfere with the right of national governments to develop and enforce high environment and health standards at the level they deem appropriate;

ii. Fully recognize the precautionary principle;

iii. Acknowledge clearly that international standards establish minimum, not maximum standards for the levels of environmental and health protection set by WTO Members.

c. Acknowledge Multilateral Environmental Agreements (MEAs) in WTO Rules. Consistent with the recent G–8 Cologne Communique, there must be an affirmation that trade-related environmental measures (TREMs) authorized or required under multilateral environmental agreements or internationally recognized environmental

principles are consistent with WTO rules, including Article XX of the GATT, the TBT Agreement and the SPS Agreement. Criteria should be defined indicating to the WTO how to recognize the types of agreements or principles that fit within the MEA category. Contrary to USTR's suggestion in the July 2 briefing, the concept is not to establish criteria for evaluating whether an MEA measure is legitimate. Rather, such measures will be deemed legitimate by virtue of their adoption under an MEA.

d. Build Effectiveness of MEAs including Trade-Related Measures. The Administration needs to make it a positive priority to build effectiveness of MEAs. Where trade-related measures are appropriate means for addressing the environmental problem, the Administration should support their use. A WTO decision to defer to MEAs will do little good if MEAs are written to include "carve-outs" that ensure that WTO rules prevail over MEA obligations. Disputes over the implementation of MEAs should be resolved by MEAs, not by the WTO. Thus, we are also seeking a commitment from the Administration not to advocate the inclusion of "savings clauses" in future MEAs. The Administration should also work with other countries through appropriate environmental institutions such as the United Nations Environment Programme (UNEP) to develop principles of trade policy to which negotiators of MEAs can refer during negotiations.

e. Production or Processing Methods (PPMs). Ensuring that distinctions between products based upon PPMs related to environment, human rights and internationally recognized labor standards are recognized as legitimate measures for promoting sustainable commerce that are consistent with WTO rules.

f. Procurement. A clarification or amendment to the Agreement on Government Procurement ensuring that it recognizes the right of governments to use social and environmental criteria in making purchasing decisions. Several of our organizations provided further suggestions on this topic in comments submitted to USTR by the Consumer Choice Coalition in January.

g. UNEP and other Environmental Institutions. Adoption of cooperative agreements between WTO and international environmental institutions, including UNEP, by which the WTO defers to the role of appropriate institutions in addressing environmental aspects of international decision-making. Specifically, institutions such as UNEP and the secretariats of relevant MEAs should have a role in the settlement of environment-related disputes under the Dispute Settlement Understanding (DSU) as well as the definition of key international environmental principles such as the precautionary principle. Deference to such outside expertise is necessary in light of the specialized nature of WTO as a trade policy institution with trade expertise.

We will be happy to discuss the precise legal form that these steps might take at the appropriate time. For instance, a clarification could involve language in a statement adopted by a WTO Ministerial Conference or the WTO General Council, an agreed-upon interpretation formally adopted by the General Council, or an amendment to the text of the relevant agreement.

As a general matter, we would like to emphasize that the use of trade measures that affect developing countries to accomplish environmental goals should be accompanied by assistance to those countries to help them achieve those goals. This is consistent with the Rio bargain that developed countries would assist developing countries in raising environmental standards and combating environmental problems, so that all could share in sustainable development and an improved global environment. The merit of this approach was recognized in the Appellate Body's Shrimp/Turtle decision. Unfortunately, developed countries have failed to carry out their end of the bargain, with foreign assistance budgets declining, and debt relief proposals still inadequate. A renewed political commitment from the United States and other industrialized countries would contribute significantly to multilateral agreement on the program outlined here, and would offer long term payoffs for the United States economy and environment.

2. Protection of the Consumer's Right To Know

Markets can allocate resources properly only if consumers have the necessary information to make informed decisions. Unfortunately, some WTO Members—including the United States government itself—have advanced interpretations of WTO rules that threaten to restrict the power of governments and private organizations to provide consumers with information they want about the environmental and health aspects of products and their production. We urge the United States to work with other WTO Members to launch a process at Seattle that leads toward the following outcomes:

a. Ensuring that the WTO Agreement on Technical Barriers to Trade (TBT) preserves the ability of governments and private organizations to protect the con-

sumer's right-to-know and to promote sustainable consumption through open and transparent labeling programs, including genetically modified food;

b. Ensuring that the TBT Agreement recognizes the legitimacy of regulations and standards that distinguish between products based on the environmental consequences of their manufacture, use and disposal; and

c. Ensuring that the TBT rules do not conflict with speech protected under the U.S. Constitution, including third-party certified private labeling programs.

As with the proposals in Part II.1 above, we are open to further discussion about the precise legal form that these assurances should take. Generally, however, the principle is that the WTO must recognize that the TBT Agreement effectively includes an exception along the lines of Article XX, to the extent it applies to ecolabeling.

3. Eliminate Environmentally Damaging Subsidies

We welcome and support the Administration's willingness to push for the elimination of fishery subsidies that have contributed to the current global fisheries crisis. The Seattle ministerial should unambiguously place the fishery subsidies issue on the negotiating agenda, and should do so in the context of an open interdisciplinary and inter-organizational procedure that includes other institutions with relevant and needed expertise alongside the WTO. We urge the United States to push for a similar review of other environmentally damaging subsidies, such as those for forestry, fossil fuels and nuclear energy. At the same time, WTO Members must ensure that WTO rules allow governments to craft measures that reward the social and environmental values conferred by certain activities, such as adoption of environmentally responsible technologies, artisanal fishing and development of renewable sources of energy. The ability of the WTO to play a constructive role on subsidies will be a significant test of the organization's ability to produce the oft-promised "win-win" outcomes for trade and the environment.

4. Recognizing Environmental Aspects of WTO Decision-Making

Another key question is how to reform the procedures and institutions of the WTO so that decision-making takes into account its environmental implications. The United States proposes to use the Committee on Trade and Environment (CTE) on a "rolling basis" and in an advisory capacity to address the environmental aspects of WTO decisions. But compartmentalizing environment in the CTE has not worked in the past and will not work in the future. The Administration has offered no concrete steps that would effectively link the CTE to the real decision-making forums at the WTO.

In our view, much more is needed to ensure that the WTO takes environment into account in its decision-making. As a general matter, all relevant WTO bodies—including councils, committees, and working groups—must include reference to environmental protection and sustainable development among their objectives or terms of reference, consistent with the preamble of the WTO Agreement itself.

The WTO will also have to adopt procedures that ensure that these forums take these objectives seriously. For instance, each forum could periodically consult with international environmental institutions with relevant expertise, report on the environmental implications of their work, and make recommendations on how to address environmental impacts of the trade policies with which they are concerned. The CTE might have a role through review and comment on that report. Another option is for the WTO's Director General to present a review of the WTO's record on environment and sustainable development in a section of the annual report. The United States itself could do a better job of integrating environment by including representatives from relevant agencies such as the EPA on delegations when forums such as the SPS or TBT Committees discuss environment-related issues.

5. Improved Transparency, Public Participation And Accountability At The WTO

We very much appreciate the efforts made by the Administration to advance democratic reform of the WTO. We ask that the Administration continue to include increased transparency, participation and accountability as a priority on its negotiating agenda in Seattle. However, effective achievement in this area will require more actions in addition to broader and faster access to working documents and consideration of NGO submissions in dispute settlement. It will also require, at a minimum:

a. opening of dispute settlement and appellate body proceedings to public observation;

b. NGO participation in discussions of environment-related issues by other WTO decision-making forums, such as the SPS Committee, the TBT Committee, the

TRIPS Council, the Agriculture Committee, the CTE, and relevant negotiating groups; and

c. the development of a consultative process between the WTO, NGOs, member governments and businesses.

We recognize the validity of concerns raised by developing countries that they may have fewer resources than do some NGOs. The United States and other developed countries should support fuller participation by poorer WTO Members, for instance through financial and technical assistance.

A first step towards improved transparency of the WTO and trade policy must begin at home. We have indicated our willingness to work with the Administration to provide input into the negotiating agenda, yet little information and no documents have been shared with the NGO community as the Administration prepares its position for the WTO Ministerial. Only at the July 2 briefing did we hear any degree of detail about the Administration's proposed positions. We urge the Administration to be more transparent, to share information and documents, to engage the NGO community in a constructive dialogue, and to ensure balanced representation on advisory committees dealing with trade issues that have environmental implications consistent with the Federal Advisory Committee Act. Furthermore, we reiterate our request that the United States include NGOs on its delegation to the WTO Ministerial meeting, especially since other governments, such as Denmark, have already done so.

III. Environmental Assessments of Current and Proposed Trade Policies

We are pleased that President Clinton has committed the federal government to conducting an environmental review of the next round of talks at the WTO. However, the Administration needs to make significant progress in this area. We are concerned about the adequacy of the process and criteria for such an assessment. We believe that the assessment should include a review of both past and current impacts of existing trade policies on the environment and on environmental law and policy, a similar review of foreseeable impacts of proposals for negotiations, and consideration of policy alternatives. We remain very concerned about the conduct of assessments of proposed tariff reductions in environmentally sensitive sectors. Finally, we have concerns about certain process issues, including the roles of relevant agencies and cooperation with other governments.

1. Procedures and Criteria for Assessment

We are concerned that the Administration has yet to suggest any procedures or criteria for the assessment, with Seattle less than six months away. In our view, there are some clear principles with which this assessment must comply. Many of these principles are found in the National Environmental Policy Act (NEPA). The starting point for this assessment must be NEPA's mandated procedures and methodologies, as elaborated through regulations of the Council on Environmental Quality, and enriched through decades of federal agency experience with implementation.

At a minimum, the assessment must be comprehensive in scope, covering all Administration proposals for modifying or adding to existing trade policies embodied in the WTO Agreements. The assessment should be framed in terms of two basic questions. Is the framework of laws, policies and institutions in place to ensure that additional multilateral steps to liberalize trade will lead to environmentally and socially beneficial outcomes? If it is not, then what institutional, legal and policy changes must we make before we move forward with further liberalization?

The assessment must involve the full participation of civil society. In light of the short time remaining before Seattle, the assessment procedure must begin immediately. It must consider reasonably foreseeable impacts on a global scale. It must continue until the conclusion of any new negotiating round, taking into account new knowledge as it accumulates, as well as evolving trade policy positions. It must identify areas in which existing WTO agreements and new negotiations have (or will have) significant environmental effects, and evaluate policy alternatives and mitigation measures, including reforms of existing agreements and modifications of proposed ones including the no-action alternative. And it must integrate social and development concerns.

To ensure that the results are balanced and objective, the process should be overseen by the CEQ and conducted with the full and equal participation of affected federal agencies, state and local governments, and interested members of the public. Finally, we urge the Administration to take the lead in facilitating an assessment at the multilateral level by a balanced panel of experts drawn from the WTO Secre-

tariat, international institutions with environmental and other relevant expertise, the scientific community, and the public.

2. Assessments of Existing Trade Policies

A forward-looking assessment must be complemented by consideration of lessons learned. To date, unfortunately, governmental consideration of environmental impacts of trade policy have been inadequate. As a result, we urgently need to gain a better understanding of the impacts of past trade policies. Thus, the Administration should also conduct an assessment of the environmental impacts of the WTO Agreements adopted in the Uruguay Round, carried out consistent with the principles we have outlined for conducting an assessment.

This review should cover all relevant WTO Agreements, such as the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), the Agreement on Technical Barriers to Trade, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and agreements on subsidies and agriculture. In relation to the TRIPS Agreement, we are concerned that the expanded scope and enforcement of intellectual property rights required under the WTO TRIPS Agreement may affect the transfer of technology required under multilateral environmental agreements (MEAs), the rights of farmers and indigenous peoples, and the equitable distribution of benefits required under the Biodiversity Convention.

3. Assessment of Proposals for Accelerated Sectoral Liberalization

Beginning in the context of Asia-Pacific Economic Cooperation (APEC), and more recently in the WTO, the Administration has proposed accelerated reduction of tariffs, accompanied by examination of non-tariff measures, of a number of sectors, including environmentally sensitive sectors such as energy, chemicals, fish and forest products. In light of the potential environmental impacts, we urge the Administration to assess carefully the environmental effects of accelerated liberalization in all sectors, and to define and implement policy measures to maximize environmental benefits and mitigate harmful impacts. The United States should not push for accelerated liberalization until full environmental assessments have been conducted—of the proposals for both tariff and non-tariff measures—along the lines discussed in this letter. In light of the severe threats confronting forests and fisheries, and the demonstrably inadequate national and international frameworks for conserving them, this approach is particularly important with respect to the fish and forest product sectors.

We appreciate the step in the right direction represented by the joint analysis of the economic and environmental effects of the forest product initiative to be conducted by CEQ and USTR. We are skeptical, however, whether the review as defined in the June 25, 1999 Federal Register notice will be an adequate basis for sound policy making. Even if it is, we are equally concerned that the review's results will not be taken into account in the ultimate decision. Thus, we call on the Administration to explain on the record the environmental basis for whatever policy decision it takes. As currently proposed, the review does not reflect key principles of NEPA. For instance, the Federal Register notice allows only 30 days for the public to provide input, and it is unclear whether there will be any other opportunities for public participation.

4. Assessment of the Built-In Agenda

Services. We have concerns that negotiations on services could have some of the same far-reaching implications for domestic environmental and health regulation as would investment liberalization. Services, like investment, involve activities within a country's territory that relate to a host of regulatory functions performed by federal, state and local authorities. When it comes to trade liberalization, services, like investment, raise a host of concerns about community values, regulation and sovereignty that are not so directly posed by goods. We urge the Administration to assess environmental and social implications as it develops its positions.

Agriculture. The United States has called on WTO members to carry forward with agricultural negotiations with the objectives of gaining "further deep reductions in support and protection, while encouraging non-trade distorting approaches for supporting farmers and the rural sector." We share the Administration's desire to reform policies and programs that encourage environmentally damaging expansion and intensification of production. At the same time, government agricultural policy can and must reflect the multiple environmental and social functions that agriculture plays. Support for environmentally responsible agriculture can help level the playing field for farmers who take responsibility for the impacts that production has on the environment of their neighbors, and at the same time have to compete with

producers that externalize environmental costs onto society. Government policy also should take into account the social values that independent farmers provide to communities.

We urge the Administration to make an effort to ensure that the United States approach to agriculture at the WTO strikes a better balance among these policy objectives than in the past. The United States continues to maintain direct and indirect subsidies and protections that distort agricultural markets and threaten our environment, such as below-market pricing for water from government-funded projects and for grazing on public lands. The Administration should carry out a thorough review and restructuring of these policies and programs.

The agricultural negotiations on the built-in agenda will offer governments a chance to develop a multilateral understanding of which policies and programs should be reduced, and which should be permitted, on environmental and social grounds. The assessment we are calling for will provide an opportunity for this. Governments should also explore how to help developing countries implement such support, whether through multilateral financial and technical assistance or through some system of preferences. We urge the Administration to provide leadership on the issue of food security in these talks. Governments must consider the impacts that dumping of food exports have on the productive capacity of countries whose populations suffer from chronic hunger, and take this into account in defining relevant trade policies.

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—

Chairman CRANE. Mr. Kleckner, is there room for a compromise between industry and service interests who advocate early harvests of trade liberalization measures and agriculture groups like the Farm Bureau who insist on the need for a single undertaking?

Mr. KLECKNER. Good question, Mr. Chairman. We need to keep talking about it. I talked to Sue Esserman during the break today when you went back to vote, and I talked to Charlene Barshefsky

yesterday by telephone, and, John, you and I visited briefly early. We have to keep talking about that to see if there can be a meeting of the minds.

I just believe that strongly, though, that if we solve some of the problems and leave the tough ones like agriculture to last, it is going to be very, very tough to get it done there. And that is not a new position for me or for us in the Farm Bureau. In Belgium, Mr. Chairman, in Brussels in 1990, when this Uruguay round was supposed to end, I chaired the American delegation of all segments that were there. When it looked as though agriculture was going to be able to get theirs done first, and I said to my cohorts—they were not there in person, but their companies were—that I did not favor that because I didn't think that they would get what they wanted at the end of the day if we got agriculture solved first.

In the end it did not work that way, but we are all in it together, or we are not in it at all, it seems to me. I am willingly to talk to John and to the other ones, including Charlene and Sue Esserman, to see if there is somewhere that we could work it out, though.

Chairman CRANE. Have you got anything to add to that, Mr. Dillon?

Mr. DILLON. I agree with Dean. Someplace there needs to be a coming together. I would only point out that part of the difference here is the issue on forestry and paper is old business that is carried over from the Uruguay round, and there were agreements on the part—or direction on the part of the Congress to the administration to move forward on those agreements in the zero-for-zero sectors from the Uruguay round and to do so, before the next round.

On the other hand, these are tough issues, and if we are not together on them, the Japanese and the Europeans are going to look for any crack that they can find. And so I think, as Susan has said and as Dean said, there has got to be a way here that we can meet everybody's objectives and come out of this not with a split in our ranks, but a position that we can go forward on.

Chairman CRANE. Mr. Micek, I am intrigued by the broad coalition that you have put together in support of the food chain proposal which spans manufacturing and services in addition to agricultural interests. Is the proposal apt to appeal to lesser developed countries?

Mr. MICEK. Well, as a matter of fact, the proposal that we are advocating really is an extension of the open food system that is being advocated in APEC member countries. The open food system really is about bringing more and better food to more people at affordable prices. To do this, one of the key things we need to do is to deal with the issue of food security. If we can do that, we can deal with some of the issues that have been talked about, about some of the environmental concerns.

For example, there is land in China that is being farmed agriculturally that should not be farmed, but one of the key reasons it is farmed today is because the Chinese are on a policy of 100 percent self-sufficiency. And if we can deal with some of these difficult issues, I think we can also find a way to deal with some of the environmental problems we have.

Chairman CRANE. Thank you.

Mr. Van Putten, what types of improvements in the WTO's institutional operations are needed to ensure more transparency and accountability?

Mr. VAN PUTTEN. Well, Mr. Chairman, we think the types of improvements include access to the decisionmaking panels, inclusion of friends of the court briefs, if you will, publication of panel decisions. Those types, sort of transparency values that we take for granted here in the United States are critical, we think, to the WTO taking into account values like the environment, but also gaining public confidence in the decisionmaking processes.

Chairman CRANE. Thank you.

Mr. Levin.

Mr. LEVIN. Thank you.

Mr. Van Putten, I will start with you. Thank you. I think your testimony is constructive, and I think there is a spirit of willingness to look at issues together, and I hope everybody picks that up.

Mr. Kleckner, I, for one, lean in your direction. I hope we can resolve in terms of this early harvest. Maybe—the Farm Bureau, you are not in favor of early harvest usually. It is not ripe. But, seriously, I trust we will work hard to work this out. It seems to me if you say in advance you will accept separation, you are likely to have people try to cherry-pick issues, while if you say you want to wait until it is all resolved before anything, there is a pressure to resolve everything. You can later modify that if you need to. That is the way I lean.

First, service products. I remember when I was over for the Uruguay round talking to some Europeans, Mr. Dillon, but in those days—it was not that long ago—some of the countries have 14-percent tariffs, and we had much, much lower, as I remember it, and that struck me as unfair. And I think you are right to call for beginning to more level the playingfield, including the emerging economies.

And I would just suggest to you that you look at the playingfield and that you take into account issues including environmental differentials, and we are not talking about having identical structures, but differentials as well as in the labor market. I mean, that is part of the difference in scales.

In that regard I want to just say a word about the labor issues, because, Mr. Kleckner, you said we cannot allow economic prosperity of our Nation and that of our agricultural producers to be used as a weapon for nations that disagree with our values.

I don't think that is, if I might say so, quite a fair way to say it, because in a sense our struggle on trade has been to convince people to abide by or incorporate our values in terms of free markets into their systems. And I think to separate out labor issues that way, labor market issues kind of misses the point. And the same with environmental issues.

In that regard—and I am sorry that Mr. Pepper is not here, because I was struck by his testimony. I happened to be at an advisory Committee meeting where there was discussion and very open discussion. And I hope all of us will encourage ACTPN to continue these, and I wish Mr. Sweeney and Mr. Donahue good luck because we need to try to find common ground. If we do not find it, I think

we are likely to have continued stalemate in straight issues here and possibly a blowup in Seattle, and that is not what we want.

I finish, Mr. Micek, with your testimony because I am trying to persuade you, and I am hoping Mr. Pepper can persuade you, to discuss these issues. You say in your testimony that the agenda should avoid globally divisive issues such as nontrade-related labor or competition policies on which there is not yet a broad consensus within the WTO. That is not to say these issues are unimportant. It is merely to recognize that if contentious issues dominate the ministerial, confidence in the global trading system and U.S. leadership will be undermined.

You know, I have not been a USTR negotiator, but I have been at a number of sessions, and they are nothing if not contentious. I mean, we cannot eliminate issues from the ministerial and the next round because they are contentious. Agriculture is sure—contentious, my lord, that understates it.

And then you say on labor issues the U.S. is pursuing an appropriate course in increasing its support for the ILO and focusing its efforts to achieve a forum on global labor issues within that organization.

I respect the ILO up to a point. It has been evolving some core labor standards, but its function is limited. It has no enforcement. There is nothing there except discussion and then unanimous agreement to accomplish something. And the question is how we take what they have evolved, and where they are part of the trade equation, how we work it out so they are meaningful. So it will not work to just say leave it to the ILO. And I think Mr. Pepper acknowledges that. And that is the basis for the discussions with Mr. Sweeney, how we are going to go try to find some common ground beyond that. And I just urge everybody in the business community, I urge everybody in the environmental community as well as the labor community these next weeks and months to work hard, because otherwise who knows what is going to happen?

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman, and let me say I appreciate this panel very, very much, and I would like to preface some things. My colleagues know I was here in Congress, and I left and I went back to Oklahoma, and then I came back. I was on that side of the aisle, and now I am back on this side of the aisle. So let me say I came back for two reasons: One, to balance the budget. I felt like I had not done justice by the future generation of our children and grandchildren, and I am very proud of the fact we have balanced the budget in this Congress and all.

Second, I came back because I wanted to help shape a 21st century global competitive economy for this country. I hope—you may say what is a 21st century global competitive economy? Let me say that I see it as one that we have got to have less taxation. Some of you have mentioned some countries do not have capital gains, but we do have a situation in this tax bill that we are going to vote right now on. We have got some great provisions that is going to allow us to be more competitive around the world, so we need you to go out and sell that to the American people, if we believe what we are talking about.

The second thing we have got to have is less regulation if we are going to be competitive. About 7 percent overburden we have on our trade products because of regulations. We have got to try to continue to ratchet that downward.

And third, we have got to have less litigation. I don't know about you, but in business I guarantee you I spend more money—or I did when I was in business—let me say, there is no one any more sincere in this Congress than I am about trying to have free and fair trade. I want us to succeed. I could probably not have come back to Congress. I could have probably shoved back and said this is not going to affect Wes Watkins, but my children and grandchildren have no way to go. They cannot. They have got to participate.

What we do has got to lay that kind of foundation in this world in this global economy, and we are not going back, and we all know that. I was born and raised on a farm. I love agriculture. I lost everything to a drought, but I went on to Oklahoma State University and acquired two degrees in agriculture because I love it and know it is very important.

I want to mention to Mr. Micek, could I ask you or maybe one of your individuals to come by the office. I would like to discuss the Emergency Committee on American Trade. And before Mr. Kleckner leaves right fast, Dean, if I could, before you take off, many of my farmers feel like that we are being traded down or we are traded out in agriculture because when we negotiate it away. I detect you have a concern, and we have got to have a package, but not trade us out; is that correct?

Mr. KLECKNER. Yes, sir, Mr. Watkins. You know, I talk to the same people you do, whether they are in Oklahoma, and the feeling is kind of general among farmers that we have not negotiated as well as we could have, or if we did, we have not enforced the agreements as well as we should have. And in the Farm Bureau, and your State president, Jack, in your State, and other people I talk to all around the country tell me consistently we have got to either do a better job of negotiating, be a little firmer or tougher. Our tariffs are so low, for example, that the average 50 percent we pay around the world, other countries send agriculture products in here at 5. What is fair about that? Bring them down a ways before we do anything else or very much of anything else.

Mr. WATKINS. In your testimony you say we are reeling out there in agriculture, and I know we are. And we are under a freedom to farm policy, but freedom to farm will not work unless we have freedom to the markets of the world, and we have to get rid of a lot of these sanctions out there. Literally, we are killing ourselves.

Mr. KLECKNER. Mr. Watkins, you recall when freedom to farm passed in 1996, we supported it. I still think it is a good bill, but there were certain things promised to us in return, including opening markets around the world, less regulation, reformed taxes, all of those things, so it went one way, it didn't come the other way.

Mr. WATKINS. That is correct. Thank you very much, and I look forward to having a follow-up. I meet with a lot of your people.

And, chairman Micek, I appreciate what you are doing in those areas. I would like to follow up with you or your people about the emergency, and I will not belabor the Subcommittee by further questioning.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

And I want to thank all of the members of the panel, and again, we apologize to you for this chaotic day, but it is going to get worse, not better. And with that, we are going to stand in recess subject to the call of the Chair.

[Recess.]

Chairman CRANE. Folks, the place has cleared out as I indicated before. It is going to remain kind of chaotic this afternoon. But we will get under way here. Our next panel includes William Weiller, chairman and chief executive officer of Purafil Inc., in Atlanta, and he is here on behalf of the National Association of Manufacturers; Steven Warshaw, president and chief operating officer, Chiquita Brands Corp., Cincinnati; Charles Lambert, chief economist, National Cattlemen's Beef Association; Kathleen Ambrose, vice president, international affairs and co-leader of market access team, Chemical Manufacturers Association; and finally David Smith, director, Public Policy Department, American Federation of Labor and Congress of Industrial Organizations.

If you folks will please proceed in the order in which I presented you, and try and keep your oral testimony as close to about 5 minutes as possible and then any printed statements will be made a part of the permanent record.

And we will start out with you, Mr. Weiller.

STATEMENT OF WILLIAM WEILLER, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, PURAFIL, INC., ATLANTA, GEORGIA, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. WEILLER. Thank you, Mr. Chairman. My name is Bill Weiller. I am the owner and president of Purafil, a leading manufacturer of air purification systems based in Atlanta, Georgia. I would like to thank you for the opportunity to testify before the House Ways and Means Committee on the upcoming World Trade Organization Ministerial and the impact of the WTO on small businesses like Purafil. I am here on behalf of the National Association of Manufacturers and obviously also Purafil.

Many might be surprised that Purafil, a small American business, about 70 employees, is even remotely interested in the World Trade Organization and its objectives. In fact, we often encounter the notion that global free trade is good for big companies and bad for the little guy. Small—and medium-sized businesses do not attract the headlines the multinationals do and often our success in a global economy go without notice. I am here to let you know that open trade is not only good for Purafil, it is the backbone of our business.

In fact, Purafil is representative of many small businesses. I have attached a chart to my testimony which you may find interesting. In 1989 nearly half of the NAM's small—and medium-member companies said they did not export. Today only 1 in 5 fall into that category.

In other words, in the last 10 years the share of NAM's small—and medium-member companies that export has gone from half to more than three-quarters and it is a 50-percent increase. Let me

just hammer the point home. In 1989 less than 10 percent of NAM's small—and medium-member companies derived 11 percent or more of their revenue from exporting. Today that share has grown, doubled to more than 20 percent. That is an important change that has taken place over the past decade and Purafil has been part of it.

So let me tell you about Purafil. We manufacturer air quality systems that remove odorous, corrosive, and toxic gases from the air. In short, we sell clean air. Our customers include petrochemical companies like Saudi Aramco, Exxon, paper companies like International Paper, Stora, Weyerhaeuser, museums and archives such as the Sistine Chapel, the Holocaust Museum, da Vinci's Last Supper, or the U.S. National Archives. Despite our small size, Purafil is an industry leader in a niche market. Sixty percent of our sales are made outside of the United States. Exporting is vitally important to Purafil. It is the cornerstone of our coporpate strategy.

We have recognized that in order to survive and grow we have to export and become experts in doing international business. The problems that we solve are the same worldwide. A refinery in Baton Rouge experiences the same hazardous emissions from manufacturing processes as does a refinery in Saudi Arabia. If Purafil were not present to solve these problems, the increased demand for a solution would result in someone else from our foreign competitors gaining the business. Right now Purafil is the best in the world at solving air purification problems. We have few viable U.S. competitors that serve all the applications in markets that we do. That someone else could likely be a company from outside the U.S.

The trade barriers we come across when trying to export to some countries are beyond the ability of any individual business to change. For example, Mr. Chairman, the tariff for our equipment to South Africa is 19 percent. In response to this, we signed a licensing agreement with a local representative so they would build portions of our equipment in their country and remain competitive. That representative utilized the Purafil name and proceeded to dissolve the relationship and become a low-cost, Purafil-educated competitor, leaving us with little recourse.

We are facing similar high tariff situations in India, Brazil, China, Russia and others. Purafil will continue to do everything in its power to remain competitive. I am here today to ask you to do your part. Level the playingfield so our people, our technology, our products can compete in a global market. Don't force us to compete with the lack of transparency, the lack of access, irregular rule of law and some of the trade barriers and tariffs currently in place.

That is why we support the NAM's leadership role in organizing a coalition to support the upcoming WTO Ministerial in Seattle. The Alliance for U.S. Trade Expansion, commonly referred to as U.S. Trade, encompasses an impressive broad-based group of agriculture, consumer, manufacturing, retailing and service organizations, representing $2 trillion in annual trade and over 150 million Americans.

The coalition seeks to promote the benefits of economic growth, job expansion and higher living standards in the United States as

a result of free trade and specifically U.S. participation in the WTO.

And while Purafil is a small piece of the overall coalition we are participating because we will continue to be successful only if we maintain our international customer base. In order to do that, we will depend on the reduction of tariffs and other trade barriers. A multilateral rules-based approach to trade, negotiated through the WTO, is strongly supported by Purafil. The United States should take a leadership role in the pursuit of free and fair trade through the WTO in order to support American business.

Thank you.

[The prepared statement follows:]

Statement of William Weiller, Chairman of the Board and Chief Executive Officer, Purafil, Inc., Atlanta, Georgia, on behalf of the National Association of Manufacturers

Good morning, Mr. Chairman. My name is Bill Weiller, I am the Chairman of the Board and CEO of Purafil, a leading manufacturer of air purification systems based in Atlanta, Georgia. I would like to thank you for the opportunity to testify before the House Ways and Means Committee on the upcoming World Trade Organization Ministerial and the impact of the WTO on small businesses such as Purafil. I am here on behalf of the National Association of Manufacturers (NAM), and obviously also for Purafil.

Many might be surprised that Purafil, a small American business with about 70 employees, is even remotely interested in the World Trade Organization and its objectives. In fact, we often encounter the notion that global free trade is good for big companies and bad for "the little guy." Small and medium-sized businesses do not attract the headlines the multinationals do, and often our successes in the global economy go without notice. I am here to let you know that open trade is not only good for Purafil, it is the backbone of our business.

In fact, Purafil is representative of many small businesses. I have attached a chart to my testimony, which you may find interesting. In 1989, nearly half of the National Association of Manufacturers' small and medium-sized member companies said they did not export. Today, only one in five fall into that category. In 1989, only 4 percent of those members earned more than 25 percent of their revenue from exporting and another 4 percent earned between 11 percent and 25 percent. Today, those percentages have more than doubled to 9 percent and 11 percent respectively. Let me just hammer that point home. Today, in NAM's surveys we're finding that exporting generates over 11 percent of the earnings for 1 out of every 5 exporters and over 25 percent for 1 out of every 10 of these smaller manufacturers. That is an important sea-change that has taken place over the past decade and Purafil has been a part of it.

I'd like to tell you a little bit about my company. Purafil manufacturers air quality systems that remove odorous, corrosive and toxic gases. In short, we sell clean air. Our customers include paper mills in Argentina, Oklahoma and North Carolina. We protect valuable artifacts in the Netherlands, the Sistine Chapel, and in Washington, DC. We service petrochemical refineries in Texas, Brazil, and Saudi Arabia. Despite our small size, Purafil is an industry leader in this niche market.

Sixty percent of our sales are made outside of the United States. Exporting is vitally important to Purafil: it is the cornerstone of our corporate strategy. We are not a company that got into international sales by accident or solely as a reaction to market demand. We have recognized that in order to survive, to continue to provide jobs to our employees, and to continue to fund the R & D efforts necessary to our success, we have to export and become experts in doing international business.

The problems that Purafil can solve are the same worldwide. A refinery in Baton Rouge experiences the same hazardous emissions from manufacturing processes as does a refinery in Saudi Arabia. The Sistine Chapel protects its artwork from environmental degradation, as does the U.S. National Archives in Washington. Our intellectual property, considering our size, is significant. We have worked hard to take a technology that was developed in the U.S. about 30 years ago and have constantly refined and improved it.

If Purafil were not present to solve these problems, the increased demand for a solution would result in foreign competitors gaining the business. Right now, Purafil is the best in the world at solving air purification problems. We have a technology that cannot be matched. Purafil has worked hard to stay on top of our industry, and

I fear that without exporting, someone else will take the lead. We have few viable U.S. competitors that serve all the applications and markets that we do. That "someone else" could likely be a company from outside the U.S.

The trade barriers we come across when trying to export to some countries are beyond the ability of any individual business to change. For example, Mr. Chairman, the tariff for our equipment in South Africa is 19%. In response to this, we signed a licensing agreement with our local representative so they could build portions of our equipment in country and remain competitive. That representative utilized the Purafil name and proceeded to dissolve the relationship and become a low cost, Purafil-educated competitor, leaving us with little recourse. We are facing similar high tariff situations in India, Brazil, China and others. One solution is to form licensing agreements in these countries, but in doing so, we dilute our profit margins and make it easy for partners to eventually become competitors.

Purafil will continue to do everything in its power to remain competitive. I am here today to ask you to do your part—level the playing field so our people, our technology and our products can compete in the global market. Don't force us to compete with the trade barriers and tariffs currently in place.

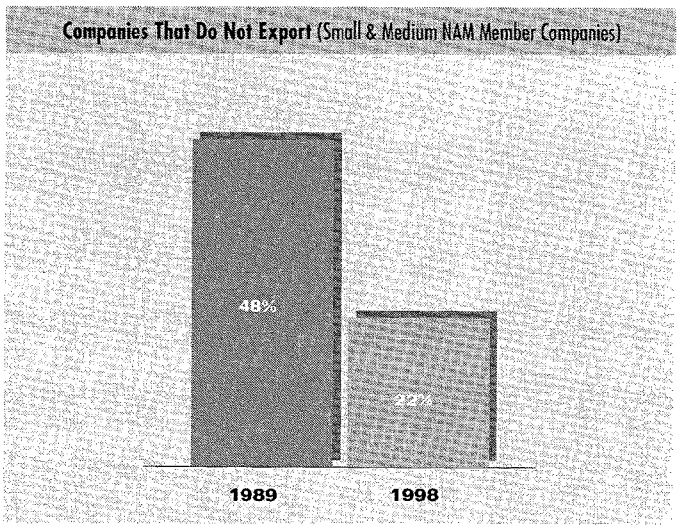
I don't need statistics, studies or business experts to tell me that exporting creates jobs and is good for the economy. As a small business owner, I see it every day I go to the plant. I'm constantly reminded when I look at the shipments on our dock and see their final destinations.

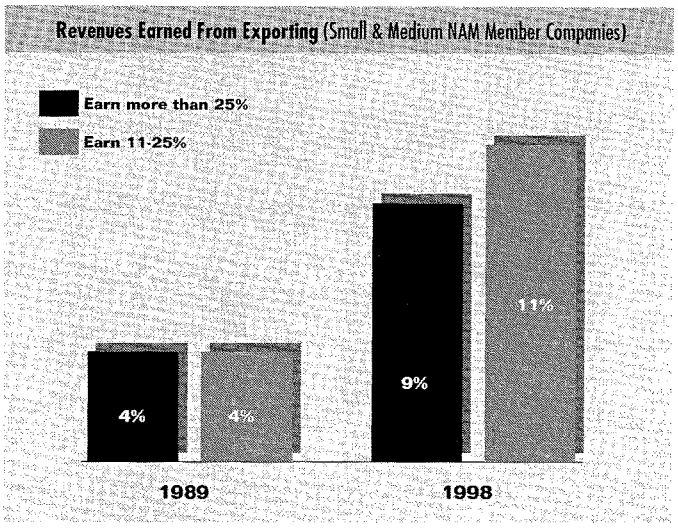
That is why we support NAM's leadership role in organizing a coalition to support the upcoming WTO Ministerial in Seattle. The U.S. Alliance for Trade Expansion, commonly referred to as "US Trade," encompasses an impressive broad-based group of agriculture, consumer, manufacturing, retailing and services organizations representing $2 trillion in annual trade and over 150 million Americans. The coalition seeks to promote the benefits of economic growth, job expansion and higher living standards in the United States as a result of free trade and specifically U.S. participation in the WTO.

While Purafil is a small piece of the overall coalition mentioned above, we are participating because we will continue to be successful only if we maintain our international customer base. In order to do that, we will depend on the reduction of tariffs and other trade barriers. A multilateral, rules-based approach to trade, negotiated through the WTO, is strongly supported by Purafil. The United States should take a leadership role in the pursuit of free and fair trade through the WTO, in order to support American business.

Thank you.

Survey of NAM Small/Medium Members





*Source: NAM Small Manufacturers Operating Survey, 1989 and 1998

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Chairman CRANE. Our next witness, Mr. Warshaw.

STATEMENT OF STEVEN G. WARSHAW, PRESIDENT AND CHIEF OPERATING OFFICER, CHIQUITA BRANDS INTERNATIONAL, INC., CINCINNATI, OHIO

Mr. WARSHAW. Mr. Chairman, my name is Steve Warshaw. I am president and chief operating officer of Chiquita Brands International. Chiquita Brands brings a unique perspective to these issues, being one of a very small group of American companies to have experienced every step of the WTO process from beginning to an end that never occurs.

In 1994, as Congress debated U.S. accession to the WTO, Undersecretary of Commerce Jeffrey Garten made the following statement: "The new WTO dispute settlement process will be much more effective than that of the old GATT system. Whereas in the past, parties could interminably delay the resolution of disputes, dispute settlement procedures will now be subject to strict deadlines and the adoption of panel findings will be binding and all but automatic."

Clearly the banana and recent beef cases are proof that the dispute settlement process has not lived up to that promise. Injured parties can litigate for years, win their cases and still not be compensated for damages.

The EU has lost two GATT rulings and four WTO rulings in the banana case, but its illegal banana trade practices remain in effect today. Chiquita Brands and Latin American economies continue to be harmed. The WTO calculated that Europe's illegal actions have cost U.S. interests alone $191.4 million annually, almost all of which has been borne by Chiquita Brands.

When any company suffers annual losses of this magnitude, timely relief becomes essential. The WTO procedures alone took 3½ years just to get to the point of retaliation and there is still no relief. After the U.S. won a favorable ruling in the banana case, Europe was entitled to continue its illegal practices for another 15 months. This 15-month grace period alone caused $270 million of additional injury to our interests. At the end of that period, the EU was able to claim that it was in compliance, even though it was not, as a way of further prolonging the procedures.

Such a system provides absolutely no incentive for prompt compliance. In reality it rewards delays, obstruction and noncompliance. And so, Europe has delayed, blocked, evaded, argued, appealed, vetoed and repeatedly sought ways to avoid its obligations under international trade rules.

The only tool for reversing noncompliance under the WTO is retaliation. In order to accomplish its objective of inducing compliance, it needs to be effectively applied. To date, the banana and beef retaliatory actions against Europe have been unsuccessful by any standard or measure. Five months after retaliation took effect in the banana case Europe is still proposing WTO inconsistent banana arrangements. In the beef case Europe is promising never to lift its ban.

Their continuing obstruction has persuaded several U.S. farm groups that static retaliation is not sufficient leverage. In order to increase internal pressure to comply, we recommend that retaliation targets within Europe be rotated at regular intervals. We believe this so-called "carousel retaliation" approach would be en-

tirely consistent with WTO law and urge the Trade Subcommittee to insist on its use to bring disputes to their proper conclusion.

As this Subcommittee considers the critical issue of dispute settlement in the months leading up to the Seattle Ministerial, we urge you to examine the serious flaws that have emerged as a result of the banana and beef disputes. The banana case in particular offers several valuable lessons. This has become the most litigated trade issue in the history of dispute settlement. The United States and the Latin Americans have won every major round. The rulings have been unambiguous, decisive and precedent setting and still, despite more than 6 years of successful decisions in the GATT and WTO, Europe's illegal practices continue.

If the shortcomings raised in the banana and beef disputes are resolved, the WTO can still live up to the promise that former Undersecretary Garten described and that Congress endorsed. But unless they are resolved and existing rulings and agreements are enforced, new agreements should not be pursued. Chiquita Brands is eager to assist the Trade Subcommittee in addressing these critical issues in the coming months.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Steven G. Warshaw, President and Chief Operating Officer, Chiquita Brands International, Inc., Cincinnati, Ohio

Mr. Chairman and Members of the Committee, my name is Steve Warshaw. I am President and Chief Operating Officer of Chiquita Brands International.

As this Committee knows, the Banana case—for reasons quite apart from bananas—has become important for what it says about the WTO system. The case makes clear the imperative for more effective, streamlined procedures; for good faith compliance on the part of all WTO members; for more effective application of retaliation; and, above all, for a system that delivers measurable relief to the injured U.S. commercial interests.

Chiquita Brands brings a unique perspective to these issues, being one of a very small group of American companies to have experienced every step of the WTO process from beginning to an end that never seems to occur. It is my hope that our company's experience can contribute constructively to the national debate and congressional focus in the months leading up to the Seattle WTO Ministerial.

The Need for More Effective, Streamlined Procedures

More than five years ago, as Congress debated U.S. accession to the WTO, Undersecretary of Commerce Jeffrey E. Garten made the following statement:

"The new World Trade Organization dispute settlement process will be much more effective than that of the old GATT system. Whereas in the past, parties could interminably delay the resolution of disputes, dispute settlement procedures will now be subject to strict deadlines and the adoption of panel findings will be binding and all but automatic."

Clearly, the Banana case is proof that the WTO system and its dispute settlement process have not lived up to that promise described by former Undersecretary Garten. In fact, what this case—and the recent Beef case—show is that the WTO has a dispute *non*-settlement procedure. Injured parties can litigate for years, win their cases, and still not be compensated for damages as the illegal trade practices continue unimpeded.

Let me briefly review the history of the six-year Banana case, which has taken away more than half of our 100-year-old European business, and inflicted serious economic injury on many of the poorer banana-producing nations of Latin America at a time when these developing countries were being required to open their markets and abide by new trade obligations.

- In 1993, the EU instituted an illegal banana policy that systematically and deliberately destroyed much of Chiquita Brands market share in Europe.
- In late 1993, the GATT ruled that the EU banana policy violated trade agreements. In response, the EU blocked the GATT ruling and maintained its illegal practices.

• In 1994, the GATT again ruled that the EU banana policy was illegal. In response, the EU again blocked this second GATT ruling and maintained its illegal practices.

• In May 1997, using new trade rules, the WTO found that the EU banana policy violated the WTO. In response, the EU appealed the ruling and continued its illegal practices.

• In September 1997, a WTO appeals panel reiterated the ruling that the EU banana policy contained more illegalities than virtually any other policy ever reviewed in dispute settlement. Having exhausted its appeal process, the EU finally changed its banana policy—by making it more illegal and more damaging to U.S. interests.

• In March 1999, at the request of the United States, the WTO determined that the EU's "new" banana policy also violated WTO rules. In response, the EU ignored the WTO and maintained its illegal practices.

• In April 1999, when the United States imposed punitive tariffs against Europe in retaliation, the EU ignored the action.

To this day, Europe's illegal banana trade practices remain in effect. Chiquita Brands and Latin American economies continue to be harmed. The adverse impact to our business has been substantial.

The WTO calculated that Europe's illegal actions have cost U.S. interests $191.4 million annually—almost all of which has been borne by Chiquita Brands. The U.S. government and our company believe that number, which was determined by an arbitration panel, is far below actual U.S. and Latin loses.

When any company suffers annual losses of this magnitude, timely relief becomes essential. The WTO procedures alone took three and a half years just to get to the point of retaliation, and there is still not resolution or relief. This timetable is entirely too long when significant injury is compounded year after year. By authorizing prolonged delays, the WTO effectively legitimizes evasion, obstruction, and runaway injury to the prevailing party. How many American companies, farmers or industries could sustain that amount of injury for that amount of time?

The delays are all the more frustrating because they arise for inequitable and illogical reasons. In the Banana case, for example, consistent with standard WTO procedures, even after the United States received a favorable ruling, Europe was entitled to continue its illegal, harmful practices for another 15 months. To make matters worse, WTO rules prohibited the United States from scrutinizing Europe's so-called compliance or plans for a "new" banana policy during those 15 months. As a result, at the end of that period, the EU was able to claim that it was in compliance, even though it was not, as a way of further prolonging the procedures and its illegal trade practices.

Using the WTO's own injury calculations, the aggregate harm done to our interests during the multi-year period from when the WTO procedures first began to the date retaliation took effect was $670 million. The EU's 15-month grace period—that is, the period after the favorable ruling—alone caused $270 million of additional injury to our interests.

Under present WTO rules, Chiquita Brands can never recover the damages incurred during those periods. Relief, if provided, will be strictly prospective, with no retroactive penalty imposed on Europe for the damage it has caused in the meantime. Such a system provides no incentive at all for prompt compliance and every incentive for protectionist member countries to gain a lasting commercial edge over U.S. interests without fear of penalty or economic consequence. In reality, the WTO procedures reward delays, obstruction and non-compliance: European banana interests continue to earn illegally conceived profits. There is no mystery in why the EU continues to procrastinate and evade compliance with GATT and WTO rulings.

The Need for Good Faith Compliance

Another major concern arising from the Banana case is one that Ambassador Barshefsky has described as Europe's "30-year pattern of refusing to accept panel decisions." Nowhere is that pattern more apparent than in the Banana case.

Under the old GATT, the EU blocked two banana panel rulings. New WTO rules were supposed to prevent such tactics. However, even under the WTO, the EU has continued to do everything possible to avoid compliance.

For decades, the EU has demonstrated this pattern of protectionism and prevarication. In case after case, Europe has delayed, blocked, evaded, argued, appealed, vetoed and repeatedly sought ways to avoid obligations under international trade rules. It has happened on citrus, pasta, canned fruit, soybeans, beef, and bananas. The list goes on, and so do Europe's unlawful trade practices.

For Chiquita, the problem of chronic non-compliance threatens our business. For the WTO system, the stakes are equally high. If Europe, the largest WTO member,

continues its pattern of non-compliance, legitimate questions will be raised about the real value of the WTO.

The Need for More Effective Retaliation

The only tool for reversing non-compliance under the WTO is retaliation. When WTO-sanctioned retaliation is imposed, it must be applied in a way that induces compliance as quickly as possible. If retaliation is the end-result, the injured petitioning interest gets no relief and the entire multi-year litigation process becomes futile.

To date, the Banana and Beef retaliatory actions against Europe have been unsuccessful by any standard. Five months after retaliation took effect in the Banana case, Europe is still proposing WTO-inconsistent banana arrangements. In the Beef case, Europe is promising never to lift its ban.

Europe's response to these retaliations has persuaded the American Farm Bureau, the National Cattlemen Beef Association, the American Meat Institute, the U.S. Meat Export Federation, the Hawaii Banana Industry Association and Chiquita Brands that static retaliation is not sufficient leverage. In order to increase internal pressure to comply, we recommend that retaliation targets within Europe be rotated at regular intervals. Because the overall level of retaliation against Europe would not change, we believe this so-called "carousel retaliation" approach would be entirely consistent with WTO law. We urge the Trade Subcommittee to insist on the use of carousel retaliation in order to bring these cases—and future disputes—to their proper conclusion.

The Need for Measurable Relief to the Injured U.S. Industry

Ultimately, the proper and equitable conclusion of dispute settlement must be full WTO compliance and the delivery of quantifiable relief to the petitioning U.S. industry. Chiquita, like other U.S. companies and farmers, has availed itself of dispute settlement with that singular objective in mind. U.S. interests, particularly agricultural interests, have often made the point that if prominent cases like Bananas and Beef are not resolved in a way that produces a fair outcome and tangible relief, WTO dispute settlement will inevitably lose its appeal.

This overriding imperative has not yet been grasped by the European Commission, which continues to propose certain new banana arrangements that would in fact increase injury to Chiquita Brands. Congress and the Administration need to reinforce in the clearest way possible the message to Europe that dispute settlement is intended to accord commercial relief from illegal practices and that outcomes that fall short of that objective will be unwelcome and of no help in lifting U.S. retaliation.

Conclusion

America's agricultural sector is the most productive and competitive in the world. Despite this fact, some of our nation's most important export markets are being stolen away by illegal trade practices. We don't permit America's intellectual property, patents, or high technology industries to be subjected to such treatment, and we shouldn't allow it in agriculture.

As this Subcommittee considers the critical issue of dispute settlement in the months leading up to the Seattle Ministerial, we urge you to examine the serious flaws that have emerged as a result of the Banana and Beef disputes. These cases provide concrete examples of the obstacles that any U.S. interest could encounter when taking on unfair practices by the EU.

Unless solutions to these inadequacies can be found prior to the WTO Ministerial Meeting, many will question the value of new agreements, given that existing ones cannot be enforced. On the other hand, with proper attention to the concerns raised in the Banana and Beef disputes, the WTO can still live up to the promise that former Undersecretary Garten described and that Congress endorsed. Chiquita Brands is eager to assist the Trade Subcommittee in addressing these critical issues in the coming months.

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Chairman CRANE. Thank you.

Our next witness, Mr. Lambert.

STATEMENT OF CHARLES D. "CHUCK" LAMBERT, PH.D., AND CHIEF ECONOMIST, NATIONAL CATTLEMEN'S BEEF ASSOCIATION

Mr. LAMBERT. Thank you, Mr. Chairman and Members of the Subcommittee, for holding hearings on issues that are vitally important to American agriculture. I am Chuck Lambert, chief economist of the National Cattlemen's Beef Association. Exports of meat and grains are imperative for the United States. We have only 4 percent of the world's population but a large share of the world's production agriculture.

One of the underlying premises of the 1996 Freedom to Farm bill was that aggressive pursuit of growing export markets would replace the safety net of traditional farm programs. There must be followthrough by Congress and the administration on this obligation.

The Seattle Round of trade talks will be a defining moment for world agriculture trade. Success of the Seattle Round dictates that the U.S. take the high road to expanded exports and freer trade with less dependence on government assistance. The near agreement with China last April was a good one. Hopefully it will be completed and set the benchmark for tariff reduction and market access for WTO members to follow in November.

NCBA supports three process objectives for the negotiations as follows. Set the 3-year time line for concluding the negotiations, no product or policy exemptions, and three, conclude with a single agreement that encompasses all sectors. There is a perception among many in agriculture that past negotiations often traded agricultural interests for other priorities. NCBA and other agricultural organizations strongly object to the finalization of agreements in any other sector until agreements in agriculture are concluded. From the parochial view of the beef industry, the overall objective of U.S. trade policy is to maintain and increase access to existing markets for U.S. beef and to gain access in emerging markets.

NCBA supports addressing the specific points regarding the upcoming WTO negotiations. Prevent the EU from rolling back progress made during previous agreements. Ensure that science remains the only basis for resolving the SPS agreements. Protect science-based technologies and establish transparent science-based rules. Eliminate state trading entities. Negotiate reduction and eventually elimination of production-distorting price supports, and I will add here including those that are currently insulated in the blue box, and eliminate export subsidy programs. Establish a target date for reducing all tariffs to zero, and until that elimination can take place, continue tariff reduction and expands tariff rate quotas to permit continued growth in exports.

U.S. beef entering many Asian markets still faces close to a 40-percent tariff. In Europe, we face a 20-percent tariff and that is within a very small quota of 11,500 metric tons, even if we had all of our other issues resolved. Prices still drives the effective demand for our product, and tariffs increase price. Continued tariff reduction is critical.

I am clearly aware of the administration and other sector positions regarding dumping. But the fact is the current definition of dumping does not make sense for many agricultural commodities.

Cyclical commodities, including beef, have periods of low prices. Often those prices are below the cost of production for most of the industry. That is why our industry is cyclical. By WTO definition the beef industry may be considered to be dumping during periods of low prices, even in the absence of evidence of predatory behavior, intention to monopolize or other efforts to drive competitors out of business.

Under the current definition, U.S. dumping suits were filed in 1998 against cattle from Canada and Mexico. In return Mexican feeders and processors filed a dumping case against beef and cattle from the United States. Mexico announced tariffs as high as 215 percent just last Monday for some exporters of some U.S. products.

Among the strengths of the current WTO system is a well defined process for initiating a case for determining the final ruling. The current—the strict, science-based rules established for resolving these issues is another major strength. The primary weakness of the current system is the absence of an enforcement mechanism to assure compliance once the ruling is issued. Canada and the United States painstakingly followed the WTO dispute settlement process for changing regulations to come into compliance with the WTO ruling.

No one wins in trade wars, and our preference is for access. All we ask is for Europe to give their consumers a choice. Our negotiators with our advice and consent have offered labeling beef as a product of the U.S. to the EU with no success.

If Europe continues to thumb its nose at this science-based process, the WTO is in jeopardy of losing its credibility. Thank you for the opportunity to present this information.

[The prepared statement follows:]

Statement of Charles D. "Chuck" Lambert, Ph.D., and Chief Economist, National Cattlemen's Beef Association

Thank you Chairman Crane and the Subcommittee for holding hearings regarding issues to be addressed in the 1999 Seattle Ministerial meeting. NCBA commends your continuing efforts to improve the export outlook for U.S. agricultural products. I am Chuck Lambert, Chief Economist for the National Cattlemen's Beef Association,

IMPORTANCE OF TRADE:

Beef and pork producers have always avoided the traditional supply management and price support programs, and therefore, had the "freedom to farm" as well as "freedom to fail." Livestock producers add value to grain produced by our neighbors by feeding it through our livestock.

Livestock producers are becoming increasingly dependant on the rest of the world to buy our products. Exports of meat and grains make sense for the US, a country that has only 4 percent of the world's population, but a large share of the world's production agriculture. Exports of beef have helped to take up the slack of declining demand for beef at home. We, as an industry, have worked hard to promote beef exports which now account for over 12 percent of the value of wholesale beef sales. On a tonnage basis, we export 8–9 percent of what we produce.

The 1998 calendar year—a year of recession in most Asian markets—was the first time that more than one million metric tons of US beef and beef variety meats have been exported. Compared to 1997, exports of beef and beef variety meats during 1998 increased of 4.75 percent on a volume basis but declined 5.44 percent on a value basis as U.S. beef prices declined and international customers shifted to a lower-price mix. As an industry, we have expanded exports of beef and beef variety meats from about one-half billion dollars twenty years ago, to approximately $3 billion today. During the first five months of 1999, beef exports increased 6.43 percent on a volume basis and 6.56 on a value basis compared to the same time in 1998.

The Seattle Round of world trade talks will be the defining moment for world agricultural trade. The US beef industry has worked hard to expand sales of our product in the younger, fast growing, overseas markets. In spite of record US meat exports and efforts of most commodity organizations to expand exports, prices for nearly all US agricultural products remain very low.

There is a perception among many in agriculture that past GATT and WTO rounds often traded agricultural priorities for other priorities and left US crop and livestock producers facing high tariffs and a host of non-tariff trade barriers in overseas markets while opening US markets to imports. One of the underlying premises of the 1996 "Freedom to Farm Bill" was that aggressive pursuit of growing export markets would be a critical strategy to replace the safety net of traditional farm programs. The pursuit of export markets includes eliminating trade barriers and this must be a successful part of the next round.

Success of the Seattle Round means that the US must take the high road to expanded exports and free trade, with less dependence on government assistance. Failure to follow this course will take us down the road to protectionism—if not isolationism—trade wars and a return to costly government supply management and price support farm programs. The near-agreement with China last April, if finalized, would set a good example for other countries for reducing trade barriers. If the agreement with China—which would be contingent upon approval of permanent Normal Trading Relations—can be finalized it will set the pace for all of the WTO countries to follow in November. The proposed China agreement would allow for:

• a bilateral Sanitary/Phytosanitary agreement for China to accept all USDA approved processing plants as eligible to ship to China. This bilateral agreement has been finalized, but its impacts will depend on finalization of the overall trade package with China. The proposed overall package would allow for the following with respect to the beef industry:

• duties on certain beef items to decline from 45 percent to 12 percent over a five-year period

• a commitment not to subsidize domestic agricultural products

• US investment in distribution, wholesaling, retailing, and transportation

OBJECTIVES FOR THE 1999 WTO NEGOTIATIONS

NCBA, in conjunction with nearly 60 other agricultural and food sectors, expressed support for launching a comprehensive round of multinational trade negotiations in an April 1, 1999 letter to President Clinton. The group specified three process objectives for the negotiations, as follows:

• Establish a three-year goal for concluding the negotiations.

• Adopt the Uruguay Round framework for the 1999 agricultural negotiations so there are no product or policy exceptions.

• Conclude with a single undertaking that encompasses all sectors.

NCBA and other agricultural organizations strongly object to the conclusion and implementation of agreements in any other sector until agreements in agriculture are finalized. Many other countries have remained very protectionist of agriculture while negotiating expanded trade in other sectors. Unless there is a reciprocal opening of agricultural markets there will be very little support within the agricultural community for these trade agreements in other sectors.

NCBA and the U.S. beef industry believe that the overall policy objective for U.S. trade is to maintain and increase access to existing markets for U.S. beef, beef byproducts and other industry-related products and to gain access in emerging markets for these products. NCBA and other meat industry groups support the following specific points to be addressed during the 1999 round of WTO negotiations:

• Prevent the EU from rolling back progress made during the previous GATT agreement. Enforcement of the strict science-based trading rules established in the Uruguay Round Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement) is critical to continued expansion of U.S. beef exports.

• Ensure that science remains the only basis for resolving SPS issues. To ensure this outcome, the red meat industry does not support opening the SPS Agreement for further negotiation in the next trade round.

• Protect scientifically approved technologies, such as Genetically Modified Organisms (GMOs) and beef growth promotants that enhance production efficiency or food safety by establishing transparent, science-based rules.

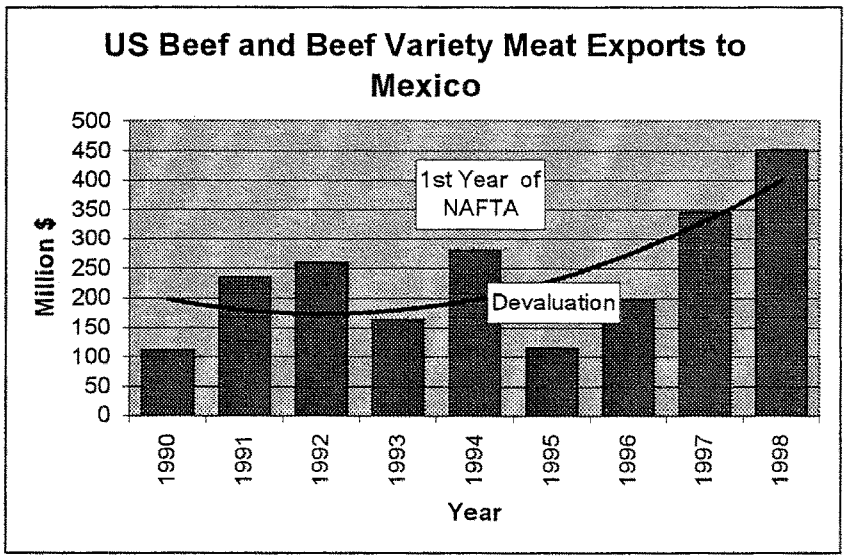
• Eliminate State Trading Entities (STEs) and increased access to wholesale and retail trade in importing countries (especially relevant in China, Australia and Canada)

• Reduce and eventually eliminate production-distorting price supports and export subsidy programs. In addition, stricter disciplines and tougher enforcement

mechanisms should be established to prevent the emergence of new schemes to circumvent WTO rules.

• Continue to reduce tariffs and expand Tariff Rate Quotas (TRQs). Existing duties in key export markets such as Japan and Korea must be reduced to single digit levels and a target date must be established for reducing all tariffs to zero. Until elimination of duties can be accomplished, existing tariff rate quotas must continue to be expanded to permit continued growth in exports.

From the beef industry perspective the last point may be the most crucial. US beef entering many markets for US beef in Asia (Japan, Korea, and China) still faces close to a 40 percent tariff. Price still drives the effective demand for our product. If one looks at Mexico, you can see what the effects of eliminating tariffs of 20 to 25 percent did in that market after NAFTA was initiated—even with the 50 percent devaluation of the peso in late 1994. While we have done well in the Asian countries, tariff reduction must be one of the main keys to exporting more red meat to countries with high tariffs.



DEFINITION OF DUMPING:

The beef industry is driven by supply and demand and these forces determine the market price for beef. Market-driven industries traditionally run in cycles, and most beef producers periodically sell below the cost of production (at a loss) during the high production/low price periods of the cattle cycle. Indeed, it is these low prices and industry losses that result in herd reduction and declining supplies. These periods of cyclical low prices and producer losses in the beef industry meet the definition of dumping under current WTO rules—even in the absence of evidence of predatory behavior, intention to monopolize, or other intentional efforts to drive competitors out of business.

Producer unrest has resulted from low prices for agricultural commodities and the threat of protectionism is rearing its ugly head. The storm clouds of unrest include calls for dumping lawsuits, blockading borders and other retaliatory measures to restrict trade. The current definition of dumping under WTO rules does not make sense for commodity markets like beef because one of the criteria to file a dumping case is that the commodity must be sold below the cost of production in the importing country.

Under the current WTO definition of dumping, suits were filed against Canada and Mexico in 1998 and in return, Mexican feeders and processors filed a dumping case against the United States. Mexico announced tariffs as high as 215 percent just last Monday (August 2, 1999) for some exporters of some beef products. These cases were the fallout of cyclically low market prices related to supply and demand and had nothing to do with predatory behavior, monopoly practices or the intention of

beef producers in one country to drive other producers out of business. The bottom line is that these cases will cost the beef industry scarce resources to defend without addressing the base cause of low prices. Ultimately, these cases will lead to less efficient trade patterns without significantly increasing producer profitability. During future negotiations NCBA supports changing WTO rules that define beef dumping to include factors other than selling below the cost of production.

MAINTAIN INTEGRITY OF THE WTO—FORTRESS EUROPE:

Existence of a well-defined process for initiating a case and for determining the final ruling

is among the strengths of the current WTO system. The current system is much improved from its GATT predecessor in this respect. The strict science-based rules established for resolving these issues is another major strength of the current dispute settlement process. The primary weakness of the current system is the absence of an enforcement mechanism to assure compliance once the ruling is issued.

The US has been unfairly locked out of the European beef market for more than 10 years by a thinly veiled trade barrier commonly referred to as the EU hormone ban. During the past decade, the EU has not been able to cite scientifically valid reasons for the ban. The U.S. filed its formal complaint with the WTO in January 1996, claiming the beef ban was a non-tariff trade barrier. Argentina, Australia, and New Zealand joined the United States in the action while Canada filed a separate case. Canada and the United States painstakingly followed the WTO dispute settlement process for three and one-half years before retaliation finally began on July 29, 1999. Negotiations continue.

The objective of U.S. the beef industry has always been to re-gain access to the European beef market, not retaliation. No one wins trade wars and that the US beef industry preference is for access. All we ask is for Europe to give their consumers a choice. The industry has agreed to label US beef as a "product of the US" or as "USDA inspected and approved" as negotiating alternatives with no success. The same issues will be raised regarding BT corn, or Roundup-ready soybeans and other technologies that that have been proven safe.

The European response raises the question, "what do we do with a country that has agreed to a set of rules on trade, refuses to live by them, but expects other countries to comply?" If Europe continues to thumb their nose at this science based process, the whole WTO may be in jeopardy of losing its credibility.

Many U.S. cattlemen have a perception that the EU is undermining the current system and has perfected the stall and delay tactic with immunity. Many are asking why the U.S. continues to participate in a system that does not provide a clear and prompt resolution to trade disputes. This growing loss of confidence and increasing distrust has resulted in declining grassroots support for trade and trade negotiations in general.

WTO DISPUTE SETTLEMENT PROCESS MODIFICATION:

Shortening the WTO dispute settlement process or providing for a mechanism that allows the winning party to be compensated while the losing party delays implementation may be alternatives. Perhaps some type of escrow account or bonding requirement could be established so the defending party would begin paying when the initial ruling is made. Alternatively, the amount of injury could be established at the time that the "reasonable period" is determined with the amount of injury dependant on the length of time it takes for the losing party to come into compliance.

Under the current system, compensation or retaliation only starts once the entire process is completed and the injured party is not reimbursed for losses incurred during or prior to the case. There is no incentive for early settlement by the losing party. In fact, the current system rewards blatant stall and delay tactics. The problem tends to be more with the current dispute settlement process because the losing party only has to pay for future losses and the payments won't begin as long as the process can be strung out.

Another alternative supported by the beef industry and others is for the retaliation list to be revised periodically—often referred to as carousel retaliation. Under the current system, the countries and the commodities that are not affected by retaliation breathe a sigh of relief and there is no further political pressure from these entities for change. If the list of affected commodities were subject to change on a random basis no countries or commodities would be exempt with certainty. Uncertainty would continue to generate pressure from all parties for changing regulations to come into compliance with the WTO ruling.

A CLEAR PLAN:

It is clear that Congress and the Administration do not have a unified strategy to systematically attack the trade problems of US agriculture as part of the upcoming negotiations. The inability to secure approval of "fast track" continued negotiating authority prior to the Seattle Ministerial meeting is testimony to this void. Agricultural producers are justifiably concerned about sending a team to the negotiating table that has a more consistent track record of in-fighting among Congressional and Administrative ranks rather than engaging the opposition.

The U.S. must hold its trading partners to commitments agreed to in previous trade agreements or risk losing public support for additional trade negotiation authority. Without fast track authority, the U.S. will lose the initiative in gaining access to emerging markets and enforcing existing trade agreements.

The National Cattlemen's Beef Association is prepared to participate in the process of evaluating critical trade issues within the beef industry. NCBA looks forward to providing additional input as the U.S. addresses other trade issues, including accession of China to the WTO and approving legislation to provide authority for negotiating additional trade agreements. Thank you for the opportunity to present this information.

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Chairman CRANE. Thank you Mr. Lambert. Our final witness, Ms. Ambrose.

STATEMENT OF KATHLEEN A. AMBROSE, VICE PRESIDENT, INTERNATIONAL AFFAIRS, AND CO-LEADER, MARKET ACCESS TEAM, CHEMICAL MANUFACTURERS ASSOCIATION, ARLINGTON, VIRGINIA

Ms. AMBROSE. Thank you, Mr. Chairman. I am Kathleen Ambrose, vice president for international affairs of the Chemical Manufacturers Association. I have spent more time sitting in the staff chairs behind you, Mr. Chairman, than I have on this side of the aisle but I appreciate the opportunity to testify today before this Subcommittee.

CMA is a nonprofit trade association whose 190 members represent 90 percent of the productive capacity for basic industrial chemicals in the United States. If I leave you with any thought today, I would like to leave you the following thought, and the following information: The U.S. chemical industry is America's largest exporting sector. We, in 1998 alone, contributed $13.4 billion to the positive trade surplus on our more than $68 billion in export sales. Therefore we have a large stake in the next round of trade negotiations.

CMA and its member companies support the launch of a new, broad-based and flexible round of trade negotiations to be launched in Seattle and a negotiation process that allows for individual agreements to be implemented as they are completed. We are "teed up", as they say, as an accelerated tariff liberalization sector. We have worked with the other ATL sectors to offer a position that would bridge the gap that we have just been describing here today brought to you both by the USTR's office and by my counterparts even on this panel. We strongly believe that early results in the round will not jeopardize the concept of single undertaking and that the objectives of the round can be accomplished if we all work together.

CMA's highest priority is increased country participation in the Chemical Tariff Harmonization Agreement. We have worked with

USTR through the Early Voluntary Sector Liberalization process both in APEC and then as it became ATL to move to the WTO. It is designed to be building on our current agreement that was completed in the Uruguay round. Our view is that expanding the Chemical Tariff Harmonization Agreement to include additional countries that are chemical producers can be accomplished as an early result of the round and that at the end of the day, the single undertaking concept can be fully accommodated within the upcoming round.

It is essential that the timing of achieving results during the negotiations not be confused with the objective of a single undertaking at the conclusion of the round. Use of a common crediting mechanism that keeps a running total of all liberalization and a provisional implementation schedule will enable us to recognize that all WTO members at the end of the day must take on the obligations of all WTO Agreements.

Achieving results in the ATL sectors provisionally with binding results at the end of the negotiations increases rather than decreases the chance that all parts of the American business community will devote their energies toward completing a beneficial, broad-based round that is in the United States economy's interest.

The worldwide chemical industry is united in its endorsement of a new WTO round through these mechanisms. In June, the International Council of Chemical Associations for which I serve as the Secretariat, a Coalition of Chemical Industry Associations of the United States, the European Union, Japan, Canada, Mexico, Argentina, Brazil, New Zealand, and Australia, endorsed the goal of elimination of all chemical tariffs in the next WTO round. It stated that new rounds should build on the sectoral negotiations that have been going on for the last 3 years in APEC. And, in addition, it supported the concept of early results so long as at the end of the day all WTO members assume the obligations of the round in the concept of single undertaking.

In addition, the ICCA called for the establishment of a global balanced and beneficial investment regime, advocated rules under the WTO for trade facilitation and sought full implementation of the existing TRIPs agreement. The ICCA also urged clarification of the relationship between multilateral environmental agreements and the WTO rules.

In summary, Mr. Chairman we support the launch of a new WTO round that will be broad-based and that will benefit the full American economy.

Thank you for this opportunity today.

[The prepared statement follows:]

Statement of Kathleen A. Ambrose, Vice President, International Affairs and Co-Leader, Market Access Team, Chemical Manufacturers Association, Arlington, Virginia

Good morning. I am Kathleen A. Ambrose, Vice President, International Affairs and Co-Leader of the Market Access Team, of the Chemical Manufacturers Association (CMA).

CMA is a non-profit trade association whose 190 member companies represent 90 percent of the productive capacity for basic industrial chemicals in the United States. The U.S. chemical industry is a keystone of the U.S. economy and America's largest exporting sector. In 1998 alone, the industry tallied a $13.4 billion trade surplus, generating more than $68 billion in export sales. Chemical exports easily outpaced U.S. agricultural exports of $51 billion and aircraft and parts exports of $50

billion. U.S. chemical companies produce over 2% of America's Gross Domestic Product (GDP) and keep more than 1 million Americans at work. The chemical industry's strong export performance directly supports 180,000 of these high-tech, high-wage jobs.

CMA and its member companies are committed to the multilateral liberalization of trade and investment underpinned by a framework of rules implemented through the World Trade Organization (WTO). We support the launch of a new broad-based and flexible round of trade negotiations at the WTO Ministerial Meeting in Seattle and a negotiation process that allows for individual agreements to be implemented as they are completed. We believe strongly that early results in the round will not jeopardize the "single undertaking" objective of the round, which requires all WTO members to implement all negotiated agreements.

Market Access and Accelerated Tariff Liberalization

A significant achievement of the global chemical industry in the Uruguay Round was the Chemical Tariff Harmonization Agreement (CTHA), whereby 23 trading partners included the harmonization of tariffs on chemical products to rates between 5.5 percent and 6.5 percent in their schedules of tariff concessions. Since the conclusion of the Uruguay Round, the number of countries joining the CTHA or applying CTHA rates has increased to 35.

CMA's highest priority is increased country participation in the CTHA. We have worked with the Office of the U.S. Trade Representative to include the objective of harmonizing chemical tariffs as one of the "early voluntary sectoral liberalization" (EVSL) initiatives in the Asia Pacific Economic Cooperation (APEC) forum. We continued these efforts through the transfer of the EVSLs to the WTO as the "Accelerated Tariff Liberalization" (ATL) process.

The ATL in chemicals is designed to build on the results of the Uruguay Round by bringing important chemical-trading countries into the CTHA. U.S. negotiators have aided the industry's efforts by including chemical tariff harmonization in the market access requests of trading partners that are in the process of acceding to the WTO. For instance, Chinese Taipei has already incorporated chemical harmonization in its schedule of concessions for implementation upon accession, and China agreed to implement the chemical and other ATLs as part of its April 8th package of market access commitments for WTO accession, provided that others in the WTO also agree to do so. And, Indonesia announced recently that it would also begin lowering its tariffs on chemicals.

ATL and the New WTO Round

CMA and its member companies firmly support broad-based and balanced results in the new round of WTO negotiations, and we support the "single undertaking" mechanism as a means to achieve such results that also reflect the interests of all parties. The single undertaking mechanism ensures that all elements of the negotiated results (except where explicitly exempted and agreed) are subject to unified dispute settlement and that all WTO members (developed and developing alike) agree to obligate themselves to all elements of the negotiations, without derogation, even though individual WTO members may be subject to differing timetables for implementation.

Our view is that both early results, such as the ATL, and a "single undertaking" can be fully accommodated within the upcoming round. It is essential that the timing of achieving results during the negotiations not be confused with the objective of a single undertaking at the conclusion of the round. Use of a common crediting mechanism that keeps a "running total" of all liberalization, together with recognition by all WTO members that they must participate in all agreements in the final package, removes procedural impediments to begin implementing negotiated results in specific sectors or issue areas as agreements are achieved. Thus, the timing for reaching agreement on specific elements is far less important than ensuring that the final negotiated result is balanced, reflects outcomes of interest to all parties, and is mutually binding on all WTO members.

As an incentive for participation in early tariff liberalization, WTO members can agree to provide countries with credit for guaranteed, bound trade liberalization enacted since the close of the Uruguay Round. The permanent binding of concessions can take place, as in the past, at the conclusion of the round, or a release from the provisional binding can be granted by the WTO should the round not reach a conclusion.

Achieving early results in the multilateral negotiations adds to the credibility of the WTO process by showing that it is not necessary to wait seven or more years, as we did in the Uruguay Round, before tangible outcomes can be shown. Early results will help to keep the negotiating process manageable while also maintaining

momentum toward further liberalization. We think it is far better to implement trade liberalization on a regular, ongoing basis than it is to force all issues and sectors to be held in reserve for one "big bang," but agonizingly slow, result.

International Chemical Industry Supports New WTO Round and Chemical Tariff Elimination

The worldwide chemical industry is united in its endorsement of a new WTO round and the elimination of all chemical tariffs by all WTO members. In June, the International Council of Chemical Associations (ICCA)—a coalition of the chemical industry associations of the United States, the European Union, Japan, Canada, Mexico, Argentina, Brazil, New Zealand, and Australia—stated that the new round should build on sectoral and trade liberalization undertaken since the Uruguay Round and stressed that final results of all negotiations must be adopted in their entirety by all WTO members. Specifically, the group called for worldwide elimination of chemical tariffs for all WTO members and proposed a phased approach based on the level of existing tariffs. Furthermore, the ICCA called for the elimination of non-tariff measures, such as export licensing, quotas, dual pricing and trigger price mechanisms, and discriminatory standards.

In addition, the ICCA called for the establishment of a global, balanced and beneficial investment regime for all members of the WTO, advocated WTO rules for trade facilitation, supported current WTO disciplines for anti-dumping, and sought full implementation of the existing TRIPs agreement on intellectual property. The ICCA also urged clarification of the relationship between multilateral environmental agreements and WTO rules. We are attaching an overview of the ICCA statement on the new round.

Conclusion

CMA looks forward to working with the Members of this Subcommittee as you develop negotiating objectives for the upcoming WTO Round. In particular, we urge you to consider approaches to renewing the President's trade negotiating authority so that ATL tariff reduction commitments and other early results can begin while the round continues.

A new WTO round that combines early results with a single undertaking offers new opportunities for tariff liberalization, market expansion, and the guarantee of internationally accepted rules of fair trade. Without U.S. support of the WTO, its agreements, and its ongoing negotiations, the U.S. chemical industry will lose the benefits of free and fair trade, including export markets, and the U.S. economy will lose the chemical industry's significant contributions: export revenues, annual trade surpluses, and highly skilled jobs.

INTERNATIONAL COUNCIL OF CHEMICAL ASSOCIATIONS

Chemical Industry Strongly Supports New Trade Round, Tariff Elimination

Geneva, Switzerland, June 23—Leading chemical trade associations today expressed strong support for a new round of multilateral negotiations in the World Trade Organization (WTO), including the elimination of all chemical tariffs by all WTO members.

The International Council of Chemical Associations (ICCA) meeting in Geneva, urged that *all* chemical tariffs without exception be eliminated by *all* WTO members. The group proposed a phased approach to tariff elimination, according to the level of existing tariffs. Furthermore, ICCA called for elimination of non-tariff measures, such as import licensing, quotas, dual pricing and trigger price mechanisms, and discriminatory standards.

ICCA said the new round should build on sectoral and regional trade liberalization undertaken since the end of the Uruguay Round, and stressed that final results of all negotiations must be adopted in their entirety by each WTO member. ICCA also expressed its strong support for the WTO as an institution, and welcomes the accession of new members to the WTO provided these countries adopt all the agreements required for entry to the organization.

The ICCA hopes that the period leading up to the start of the new round will provide an opportunity to broaden tariff harmonization for chemicals through expanded product and country coverage of the Chemical Tariff Harmonization Agreement, or through other mechanisms which achieve at least the same results.

In addition, the ICCA called for the establishment of a global, balanced and beneficial investment regime for all members of the WTO. The group advocated WTO rules for trade facilitation, supported current WTO disciplines for anti-dumping, and sought full implementation of the existing TRIPs agreement on intellectual prop-

erty. ICCA urged clarification of the relationship between multilateral environmental agreements and WTO rules.

World chemical industry production exceeds US$1.6 trillion annually and almost 30% of this production is traded internationally. Within global trade in manufacturing, world trade in chemicals is second only to automobiles, far outpacing computers and related technology in third place. The International Council of Chemical Associations (ICCA) represents almost 80% of the world's chemical production. It is a coalition of the following chemical industry trade associations:

Asociacion Nacional de la Industria Quimica (ANIQ) [Mexico]
Canadian Chemical Producers' Association (CCPA)
Chemical Manufacturers Association (CMA) [USA]
Conselho das Industrias Quimicas do Mercosul (CIQUIM) [Argentina and Brazil]
European Chemical Industry Council (CEFIC)
Japan Chemical Industry Association (JCIA)
New Zealand Chemical Industry Council (NZCIC)
Plastics and Chemicals Industry Association (PACIA) [Australia]

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Chairman CRANE. Thank you, Ms. Ambrose. And the advantage of being there rather than up here is you are stuck up here.

Let me put my first question to you, Mr. Weiller. I was impressed with the statistics here on small business. We had a Trade Subcommittee hearing back in my district a couple of years ago, and Illinois is the fifth largest export state in the country. We have some giants there in my district like Motorola and Ameritech, Sears, United Airlines, but next door to me are ones like John Deere and Caterpillar down south. I always knew that they are very aggressively involved in exports. What was revealing was that better than 90 percent of the exports from our State of Illinois came from companies employing 500 or fewer. And what is striking is this top graph here of the increase, companies that do not export in 1989 were almost half of them, 48 percent, and that has dropped in 1998 to 22 percent. And I am sure it is still going down.

And the other thing is the revenues. I had no idea what a rich market that is out there, that 9 percent of those exports earned 9 percent—9 percent rather earned over 25 percent in profits and 11 percent earned between 11 and 25 percent. So it is a good market out there. And getting that word out is one of the problems frankly I think we have in trade in this country.

When I say getting the word out, I think we have not effectively got our chief executive officers to communicate to their employees that the company's survival is dependent upon that world market out there, and that means their jobs, and getting them in turn to communicate that message to all of us, to our local district offices or send us postcards down here on these trade issues, whatever is involved. I was wondering if are there areas in the WTO negotiations that will be particularly important for small businesses such as your company? Have you got thoughts on that?

Mr. WEILLER. Well, thank you for the opportunity. What you were saying earlier about the percentage of business that is export, and it shows at 75 percent small- and medium-sized, I expect the number is actually larger. As an example, my company is an exporter, and we have about 70 employees. But we use, purchase services from other smaller companies sometimes, metal manufacturing, sometimes smaller electronics, circuit board manufacturers and so on. And they in effect export but they don't realize it. They

think they are just selling to a local company in the same town. They don't realize that 100 percent of what they manufacturer gets assembled and shipped overseas as a export. So I suspect that some of these numbers by the time you really get through become much larger.

If the question is what is it that can be done to help exporters, there are a number of things that are already being done. I recognized my testimony was focused really on the areas that are really impediments, the countries that are problem areas for everybody, China and so on which have very high tariffs and so on. The truth is that I really don't feel that negative. I think a lot has happened. I think it is very positive in the last 10 years. And in effect we have—we are enjoying some of the benefits of fair trade already. Again, focusing on those that I did in my conversation here, that we need some help there because those are markets that are growing, and if we don't get into them, I don't mean just the small companies, I mean the larger ones, we will lose, even after a trade agreement is reached.

To give you a specific example, in some countries, for example, in India, American consulting engineers are not present. You have German consulting engineers. Well, once, if ever, India agrees to liberalize all the infrastructure, development will continue to be dictated by the German engineering companies. They will purchase German products and American companies will be out of that. This has happened in Vietnam from what I understand from other people. So some of the effects of this is going to be very long, much longer than after the trade barrier is officially opened.

Chairman CRANE. Thank you, Mr. Warshaw, and, Mr. Lambert, the U.S. Trade Representative has made proposals to make the dispute settlement process more transparent and streamlined, and in your view are these proposals, if enacted, satisfactorily, and what else should the U.S. propose in the way of changes to the dispute settlement process?

Mr. LAMBERT. We strongly support any efforts to strengthen the dispute settlement mechanism. NCBA would also support consideration of the carousel approach to changing the retaliation list periodically to keep uncertainty in the system, to keep political pressure in the system within the European Union to bring resolution to this issue.

Other areas that we have suggested are things perhaps like a bond or an escrow account to be set up when the initial ruling comes into effect so there is an incentive for early settlement rather than the premium on stall and delay, or possibly the amount of injury could be set at the time that the reasonable period is determined with some type of a plus or minus in that injury amount depending on the length of time that the process is dragged out.

But we wholeheartedly support any efforts to strengthen that settlement process.

Mr. WARSHAW. And we generally agree with Mr. Lambert, the position of USTR right now is a good starting point. But the thing that is important to us after the experience that we have been through in the dispute settlement process is that each of the steps can be relatively fast. You know reflecting back on a point that I made before, remember in the case of the initial decision against

the European regime, it had taken them 3 months to put in place the illegal regime but the WTO granted 15 months of, quote, "reasonable" period to conform their system with WTO laws.

So as an example something that we would encourage of USTR is to have a more speedy process, a more thorough process, something that more parallels the kind of activity that puts into place the illegality. We would like to see fixed timeframes that are relatively inflexible. We remember that we were supposed to see a panel report most recently about 60 days before the final panel report was issued. And every month counts in a situation like this.

And finally that in the situation where there is noncompliance, that there be additional consideration given to punitive damages. That would, in addition to the actual damage sustained, cause the offending nation to act a little bit faster in bringing the situation to its rectification.

Chairman CRANE. The most vexing thing about the first 5 years of the WTO's operation has been the European refusal to respect the dispute settlement findings against their restrictions on bananas and beef, and you suggest a carousel approach to retaliation. Could you describe that in greater detail?

Mr. WARSHAW. Let me give a little bit more dimension as I do that to the reasons why we actually like the idea of the carousel retaliation. The plain fact is this: There has been a list of European products that there have been over $300 million of 100 percent duties in place for some time now. It doesn't seem like Europe minds this very much. We think that Europe didn't mind it because a list like this has to be very, very carefully selected. It has to be targeted against constituents who care, who will go to their governments, their members states, and complain and say "we can't live with this anymore."

If you look at the lists both in the beef case and the banana case, we haven't seen any evidence that the constituents really care at this point. So there is not an enormous pressure being borne by the member states, hence the EU commission can take its time.

We think that the idea of carousel is effective because it affords the possibility of going to alternatives as soon as you realize that the selected products are not having the desired impact so that effective products can be targeted, the retaliation can be put in place so that we can get the retaliation over with as quickly as possible. That is the objective. Not to live with retaliation but to get it over. We see carousel as something that makes it move faster.

Mr. LAMBERT. I think we would concur. Our objective has never been retaliation. That gains the beef industry nothing. It distorts trade, stops trade. Our objective is to bring enough pressure to bear within the community to bring about a change in the regulations and to gain access to that market.

In our case, there was an initial list $900 million worth of products published. Our final retaliation is $116.8 million. If all of those commodities and all of the countries were uncertain if their commodities were next on the list, that would keep them in the game, keep their pressure in the system to bring about a change of policy.

Chairman CRANE. Thank you.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. I am sorry, I was in the Rules Committee for part of your testimony and I missed it. But we will review it carefully. And the next panel, Mr. Chairman, has been here a long time. So I will refrain from questioning, just to comment we should hear your urgings that the dispute settlement process be more effective and the WTO therefore be more effective and relevant.

I only urge that when other sectors urge the same or when people want to bring in other related trade issues, you have the same open mind or better than that, encouragement. Any way, we welcome your testimony.

Thank you very much, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman. And thanks for the testimony today.

In response to the Chairman's questions you have given me most of what I was going to look for in the question and answer period. So if I could delve a little deeper into the topic of why you think in this case, beef and bananas in this particular, that the Europeans have not been willing to comply with, in this case, very clear dictates from first GATT, we had two GATT decisions in the banana issue, and the beef case there was a clear and unequivocal legal decision, then several WTO decisions. And I guess rotating in carousel seems to make sense to me but I would wonder if we could step back and think why do you all believe they are not complying and then maybe we would know better whether carousel would be effective.

Mr. Lambert.

Mr. LAMBERT. I think in the case of beef and in agriculture in general, Europe is heavily subsidized. They do not want the competition. We feel that we could be very competitive in the market from a price standpoint and a quality standpoint. We have always viewed this as much more protection for the domestic industry in the European Union than a consumer concern.

We are willing to label our product and let the consumer make the choice. So from our viewpoint it is the fact that they are heavily subsidized and any technology or any competition to that system just increases the cost of their subsidy system.

Mr. PORTMAN. So as an economist you would look at this as this is just the cost of doing business. In other words, they are already so heavily subsidized why not subsidize it a little more, which is in effect absorbing the retaliation.

Mr. LAMBERT. We have said we would cash out the retaliation.

Mr. PORTMAN. Do you think rotation would be effective then in dealing with the problem given the fact they are willing to absorb these losses?

Mr. LAMBERT. We feel that it would increase the political pressure within the system. Whether that would be adequate given all the constraints and the political system that they have to deal within the European Union, I am not sure. But we would like to give it a try.

Mr. PORTMAN. The American Farm Bureau has been supportive. I spoke to the Farm Bureau president after his testimony because

I didn't have a chance to ask him questions, but he indicated that he thought carousel was a good idea. And his response was sort of one of frustration that, you know, how else are we going to be able to get at this without being able to rotate and find more politically sensitive industries and businesses.

Mr. Warshaw.

Mr. WARSHAW. Well, first of all I concur with that point, Congressman, that the rotation is absolutely necessary. Until we target the right products it will not be effective. To get the retaliation over is the first thing that we want to do, as I mentioned.

I think that you asked two questions. One is why the EU is not agreeing to a future implementation that is WTO compatible. I think the answer is that in the case of bananas at least we have a situation where it has been ruled on that this licensing system under the tariff rate quota that grants licenses illegally needs to be disbanded, that people who had the historical access to market under WTO rules must be given continued access under a licensing regime. So in fact why they don't want to come up with a system that is WTO compatible is that they lose their illegally gotten licenses and therefore the illegal profits that they carved out for European interests.

Interestingly enough, the Europeans comment from time to time that the cocomplainants, the United States and the five Latin governments are not in agreement on a solution. In fact that is not the case, that if you interview each of the governments that were plaintiffs in the case, you would find that they all agree that a tariff rate quota that is properly constructed will conform with WTO's norms.

The why are they not complying sooner aspect of the question is just simply that they are still making money and they don't have an incentive to stop making that money. And until someone clamps down, they will continue to earn those illegally conceived profits.

Mr. PORTMAN. When will they realize that? I guess my final question would be, and it is to both Mr. Lambert and Mr. Warshaw, do you think that the EU properly understands that retaliation will not be lifted until the U.S. industry receives some relief? Is that message clear to the Europeans? And if not, what can this Congress do to make that message very clear?

Mr. LAMBERT. From our viewpoint I think it is clear, although they seem to hold out some false hope that they will offer some type of a compensation package that will be acceptable and will entice us to removing retaliation. So I think as much to the degree that we can send a united message from the Hill as well as from the administration, that it is very important that the European Union comply with the rulings, if for no other reason than for the sake of the WTO as a dispute settlement mechanism, and that sooner or later they will win a case and they would not want to be treated the way that we have been treated in this instance.

Mr. PORTMAN. Mr. Warshaw.

Mr. WARSHAW. I have been told by senior members of the European Commission that they understand that the retaliation will not be lifted and I will tell you that they don't seem to mind. They have taken their time. It is a deliberate schedule. The rulings came out as you know in April, and we are still sitting with the fact that

the commission has said that come September 9 they will make a proposal and all of the proposals that they have made in the meantime, that they put out to the trade, and to us for that matter are illegal under WTO law.

Mr. PORTMAN. If there is anything we can do to make it clear that we in the U.S. Congress and the USTR and the industry are one with regard to this strong message that unless there is compliance there will not be backing down on retaliation, it would be helpful. So you need to let this Subcommittee know and this Chairman know.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. I want to just thank the witnesses and thank them for being so understanding of the time. And I will withhold on any questions. Yield back.

Chairman CRANE. Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman. Thank the panel. You know, Mr. Portman and I, banana and beef guy, it seemed like this was a threshold on some decisions and not getting things done under the WTO. Because WTO overall has ruled about 29 times in our favor. So when you look at the overall situation, Mr. Portman, I don't know why they selected bananas and beef, not really put some teeth in it— Mr. Warshaw, you are talking about—because they don't seem like they mind. And same thing with beef. They don't seem like they mind about that.

So, it is going to be an interesting situation to see what WTO does. And let me just say, their credibility is at stake. We got to have and need a WTO, but I can say in the beef case, and I know Mr. Portman will speak more detail and knowledgeable about bananas, he and I have talked going back and forth lots of times about the bananas and about beef, but in the case of beef, it has been a disaster in my opinion. And I have talked to a lot of cattlemen. When you think 10 years ago they started banning beef, and the long delay. And then after that period of time, a lot of my cattle people felt like it was losing about a $500 million market. But they were also willing to come down and say well, hey, 250 million. And then we projected, say we, U.S. Trade Representative, projected $205 million dollar loss, and then by the time they got through the WTO settlement, out about $116 million.

Rob, that is less than bananas. I didn't know that. But, you know, but look at that, and you think, my gosh, we are not very strong in trying to get our point across.

And I hope Mike Moore will insist on a stronger following of the WTO rules and where we are. But, you know, this becomes quite alarming. We know there is a group in the Congress, they don't fast track, they don't want any kind—the fear is out there. You couple that with what has happened to bananas and beef, and putting some things in jeopardy, I think we have got to see a stronger position along the way there.

Both have mentioned about subsidies. I totally agree. You know, it is subsidy structure in the European Union I think we need to go after a great deal. Now, a lot of people do not know we do not receive subsidies in the cattle industry. It does in the crops and things like that, but we do not have that subsidy in cattle, but yet

you look around and you see the overall budget of ECU, 70 percent or so is utilized for agriculture, not only just to subsidize to production, but also in necessary taking losses in order to capture markets around the world. Somewhere we got to address that fact.

And also, that doesn't count the subsidies from the individual countries within the ECU. So you look at that. And that is why I talk about fairness. We have got to get the teeth in that and I have a lot of high hopes and hope that we can do some things to reconcile that. But, right now, as one who has fought this battle and, like I say, it is not a fly by-night thing for me, and it is not a political thing. My roots go deep in agriculture, and the cattlemen are probably my closest friends in the State of Oklahoma. I know there is no—they are so independent. They stick it out through thick and thin, drought, everything else. And I just cannot sit idly by when they are really totally feeling the effects of it in a big way.

So I just want to thank both of you for being here, all three of you for being here and presenting this case. I think it is so timely and important, and I guess I keep saying the credibility, it could be in jeopardy next spring with the resolution coming from Congress if things do not turn around. We need to make sure that we get out and try to see what we can get done. We got to have the fairness here.

Mr. Chairman, I might just say one more thing. I have such strong feelings about trade and you and I have shared that. I was thinking a little earlier, back when I was a youngster in De Queen, Arkansas about 4 years of age I used to come to town with my grandpa, Grandpa Johnson in a wagon, we had a rick of wood in the back of the wagon, and he had a horse and a mule usually tied or a horse or mule or combination of them tied on the back of the wagon. It was always a big day, Mr. Portman, when we did that on Saturday because we always went to the square in De Queen, Arkansas.

And I would sit there in under the shade trees with him as my grandpa would negotiate the trade of that mule and horse and selling or trading of that rick of wood for something else. And I always wondered about grandpa, because at home he had, Mr. Chairman, a box, a bolo knife. Any of you know what a bolo knife is? A bolo knife, that was the thing back then, but I was always so thankful when he got to the point of making that trade he would say, I will pitch in a bolo knife to boot to make it work. You may not have heard the word to boot in a long time. But I know that was going to sink that trade. And what it really meant was that grandpa was going to go by the drugstore and we were going to get root beer on our way back. Nary a nickel, all we could drink.

I look back and I think we need some bolo knives. We need to get some teeth in finalizing some of these agreements to make sure we can make it happen for the United States of America. Our future is at stake. Our children's future is at stake. I want not only Oklahoma but I want the United States to be the leader in the world.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Mr. Watkins. And I want to thank our panel for their participation in this effort. And it will be ongoing. This is not the only day we are going to have hearings on this

subject but your input is extremely valuable to us, and we would appreciate even when you are not here present, in person, please keep the chain of communication going to us. We need all the input we can get.

And with that, this panel is in recess, and our next panel I hope is here. Let me call up first in the next panel though, David Smith, director, Public Policy Department of the American Federation of Labor and Congress of Industrial Organizations. David was tied up at another hearing where he was testifying, so we will have him as our first witness in the next panel. And then Charles Lake, vice president, American Family Life Insurance Co., on behalf of the American Council of Life Insurance; Gilbert Sandler, senior partner, Sandler, Travis & Rosenberg, on behalf of the Washington International Assurance Co., Itasca, Illinois; Rhett Dawson, president, Information Technology Industry Council; and Sheldon R. Jones, director, Arizona Department of Agriculture in Phoenix.

We will proceed first with you, David, and then the other witnesses in succession.

STATEMENT OF DAVID SMITH, DIRECTOR, PUBLIC POLICY DEPARTMENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. SMITH. Mr. Chairman, Members of the Subcommittee, I apologize for not having gotten back here for the last panel. I thought everything would work perfectly, that I would testify at the Judiciary Committee and get back here. Of course I made a misjudgment and apologize.

Chairman CRANE. And in this town nothing works perfectly, David.

Mr. SMITH. Well, I appreciate your indulgence. Let me try to reciprocate by being brief. You have my written testimony and I would appreciate that it could be placed into the record.

Chairman CRANE. All oral testimony, if you can all try and keep it to about 5 minutes, all written testimony will be made a part of the permanent record.

Mr. SMITH. I will do that. On behalf of our 14 million members, we certainly appreciate the opportunity to testify today. The subject that you are talking about is of enormous importance. It is of enormous importance not simply to working people here but to working people around the world.

The tone I want to set really has two dimensions. I want to talk specifically about the negotiating agenda. But we need to pay attention to a second point that Mr. Watkins was making as I was coming in I think it is a fundamental point. This system is not working well enough for us to have any assurance that it will endure, and we can't underscore that point too firmly. I think about the last 30 years, a period of enormous increase in global integration, trade has increased several times in orders of magnitude as a share of our GDP and others, but these last 30 years have been marked by the slowest periods of growth internationally in the postwar era. They have been marked by increasingly violent and increasingly volatile financial crises, some of which we are still feeling the effects of. Income distribution has worsened, both inside of countries and among countries. This is hardly a track record

which suggests that the evidence is unequivocal that greater global integration, more trade, more open markets, more financial integration is necessarily good for people.

In the real world, in the world where people get up in the morning and go to work for a living, where people make a commitment to an employer and expect to have that commitment honored, in the world where developing countries are struggling to find a place in the international system, but see their currencies come under attack, their standards of living destroyed overnight, tens of millions of Indonesians thrust back into poverty, at the stroke literally of an arbitrageur's computer, we ought to be very cautious about whether or not the kind of support we need for an increasingly integrated global system will endure.

Part of what is missing, part of what is missing from this system is decent and fully cognizant respect for the other half of the economic equation, the half that is provided by people who work for a living. We provided a lot of protection for people who own intellectual property, we provided a lot of protection and intend to provide more for people who trade financial instruments. We provided a lot of protection for people who own real property. But we failed to meet our obligation to people who work for a living.

The WTO agenda needs to begin in Seattle by asking two questions. The first question that it ought to ask is: What have we learned during the last 30 years, not simply in the 5 years since the WTO has been in existence, but what have we learned during the last 3 decades in which this grand project of global integration has proceeded so rapidly? How do we explain and understand and take measures that correct the fact that income distribution hasn't improved, it has deteriorated; that financial stability hasn't become the norm, in fact financial instability has become the norm. And how do we address the question facing many workers in this country, Mr. English and others raised it this morning, of the transmission belt of trade, transmitting our failures internationally, our failures in the international financial system into domestic labor markets, into domestic product markets and resulting in great disruption here in the steel industry, in the garment industry, and the electronics and auto parts industry.

The WTO agenda ought to begin with saying let's take a deep breath, let's step back, let's take a look, let's try to understand what has happened.

Second, the WTO ought in Seattle to build on a commitment it made at the last ministerial in Singapore regarding worker rights. The worker rights that I am talking about are what have come to be known as core worker rights. They are reflected in the ILO Declaration on Fundamental Principles and Rights at Work, adopted with the strong support of our government a year ago in Geneva. That establishes a set of not quantitative, not arithmetic rights, but a set of human rights.

It argues that human beings ought to have the right to freedom of association, meaning that they ought to be able to join a trade union if they wish without interference either from an employer or a government; that they ought to have the right to collectively bargain; that we ought to outlaw child labor, that we ought to get kids, wherever they live, in school so that as they grow they can

become real contributing members of their country's economy; that we ought not to use prison labor illegally producing goods at prices that obviously distort labor markets because the men and women who are incarcerated that are producing goods for the commercial marketplace aren't compensated; that these rights ought to be honored in our trading system because the absence of these rights is itself a distortion.

We think about distortions as if they were only in the form of monetary distortions, subsidies on the one hand or some inappropriate set of nontariff barriers to the movement of goods in the economy. In fact, the denial of these basic human rights is a distortion and a distortion which creates severe consequences both for the people whose rights have been denied and those who are forced to compete against goods produced in countries where the comparative advantage is the increased ability to degrade labor or to despoil the environment.

We ought to take another step in Seattle and we ought to take the step, and you discussed it a bit with Ambassador Esserman this morning, of making concrete the obligation for candidate members, those seeking accession to the WTO, making concrete what we said in Singapore in general, which is that all countries accept these standards and commit themselves to honoring them.

I want to just briefly say the market access questions that you spent some time on this morning are things that we support. It is an agenda that we think ought to be pursued. But I want to emphasize the other things I have talked about, and, last, there is an enormous need in the dispute settlement mechanism, in the proceedings as the WTO considers both the built-in agenda and new items on the negotiating agenda, there is an enormous need for greater transparency and access for working people, for citizens' groups of all kinds.

So that what—much too often in reality as well as in characterization, what is described as a closed club of international elites becomes an organization which people can understand, can get at, and can influence in the ways that mean so much to their lives. Thank you very much.

Chairman CRANE. Thank you.

[The prepared statement follows:]

Statement of David Smith, Director, Public Policy Department, American Federation of Labor and Congress of Industrial Organizations

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to present the views of the AFL-CIO on this important topic. I will summarize my comments here and submit my written testimony for the record.

As the 20th century draws to a close, the global economy is still reeling from the turmoil unleashed by a series of serious financial crises. A quarter of the world economy remains mired in recession, and sluggish growth in much of the rest of the world calls into question prospects for rapid global recovery and improving living standards for the majority of the world's workers. While increased global integration has brought growth and dynamism to some sectors and to some corporations, its downside has become more apparent and more troubling.

Long-term trends toward growing global inequality continue, both between and within countries. In sub-Saharan Africa and in many other of the poorest countries, per capita incomes are lower today than they were in 1970. The gap between per capita incomes in countries with the richest fifth of the world's people to those with the poorest fifth widened from 30-to–1 in 1960, to 60-to–1 in 1990 and to 74-to–1 in 1995. Meanwhile, the richest three people in the world have assets greater than the combined incomes of the 600 million people living in the 48 poorest countries.

Most American workers have not benefitted from global integration either. Real wages have stagnated or declined for the majority of American workers, while the wealthy few have reaped disproportionate gains.

The economic and political power of transnational corporations has become increasingly concentrated, both through mergers and acquisitions and, in some industries, through rapid growth. Dramatically unequal access—between men and women, among English and non-English speakers and among countries—to technology, education, and Internet connections will exacerbate these trends.

In the United States, fundamentally misguided trade policies have resulted in ballooning trade deficits, the loss of hundreds of thousands of high-paying manufacturing jobs and a system of international rules that has undermined domestic measures designed to protect human rights and the environment. Trade agreements have opened our markets while leaving in place other countries' barriers; they have empowered multinational corporate giants while leaving workers and communities to fend for themselves in an increasingly bitter global competition for scarce jobs and investment.

Chronic and growing U.S. trade deficits have led to a massive international debt that is not sustainable in the long run. The underlying problems must be addressed, or these trade imbalances will bring the current economic boom to an abrupt halt.

If we do not fundamentally change U.S. policies and the policies of the international institutions in which the U.S. government plays such an important role, we will continue to lose good jobs, our trade deficit will continue to soar, inequality will continue to grow, corporate power will become more concentrated and the world's poorest nations will fall further behind. The American people will—and should—reject a policy of global engagement that comes with these costs. There is an alternative.

America's unions are committed to a new internationalism focused on building international solidarity around a progressive, pro-worker, pro-environment, pro-community international economic policy.

Global Turning Point

The global community stands at an important turning point—key decisions will be made in the near future, both in the global policy arena and by national governments. In November, the world's trade ministers will consider whether to launch an ambitious new round of negotiations and what such negotiations should address. The international financial institutions are under pressure to reevaluate the conditions they impose on developing countries in exchange for loans and financial assistance, in the wake of the Asian financial crises. The U.S. political system is stalemated with respect to new trade negotiating authority, unable to build consensus around traditional trade bills.

We should use this moment to pause and take stock of globalization so we can begin to repair the damage that has been done by misguided and careless policies. After several decades of tearing down trade barriers and increasing the mobility and flexibility of direct investment as well as speculative capital, we need to take an honest and careful look at the results. What has been the impact of current trade and investment liberalization policies on development, income distribution, financial stability and American workers? Have we struck the right balance between the need for global rules and the scope of domestic regulation on public health, the environment and human rights?

Current Rules Have Failed

We believe that the current framework of global rules has failed miserably on many crucial counts. The international financial system has promoted policies that left many developing countries vulnerable and unprepared in the face of currency volatility and unpredictable swings in speculative capital flows. The result was thousands of bankruptcies and suicides, and tens of millions of people losing their livelihood and falling into desperate poverty. The international financial institutions pressured crisis countries to export their way out of their problems—exacerbating deindustrialization and a rising trade deficit here in the United States.

Trade and investment rules have focused on guaranteeing the mobility of goods, services and capital across borders without giving adequate attention to the social impact of liberalization. In doing so, they have strengthened the power of corporations bargaining with their workers, as well as with national and state governments.

But these trade and investment policies have done nothing to discipline illegal and anti-social behavior by corporations and governments competing in a fiercely competitive global economy. As a result, American workers have found themselves increasingly in head-to-head competition with workers in other countries who lack

basic human rights, and legitimate national regulations protecting the environment, consumer standards and workplace health and safety have been challenged as disguised restraints on trade.

Development policy has been inadequate, inefficient and misguided. If the global economy does not generate more equitable outcomes in the developing world, then the entire global system will become increasingly unstable and unsustainable. We must use trade and investment agreements to reward those governments that respect workers' rights, protect the environment, and allow democracy to flourish, not those that create the most hospitable climate for foreign investment, regardless of social concerns.

WTO Priorities

When the world's trade ministers gather in Seattle later this year, the U.S. government should insist that the WTO take concrete steps to achieve the following goals:

- Review the impact of trade liberalization on income distribution, economic development and financial instability before launching major new negotiations.
- Incorporate enforceable rules on core labor standards (including the freedom of association, the right to bargain collectively and prohibitions on child labor, forced labor and discrimination in employment).
- Establish accession criteria requiring that new WTO members are in compliance with core workers' rights.
- Overhaul existing rules to strengthen national safeguard protections in the case of import surges and ensure that trade rules do not override legitimate domestic regulations. It is essential that WTO rules not infringe on the ability of national or state governments to use their purchasing power to protect human and workers' rights.
- Ensure that WTO rules do not create pressure on governments to privatize public services.
- Carry out institutional reforms, enhancing transparency, accountability and access, so that citizens can understand the basis for WTO decisions, as well as provide meaningful input to this process.
- Provide more technical and legal support to developing countries so their participation in negotiations is not hampered by lack of resources or technical expertise.

In addition, the AFL-CIO believes that new negotiations on investment and competition policy are headed in the wrong direction—toward shoring up the rights of investors at the expense of other members of civil society and U.S. laws.

Coordinating the Work of the International Organizations

The AFL-CIO supports the International Labor Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work and urges the ILO to move forward speedily with a strong and energetic follow-up mechanism. Now that the ILO and the international community have succeeded in building consensus around the universality and importance of the core labor standards, it is crucial that these core standards be incorporated into the work of the other international organizations, including the WTO, the International Monetary Fund (IMF), and the World Bank

The IMF, the World Bank and the regional banks must fundamentally rethink the conditionality they impose on developing countries. Rather than forcing austerity, privatization, deregulation, export-led growth, trade and investment liberalization and weakening of labor laws, the international financial institutions must emphasize domestic-led growth, democratic institutions and the observance of core labor standards.

The international financial institutions and the governments of the industrialized countries must take urgent steps to grant deep debt relief to the least developed countries that are in compliance with core labor standards so these countries can meet the basic human needs of their populations and lay the foundation for future growth.

The Economic Imperative

The current regime of international trade and investment rules has failed on economic as well as moral terms. Aggregate global growth is slowing, not accelerating. Global inequality is growing. And many of the nations heralded in the recent past as stars of the global economy have found that repressing political dissent, stifling an independent labor movement and concentrating economic and political power in the hands of the corrupt few do not provide a basis for long-term growth and stability.

The AFL-CIO is facing the challenges of the global economy in three ways: by building international solidarity, working to change the rules of the global economy and fighting on the home front to build strong, effective unions and ensure that workers have a voice in the national political debate.

Thank you for your time and attention. I look forward to answering any questions you may have.

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Chairman CRANE. Mr. Lake.

STATEMENT OF CHARLES LAKE, VICE PRESIDENT AND COUNSEL, AFLAC JAPAN, ON BEHALF OF AMERICAN COUNCIL OF LIFE INSURANCE, AMERICAN INSURANCE ASSOCIATION, HEALTH INSURANCE ASSOCIATION OF AMERICA, INTERNATIONAL INSURANCE COUNCIL, AND THE REINSURANCE ASSSOCIATION OF AMERICA

Mr. LAKE. Mr. Chairman, I am Charles Lake, vice president and counsel of AFLAC Japan. AFLAC is the largest foreign financial services company in Japan in terms of profits, and the second most profitable foreign company of any industry in Japan. AFLAC now insures almost 25 percent of Japan's overall population.

My testimony is presented on behalf of the American Council of Life Insurance, the American Insurance Association, the Health Insurance Association of America, the Reinsurance Association of America, and the International Insurance Council where I serve on the board of directors. Collectively, these associations represent the major U.S. insurance and reinsurance companies with international operations.

As a former USTR negotiator involved in the completion of the General Agreement on Trade and Services, I am very honored to appear in front of this distinguished Subcommittee to present the insurance industry's views regarding the negotiating objectives for the WTO Seattle Ministerial.

U.S. insurance providers are among the most competitive in the world. Our cutting-edge products, services, and technologies allow us to offer customers the highest quality products in the world at competitive prices when the playingfield is even and a fair competition is permitted. Today I wish to address how our industry believes the WTO 2000 round of negotiations can enhance our ability to compete overseas while encouraging sound and consistent regulation that protects policyholders.

In the upcoming WTO services negotiations, the insurance industry believes that all WTO countries should commit to procompetitive regulatory principles—sound insurance regulation that allows free and fair competition.

GATS recognizes the right of its signatory jurisdictions to regulate their domestic service industries. Regulations should be justified by an objective and clearly defined need, not by whim or domestic political circumstances. Unfair and unequal regulatory requirements and restrictions often deny foreign firms the opportunity to compete on an equal basis with local firms. In addition, lack of transparency can provide the domestic industry with a distinct and unfair competitive advantage. A detailed explanation of

all of our insurance regulatory principles is contained in my full written statement.

With my remaining time I would like to highlight several key points that we feel are particularly timely and appropriate with our priority emerging markets.

Solvency and prudential focus: Regulation should focus on ensuring that institutions meet reasonable solvency and prudential requirements as the primary means of protecting consumers. In most cases governments should allow the markets to determine the most effective products and pricing of those products in a competitive regulatory environment that encourages innovation and product diversity.

A transparent legal, administrative and regulatory environment: Standards, requirements, and codes of practice need to be promulgated with consultation, full documentation and accessibility to all market participants. Regulators should be impartial and an independent government entity.

Income security: The U.S. insurance industry supports the development of a WTO mechanism that encourages global pension reform based on free market principles with sound regulation and tax treatment that encourages citizens to offset the forecasted large gaps in public expenditures.

Access to international reinsurance markets: All insurers, domestic and foreign, should have access to the international reinsurance market with cross-border transactions authorized and monopolistic mandatory cessation requirements prohibited.

Taxation stability: The agreement should require the scheduling of all future taxation of insurance products.

Improving definitions: USTR should determine the extent to which all United States insurance industry export product lines are currently covered by existing definitions.

Dispute settlement: The U.S. should work to ensure that the WTO dispute settlement process provides a meaningful mechanism to challenge practices that are inconsistent with all current and future commitments.

In conclusion, while these principles are ambitious, they are intended to build on the Financial Services Agreement so that the WTO 2000 negotiating objectives will not only improve traditional market access commitments, but improve regulatory standards to foster financially sound and competitive insurance markets worldwide.

Our European insurance industry colleagues support these policy objectives. We are currently working with our Latin American and Asian counterparts to gain their support as well. Also we have begun consultations with U.S. State regulators and their international counterparts to seek their support for our mutual objectives. We believe we have a historic opportunity to improve our ability to provide our products and services to the people of the world, and we look forward to working with the Congress as well as international trade negotiators to achieving these objectives.

I thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to outline our negotiating objectives for the WTO Seattle Ministerial, and I would be pleased to answer any questions you may have.

Chairman CRANE. Thank you, Mr. Lake.

[The prepared statement follows:]

Statement of Charles Lake, Vice President and Counsel, AFLAC Japan, on behalf of American Council of Life Insurance, American Insurance Association, Health Insurance Association of America, International Insurance Council, and the Reinsurance Asssociation of America

Mr. Chairman, I am Charles Lake, Vice President and Counsel of AFLAC Japan. AFLAC is the largest foreign financial services company in Japan in terms of profits, and the second most profitable foreign company of any industry in Japan. My testimony is presented on behalf of the American Council of Life Insurance, the American Insurance Association, the Health Insurance Association of America, the Reinsurance Association of America, and the International Insurance Council, where I serve on the Board of Directors. Collectively, these associations represent the major U.S. insurance and reinsurance companies with international operations.

As a former USTR negotiator involved in the completion of the General Agreement on Trade in Services (GATS), I am very honored to appear in front of this distinguished committee to present the insurance industry's views regarding the negotiating objectives for the WTO Seattle Ministerial.

U.S. insurance providers are among the most competitive in the world. Our cutting edge products, services and technologies allow us to offer customers the highest quality products in the world at competitive prices when the playing field is even and fair competition is permitted. AFLAC has built upon product knowledge and underwriting expertise learned in the U.S. and created in 1974 an entirely new category of products in Japan. AFLAC now insures almost 25% of Japan's overall population.

AFLAC Incorporated is a Fortune 500® company which insures more than 40 million people worldwide. AFLAC was ranked as the top insurance company in Forbes Global Business & Finance magazine's "A-plus" list of the world's best companies. AFLAC's experience is often used in MBA curriculums as an example of what U.S. companies can do if they take their unique and innovative products overseas.

When allowed to fairly compete in foreign markets, our industry provides substantial benefits to foreign consumers and economies, to domestic policyholders through increased financial resources and risk diversification, to stockholders, and the U.S. services trade surplus through return on investments. Since the U.S. market's ability to absorb our wide range of insurance products is limited, an increasing number of life pension and annuity, property and casualty, reinsurance and surety companies have significantly strengthened their commitment to conducting business overseas or have for the first time established an international presence to begin offering their products outside of the U.S. This trend will only intensify, in part because of the success of the upcoming WTO round. In that regard, we deeply appreciate the Committee's leadership in establishing tax policy that supports U.S. trade policy. The extension of the exemption from Subpart F for active financing income is crucial in allowing U.S. financial companies, in general, and insurance companies, specifically, to compete in the global marketplace.

Today I wish to address how our industry believes the WTO 2000 Round of Negotiations can enhance our ability to compete overseas while encouraging sound and consistent regulation that protects policyholders, and increases trust in the private insurance industry. In the upcoming WTO services negotiations, the insurance industry believes that all WTO countries should commit to pro-competitive regulatory principles—sound insurance regulation that allows fair and free competition.

The December 13th 1997 WTO Financial Services Agreement, created the first multilateral, legally enforceable, and permanent agreement covering insurance trade and investment. The agreement is designed to reduce and/or eliminate governmental actions that prevent financial services, including insurance, from being freely provided across national borders or that discriminate against foreign-owned financial services firms. When it came into force on March 1, 1999, the agreement created a floor of specific insurance market access, national treatment, and transparency commitments, below which countries will not be able to act without facing binding adjudication and sanctions. However much more liberalization needs to occur.

The WTO's GATS has a built-in requirement for progressive liberalization negotiations, the first of which must begin no later than January 1, 2000. In contrast to the 1997 negotiations on basic telecommunications and financial services, these negotiations will cover a large spectrum of sectors. Since this is the beginning of a new round, the negotiating format and structure of the agreement are now open to redesign. My industry colleague, Dean O'Hare, Chairman of the Coalition of Serv-

ices Industries, will address the overall services negotiations, so I will limit my comments to our insurance-specific objectives and consensus building activities to promote sound, pro-competitive insurance regulatory principles.

GATS recognizes the right of its signatory jurisdictions to regulate their domestic service industries. Many services are regulated by governments to ensure the fundamental goals of consumer protection and guarantee the supply of services to consumers. These fundamentals are not disputed by the U.S. private sector, although there are different ways of ensuring such fundamental goals through regulation. Some of these ways will be more restrictive than others. Regulations should be justified by an objective and clearly defined need, not by whim or domestic political circumstances.

An essential element of true financial services liberalization should be the global development of pro-competitive regulatory principles. Open, well-regulated service markets are the necessary foundation for a country's ability to compete in global markets for goods, agriculture and services. Market access alone does not guarantee liberalization.

We believe that the negotiations should continue to focus primarily on market access and national treatment needs. However, they should also focus on another significant barrier to trade that transcends both market access and national treatment objectives—burdensome regulatory systems that can serve as major impediments to free trade.

While traditional market access and national treatment liberalization commitments are a significant step toward market liberalization, these principles alone do not assure fair competition. Unfair and unequal regulatory requirements and restrictions often deny foreign firms the opportunity to compete on an equal basis with local firms. In addition, a lack of transparency, combined with uneven enforcement of regulations, can provide the domestic industry with a distinct and unfair competitive advantage.

Regulation of financial services markets must protect consumers; however, some regulatory systems may actually deprive consumers of better products, lower costs, and improved service. For example, restrictions on the types of products that can be offered by a company or unreasonably lengthy product approval procedures prevent firms from introducing new products or developing products that are tailored to the needs of local customers. Moreover, restrictions on the pricing of products limit the ability of companies that are run more efficiently to offer consumers better prices. Other types of regulations that prevent foreign firms from competing fairly with local businesses include: exchange controls, deposit and lending rate ceilings, investment restrictions, qualitative lending controls, privileged access to credit, and restrictions on business powers.

Lack of regulatory transparency is another barrier to fair and open competition in financial services. In some countries, regulations are not published in a way that is easily accessible to all businesses. In other countries, the process for developing regulations is opaque and there is no opportunity for local private sector input. Even if the regulations are available, the inconsistency of enforcement (or even non-enforcement) against local firms can handicap foreign competitors. Financial services firms that dutifully comply with domestic regulations simply cannot compete fairly or successfully with local companies that can lower costs by ignoring those same regulations. Political interference in the development and implementation of regulations adds yet another impediment to fair competition as local leaders intervene on behalf of local businesses, often resulting in disparate regulatory treatment for a foreign firm.

It is a difficult task to draw a clear line between market access issues, national treatment concerns and domestic regulation principles. Countries may disguise a market access issue, such as restricting new products under domestic regulation arguments, by characterizing it as consumer protection. It is the role of the private sector to assist government negotiators in assessing market situations, identifying protectionism and discriminatory regulations, and persuading countries to commit to regulation that allows fair and free competition.

While considering areas of possible liberalization under the pro-competitive theme, we are conscious that as this is the beginning of a new round of negotiation it is now possible to address areas that have traditionally not been included in the WTO. Now is the appropriate time to consider building upon the Financial Services Agreement to create a second generation of trade agreements that will not only allow U.S. insurance providers to compete more effectively in international markets but which will continue the relevancy of the WTO in the future.

Solvency and Prudential Focus:

Regulations should focus on insuring that institutions meet reasonable solvency and prudential requirements as the primary means of protecting consumers. In most cases, governments should allow the market to determine the most effective products and the pricing of those products in a competitive regulatory environment that encourages innovation and product diversity.

Mechanisms to accelerate the licensing of new insurance products should be encouraged. Expedited licensing procedures should be available for those products, which already fit into the existing regulatory framework and are available in the market. No limits should be placed upon the number or frequency of new product introductions by a company.

Appropriate rules and procedures that do not discriminate against foreign insurers and are consistently applied should be established and made public governing the identification and handling (including closure) of financially troubled institutions.

A Transparent Legal, Administrative, and Regulatory Environment:

Standards, requirements, and codes of practice need to be promulgated with consultation, full documentation and accessibility by all market participants. Foreign insurers applying for authorization to do business should be provided a written statement, setting out fully and precisely the documents and information the applicant insurer must supply for the purpose of obtaining authorization. This statement should aim to simplify and accelerate, as appropriate, the explicit procedures to be followed.

The regulatory body should be an independent government entity. Decisions regarding the procedures used by the regulators/supervisors should be impartial with respect to all participants and not supplant a competitive marketplace. The government should ensure that the financial services regulatory bodies have sufficient resources and trained personnel to effectively enforce the solvency, prudential and consumer protection laws and regulations.

Income Security:

Supporting the "three pillar" pension system currently recommended by the World Bank and the Organisation for Economic Co-operation and Development, the U.S. industry supports the development of a WTO mechanism which encourages global pension reform based on free market principles, with sound regulation, and tax treatment that encourages citizens to offset the forecasted large gaps in public expenditures through either group or individual forms of savings and benefits.

Access to International Reinsurance Markets:

International reinsurance market access is necessary in all product lines to better spread loss exposures, absorb catastrophes and marshal sufficient capacity to insure adequate market resources to avoid any crisis. Therefore, all insurers, domestic and foreign, should have access to the international reinsurance market, with cross-border transactions authorised and monopolistic mandatory cession requirements prohibited. Regulations should provide locally established direct insurers with the option to take credit for cross border reinsurance secured by either: letter of credit, reasonable trust fund deposit, or funds withheld.

Taxation Stability:

The agreement should require the scheduling of all future taxation of life insurance pension and annuities, property and casualty insurance, reinsurance, long-term care, disability income and retirement security products, prior to entry into force via a biannual notification process.

Improving Definitions:

USTR should determine and confirm with the WTO Secretariat the extent to which all U.S. insurance industry export product lines are currently covered by existing definitions. Industry suggested additions that are not currently explicitly covered include: life reinsurance, pension products and services such as plan administration, annuities, surety bonds and financial guarantees, disability income and long term care insurance, health care and medical insurance, as well as ancillary services such as pension fund management and related endeavours.

Notwithstanding setting higher standards for liberalization, without a fundamental strengthening of the dispute resolution mechanism other changes will be largely pointless. The U.S. should work to ensure that the WTO dispute settlement

process provides an effective and meaningful mechanism to challenge practices that are inconsistent with all current and future commitments.

In conclusion, while these principles are ambitious, they are intended to build upon the 1997 WTO Financial Services Agreement so that the WTO 2000 Negotiation Objectives will not only improve traditional market access commitments, but improve regulatory standards to foster financially sound and competitive insurance markets.

We have the support of our European insurance industry colleagues in promoting these policy objectives. We are currently working with our Latin American and Asian counterparts to gain their support as well. We have also begun consultations with U.S. State regulators and their counterparts in global markets to seek their support for mutual objectives

We believe we have a historic opportunity to improve our ability to provide our products and services to the people of the world, and we look forward to working with the Congress as well as international trade negotiators to achieving these objectives.

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Chairman CRANE. Mr. Sandler.

STATEMENT OF GILBERT LEE SANDLER, SENIOR PARTNER, SANDLER TRAVIS & ROSENBERG, P.A., ON BEHALF OF THE WASHINGTON INTERNATIONAL INSURANCE COMPANY, ITASCA, ILLINOIS, ACCOMPANIED BY MICHAEL DAVENPORT, VICE PRESIDENT, WASHINGTON INTERNATIONAL INSURANCE COMPANY

Mr. SANDLER. Mr. Chairman, thank you very much. We appreciate the opportunity to be here. My name is Lee Sandler. I am an attorney with Sandler, Travis & Rosenberg, and I am here today representing Washington International Insurance Co., who is also represented today by Michael Davenport, their vice president, who is with me to participate in this hearing.

Washington International is one of the largest suppliers of customs surety bonds in the United States. Approximately one-third of the bonds currently on file with the Customs Service are Washington International-generated bonds. They have a wealth of experience and knowledge about how the bonding system facilitates trade, and that experience is the basis of this testimony today.

There are two chief concerns that we have about the ministerial meetings: facilitating U.S. exports and expanding markets or U.S. surety companies. We have a simple request, and that is that a great priority be given to encouraging our trading partners to establish surety-based control and release systems. There are two benefits from this that are particularly significant. The first, of course, is that across the board, all types of goods exported from the United States can be facilitated by the use of a surety bond system. The second is that the surety bond industry in the United States can benefit by the expansion of that industry into a global environment, allowing them to compete in larger markets.

You heard Chubb testify earlier today about the maturity of the American insurance market, the flatness of growth. Well, the global growth in this industry would be extremely important for the growth of U.S. industries.

What does the bond system do? It completes the sale. Every export from the United States is a sale, but the sale is not consummated when the merchandise leaves our borders. It is only con-

summated when it gets into the hands of the customer in the foreign destination at the time he wants it and in the condition he wants it. That doesn't happen under current systems, where customs regimes and all the other government agencies who take a look at trade in a foreign country hold up the goods while they make all of their final decisions. Plants that could be producing in those countries and employing people in those countries lie idle while materials do not get there or while machinery doesn't get put in place on productionlines, and goods do not get to customers, so sales are not consummated.

The surety bond system permits trade to take place in an efficient manner. It is a critical cornerstone of all the transparency and procedural issues that others have testified to today, and we would encourage that it be highlighted at these hearings.

When you do not delay goods at the border, it lowers the possibilities of theft, of pilferage, of damage, of contraband. It lowers the possibility of corruption at borders, which has been such a major impediment to so many of our companies.

This is not simply a benefit for the U.S. export community, it is also a benefit for the foreign countries seeking to compete globally as well. Increasingly, companies trying to make an investment decision whether to place a manufacturing operation abroad or regional distribution center abroad take a look at whether they have the capacity of moving cargo, moving goods, or moving machinery or equipment quickly into that commerce in predictable timeframes and under predictable conditions. The surety bond system is a cornerstone of that type of an investment regime, and our trading partners should embrace it just as the exporters would embrace it to encourage to their businesses.

We know that there have been obstacles in discussing this type of system internationally, whether it is in the FTAA negotiations or before the WCO or the WTO. That reluctance in foreign countries to adopt a bonding system often has sprung from a traditional fear of importer fraud or from a traditional fear that customs service officials would not like to see integrity brought into their systems.

So we have proposed five different approaches to make certain that this is something that we can bring home to the ministers in Seattle. First is to take a hard look at creating prototypes; defined test programs that can be established within our friendly trading countries that can serve as a model for others to achieve a level of comfort in the system and for them to copy.

We have suggested that there be some imagination used in approaching this and not just use traditional bonding systems, including a bonding system which is not just a bond posted by the importer, but a bond posted by the exporter. This would work particularly well in related-party transactions, which comprise so much of our trade today. The related-party exporter bond gives the importing country the knowledge that it is recourse not just against the importer, but against the surety company and against the exporting parent company as well.

Second, to make certain that we in our negotiations have demonstrated the importance of this type of a system to the investment programs in the foreign countries. Third, capitalize on the business

facilitation process, the civil society process that is a companion to the ministerial meetings. Having the business community come forward and make it clear how important this is to their decisionmaking process can be critical to getting the ministers to embrace it.

We know that the ICC has embraced this process, the U.S. Council for International Business and the U.S. Chamber of Commerce has, and we are certain that the business organizations outside the United States would as well.

Fourth, tie the system to trade benefit promotion. The World Customs Organization now has the capacity to measure the length of time it takes to release cargo into the commerce of a foreign country. Take that measurement standard and establish it as you would a tariff level, and use that as a basis for negotiation and providing of benefits—trade benefits to our trading partners when they can demonstrate that they have put in place a process that lowers the length of time it takes to clear goods into the commerce. When clearance time drops, they would be eligible for additional benefits.

and fifth is insist upon strict adherence to the customs avaluation code. Article 13 of that code states very specifically that there should be a bonding system in place to assure that the decisionmaking by the government agency takes place after the goods have been released into the commerce under bond and not hold up the goods at the border while they make prolonged decisions impeding commerce for no good reason. There is adequate security through an adequate bonding system.

We think that these types of imaginative approaches can be very convincing and can move this issue forward to the benefit of our exporters, to the benefit of our surety industry, and, in fact, to the benefit of the foreign countries seeking investment opportunities.

We thank you for the opportunity to testify today.

Mr. PORTMAN [presiding]. Thank you, Mr. Sandler.

[The prepared statement follows:]

Statement of Gilbert Lee Sandler, Senior Partner, Sandler, Travis and Rosenburg, P.A., on behalf of Washington International Insurance Company

We wish to thank the Subcommittee for holding this hearing and providing an opportunity for the business community to provide recommendations on the proposals and positions to be advanced by the United States at the Third Ministerial Conference. The World Trade Organization has taken on an increasingly important role in the world economy. Its rules and rulings directly affect the ability of United States companies to compete. Your efforts to obtain a wide range of suggestions from the business community to better craft United States objectives at the next Ministerial meeting is most welcome and appreciated.

My testimony today is offered on behalf of Washington International Insurance Company ("WIIC"). WIIC is a United States insurance company with its headquarters office located outside Chicago in Itasca, Illinois. It is one of the many companies certified by the United States Treasury Department to secure government obligations; it is one of the smaller group of companies which writes substantial number of bonds securing United States Customs (and other agency) import obligations. In fact, WIIC is surety on approximately one-third of the bonds currently on file with the United States Customs Service.

My testimony today also reflects important lessons learned in my law practice. I am a lawyer with thirty years experience in international trade regulation. My career began in the Department of Justice, defending decisions by the United States Customs Service affecting importations into the United States. After leaving government, my practice naturally focused upon representing United States companies

seeking to cope with United States import laws. Over the last decade, those United States companies have increasingly come to us to assist with their exports which have been ensnarled or damaged by unforeseeable or unacceptable customs procedures administered by our trading partners throughout the world. Many of these problems are ones which can now be understood, anticipated and remedied—because so many of our trading partners have adopted the GATT Harmonized Tariff and Customs Valuation Codes.

This testimony will focus upon another area in which United States companies can better compete by reform of a world-wide customs procedure: adoption of a surety-based system for control and early release of cargo, permitting release of goods to importers before completion of decision-making by the importing government agencies.

SUMMARY OF STATEMENT

In our experience, one of the greatest regulatory needs faced by United States companies seeking to compete in foreign markets is the need for a reliable system assuring the quick and timely release of goods into the commerce of the country of importation. The "quick release" of merchandise from the custody of all government agencies in the country of importation would allow United States exporters to meet customer demands and/or manufacturing and inventory schedules. It would also minimize the opportunities for damage, theft and corruption at the point of entry.

Our trading partners should have a strong interest in the establishment of a customs bond system: the timely release of goods is a major factor when multinational companies make investment decisions on where to establish manufacturing and distribution centers outside the United States. A system that accommodates the needs of just-in-time inventories for manufacturing and distribution is essential to the success of any investment promotion program.

The United States service industries also have a strong interest in establishment of customs bonding systems throughout the world. United States insurance and surety companies have the experience and capacity to serve this new marketplace. International negotiations in the services sector have created the possibility for our companies to compete; encouragement of new surety bond marketplaces will open new opportunities for United States companies in a field in which we are already more experienced than our foreign competitors.

The United States has a long and successful history of relying upon a surety bond system to satisfy law enforcement interests of the government and the trade facilitation interests of importers. We urge that the strongest possible efforts should be taken to encourage the adoption of surety-based control and release system by all of our trading partners.

In addition, we urge that the GATT process reach out more systematically to the business community by establishing a consultation and negotiation mechanism similar to the business facilitation measures adopted in the Free Trade Agreement of the Americas ("FTAA") negotiations. Long-term negotiations can be supplemented and enhanced with short-term objectives and accomplishments, focused upon identifying and targeting specific new approaches to facilitate trade.

THE PROBLEM

Prolonged detentions or interminable release times for imported cargo are perennial problems for United States exports to foreign nations. Foreign customs regimes typically insist upon holding goods until they are satisfied that all requirements are met, including the full range of customs valuation and tariff classification decisions, quantity and labeling verifications and health and safety standards. This inherent delay imperils the ability of United States exporters to meet contract or production deadlines, raises the costs of our products and undermines our basic competitive position in foreign markets.

In addition, prolonged periods of detention and inspection create an environment in which corruption can flourish. Delays in release, and the holding of goods in a detention facility or at the point of entry, render the goods vulnerable to theft and pilferage. The delays also subject the owners of the goods to solicitation of "gratuities" by government officials or third parties.

This is also a problem which challenges the competitiveness of our trading partners. A surety-based quick release system, permitting release of cargo prior to completion of the administrative process, will enhance the ability of the importing country to collect revenues, improve its enforcement efforts and create the efficiencies needed to compete in a world economy which increasingly invests in countries which can support just-in-time manufacturing and distribution systems

One Solution: Traditional Import Bonds

The United States and many of our major trading partners permit the posting of a bond written by a government-approved surety company in order to permit the immediate release of imported goods securing or guaranteeing all of the government obligations involved in the importations while the government agencies make their final determinations. This approach allows the importing country to make its final decision over a reasonable period of time, while permitting businesses to efficiently move goods into the foreign commerce. This system of customs surety bonds is approved by the Kyoto Convention and the Customs Valuation Code (Article XIII), but has gone largely unused.

The role of the traditional surety is to guarantee the importer's obligations to pay duties, fees and taxes on the importation, and to comply with all other government obligations. The traditional bond would secure liquidated damages—but not fines and penalties for misconduct—assessed for failure to comply with a broad range of government obligations enforced at the border (i.e., all of the health and safety measures). The government would continue to look to the importer—at least initially—to fulfill its obligations under the law, but upon default by the importer, would have recourse against the surety to collect its revenues and enforce its laws.

The traditional import bond is made available by the insurance or surety industry in the country of importation. Any country with a large pool of importers and an insurance or finance industry with access to information necessary to underwrite the risk of writing bonds for a particular company is capable of instituting a bond system very quickly and successfully.

In addition, a sound surety system relies upon a national legal and judicial system which permits seeking reimbursement from defaulting or bankrupt bond principals (i.e., importers), and administrative and judicial procedures which allow the surety to evaluate, accept or contest demands made upon it by customs authorities.

United States insurance and surety companies have long worked successfully in providing security for United States Customs obligations, and are likely to be able to participate in an expanded international marketplace for customs surety bonds. The efforts by the Administration to open the world's insurance markets to foreign investors provides an important platform for United States participation in an expanded use of the surety system to facilitate international trade.

Another Solution: Non-Traditional Bond

It is recognized that a traditional import bond may not be a viable alternative in many of the developing counties due to the lack of the necessary industry and legal structures described in the preceding section of this statement. Accordingly, we urge consideration of new, non-traditional approaches to bonding systems which could establish "quick release" systems to complement or substitute for a traditional bonding system. One such Non-traditional system is an exporter bond.

Under an exporter bond system, the importing country would agree to accept the bond written by a surety approved by that country and posted with it by the exporting company. The bond could also be signed by the importer. The bond could secure all (or designated) obligations to the importing country. It could provide recourse by the importing country against the exporter—with benefit of the surety obligations—while continuing its recourse against the importer. It would not alter the commercial terms of the transaction (e.g. title would pass wherever designated by the parties).

The Non-traditional concept has many advantages. It serves the traditional roles of import bonds: immediate release of goods while customs authorities take additional time to make proper decisions; enforcement of laws against the importer with reliable security available from the bonding company to both satisfy the government obligation and to have private industry continue to pursue the importer-of-record.

It has several added advantages over those available in a traditional bond program: it provides a unique assurance to the importing country that it has recourse against the exporter as well as the importer, and a better means to appreciate and evaluate the transaction value reported for the transaction. In related party transactions, validation of the transaction value is particularly significant—involvement of the exporter in the security arrangement could improve the possibility that related party transaction values will be more readily accepted by new signatories to the Customs Valuation Code. Further, the non-traditional exporter bond would foster a favorable environment for foreign investment to build industrial capacity within the importing country by establishing a more reliable and predictable customs procedure for multinational companies.

An exporting bond system could be established in developing countries much faster than a traditional bonding system. Since the bond principal is in the country of

exportation, the surety need not rely upon the country of importation for the pool of companies needing bonds, access to underwriting information, and legal and judicial systems in place to permit seeking reimbursement from the principal. The importing country would be required only to establish procedures to certify companies eligible to write bonds, and to provide reasonable administrative and judicial procedures for evaluating and contesting demands made on the bonds by the customs authorities.

SUMMARY AND CONCLUSION

One of the most significant regulatory impediments to United States competitiveness in worldwide product markets is the inability to have our exports released timely by foreign government agencies. We urge that this problem be attacked at the Ministerial Meetings by encouraging the adoption of surety-based quick release procedures. We believe that such procedures are also important to the United States insurance and surety industries, as they seek to compete in worldwide markets, and to our trading partners as well, as a necessary part of their efforts to compete for foreign investment and a larger role in global manufacturing and distribution.

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Mr. PORTMAN. Mr. Dawson.

STATEMENT OF RHETT DAWSON, PRESIDENT, INFORMATION TECHNOLOGY INDUSTRY COUNCIL

Mr. DAWSON. Mr. Chairman, I am Rhett Dawson, president of the Information Technology Industry Council, and I want to leave with you three thoughts today if I could. Information technology is one of the key sectors of the economy driving growth and increasing jobs. Second, we are delighted that we have been the recipient, the beneficiary of the past efforts to improve trade and eliminate barriers in information technology products and services. And we are happy that we have contributed to that success ourselves in our leadership.

The third point I want to leave with you today is that in Seattle we hope that the ministers will kick off something we call the Trade Framework for the Information Economy. My organization, the Information Technology Industry Council, represents the leading providers of information technology products and services, and we have been very deeply involved in the past trade agenda, and we have a big stake in this one as well. Our members had worldwide revenues of $440 billion in 1998, and we employ 1.2 million people in the United States.

A recent administration report put it this way: Over the past 4 years, information technologies industry output has contributed more than one-third to the growth of real output of the overall economy.

The ubiquity of the Internet is altering the way our economy operates. Growth in electronic commerce is astounding everyone, and it is not a sector of the economy that is reserved just for the so-called Internet companies. There is now recognition that to be competitive in any business, companies must understand how to effectively utilize information technology and the Internet.

Let me give you a perspective on what is called the connected economy. The 1999 estimate is that 200 million PCs, in homes and businesses, are going to be connected worldwide. The number is going to double in 2 years. And, we are on our way to 1 billion connected personal computers worldwide.

There is recognition that not only is this good for business, but it is also good for consumers. And it is also good for expressing where we are and what we stand for as a country. The information revolution makes freedom more attainable because it makes it more difficult for governments to control, censor and centralize the free flow of information.

American consumers and businesses have benefited greatly from past successes on opening up global trade and information technology goods. Let me give you two conspicuous examples. First, of great significance to our country and our industry was the negotiation of 1996 Information Technology Agreement. The ITA currently has 44 signatory countries and represents well over 90 percent of the world market for IT products, and we are hopeful that we can add China to that list when they become a member of the WTO. Full implementation of the ITA next year will bring tariffs on a broad range of information technology products to zero. Already the information technology agreement has stimulated over $500 billion in trade.

We also benefited from the 1998 WTO Ministerial agreement not to impose customs duties on electronic transmissions, the so-called duty-free cyberspace declaration. This gives us more breathing space in other countries to see the benefits of IT and better understand how electronic commerce is changing international business opportunities for our citizens.

The Seattle Ministerial offers an opportunity to pull all of these elements together, recognize the role of electronic commerce in promoting and facilitating international trade, and articulate what I called before, the Trade Framework for the Information Economy.

We propose that the WTO ministers when they meet in Seattle endorse this Trade Framework for the Information Economy and take on four commitments: First, to agree to continue the May 20, 1998, moratorium on customs duties on electronic commerce—that is duty-free cyberspace—and do that for the duration of the next round, and that applies to both the transmissions themselves and to their content.

Second, we want the ministers to reaffirm that current WTO obligations, rules, disciplines and commitments, namely the GATT, GATS and TRIPS agreement, are technology-neutral and apply to e-commerce. We do not need to invent new trade rules when existing rules may serve.

Third, we want ministers to commit to refrain from taking measures that would inhibit the growth of e-commerce and access to information technology. Forbearance is a very tough thing for governments to do, but that is what is needed and what we are seeking. But even when domestic measures in a country are taken, we think even when that happens, the measures should be such that they are the least trade-distortive as possible and subject to WTO principles.

Fourth, we want ministers to begin work on the trade framework, but here we ought to be explicit. We are not proposing that the WTO embark on negotiations on issues that are not yet ripe for international agreement. There is a lot of work to be done to broaden the understanding of the connected economy and how it is changing business, and they should also examine how current

trade rules apply and to assess whether new regimes are necessary to provide a strong underpinning for the global information economy.

A political commitment to forbear from taking measures that would inhibit access to or use of the Internet would provide the measure of confidence that all businesses seek from every part of the globe.

In the last several months, ITI has participated in seminars in Geneva to acquaint WTO representatives there from over 60 countries with the benefits of information technology and electronic commerce. We strongly encourage that the WTO work on e-commerce continue, and we are delighted to have an opportunity to have testified today. Thank you.

Mr. PORTMAN. Thank you, Mr. Dawson.

[The prepared statement follows:]

Statement of Rhett Dawson, President, Information Technology Industry Council

Thank you Mr. Chairman for inviting me to testify today on the upcoming World Trade Organization Ministerial and the agenda for the New Round.

In my brief comments today, I want to leave you with three thoughts:

• Information technology ("IT") is driving US economic growth, increasing productivity, creating better paying jobs and expanding opportunities for all Americans. A substantial part of the growth is due to strong exports of information technology products and services.

• The IT industry and consumers and businesses around the world have benefited from past successes to eliminate barriers to trade in IT products and services.

• In order to further extend the benefits of IT to developing countries in the 21st Century, we are putting forward an initiative we call the "Trade Framework for the Information Economy".

First, though, a few words about the association I represent. The Information Technology Industry Council represents the leading U.S. providers of information technology products and services (a membership list is attached). We advocate expanding economic growth through innovation and support free-market policies. Our members had worldwide revenue of more than $440 billion in 1998 and employ more than 1.2 million people in the United States.

I. INFORMATION TECHNOLOGY'S CONTRIBUTION TO US ECONOMIC GROWTH

As Federal Reserve Chairman Alan Greenspan recently told the Joint Economic Committee, "Something special has happened to the American economy[1]."

• Information technology jobs are high paying jobs, averaging $53,000 per year, compared to an average of $30,000 per year for all private sector jobs.[2]

• Technology has played a key role in restraining inflation. Price changes in IT-producing industries, compared with the rest of the economy, have resulted in a lowering of domestic inflation by one full percentage point per year during both 1996 and 1997.[3]

• Investment in computers and information technologies in the 1990s by every sector of our economy—from carmakers to farmers—has cut production costs and boosted output. The result has been to hold prices down and increase American competitiveness internationally.

• IT contribution to real domestic economic growth continues to increase. The Commerce Department's recent report, *The Emerging Digital Economy II*, put it this way: "Over the past four years, IT industries' output has contributed more than one-third to the growth of real output for the overall economy."[4]

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[1] Testimony of Federal Reserve Chairman Alan Greenspan before the Joint Economic Committee, June 14, 1999.

[2] *The Emerging Digital Economy II,* US Department of Commerce, June 1999, page 39

[3] Ibid., page 18

[4] Ibid., page 19

• Again, quoting Chairman Greenspan, "The newest innovations, which we label information technologies, have begun to alter the manner in which we do business and create value, often in ways not readily foreseeable even five years ago."[5]

The increasing ubiquity of the internet is promising to significantly alter the way our economy operates. Growth in electronic commerce is astounding—and this is not a specialized sector of the economy reserved for the so-called "internet companies." There is now recognition that to be competitive in any business, companies must understand how to effectively utilize information technology and the Internet.

Some industry analysts estimate that e-commerce will generate more than $3 trillion in sales by 2003. This is due in large part to the United State's world leadership in the information technology sector as well as policies that promote minimal regulation and free trade.

II. IT Has Benefited from Past Successes

American consumers and business have benefited greatly from past successes to open global trade in information technology goods, establish ground rules for competitive telecommunications services, intellectual property protection, and the moratorium on customs duties on electronic transmissions. ITI and its member companies have been in the vanguard of these and other trade policies and intend to continue our leadership role.

Let me give you two conspicuous examples:

The ITA

Of great significance to our industry was negotiation of the 1996 Information Technology Agreement. The ITA currently has 44 signatory countries, representing well over 90% of the world market for IT products. We are hopeful that we can add China to the list of signatories when China becomes a member of the WTO.

Full implementation of the ITA next year among the signatories will bring tariffs on a broad range of information technology products to zero. Already, the ITA has stimulated over $500 billion in trade, and facilitated access to state-of-the-art information technology in both developed and developing countries.

In addition to eliminating duties on IT products, the ITA has a built-in review mechanism that ensures it will be expanded over time to include other countries and products. This is a critical point for our industry. In just the past three years we have seen the convergence of computing, telecommunications and consumer electronics technologies, and the creation of a range of fascinating new products and applications. The ITA must be updated to include these new products. In addition, there is opportunity to further open trade at the level of parts, components and other inputs.

We strongly advocate completion of the ITA II negotiations to expand product coverage and establishment of an aggressive work program to address trade issues arising from convergence and non-tariff barriers, particularly technical standards. In that respect we have been especially active in advancing an agenda to eliminate duplicative testing and certification requirements for IT products in foreign markets.

Trade and Electronic Commerce.

Our industry benefited from the 1998 WTO Ministerial agreement not to impose customs duties on electronic transmissions, the so-called "Duty-free Cyberspace Declaration." This action and the ensuing year-long work program have given countries "breathing space" to examine the benefits of IT, better understand how electronic commerce is changing international trade and business opportunities for their citizens, and think through appropriate next steps.

Some have said that e-commerce is simply another form of trade. This is true, but that description does not go far enough. Information technology makes e-commerce possible, transforms old ways of doing business (including entire industries), and creates new economic opportunities. People all over the world are "connected" with one another like never before.

Too often we have a tendency to think about and address each WTO agreement or work program in isolation from all of the others—the Information Technology Agreement separate from the Basic Telecom Agreement; the Agreement on Trade-Related Aspects of Intellectual Property separate from the Agreement on Technical Barriers to Trade; and so on. As we bore down even deeper into the details of each individual subject, we lose sight of the interrelationships between and among the agreements. For a cross-cutting industry like information technology, this approach

[5] Federal Reserve Chairman Alan Greenspan, May 6, 1999.

often forces us to emphasize certain elements over others. We risk losing focus on the broader goal.

The Seattle Ministerial offers an opportunity to pull all of these elements together, recognize the role of electronic commerce in promoting and facilitating international trade, and articulate what we call the "Trade Framework for the Information Economy."

III. Objectives for the Seattle Ministerial

We propose that the WTO Ministers, when they meet in Seattle, set forth the "Trade Framework for the Information Economy" through four related commitments. Taken together, these commitments provide a transparent, predictable, and technology-neutral international trade environment that will foster global economic growth and development.

These commitments are political only, and by that I mean that they would not be legally binding or enforceable. They would reflect the "best efforts" of trade ministers to keep electronic commerce "barrier-free."

The first commitment is to agree to continue the May 20, 1998 Moratorium on Customs Duties on Electronic Commerce (for at least the duration of the New Round) and clarify that the exemption from tariffs applies both to the transmissions themselves and to their contents.

Second, we want the Ministers to reaffirm that current WTO obligations, rules, disciplines and commitments (namely the GATT, GATS and TRIPS agreements) are technology-neutral and apply to e-commerce. We don't need to invent new trade rules when using the existing rules may serve us better.

Third, we want Ministers to commit to refrain from taking measures that could inhibit the growth of e-commerce and access to IT. Forbearance is a tough thing for governments to do, but that is what is needed and what we are seeking. However, should domestic measures be deemed necessary, even then the measures should be the "least trade distortive" as possible and subject to WTO principles (in particular, national treatment, non-discrimination, transparency, notification, review and consultation).

Fourth, we want Ministers to initiate the Trade Framework for the Information Economy. Let me be explicit: we are not proposing that the WTO embark on negotiations on issues that are not yet ripe for international agreement. But, there is much work to be done to broaden understanding of how electronic commerce is changing global business, to examine how current trade rules apply, and to assess whether new rules are necessary to provide a strong underpinning for the global information economy. The Seattle Ministerial offers an opportunity to initiate work on these critical issues.

Let me underscore the importance we attach to a political commitment by ministers to refrain from taking measures that restrict or inhibit electronic commerce. In order for all countries—both developed and developing—to reap the benefits of the information age, electronic commerce must remain as unimcumbered as possible from regulation and trade barriers.

One of the main reasons electronic commerce has grown so quickly is because the internet has not been singled out for regulation. We propose Ministers commit themselves to resisting imposing burdensome regulations that will inhibit the growth of electronic commerce and instead, when measures must be taken, make them the least restrictive.

A political commitment to "forebear" from taking measures that would inhibit access to or use of the Internet would provide the measure of certainty that businesses all around the world seek. And it would set into motion a dialogue among countries on the trade-distortive effects of potential measures—again, to the benefit of all WTO members.

In the last several months, ITI and its member companies have conducted four seminars in Geneva to acquaint WTO representatives from over 60 countries with the benefits of information technology and electronic commerce. We strongly encourage that the WTO's work on e-commerce include substantive dialogue with industry.

ITI stands ready to provide whatever assistance we can to ensure that the Seattle Ministerial and the ensuing negotiations result in a transparent, predictable and technology-neutral trade environment that will foster global economic growth and development. This would be a "win" for all and another reason to celebrate the benefits of information technology as we reach the start of the 21st Century.

Thank you Mr. Chairman and I would be happy to answer any questions you might have.

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Mr. PORTMAN. Director Jones.

STATEMENT OF SHELDON R. JONES, DIRECTOR, ARIZONA DEPARTMENT OF AGRICULTURE, PHOENIX, ARIZONA

Mr. JONES. I am Sheldon Jones, director of the State Department of Agriculture for the State of Arizona in Phoenix. I am grateful to you and to the Subcommittee as a whole for giving me this opportunity to speak on behalf of the State of Arizona on why it is crucial that the United States continue its ambitious trade agenda.

Now more than ever it is imperative that the United States negotiate and enforce agreements worldwide which will create open and fair markets for U.S. products and services. This process of engagement will ensure our continued growth and standard of living into the 21st century.

Allow me to begin by stating that Arizona fully supports legislation providing the administration fast track trade authority. An export-dependent industry, U.S. agriculture must be able to compete in foreign markets on a level playingfield. Without authority to negotiate trade agreements, the administration cannot fully assure agriculture a place at the table in the international marketplace.

Comprehensive negotiating authority is needed to address high tariffs, trade-distorting subsidies and other restrictive trade practices. Fast track is also needed to pursue promising new opportunities for market-opening trade agreements in Latin America, Asia and elsewhere. Passing fast track legislation will provide the administration with the necessary authority to assure the U.S. competitiveness in foreign markets does not continue to suffer.

The United States has 4 percent of the world's population and controls 22 percent of the world's wealth. In the next 15 years, the developing countries in both Latin America and Asia are expected to grow three times as fast as the United States, Europe and Japan. With this information, it is clear that if 4 percent of the world's population is to maintain 22 percent of the world's wealth and create more wealth, we must open up the world's fastest-growing markets to U.S. products and services.

The World Trade Organization today is the result of 50 years of American leadership and the creation of an international trading system. This system is designed with the primary goal of tearing down foreign trade barriers and promoting a singular rule of law in the arena of international trade. The World Trade Organization has worked to cut tariffs and quotas on farm and ranch products worldwide. However, many will agree there is much more to be accomplished. I applaud both Ambassadors Barshefsky and Esserman for their commitment to address the concerns of the U.S. agriculture industry in its recent circulated objectives for the agriculture negotiations.

While I fully support the four objectives to which the USTR has committed its attention, I believe the trade issues facing agriculture in America extend deeper and deserve further specific attention. Today, I will touch on five issues which the State of Arizona views as critical to the success of any international trade system for agricultural products.

First, the State of Arizona supports the unilateral reduction of all foreign subsidies and tariffs on all agricultural products. Ample time has passed since WTO initiated agricultural trade reform, and it shouldn't be unrealistic to expect the WTO member countries to have significantly reduced agricultural dependence on government support. Arizona recognizes the prerogative of sovereign nations to support farmers and ranchers if they so choose; however, it is important that the WTO address the distortions these measures of support have caused to global production and trade.

The 1996 farm bill clearly established the expectation of this government that the United States agricultural industries would learn to compete internationally with minimal subsidization in the field and in the marketplace. We, as a whole, recognized the need to redirect this sector of our economy to a self-sufficient, market-driven industry. The days of heavy governmental assistance for farming and ranching in this country were over. This, as we all know, is just not the case throughout the rest of the world.

Without the elimination of unreasonable government field and market subsidization of WTO member countries' agricultural industries, U.S. farmers and ranchers cannot compete.

Equally important is the issue of tariffs placed on agricultural products. The State of Arizona supports the reciprocal reduction of tariffs in WTO member countries on U.S. agriculture products.

Second, the State of Arizona supports the implementation of rules for the trade of perishable and seasonal commodities. In fiscal year 1997, Arizona agricultural operations raising everything from artichokes to cotton lint, corn to honey, to tomatoes and watermelon generated nearly $2.2 billion in cash receipts from agriculture marketings. While Arizona produces a variety of crops, a great variety of commodities produced in my State are seasonal and perishable in nature. Presently no specific rules exist to deal with the trade of perishable and seasonal commodities. When asked if specific rules for perishable commodities were needed at the Agriculture Forum immediately preceding the Free Trade Area of the Americas Business Forum in Belo Horizonte, the head of the Uruguay round agriculture negotiating team agreed that the promulgation of such rules would be both helpful and advisable for all WTO member countries.

Third, the State of Arizona supports the implementation of a workable and meaningful dispute resolution mechanism. Presently, Arizona believes the avenues for dispute resolution within the WTO inadequately suit the needs of perishable and seasonal commodities. By their very nature, these commodities require timely solutions to ensure that perishable shipments are not lost to bureaucratic or political mechanisms.

In the new round of negotiations, Arizona recommends that the U.S. solicit clarification of the dispute settlement process with a strong enforcement mechanism, limited settlement appeals, and strict compliance deadlines.

Fourth, the State of Arizona supports the Uruguay round agreement on sanitary and phytosanitary measures and does not support opening them for discussion. Despite the adoption of the Uruguay round agreement on SPS issues, a number of WTO member countries continue to impose sanitary and phytosanitary measures

which are questionable at best in nature and sincerely lack a basis in sound science. These SPS measures create tremendous barriers to market access abroad for U.S. agricultural products.

While some WTO member countries wish to reopen he SPS agreement for amendment, the State of Arizona believes that the WTO's strict enforcement and thorough implementation of the current SPS agreement is absolutely essential to the success of any international trade system.

Fifth, the State of Arizona supports transparency and science in the genetically modified organism approval process and market access for GMOs. I support the administration's recently circulated position to the WTO entitled "Measures Affecting Trade in Agricultural Biotechnology Products." as a representative of a $6.3 billion industry in Arizona, I am tremendously concerned that the European Union's approval system for biotechnology products is a process rooted in hysteria and lacking transparency.

The State of Arizona continues to advocate for global market access for genetically modified organisms in all WTO countries. Further, we believe it is imperative that any process developed for approval of GMOs is fully transparent to all parties.

In summary, the State of Arizona advocates for and urges you to support the unilateral reduction of foreign subsidies and tariffs, implementation of rules for the trade of perishable and seasonal commodities, clarification of existing dispute resolution mechanisms, adherence by all WTO member countries to the Uruguay round Agreement on Sanitary and Phytosanitary Measures, and transparent market access for genetically modified organisms.

On behalf of the State of Arizona and Governor Hull and the agriculture industry, I thank you for this opportunity.

Chairman CRANE [presiding]. Thank you, Mr. Jones.

[The prepared statement and attachments follow:]

Statement of Sheldon R. Jones, Director, Arizona Department of Agriculture, Phoenix, Arizona

Thank you, Mr. Chairman, for inviting my testimony on the importance of strong U.S. negotiation objectives for the World Trade Organization Seattle Ministerial Meeting in November. I am grateful to you and to the Subcommittee as a whole for giving me this opportunity to speak on behalf of the State of Arizona on why it is crucial that the U.S. continue its ambitious trade agenda. Now, more than ever, it is imperative that the U.S. negotiate and enforce agreements worldwide which will create open and fair markets for U.S. products and services.

This process of engagement will insure our continued growth and standard of living into the 21st Century. My testimony will touch on why an aggressive trade policy to open markets is important to the agricultural industries of Arizona's economy.

Allow me to begin by stating Arizona fully supports legislation providing the Administration Fast Track trade authority. An export dependent industry, U.S. agriculture must be able to compete in foreign markets on a level playing field. Without authority to negotiate trade agreements, the Administration cannot fully assure agriculture a place at the table in the international market place.

Comprehensive negotiating authority is needed to address high tariffs, trade-distorting subsidies, and other restrictive trade practices through further World Trade Organization (WTO) negotiations. Negotiating authority is also needed to pursue promising new opportunities for market opening trade agreements in Latin America, Asia and elsewhere.

Equally important to nurturing existing trade alliances, is the commitment to ensure that trade liberalization continues so the agriculture industry can compete fairly in the global market place. As price supports continue to be phased out under the 1996 Farm Bill, international trade has become increasingly important to the stability of agriculture. Fast Track gives the U.S. the tools necessary to continue to

play a role in the trade liberalization process and the opening of overseas markets to quality agricultural products.

Passing Fast Track legislation will provide the Administration with the necessary authority to assure the U.S. competitiveness in foreign markets does not continue to suffer. The United States has 4% of the world's population and controls 22% of the world's wealth. In the next fifteen years, the developing countries in both Latin America and Asia are expected to grow three times as fast as the United States, Europe and Japan. With this information it is clear to see that if 4% of the world's population wants to maintain 22% of the world's wealth, or grow more control, we must open up the world's fastest growing markets to U.S. products and services.

Recently, the Arizona Department of Agriculture had the opportunity to participate in the formation of a coalition, known now as NFACT, with the departments of agriculture from New Mexico, Florida, California, and Texas. NFACT represents over 23% of total U.S. agricultural cash receipts, as well as 25% of the entire U.S. Congressional Delegation. Agricultural exports from the states represented by NFACT in 1997 alone were estimated to be over $5 billion. Among the positions these five states gained consensus is the issue of international trade. While we represent varied constituencies, our concerns with fundamental agricultural trade issues are similar. My comments today will reflect many of the concerns the NFACT coalition has expressed to the Office of the United States Trade Representative, the United States Department of Agriculture, and to Members of Congress in recent visits.

Arizona already benefits from a number of agricultural trade agreements. Since Arizona is the only documented fruit fly-free state in the United States, our citrus is in high demand throughout the world, especially Southeast Asia, China and Japan. With more than 25% of Arizona's farm receipts coming from cattle, our state benefitted from the significant reduction of beef export and slaughter tariffs by a number of countries following agreements reached at the Uruguay Round, including Korea, Japan, Mexico, and the European Union.

According to the Arizona Department of Commerce, economists agree that Arizona's overall economy will remain strong throughout 1999, with job creation heading the list of positive indicators. Exports of Arizona based companies topped $11.4 billion in 1998, a decline from the record-breaking total of $13.8 billion in 1997, but still the second most successful year in the state's history. Arizona exports topped $2.8 billion for the first quarter of 1999, down 3.7% compared to the first quarter of 1998. This decline has been attributed to the effect of the "Asian flu" on Arizona-based companies. However, Arizona exports to North American Free Trade Agreement (NAFTA) member countries have increased dramatically since the negotiation of the Agreement.

Western Blue Chip Economic Forecast (April), a consensus forecast of economists from 10 Western states, ranked Arizona #1 in the nation for nonagricultural job growth in 1998. With a 4.7% increase, Arizona surpassed Nevada which had held the top position for the past four years.

However, even with the tremendous job growth in urban populations of Arizona, my state's rural and chiefly agricultural communities are feeling the pinch. With sagging prices, labor shortages, increased costs and diminishing abilities to compete in domestic channels of trade, Arizona's farmers and ranchers are now, more than ever, looking to the global marketplace to earn their living. My testimony today will provide you with valuable insight to the concerns of Arizona's farmers and ranchers when faced with the challenge of gaining foreign market access.

The World Trade Organization today is the result of fifty years of American leadership in the creation of an international trading system. This system was designed with the primary goal of tearing down foreign trade barriers and promoting a singular rule of law in the arena of international trade.

The WTO has worked to cut tariffs and quotas on farm and ranch products worldwide. However, many will agree there is much more to be accomplished. I applaud both Ambassadors Barshefsky and Esserman for their commitment to address the concerns of the U.S. agriculture industry in its recently circulated "Objectives for the Agriculture Negotiations." While I fully support the four objectives to which the USTR has committed its attention, I believe the trade issues facing agriculture in America extend much deeper and deserve further specific attention.

Today I will touch on five issues which the State of Arizona views as critical to the success of any international trade system for agricultural products. Those issues are the Reduction of Foreign Subsidies and Tariffs, Implementation of Rules for Perishable and Seasonal Commodities, Dispute Resolution Mechanisms, Adherence to Sanitary and Phytosanitary Agreement, and Transparent Market Access for Genetically Modified Organisms.

• **The State of Arizona supports the unilateral reduction of all foreign subsidies and tariffs on all agricultural products.**

Ample time has passed since WTO initiated agricultural trade reform and it should not be unrealistic to expect the WTO member countries to have significantly reduced agricultural dependence on government support. Arizona recognizes the prerogative of sovereign nations to support farmers and ranchers if they so choose. However, it is important that the WTO address the distortions these measures of support have caused to production and trade.

The 1996 Farm Bill clearly established the expectation of this government that U.S. agricultural industries would learn to compete internationally without subsidization, in the field or the marketplace, or face going out of business. We, as a whole, recognized the need to redirect this sector of our economy to a self-sufficient market-driven industry. The days of heavy government assistance for farming and ranching in this country were over. This, as we all know, just isn't the case throughout the rest of the world.

Without the elimination of government field and market subsidization of WTO member countries' agricultural industries, U.S. farmers and ranchers **CANNOT COMPETE.**

Equally important is the issue of tariffs placed on agricultural products. The State of Arizona supports the reciprocal reduction of tariffs in WTO member countries on U.S. agricultural products.

The tariffs on fruits and vegetables entering the United States, for example, are among the lowest in the world. Legitimately, the agricultural producers of Arizona believe that reciprocity should be granted and all such tariffs in WTO member countries be uniformly reduced. It also warrants clarification that true reductions in tariffs should be thorough in nature. That is, not only should the bound rate be addressed when reductions are made but, rather, the currently applied rate should be addressed simultaneously. If the applied rate is not addressed, often times the tariff reductions are meaningless and I applaud the USTR for recognizing the need to reduce the disparity between the applied and bound tariff rates.

• **The State of Arizona supports the implementation of rules for the trade of perishable and seasonal commodities.**

In fiscal year 1997, Arizona agricultural operations, raising everything from artichokes to cotton lint, corn to honey, to tomatoes and watermelon, generated nearly $2.2 billion in cash receipts from agricultural marketings. While Arizona produces a variety of crops, a great number of the commodities produced in my state are seasonal and perishable in nature. Presently, no specific rules exist to deal with the trade of perishable and seasonal commodities. When asked if specific rules for perishable commodities were needed at the Ag Forum immediately preceding the Free Trade Area of the Americas Business Forum in Belo Horizonte, the head of the Uruguay Round agriculture negotiating team agreed that the promulgation of such rules would be both helpful and advisable for all WTO member countries.

Because Arizona and its NFACT counterparts produce a tremendous number of fruits and vegetable as well as live animal agriculture, I urge the USTR to develop immediately trade rules for these valuable perishable and seasonal commodities. Failing to do so guarantees the producers of non-traditional crops in my state as well as those in other "non-Farm Belt" states are being left behind.

• **The State of Arizona supports the implementation of a workable and meaningful dispute resolution mechanism.**

Presently, Arizona believes the avenues for dispute resolution within the WTO inadequately suit the needs of perishable and seasonal commodities. By their very nature, these commodities require timely solutions to insure that perishable shipments are not lost to bureaucratic or political mechanisms. In the new round of negotiations, Arizona recommends the U.S. solicit clarification of the dispute settlement process with a strong enforcement mechanism, limited settlement appeals and strict compliance deadlines.

• **The State of Arizona supports the Uruguay Round Agreement on Sanitary and Phytosanitary Measures.**

Despite the adoption of the Uruguay Round Agreement on Sanitary and Phytosanitary Measures (SPS), a number of WTO member countries continue to impose sanitary and phytosanitary measures which are questionable, at best, in nature and sincerely lack a basis in sound science. These SPS measures create tremendous barriers to market access abroad for U.S. agricultural products.

While some WTO member countries wish to reopen the SPS Agreement for amendment, the State of Arizona believes the WTO's strict enforcement and thorough implementation of the SPS Agreement and adherence to these standards by all member countries is absolutely essential to the success of any international trade system.

With an increased emphasis on international trade, Arizona, and its border state counterparts, has experienced significant increases in detections of plant and animal pests and diseases at our borders. These detections will have devastating economic impacts to U.S. agricultural producers if left unmanaged by the U.S. and trade alliances like the WTO. Unfortunately, U.S. Customs, the United States Department of Agriculture and the U.S. Food and Drug Administration have not been able to provide adequate border inspections and surveillance efforts due to budgetary and staffing constraints leaving the enforcement of federal inspections in large part to State governments.

I urge the U.S. negotiators to address the SPS Agreement in their efforts to negotiate the objective of implementation. Focus must be made on the enforcement of legitimate science-based sanitary and phytosanitary measures and not based on the non-tariff trade barriers promulgated by other nations.

• **The State of Arizona supports transparency and science in genetically modified organism approval process and market access for genetically modified organisms**

I support the Administration's recently circulated position to the WTO entitled "Measures Affecting Trade in Agricultural Biotechnology Products." As a representative of a $6.3 billion dollar industry in Arizona, I am tremendously concerned that the European Union's approval system for biotechnology products is a process rooted in hysteria and lacking transparency.

The State of Arizona continues to advocate for global market access for genetically modified organisms in all WTO countries. Further, we believe it is imperative that any process developed for the approval of GMOs is fully transparent to all parties.

In summary, the State of Arizona advocates for and urges you to support the unilateral reduction of foreign subsidies and tariffs; implementation of rules for the trade of perishable and seasonal commodities; clarification of existing dispute resolutions mechanisms; adherence by all WTO member countries to the Uruguay Round Agreement on Sanitary and Phytosanitary Measures; and transparent market access for genetically modified organisms.

On behalf of the State of Arizona, the Arizona Department of Agriculture and the multi-billion dollar industries it supports, I want to thank you again for providing our local government the opportunity to share with you our concerns for the upcoming Ministerial meeting in Seattle.

July 17, 1999

The Honorable Charlene Barshevsky
U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C.

Dear Ambassador Barshevsky:

Agricultural representatives of 44 states and provinces from the three NAFTA countries met at the States-Provinces Agricultural Accord in Salt Lake City, July 15–17, 1999. A key objective was to develop common positions for the upcoming WTO negotiations that will provide increased potential for the profitability and long-term viability of our producers.

Our countries must adopt a negotiating strategy that makes agriculture the highest priority for the upcoming WTO round. Negotiating strategies that leave the difficult agricultural issues unresolved will be detrimental to the future growth and prosperity of our agricultural industries in all three countries. Any WTO agreement that does not include substantially improved rules in agricultural trade will be judged a massive failure by our farmers and ranchers.

We urge you to utilize the following recommendations as you work to finalize your negotiating strategy.

Sanitary/Phytosanitary Issues: The Sanitary/Phytosanitary (SPS) chapter should remain intact and closed to further negotiation. However, the process supporting the SPS chapter must be strengthened and effectively enforced in order to ensure WTO member compliance. Improvements in efficiency of the WTO Dispute Settlement Mechanism are required in order to ensure these issues are resolved and enforced in a timely manner. Too often, scientifically unfounded SPS and technical issues have been used to deny market access for our respective nations' agricultural products.

Perishable and Seasonal Products: We urge the creation of specific rules and processes for trade in perishable and seasonal products that address the unique nature of these products.

Export Subsidies: Continued excessive use of export subsidies by the European Union (EU) erodes the competitiveness and profitability of our agricultural industries. Therefore, we urge you to work towards the elimination of all direct export

subsidies and pursue the substantive and progressive reduction of trade-and production-distorting supports worldwide. Current inequities in supports provided by the EU and other countries must be addressed through establishment of rules that will lead to faster downward adjustment by these countries.

Food Safety: Food safety is of primary concern to the agricultural industries and consumers of the three countries. With this in mind, we urge intensified efforts to educate and inform consumers and regulators on the scientifically-based issues surrounding biotechnology. International regulatory measures must be based on sound scientific principles and approval procedures for genetically enhanced products must be effective in ensuring safety. These procedures must not be used as a trade barrier.

Dispute Resolution Measures: Effective safeguard mechanisms and rapid dispute resolution measures that do not require expensive litigation are needed. This will provide another method to current anti-dumping laws which include, in part, "cost of production" and "market price" tests.

Harmonization of Standards: The international harmonization of pesticide and animal drug usage and standards must also be a priority. We must work to harmonize to the highest possible standards.

The issues outlined above are paramount to the continued viability of our agricultural industries. As you finalize preparations for the WTO negotiations, it is critical that you extend every effort to improve our trading position and create an environment that affords increased market opportunities for our producers.

Your immediate attention to these issues is requested and we look forward to your response.

Sincerely,
Cary Peterson,
President,
National Association of State Departments of Agriculture
United States of America

Jaime Rodriquez Lopez,
President,
Mexican Association of State Departments of Agriculture Development
Mexico

Eric Upshall,
Chair,
Provincial Ministers of Canada
Canada

July 17, 1999

The Honorable Dan Glickman
Secretary
U.S. Department of Agriculture
Washington, D.C.

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Sincerely,

Cary Peterson Jaime Rodriguez Lopez
President President
National Association of State Departments of Agriculture
United States of America

Jaime Rodriquez Lopez,
President,
Mexican Association of State Departments of Agriculture Development
Mexico

Eric Upshall
Chair
Provincial Ministers of Canada
Canada

—

Chairman CRANE. Your testimony basically supports all the positions of our U.S. Trade Representative and I am wondering if there is any area where your perspective differs from the administration's views on these issues?

Mr. JONES. Mr. Chairman, we have worked real hard with Ambassador Barshefsky and Sue Esserman specifically on the seasonal and perishable commodities. And uniquely enough we do see eye to eye on a lot of those issues, and we appreciate their support.

Chairman CRANE. Well, I think you have profound insights down there, especially based upon your legislative liaison behind you, Nicole Waldron, who used to be an intern in my office. And she and I are alumni of the same little college up in Michigan, Hillsdale, so you are privileged, Mr. Jones, to have her on your staff.

I want to ask Mr. Lake a question. What does AFLAC stand for?

Mr. LAKE. American Family Life Assurance Co. of Columbus.

Chairman CRANE. Assurance.

Mr. LAKE. Yes.

Chairman CRANE. Not insurance.

Mr. LAKE. Yes, that is correct.

Chairman CRANE. Because I have seen it American Family Life "Insurance" Co., which would be AFLIC, and that is why I was curious, because my staff does not have the answer to why it is called AFLAC sometimes and I have never see it as AFLIC.

Mr. LAKE. Right.

Chairman CRANE. I just want to make sure that you are using the right acronym there.

At any rate, I congratulate you on the comprehensive nature of your proposal for achieving the regulatory reform in the service negotiations and also for working to build support for it among European companies. Has USTR been receptive to your approach?

Mr. LAKE. Yes. I think they are studying the paper that was provided to them, and we are working as an industry—the associations that are listed in our submission are working very closely with the USTR. We hope to move forward on that basis.

Chairman CRANE. And, Mr. Smith, past attempts to bring labor issues into the WTO have met with virulent opposition from less developed countries who believe it will establish a pretext for protectionist trade restrictions. Is there a way to assure them otherwise so that the Seattle Ministerial doesn't become a standoff between the U.S. and LDCs on labor issues like what happened in Singapore?

Mr. SMITH. Mr. Crane, I don't know the answer to that. The question of labor rights, we believe, is one where both the developed and the developing world have common cause; that the absence of robust democratic civil society institutions, including trade unions, is part of what sets the stage for some of the disasters like we saw in East Asia over the last years, the absence of a society that could function at all levels.

It is also important, I think—and we have an important job to do, all of us, in talking to our brothers and sisters in the developing world—it is important to make the point that in the absence of widely agreed upon and widely adhered-to standards, we do encourage a race to the bottom. We do pit precisely those countries who can least afford it, whose people can least afford it, who most need standards which begin to harmonize incomes upward and deal with income inequality—those countries do not need to be fighting with each other, and fighting in the way that is most difficult for their citizens. Pitting the poor people of eastern Africa against the poor people of Southeast Asia is a crazy way for the world to pursue international trade.

Chairman CRANE. What is the AFL–CIO's key objective in the Seattle Ministerial?

Mr. SMITH. Our key objective is to make substantial progress on the question of incorporating enforceable labor rights and other social standards in the WTO regime. The most important step in Seattle would be to begin down that road in the creation of a working group toward that end.

Chairman CRANE. Mr. Levin.

Mr. LEVIN. It is the end of the day, but in some respects I think we have touched on one of the more important issues in your an-

swer, Mr. Smith, to Chairman Crane. I hope everybody will hear. You say that we meaningfully need to begin to go down the road. I think people should understand no one is expecting overnight transformations. One is hopeful, and one can expect a structure that assures meaningful movement.

I kind of chuckled, Mr. Dawson, when you described so effectively what is at stake with information technology. There will be controversy about some of these issues. An earlier panelist suggested we shy away from controversy at Seattle. Lord, there has never been a meaningful trade negotiation that was not embedded in controversy.

It is going to be difficult. On environmental issues we face a real struggle over the Kyoto agreement as to the extent to which evolving economies participate in the evolution—not the revolution, the evolution of environmental standards. And until that is resolved, I don't think the Kyoto agreement will ever get the votes in the Senate.

I think the same is true of labor market issues and with information technology. You are cautious, you do not want us to push issues before they are ripe, but I take it you want us to press issues to help make them become ripe. I think we need to do exactly that at Seattle to set the stage.

You know, the issue of taxation in terms of the Internet is a controversial issue internally within this country, and you can just imagine what is going to happen as we confront it internationally. And it will be controversial, but we in this country have certainly faith in the evolution of free markets, and I think they should include all kinds of market, capital markets and labor markets, and I think increasingly that will have to be true of information technology.

And I think we will expect some resistance, right?

Mr. DAWSON. I did not mean to paint a picture that was without controversy.

Mr. LEVIN. I am agreeing. I think it will be controversial.

Mr. DAWSON. We are not cattle or bananas yet, though, I must admit.

Mr. LEVIN. No, but it could happen quickly.

Mr. DAWSON. Yes.

Mr. LEVIN. I am not sure of that analogy, but we are having immense trouble with bananas and cattle, and I suspect the notion we had trouble at Singapore, so do not even unfold our tent, that is nonsense in the labor market issues. And the same is going to be true of the burgeoning information technology issues. They are doomed to be controversial because they are meaningful, right? And we have to figure out how far we want to go at Seattle. Expect resistance. But we have in mind the evolution of markets in terms of information technology.

But I need to go and leave and see if I can get a ticket for my grandson on the Internet so I can take him back to Michigan. Through a travel agency.

But anyway, Mr. Chairman, this has been a very useful hearing, and I think this last panel has really raised some vital issues, and we need to be in much further discussion.

Mr. Pepper, while he was here, talked to Mr. Smith about this group within ACTPN chaired by Mr. Sweeney, Mr. Donahue, and we wish them the best.

Mr. SMITH. Controversy is never very far away, but we are working at it hard.

Mr. LEVIN. Good luck.

Chairman CRANE. Could I add one quickie to some of Sandy's inquiries? Is there a chance that our trading partners will seek to define electronic commerce as a service rather than a good in order to escape the more rigorous guidelines and requirements?

Mr. DAWSON. Yes. We are trying to lead them down a track that is difficult because we are describing it as being neither. Actually it is something quite different. And so that in and of itself is a substantial part of our educational effort, that things can be a medium, a product, a good at one point, and they can be converted in commerce to a service. And it is a more exotic existence than what we are used to in this kind of binary world of goods and services.

Chairman CRANE. Well, there are more rigorous disciplines that apply to goods. That is why I was curious.

Well, gentlemen, I want to thank you all for your participation. And as I told an earlier panel, please keep the channels of communication going, because this is an ongoing battle, and it is not even going to be totally resolved in Seattle come the end of November or early December. But at least, God willing, and thanks to your input, we will make progress. Thank you all.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

AD HOC WTO ROUND PROCESSED FOOD COALITION
WASHINGTON, DC 20006
August 4, 1999

A.L. Singletion, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: WTO SEATTLE MINISTERIAL

Dear Mr. Singleton:

On behalf of the Ad Hoc WTO Round Processed Food Coalition, the following July 22, 1999 letter was sent to Ambassador Charlene Barshefsky relevant to the Seattle Ministerial and forthcoming multilateral trade negotiations. This letter is provided the Subcommittee on Trade in response to its July 8, 1999 request for private sector views relevant to the captioned subject.

AD HOC WTO ROUND PROCESSED FOOD COALITION
WASHINGTON, DC 20006
July 22, 1999

Honorable Charlene Barshefsky
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Subject: Ad Hoc WTO Round Processed Food Coalition/ Recommendations for the Seattle Ministerial and New Round of WTO Negotiations.

Dear Ambassador Barshefsky:

We, the undersigned trade associations and food companies, are writing to underscore the priority that should be given at the Seattle Ministerial and forthcoming

World Trade Organization ("WTO") negotiations to liberalizing trade in the processed food sector. Further, this letter provides specific recommendations with respect to the scope, structure, and negotiating modalities that should be pursued in this important export sector to U.S. farmers, workers, and the American economy overall.

TRADE LIBERALIZATION IN THE FOOD SECTOR.

The U.S. food processing sector recognizes that the major achievement of the Uruguay Round was to introduce fundamental trade disciplines into the agriculture and food processing area. These new disciplines included the conversion of non-tariff measures to tariffs, the binding of tariffs at maximum levels, and rules on the use of sanitary and phytosanitary (SPS) measures.

However, only minimal improvements in market access were actually achieved in the Uruguay Round. In some cases, conversion of non-tariff measures to tariffs actually increased the degree of protection provided to processed foods. The complex tariff formulas adopted by some countries, particularly the nations of the European Union, impose high, variable tariffs based on standard "recipes" that may bear little resemblance to the actual composition of a processed food product.

Despite the existence of significant market access barriers, world trade in processed food products is increasing twice as fast as trade in primary commodities. By 2000, trade in processed and value-added products is predicted to account for 75 percent of global agrifood trade. A range of economies, including net food importing countries, now export processed foods.

Value-added consumer-ready food exports have a greater positive impact on the U.S. economy than bulk commodity exports. In 1998, U.S. consumer-ready processed food exports to the world accounted for 39 percent of the total $51 billion of "agricultural" exports. For the first, time, the value of consumer-ready exports was equal to that of bulk agricultural commodities.

Further processed products create high-paying jobs and value in the United States. Seven of the largest 10, and 22 of the largest 50, food processing firms in the world are headquartered in the United States. U.S. farmers and their families are a major beneficiary of increased exports of processed food products, both through farm sales and off-farm employment opportunities. For example, 1.9 billion pounds of U.S.-grown potatoes were purchased and further processed into exports of $286 million in french fries in 1997.

U.S. exports of processed foods would be even higher but for market access barriers. Globally, tariffs on processed foods remain higher than those on basic agricultural commodities, and higher than those on industrial products. Bound agricultural tariffs average over 40 percent ad valorem, and tariff bindings on processed foods average significantly more than 40 percent.

RECOMMENDATIONS FOR THE SEATTLE MINISTERIAL AND WTO NEGOTIATIONS.

The next round of trade negotiations will provide an opportunity to capitalize on the fundamental restructuring of the trade rules for food and agriculture. Strong opposition to lowering trade barriers is already apparent, and countries such as Japan and Norway—which fear low incomes and declining employment in agriculture—have positioned themselves to fight against further liberalization. The United States must take the lead in combating this opposition and insisting that further liberalization take place.

The highest priority for the United States should be commercially meaningful reductions (including zero-for-zero in certain tariff lines) in tariffs and further disciplines on non-tariff measures (NTMs) facing U.S. exports of highly competitive processed food exports. Such products include processed cereal products (e.g., cookies, crackers and snack foods); pet food; processed vegetable and fruit products (e.g. soups, french fried potatoes, juices and sauces); processed meat and poultry products; and certain miscellaneous food preparations (e.g. formulated protein mixes and nutritional supplements).

1. Tariffs.

• *The United States should insist on a formula that will lead to significant reductions in tariff peaks, rather than a simple percentage reduction across the board.* There is ample precedent for formula cuts in the industrial product area. The so-

called "Swiss formula"[1] was used for industrial goods during the Tokyo Round. There are any number of other ways in which such reductions can be achieved, including the harmonization of tariffs at certain levels or in certain bands.

• A formula approach that cuts high tariffs more than low tariffs will help address "tariff escalation." Tariff escalation occurs where tariffs for processed products are high compared to the primary products from which they are derived. Tariff escalation still prevails in important product chains in many countries, impeding imports of processed products.

• Reducing high tariffs more than low tariffs will also help reduce the gaps and address the distortions that are created when countries have very high bound tariff rates, but apply actual tariff rates below the bindings. Countries often adjust these applied rates to protect domestic production from market price signals.

• The United States should argue strongly for the simplification of tariff structures. Complex formulas and tariffs based on "standard recipes" should be eliminated and replaced by straightforward *ad valorem* tariffs which are fair and consistent with free trade principles.

• Countries must not be permitted to "average" tariff reductions in specific food and agricultural commodities to achieve agreed reductions. Averaging allows countries to make high percentage reductions on already low tariffs, and lower percentage reductions on lines with higher tariffs. In order to achieve meaningful improvements in trading opportunities, the reverse should occur: the greatest reductions in tariffs must occur where tariff levels are the highest.

• *Request-offer negotiations are not an acceptable negotiating option*. In past negotiations, such an approach resulted in little improvement in overall market access or in disciplining trade barriers. Request-offer negotiations do not systematically address the problems of tariff escalation nor do they assure that very high tariffs will be reduced at all. However, should the United States ultimately find it necessary to engage in request-offer negotiations, efforts should be concentrated on processed food product commitments by nations in the Asia Pacific and South American regions. Despite recent economic difficulties, these regions show the greatest promise for intermediate-term processed product export opportunities.

• The focus of U.S. negotiations should be to obtain significant multilateral commitments for food and agriculture as a whole. However, the Ad Hoc Coalition would also support a "zero-for-zero"[2] approach for specific product sectors such as soups, french fried potatoes, biscuits and snack foods, and pet food.

• "*Nuisance Tariffs*" (e.g. below 2 percent) should be eliminated. The Administrative costs to collect these tariffs exceed the revenue generated and are a hindrance to commerce.

• The next Round of multilateral negotiations should eliminate all tariff-rate-quotas on agricultural products. This would complete efforts achieved in the Uruguay Round to progressively liberalize and limit the use of tariff-rate-quotas. However, the process of converting tariff-rate quotas to tariff equivalents should not result in a reduction in market access.

2. Non-Tariff Barriers to Trade.

• The WTO Agreement on Sanitary and Phytosanitary ("SPS") Measures—which insists on sound science and risk assessment—should *not* be open for negotiation in the new Round.

• However, the Agreement on Technical Barriers to Trade should ensure that standards for biotechnology be based on sound science and not used as a disguised non-tariff trade barrier.

• The U.S. government should support technical assistance to developing countries, many of which lack the expertise to comply with SPS measures, labeling and technical standards of trade.

3. Key Participation by Developing Countries.

• Developing countries such as India must participate fully in the negotiations and provide improved access opportunities for processed food products. Consideration might be given, e.g., to modified tariff reduction commitments and extended implementation periods, but exemptions should not be permitted.

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[1] The "Swiss formula" is new tariff=(old tariff * agreed coefficient)/(old tariff +agreed coefficient). Such a formula not only reduces the highest tariffs the most, but it also establishes an upper bound on all tariffs (depending on the coefficient chosen).

[2] The "zero-for-zero" approach is one in which countries agree that all tariffs on a group of specific products will be reduced to zero. During the Uruguay Round, such an agreement was successfully concluded for beer.

4. Services, Investment and Intellectual Property.

• The Ad Hoc Coalition also supports renewed negotiations in the areas of services, investment and intellectual property. Enhanced agreements should guarantee freedom of sale, transport, and all forms of distribution (including direct selling); protect U.S. investments in the food processing, distribution and sales sectors of other nations; and protect U.S. brands and trademarks. Without such guarantees, improvements in market access will be meaningless.

• Moreover, as famous U.S. brands become more globally dominant in the 21st century, we will witness an increase in efforts by developing countries to unfairly tax U.S. brands at higher rates than local brands and competing products. Such discriminatory taxation is a particularly serious problem facing the U.S. soft drink industry and should be addressed in the next Round of WTO negotiations.

We look forward to working with you as we approach the Seattle Ministerial and begin negotiating in 2000. With your support and leadership, the upcoming negotiations will at long last result in meaningful benefits for the U.S. food sector. We stand ready to provide whatever assistance might be appropriate.

Sincerely,

Bestfoods
Campbell Soup
ConAgra
General Mills
Herbalife International
J. R. Simplot Co.
Lamb-Weston
National Food Processors Association
National Potato Council
Nestle USA
Oregon Potato Commission
Pepperidge Farm
PepsiCo
Pet Food Institute
Procter & Gamble
Ralston Purina
Tricon Global Restaurants
Welch's
Wm. Wrigley Jr. Company

Respectfully submitted on behalf of the Ad Hoc WTO Round Processed Food Coalition,

JOHN F. MCDERMID
President, IBC, Inc.

Statement of the Aluminum Association, Inc.

Mr. Chairman and Members of the Trade Subcommittee:

The Aluminum Association appreciates the opportunity to present its views on the U.S. negotiating objectives for the WTO Seattle Ministerial Meeting.

The members of The Aluminum Association are domestic producers of primary and secondary ingot, aluminum mill products and castings. Mill products include sheet and plate, foil, extrusions, forgings and impacts, electrical conductor, and wire, rod and bar. The membership also includes producers of master alloys and additives and aluminum pigments and powders.

The association is a primary source for statistics, technical standards and information on aluminum and the aluminum industry in the United States. Member companies operate approximately 300 plants in 40 states.

OVERVIEW

The members of the Aluminum Association are fully committed to a fair and open world market for aluminum. We believe strongly that tariff elimination or reduction should occur only as the result of the mutual agreement of all the parties to a tariff negotiation, such as the up-coming WTO Seattle Round, and only over a multi-year phase-in period.

BACKGROUND

The aluminum industry is global. The largest aluminum producers are multinational companies production, fabricating and distribution facilities around the world. During 1998, world aluminum production totaled an estimated 22.1 million metric tons.

The leading producing countries include the United States, Russia Canada, the European Union, China, Australia, Brazil, Norway, South Africa, Venezuela, the Gulf States (Bahrain and United Arab Emirates), India and New Zealand; together they represent more than 90 percent of the world primary aluminum production.

The major uses for aluminum are transportation, packaging and building and construction and the largest markets are North America, Europe and East Asia.

The U.S is both a major importer and exporter of aluminum. Approximately 31 percent of the U.S. supply of aluminum was imported from foreign producers in the in the form of primary ingot and scrap from Canada, Russia, Venezuela and Mexico and mill products from Canada and the EU. U.S. exports amounted to 13 percent of U.S. producer shipments in the form of ingot, scrap and mill products primarily to Canada, Mexico and East Asia including Japan and Latin America.

Excluding NAFTA trade, the EU accounted for approximately 55 percent of U.S. mill products imports and only 17 percent of U.S. exports. East Asia (China, Hong Kong, Japan, Korea and Taiwan) accounted for 15.5 percent of U.S. imports and consumed 30 percent of U.S. exports. Latin America accounted for 10 percent of U.S. imports and 40 percent of U.S. exports.

A substantial part of U.S. exports to the EU are shipments which are duty free under the Civil Aircraft Agreement.

The attached tables provide comparisons of U.S. aluminum imports and exports for 1998 by region.

ANALYSIS

The members of The Aluminum Association are firm believers in the objective of trade liberalization. They have long supported open and fair trade. They have seen the benefits from the elimination of tariffs and non-tariff measures under NAFTA and from the decision by the government of Japan in 1987, to achieve parity with U.S. tariffs on aluminum ingot, scrap and sheet and plate.

The members of the association fully understand that the Agreement on Civil Aircraft, which provides for duty free access to the EU for aircraft parts, has enabled them to compete for business in the EU aircraft market.

The potential growth of markets in Asia and Latin America promises opportunities now and, even more so, in the future. The realization of that potential can only be redeemed when tariffs and other impediments to access to those markets have been significantly reduced or eliminated.

As circumstances now stand, that realization will be delayed as long as high tariffs are maintained on aluminum and products made with aluminum.

U.S. tariffs range from zero on ingot and scrap to 2.7 to 6.5 percent on most mill products. The tariff on aluminum can sheet, which is the largest single aluminum mill product consumed in the U.S. is three percent. By contrast EU aluminum tariffs are six percent on ingot and 7.5 percent on mill products. Tariffs in Japan are zero on ingot, the same as the U.S. for some categories of sheet and plate and 7.5 percent or more on all other mill products. For most developing countries aluminum tariffs are in excess of 10 percent with many significantly higher than that.

CONCLUSION

It is highly unlikely that any of our trading partners will voluntarily reduce their bound aluminum tariffs, except as the result of an agreement reached during trade negotiations. Therefore, we recommend that, with respect to aluminum, the objective of the WTO Seattle Ministerial Meeting be to achieve:

an agreement by all major aluminum producing and consuming countries to eliminate tariffs and other impediments to trade in aluminum

by phasing out those tariffs or other impediments, over a reasonable period of time, by a date certain, to be determined through multilateral negotiations.

We thank you for this opportunity to express our views.

ATTACHMENT

U.S. Aluminum Exports by Region—1998

(Millions of Pounds)

Region	Total	Ingot	Scrap, & Dross	Mill Products
North America	2,328	445	480	1,404
Latin America	320	6	3	311
European Union	143	8	5	131
Other Europe	12	*	*	11
East Asia	834	146	457	231
Other Asia	86	3	9	74
Oceania	13	1	*	12

U.S. Aluminum Exports by Region—1998—Continued

(Millions of Pounds)

Region	Total	Ingot	Scrap, & Dross	Mill Products
Africa	5	*	*	5
Total	3,743	610	954	2,179

ASource: U.S. Department of Commerce

U.S. Aluminum Imports by Region—1998

(Millions of Pounds)

Region	Total	Ingot	Scrap, & Dross	Mill Products
North America	5,043	3,177	794	1,072
Latin America	604	389	139	75
European Union	469	37	58	374
Other Europe	1,679	1,541	73	65
East Asia	164	49	10	105
Other Asia	180	79	69	33
Oceania	151	144	1	6
Africa	52	34	2	16
Total	8,342	5,449	1,146	1,747

ASource: U.S. Department of Commerce

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Joint Statement of the American Crop Protection Association; American Forest and Paper Association; American Plastics Council; Biotechnology Industry Organization; Chemical Manufacturers Association; Chemical Specialties Manufacturers Association; Coalition for Truth in Environmental Marketing Information; National Association of Manufacturers; National Fisheries Institute; National Foreign Trade Council; Soap and Detergent Association, New York, NY; and U.S. Council for International Business, New York, NY; joint statement and attachments

The undersigned business organizations welcome the opportunity to share our thoughts with the House Ways and Means Trade Subcommittee on an important trade and environment issue likely to arise in the forthcoming WTO negotiations, namely the "Precautionary Principle." The Subcommittee has invited such comments in the context of your review of the objectives for the Seattle WTO Ministerial and the outlook for a successful meeting. We applaud the Subcommittee for reaching out to the private sector, and hope these comments will be helpful to your work.

We expect the Precautionary Principle will be a topic of discussion at the WTO Ministerial, given, among other things, the European Union's announced intention to seek "a clarification of the relationship between multilateral trade rules and core environmental principles, notably the Precautionary Principle."

It is important to note at the outset that the business community supports the use of caution and sound science in developing health and environmental standards. Indeed, the risk assessment principles and risk management that U.S. authorities apply to food, finished products, and other goods are extensive and include many types of precaution. The critical factor is that such standards are risk-based and justified by sound science.

The business community supports sound science and risk based precautionary measures which are cost effective, in line with the Principles of the Rio Declaration agreed at the Earth Summit in 1992. That Declaration also stated that unilateral trade measures should be avoided, and international consensus should be sought (*Rio Declaration Principles 12 and 15 attached as Annex 1*).

Since 1992, multilateral agreements such as the Convention on Prior Informed Consent, the Sanitary and Phyto-Sanitary (SPS) Agreement and the Plant Protection Convention have been put in place precisely to provide the kind of foresight envisioned by the Precautionary Principle, but with the power of international consensus and systematic processes to better enable broad, global protections.

The undersigned groups are concerned that the Precautionary Principle—as it is being applied in Europe and advocated by activist groups—is both a misinterpretation of the principle and a radical departure from science and risk-based regulation

which could impede innovation and progress. Under such an interpretation, any assertion of harm or hazard—however remote the potential for harm or however flimsy the evidence to support the assertion—justifies restricting or eliminating the use of a product. Meanwhile, certain industry sectors would be unfairly obliged to bear the resulting added costs of disproving alleged risks. If adopted, such a policy would cause the elimination of many beneficial products based solely on a mere assumption of hazard. Sound science and risk-based decision making would be crowded out.

Against that background, a number of U.S. business and farm groups joined to express their concerns about international developments regarding the Precautionary Principle in an April 14 letter to Ambassador Barshefsky (*Annex 2*). That letter asked the U.S. government to reject any version of the principle that does not rely on a risk assessment-based, science-justified approach, both in the WTO and in specific agreements and forums such as the SPS Agreement and the Biosafety Protocol of the U.N. Biodiversity Convention.

In that letter, business and farm groups stated:

"We recognize that uncertainty and risk are inherent in policymaking, and we support cooperative international efforts involving both the public and private sectors to develop scientific data that would improve the accuracy and relevance of risk assessments and harmonize methodology and quality assurance."

We have seen U.S. products that have been thoroughly assessed as safe by U.S. regulatory authorities, among the most highly developed and stringent in the world, rejected by other countries because of claimed and often unsubstantiated environmental and health concerns about the alleged absence of sufficient science, while citing the Precautionary Principle as justification.

Business is deeply concerned that a number of groups and countries seek to invoke a misconstrued version of the Precautionary Principle as an absolute standard, overriding all others, to prevent well-justified human activities wherever any vestige of risk can be asserted, even speculatively. This abuse of the principle is counter to longstanding public policy, past human accomplishment and future human aspirations.

The Precautionary Principle is but one of a number of well-recognized principles and factors that must be considered in uncertain situations that credible scientific evidence shows could pose a risk of serious or irreversible damages. These include consideration of the degree of uncertainty, the magnitude and possible consequences of risk, the ability to manage the risk, and analysis of whether or not proposed precautionary responses are effective, feasible, cost-effective, and fair.

In Seattle, the U.S. government delegation should advocate the essential importance of a sound risk and scientific foundation for environmental standards and environmentally-based restrictions on trade. Application of the Principle must recognize the science that *is* available even where 100% scientific certainty is not and may never be. Efforts to invoke the Precautionary Principle in the absence of any scientific information, or worse yet, with selective avoidance of scientific information, can only invite unnecessary conflict. Those who misuse the Precautionary Principle to add to public fears about product safety, without credible and widely recognized scientific evidence, mislead consumers, waste public resources and increase trade tensions.

Therefore, the U.S. government should oppose strongly any effort to redefine the Precautionary Principle in a way that permits the circumvention of sound scientific and risk information and international consensus. In particular, the U.S. should block any effort to accept or codify the misuse of the Precautionary Principle, as the European Union is doing in the case of products containing Genetically Modified Organisms. The U.S. government should emphasize that application of the Precautionary Principle must be structured around:

1. Sound Science, International Dialogue and Mutual Recognition of Standards;
2. Sound Risk Assessment, Management, and Communication;
3. Timely, Transparent and Non-Discriminatory Regulatory Procedures which are responsive to new scientific developments;
4. Credible Sources of Environmental and Health Information;

U.S. business has consistently called for multilateral, cooperative approaches to international environmental issues, and warned that unilaterally imposed trade restrictions endanger economic prosperity, human health and environmental protection. That position also has the full support of bodies such as the International Chamber of Commerce, the voice of international business.

The Seattle WTO Ministerial offers a valuable opportunity to reaffirm the importance of sound science and risk assessment in a rules-based trading system. Decisions to apply the Precautionary Approach will then be made in the best interests

of the environment and the public in ways that are cost effective and consistent with international trade disciplines.

Trade and environmental policies should be rooted in sound science and risk assessment and not be driven by unsubstantiated allegations, scare tactics, and political gamesmanship, as has been the case too often outside the U.S., and especially in Europe. It is our hope that the U.S. government delegation in Seattle will use this opportunity to ensure that the inappropriate application of the Precautionary Principle does not spread throughout the WTO.

We understand that USTR made a statement last week pertaining to these issues. We encourage USTR and the Administration to consult with business on how to address the role of the Precautionary Principle in international trade policy and hope the Congress will support a transparent and balanced discussion of the U.S. government position on this question as is warranted by its economic and environmental impacts.

Endorsed by :

American Crop Protection Association
American Forest and Paper Association
American Plastics Council
Biotechnology Industry Organization
Chemical Manufacturers Association
Chemical Specialties Manufacturers Association
Coalition for Truth in Environmental Marketing Information
National Association of Manufacturers
National Fisheries Institute
National Foreign Trade Council
Soap and Detergent Association
U.S. Council for International Business

—

The Rio Declaration on Environment and Development

PRINCIPLE 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an interesting consensus.

PRINCIPLE 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

April 14, 1999

The Honorable Charlene Barshefsky
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Madam Ambassador:

The United States Council for International Business (USCIB) and a number of the other under-signed organizations were pleased to attend the recent World Trade Organization's (WTO) High-Level Symposium on Trade and Environment. Governments, business, and non-governmental organizations that participated had a useful exchange of views on a wide range of issues relating to the interface between environment and trade issues and policies.

While we found the Symposium worthwhile, we were concerned by the U.S. Government (USG) delegation's statements on the Precautionary Principle and non-product related Processing and Production Methods (PPM's). First of all, both in the

March 15–16 Statement (attached) and in other discussions, the USG seemed to endorse a broader application of the Precautionary Principle, even if the Principle itself was not always explicitly mentioned. Secondly, USG statements also appeared to signal a blanket acceptance of the use of non-product related PPM's in environmental labels in a way that would set the stage for trade discrimination. In our view, these statements raise considerable doubt about the consistency of U.S. trade policy, especially in light of the government's strong stance in the beef hormone case and in other current trade disputes and international negotiations. Let us address these two issues in greater detail.

Precautionary Principle

We recognize that uncertainty and risk are inherent in policymaking, and we support cooperative international efforts involving both the public and private sectors to develop scientific data that would improve the accuracy and relevance of risk assessments and harmonize methodology and quality assurance. We believe the USG should reject any interpretation of the Precautionary Principle that does not rely on a risk-based, science-justified approach in the WTO and in specific agreements and forums such as the Sanitary and Phyto-Sanitary (SPS) Agreement and the Codex Alimentarius. We are concerned that the U.S. government's characterization of the Precautionary Principle at the High-Level Symposium would seemingly undermine the fundamental importance of sound science as a basis for environment and other regulation.

As you well know, U.S. trade has suffered substantially from trade restrictive measures by other countries which have based their actions on unacceptable interpretations of the Precautionary Principle, as Europe has done in the beef hormone case. Similar challenges face U.S. business in trade of biotechnology products with Europe, in the Biosafety Protocol negotiations, and in European environmental labeling programs. These examples demonstrate all too clearly how interpretations of the Precautionary Principle which neglect scientific considerations can prevent legitimate trade in products whose risks can be identified and managed.

PPM's and Environmental Labeling

The 1995 Report on Trade and Environment to the OECD Council at Ministerial Level made several important points relating to PPM's, which we believe are still appropriate. That report stated explicitly that:

"When PPM's affect the characteristics of products, existing trade rules clearly permit the use of PPM-based trade measures, subject to agreed disciplines. However, multilateral trade rules and disciplines make no provision for, and have been interpreted not to allow for, import restrictions based on characteristics which are not physically embodied in the imported products and therefore do not impact on the environment in the importing country."

The report had two specific findings or recommendations with respect to PPM's:

- OECD Governments agree that environmental concerns related to PPMs that have transboundary or global environmental effects are best addressed through international cooperation.
- A further examination of the appropriate and effective role of PPM-based trade restrictions in MEAs is necessary.

Given that no such study has taken place and no international consensus exists on the proper role of non-product related PPM's within the international trading system, any USG position which condones their use outside of MEAs founded on established trade disciplines, as implied by USG statements at the High-Level Symposium, would be premature and create a dangerous precedent.

Regarding environmental labeling, we believe that such labels can provide factual information which enables consumers to make informed purchasing decisions. Regrettably, most environmental labeling programs take the form of multi-criteria labels, developed and awarded through a non-scientific, largely political process. In the absence of an accepted scientific methodology that can fairly distinguish and justify the overall environmental preferability of individual products within entire categories, such labels have questionable environmental benefits. While voluntary, they can still create unfair competitive advantage and pose discriminatory trade barriers, especially when the labels' criteria are based upon PPM's. Therefore, we believe that the Agreement on Technical Barriers to Trade (TBT) should emphasize sound science and transparency and discourage non-product related PPM's as a component of environmental labeling. These recommendations also pertain to any consideration of labeling for products derived from biotechnology.

In conclusion, we believe the USG should advocate and pursue sound-science based multilateral responses to international environmental challenges, including PPM's, without restricting trade. The USG views expressed at the Symposium ap-

pear to represent a major shift in U.S. policy away from these important principles. We would appreciate confirmation that the U.S. government's statements should not be read to detract from our strong support for the trading system and strict adherence to the principles of the WTO.

Sincerely,

The American Bakers Association
The American Farm Bureau Federation
The American Forest and Paper Association
The Biotechnology Industry Organization
The Chemical Manufacturers Association
The Grocery Manufacturers Association
The National Association of Manufacturers
The National Fisheries Institute
The National Foreign Trade Council
The National Mining Association
The United States Council for International Business

Encl.

CC: Madeleine K. Albright, Secretary of State
William M. Daley, Secretary of Commerce
Daniel R. Glickman, Secretary of Agriculture
Carol M. Browner, Administrator, Environmental Protection Agency

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Linkages Between Trade and Environmental Policies

Statement of the United States

As we noted in our earlier intervention, in the WTO's Preamble, Members recognize that trade is not an end in itself and that sustained economic growth must be pursued in the broader context of sustainable development, which integrates economic, social and environmental policies. Moreover, the linkages between trade and environmental policies are multifaceted. Nevertheless, we believe that economic development and stronger protection of the environment go together. Experience has shown that greater attention to environmental concerns is directly correlated with better economic results at the national, industry and company levels.

The relationship between the trading system and environmental regulations is an issue of particular importance to environmental policymakers and regulators in our respective countries. Modern trade agreements, of course, apply to domestic heath, safety, and environmental regulations in many ways. Also, we must recognize that regulatory choices often involve difficult judgement calls on complex matters as to which particular environmental policy tool is most appropriate in achieving a society's desired environmental policy objective. Not only the science but the analysis of different regulatory alternatives is complex. In the United States, this process of choosing a regulatory tool generally includes an extensive process of public participation and political accountability at the domestic level.

In view of all of this, it is essential that WTO rules recognize and are fully consistent with the needs of

regulators to take action to stringently protect health, safety and the environment. It is necessary to ensure that obligations under international trade agreements do not hamper, but rather are supportive of, the ability of governments, at central and sub-central level, to maintain and enforce high levels of domestic protection that they deem appropriate.

As President Clinton said at last May's WTO Ministerial Conference, "International trade rules must permit sovereign nations to exercise their right to set protective standards for health and safety, the environment and biodiversity. Nations have a right to pursue these protections, even when they are stronger than international standards."

We note that WTO Agreements specifically recognize the sovereign rights of Members to determine the level of protection that their standards are designed to achieve. This is important and must be maintained. In order to adequately protect the health of our citizens, we must maintain our right to ensure that products that enter our country meet our requirements.

One agreement of particular importance to health, safety and environmental policy makers is the Agreement on Sanitary and Phytosanitary measures. Again, there are a number of provisions in this agreement that are particularly important to regulators. This includes the Agreement's provisions recognizing the rights of countries to maintain pre-approval requirements. As a matter of U.S. law and practice, for example, certain products (e.g., pesticides) must be approved before they can be marketed. We have adopted this approach in recognition of the fact that pesticide residues on foods may pose risks to health or the environment. In order to obtain approval to sell or distribute a pesticide, pesticide producers must provide sufficient data to enable regulators to determine that there are no unreasonable adverse effects on public health or the environment.

It is also important that the SPS Agreement recognizes the right of countries to take provisional measures in cases where relevant scientific information is insufficient. This point is particularly important as policy makers often operate at the cutting edge of scientific information. To achieve our health, safety, and environmental objectives, it is a reality that we must be able to make decisions and take environmentally protective actions in the absence of full scientific certainty.

The need to fully address regulators' needs and concerns does not, of course, mean that we condone trade protectionist measures that are disguised as environmental measures—indeed, such measures would have the effect of casting doubt upon, and even undermining, environmental as well as trade policy objectives.

Turning to the issue of the relationship between WTO rules and multilateral environmental agreements, or MEAs, our point of departure is that all WTO members are committed to multilateralism. As stated in the report of the CTE to the Singapore Ministerial Conference, "WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue shared goals, and in the development of a mutually supportive relationship between them due respect must be afforded to both." There can be no doubt that the relationship between the WTO and MEAs is a partnership of equals.

Clearly, it is important that MEAs be able to achieve their objectives, including through the use of trade measures, while at the same time being mindful of multilateral trade disciplines. To date there has never been any dispute concerning the provisions of an MEA. The past is not always a reliable predictor of the future. However, we believe that there is substantial flexibility under WTO rules to address environmental challenges through MEAs. Also, we believe that the possibility of conflict can be substantially reduced through policy coordination at the national level. Nevertheless, we must be sure that there is no doubt that we as WTO members support the efforts of environmental negotiators in cooperating to address environmental challenges of common interest.

Turning to ecolabeling, it is broadly recognized that ecolabels can be an important tool for engaging consumers in environmental protection. At the same time, from both an environmental and trade perspective, it is important that such measures not be misused as a hidden form of protectionism. We believe that the WTO rules provide sufficient flexibility to permit all forms of ecolabeling, including those involving criteria based on processes and production methods, subject to appropriate trade disciplines of the multilateral trading system, including in particular transparency and non-discrimination. More generally, we think it is clear that the rules of the multilateral trading system can permit the application of innovative environmental policy tools.

One way of helping to ensure that ecolabels meet their environmental objectives in a way that is mutually supportive of trade objectives is to provide transparency in the design of ecolabeling programs, the selection of products to be covered by ecolabeling, the selection of criteria for receipt of an ecolabel and the design of any conformity assessment procedure. That means there should be full transparency with an opportunity for public input at each critical stage of the program's development.

The issue of measures based on processes and production methods (PPMs) has been an important and controversial issue on the trade and environment agenda. We would note that the Appellate Body report in the Shrimp/Turtle dispute belies the notion that such measures are a priori out of bounds under WTO rules. However, that report also makes clear that such measures must meet the rules of the trading system which guard against abuse. Without arguing the pros and cons of the specific measures at issue in the dispute, we wish to point out that the Appellate Body has helped shed important light on the application of WTO rules in this area.

Looking towards the future, we must look for innovative ways to ensure that WTO rules strike the right balance—-promoting free trade in a manner consistent with and supportive of high environmental standards. As we noted earlier, we be-

lieve that as we embark on the next round of WTO negotiations, it would be useful to provide a forum where WTO members can identify and discuss links between elements of the negotiating agenda and the environment. While negotiations on these issues would be the responsibility of the relevant negotiating groups, the proposed forum would help ensure that these links receive the attention that they deserve during the negotiations and help delegations to look at what they are negotiating from a broader perspective. We believe that the CTE could play this role. It has already shown its capability to take on work along these lines through its work in analyzing the potential environmental benefits of trade liberalization in various sectors.

The idea would be for the CTE to look systematically and transparently at all the various areas of negotiation on a rolling basis. After an initial run through of all the areas under negotiation, the CTE would continue to look at all of the issues so that the work of the CTE could evolve as the negotiations evolve. The CTE would identify and discuss issues, but not try to reach conclusions or negotiate these issues in the CTE itself. Rather, it would provide a report of its discussions to Members and the relevant negotiating groups. We would expect that the CTE's work would play a valuable role in providing input to deliberations at the national level on positions to be taken in the actual negotiating groups. Of course, we would have to be absolutely clear that the CTE's role in identifying issues would not detract from, or interfere with, in any way the responsibilities of negotiating groups for addressing issues that are raised by Members on these or any other issues.

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Statement of the American Free Trade Association (AFTA), Miami, Florida

This testimony is offered on behalf of the American Free Trade Association (AFT). The American Free Trade Association is a not-for-profit trade association of independent American importers, distributors and wholesalers, dedicated to preservation of the parallel market as a source of genuine and legitimate brand-name goods at reasonable cost to American consumers. The parallel market embraces a broad range of products, but AFTA's members are primarily involved in sale and distribution of fragrance, cologne, health and beauty aid (e.g. shampoo, soap, etc.) products.

AFTA has been an active advocate of parallel market interests for over fifteen years. It has appeared as *amicus curiae* in the two leading Supreme court cases affirming the legality of parallel market trade under the federal trademark, customs and copyright acts (the 1986 *Kmart* case and the 1998 *Quality King* case) and in numerous lower court decisions. The Association regularly addresses regulatory and legislative challenges to the parallel market through meetings and petitions with government offices.

Because AFTA, and others, believe the preservation of the parallel marketplace is paramount to the goals and objectives of the WTO, it submits this written testimony in response to the Committee's request for comments on the specific objectives of the upcoming WTO Ministerial. The parallel marketplace is an industry serving the interests of the international consumer and trader. Accordingly, we urge that the Administration give a priority to assuring that the Ministerial Meetings do not advance any principles which would curtail or diminish the legality of parallel market trade throughout the world.

THE IMPORTANCE OF THE PARALLEL MARKETPLACE

Parallel Imports are genuine trademarked consumer products, such as fragrances, 35 mm cameras, electronic products and watches which are manufactured abroad and imported by independent American importers rather than by "authorized" U.S. importers and distributors. Parallel imports exist primarily because the manufacturers, for reasons of their own, seek significantly higher prices for their products in the United States than elsewhere in the world. They do this by creating wholly-owned or controlled subsidiaries in this country, designating those companies as the exclusive "authorized" importers and distributors for their products here, and refusing to sell to retailers who will not maintain the higher prices for the products.

The obvious result in a free enterprise, free trade market is that independent American importers can purchase the same products overseas at the world price, often directly from the manufacturers' "authorized" distributors abroad. The foreign manufacturers' price differential for the U.S. market is often so great that, even after paying shipping costs and U.S. Customs duties, the parallel importer can offer the identical articles for twenty to forty percent less than the U.S. "authorized" distributor.

The result is a saving to American consumers amounting to billions of dollars a year. Another result is the availability of popular products to a much wider spectrum of Americans who do not live in the large cities where the exclusive authorized stores are generally located. The parallel import trade has also served as an independent bulwark against unrestrained increases on the domestic price of imported consumer goods as compared to prices available worldwide.

THE WTO OBJECTIVE

On August 5, 1999 Lori Wallach of Global Trade Watch presented oral testimony to the Committee detailing how governments are utilizing international trade agreements to promote corporations' needs over the needs and benefits of consumers and citizens. As stated by Ms. Wallach, parallel importing is a practice opposed by some manufacturers who seek to engage in significant price discrimination by geographic area. This practice of price and distribution discrimination undermines the very intention of the WTO which is to help trade flow as freely as possible and to achieve further trade liberalization.

The Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) is administered by the WTO. The goal of TRIPS is the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. All of these objections are hindered, if not prevented, by national legislation banning, preventing or discouraging parallel imports. As can be seen in the present South African conflict, global recognition of the right of the parallel marketplace to exist is of paramount importance to any ongoing consideration of global economic and consumer rights. If citizens cannot be protected by international trade agreements, they serve no purpose whatsoever. If sick people are prevented access to cheaper pharmaceuticals in the guise of advancement of international trade and intellectual property considerations, we, as a global community, are failing our obligations to our citizens. If the fear of competition from parallel imports is so great that WTO dispute mechanisms are relied upon to protect manufacturers from this type of free trade, then the very ideal by which the WTO was established is necessarily threatened.

INTERNATIONAL CONSIDERATIONS

In South Africa, parallel importation of generic drugs is being opposed by the U.S. government because drug manufacturers feel threatened by the competition of cheaper imports. This is despite the fact that these drugs may assist tremendously in curbing the rising rate of the spread of AIDS in that country. In New Zealand and Israel, the U.S. has threatened trade sanctions for repealing their bans on parallel imports—even though the repeal was based on funded economic studies proving that consumers would benefit tremendously from the increased competition and lower prices. In the United Kingdom, manufacturers are struggling to maintain their historic ability to charge British consumers much higher prices than other consumers in other countries pay for the identical goods and the Ministers are urging the repeal of trademark laws heretofore interpreted to deny parallel imports. In Japan, recent case law limits the prevention of parallel patented imports and recent studies clearly show that the practice is fully supported, albeit silently, by the manufacturers themselves. Summarily, the international community is struggling to regulate, or deregulate, parallel market trade.

In July 1998, in "Parallel Importing: A Victory for the Consumer" Garreth Morgan, a respected New Zealand columnist, reviewed the arguments submitted by opponents of New Zealand's repeal of its prohibition against parallel imports. "The staunchest objection is that an owner of copyright should have the right to control distribution of the copyrighted product—that without it they cannot maximize the return from their investment. Conferring sole rights of control over these functions (distribution, service and warranty) would generate unnecessary market power and with that monopolistic pricing and production practices would proliferate—along with a reduction in consumer benefit. So long as copyright law ensures that the owner of the brand is able to levy purchasers a royalty at one stage of the production or distribution chain, then they can get a return for their intellectual product. There is no case that they should control all steps in the chain from producer to consumer. Next, it's been suggested that ownership of the New Zealand-registered trademark can prevent others from using it. Again, to the extent that trademark law enables its owner to limit competition beyond that necessary to ensure the owner has an opportunity to charge a royalty for use of that ownership, it should be modified. Similarly the privilege that New Zealand-registered patents or reg-

istered designs confer should be limited to ensure that offshore owners aren't prevented from having their products distributed here—so long as they're not passed off as something they're not. It is therefor totally unnecessary for the government to provide them additional protection on distribution—and indeed to do so harms purchasers. A presence in manufacture and distribution is fine, but using one activity to dominate the market in the other, similarly compromises consumer sovereignty.

The opinion of the Arbeitsgemeinschaft de Verbraucherverbande, the federal organization of the German consumer associations, echoes the sentiments that free trade can only be accomplished through the international legalization of parallel importation. "From the consumer associations' point of view it is completely unreasonable that, in a context of increasingly global economic and trade relations, legal regulations can be in force which make it possible to artificially keep prices high and for manufacturers to block or considerably control distribution pathways for their products which were legally brought on the market. For consumers, this casts doubt on the advantages of free world trade. Consumer organizations all over the world already justifiably fear that continuing liberalization in world trade could also result in reduction of hard-gained national consumer protection standards."

And, Japan, which recently held that parallel imports of patented products was permissible (*BBS Kraftverzueg Technik AG* v. *K.K. Racimex & K.K. Jap-Auto Proucts,* Supreme Court of Japan 1988), has consistently held that parallel importing is generally considered to promote price competition in a market. Accordingly, restrictions on parallel importing are viewed with scrutiny under the Antimonopoly Law of Japan (the "Antimonopoly Law"). The guidelines to the Antimonopoly Law concerning Distribution Systems and Business Practices in Japan specifically address forms of restrictive conduct with respect to parallel importing which are deemed to the violations of the Antimonopoly Law.

Throughout the World, government and courts permit and advocate parallel importation and the secondary marketplace. It is imperative that the global community not protect manufacturers at the cost of its citizens. Intellectual property laws must not be utilized to prevent free trade practices and parallel importation must be evaluated as a means to protect against monopolistic trade practices.

THE DOMESTIC SITUATION

In the United States, the parallel marketplace has long been sanctioned by federal law. It is based in United States Customs and trademark laws and regulation (The Tariff Act, 199 U.S.C. 1526; The *Lanham Act* (15 USC 1051, et.seq.)). It has repeatedly been upheld as a legitimate industry by the United States Courts, including decisions by the Supreme Court over a decade ago (*Kmart* v. *Cartier;*) and as recently as February 1998 (*Quality King V. L'Anza International*). The Congress has not been asked to reconsider or revise the law in the United States, although legislation which failed in the last Congress (H.R. 3891) but has been reintroduced in this Congress (H.R. 2100) would effectively eliminate the benefits of parallel trade in the United States. Neither bill invited Congressional evaluation of the benefits of parallel market to United States trade and consumers, as the bills were caste as intellectual property and health and safety measures, not as anti-parallel market bills.

The Administration's actions regarding the parallel market create a great fear that it might very well take a position at the Ministerial meetings contrary to United States law and contrary to the interests of United States consumers and trade community. As reported in the *New York Law Journal* May 11, 1998 article "U.S. Government in Tough Stand to Enforce Rights" by Catherine Curtiss, Edwin C. Bullock and Thomas P. Newman, The United States government has made a commitment to help United States trademark and copyright owners stop the importation of gray market goods, despite it legality and its benefit to the consumer. This article describes the *Quality King* v. *L'Anza Research*Supremen Court decision and notes the Supreme Court's objection to the Government's position that to allow parallel importation would be "inconsistent with a number of international trade agreements concluded by the United States." The Supreme Court, in its decision, declared the government's "international trade agreements" argument to be "irrelevant" to interpretation of statutory language enacted many years before the earliest of those agreements was made. Nevertheless, the Administration continues its efforts to force other countries to prohibit parallel trade, if not through express agreement, then via threats of economic trade sanctions.i11For example, the United States' Trade Representative, convened a special review of New Zealand's repeal of their prohibition of parallel imports, stating that the action would have "sever consequences" extending "far beyond the New Zealand market." However, New Zealand

only changed its laws concerning parallel imports after extensive government funded research into the possible consequences on consumers and manufacturers. Based on these studies, the government determined that removing the ban would benefit consumers through lower prices and wider availability of goods, which are currently limited through exclusive franchise networks. In addition, even New Zealand's Manufacturer's Federation said the "advantages would outweigh the drawbacks" as manufacturers would be able to buy cheaper machinery and equipment. Nevertheless, for fear of its impact on international manufacturer monopolies and claiming the need to protect the integrity of intellectual property rights, the U.S. felt compelled to chastise New Zealand for its actions and threaten to place the country on the Special 301 Watchlist.

In 1997, the Special 301 watchlist, the USTR' annual review of intellectual property rights protection in more than 70 countries and identification of countries which are being "watched" by the U.S. intellectual property objectives and evaluated for possible sanctions should those objectives not be met, included the following countries: Argentina, because, among other things, "there is no provision for protection from parallel imports; Venezuela because, among other things, there is a "lack of protection against parallel imports; and Colombia because, among other things, there is a "lack of protection against parallel imports."

The secondary marketplace employs hundreds of thousands U.S. citizens and engages small, tax-paying businesses throughout the country. The parallel marketplace thrives because of the global marketplace and its continued operation necessarily depends upon equal treatment between trading partners. Parallel imports are products manufactured in one country and imported into another. The imported product, pursuant to the WTO, must not be discriminated against in favor of the domestic product. Accordingly, the U.S. parallel marketplace, like the industry in other countries, depends upon international adherence to the provisions set forth in the WTO. If these provisions are adhered to the recognized, even the United States government will have no choice but to advocate the parallel marketplace.

The TRIPS Agreement is silent on the issue of parallel market trade legality. At the Ministerial meetings, the United States should make certain that the Agreement remains neutral on this issue—and certainly should not promote negotiations to render parallel market trade illegal. The Courts and the Congress have supported parallel market trade in this country; the Administration should not be taking a contrary position in the international arena.

CONCLUSION

In comments made to South Africa's parliament, in October 1997, Mr. James Love of the Consumer Project on Technology (CPT) (a non-profit organization, created by Ralph Nader, located in the United States) stated the following: "Parallel imports can be an important source of price competition for many goods. recent decisions by the European Court of Justice and the Supreme Court of Japan clearly state that parallel imports of patented and trademarked goods are not contrary to international law. National legislation regarding parallel imports varies from country to country. In many nations, parallel imports are not only permitted, but national antitrust authorities actively take steps to prevent manufactures from discouraging or impeding parallel imports. This is the case, for example, in the European Community and In Japan. There is clearly no worldwide consensus about the exhaustion of IP rights. The older IP agreements, such as the Paris Convention and the Berne Convention, do not touch upon this issue at all. The most recent global IP agreement, TRIPS, carefully circumvents this issue; TRIPS Article 6 states that, for the purpose of dispute settlement, nothing in the agreement shall be used to address the issue of the exhaustion of IP rights. Legislation and jurisprudence on this topic is varied from country to country, with countries taking different and nuanced positions on exhaustion of rights patents, copyrights and trademarks."

The *Journal of International Economic Law*, Volume 1, Issue 4, pp. 607–636, includes the First Report (final) to the Committee on International Trade Law of the International Law Association on the subject of parallel importation by FM Abbott, Professor of Law, Chicago-Kent College of Law. The Report approaches the exhaustion/parallel imports question in broad economic terms, asking whether there may be an economic and social welfare benefit to permitting IPR holders to black parallel imports that outweighs the potential harm to liberal trade. The Report observes the most objective which IPR holders seek to achieve by the allocation of geographic markets can be attained through less trade restrictive means, namely through the vertical allocation of distribution territories by contract and that developing and developed countries are better served by open markets and the operation of compara-

tive advantage. The Report recommends that the WTO adopt a rule precluding governments from blocking parallel imports save in certain exceptional cases

We believe it is imperative that the global community not protect manufacturers at the cost of its citizens. Intellectual property laws must not be utilized to prevent free trade practices and businessmen throughout the World must believe they are free to compete in the international marketplace. the health and safety of sick patients must not be compromised because manufacturers fear the importation of cheaper drugs and consumers' rights must not be sacrificed in order to allow manufacturers to discriminately distribute and price their products in order that they may unilaterally gain unjustifiably rich rewards.

The American Free Trade Association believes that the international community is best served by a global consensus on parallel trade. this must be made a priority during the upon coming WTO Ministerial conference in Seattle. As economists reports are studied, as other countries' decisions are evaluated and when consumers' interests are held higher than the corporation's, AFTA is certain that even the United States' government will support what its court system has already held—parallel importation is a legitimate, beneficial industry that must be supported, advocated and favored within the international marketplace.

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Statement of the American Iron and Steel Institute (AISI)

AISI is pleased to submit testimony on U.S. objectives for the Seattle Ministerial and a new round of WTO talks. The following statement is submitted on behalf of AISI's U.S. member companies, who together account for approximately two-thirds of the raw steel produced annually in the United States.

NEED TO ACHIEVE CONTINUED PROGRESS IN THE WTO'S BUILT-IN AGENDA

As the Seattle Ministerial prepares for a new round of multilateral trade negotiations, the main focus should be on achieving progress in the WTO's "built-in agenda" of existing rules on agriculture, services and intellectual property. Such progress can *only* be made if the United States resists efforts by other WTO members to reopen a counterproductive debate over the WTO's antidumping and anti-subsidy rules.

NEED TO MAINTAIN EFFECTIVE WTO ANTIDUMPING AND ANTI-SUBSIDY RULES

It is the *failure* to counter injurious dumping and other unfair trade practices that undermines public confidence in free trade and public support for further multilateral trade liberalization. For more than 50 years, international trade rules (first the GATT, now the WTO) have allowed the U.S. and other countries to counter injurious dumping. The reason: there is clear recognition that, in the real world, there can be no free trade unless it is *rule-based and fair*. As soon as the public believes that existing trade rules are ineffective or are not being enforced, support for free trade begins to erode—and support for more restrictive, less transparent solutions inconsistent with international trade rules starts to grow. This is what has occurred in the United States in recent years, and the *only* way to reverse this trend is to ensure prompt and strict trade enforcement of more effective U.S. laws against unfair trade.

To quote from the July 1998 U.S. submission to the WTO Working Group on the Interaction between Trade and Competition Policy, the antidumping remedy is:

> "necessary to the maintenance of the multilateral trading system. Without this and other remedial safeguards, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system. . . . [T]he antidumping rules represent an effort to maintain a "level playing field" between producers in different countries . . . [and] are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization."

In recent years, AISI and its U.S. member companies have supported virtually every major initiative to liberalize international trade, including:

- renewal of U.S. traditional trade negotiating authority ("fast track");
- the North American Free Trade Agreement ("NAFTA");
- the GATT Uruguay Round (UR) results;
- the process of Asia-Pacific Economic Cooperation ("APEC"); and
- negotiations to achieve a Free Trade Area of the Americas ("FTAA").

At the same time, the revitalized, world class U.S. steel industry has confronted, and continues to face, long-standing, injurious and pervasive foreign unfair trade practices. Accordingly, AISI's U.S. members have used antidumping (AD) and countervailing duty (CVD) laws to counter:

- closed foreign markets;
- foreign private anticompetitive practices;
- foreign dumping; and
- foreign government trade-distorting subsidies.

This experience has made clear that effective rules against dumping and trade-distorting subsidies are what makes trade liberalization possible.

NEED TO PREVENT ANY REOPENING OF THE WTO'S ANTIDUMPING AGREEMENT AND THE WTO'S AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (SCM)

With much of Asia and Latin America in recession and Russia in collapse, the steel industry in the United States and throughout North America experienced the greatest surge of injurious dumped and subsidized imports in its history in 1998. Unfortunately, America's steel trade crisis continues in 1999 in the form of loss of orders, sales and revenue; severe price depression; cutbacks in production and operating rates; lost jobs; sharp declines in profitability and liquidity; reduced investment; depressed stock prices; and five bankruptcies. Therefore, AISI's U.S. members have a particular interest in avoiding any efforts by foreign governments to use the WTO process to try to weaken further international and U.S. disciplines against trade-distorting practices. This is a goal strongly shared by AISI's entire North American membership.

The Committee on Ways and Means, in its 1997 markup of fast track bill legislation, approved by voice vote—without dissent—a provision instructing U.S. negotiators to reject any agreement that would weaken existing disciplines against dumping and subsidies. The Committee stated that USTR:

> "shall—... preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping and countervailing duty laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies. . .."

Unfortunately, a number of foreign governments have recently made clear that they would like to reopen these rules as a top priority—in order to weaken them. Therefore, *the absolute top priority* for the U.S. government should be to oppose any foreign government efforts to reopen the WTO Antidumping and SCM Agreements. Whatever WTO members do agree to add to the list of agreed post–1999 WTO negotiations, reopening the WTO Antidumping and SCM Agreements should not be on the list.

- *First, there have been no major problems with WTO members' implementation of the new AD/CVD rules, so reopening these agreements is unnecessary*. The only unresolved AD issue is circumvention and, while AISI supports adding further clarity to WTO rules and improving U.S. law in this area, this neither requires nor justifies reopening the WTO Antidumping Agreement. On the issue of subsidies, there is a need for more notification by governments, but this does not require or justify reopening the SCM Agreement. Likewise, the only SCM issue in need of near-term attention is the pending expiration, unless extended by Ministerial decision, of the "greenlight" (Arts. 8 and 9) and "dark amber" (Art. 6.1) provisions, and this issue, too, neither requires nor justifies reopening the SCM Agreement.
- *Second, there has been little testing to date of the new AD/CVD rules*. Many developing countries have not even come into full compliance with the GATT Uruguay Round's trade law changes. The world trading system has not had sufficient time to digest the UR's changes to dumping and anti-subsidy rules. A period of stability and certainty is in order. Continued change and uncertainty in the WTO's fair trade rules would actually impede world trade.
- *Third, the new AD/CVD rules are weaker than the pre-GATT Uruguay Round rules*. In the antidumping area, as a result of the UR's stricter standing requirements, changes in how margins are calculated, higher de minimis standards and new "sunset" provision, U.S. cases will be (1) harder to bring, (2) more difficult to win, (3) provide less relief for a shorter period of time and (4) cost more money for injured American industries and workers. In the anti-subsidy area, while the new SCM Agreement has a somewhat expanded "red" list of prohibited subsidies and a new deep amber definition for "serious prejudice," the U.S. in the UR lost the ability to pursue private subsidies, and also had to accept three new loopholes in the form of greenlights that make non-actionable subsidies for research and "pre-competitive development," regional development and environmental equipment.

• *Fourth, the new AD/CVD rules are not the problem in international trade*. The real problems continue to be the trade-distorting practices of foreign countries (closed markets, cartel behavior, massive subsidies) that facilitate dumping and make it so necessary for the United States to maintain and enhance effective AD/CVD rules.

• *Fifth, any reopening of the WTO Antidumping and SCM Agreements would only lead to a further weakening of AD/CVD rules*. This, in turn, would further perpetuate uneconomic excess capacity abroad and foreign trade-distorting practices. This would not serve the U.S. national economic interest.

• *Sixth, a highly divisive fight over reopening the Antidumping and SCM Agreements would make it all but impossible to achieve progress in key areas and conclude a new round of trade talks in a timely fashion*. It could prevent progress on all of the important issues that comprise the agreed built-in agenda for the next round.

In sum, the U.S. government should continue to *resist by whatever means necessary* any foreign government efforts to reopen these agreements. As AISI's President and CEO Andrew G. Sharkey, III said recently:

> "In the {President's new} Action Plan {for steel}, in testimony {on August 5} before the House Ways and Means Committee and in many other settings, the resolve of the Administration is unmistakably strong. We plan to support our negotiators in every way possible, because our trading partners have made no secret of their intent to use the Seattle Round to cripple our defenses against unfair trade."

NEED TO IMPLEMENT THE GATT URUGUAY ROUND'S EXISTING RULES

AISI also supports U.S. efforts to ensure that the existing UR antidumping and anti-subsidy rules are effectively implemented, e.g., through continued monitoring by the WTO's Committee on Antidumping. This, however, is very different from renegotiating those rules.

In addition, two Marrakesh Ministerial decisions have not yet been properly implemented. The first calls for an examination of the Antidumping Agreement standard of review to determine broader application in WTO dispute settlement proceedings. The second makes it clear that the WTO standard of review in AD disputes should apply equally to WTO panel reviews of CVD disputes. Both of these Ministerial decisions should be addressed and resolved as part of the pending WTO Dispute Settlement Understanding (DSU) review, and neither provides a reason to reopen the substantive WTO Antidumping or SCM Agreements.

NEED TO CONTINUE THE PROGRESS IN WTO-MANDATED NEGOTIATIONS

With respect to the concluded UR agreements where there was an express agreement to conduct further negotiations, AISI would hope that any negotiations in the services area would include a major focus on distribution services. Such a focus is warranted because distribution barriers are a main method used in other countries to limit imports of steel and other manufactured products. This, of course, impairs U.S. exports and diverts foreign exports of steel and steel-intensive products to the United States.

NEED TO REFORM THE WTO'S DISPUTE SETTLEMENT UNDERSTANDING

The DSU review is to be concluded by year-end 1998 and, thus, technically is not part of the post–1999 negotiating agenda. AISI believes that U.S. support for continuing WTO dispute settlement rules should be conditioned on additional improvements and reforms. Among key and necessary reforms would be:

• to permit enhanced participation by private counsel "in the development of U.S. positions and in the preparation for consultations and dispute settlement proceedings" as called for in the FY 1998 appropriations bill funding USTR;

• to limit the WTO's focus to legitimate dispute settlement functions, e.g., to prohibit WTO panels from reevaluating factual findings made by national authorities in CVD, as well as in AD, cases; and

• to increase the fairness, transparency and openness of WTO dispute resolution decision making.

In addition, AISI's U.S. members support continued U.S. efforts to:

• *defend sovereignty*—the WTO must continue to provide flexibility to allow a country to maintain practices that violate the WTO as long as that country is willing to compensate injured trading partners or accept retaliation;

• *maintain Section 301*—the U.S. should keep stressing that, in areas where there are currently no WTO disciplines, Section 301 will continue to be available and will continue to be used to reduce and eliminate foreign market barriers; and

• *establish a WTO oversight commission*—one way to enhance the credibility of the WTO and its new DSU rules would be to enact the WTO judicial oversight bill sponsored in the last Congress by Representatives Benjamin Cardin (D–MD), Ralph Regula (R–OH) and others in the House and Senate. This WTO-consistent proposal would help ensure that, in future AD/CVD appeals, WTO panels do not exceed or abuse their authority.

NEED TO CONTINUE PROGRESS ON THE SINGAPORE MINISTERIAL'S WORK PROGRAM

With respect to next steps on issues raised in the context of established WTO working groups, AISI believes that:

• the current discussions in the trade and competition policy working group should conclude by year's end; and

• any report from this working group to the WTO General Council should omit any references to antidumping law, which is a totally extraneous issue.

While the U.S. Administration deserves much credit for resisting foreign government efforts to weaken U.S. AD law by trying to link antidumping to competition policy, the potential for WTO mischief making in this area has not diminished. Indeed, WTO Secretariat officials continue to engage in unfounded attacks on the GATT Article VI antidumping remedy through so-called "objective" studies on competition policy.

Once again, the international trade problem is anticompetitive practices, not antidumping law. U.S. steel companies and employees continue to suffer serious damage from foreign steel cartel behavior.

The WTO could provide useful insights into this problem if future work were to focus *solely* on the serious market access issues related to anticompetitive practices. Any future educational work in this area, however, would need to steer absolutely clear of any discussion or review of AD law and rules. It would need to confine itself to exploring the problem of private (and joint public-private) anticompetitive practices and other trade restraints. It would need to look seriously at the damaging effects of closed markets and private anticompetitive practices abroad, including foreign governments' support for, and toleration of, cartel behavior. To that end, AISI's U.S. members would also like to see an official U.S. government study on the problem of foreign anticompetitive practices.

NEED TO ENACT WTO-CONSISTENT U.S. TRADE LAW REFORM

WTO-consistent provisions to improve the effectiveness of U.S. trade laws are among the most important pieces of trade legislation that Congress could enact this year. Since the conclusion of the GATT Uruguay Round, which itself resulted in a net weakening of U.S. trade laws, America's antidumping and countervailing duty laws have been further weakened by court decisions and sophisticated efforts at trade law evasion and circumvention. In addition, economic crises abroad have resulted in unprecedented, injurious surges of dumped, subsidized and disruptive imports, to which our existing trade laws have not provided adequate remedies.

The United States is heading toward a record $300 billion merchandise trade deficit in 1999. In some cases, U.S. trade laws make it more difficult to obtain relief from injurious imports than the WTO requires. As a result, public faith in free trade is eroding, and public support for new multilateral trade liberalization is being undermined.

Therefore, as the United States prepares for a new round of multilateral trade negotiations, we must ensure that WTO-consistent U.S. trade laws (1) enhance U.S. leverage and credibility at the negotiating table and (2) reassure the American public that multilateral trade rules and national trade laws will be effectively enforced. The best way to achieve these goals is to enact WTO-consistent trade law strengthening proposals of the kind contained in The Fair Trade Law Enhancement Act (H.R. 1505) and the Continued Dumping and Subsidy Offset Act (H.R. 842).

NEED TO PURSUE OTHER KEY WTO GOALS IN THE NATIONAL INTEREST

While ensuring that a new WTO round does not result in any weakening of AD/CVD laws remains AISI's top priority, we also support the following WTO-related objectives:

• *Need to Achieve Steel Tariff Elimination Globally*. The GATT Uruguay Round already provides for a 10-year phase-out of *U.S.* steel tariffs. All normal U.S. duties on steel imports are scheduled to reach zero on January 1, 2004. Unfortunately, the GATT UR led to *only some* countries going to zero tariffs on steel. Many steel-producing and trading countries in Asia, Central Europe, Latin America and elsewhere did not agree to go to zero tariffs in the UR. Therefore, it is imperative in any new

WTO Round that governments work together to ensure that *all* steel producing and trading nations go to zero on steel tariffs as soon as possible. Achieving zero tariffs on steel by all major steel producing and trading nations is in the interest of both steel producers and consumers globally, and is needed to level the playing field in international steel trade.

• *Need to Pursue Simpler, More Transparent Government Procurement Rules*. AISI's U.S. members support enhanced foreign procurement opportunities for steel's U.S. customers. They therefore support continued U.S. government efforts to: (1) simplify and improve the World Trade Organization (WTO) Government Procurement Agreement (GPA); (2) update the GPA to take account of the growing role of electronic commerce in the government procurement area; (3) encourage developing countries and other non-signatories to sign the GPA; (4) encourage non-signatories to assume equivalent commitments to promote transparency and open access to "covered entities"; and (5) encourage greater transparency and compliance by GPA signatories of the commitments they have already agreed to.

• *Need to Prevent Any Weakening of Steel Buy American Rules*. At the same time, in any new negotiations in the government procurement area—whether under the auspices of the WTO, the FTAA or the Transatlantic Economic Partnership—AISI's U.S. members remain strongly opposed to any weakening of steel Buy America rules or any expansion of "covered entities" affecting steel. In particular, insofar as Congress only recently reaffirmed, once again, its strong support for leaving steel Buy American rules totally intact in the reauthorized ISTEA bill, there should be no weakening of Buy American preferences in the Highway Bill. The problem is, AISI's U.S. members remain highly skeptical of expanding market access coverage at this time in areas affecting steel, because: (1) the U.S. has not achieved anything close to *equitable results* in terms of currently covered entities; and (2) many foreign governments have not lived up to their existing WTO GPA obligations and commitments. If Buy American provisions were weakened *without* reciprocal access to foreign markets, U.S. steel producers, workers, customers, the U.S. economy and U.S. trade policy would be the loser. At a time of steel trade crisis in the United States, it should not even need saying that, in any procurement-related negotiations in the near future, steel Buy American rules should be left *fully intact*.

• *Need to Ensure WTO Accessions for China and Russia on Commercially Viable Terms*. AISI's entire North American membership agrees that China (the world's number one steel producing nation), Russia (the world's number one steel exporting nation) and other countries in the Commonwealth of Independent States (CIS) should accede to the WTO—but only on commercially viable terms. They agree in particular that: (1) WTO members should be allowed to continue to apply non-market economy antidumping methodology until steel and other key sectors of the Chinese and CIS economies are no longer under government regulation or control; (2) China and the CIS countries should end subsidies now to the steel sector and adhere as soon as possible to the WTO Subsidies Code; (3) China should eliminate immediately all trading rights and other discriminatory barriers to steel imports; and (4) there should be a special safeguard in the Chinese and CIS accession protocols that enables other WTO members to address the possibility of import market disruption from China and the CIS.

• *Need to Be Cautious on the New Issue of Trade and the Environment*. One "new" WTO issue is trade and the environment. On this issue, unlike some other segments of U.S. industry, AISI's main concern is not that NAFTA-type environmental provisions might find their way into additional trade agreements. Rather, AISI's concern is that unilateral U.S. efforts to implement certain international environmental accords could end up causing substantial harm to the trade and competitiveness position of U.S. manufacturers—*without* in any way solving the global environmental problems at hand. The steel industry's most immediate concern in this regard is global climate change policy. Simply put, the goal of reducing the world's "greenhouse" gasses and global warming will not be achieved if the U.S. and other developed countries are forced to live under strict new environmental standards, while other major steel industries in the world are exempted as "developing" countries.

MAIN CONCLUSIONS

At a time when the U.S. steel industry continues to confront a trade crisis of historic proportions, AISI remains greatly concerned by ongoing foreign government efforts to reopen the current WTO dumping and anti-subsidy rules. Such a reopening would only further erode current remedies to unfair trade. If that were to occur, the support of steel and many other key U.S. industries for the WTO could turn to opposition. Therefore, Congress should continue to oppose foreign government efforts to reopen and weaken WTO antidumping and anti-subsidy rules.

In response to this latest trade law weakening push by foreign governments, AISI's U.S. member companies support:

• more effective U.S. AD/CVD laws and enhanced Department of Commerce trade law enforcement;

• an intensified commitment by the Administration that it will vigorously enforce U.S. trade law rights when they are challenged by foreign governments in the WTO; and

• continued, close congressional oversight of WTO matters to ensure that the WTO Antidumping and SCM Agreements do not get reopened.

AISI, on behalf of its U.S. members, appreciates this opportunity to provide a written statement to the Trade Subcommittee on U.S. objectives for the third WTO Ministerial Conference in Seattle and for a new round of WTO trade negotiations.

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Statement of Antonia Juhasz, Director, International Trade and Forests Program, American Lands Alliance, and Dr. Faith Campbell, Director, Invasive Species Program, American Lands Alliance

AMERICAN LANDS ALLIANCE

"I think trade has divided us, and divided Americans outside this chamber, for too long. Somehow we have to find a common ground on which business and workers and environmentalists and farmers and government can stand together." President William Clinton, State of the Union Address, January 19, 1999

We joined with millions of Americans on January 19, 1999 to hear President Clinton speak these words. We admit that we listened with some scepticism, but we also accepted the President at his word. As Directors of the International Trade and Forests and Invasive Species Programs at American Lands Alliance, an organization that works with forest protection activists and organizations from across the country, we looked forward to a year of increased participation in our government's trade policy agenda.

So, it was with considerable disappointment that we returned to work and learned in increasing detail of the Administration's agenda for the third Ministerial meeting of the World Trade Organization.

Rather than use this meeting as an opportunity to use trade policy to promote greater protections for the world's embattled forests, the Administration is spearheading efforts that will threaten forests, biodiversity and eco-systems.

Given the multiple threats and abuses placed on the world's dwindling native forests, now is not the time to advocate trade policies that threaten to increase these pressures. Rather, it is time to assess the impact of past international trade agreements on forests and other non-renewable resources in an attempt to protect these resources in the future.

There are several elements of the agenda for the Ministerial meeting that could have a deleterious impact on forests. However, there are just three key issues that we would like to bring to the attention of the Subcommittee today: the Global Free Logging Agreement, the threat of invasive species invasion from the Sanitary and Phytosanitary Standards Agreement and the potential inclusion of investment provisions similar to the Multilateral Agreement on Investment.

THE "GLOBAL FREE LOGGING AGREEMENT"

On February 11, 1999, less than one month after the State of Union Address, United States Trade Representative Charlene Barchefsky, stated that trade liberalization of forest products is a priority of the Administration and part of an "early harvest" agenda—negotiations that will occur prior to the Ministerial meeting so that a final agreement can be reached in November. The so called "Advanced Tariff Liberalization" (ATL) initiative would eliminate tariffs on all forest products by the year 2000 for developed countries and 2003 for developing countries.

Tariff Elimination on Forest Products

According to the American Forest and Paper Association, tariff elimination could generate three to four percent additional growth in consumption of forest products worldwide.[1]

[1] "Forest Industry Leader Urges Worldwide Tariff Elimination," American Forest and Paper Association, April 28, 1999.

This finding is troubling because increased consumption of forest products will lead to an increase in production. Increased production means increased logging—making the ATL a virtual "Global Free Logging Agreement." Without the appropriate environmental protections to ensure that logging takes place in unthreatened forests and will not cause environmental harm, increased logging will mean increased destruction of the world's forests, biodiversity and eco-systems.

Current logging practices have decimated the world's forests. According to the World Resources Institute (WRI), nearly one-half of the world's original forest cover is gone. Of the remaining original forests, most is severely degraded, while only 22 percent remains as large tracts of relatively undisturbed primary or "frontier" forests. WRI and other organizations have named commercial logging as the greatest threat to frontier forests. According to World Wildlife Fund mapping projects, in North America, all but about five percent of the forests in the lower 48 states have been logged at least once. Following logging, replanted areas typically lack the biodiversity and ecological functions present in the original forest. The World Conservation Monitoring Center considers this type of habitat loss to be the biggest current threat to biodiversity. An increase in unsustainable logging practices by the ATL would exacerbate this already tenuous situation.

In response to the concerns raised by environmental organizations and others, the Office of the U.S. Trade Representative has argued that tariff elimination is a win-win scenario for the environment and industry because the increased consumption it generates will be met by more efficient production.[2] Unfortunately, the Administration has yet to cite evidence in support of this contention.

Written testimony by Earthjustice Legal Defense Fund and Defenders of Wildlife[3] demonstrates the hollowness of the Administrations argument. First, the most economically efficient way to log a forest is to clear cut. Clear cutting also happens to be the most environmentally harmful method. Second, the organizations cite a U.S. Department of Commerce finding in a countervailing duty investigation of softwood lumber imports from Canada that as costs of producing timber decrease (in this case through decreasing stumpage rates), logging increases. The Administration can not have it both ways.

The ATL would accelerate and expand a tariff schedule agreed to at the Uruguay Round of the WTO. Given the status of the world's forests, there simply is not enough information available at this time to know exactly what the impact of accelerated tariff elimination of all forest products world-wide would mean to endangered forests, biodiversity and fragile eco-systems. Therefore, until such information is available, and—if necessary—the appropriate environmental protections put into place, it is fool-hearty to rush forward with these negotiations.

Non-Tariff Barriers to Trade: A Threat to Domestic Environmental Protections

In addition to tariff elimination, it is possible that the WTO will consider non-tariff barriers to trade in the forest products sector. At least one nation, Japan, has proposed the inclusion of non-tariff barriers to trade such as export bans on raw logs for discussion at the Ministerial meeting.[4]

The agreement on forest products was transferred to the WTO from the Asian Pacific Economic Cooperation (APEC). APEC is negotiating a similar agreement that includes the voluntary elimination of laws that are considered to be "unjustified" non-tariff barriers to trade.

We find the potential negotiation of the elimination of non-tariff barriers to trade troubling because such negotiations amount to a virtual attack plan on the forest protection laws that American Lands Alliance cares about the most.

A 1997 paper by the WTO's Committee on Trade and the Environment[5] describes in detail non-tariff barriers to trade on forest products that could be considered inconsistent with WTO rules. These non-tariff barriers include export controls, including export taxes; restrictions and bans on certain products such as unprocessed logs; recycled content requirements on paper products; regulations specifying types of allowable packaging materials; percent of packaging material acceptable in relation to product size and weight; packaging reuse and recycling targets; recovery or return schemes and certification and labeling of forest products.

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[2] Letter to Paige Fischer and Jim Jontz from Don Phillips, Assistant U.S. Trade Representative for Asia and the Pacific, July 27, 1998.

[3] "Conditions of Competition in the U.S. Forest Products Trade." Investigation 332–400, United States International Trade Commission. Hearing testimony submitted by Earthjustice Legal Defense Fund and Defenders of Wildlife, May 26, 1999.

[4] "Preparations for the 1999 Ministerial Conference." Communication from Japan. July, 1999.

[5] WT/CTE/W/67, 7 November 1997

We worry that negotiations of forest products at the WTO Ministerial and subsequent round will attempt to treat legitimate conservation measures as "unjustified" non-tariff trade barriers. Numerous U.S. laws designed to protect forests, the environment and domestic workers could be challenged and potentially eliminated if they were no longer considered justified, and therefore illegal, barriers to trade.

Examples of U.S. laws that could potentially be challenged by the WTO as illegal non-tariff barriers to trade include the 1990 Forest Resources Conservation and Shortage Relief Act that permanently banned the export of unprocessed logs from federal and most state lands. The law was created to protect domestic workers, mills and forests.

President Clinton's Executive Order 12995 which establishes specific recycled content requirements for paper and paper products used by the federal government is a non-tariff barrier to trade that could be considered "unjustifiable" at the WTO. The same is true of laws enacted by every state except Alabama, Delaware and Wyoming to purchase recycled products including 33 states with preferences for recycled materials generally, twenty states with separate purchasing preferences for recycled paper, and several addressing other recycled materials.

Arizona, New York and Tennessee have passed eco-labeling or certification laws that limit the purchase of wood from tropical rainforests, only buying tropical timber that is harvested using ecologically sound management practices. Such certification programs are gaining in popularity around the country and the world. When used by governments, these programs could be considered non-tariff barriers to trade subject to WTO disciplines.

The vital environmental and labor protections created through these laws would be eliminated if these laws were challenged and removed as illegal non-tariff barriers to trade.

The WTO has a perfect record when it comes to environmental protection laws: every environmental protection law that has been challenged at the WTO has fallen.

Given this record, the Clinton Administration should be using the Ministerial meeting of the WTO to assess the threats currently faced by legitimate conservation laws at the WTO rather than discussing proposals that put such laws into even greater jeopardy.

ADMINISTRATION ANALYSIS OF ATL

Under growing pressure from environmental organizations and citizens to assess the environmental impacts of the proposed liberalization initiatives for forest products at the WTO, the Administration has initiated a limited analysis of the potential "economic and environmental impacts" of the ATL. Unfortunately, this analysis falls well short of what would be necessary to provide an adequate basis for policy decision-making. Specifically, the reference point for such an assessment must be the National Environmental Policy Act's (NEPA) mandated procedures and methodologies, as elaborated through regulations of the Council on Environmental Quality (CEQ). Because the analysis proposed by USTR and CEQ does not follow nor even come close to reflecting these guidelines, it does not provide for the appropriate depth, public participation nor evaluation of alternatives necessary to serve as a satisfactory source of information.

American Lands finds the study to be inadequate for the following reasons:

1. **The time-frame is too short for adequate public input and for completion of a comprehensive assessment.** While the Federal Register requests "specific information regarding, or empirical studies of, the economic and environmental impacts of past trade liberalization in this sector," the thirty day comment period does not provide adequate time to compile this or other meaningful information. In addition, thirty days does not provide adequate time to notify the broader "non-beltway" public of the request period such that they have to time to prepare a response. Finally, the time-frame for completion of the study (USTR and CEQ stated that the study would be completed in September[6]) is too short for a comprehensive analysis of both economic and environmental impacts.

NEPA COMPARISON: the NEPA process specifies that no final decision will be made until at least 90 days after publication of a notice of a draft Environmental Impact Statement (EIS) and 30 days after publication of a final EIS.

2. **The scope of the analysis is too limited**. The proposed analysis includes only tariff elimination and does not include non-tariff barriers to trade. As discussed above, it is most likely that the WTO discussions will include non-tariff measures. Non-tariff measures are a vital part of the answer to the study's question of how

[6] USTR and CEQ briefing for NGOs on the ATL, June 3, 1999.

forest product trade liberalization efforts relate to "other U.S. government goals and objectives in the forest policy arena." As listed above, there are many U.S. government policies intended to protect forests that could be considered non-tariff barriers to trade. The analysis is incomplete without an investigation in to this area.

3. **The proposed analysis does not include an exploration of alternatives, including the "no action" alternative. The analysis does not even consider the possibility of achieving the trade goal with an environmentally justifiable alternative. Without a thorough investigation of alternatives to the ATL, the agreement appears to be a "fait accompli" and the analysis nothing more than a gesture to the environmental community rather than a meaningful process.**

NEPA COMPARISON: the NEPA EIS must include a comparison of the potential environmental impacts of the proposed action to the impacts of alternatives (including no-action alternative) including appropriate mitigation measures.

4. **The analysis does not include a study of the state of the world's forests today nor the adequacy of current forest protection laws.** A comprehensive environmental assessment must take into account the environmental status of the natural resource in question and the laws intended to protect that resource. The proposed analysis, on the other hand, fails to ask the basic question "are the world's forests able to sustain an ATL in forest products given current national and international frameworks for forest conservation?"

NEPA COMPARISON: the NEPA EIS must include a description of the affected environment and the environmental consequences—including direct and indirect effects, possible conflicts with other federal, state and local policies governing the affected areas, impacts of alternatives and the impacts on depletable resources and on conservation.

5. **The concerns raised by other agencies and the public are not being investigated.** While the Federal Register notice states that previous testimony submitted on this topic will be made a part of the record, it does not say that USTR and CEQ will respond to these comments nor the comments being requested in the current notice. There is also no explanation given as to how comments will be included in the process nor how the recommendations of the public will be rejected or accepted. Finally, nowhere does it say that an explanation will be provided as to why certain recommendations were rejected or accepted.

NEPA COMPARISON: under NEPA guidelines, the government is required to assess and respond to public comments. In addition, the EIS must cover areas of controversy, including issues raised by agencies and by the public, and issues to be resolved (including alternatives).

Each of the five points provided above would be addressed if the Administration had agreed to cease negotiation of forest product liberalization efforts at the WTO and begin an assessment consistent with NEPA disciplines. Unfortunately, the proposed analysis follows none of these guidelines and therefore will be an inadequate assessment on which to base policy decisions about the ATL or any other trade liberalization initiatives in the forest products sector.

PUBLIC AND CONGRESSIONAL OPPOSITION

On July 19, 1999, in a letter to United States Trade Representative Charlene Barshefsky, sixteen of the nations leading environmental organizations expressed their opposition to the forest product liberalization plans at the WTO. Groups as diverse as the World Wildlife Fund, the Wilderness Society and Greenpeace wrote that the ATL "would not correct, and could very well compound, worldwide forest destruction." They urged the Administration to "promptly suspend further promotion of the current U.S. position" and "begin development of an alternative trade policy that demonstrably enhances forest conservation and sustainable development."

On the topic of non-tariff barriers to trade, the groups "reject any forest products negotiations that threaten to treat legitimate conservation measures as illegal 'non-tariff trade barriers.'" They urged the Administration to "make clear that it would vigorously oppose any negotiations that could lead to restrictions on legitimate third party certification and ecolabeling of forest products, or otherwise on the consumer's right-to-know about the environmental conditions under which wood products are logged and produced."

On July 28, 1999, 48 bi-partisan Members of Congress wrote President Clinton demanding that he withdraw from negotiations of the Global Free Logging Agreement, saying that it would increase unsustainable logging practices, threaten domestic forest protection laws, and jeopardize the world's remaining native forests.

The letter was spearheaded by George Miller (D–CA) and Merrill Cook (R–UT). House Minority Leader Richard Gephardt (D–MO) also signed the letter.

The Representatives addressed the topic of non-tariff barriers by expressing their concern that the "Administration is negotiating non-tariff barriers in other fora and has not committed to rejecting such discussions at the WTO in the future."

Unfortunately, the Administration ignored these concerns and announced on July 30, 1999, that the ATL remained on the agenda of the Administration for signing at the Ministerial in November. Furthermore, the Administration did not reject the negotiation of non-tariff barriers to trade at the Ministerial or in the subsequent round.

RECOMMENDATION

American Lands asks Subcommittee members to recommend that the Administration support the removal of all discussions of forest product trade liberalization from the Ministerial meeting and subsequent round of the WTO. Rather, the Administration should initiate a NEPA-style assessment of the impact of previous WTO trade agreements, and the potential impact of proposed WTO trade agreements, on forest protection and biodiversity.

THE SPS AGREEMENT: OPENING THE DOOR TO INVASIVE SPECIES

Scientists and conservationists are increasingly concerned that the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Standards (SPS Agreement) will block the U.S. Department of Agriculture from imposing sufficiently effective phytosanitary safeguards to minimize the risk that harmful exotic or alien species will be introduced in the course of international trade. As now written, the SPS Agreement requires the U.S. Department of Agriculture (USDA) to justify its phytosanitary safeguards in risk assessments that demand far greater quantities of information, and in far greater detail, than scientists can provide. In the face of these demands, the USDA must either

- adopt "provisional" regulations and expend scarce resources trying to obtain the missing information needed to make them final; or
- play "Russian roulette" by choosing to apply phytosanitary regulations only to known pests—when the vast majority of potentially damaging organisms have not been identified by science.

Furthermore, even when the USDA has sufficient information to designate particular species of insect, nematode, fungal pathogen, or plant as a "quarantine pest," the SPS Agreement still limits the types of measures that the USDA can enact to try to prevent those organisms' introduction. Because the SPS Agreement forces the USDA to rely on resource-intensive and error-prone processes of inspection, detection, and evaluation, it virtually guarantees that additional pests will be introduced.

The result of the SPS Agreement's misguided provisions is that American agriculture, horticulture, and natural environment—and the taxpayer—will be exposed to greater damage than necessary resulting from the introduction of exotic pests and weeds.

SUMMARY OF LOSSES CAUSED BY INTRODUCED PESTS AND WEEDS

According to Dr. David Pimentel and colleagues at Cornell University, introduced or exotic species cost the American economy more than $123 billion annually. Exotic pests and weeds subject to the SPS Agreement make up at least $80 billion of that total. Examples of exotic pests and weeds already wreaking havoc in the United States include Formosan termite, fire ant, gypsy moth, Melaleuca, water hyacinth, "Dutch" elm disease, pine shoot beetle, yellow starthistle, and giant reed. These and other exotic species have completely transformed the forests of the east and are destroying the ecological and economic value of grasslands and wetlands across the continent.

Even greater losses could be caused by introduction of additional exotic species not yet established in America. Just two of the recent pest risk analyses completed by the USDA put potential losses at $94 billion. These analyses considered just a few species known to pose great risk to forests and related industries; pests threatening other resources would raise the cost considerably. Furthermore, ecologists assure us that many species that could devastate our ecosystems are at present completely unknown to science or are "cryptic"—that is, since they are not considered to be pests in their native environments, their pest potential here has been underestimated. We can predict that future losses could rise to several hundred billion dollars—but we cannot predict which introduced species will contribute most to such a nightmare.

HOW EXOTIC SPECIES REACH AMERICA

Exotic species reach America in the course of international trade. Most come in as unintended "hitchhikers" or "stowaways"—organisms that found homes in the commodity being traded, or in the packaging containing the commodity, in the ballast water, even in or on the structures of the ships and planes themselves. Insects, fungal pathogens, weed seeds, brown tree snakes, even mammals have survived long-distance transport inside the holds of ships or planes. Once on our shores, the organism may escape into suitable habitats, become established, and start to reproduce and spread.

As America's imports increase—according to the General Accounting Office, they have expanded by more than 50 percent just since 1990, so do the opportunities for hitchhiking organisms. Unfortunately, virtually all ship-based transport ranks as a high risk of introducing exotic species because both ballast water and solid wood packaging—the crates, pallets, etc., that contain many products, and the wood blocks ("dunnage") placed between containers to prevent their shifting—provide suitable habitats for a myriad of species. If the United States is to protect itself from being overrun with exotic species and the hundreds of billions of dollars in associated control costs and losses, it must impose stringent phytosanitary safeguards aimed at ballast water, wood packaging, a wide variety of commodities, and other "pathways" of introduction.

SUMMARY OF FAULTS IN THE SPS AGREEMENT

A) The Right of a Country to Set its Own "Appropriate Level of Risk":

The SPS Agreement explicitly allows a country to set its own "appropriate level of risk" or protection (Article 3.3). However, this right is circumscribed. First, the country must be consistent—that is, apply comparable levels of protection in comparable situations (Article 5.5). To satisfy this requirement, countries must close any existing loopholes in "comparable" measures—both other phytosanitary measures applied to imports and domestic measures intended to prevent the spread of "comparable" organisms within the country (or the absence of such measures). This step will be politically difficult, may interfere with interstate trade, and will demand expenditure of significant resources at a time of stringent budgetary limits.

Second, the "appropriate level of protection" must be justified by risk assessments pointing to a specific—not a generalized—threat. However, scientists' knowledge about the ten million or more species of insects, fungi, and disease pathogens living in our trading partners' habitats is far too limited to enable them to predict which foreign species might cause devastating damage if introduced to a new ecosystem. For example, neither the chestnut blight nor the fungus which causes "Dutch" elm disease is considered to be a damaging pest in their native Asia. The more specific the information demanded by the SPS Agreement, the greater the number of poorly understood exotic organisms that will not qualify for exclusion—and the risk that some of those species will prove to be highly damaging pests once introduced.

B) Risk Assessments

The WTO Appellate Body has required that the risk assessment for phytosanitary measures be very specific. The types of species and impact-specific information demanded just cannot be obtained for most potential phytosanitary pests. George Carroll, President of the Mycological Society of America, has said:

> Current regulations are based in part on pest risk assessments ... However, most of the fungi that have caused devastating epidemics upon introduction to North America were previously unknown as significant pathogens and indeed were not significant pathogens in their native habitat. Today, it is estimated that 95% of fungal species in the world remain undescribed, let alone understood in terms of ecological function. We do not believe that pest risk assessments can adequately identify organisms which may cause severe damage in North America.

America's ecosystems will not be protected by phytosanitary measures targeted on the few individual species for which sufficient data exist to meet this standard. Yet, the SPS Agreement prohibits the USDA from acting to prevent the introduction of species that are not determined, in the risk assessment, to be "quarantine pests" under SPS standards—again, a decision dependent upon the error-prone process of evaluating the potential impacts of individual taxa.

C) "Provisional" Measures Adopted Under the Terms of Article 5.7

The only way a country can escape the obligation to define the problem and its solution with such specificity is through adoption of "provisional" measures under

the terms of Article 5.7. A country's right to adopt "provisional" measures is often said to be the Agreement's acceptance of the "precautionary principle." However, the text and a third decision by the Appellate Body make it clear that "provisional" measures are expected to be short-term and the exception rather than the rule. Furthermore, the country must be seeking the additional information—a task that will certainly consume scarce governmental resources and may be completely fruitless.

As we said initially, the USDA has two choices:

1) play Russian roulette—let in the thousands of taxa for which it lacks sufficient information to prepare an acceptable risk assessment—and hope that none of them turns out to be the bullet in the chamber, or

2) issue numerous "provisional" regulations and waste scarce resources seeking additional information and reviewing its decisions.

D) Pests and Weeds Already Present in the Country

The SPS Agreement severely restricts the U.S.' right to protect itself from continued introduction of pests and weeds that are already present in the country. The SPS Agreement allows a country to erect phytosanitary barriers for pests already in the country only when:

- the species is not widespread *and* an "official control program" targets the species; or
- the newly introduced organism differs genetically from its relative in the United States in a way that demonstrates the potential to cause greater damage.

At least 400 species of exotic insects and 500 species of alien plants already threaten natural ecosystems in the United States; additional pests and weeds threaten agriculture. Allowing more individual organisms belonging to these species into the country presents the following risks: the added numbers enable the species to reproduce more rapidly; the new imports may establish a population in an area not previously infested: and the organisms may introduce a genetic variety that is harder to control.

Yet the U.S. lacks the resources to maintain "official control programs" for a significant number of these established pests and weeds—especially when the principal reason for doing so is not to improve control over the invader within our borders, but only to meet the conditions for preventing further introductions.

Scientists cannot meet the second condition—analyzing the genetic makeup of these organisms and predicting that any differences may result in the species showing greater virulence or resistance to control—because they do not have sufficient information about the species' genetic makeup.

The Type of Phytosanitary Program the SPS Agreement Should Allow

A truly "science-based" phytosanitary program should reflect the serious threat posed by exotic species to agriculture, horticulture, forestry and to the myriad natural ecosystems and biotic communities found from Alaska to Florida, Maine to Hawaii.

It should also reflect practical realities, including gaps in scientists' knowledge about both species that inhabit our trading partners' habitats and the vulnerability of American ecosystems; and limits on funding, control technologies, etc. that impede efforts to control introduced organisms once they are in the country. Indeed, biological invasions are usually irreversible given today's level of scientific knowledge, limited funding, and the ever-rising number of pests that must be addressed. For this reason, scientists strongly recommend focusing efforts on preventing introductions.

It follows that a sound phytosanitary program should have as its premise the goal of keeping out—"excluding"—*all* exotic organisms that have not been evaluated and determined very unlikely to be invasive.

In other words, "If in doubt, keep it out"; or "guilty until proven innocent"

Exclusion is most effectively and efficiently done by utilizing the best technologies and regulations to ensure that each of the many introduction "pathways" will be as inhospitable to *any* insect, fungus, virus, weed, or other potential pest organism as is technically possible. This approach solves several problems; it:

- reduces the burden on USDA port inspectors who otherwise must search millions of shipments for tiny, even microscopic, organisms; and
- reduces the risk that an error in identifying and assessing the potential impacts of an organism that is detected by inspectors will result in a decision to allow entry of a species that turns out to be highly damaging.

Unfortunately, the SPS Agreement does not allow this sensible, science-based approach.

RECOMMENDATION

American Lands asks Subcommittee members to recommend that the Administration seek amendment of the SPS Agreement so that the United States and other countries can institute effective phytosanitary safeguards to prevent irreversible damage to our environment and losses in the hundreds of millions of dollars.

THE MULTILATERAL AGREEMENT ON INVESTMENT AT THE WTO

We appreciate that the Administration's proposed agenda for the Ministerial does not include negotiation of investment provisions such as those found in the Multilateral Agreement on Investment (MAI). However, because at least one negotiating body, the European Union, did include such discussions in their proposal, we ask that the U.S. government explicitly state its opposition to such negotiations at the Ministerial and the subsequent round.

The MAI is an international economic agreement that was originally negotiated at the Organization for Economic Cooperation and Development (OECD). The MAI would make it easier for individual and corporate investors to move assets—whether money or production facilities—across international borders by limiting the ability of governments to regulate their activities. While negotiations of the MAI were scheduled for completion in May, 1998 at the OCED, overwhelming public and some governmental opposition forced the OECD to cease these negotiations. Since this time, WTO members such as the European Union, have suggested that MAI-like investment provisions be included in the WTO Ministerial round negotiations.

The inclusion of MAI-like investment provisions in the WTO would threaten forest protection laws across the United States and the world.

The MAI: A Threat to Forests Everywhere

The MAI would increase access to foreign markets to multinational timber companies while at the same time limiting the ability of governments to regulate the activities of those companies. In fact, governments would be forced to grant foreign-owned companies special rights over domestic companies.

WTO rules currently apply primarily to the movement of goods and services. If investment was included, WTO rules would be expanded to apply to the movement capital and production facilities, such as factories, around the world.

These rules include:

National Treatment (NT). NT requires countries to treat foreign investors and investments no less favorably than domestic ones. Under NT, governments can not favor domestic, locally owned timber companies (even if these companies are proven to operate the most sustainably) with tax breaks, special subsides or contract preferences; nor can governments reserve publicly owned forests for local economic use: foreign corporations must be given an equal right to bid for concessions.

Most Favored Nation (MFN). MFN requires governments to treat all foreign countries and investors the same with respect to regulatory laws. Laws prohibited by MFN would include laws that restrict trade with specific foreign-owned companies known for their unsound environmental production practices and laws that restrict trade with companies that do business in countries with especially threatened forests.

The MAI included the following provisions which could also be introduced at the WTO:

Limitations on Performance Requirements (PR). PRs are laws that require investors to meet certain conditions if they want to establish an enterprise in a particular location. Such laws were banned outright at the OECD, even if they did not discriminate against foreign investors. Therefore, laws designed to ensure that local communities benefit from the economic activity of foreign-owned timber companies could be banned. For example, requirements to: take a local partner, hire local people, make a specific level of investment—including local benefit or assistance packages, or requiring the transfer of environmentally beneficial technology.

A Ban on the Uncompensated Expropriation of Assets. The MAI required governments, when they deprive foreign investors of any portion of their property, to compensate the investors immediately and in full. Because this provision is defined so broadly, it has the effect of essentially threatening the ability of governments to write any regulatory laws because these laws could be argued to reduce the value of an investment. For example, it could be argued that a ban on clear-cutting or other land use restrictions limits the ability of timber companies to get the full value of their investment and therefore is an "expropriation of their assets." Under MAI rules, the company would have to be compensated for their "lost profits" by the government.

Investor-to State Dispute Resolution (ISDR). Currently, the WTO does not allow for ISDR. However, the member nations could agree to institute it at the WTO. Under ISDR, individual investors and corporations are given the right to enforce the MAI by suing national governments directly if they believe that their rights, as established by the MAI, have been violated. The implications are enormous. Rather than go through the "political filter" of governments suing governments—as is the standard for all international trade agreements other than the North American Free Trade Agreement (NAFTA)—the only filter keeping corporations from suing governments is the size of the corporations legal budget. Using the ISDR mechanism in NAFTA, a Canadian environmental and health law has been struck down and a California environmental and health law is the subject of a $1 billion suit.

A Ban on Restrictions on the Repatriation of Profits or the Movement of Capital. Under this provision, countries can not prevent an investor from moving profits from the operation or sale of a local enterprise to that investor's home country. Nor can countries delay or prohibit investors from moving any portion of their assets, including financial instruments like stocks or currency. Many experts blame the recent East Asian financial crisis on just this type of capital flow liberalization.

Investment provisions at the WTO modeled after those in the MAI would force governments to abandon laws that protect forests and the environment in order to grant increased rights to foreign corporations.

RECOMMENDATION

American Lands asks Subcommittee members to recommend that the Administration explicitly oppose the negotiation of MAI-like investment provisions at the WTO Ministerial meeting or the subsequent round.

CONCLUSION

Free trade in forest products is not like free trade in other areas. Unlike radishes, when you pick a 4000 year old Chilean Alerce tree out the ground, it is gone for ever, it will not grow back. Unlike aluminum cans, when you crush millions of lifeforms as yet to be identified while clear-cutting a forest, they can not be recycled. Therefore, it is fool-hearty to proceed with agreements to increase trade in non-renewable resources without in-depth analysis of the environmental consequences.

American Lands would like to make four specific requests to the members of the Subcommittee for their recommendations to the Administration:

1) The Administration should oppose all discussions of forest products trade liberalization at the Ministerial meeting and subsequent round of the WTO. Rather, the Administration should initiate an assessment of the impact of previous WTO trade agreement, and the potential impact of proposed WTO trade agreements, on forest protection and biodiversity. This assessment should be conducted with the reference point being NEPA's mandated procedures and methodologies, as elaborated through regulations of CEQ.

2) The Administration should seek amendment of the SPS Agreement as defined in detail above such that the United States and other countries can institute effective phytosanitary safeguards to prevent irreversible damage to our environment and losses in the hundreds of millions of dollars.

3) The Administration should explicitly state its opposition to negotiations of MAI-like investment provisions at the Ministerial and subsequent round of negotiations of the WTO.

4) The Administration should heed the demand reflected in a letter which this organization helped draft and which has been signed by over 700 organizations worldwide demanding that the Ministerial meeting in November be an assessment round. The current Agreements of the GATT and WTO would be assessed for their impacts on the environment and other social and economic areas at such a round. This assessment must be conducted with the direct input of qualified experts from non-governmental organizations and institutions and in an open and transparent manner

Thank you for the opportunity to address this Subcommittee in written testimony.

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Statement of James Wm. Johnson, Jr., President, United States Beet Sugar Association, and Chairman, American Sugar Alliance

INTRODUCTION

Thank you for the opportunity to submit testimony in conjunction with this important hearing. I am the president of the United States Beet Sugar Association, which represents American sugarbeet processing companies. I am also honored to serve as chairman of the American Sugar Alliance (ASA). The ASA is the national coalition of growers, processors, and refiners of sugarbeets, sugarcane, and corn for sweetener.

The ASA has long endorsed the goal of global free trade because U.S. sugar and corn sweetener producers are efficient by world standards and would welcome the opportunity to compete on a genuine level playing field. Until that free trade goal is achieved, however, the United States must retain at least the minimal sugar policy now in place to prevent foreign subsidized, dump market sugar from unfairly displacing efficient American producers. This policy was substantially modified by Congress in the 1996 Farm Bill, but remains highly beneficial to American taxpayers and consumers.

While the ASA supports the goal of free trade, we have serious concerns about past agreements and about the structure of future multilateral or regional trade agreements. Listed below are our specific recommendations regarding negotiations of the World Trade Organization, followed by some background on the United States' role and standing in the world sugar economy and our evaluation of the effects of past multilateral and regional trade agreements on the world sugar market and on our industry.

U.S. agriculture is extremely vulnerable as we approach the next trade round. If we are reckless, we risk converting American agriculture into a Rust Belt. If we negotiate carefully and rationally, however, there is enormous potential for responsible American producers to compete and prosper in a genuine free trade environment, free from the need for government intervention.

RECOMMENDATIONS FOR FUTURE WTO NEGOTIATIONS

The 1999 World Trade Organization (WTO) Ministerial will play a pivotal role in establishing the scope, parameters, and goal of the next multilateral trade round. Shaped by our experience and by the specific failures of past agreements, described later in this paper, the following are the ASA's recommendations for the Ministerial.

Compliance.

Compliance with past agreements, in particular, the Uruguay Round Agreement (URA) of the WTO and the North American Free Trade Agreement (NAFTA), must be achieved before the United States forges any new agreements. The United States, and any other country that has surpassed its URA commitments, should be given credit for doing so before being required to make further cuts in the next trade round.

2. Catch-up.

The United States must not reduce its support for agricultural programs, particularly for import-sensitive crops such as sugar, any further until other countries have reduced their support to our level.

3. Export subsidies/STE's.

Elimination of export subsidies, the most trade distorting of all practices, and of state trading enterprises (STE's), which were ignored previously, must be given top priority in the next trade round.

4. Labor and environmental standards.

The wide gap in labor and environmental standards between developed and developing countries must be taken into account in the next trade round, to provide both incentives and penalties that ensure global standards rise to developed-country levels, rather than fall to developing-country levels. Nearly three-quarters of the world's sugar is produced in developing countries.

5. Negotiating strategy.

With regard to future tariff reductions, the traditional, flexible, "request/offer" type of negotiating strategy must be followed in the next trade round, rather than the rigid, across-the-board, formula approach that was used in the URA. This is the only way to recognize the enormous diversity, and varying sensitivities, among agricultural industries and commodity markets.

BACKGROUND ON U.S. SUGAR INDUSTRY, POLICY

Size and Competitiveness.

Sugar is grown and processed in 17 states and 420,000 American jobs, in 40 states, are dependent, directly or indirectly, on the production of sugar and corn sweeteners. The industry generates an estimated $26.2 billion in economic activity annually. A little more than half our sugar is produced from sugarbeets, the remainder from sugarcane. More than half our caloric sweetener consumption is in the form of corn sweeteners.

The United States is the world's fourth largest sugar producer, trailing only Brazil, India, and China. The European Union (EU), taken collectively, is by far the world's largest producing region. It benefits from massive production and export subsidy programs.

Sugar is an essential food ingredient and the U.S. sugar producing industry is highly efficient, highly capitalized, and technologically advanced. It provides 260 million Americans most of sugar they demand, in 45 different product specifications and with "just-in-time" delivery that saves grocers and manufacturers storage costs.

Roughly 15–20% of U.S. sugar demand is fulfilled by duty-free imports from foreign countries, making the U.S. one of the world's largest sugar importers. Many of the 41 countries supplying our sugar are developing economies with fragile democracies and they depend heavily on sales to the United States, at prevailing U.S. prices, to cover their costs of production and generate foreign exchange revenues.

Despite some of the world's highest government-imposed costs for labor and environmental protections, U.S. sugar producers are among the world's most efficient. According to a study released in 1997 by LMC International, of England, and covering the 6-year period ending in 1994/95, American sugar producers rank 19th lowest in cost among 96 producing countries, most of which are developing countries. According to LMC, fully two-thirds of the world's sugar is produced at a higher cost per pound than in the United States.

During the last three years studied, 1992/93–94/95, the United States became the lowest cost beet sugar producer in the world. American corn sweetener producers are also the lowest cost of all caloric sweeteners in the world, and always have been the lowest cost producer of corn sweetener.

Because of their efficiency, American sugar farmers would welcome the opportunity to compete against foreign farmers on a level playing field, free of government subsidies and market intervention. Unfortunately, the extreme distortion of the world sugar market makes any such free trade competition impossible today.

UNIQUE CHARACTERISTICS OF THE WORLD SUGAR MARKET

There are a number of unique characteristics to the world sugar market, which trade negotiators must take into account in future multilateral deliberations.

World Dump Market.

More than 100 countries produce sugar and the governments of all these countries intervene in their sugar markets and industries in some way. These unfair trading practices have led to the distortion in the so-called "world market" for sugar, and to a disconnect between the cost of production and prices on the world sugar market, more aptly called a "dump market." Indeed, for the period of 1984/85 through 1994/95, the most recent period for which cost of production data are available, the world average cost of producing sugar is over 18 cents, while the world dump market price averaged barely half that—just a little more than 9 cents per pound raw value.

Volatility.

Furthermore, its dump nature makes sugar the world's most volatile commodity market. Because it is a relatively thinly traded market, small shifts in supply or demand can cause huge changes in price.

During the period 1965–95, the average deviation from trend for raw sugar prices was nearly 50 percent, more than double the average deviation for corn and almost

double that of wheat. Just in the past two decades, world sugar prices have soared above 60 cents per pound and plummeted below 3 cents per pound.

Other Factors.

Aside from the highly residual and volatile nature of the world sugar price, there are a number of factors that set sugar apart from other program commodities. These unique characteristics should be taken into account before sugar is lumped in with other commodities for across-the-board policy reforms.

- *Lack of Concentration.* World grain exports are overwhelmingly dominated by a small number of developed countries, but sugar exports are far more dispersed, and dominated by developing countries. This makes the playing field among major grain exporters comparatively level and policy reform relatively less complicated than for sugar.

The world wheat and corn markets, for example, are heavily dominated by a handful of developed-country exporters—the United States, the European Union, Australia, and Canada are four of the top five exporters of each. The top five account for 96% of global corn exports and 91% of wheat exports.

The top five sugar exporting countries, on the other hand, account for only two-thirds of global exports and three of these are developing countries. The top 19 sugar exporters account for only 85% of the market, and 16 of these are developing countries.

- *Developing Country Dominance.* Developing countries account for 73% of world sugar production, and 69% of both exports and imports. Developing countries were virtually ignored in the Uruguay Round of reductions in barriers to agricultural trade, and impose far lower costs on their producers for labor and environmental protections.
- *Grower/Processor Interdependence.* Grain, oilseed, and most other field-crop farmers harvest a product that can be sold for commercial use or stored without any further processing. Sugarbeet and sugarcane farmers harvest a product that is highly perishable and of no commercial value until the sugar has been extracted. Farmers cannot, therefore, grow beets or cane unless they either own, or have contracted with, a processing plant. Likewise, processors cannot function economically unless they have an optimal supply of beets or cane. This interdependence leaves the sugar industry far less flexible in responding to changes in the price of sugar or of competing crops.
- *Multi-Year Investment.* The multimillion-dollar cost of constructing a beet or cane processing plant (approximately $300 million), the need for planting, cultivating, and harvesting machinery that is unique to sugar, and the practice of extracting several harvests from one planting of sugarcane, make beet or cane planting an expensive, multiyear investment. These huge, long-term investments further reduce the sugar industry's ability to make short-term adjustments to sudden economic changes.
- *High-Value Product.*

While the gross returns per acre of beets or cane tend to be significantly higher than for other crops, critics often ignore the high cost associated with growing these crops. Compared with growing wheat, for example, USDA statistics reveal the total economic cost of growing cane is nearly seven times higher, and beet is more than five times higher. With the additional cost for processing the beets and cane, sugar is really more of a high-value product than a field crop.

- *Inability to Hedge.* The 1996 Freedom to Farm Bill made American farmers far more dependent on the marketplace. Growers of grains, oilseeds, cotton, and rice can reduce their vulnerability to market swings by hedging or forward contracting on a variety of futures markets for their commodities. There is no futures market for beets or cane. Farmers do not market their crop and can neither make, nor take, delivery of beet or cane sugar. The hedging or forward contracting opportunities exist only for the processors—the sellers of the sugar derived from the beets and cane. These marketing limitations make beet and cane farmers more vulnerable than other farmers to market swings.

U.S. Sugar Industry's Free Trade Goal

Because of our competitiveness, with costs of production well below the world average, the American Sugar Alliance supports the goal of genuine, global free trade in sugar. We cannot compete with foreign governments, but we are perfectly willing to compete with foreign farmers in a truly free trade environment.

We were the first U.S. commodity group to endorse the goal of completely eliminating government barriers to trade at the outset of the Uruguay Round, in 1986.

We understand we are the first group to endorse this same goal prior to the start of the 1999 multilateral trade round.

The ASA does not endorse the notion of free trade at any cost. The movement toward free trade must be made deliberately and rationally, to ensure fairness and to ensure that those of us who have a global comparative advantage in sugar production are not disadvantaged by allowing distortions, exemptions, or delays for our foreign competitors, as we are experiencing under the current agreement.

SUGAR AND THE URUGUAY ROUND AGREEMENT

Little Effect on World Sugar Policies.

More than 100 countries produce sugar and all have some form of government intervention. Unfortunately, these policies were not significantly changed in the Uruguay Round Agreement (URA) of the WTO.

The URA inadequately addressed, or ignored:

• *Compliance.* Many countries have evaded or not yet even complied with their URA agricultural commitments. In sugar, for example, the EU has managed to isolate most of its sugar export subsidy program from URA disciplines. The Philippines has yet to meet its requirements for increasing minimum access levels to its sugar market.

It was revealed at a WTO Analysis and Information Exchange Group meeting Geneva in September 1998, nearly four years since the inception of the URA, that a mere 17 of the 132 member nations have fulfilled all their notification requirements on domestic support, export subsidies, and market access. One must wonder how we can monitor compliance with WTO-mandated reductions in agricultural policies when the vast majority of countries will not even acknowledge which policies they have in place.

• *Export Subsidies.* The most distorting practice in world agricultural trade is the export subsidy. Export subsidies provide countries the mechanism to dispose of surpluses generated by high internal production subsidies. In the absence of export subsidies as a surplus-removal vehicle, countries would have to reduce their production supports. With export subsidies in place, countries can move surpluses into markets where they do not belong and depress market prices. Other countries are forced to respond with import barriers. In the world sugar market, subsidized exports by the EU alone amount to about a fifth of all the sugar traded each year.

The URA did not significantly reduce the amount of sugar sold globally with export subsidies. The agreement failed to reduce the European Union's generous price support level and requires only a tiny potential drop in its substantial export subsidies.

• *State Trading Enterprises (STE's).* STE's are quasi-governmental, or government-tolerated organizations that support domestic producers through a variety of monopolistic buyer or seller arrangements, marketing quotas, dual-pricing arrangements, and other strategies. These practices were ignored in the Uruguay Round, but are, unfortunately, common in the world sugar industry. Major producers such as Australia, Brazil, China, Cuba, and India have sugar STE's, but were not required to make any changes in the URA.

• *Developing-Country Producers.* Developing countries, which represent nearly three-quarters of world sugar production and trade, have little or no labor and environmental standards for sugar farmers, have no minimum import access requirements, and often have high import tariffs. Nonetheless, developing countries were put on a much slower track for reductions, or, in the case of the least developed countries, were exempted altogether from URA disciplines.

• *WTO Non-Members.* Important sugar-producing and importing countries such as China and the former Soviet republics are not WTO members, and need to do nothing under the URA. Yet, these countries represent some 40% of global sugar imports and 20% of production.

• *Labor and Environmental Standards.* The gap in government standards—and resulting producer costs—between developed and developing countries is well documented and immense, but was ignored in the URA. In sugar, the gap is particularly pronounced because, while the EU and the U.S. are major players, production and exports are highly dominated by developing countries, especially in the cane sector.

Social Standards Gap.

The differences in labor and environmental standards between developed and developing countries are wide. American sugar producers operate with the highest possible regard for workers and the environment. But we should not be penalized in multilateral trade negotiations for providing these costly protections. Foreign countries that do not provide such protections should not be rewarded. If we are at-

tempting to globalize our economy, we should also globalize our worker and environmental protection responsibilities. If markets are to be liberalized, standards must be harmonized.

In the next trade round, access to developed countries should be conditioned on developing countries' achievement and enforcement of higher labor and environmental standards. Such an incentive system could help ensure that the next trade round results in a race to the top, in protection of workers and the environment, rather than a race to the bottom.

Widely Varying Levels of Support.

Unilateral reforms to U.S. agriculture policy in the 1996 Farm Bill far exceeded U.S. commitments made the year before in the Uruguay Round. Furthermore, developing countries, which dominate world agricultural trade and particularly sugar trade, were subject to a slower pace of reductions, if any.

As a result, the United States is way out in front of the rest of the world in removing its government from agriculture and has placed its farmers in a domestic free market situation. This gap makes American farmers uniquely vulnerable to continued subsidies by foreign competitors.

It is key that American farmers not be penalized for attempting to lead the rest of the world toward free agricultural trade. American farmers must be given credit for the reforms they have endured.

U.S. Sugar Surpasses URA Requirements.

The United States is one of only about 25 countries that guarantees a portion of its sugar market to foreign producers and it has far surpassed its URA commitment on import access. The URA required a minimum access of 3–5% of domestic consumption. The United States accepted a sugar-import minimum that amounts to about 12% of consumption. In practice, U.S. imports in 1994/95 and 1995/96 averaged 24%—double the promise we made in the URA, and about six times the global URA minimum.

All this sugar imported from 41 countries under the tariff-rate quota (TRQ) enters the United States at the U.S. price, and not at the world dump price. Virtually all this sugar enters duty free. Just five countries (Argentina, Australia, Brazil, Gabon, and Taiwan) that lack Generalized System of Preferences status pay a minuscule duty of 0.625 cents per pound.

The United States calculated its above-quota tariff rate in the manner dictated by the URA. These tariff levels are totally WTO consistent, and are dropping by 15% over the 6-year transition period, as we promised they would in the Uruguay Round. This duty is frozen in the year 2000 and must not be reduced further until foreign countries have complied with their URA requirements, as the U.S. has done.

U.S. Sugar Policy Reforms.

U.S. sugar policy was unilaterally and substantially reformed in the 1996 Farm Bill, far in excess of URA commitments. The key reforms: 1) Production controls ("marketing allotments") were eliminated. 2) Government-provided non-recourse loans, or a government-guaranteed minimum price, are conditional and no longer guaranteed—unlike all other U.S. program commodities. This ensures long-standing Congressional intent that U.S. sugar policy be run at no cost to the U.S. Treasury. 3) The minimum import level, already about four times the minimum required by the URA, was effectively raised another 20%. 4) Sugar producers' burdensome and discriminatory marketing assessment tax was raised 25%. 5) A 1-cent per pound penalty was established to discourage government loan forfeitures. 6) The U.S. committed to further support price reductions when other countries surpass their URA requirements, as the U.S. has done, and achieve levels equal to ours.

The reformed sugar policy of the 1996 Farm Bill does retain the Secretary of Agriculture's ability to limit imports, and also provides a price support mechanism, though only when imports exceed 1.5 million short tons. The 1998/99 sugar import quota is already below that critical trigger level.

Playing Field Lower, But Not More Level.

The URA's formula-based approach called for across-the-board percentage reductions, regardless of the original level of price support, import barrier, or export subsidy. Countries with the most egregious barriers can maintain their advantage throughout the transition process. For example, if one country's price support were 40% higher than another's, and both reduced by the URA-mandated 20%, the 40% advantage would remain in place—the playing field has been lowered, but not leveled.

Furthermore, the United States far surpassed its URA commitments, unilaterally dismantling its already minimal commodity program in the 1996 Farm Bill, while many other nations with higher levels of government intervention have yet to even minimally comply. This has tilted the playing field even further to the disadvantage of efficient American farmers.

Formula Driven Trade Strategy.

For the many reasons outlined above, the rigid, formula-driven, or one-size-fits-all, approach for trade concessions does not work for agriculture in general, or for sugar in particular. Pursuing this approach would: 1) Fail to reduce the gap in supports between countries—lowering the playing field, but not leveling it; 2) Again give developing countries virtually a free ride; 3) Further diminish U.S. negotiating leverage, which was severely reduced through our unilateral concessions in the 1996 Farm Bill.

To date, U.S. agriculture has led the world in trade barrier reductions and we are disadvantaged as long as the rest of the world fails to follow our example.

Special Import Safeguards.

The URA did provide some special import safeguards for sugar in the event of a world price collapse. Such a price collapse has occurred—current world prices are at a 14-year low of less than 5 cents—and these price-triggered safeguards are proving valuable to prevent dump market sugar from entering the U.S. market. These safeguards must be retained, and should be strengthened, in the next trade round.

SUGAR AND THE NAFTA

The ASA is concerned that before the United States embarks on another multilateral trade round we must be cognizant of serious problems that remain with our primary regional trade agreement, the North American Free Trade Agreement (NAFTA). Evasion of NAFTA rules and violation of international trade rules by our North American trading partners have left many American sugar producers with a distrust of trade agreements and a serious reticence about entering into new ones.

Canada.

Sugar trade between the United States and Canada, which imports about 90% of its sugar needs, was essentially excluded from the NAFTA. U.S.-Canadian sugar trade is governed mainly by the U.S.-Canada Free Trade Agreement and by the WTO.

Currently, entrepreneurs based in Canada are threatening the integrity of U.S. sugar policy by circumventing the tariff-rate quota with a new product referred to in the trade as "stuffed molasses"—a high-sugar product not currently included in U.S. sugar TRQ classifications. USDA has estimated imports of this product could add about 100,000 tons of non-quota sugar to the U.S. market per year. That amount could grow if this loophole is not closed, further harming U.S. sellers of refined sugar and possibly threatening the no-cost operation of U.S. policy.

Mexico.

Mexico had been a net importer of sugar for a number of years prior to the inception of the NAFTA. Nonetheless, the NAFTA provided Mexico with more than three times its traditional access to the U.S. sugar market during the first six years, 35 times its traditional access in years 7–14, and virtually unlimited access thereafter.

These provisions were negotiated by the U.S. and Mexican governments and contained in President Clinton's NAFTA submission to the U.S. Congress, which Congress approved in November 1993.

The sugar provisions, as altered from the original NAFTA text, were critical to the narrow Congressional passage of the NAFTA.

Nonetheless, Mexico is now undermining the integrity of the NAFTA by claiming the sugar provisions are somehow invalid. This questioning by Mexico has bred deep feelings of distrust in trade agreements among many American sugar producers.

In addition, Mexico has not complied with a NAFTA requirement to phase out its tariffs on U.S. high-fructose corn syrup (HFCS). Instead, Mexico raised its tariffs on HFCS imports to levels approaching 100%. Mexico may also be violating international trade rules by sanctioning a restraint of trade agreement among Mexican sugar producers and soft drink bottlers to slow the pace of substitution of HFCS for sugar in Mexican soft drinks. (The ASA has filed a paper with USTR on this subject, "Initiation of Section 302 Investigation on Mexican Practices Affecting High Fructose Corn Syrup," June 19, 1998.)

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Statement of the American Textile Manufacturers Institute (ATMI)

ATMI's member companies range from small, specialized family-owned enterprises to diversified, multi-billion dollar public corporations. They and ATMI believe that United States negotiating objectives in the upcoming World Trade Organization (WTO) Seattle Ministerial meeting and subsequent "Millennium Round" should be focused on completing the job that was begun but not finished during the Uruguay Round negotiations. Full stop.

Key objectives of the Uruguay Round, as is well known, were to bring international trade in services, agriculture and textiles/apparel under GATT (the precursor of the WTO) disciplines and to forge international agreement on measures granting intellectual property protection. Negotiations to achieve these highly, worthwhile ends were scheduled to last four years and no more. Finally, after seven years, only one of these objectives was realized: that with respect to textiles/apparel. In services, agriculture and intellectual property, only ineffectual half measures and agreement to continue negotiations as part of a "built-in agenda" in these sectors were adopted. The Uruguay Round, though resulting in nearly a thousand pages of text ratified on April 15, 1994, remains an unfinished work.

With regard to trade in textiles and apparel, profoundly far-reaching decisions were taken in the Uruguay Round. Agreement was reached to gradually phase out quantitative restraints on imports of textiles and apparel which were maintained since 1974 pursuant to the GATT-sanctioned International Arrangement Regarding Trade in Textiles (the "MFA"). All such restraints are to be gradually phased out over a ten-year "transition period" and completely eliminated as from January 1, 2005. It is difficult to overstate the magnitude of this concession by the United States and the other textile/apparel importing countries. In dollar terms, it is probably worth more to the exporting countries than all the other Uruguay Round Agreements. Combine, in addition, other concessions were made and gifts bestowed on the exporting countries in the form of ever higher annual growth rates for those restraints which do remain in place until 2005 and greatly increased "flexibility" provisions which allow countries to exceed the annual limits to which they agreed until 2005. As a result of these measures, U.S. imports of textiles and apparel, not including imports from free trade partners Canada, Mexico and Israel, increased $13.3 billion or 36.5 percent in just the four years since the Uruguay Round Agreements went into effect (1995) through last year.

And, to further liberalize its contribution to world trade, the United States agreed to tariff cuts on essentially all textile and apparel products.

It is safe to say that no other sector of U.S. industry was required to make as many concessions in the Uruguay Round Agreements as the domestic textile and apparel industries. But there was supposed to be at least partial recompense in the form of market opening initiatives by the exporting countries who, for two generations, have kept their domestic markets closed to foreign competition* while cheerfully exporting over $100 billion worth of textiles and apparel annually (1997). Indeed, Article 1 of the Uruguay Round Agreement on Textiles and Clothing (ATC) states "Members should allow for . . . increased competition in their markets." This is reinforced by language in Article 7: ". . . all (emphasis added) Members shall take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to:

a) achieve improved access to markets for textile and clothing products. . ."

There can be no question but that the United States has fulfilled not only the spirit, but the letter of this requirement (and has a $13.3 billion increase in textile and apparel imports to prove it). Most regrettably, however, many of the large textile and apparel exporting nations have ignored their commitments under the Agreement and have utterly failed to provide meaningful, real market access. (In this context, Pakistan's removal of knitted ski suits from its list of banned imports is not meaningful market access). A list of import barriers still maintained by the noncompliant exporting countries and the results thereof are attached as Exhibits A & B.

Until the major textile and apparel exporting nations provide a degree of access to their domestic markets comparable to what the United States has provided, no further concessions should be made by the U.S. The United States' negotiating ob-

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*Except, of course, Hong Kong and Singapore, which somehow manage to export increasing quantities of textile products despite rapidly declining employment in the sector. It is possible that the openness of their markets plays a role in the growth of their exports by facilitating illegal transshipments.

jective in the Millennium Round should be, clearly and simply, to require these recalcitrant exporting nations to abide by the ATC—five years after the fact—and provide real access to their domestic markets. Should they fail to do so, the United States should then move to deny them further trade liberalizing elements (Article 2) of the ATC. What the United States should not do, what it must not do, in the Millennium Round, is to agree to further reduce U.S. apparel and textile tariffs. Not only would doing so damage U.S. production and investment and destroy U.S. textile jobs, any further tariff cuts would also undermine the preferential access to the U.S. which Mexico, Canada, and Israel enjoy under our free trade agreements, as well as any future benefits which may be realized under CBI enhancement legislation.

Exhibit A

BALANCE OF TRADE IN TEXTILES AND APPAREL

Billion U.S. $—1997

India	(a.) 9.153	Neg.
Pakistan	6.399	Neg.
Indonesia	5.159	(b.) 1.152
Thailand	5.695	(b.) 1.249
Malaysia	3.616	(b.) 1.210
Philippines	2.590	(b.) 1.175
Egypt	.792	(b.) .300

Neg: neglibile; not reported
a.) 1996
b.) nearly all textiles imported into export processing zones.
Source: World Trade Organization.

Exhibit B

Average Tariffs on Textile and Apparel Products (1998) *	
Argentina	40% - 50%
ASEAN**	20% - 40%
Brazil	40% - 100%
China	25% - 100%
Egypt	25% - 60%
India	50% - 70%
Japan	7% - 21%
Pakistan	40% - 65%
South Africa	42% - 100%
United States*** *(as a baseline)*	16%

1998 U.S. Textile and Apparel Trade Balance ($ Mil)	
Argentina	54
ASEAN**	- 7,100
Brazil	3
China	- 5,800
Egypt	- 460
India	- 2,300
Japan	483
Pakistan	-1,400
South Africa	- 66

Most Trade Restrictive Non-Tariff Barriers	
Argentina	Difficult and cumbersome certificate of origin rules; long delays at customs; difficulties dealing w/customs officials.
ASEAN	Some problems w/customs agencies in some countries mentioned: delays, arbitrary valuations, cumbersome documentation requirements. Numerous export and domestic industry subsidies.
Brazil	Difficult import licensing procedures; valuation problems when dealing with Brazilian customs
China	Non-transparent customs valuation procedures – use of unofficial reference price lists; importing of textile products restricted to foreign trading companies (FTC) which are also producers of similar products; distribution channels dominated by state controlled enterprises; discriminatory technical/quality testing rules. Export and domestic industry subsidies.
Egypt	Complex and excessive customs rules and procedures; arbitrary customs valuations; time consuming customs clearance procedures; bans on importation of apparel and some textile products; excessive technical certification requirements; difficult, costly marking requirements for textile products. Export and domestic industry subsidies.
India	Bans and/or restrictions on the importation of most textile and all apparel products; discriminatory and non-transparent licensing procedures; complex, difficult and time consuming customs clearance procedures; extremely difficult and costly marking requirements. Numerous export and domestic industry subsidies.
Japan	Complex technical barriers (quality, certification and labeling requirements). Distribution system gives preferences to Japanese companies.
Pakistan	Textile and apparel products on restricted import lists; export subsidies for domestic suppliers (part. cotton subsidies); complex and time consuming customs procedures.
South Africa	Arbitrary customs valuations.
United States *(as a baseline)*	Quota system in place (10% of quotas filled in 1998). *NOTE: U.S. will not have any non-tariff barriers after Jan. 1, 2005, consistent with the Agreement on Textiles and Clothing of the WTO.*

*Includes taxes, fees and other misc. charges for imported products.
**Average tariff rates for Philippines, Thailand, Indonesia and Malaysia. Country averages: Thailand (25% – 50%), Indonesia (10% - 30%), Philippines (10%-20%), Malaysia (20% - 40%).
***Department of Commerce.

Sources: "1999 National Trade Estimate Report on Foreign Trade Barriers," USTR; "Market Access Study to Identify Trade Barriers Affecting the EU Textiles Industry in Certain Third Country Markets," EU Commission, 1999; "The Market for U.S. Cotton Textile and Apparel Products in India," Economic Consulting Services, 1998; "The Market for U.S. Cotton Textile Products in Indonesia," Economic Consulting Services, 1998; "The Market for U.S. Cotton Textile Products in the Philippines," Economic Consulting Services, 1998; Werner Infotex Trade Database.

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Statement of Association of International Automobile Manufacturers, Inc., Arlington, Virginia

The Association of International Automobile Manufacturers, Inc. (AIAM), is the trade association representing U.S. subsidiaries of international automobile companies doing business in the United States. Member companies distribute passenger cars, light trucks, and multipurpose passenger vehicles in this country and export them outside the United States. Nearly two-thirds of the vehicles they distribute here are manufactured in the New American Plants. International automakers support American jobs in manufacturing, supplier industries, ports, distribution centers, company headquarters, research and development centers, and automobile dealerships. AIAM also represents manufacturers of tires and other original equipment with production facilities in the United States and abroad. AIAM submits this

written statement for record of the hearing held by the Subcommittee on Trade on August 5, 1999, on the subject of U.S. Negotiating Objectives for the WTO Seattle Ministerial Meeting.

1. Reduction of Tariffs on Motor Vehicles and Parts

The rates of duty on passenger vehicles exported to the United States, the Europe Union, Japan and Korea now generally range from zero to 10 percent. However, in many countries the rate is 20, 30 or even 40 percent. Rates of duty on vehicle parts vary widely and in many cases are unnecessarily high. Automobile manufacturing is now a global industry which has experienced dramatic restructuring in recent years. The high costs of research, engineering, manufacturing technology, and marketing, among other factors, have influenced the industry to become truly international, with worldwide companies that source parts from across the globe and assemble vehicles in many countries. The notion of a national car or a strictly domestic automobile manufacturing industry does not square with modern economic reality. Protecting a national industry that is not competitive does little good for the citizens of any country. In the near term, at least for the developed world, progress toward a zero duty rate would be an excellent goal for the new WTO round. It would encourage competition and lead to lower prices, higher quality, and wider consumer choice. For less developed countries, such a goal may take longer to achieve, but it should nonetheless be an objective advanced by the WTO.

2. U.S. Light Truck Tariff

A particularly severe and unjustifiable barrier to trade is the 25% ad valorem duty that the United States imposes upon light trucks. This duty is an obsolete remnant of the so-called Chicken War between the United States and then-European Economic Community in the early 1960's. It has no economic justification and restricts trade unnecessarily.

This duty has been the subject of long-standing controversy and political debate. It has generated strong feelings within the United States and intense discussions with our trading partners. Abolishing the 25 percent duty should be the long-term goal of the United States. In the short term, action by the United States to reduce it to a level such as 4 percent, which is now the duty on trucks between five and twenty metric tons in gross vehicle weight, would be a very positive step that would serve U.S. interests. It would lower consumer costs and stimulate competition. Light trucks have become extremely popular in the United States. For many families, they fill the role of a second car. American consumers would benefit significantly from the increased competition and lower prices that should result from eliminating the Chicken War tariff.

This anachronism is an example of the lasting negative effects of retaliatory tariffs. While the United States may wish to accomplish a tariff reduction in the context of bilateral or multilateral concessions, U.S. negotiators will have to take some initiative for American consumers to gain this benefit. That is because the circumstances and interested parties involved have changed since 1963. The variable levy imposed by the EEC on imports of frozen poultry from the United States (an effective embargo of such imports) has been eliminated. Changes have also taken place in the structure and locations of light truck manufacturing. What has not changed are the artificially higher prices paid by American consumers for these popular vehicles.

3. Technical Barriers to Trade

Article II of the Agreement on Technical Barriers to Trade (Agreement) lays down certain basic principles concerning the use of technical regulations. For example, such regulations must satisfy the principle of most-favored-nation treatment. They must conform as much as possible to international standards when such standards exist. They must abide by the principle of transparency, so that other countries may readily become acquainted with them.

Perhaps most importantly, the Agreement provides that technical regulations are not to be prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. Technical regulations shall therefore not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.

Especially if tariffs on motor vehicles are to be further reduced or eliminated, AIAM urges that special attention be paid to the technical regulations in the automotive sector. U.S. exports of motor vehicles are increasing, and it is therefore im-

portant that they encounter no unjustifiable non-tariff barriers like protectionist technical regulations.

If such regulations are identified, their elimination should be a condition of the U.S. willingness to reduce or eliminate its tariffs on motor vehicles. At the very least, such regulations should be amended to conform to international standards.

4. ADD AND CVD—CAUSATION

At present, both U.S. and international laws provide that the imposition of anti-dumping (ADD) and countervailing duties (CVD) requires a determination that the dumped or subsidized imports are causing material injury or the threat of such injury to a domestic industry. But neither U.S. nor international law specifies the degree of causation that must be found to justify the imposition of ADD or CVD.

The pertinent U.S. law is the Tariff Act of 1930, as amended. Section 731(2), in the case of ADD (19 U.S.C. Sec.1673(2)), and Section 701(a)(2) in the case of CVD (19 U.S.C. Sec. 1621(a)(2)), both provide that the U.S. International Trade Commission (ITC) shall determine whether a U.S. industry is materially injured or threatened with material injury (by reason of imports) of the merchandise in question. Likewise, Article 3.5 of the Agreement on Implementation of Article VI (ADD Agreement) and Article 15.5 of the Agreement on Subsidies and Countervailing Measures (CVD Agreement) both provide that,"It must be demonstrated that the dumped [or subsidized] imports are, through the effects of dumping [or subsidies], causing injury within the meaning of the Agreement."

The absence of a specification of the degree of causality has allowed the ITC to take one of two approaches. The first is not to address the issue and simply assume that the test of causation is met. The second is to address the issue but dilute the test so that any causal connection is deemed sufficient. In either case, the test of causality is rendered insignificant, thereby allowing the imposition of ADD and CVD without objective justification.

The result of doing so is, at one and the same time, to give the domestic industry a remedy it does not need and to impose upon consumers a measure that unnecessarily hurts them. The ADD and CVD laws thereby become contrary to the national interest, since the costs are not offset by any benefits.

Accordingly, AIAM proposes that both the U.S. laws and the international agreements be amended to provide that the dumped or subsidized imports must be a cause greater than any other cause of material injury or the threat thereof to the domestic industry. If one or more causes are each greater than the dumped or subsidized imports, imposing ADD or CVD is not justified, since they will not address the more significant cause or causes of the domestic industry's injury.

5. AGREEMENT ON SAFEGUARDS

The Agreement on Safeguards ("SG Agreement") should be amended to establish that, in order to justify the imposition of safeguard measures, increased imports must be a "substantial cause" of serious injury or threat. "Substantial cause" should be defined to mean a cause that is important and not less than any other cause. Such an amendment would be consistent with the nature and purpose of the SG Agreement, and would make the SG Agreement consistent with U.S. law.

The SG Agreement sets forth the rules for applying safeguard measures pursuant to Article XIX of GATT 1994. Safeguard measures are "emergency" actions that permit WTO members to suspend WTO concessions in cases in which increased imports of particular products are causing or threatening to cause serious injury to the importing Member's domestic industry. Such safeguard measures can take the form of quantitative import restrictions or of duty increases to higher-than-bound rates.

Since safeguard measures are exceptions to WTO negotiated concessions, they should only be taken in extraordinary circumstances. This is reflected in part in the current requirements of the SG Agreement that there be increased imports that cause or threaten "serious injury." The SG Agreement defines "serious injury" as significant impairment in the position of a domestic industry. "Threat of serious injury" is threat that is clearly imminent as shown by facts, and not based on mere allegation, conjecture or remote possibility. Safeguard measures are not to be adopted lightly, since they are exceptions to the general rule of trade liberalization that form the basis of the WTO.

The current causation standard in the SG Agreement, however, is inconsistent with the exceptional nature of safeguard provisions. The SG Agreement only requires that there be a causal link between serious injury and imports, and that injury caused by other factors should not be attributed to imports. The SG Agreement would, therefore, apparently permit the imposition of extraordinary emergency measures when increased imports may only be a cause, however insignificant, of in-

jury. It could be argued that the latter provision—that injury caused by other factors should not be attributed to imports—is meant to imply that imports have to be more than an insignificant cause of serious injury to justify safeguard measures. Such a reading would be consistent with the purpose of the SG Agreement. A literal reading of this provision, however, does not support this interpretation.

The U.S. version of the SG Agreement is section 201 of the Trade Act of 1974, as amended. Section 201 adopts a standard for causation that is consistent with the extraordinary, emergency nature of section 201. Section 201 requires that increased imports be a "substantial cause" of serious injury or of threat thereof. "Substantial cause" is defined by section 201 as a cause that is both important and not less than any other cause.

This is a causation standard that makes sense and is consistent with the purpose of the SG Agreement. In the United States, this causation standard has not prevented section 201 relief when it was warranted. It has however, prevented the imposition of anti-import measures when causes other than imports were more important causes of injury than imports. In the 1980 automobile section 201 investigation, for instance, it would have been counterproductive to impose import restraints on automobiles when the more important cause of injury was the recession taking place at that time. To do otherwise would have been to scapegoat imports, undermine GATT commitments, hurt both consumers and the economy, and do little to help the domestic industry.

In the next WTO round, the U.S. should push to change the causation standard of the SG Agreement to require that imports be a "substantial cause" of serious injury or threat, and that "substantial cause" be defined to mean a cause which is important and not less than any other cause.

6. Dispute Settlement Understanding

There are several ways in which the WTO's dispute settlement understanding can be improved.

Transparency:

The U.S. should encourage WTO members to take steps to ensure that the WTO decision-making process is open and transparent. First, all submissions made in connection with a dispute that do not contain confidential information should be made available publicly when they are filed. This includes submissions and reports of the parties and any experts selected by the dispute settlement panel, as well as requests for the formation of a panel and notices of appeal. Second, public versions of confidential reports and submissions should be submitted and made available to the public within a reasonable time—no more than 2 days—after the confidential reports and submissions are filed. There should be a strong presumption against redacting information in the public version, and confidential information should only be redacted if it meets certain narrowly defined criteria. Third, decisions of the Dispute Settlement Panels should be made available to the public at the same time they are released to the parties to a dispute. Finally, hearings before dispute settlement panels and before the appellate body should be open to the public, unless a request is made by a party for in camera treatment of certain portions of the proceeding, due to the confidential nature of the information being discussed.

Public Participation:

The DSB should encourage and accept amicus curiae briefs from the public in dispute settlement proceedings, as permitted by Article 13.2 (which provides that the DSB may seek information from non-parties to assist in the settlement of disputes). This may be of particular significance in cases involving complex technologies and issues. Further, upon request by an NGO amicus party, the dispute settlement panels and appellate body should permit oral presentations at hearings by that party or by their attorneys. Finally, the DSB should allow parties, including NGO amicus parties, at least 30 days in which to comment on any reports submitted by experts selected by the WTO panel.

7. Rules on Country of Origin

The Agreement on Rules of Origin (Agreement) begins to lay down the rules of general application for determining the country of origin of goods that are traded among countries. The Agreement further establishes a Committee and a Technical Committee on Rules of Origin, charged with the task of formulating a definitive set of rules. These Committees have not yet finished their work.

Article 9 of the Agreement sets forth certain principles to guide the work of the Committees. The most important principle is that

rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, where more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out.

The question is how "substantial transformation" should be defined. Article 2 sets forth three possible criteria. The first is a change in tariff classification. The second is the addition of value added. The third is the specification of a manufacturing or a processing operation.

AIAM urges that the first criterion—a change in tariff classification—be adopted. This criterion operates in the following way. Assume the following facts. Steel plate is made in Country A and is imported into Country B. In Country B, the steel plate is manufactured into parts of the body for passenger vehicles. The body parts are then imported into Country C. If the tariff classification of the body parts is sufficiently different from the tariff classification of the steel plate, the body parts are deemed to be the product of Country B. Country B is therefore the country of origin.

Although prepared for use in administering a preferential regime, the North American Free Trade Agreement (NAFTA) includes a comprehensive set of rules that determine whether or not a change in tariff classification is sufficient to meet the test of substantial transformation. The NAFTA rules therefore provide a good start in establishing a set of rules for general application.

AIAM believes that such rules would provide both objectivity and predictability in determining the country of origin. The second criterion—based on a stipulated addition of value added in Country B—is less workable than the first criterion. The choice of the requisite amount of value added is arbitrary, and its calculation can raise accounting problems. The third criterion is even less workable. It involves the preparation of countless specifications to cover manufacturing and processing operations used by industries throughout the world.

8. Customs Valuation

Article 1 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement) deals with customs valuation. It provides that transaction value shall be the preferred basis for determining the dutiable value of goods. The transaction value is defined as the price actually paid or payable for the goods when sold for export to the country of importation.

Article 1 also deals with the question whether the price paid by a buyer to a related seller may be accepted as the transaction value. It provides that the price will qualify if an examination of the circumstances surrounding the sale establishes that the relationship did not influence the price.

The U.S. valuation statute contains similar provisions (19 U.S.C. Sec. 1401a). But neither the Agreement nor U.S. law sets out the criteria by which to determine whether the relationship did or did not influence the price. This has created considerable uncertainty.

A large percentage of international trade is conducted between related parties. In the automotive sector, in particular, most imports into the United States are made by companies that are related to the foreign manufacturers. There is therefore a conspicuous need to develop the appropriate criteria and thereby reduce the uncertainty surrounding the acceptability of the price between related parties.

AIAM therefore proposes that both the Agreement and the U.S. law be amended to provide that the price between related parties shall be acceptable as transaction value if the following circumstances exist and no other contradictory circumstances exist:

1. The parties engage in arm's-length negotiations concerning the price and other elements of the transaction.
2. The foreign manufacturer's price is adequate to ensure recovery of all costs plus a reasonable profit.
3. Each party is a principal in its own right, operating as a separate profit center and having its own separate management.
4. The related importer buys from the foreign manufacturer, takes title to the goods, and is free to resell at its own price.
5. The related importer takes all the proceeds of its sales and does not remit any part of its profit to the foreign manufacturer.

9. Environmental Standards

Article XX of GATT 1994 provides for "General Exceptions" to the general GATT rules, stating that GATT 1994 does not prevent a Member from adopting measures, among other things, related to conservation of exhaustible natural resources or necessary to protect human, animal, or plant life or health, "subject to the requirement

that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." This provision has given rise to disputes as to what are and are not "GATT-" or "WTO-legal" environmental measures. The general statement of principle in Article XX appears inadequate to the task of resolving these disputes. This has caused some experts to question whether the WTO is the appropriate forum to resolve trade-related environmental disputes. AIAM submits that environmental measures that have trade implications are appropriately analyzed under the principles of the WTO. The answer is not to defer such trade-related environmental disputes to other agreements or other fora, but to develop more detailed and clearer rules in the WTO as to when trade-related environmental measures are consistent with the WTO. AIAM suggests that the next ministerial undertake to define such rules in the context of a specific agreement interpreting Article XX of GATT 1994.

CONCLUSION

AIAM appreciates this opportunity to offer suggestions as the United States prepares for the WTO ministerial meeting in Seattle and for the next round of multilateral trade negotiations. We would be pleased to provide further information to the Subcommittee at any time.

AIAM

The World's Leading Automakers®

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International automakers are responsible for nearly 1.3 million jobs, resulting in nearly $50 billion in wages, salaries and benefits, according to a University of Michigan study. AIAM also represents manufacturers of tires and other original equipment with production facilities in the U.S. and abroad.

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updated 4/27/99

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Statement of the Business Roundtable

EXECUTIVE SUMMARY

The Business Roundtable believes strongly that it is in the national interest for the United States to lead in launching, and to participate aggressively in, new WTO negotiations. We present this paper to make the case for pursuing such negotiations and to recommend specific objectives for the U.S. government.

The United States has been the leader in working for open markets because we know that, with our market the most open in the world, and with our companies, workers and farmers the world's most competitive, we have the most to gain from removing foreign barriers to our goods and services through trade agreements, and the most to lose if such barriers persist. For example, inadequate intellectual property protection, investment distortions, customs red tape, and other regulatory barriers have emerged as major problems for U.S. exporters and their workers. Our agricultural exports continue to face a raft of tariff and nontariff barriers.

Some interest groups have argued that given the deterioration in the U.S. trade balance, this is no time to begin new liberalization initiatives. But this is the wrong way to look at the question. Commencing new trade negotiations has the potential to stimulate economic growth in those countries suffering weak economies. That will boost the demand for American exports.

Trade is good for our economy, good for business, good for workers, good for farmers and good for consumers. U.S. exports continue to rise at an impressive rate—in 1996–1998, real exports were up 30 percent from the 1993–1995 period. These exports are the engine driving economic growth and job creation in the United States. American workers also benefit from greater trade. Approximately 12 million U.S. jobs are supported by exports.

With the opportunities presented by the global economy come fears. It is, therefore, important to look closely at some of the charges being leveled about international trade and lay these fears to rest. To start with, there is no simple direct linkage between imports and lost jobs. It should also be recognized that the trade deficit emanates from many factors; any simple linkage to trade policies is misleading.

Moving Ahead with Trade Negotiations

To guide U.S. policymakers, The Business Roundtable has developed four fundamental principles.

- The United States need trade and investment policies to ensure that trade achieves its intended purpose—to raise American and global living standards.
- U.S. leadership is critical to continued trade liberalization.
- The rules-based trading system is the foundation of the global economy and *enforcement* of the rules is the basis for public trust and support for U.S. participation.
- Business is a key driver in the global economy and must be a force for developing and implementing better trade policy.

Improving the world trading system is vital for the United States and the global economy. It is important to launch new world trade negotiations in 1999 and not to let differences in economic performance among countries, or election cycles, delay their start. Americans can be confident that new trade negotiations will make the United States more prosperous, because the Uruguay Round has delivered, and continues to deliver, a boost to economic growth. The WTO Ministerial to begin in Seattle on November 30 provides an opportunity for the U.S. government to promote the launching of new WTO negotiations. To assist trade negotiators in crafting an agenda for new WTO negotiations, we offer several recommendations for how U.S. interests can be best advanced.

In considering what a new WTO negotiation should accomplish, it is helpful to divide the issues into two categories:

- the built-in agenda that carries forward ongoing negotiations, and
- review and strengthening of various WTO agreements.

By distinguishing these two categories, it may become clearer to policymakers and the public that much of what needs to be done within the WTO at this time is not the development of new rule-based agreements, but rather the continuation of the unfinished business of the Uruguay Round. The improvement of current WTO agreements is especially important to preparing the world trading system for the 21st century.

The built-in agenda includes services, agriculture, and tariffs. The Business Roundtable makes the following recommendations:

1. *Services.* Agreements to open services markets and to grant national treatment to providers should be pursued on the most comprehensive basis possible. The WTO needs to begin by ensuring that governments ratify both the Financial Services and Basic Telecommunications agreements and fulfill their commitments. Negotiations should also be launched to expand liberalization commitments under these two agreements.

2. *Agriculture.* This sector is important for American exporters and for securing developing country participation. Agricultural tariffs and tariff-rate quotas should be negotiated down, perhaps using a formula approach. Domestic farm programs should be reformed to use fewer trade-distorting instruments and to limit domestic subsidies. Market access should be improved for biotechnology goods.

3. *Tariffs.* Negotiations should consider new steps to address tariffs. This could involve tariff harmonization agreements and/or zero-for-zero proposals. When such agreements already exist, all governments should be urged to sign on. In addition, WTO Members should agree to a permanent ban on customs duties on electronic transmissions.

Review and strengthening of WTO Agreements should be the other major focus of new negotiations. Our principal recommendations include:

4. *Intellectual Property*. The built-in reviews of TRIPs may make it premature to present a comprehensive negotiating agenda for new WTO negotiations. If new intellectual property negotiations are launched, they should address the significant gaps remaining in the protection and enforcement of intellectual property. These negotiations should also be structured to prevent any weakening of the protection included in TRIPs. WTO members also need to assure that developing countries honor their TRIPs obligations following the termination of the transition periods establish by TRIPs.

5. *Subsidies.* The WTO Agreement on Subsidies was an important achievement of the Uruguay Round, and trade negotiators should resist proposals to weaken it. New actions should include, for example, phasing out the toleration of developing country export subsidies and considering a work program on the way that WTO rules treat different tax systems.

6. *Customs-Related Issues*. Customs regulations can have a significant impact on business costs and trade flows. Ongoing efforts to harmonize rules of origin should be given a high-level push. For all issues of trade facilitation, the WTO should have procedures whereby the private sector can submit recommendations.

7. *Sanitary Measures*. The WTO has gotten off to a constructive start in implementing the new sanitary disciplines. But the WTO will need to be vigilant in enforcing dispute decisions. In addition, more attention should be given to the Uruguay Round provision calling for governments to base their sanitary measures on international standards.

8. *Technical Barriers to Trade*. Conformity assessment procedures often remain onerous. The WTO Committee on Technical Barriers to Trade should, therefore, consider how this process can be expedited, perhaps with a supplier's declaration of conformity. The adequacy of rules to address labeling and product seals also needs clarification.

9. *Government Procurement*. The Agreement on Government Procurement is not part of the WTO single undertaking. The upcoming negotiation should review this status to see if Procurement can be fully brought into the WTO. If Procurement retains its à la carte character, then governments should consider negotiating a Procurement Transparency Agreement.

10. *Trade-Related Investment Measures*. The WTO Agreement on Trade-Related Investment Measures is the thinnest WTO Agreements and attention should be given to strengthening its provisions. One of the critical areas for discipline is the imposition of mandatory technology transfer requirements on foreign investors.

11. *Antidumping*. The WTO Anti-Dumping Agreement is designed to provide protection against unfair practices by exporters. The Uruguay Round negotiations struck a proper balance and, while there may be ways to improve the Agreement, it would be a mistake to reopen the Agreement when there are so many other trade issues of more pressing importance.

12. *Textiles and Clothing*. The WTO should evaluate the extent to which countries are adhering to their market access obligations under the Agreement on Textiles and Clothing. In addition, the United States should continue to seek future liberalization in this area.

13. *E-Commerce*. The importance of this sector to economic efficiency and growth, requires the WTO to ensure that countries do not adopt trade-related barriers that will inhibit e-commerce's global expansion. The top priority for the Ministerial should be to make permanent the standstill regarding tariffs on electronic transmissions.

14. *Transparency of Government Policies*. The WTO should consider the negotiation of a general transparency agreement. Such an agreement should provide for clear publication of government rules and notice before such rules are changed. It should also affirm the value of private sector participation in the rules-setting process.

15. *Dispute Settlement*. Experience with the WTO dispute process has revealed several areas where improvements are needed. First, trade negotiators should consider whether the timetable for the panel process can be substantially streamlined, perhaps by cutting down the time by fifty percent. Second, the WTO needs to address "gaming" by governments that drags out compliance with adverse panel reports. Third, hearings by WTO panels should, in general, be open to the public.

16. *Nullification and Impairment*. The WTO Dispute Settlement Understanding renders unusable the non-violation nullification and impairment provisions in the GATT because there is now no obligation to withdraw a measure found to nullify the benefits under a WTO agreement. This problem needs to be addressed by the WTO.

17. *WTO Institutional Improvements*. Although the WTO has made great strides in institution building over the past few years, more efforts are needed. The 1999 Ministerial should be seized as an opportunity to catalyze accession negotiations so that countries that remain outside of the WTO can be brought in as members on appropriate terms. The WTO also needs to do more to assist the least developed countries in improving their trade policies. Furthermore, the WTO should continue to increase its own transparency.

18. *Improving WTO Cooperation*. The WTO needs to strengthen its cooperation with the World Bank and the International Monetary Fund, and with other multilateral organizations where such coordination can improve international economic policymaking.

19. *WTO Consultations with Stakeholders*. The WTO is making progress on dialogues with stakeholders in trade, but further steps are needed. Once a year, the WTO might convene a meeting of various groups such as consumers, business, environment, and labor. This would not be a negotiation, but an opportunity for exchange of information.

20. *Trade and Environment*. The WTO is not the right forum to negotiate international environmental policy and attempting to do so would distract trade ministers from their primary objective. Nevertheless, on a few issues, the WTO can take action. For example, the status of multilateral environmental agreements under trade rules needs to be clarified so that the WTO is not perceived in some quarters as an impediment to environmental protection.

21. *Labor Issues*. The WTO should not be oblivious to the problem of forced labor and exploitative child labor. One constructive step that can be taken is to have the WTO Secretariat analyze whether the GATT Article XX(e) exception for goods made by prison labor can be used to justify a ban on imports produced using forced labor. Consideration should also be given to expanding GATT Article XX to deal with products made using child labor.

A number of new rule-based WTO initiatives have been proposed such as investment and competition policy.

These issues are important to the international economic system, and careful consideration should be given to determine whether these issues are ripe for WTO negotiations. Adding new agreements does not necessarily strengthen the WTO. If governments are not ready for the WTO to absorb such responsibilities, or if the potential new agreements are not well thought out, or if a constructive foundation has not be established for the negotiations, then the negotiations may flounder or result in counterproductive agreements.

The globalization of business activities raises important questions about the extent to which foreign anticompetitive practices may undermine market access opportunities. Yet at this time, there are huge uncertainties as to the proper goals for a competition policy negotiation and whether the WTO is the optimal forum. Under these circumstances, it is premature to launch a WTO negotiation on competition policy. A more constructive approach would be to establish a new WTO work program that will assist governments in thinking through the competition policy issues and in exchanging information.

Achieving disciplines on how governments regulate foreign investment is important to gaining the full benefits of the international economic system. Many key developing countries have indicated they are not, at this time, prepared to make commitments on investment in the WTO. In addition, the Multilateral Agreement on Investment negotiations in the OECD revealed substantial differences of opinion between the industrialized countries on a wide range of investment issues. These factors clearly reveal that an international consensus on the negotiation of a multilateral investment agreement is still evolving. The importance of international investment to the global economy requires that the WTO members to commit themselves to developing a consensus on how to move forward as soon as possible. In the event the WTO Ministerial does not launch comprehensive international investment negotiations, a constructive interim course would be (1) to strengthen the WTO Agreement on Trade-Related Investment Measures by expanding it to include additional trade distorting investment measures, and (2) to establish a WTO work program to help governments understand how to establish investment regimes that will effectively provide economic growth.

Preparing for New WTO Trade Negotiations to Boost the Economy

The Business Roundtable believes strongly that it is in the national interest for the United States to lead in launching, and to participate aggressively in, new WTO negotiations.

This paper has five sections. Section I explains why the United States needs to negotiate new trade agreements in order to prosper in the global economy. Section II highlights why success in the global economy is critical for the American economy and companies, workers and farmers. Section III discusses why the critics of trade are off-the-mark. Section IV explains why there is an urgent need for new WTO negotiations. Finally, Section V outlines a suggested agenda for new WTO negotiations.

I. TO PROSPER IN THE GLOBAL ECONOMY, THE UNITED STATES MUST REACH NEW TRADE AGREEMENTS

Over the last several decades, successive Congresses and Administrations have made significant and admirable progress in breaking down foreign trade barriers, benefitting our companies, workers, farmers and the country as a whole. However, the ever-changing global economy continually presents new opportunities and challenges. The United States must reach out for these opportunities and meet these challenges. In order to do so, the United States must continue to pursue trade liberalization, especially through new international agreements. If we are not in the vanguard, we risk falling behind other countries that are pursuing their own agendas.

International trade agreements are needed to open foreign markets for American companies, workers and farmers.

The United States has been the leader in working for open markets because we know that, with our market the most open in the world, and with our companies, workers and farmers the world's most competitive, we have the most to gain from removing foreign barriers to our goods and services through trade agreements, and the most to lose if such barriers persist.

However, despite recent trade agreements and improvements in world trade rules, foreign barriers remain and new ones continue to be erected. Many countries still impose significant tariffs on our exports. In an increasingly competitive global economy, these "taxes" can make the difference between success and failure in foreign markets.

Moreover, as tariffs and traditional non-tariff barriers to our goods and services exports have fallen, new problems have emerged. For example, inadequate intellectual property protection, investment restrictions, customs, and standards-related and other regulatory barriers have emerged as major problems for U.S. exporters and their workers. Our agricultural exports continue to face a raft of tariff and non-tariff barriers. Recent agreements have gone part of the way toward resolving some of these problems, but more progress is needed multilaterally, regionally, bilaterally and sectorally.

Some interest groups have argued that given the deterioration in the U.S. trade balance, this is no time to begin new liberalization initiatives. But this is the wrong way to look at the question. Commencing new trade negotiations has the potential to stimulate economic growth in those countries suffering weak economies. That will boost the demand for American exports.

To guide U.S. policymakers, The Business Roundtable has developed four short principles which we note below. Broadening the consensus on these principles beyond the business community is one of our goals in the coming year.

PRINCIPLES TO GUIDE U.S. TRADE POLICY

In planning for new trade talks, U.S. policymakers should be guided by the following four principles:

1. *Given the reality of the global economy, the United States needs trade and investment policies to navigate through the complexities of a global system and ensure that trade achieves its intended purpose—to raise American and global living standards.* The U.S. Government needs to continue to be a powerful advocate for U.S. exports, both in terms of political support and programs to support U.S. exports. At the international level, there is a need for effective global financial institutions to promote international economic stability. Within the United States, there is a need for periodic review of U.S. laws and regulations—including sanctions and trade statutes to ensure that they do not unnecessarily impede the ability of U.S. agriculture, industry, and their workers to compete in world markets.

2. *U.S. leadership is critical.* For the last 50 years, the United States has led the effort to liberalize trade, and the United States and our trading partners have benefited both economically and strategically. Continued efforts to liberalize trade will require U.S. leadership.

3. *The rules-based trading system is the foundation of the global economy and enforcement of the rules is the basis for public trust and support for U.S. involvement in the global economy. The strength of the rules-based WTO system also lies in its inclusiveness and transparency.* Compliance with, and enforcement of, the rules governing trade is key to sustaining support for further trade liberalization. This applies to the WTO as well as bilateral rules under agreements negotiated between the United States and other countries. Furthermore, given the importance of the rules-based WTO system, aggressive efforts should be made to incorporate into the system trading partners that have demonstrated a commitment to WTO principles and trade liberalization.

4. *Business is a key driver in the global economy and must be a force for developing and implementing a trade policy that is no longer viewed as a zero sum game.* Nations pursue trade to benefit their citizens. Business must work with governments to create a global trading system that provides benefits to more individuals in society and accommodates the interests of a broader range of stakeholders. Business must also ensure that the stakeholders clearly understand the importance of trade to their future. The best way to assure that trade is a win-win for a broader group of Americans is by training and upgrading the skills of the workforce, enforcing international trade rules and, when necessary, ensuring that companies and workers have access to appropriate import relief procedures and remedies.

II. SUCCESS IN THE GLOBAL ECONOMY IS CRITICAL FOR THE AMERICAN ECONOMY AND COMPANIES, WORKERS AND FARMERS

The United States must lead in promoting trade liberalization around the world because the U.S. economy has become internationalized. The United States cannot hide from the reality of globalization, and cannot afford to turn its back on the opportunities it presents. The United States is the strongest country in the world economically, politically and militarily. However, the United States cannot maintain that strength if it does not continue to engage fully the world outside its borders.

International trade is increasingly important for the world as a whole. Since 1990, world exports have grown an average of 6.5 percent a year. This is a little more than three times as fast as growth in world GDP and world merchandise production.

The world at large is more important to the U.S. economy than ever before. We remain the world's largest exporter—our total exports were $931 billion in 1998 ($671 billion of goods and $260 billion of services). Total trade—imports plus exports—accounted for over $2.0 trillion in business activity, equal in magnitude to nearly 24 percent of the size of the U.S. economy as a whole. Over 95 percent of the world's consumers—5.6 billion people—live outside the United States, and the world's fastest-growing and most promising new markets are spread across the globe. There is no way the United States can have a bright economic future if we do not actively pursue these foreign customers and markets.

Trade is good for our economy, good for business, good for workers, good for farmers and good for consumers.

American companies, workers and farmers have worked hard to compete and win in the global economy, and the United States has seen the positive results. U.S. exports continue to rise at an impressive pace—in 1996–1998, real exports were up 30 percent from the 1993–1995 period. These exports are the engine driving economic growth and job creation in the United States. Export growth has accounted for about 27 percent of the nation's overall economic growth over the past ten years, during which time export growth outpaced the growth of the economy as a whole. In 1998, however, exports slowed due to the ongoing Asian economic crisis. (The impact of the Asian economic crisis on U.S. businesses, workers and farmers highlights the reality that U.S. economic growth and stability depends in large measure on international markets.)

Trade is not just good for big companies. First of all, small and medium sized companies are active exporters. In 1992 (the latest available data) companies employing fewer than 500 employees exported $103 billion in goods, about 29% of U.S. goods exports. Many small and medium-sized companies also supply large companies with products and services that are used in the production of the large companies' exports. Big companies recognize that smaller companies are the backbone of their business—big companies need smaller companies to survive, and vice versa. Trade benefits all in the supply chain.

Trade is good for American workers. Approximately 12 million U.S. jobs are supported by exports. Export-related jobs account for one out of eight jobs created in the United States, according to the most recent study. Exports account directly or indirectly for about one in ten civilian jobs in the nation and about one in five manufacturing jobs.

Export-related jobs are also higher-wage jobs. They typically pay 13 to 16 percent more than the average compensation. Moreover, a lot of our export growth is in high-wage, high-tech sectors. These are clearly the types of jobs we want to promote for this and future generations.

Exports are particularly important for the nation's farmers—the U.S. agricultural sector is more than five times as reliant on foreign trade as the U.S. economy as a whole. U.S. agriculture exports hit a record $60 billion in 1996, but have fallen since then due to economic crises and recessions in Asia and Latin America. Agricultural exports support about 900,000 full-time jobs. One out of every three farm acres in America, and 44 percent of U.S. wheat output, 45 percent of U.S. rice output, and 37 percent of U.S. soybean output, are utilized for exports. Last year, U.S. agriculture had a trade surplus of about $13 billion. This is smaller than in previous years because of weak international markets.

Imports are also important to consumers by maintaining a vibrant, competitive economy and high standards of living. Imports can help keep inflation in check which translates into low interest rates, high investment, and hence high job creation. Imports also give consumers a greater choice of goods and services, including those not available domestically. They create jobs in areas such as retailing, distribution, ports and transportation. Imports allow U.S. companies and workers to use the best technology from around the world, increasing their productivity and competitiveness and therefore leading to higher wages and creation of more U.S. jobs. Moreover, imports encourage competition and innovation.

International investment is also a crucial part of competing and winning in the global economy.

In order to seize the opportunities presented by the global economy, companies must be able to invest in other countries when this makes sense for their businesses. Such investment creates new markets and customers for U.S. companies and their workers and boosts the U.S. economy.

One of the primary goals of foreign investment is the desire to serve businesses and consumers in the country in which the investment occurs. In 1996 (the latest available data), about 66 percent of total sales by U.S. companies' majority-owned foreign affiliates were sold in the affiliate's country of location; another 24 percent were sold in other foreign countries. So, a total of 90 percent of U.S. companies' foreign-made goods and services are sold outside the United States. This makes sense because customers demand prompt and reliable service from their suppliers; it is frequently difficult to meet those needs from thousands of miles away.

Investment abroad brings back significant benefits here at home. Because U.S. companies invest overseas to stay competitive and win new customers, their foreign investments help boost U.S. exports, creating American jobs. Exports follow investment—in 1996 (the latest year for which data is available), exports of goods by U.S.

companies to their foreign affiliates totaled $162 billion, 26 percent of all U.S. goods exports. Moreover, U.S. companies' trade with their foreign affiliates generated a $26 billion trade surplus. The result is jobs here at home. According to the latest available figures (1996), U.S. companies that invest overseas employed 19 million U.S. workers—15 percent of all private sector jobs.

U.S. companies' overseas operations also generate income that can come back to the United States to be reinvested in U.S. operations to the benefit of the local economy and U.S. workers. In 1996, this income was almost $135 billion. Moreover, overseas investments are often needed to keep U.S. companies competitive. Foreign investment allows companies to enjoy greater economies of scale and scope as well as access to important foreign technologies.

It is also important to understand that foreign investment by U.S. companies is concentrated in developed countries. If foreign investment were motivated by a search for low cost inputs, developing countries would be the predominant location for foreign investment. But 68 percent of U.S. companies' foreign investment is in developed countries, some of which have more stringent labor and environmental laws and higher labor costs than the United States.

Because the United States is the world's most competitive nation, it has the most to gain from the global economy and from trade liberalization.

In the 1980s and early 1990s, conventional wisdom held that the United States had been overtaken by Japan and Germany and might never regain its place as an economic leader. Today, the United States is back on top. Our economy has been growing faster than those in Europe and Japan. We are the world's biggest exporter of both goods and services. We have the highest budget surplus (as a percentage of gross domestic product) of any G–7 economy except Canada. We have created more net jobs in the past few years than all other G–7 nations combined, and our unemployment rate is below that of every other major industrial economy except Japan.

The United States has the world's largest economy, the most productive workers, the best technology, and the most innovative people. That is why it is considered to be the most competitive large country in the world, as recently confirmed by the Global Competitiveness Report from the World Economic Forum. The United States is highly competitive in a range of important industries, such as: semiconductors, computers, computer software, aerospace equipment, applied materials, biotechnology, construction equipment, telecommunications and other information-based equipment and services, financial services, information services and entertainment. These are the technologies of today—and of the 21st century.

The United States has done so well because its companies and workers have aggressively sought out the opportunities presented by the global economy. The U.S. government needs to continue negotiating new international trade agreements and enforce existing agreements to ensure that U.S. companies and workers, and the products and services they produce, are given the opportunity to compete fairly and to prosper in the global economy. The United States has nothing to fear from a rules-based trading system.

The United States also needs to ensure the continued competitiveness of the nation, its companies, and its workers. In a world of increasing technological innovation, U.S. companies simply cannot succeed without educated, trained and skilled workers, scientists and technicians. U.S. companies are doing their part to help ensure that our workers remain the best in the world.

Each year, companies in the United States spend an estimated $30 billion on formal training and $180 billion on informal on-the-job training of their employees. Each year, U.S. companies make huge investments in plants, equipment and research & development (over $930 billion on capital investments and over $155 billion on research & development) to ensure that their workers can benefit from the best technology and equipment.

U.S. companies are also working to improve the quality and performance of the nation's K–12 education system, including a state-by-state initiative to achieve comprehensive education reform across the nation. Forty-three states now have business-led education reform coalitions that encourage governors, state legislators and state departments of education to support fundamental changes in their schools. With improved education and training and wise governmental policies, the United States will remain highly competitive.

III. Critics of Trade are Off the Mark

With the opportunities presented by the global economy come fears. It is, therefore, important to look closely at some of the charges being leveled about international trade and lay these fears to rest.

There is no simple direct linkage between imports and lost jobs.

Some have argued that trade costs U.S. jobs because of imports. It is obvious that U.S. exports generate U.S. jobs because someone has to make those goods or produce those services. But if we look at the reality of imports, it is not obvious that they translate into lost U.S. jobs and, in fact, often they do not. Some imports, such as the $51 billion of petroleum/fuel and $3.5 billion of coffee we are importing, are products that are simply not available or are in short supply in the United States. Other imports, by providing a competitive input into a production process for example, complement U.S. production and support rather than displace U.S. jobs by enabling U.S. companies to be competitive at home and abroad. Such imports include U.S. components, and production of these components supports U.S. jobs. Imports also create jobs in such areas as ports, distribution, wholesaling and retailing.

It is true that some jobs are displaced by imports. This is a particular problem in cases involving unfair trade. In these cases, it is especially important for the United States to strongly enforce its unfair trade laws. However, when unfairly traded goods are not at issue, trade is only one factor that impacts the job market; technological change, for example, is far more significant. In fact, recent studies, including from the Organization for Economic Co-operation and Development and the International Monetary Fund, find that trade is not a major factor behind any job or wage loss that may exist in industrialized countries. These studies found other factors, including technological change, to be much more important. Moreover, jobs displaced by imports are more than offset by other jobs created by imports and exports and the other benefits of trade to the U.S. economy.

The United States cannot and should not ignore the real effects of job loss for individuals, regardless of the cause. However, trying to freeze the U.S. economy is not in the interest of this or future generations of companies and their workers. The national and world economies are seeing a shift of jobs from low-productivity, low-skill jobs to high-productivity, high-skill jobs. These job shifts are to be expected and welcomed as we approach the 21st century; they will lead to a better future for today's and tomorrow's workers. The U.S. work force is one of the most diversified and capable in the world, and as a very large and flexible economy, the United States has the ability to absorb workers into productive and well-paying jobs. As noted above, the United States needs to ensure that all Americans get the education and learn the skills they need in order to be as competitive as individual citizens as we are now as a nation. In addition to government and private sector education and training initiatives, the United States must also use trade negotiations and the resulting agreements to break down foreign barriers so that we can win new customers abroad and boost American incomes.

Trade deficits result from many factors and simple linkage to trade policies is misleading.

Some have pointed to the U.S. trade deficit as evidence that trade is bad for the United States. Actually, the trade balance is determined by macroeconomic factors, such as saving and consumption rates, currency values and growth rates. Moreover, trade deficits result in part from our growing economy, employment that is on the upswing, and our consumers and businesses having more money to spend on both domestic goods and imports. At the same time, many of our trading partners are in recession or growing only slowly.

The trade deficit has also fallen significantly in the last decade when compared to the size of our economy. Moreover, a large portion of our trade deficit consists of petroleum imports, which is not a job-displacing commodity—our deficit in petroleum products was $43 billion in 1998. Another huge chunk, about $34 billion, was the auto and auto parts deficit with Japan, which is due to special, unique bilateral problems. It is also important to note that, compared to the size of its economy, the United States imports far less than every other developed country except Japan.

When discussing the trade deficit, the United States should be addressing the macroeconomic factors it can try to control, such as the low saving rate in the United States and government spending, while continuing to focus on tearing down foreign barriers to our exports. Resorting to isolationism and protectionism to "solve" the trade deficit problem will not help.

International investment, as with trade, benefits the economy and workers.

There are also those who argue that international investment is bad. The facts noted earlier prove that this is not true.

It is important to recognize that the decision to invest is a very complex one, involving many factors, not just low production costs. The United States is endowed with numerous advantages that make it a very attractive place for U.S. companies and foreign companies to invest, including a highly productive work force, state of the art communications networks and computer systems, technologically advanced production facilities, a well-developed transportation infrastructure, and stable and sophisticated legal and financial systems. These advantages provide the reason why the U.S. economy attracts so much new investment. If low wages were the main determinant of investment decisions, our principal foreign direct investments would be in less developed countries rather than in highly industrialized, developed countries where, in fact, our principal investments are made.

Contrary to irresponsible statements by some, U.S. companies are not pulling up their stakes in the United States. U.S. companies' direct investments overseas were $115 billion in 1997, only 13 percent of non-housing domestic investment in the United States. Fifty percent of that foreign investment did not even come from the United States, but from the earnings of the companies' foreign operations themselves. As for Mexico, U.S. companies' investment there is small and, in many instances, are in niche markets like telecommunications. U.S. foreign direct investment in Mexico was only 0.5 percent of U.S. total investment in 1997, or about $5.9 billion.

Trade agreements do not threaten health and safety.

Another favorite of trade skeptics is to raise the specter of unsafe food. This is nothing but scare tactics—trade agreements do not hamper our ability to protect ourselves from any of these problems. Trade agreements do not result in unregulated trade—the United States is always able to enforce our laws and close our border to any product that could legitimately result in harm to our citizens. As recent problems with domestically-produced food demonstrate, ensuring the safety of the U.S. food supply is not a trade issue.

IV. The Urgency of WTO Negotiations

Initiating new multilateral trade negotiations in the WTO is vital for the United States and the global economy. Since the Uruguay Round negotiations were completed in 1993, the benefits of open trade for consumers and workers have been amply demonstrated. The new World Trade Organization (WTO) has provided a framework for carrying on negotiations in selected sectors, for settling disputes, and for promoting communication between governments and stakeholders in the private sector. This record demonstrates that the trading system works. Now it is time to begin new negotiations to remove remaining barriers to trade and investment. Efforts are also needed to improve the WTO's rules and its dispute resolution process.

It is important to launch new world trade negotiations in 1999 and not to let differences in economic performance among countries, or election cycles, delay their start. The world waited seven years between the GATT Tokyo Round and the Uruguay Round. But today economic change is much more rapid. Because markets respond so quickly in our global economy, trade negotiations begin to generate economic benefits very quickly. Thus, further delay in starting new negotiations will postpone the economic stimulus that successful trade negotiations can deliver. Even worse, a lack of momentum for new trade talks may lead some governments to renege on previous liberalization commitments.

Americans can be confident that new trade negotiations will make the United States more prosperous, because the Uruguay Round has delivered, and continues to deliver, a boost to economic growth. Recent studies suggest that economic growth would have been much less robust without the stimulus of trade liberalization. There are many explanations for why the U.S. economy has been so strong in the past few years, but surely one of them is that reduced trade barriers around the world are expanding opportunities for American businesses, workers, and farmers.

Although some interest groups vilify the WTO, the fact is that the WTO is just an organization of governments who cooperate to reduce trade barriers and eliminate improper trade discrimination. A strong, successful WTO is in the U.S. interest because this rules-based system can be used to confront governments that discriminate against Americans who export goods, services, and capital investments. The recent actions by the WTO to increase its own transparency and to release more documentation have contributed to a better understanding of the WTO by the public.

The Preamble to the Agreement Establishing the WTO recognizes that trade relations should be conducted with a view to raising standards of living, ensuring full employment, and expanding the production of trade in goods and services while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development. This is common ground among governments as well as among major stakeholders in world trade. Of course, there are differences between stakeholders as to the most effective way to achieve such community goals. But there is no reason to assert that the WTO, or economic globalization generally, hinders the achievement of human resource or environmental objectives.

The WTO Ministerial to begin in Seattle on November 30 provides an opportunity for the U.S. government to promote the launching of new WTO negotiations. This is the right moment to start new talks because the experience of the last few years shows several areas in which current WTO agreements can be built upon and improved. To assist trade negotiators in crafting an agenda for new WTO negotiations, we offer several recommendations for how U.S. interests can be best advanced.

V. Suggested Agenda for New WTO Negotiations

In considering what a new WTO negotiation should accomplish, it is analytically helpful to divide the issues into two categories:

- the built-in agenda that carries forward ongoing negotiations, and
- review and strengthening of various WTO agreements.

By distinguishing these two categories, it may become clearer to policymakers and the public that much of what needs to be done within the WTO at this time is not the development of new rule-based agreements, but rather the continuation of the unfinished business of the Uruguay Round. This requires the completion of current negotiations and the adjustment of Uruguay Round agreements based on the experience of the first five years of operation.

The improvement of current WTO agreements is especially important to preparing the world trading system for the 21st century. Although the Uruguay Round included a number of trade agreement milestones, the full potential of these agreements has not yet been achieved. Rather than devoting resources to the negotiation of entirely new WTO agreements, it may will be better for governments to focus on improving existing disciplines.

Governments should aim to keep the overall negotiating process flexible regarding the implementation of new decisions. In the past, the operating procedure in trade negotiations was that nothing is decided until everything is decided. Yet the more structured WTO decisionmaking mechanisms provide a way to implement agreements in individual areas as they are agreed. Requiring all agreements to be finalized at the same time would likely draw out the negotiating process, with no concrete results attainable for several years. Given the growing importance of trade to the United States and world economies, the United States should not have to wait over seven years (as in the Uruguay Round) before a package of agreements is finalized.

An important precondition for successful trade negotiators is that all WTO members should agree to a standstill on trade-restrictive measures in advance of the Ministerial and throughout the negotiations. Such a standstill would ensure that governments do not modify their laws in order to gain bargaining advantage. The standstill should not interfere with the continued use of trade remedy laws consistent with WTO rules.

It is important that WTO agreements apply to the largest possible number of large countries. So the WTO should intensify its efforts to achieve the accession of China and other countries seeking accession on commercially acceptable terms. Strengthening the WTO will also underline for China and other non-WTO-countries the value of being part of the multilateral trading system.

Below we discuss actions that the WTO might take with respect to the built-in agenda and the strengthening of existing WTO agreements. Following that, we discuss the topic of new issues for the trade round. One common theme in this paper is the need to improve enforcement of existing WTO obligations. Doing so would make the WTO a more effective institution and boost support for it in the United States.

The Built-in Agenda

1. Services

Because world trade in services is increasing at a faster rate than trade in goods, the expansion of the Services Agreement should be a top priority in the next round. The problem in services is that, at present, the General Agreement on Trade in

Services provides only minimal disciplines. The substantive commitments come in sectoral agreements on a plurilateral basis, but so far only a few sectors have been covered in detail.

Agreements to open services markets and to grant national treatment to providers should be pursued on the most comprehensive basis possible. The WTO needs to begin by ensuring that governments ratify both the Financial Services (which covers insurance, securities and banking) and Basic Telecommunications agreements and fulfill their commitments. Negotiations should also be launched to expand liberalization commitments under these two agreements. Among the high priority sectors for obtaining new services agreements are: all levels of distribution, transportation, construction, tourism, information technology, health care, advertising, express delivery, and business professional services.

Governments should also consider new modalities of negotiation that would accelerate market opening for services. For example, a negative list approach would commit a government to liberalize all service sectors unless a government takes a specific exemption for the sector as a whole or for a particular law or regulation. The WTO should also insist that applicants for WTO membership make commitments under the Financial Services and Basic Telecommunications agreements.

Negotiations on services should entail discussion of regulatory barriers which are increasingly a source of trade disputes. Regulations should be substantively responsive, impartial, minimally intrusive, and transparent. A framework for developing principles to guide regulatory behavior should be pursued as well as promotion of mutual recognition and harmonization of standards.

The WTO should also try to address the problem of regulations that manifest favoritism to incumbent suppliers. Private practices—for example, when providers of essential services charge unreasonable fees to foreign entrants—should also be discussed. In addition, negotiators should seek commitments against allocating "trading rights" on a discriminatory basis.

2. Agriculture

The Uruguay Round made progress in reducing agricultural trade barriers and making import protection more transparent. But there is far more to do in addressing policies that impede trade. The WTO Agreement on Agriculture already commits governments to commence negotiations to seek further progress on this same agenda. Negotiations on agriculture are especially important because the prospects for developing countries of obtaining greater market access can encourage responsive commitments by these countries not only on agriculture, but also on other sectors of interest to industrial countries.

Significant negotiating goals should be put on the negotiating table. Among these goals are:

- Agricultural tariffs and tariff-rate quotas should be negotiated down, perhaps using a formula approach. Whenever possible, zero-for-zero agreements should be pursued.
- Domestic farm programs should be reformed to use fewer trade-distorting instruments and to limit domestic subsidies. To complement these initiatives, the WTO should look for ways to provide incentives for market-oriented actions.
- Export subsidies should be targeted for elimination.
- When governments persist in relying upon state trading entities, the market share earmarked for such entities should be reduced.
- Market access should be improved for biotechnology goods, including through the mutual recognition of health-related tests.

3. Tariffs

Although average tariff levels have fallen as a result of trade negotiations, tariffs remain significant barriers in some industrial sectors and for trade with developing countries. The upcoming trade negotiations should consider steps to address tariffs, such as the following:

- High tariffs should be put on a timetable for reduction.
- Approaches such as tariff harmonization agreements or zero-for-zero proposals should be aggressively pursued. When such agreements already exist, all governments should be urged to sign on.
- "Nuisance" tariffs—those under 5 percent—should be eliminated.
- WTO Members should agree to a permanent ban on imposing customs duties on electronic transmissions.
- For any Harmonization Agreement, such as Chemical Tariffs, the number of government participants should be expanded as broadly as possible.
- The Information Technology Agreement should be expanded to cover additional products and participation should be mandatory for all WTO Members.

• The recent decision in the Asia-Pacific Economics Cooperation forum to move the Early Voluntary Sectoral Liberalization talks to the WTO presents an opportunity to the WTO to make progress on these sectors at the Ministerial quickly.

• Special consideration should be given to the elimination of tariff discrimination caused by countries lowering their tariffs on a non-most-favored-nation basis in anticipation of joining a customs union or negotiating a free trade area.

REVIEW AND STRENGTHENING OF WTO AGREEMENTS

The WTO is a new institution and many of the provisions written in the early 1990s now need to be updated to reflect actual experience with their operation. Using the upcoming negotiations to improve the effectiveness of existing agreements is the best way to strengthen the WTO for the challenges of the 21st century. Showing that the WTO works will also help draw the public support necessary to defend the world trading system.

There are a number of provisions in WTO Agreements that call for review or reconsideration within a specified period. Many of these reviews are now ongoing. In presenting the issues below, we note that some of them might have handled through the new WTO decisionmaking procedures.

4. Intellectual Property

Even after the improvements achieved in the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property (TRIPs), significant gaps remain in the protection and enforcement of intellectual property rights. This can impede innovation and unsettle trade relations. The built-in WTO reviews of TRIPs may make it premature to present a comprehensive negotiating agenda for new WTO negotiations. If new intellectual property negotiations are launched, they should address the significant gaps remaining in the protection and enforcement of intellectual property. These negotiations should also be structured to prevent any weakening of the protection included in TRIPs intellectual property protection. Thefollowing proposals are among the possible objectives for strengthening intellectual property protection.

• For *patents*, there should be an agreement to eliminate the TRIPs provision (Article 27.3) allowing governments to exclude from patentability plants and animals other than micro-organisms. Governments should also incorporate new provisions in TRIPs to restore time in patent terms lost due to lengthy delays in obtaining patents or in obtaining marketing approval from a government. In addition, governments should agree to prohibit international exhaustion.

• For *trademarks*, there should be an agreement to enhance protection through better regulation of domain name allocation on the Internet.

• For *trade secrets*, there should be an agreement to include a linkage between the marketing approval of generic copies and any underlying patents to ensure that existing products are not being infringed by the marketing of generic copies. In addition, a "negligence" standard should be substituted for the "gross negligence" standard currently required in TRIPs. The obligation on data exclusivity should be classified to ensure that it includes non-reliance by governments on the data for a fixed period of time, such as the ten years currently required by the European Union.

• For *industrial and layout designs*, there should be an agreement to increase the minimum term of protection, now ten years from date of registration or first commercial exploitation.

The WTO should also consider how TRIPs can be adapted quickly to respond to new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property.

Governments also need to focus on ensuring the enforcement of TRIPs obligations. Some elements of such a strategy might include:

• Assuring that developing countries honor their TRIPs obligations following the termination of the transition periods established by TRIPs.

• Taking no action to renew the five-year moratorium (Article 64.2) on the use of "nullification and impairment" complaints with regard to TRIPS commitments.

5. Subsidies and Countervailing Measures

The WTO Agreement on Subsidies and Countervailing Measures (SCM) was an important achievement of the Uruguay Round and should not be weakened. U.S. negotiators should also ensure that the SCM continues to be applied to civil aircraft, and should continue to adhere to the negotiating objectives for civil aircraft established by the Uruguay Round Agreements Act. In addition, negotiators should consider the following objectives:

• The toleration of developing country export subsidies should be phased out so that the same disciplines against export subsidies apply to all countries.

• The mandated review of the discipline on Non-Actionable (green light) subsidies should be commenced soon so that the findings can inform WTO negotiations.

• A work program should be considered on whether current WTO rules are neutral with respect to whether a government relies on direct taxes (like the income tax) versus indirect taxes (like the value-added tax).

6. Customs-Related Issues

Although often technical, national regulations regarding rules of origin, pre-shipment inspection, import licensing, and valuation can have a significant impact on business costs and trade flows. The new WTO negotiations should give attention to these issues, including the following:

• The WTO Agreement on Preshipment Inspection provides for a review by the Ministerial Council every three years, but contains no mechanism for ongoing evaluation. Negotiators should establish a working group to consider on a regular basis any needed changes to this Agreement.

• The Uruguay Round provides for a work program on the harmonization of rules of origin. These efforts have been slow going. The trade ministers should renew their efforts to achieve harmonization this year.

• Further effort is needed to assure that governments are implementing the WTO Agreement on Customs Valuation. The WTO should also consider ways to address the misuse of valuation methodologies without having to invoke dispute settlement procedures.

For all issues of trade facilitation, the WTO should have procedures whereby the private sector can submit recommendations regarding ways in which customs regulations can be improved.

7. Sanitary and Phytosanitary Measures

The WTO Agreement on Sanitary and Phytosanitary (SPS) does not prevent governments from enforcing legitimate food safety and public health regulations. What SPS is designed to do is to assure that governments do not block imports through unnecessary or unjustifiable regulations either intentionally or through inadvertence. Any attempt to water down these requirements should be opposed.

The WTO has gotten off to a constructive start in implementing the SPS disciplines. Dispute panels and the Appellate Body are giving fair interpretations to the new requirements to assure that regulations have a scientific justification and are based on a risk assessment. We expect that the SPS Agreement will continue to be tested as governments, such as the United States, complain about import barriers based on a bogus health rationale.

More attention should be given to the provision calling for governments to base their SPS measures on international standards except when those standards fail to provide a high enough level of health protection. Greater harmonization or mutual recognition of food safety standards will lead to a safer world food supply and will help achieve the dual goals of fewer trade restrictions and the avoidance of episodes in which protectionists blame tainted food on free trade. Developing countries will need more extensive technical assistance in improving their food safety standards.

8. Technical Barriers to Trade

As tariff barriers fall, some governments and standard-setting organizations will be tempted to use technical and certification standards as a substitute for tariffs in order to protect national industry. Recognizing this possibility, the Uruguay Round produced a new Agreement on Technical Barriers to Trade (TBT). This Agreement requires that technical regulations not be more trade-restrictive than necessary to fulfill a legitimate objective—such as prevention of deceptive practices, health, safety, and the environment. Under the Agreement, governments are encouraged to use international standards as a basis for their technical regulations. When a technical regulation seeks to achieve one of the listed objectives and is in accord with international standards, the TBT Agreement provides that such regulation will be presumed not to create an unnecessary obstacle to trade.

These new disciplines have not yet been tested in WTO dispute settlement. Nevertheless, a number of concerns have arisen:

• The TBT Agreement accords deference to all international standards and provides no avenue for withdrawing deference for standards that are outdated or that were adopted through flawed procedures.

• For standards seeking to fulfill health, safety, or environmental objectives, TBT lacks a requirement that such standards be based on scientific principles.

- For those industries, such as biotechnology, that come under both the SPS and TBT Agreements, two different rules may apply.
- Conformity assessment and certification procedures often remain onerous (e.g., pharmaceuticals). The WTO Committee on Technical Barriers to Trade should consider how this process can be expedited, perhaps with a supplier's declaration of conformity or expanding existing regional mutual recognition agreements or common dossier procedures.
- The adequacy of TBT rules to address labeling and product seals remains uncertain. New rules may be needed to assure that "independent" labeling schemes do not become trade barriers.

9. Government Procurement

The Agreement on Government Procurement is not part of the WTO single undertaking but rather is a "plurilateral" agreement comprising only 26 of 133 WTO member countries. The upcoming trade round should review this status to see if Procurement can be fully brought into the WTO. This is a huge sector totaling over $3 trillion a year worldwide.

For those governments that do participate in the Procurement Agreement, efforts should be made to strengthen the Agreement by: (1) expanding coverage of subnational governments and government-controlled enterprises; (2) inclusion of additional service sectors; and (3) lowering the threshold for obligations to apply. The issue of developing country participation in the Procurement Agreement should also be discussed. These countries may have the most to gain from transparent and fair procurement processes that make best use of their limited resources.

If Procurement trade commitments retain their à la carte character, then governments should consider negotiating a Procurement Transparency Agreement that would become a requirement of all WTO members. Such an agreement would help provide a fairer process for competitive bidding and help to curtail bribery and corruption.

10. Trade-Related Investment Measures

The WTO Agreement on Trade-Related Investment Measures is the thinnest of the WTO Agreements. Attention should be given to strengthening its provisions. One of the critical areas for discipline is the imposition of trade-related investment measures, such as mandatory technology transfer requirements on foreign investors. Such requirements are trade distortions and can often render new investment impossible.

11. Antidumping

The WTO Anti-Dumping Agreement is designed to provide protection against unfair practices by exporters. The Uruguay Round negotiations struck a careful balance and, while there may be ways to improve the Agreement, it would be a mistake to reopen the Agreement when there are so many other trade issues of more pressing importance. By keeping Anti-Dumping off the table, the WTO can avoid reconsideration of very controversial matters that would distract negotiators from a consensus building process.

12. E-Commerce

E-Commerce does not necessarily require unique trade rules, but because of the importance of this new sector to economic efficiency and growth, the WTO should give specific attention to it. A top priority at the Ministerial should be to make permanent the standstill regarding tariffs on electronic transmissions. Another objective should be to ensure that MFN and national treatment are accorded to foreign providers of Internet and interactive services. A third objective should be to ensure that government policies facilitate interoperability. For all WTO initiatives regarding E-Commerce, there should be significant coordination with relevant intergovernmental organizations and with the business community.

13. Textiles and Clothing

The Agreement on Textiles and Clothing (ATC) reflects carefully and strategically crafted compromises. The ATC requires certain undertakings and commitments by countries to provide market access. The WTO should undertake an assessment of individual nation's compliance with those agreed upon commitments. Any such review should include an assessment and reaffirmation of the signatories' adherence to the phase-out schedule for quotas and non-tariff barriers and rates agreed to as part, of the Uruguay Round, adherence to which several of our trading partners have already breached. The U.S. should also continue to seek further liberalization in this area.

14. Transparency of Government Policies

Transparency requirements are currently spread throughout the WTO Agreements. The WTO should consider the negotiation of a general transparency agreement that would encompass tariffs, internal taxes, standards, sanitary measures, domestic regulations, subsidies and export incentives, export controls, procurement, agricultural policies, rules of origin, and other customs practices. Such an agreement could provide for clear publication of government rules and notice before such rules are changed. It could also affirm the value of private sector participation in the rules-setting process.

15. Dispute Settlement

The WTO's Dispute Settlement Understanding (DSU) is the key to effective enforcement of WTO agreements. However, experience with the WTO dispute process has revealed several areas where the procedural rules need improvement:

- Trade negotiators should consider whether the timetable for the panel process can be substantially streamlined, perhaps by cutting down the time by fifty percent. Attention should be given to the steps involved in convening a panel and the steps taken by a panel once it is selected.
- The Secretariat's current responsibility for assisting panels on the legal, historical and procedural aspects of matters should be reviewed. Panel reports should not be drafted by WTO Secretariat staff.

The biggest problem lies in the slow implementation of panel and Appellate Body reports. The Dispute Settlement Understanding (DSU) suggests that a "reasonable time" for implementation is 15 months. While this period may already be too long, "gaming" by governments may drag out the compliance process even longer. Gaming refers to the tactic of making a minor change in the practice declared to be a WTO violation, and then self-certifying it as WTO-complaint. The WTO needs to address this tactic in order to retain public confidence in the dispute settlement system.

One possible solution is to revise the text of the DSU to make clear that all steps necessary to bring the law into compliance should be completed during this time period. For example, if a defendant government that loses an SPS dispute wants to undertake a new risk assessment, that study should be completed and submitted to the original panel well inside the 15-month period. The expectation should be that the original panel will have time to pass judgment on whether the losing defendant government has corrected its WTO violation during the 15-month period. The responsibility should be on the defendant government to secure this certification of compliance. If such a certification has not been issued during the "reasonable period," the complaining country should be able to request retaliatory authority immediately.

Looking ahead, another problem in dispute settlement could arise as the various WTO transition periods and dispute moratoria expire. For example, the TRIPS Agreement gives developing countries five years to adhere to the new disciplines. It would be abusive if a developing country does little to comply during those five years with the expectation that if it loses a dispute settlement after 1999, it would still get 18 months to implement an adverse panel report.

Another problem with the DSU is the lack of openness in the panel process. Hearings by WTO panels and the Appellate Body should, in general, be open to the public. Panels now have the option of accepting amicus briefs from any source. The Dispute Settlement Understanding (DSU) rules might be changed to instruct panels to accept such briefs and to place them in a public comment file. The public should have access to the briefs filed by governments, with mechanisms to protect business confidential information. This would improve public understanding of the dispute process and help the private sector provide information.

16. Nullification and Impairment

The WTO Dispute Settlement Understanding renders unusable the non-violation nullification and impairment provisions in the GATT because there is now no obligation to withdraw a measure found to nullify the benefits under a WTO agreement. By permitting WTO members to take domestic actions that nullify negotiated concessions, the WTO has engendered new compliance problems. Experience during the past four years has shown that an effective nullification and impairment provision is needed to address, for example, restrictive business practices and government-created barriers that impede market access.

17. WTO Institutional Improvements

Although the WTO has made great strides in institution building over the past few years, more efforts are needed. The November Ministerial should be seized as

an opportunity to catalyze accession negotiations so that countries that remain outside of the WTO can, be brought in as members on appropriate terms. The WTO also needs to do more to assist the least developed countries in improving their trade policies.

The WTO has made enormous progress in enhancing the transparency of its operations and should be commended. Its web page is state-of-the-art for an international organization. The WTO should continue to increase its transparency by taking the following actions:

- Proposed agendas for meetings and individual countries' contributions to meetings should be made public unless the author government specifically requests that its document be confidential.
- Minutes of all WTO meetings should be made public.

18. Improving WTO Cooperation with Other International Organizations

One way in which the WTO improved upon the General Agreement for Tariffs and Trade (GATT) is that the WTO Agreement contains a provision directing the WTO General Council to "make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO." This provision has been implemented to some extent, but more cooperation can be effectuated with, for example, the World Bank and the International Monetary Fund. These two financial institutions can support the WTO by reviewing trade policies of governments receiving loans to assure that commitments made in WTO negotiations are being fulfilled. The World Bank can also help developing countries invest in human capital so that they gain more from the global economy.

Beyond the Bank and Fund, the WTO should develop closer relations with other multilateral organizations where such policy coordination can improve international economic policymaking. This is already occurring with the World Intellectual Property Organization.

19. WTO Consultations with Stakeholders

Although the Organization for Economic Co-operation and Development (OECD) has always had a formal process for consultation with business and labor groups, the WTO has not yet set up such a process. To date, the WTO has held "Symposia" to promote dialogue with non-governmental organizations (NGOs) and the Director-General has met with small groups of NGOs (including business groups).

A new process should build upon these prior initiatives. Once a year, the WTO might convene a meeting of various groups such as consumers, business, environment, and labor. Participation by governmental representatives would be up to each government. The consultations would not be a WTO negotiation and would not have direct input into any committee of the WTO. The purpose would be to improve two-way communication between the trade regime and non-governmental stakeholders.

Another initiative that could be taken is to encourage other governments to improve consultations with their domestic stakeholders in trade policy.

20. Trade and Environment

In 1994, trade ministers planning for the WTO created a Committee on Trade and Environment. The WTO renewed that mandate in 1996. The Committee has held numerous meetings, but has made very limited progress. In March, the WTO is sponsoring a high-level meeting on Trade and Environment to review the issues and to stimulate new proposals.

The WTO is not the right forum to negotiate international environmental policy. Attempting to do so would distract trade ministers from what should be their primary objective which is to open markets, prevent export subsidies, and stop trade discrimination. Recognizing, however, that unmanaged transborder environmental problems can sometimes become trade issues, governments, working with interested stakeholders, should improve the effectiveness of multilateral environmental institutions and agreements.

There are a few environment-related issues that need to be addressed in the WTO and governments should strive to make greater progress. For example, the status of multilateral environmental agreements under trade rules needs to be clarified so that the WTO is not perceived in some quarters as an impediment to environmental protection. The problem of subsidies that harm the environment deserves more attention and the Trade Policy Review Mechanism might be used to cast a spotlight on such practices.

It is also important to remind environmentalists that trade promotes economic growth which will enable countries to invest more toward improving environmental quality. This is not to suggest that there is any one-to-one relationship between

trade and growth but only that economic growth may be a positive environmental factor.

21. Labor Issues

The issue of trade and worker rights has engendered so much controversy that it has eclipsed the real issue which is obtaining more respect for worker rights around the world. During 1998, significant progress was made in Geneva when the International Labor

Organization (ILO) adopted a Declaration on Fundamental Principles and Rights at Work. This was a landmark achievement for the ILO and was an exemplification of what the Roundtable called for in 1995 when The Business Roundtable urged that ILO programs be improved.

An important labor right is freedom from forced labor practices. The WTO is not oblivious to this heinous problem. Article XX(e) of the General Agreement on Tariffs and Trade has always allowed governments to ban imports of products made with "prison labor." At this time, the applicability of this exception to products of forced labor remains uncertain. It may be timely for the WTO to clarify this ambiguity by affirming that governments may ban products made using forced labor. Doing so might help governments combat forced labor, a practice that is anathema to free market principles.

Consideration should also be given to expanding GATT Article XX to deal with products made using child labor. This year, the ILO will complete a new Convention on exploitative child labor, and the definitions employed in this Convention might be utilized in modifying Article XX. It should be noted that Article XX would not permit punitive trade sanctions on unrelated products; rather, Article XX would only permit an import ban on the product made using child labor.

During both the Tokyo Round and the Uruguay Round, the U.S. government sought unsuccessfully to address labor issues. These frustrated efforts demonstrate the difficulty of convincing other countries that the trading system can play a constructive role in addressing a problem, like the denial of worker rights, that may be only loosely connected to trade. Many developing countries and business groups were concerned about the vague proposals for linking a wide range of labor issues and the GATT, and the uncertainty as to where such initiatives would lead.

Governments should pursue multilateral efforts to promote worker rights regarding freedom of association, abolition of forced labor, non-discrimination, and child labor that exploits children. The organization of primary responsibility should be the ILO, but complementary activities in other organizations should not be ruled out, or insisted upon. To assist governments in achieving better consensus policies, the Roundtable supports more active dialogues among the major stakeholders concerning the relationship between global markets and social and employment objectives.

NEW INITIATIVES

A number of new rule-based WTO initiatives have been proposed such as investment and competition policy. These issues are important to the international economic system, and careful consideration should be given to determine whether these issues are ripe for WTO negotiations. Adding new agreements does not necessarily strengthen the WTO. If governments are not ready for the WTO to absorb such responsibilities, or if the potential new agreements are not well thought out, or if a constructive foundation has not be established for the negotiations, then the negotiations may flounder or result in counterproductive agreements. Under these circumstances, WTO may be weakened, rather than strengthened.

1. Competition Policy

The globalization of business activities raises important questions about the extent to which foreign anticompetitive practices may undermine market access opportunities created by bilateral and multilateral trade and investment agreements. However, at this time, there are huge uncertainties as to the proper goals for a competition policy negotiation and whether the WTO is the optimal forum.

Among the many issues that need more thorough analysis before launching any WTO negotiations on competition policy are: (1) what are the specific market access problems that need to be addressed by an international competition policy agreement (and cannot be addressed by existing trade agreements or trade initiatives currently underway), (2) whether any such problems are the result of inadequate competition laws or regulations, inadequate enforcement or lack of harmonization, (3) what elements should be addressed in an international agreement (e.g., harmonization of competition policy standards and/or procedures, per se violations, elimi-

nation or cartels, dispute settlement procedures), (4) what would be the most appropriate forum or fora for negotiating an international agreement (e.g., the WTO, the OECD, bilateral or regional initiatives), (5) what U.S. laws and practices would be affected by an international agreement and whether the impact would have a positive or negative effect on U.S. domestic and international competitiveness, (6) what are the downsides and, conversely, the upsides of addressing market access problems through an international competition policy agreement in the WTO or other fora, and (7) are there other international antitrust issues that should be addressed in addition to or in lieu of direct trade-related market access problems (e.g., merger and acquisition procedures).

Under these circumstances, it is premature to launch a WTO negotiation on competition policy. A more constructive approach would be to establish a new WTO work program on competition policy that will assist governments in thinking through the competition policy issues and in exchanging information about the development and enforcement of appropriate antitrust laws.

2. Investment

Achieving disciplines on how governments treat foreign investment is important to gaining the full benefits of the international economic system.

Many key developing countries have, however, indicated they are not, at this time, prepared to make comprehensive liberalization commitments on investment in the WTO. In addition, the Multilateral Agreement on Investment negotiations in the OECD also revealed substantial differences of opinion between the industrialized countries on a wide range of investment issues. There were sharp differences of opinion on (1) the scope of the MAI's provisions on expropriation, especially when combined with investor-to-state dispute procedures, (2) the definition of what constitutes an investment, (3) the extent to which a government's right to regulate should be limited, (4) whether exceptions for culture and regional economic integration organizations should be included, and (5) how to address labor and environment issues.

These factors clearly reveal that an international consensus on the negotiation of a multilateral investment agreement is still evolving. The importance of international investment to the global economy requires WTO members commit themselves to developing a consensus on how to move forward as soon as possible. In the event the WTO Ministerial does not launch comprehensive international investment negotiations, a constructive interim course would be (1) to strengthen the WTO Agreement on Trade-Related Investment Measures by expanding it to include additional trade distorting investment measures, such as technology transfer requirements, and (2) to establish a WTO work program on investment that will focus on the exchange of information on how to establish investment regimes that will effectively promote economic growth. The work program should also consider the feasibility of expanding the WTO's Trade Policy Review mechanism to consider the broad-range investment issues.

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Statement of Robert W. Holleyman, II, President and Chief Executive Officer, Business Software Alliance (BSA)

Thank you, Mr. Chairman, for giving me the opportunity, on behalf of the member companies of the Business Software Alliance (BSA), to provide testimony on the upcoming World Trade Organization Ministerial and the agenda for the New Round.

In late November 1999, the World Trade Organization (WTO) will hold a meeting in Seattle, bringing together Trade Ministers from around the world. The member companies of the Business Software Alliance look to this Ministerial meeting as an opportunity to further strengthen international trade law.

Since 1988, the Business Software Alliance (BSA) has been the voice of the world's leading software developers before governments and with consumers in the international marketplace. Our members represent the fastest growing industry in the world. BSA educates computer users on software copyrights; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA worldwide members include Adobe Systems Incorporated, Attachmate Corporation, Autodesk, Inc., Bentley Systems, Inc., Corel Corporation, Lotus Development Corp., Macromedia Inc., Microsoft Corp., Network Associates Inc., Novell, Inc., Symantec Corporation and Visio Corporation. Additional members of BSA's Policy Council include Apple Computer, Inc., Compaq Computer Corporation, IBM, Intel Corporation, Intuit Inc., and Sybase. BSA can be found on the worldwide web at *www.bsa.org* and www.nopiracy.com.

The software industry depends on trade. More than 50 percent of the revenues of our members are generated by overseas sales. With the establishment of on-line electronic commerce, we expect that even more of our companies' sales will be to foreign customers.

The software industry has been a consistent advocate of international trade liberalization. The Uruguay Round results have made a meaningful and lasting contribution to our ability to compete in the international marketplace. For example, when the Uruguay Round of negotiations was launched in 1986, most countries did not provide explicit legal protection for computer programs under their national laws. Piracy of software was rampant. The Trade-Related Intellectual Property Rights (TRIPs) Agreement, however, has brought about significant improvements. Today, most countries provide substantial and meaningful legal protection of software. While software piracy remains a serious threat to the health of the industry, today we have the ability, unlike in the 1980s, to bring legal action against those who steal our products.

As we look forward, three aspects of international trade stand out as having substantial implications for the software and computer industry. While I would like to devote the bulk of my comments to trade policy issues raised by electronic commerce, I would like to say a few words first about the TRIPs agreement and tariff liberalization.

As I stated earlier, the establishment of the TRIPs Agreement was a watershed event in the development of the global software industry. TRIPs provides us with a solid framework upon which to build, promote, and defend strong intellectual property protection for copyrighted works, including computer software. Of course, there are areas where TRIPs could be strengthened and improved, particularly with regard to the Agreement's obligations on enforcement of rights, and perhaps also in the area of domain names.

We would certainly welcome such improvements, but we do not advocate specific negotiations at this time. We recognize that the TRIPs Agreement will be subject to review in 2002; once all WTO members have implemented their obligations, and based on their experiences in obtaining and enforcing rights under the Agreement, that may be the time to consider strengthening TRIPs. Since many countries have yet to implement their TRIPs obligations under the existing Agreement, we feel that new negotiations at this time would be premature.

Perhaps the most significant recent international development in the area of intellectual property is the conclusion of the World Intellectual Property Organization's (WIPO) Copyright Treaty and Performances and Phonograms Treaty. These Treaties make substantial improvements in the legal rights afforded to software developers, especially in terms of improving their ability to attack on-line piracy. The United States implemented the Treaties last year through the enactment of the Digital Millennium Copyright Act. We believe that WTO Ministers should declare that national implementation of these treaties is an urgent matter, with a substantial trade promoting impact.

Our member companies also support further reductions of tariffs on computers and peripherals. In particular, we support: the tariff liberalization that has been achieved thus far through the ITA; concluding the "ITA II" product expansion talks; and clarifying coverage to include all aspects of electronic devices (information technology products) and media (whether pre-recorded or blank) necessary to successfully conduct e-commerce. **Since the focus of the ITA is technology, it may also be appropriate to consider tariff treatment of computer programs as part of a further work program**.

Turning now to electronic commerce issues, we believe that the most promising international commercial development since the conclusion of the Uruguay Round has been the emergence of network-based (Internet) trade. Today, all BSA member companies sell software on-line. These transactions benefit both consumers and software developers because they are faster and cheaper than traditional, over-the-counter retail sales. We expect these sales to more than double annually for the foreseeable future.

Thus, we believe that a key priority for trade negotiations should be to ensure that impediments to e-commerce are not put in place, and that existing impediments are reduced or eliminated. We recognize that this goal may not be amenable to a single set of undertakings. Because the Internet continues to evolve as a business, the trade aspects of the Internet are not now fully apparent.

But we do believe that Ministers can make a good start.

An excellent fist step was taken in May 20, 1998, when the WTO's Ministers agreed that WTO ". . .Members will continue their current practice of not imposing customs duties on electronic transmissions." This commitment is not now perma-

nent, and it applies only to electronic transmissions. We would support making permanent this commitment, as well as clarifying that it applies regardless of the form of transmission (wired or wireless) and that it applies both to the transmission and to its contents.

In addition, the work over the past year by the TRIPs, GATS and GATT Councils on e-commerce constitutes an excellent foundation for the work program that should follow. It is our understanding that each Council has determined that the current WTO obligations apply to transactions conducted over networks. They have also concluded that certain areas of these Agreements need to be updated to more accurately reflect the nature of e-commerce. We agree with their conclusions that e-commerce constitutes an evolutionary step in trade regimes and does not require wholesale changes to existing obligations. Recognizing, however, that a single e-commerce transaction may implicate rules applicable to services, goods and intellectual property, we believe that a horizontal approach in the future work program of the WTO may be best.

We believe that the Seattle Ministerial provides an opportunity that must not be missed to set the right parameters for future WTO work. Key among these, we believe, is a commitment by Ministers to refrain from enacting measures that could have an actual or potential trade distortive effect on e-commerce. Such a commitment would underscore that the goal of the future work program is to seize and ensure the possibilities of e-commerce by keeping it barrier-free. Recognizing that, in some rare instances, domestic imperatives may necessitate the enactment of measures that could have a negative effect on e-commerce, Ministers should further declare that they would seek to adopt only those measures which have the least trade restrictive effect.

There is one aspect of the current WTO debate that concerns our industries. Much of the discussion in Geneva, as we understand it, has focused on whether e-commerce should be classified as simply a service, or whether it implicates goods as well as TRIPs obligations. It is our view, as noted above, that e-commerce is much more than just a set of services. Thus, we would urge a horizontal work program—-that is, work in each of the Councils at the direction of the General Council, while giving the General Council the discretion to establish additional work programs on issues which affect trade in goods, services and intellectual property.

What concerns us most, however, is that if e-commerce is treated as just a service, it could have serious implications for the software industry. Such an approach would have immediate and negative implications for software companies as well as other industries. It is our understanding that the European Union takes the position that a computer program fixed on a disk ordered on-line and delivered in physical form (e.g., by postal service) is subject to WTO obligations under the GATT. By sharp contrast, it is our understanding that they believe that the very same software program ordered on-line and delivered on-line, should be classified as an "electronic delivery" subjects only to GATS obligations.

The trade implications of such a view are potentially very serious. Software as such, other than repair and maintenance of software, does not seem to be explicitly covered under software services and is not now subject to GATS. Thus, the reclassification of software from a good to a service could deny software basic market access and national treatment benefits. Perhaps more importantly, in most countries, subject to a 1984 WTO/GATT understanding, duty on software is now assessed on the basis of the carrier medium (e.g., the value of the diskette), and not the value of its contents (the intellectual property contained in the medium). The issue of reclassification could open the door to applying duties on the value of the software itself, rather than its physical medium. The consequences for traded software would be horrendous, as they would make the value of the product subject to a duty, in stark contrast to the situation in many (if not most) countries today. In addition, such reclassification would deprive trade in software of its current unqualified MFN and national treatment benefits.

In essence, we believe that to treat e-commerce as merely a service would be to ignore the true nature of this form of trade. In addition, it could have a serious and immediate negative impact on the sale of computer programs by means of the Internet.

Mr. Chairman, the WTO Seattle Ministerial and the subsequent New Round of negotiations offer not only the U.S. economy, but indeed the global economy, tremendous opportunities as we head into the new millennium. The unparalleled growth of electronic commerce means economic possibilities that we could not even imagine just a few years ago. Your Subcommittee and the Committee on Ways and Means have an extremely important role to play in seizing these opportunities and making them a reality. The Business Software Alliance stands ready to assist you in this critical endeavor.

We thank you again for this important hearing and for the opportunity to present our views.

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Center for International Environmental Law, National Wildlife Federation, Sierra Club, World Wildlife Fund, Friends of the Earth, Natural Resources Defense Council, Greenpeace USA, Defenders of Wildlife, American Lands Alliance, Consumer's Choice Council, Earthjustice Legal Defense Fund, Pacific Environment and Resources Center, Community Nutrition Institute, Institute for Agriculture and Trade Policy

July 16, 1999

Ambassador Susan G. Esserman
Deputy United States Trade Representative
600 17th Street, N.W.
Washington, DC. 20508

Peter D. Robertson
Acting Deputy Administrator
United States Environmental Protection Agency
401 M. Street, S.W.
Washington, DC. 20460

Dear Ambassador Esserman and Mr. Robertson:

Our organizations are deeply concerned about the Administration's development of positions for the Third Ministerial Conference of the World Trade Organization scheduled for Seattle this fall. WTO rules and procedures have been used repeatedly to attack environmental laws that our organizations have worked for decades to create, strengthen and protect. Equally important, the continued pressure to expand trade through broadened and intensified application of trade policy, without an equal effort to ensure that the right framework of environmental law and policy are in place, threatens to impede the conservation of our natural resources and the maintenance and improvement of a healthy environment. Yet while the Administration has sometimes raised general environmental concerns about trade and trade rules at the WTO—most recently at the March 1999 high level symposium on trade and environment in Geneva—it has failed to take the concrete actions needed to address those concerns effectively.

As our groups have emphasized in past communications, the Administration can fulfill President Clinton's pledge to put a "human face" on the global economy only if it combines its commitment to liberalizing trade with an equally strong commitment to environmental protection and sustainable development. We appreciate the Administration's call to improve public distribution of WTO documents, enhance public participation in WTO dispute settlement proceedings, and encourage reduction of fisheries subsidies that distort trade and encourage overfishing. These efforts fall far short, however, of the comprehensive reforms needed to ensure that the world trading system does not hinder sustainable development and environmental protection. For example, we have found unacceptable the Administration's inflexible position in recent months that no textual changes to the WTO Agreements are needed, as it indicates a reluctance to deal seriously with environmental concerns.

The WTO Ministerial Conference offers an historic opportunity for the Administration to lead the review and reform that the international trade regime needs so that it will promote, rather than undermine, environmental protection and other core values of United States citizens. We stand prepared to help the Administration seize this opportunity by developing an agenda that fully recognizes environmental priorities. If, however, the Administration misses the chance to put the WTO on a course toward sustainable development, this will undermine support for subsequent negotiations at the WTO—and for United States government authority to participate in those negotiations—and invite united environmental opposition to the results. To avoid this, the Administration must develop an environmentally beneficial agenda for the Ministerial Conference, and a comprehensive plan for environmental review and reform of the WTO, that go well beyond the proposals advanced to date.

We recognize that the trade and environment issues confronting the WTO will not be resolved at a single ministerial meeting. What we do expect, however, is that the Administration formulate a plan for achieving solutions, and that it demonstrate a commitment to that plan through constructive, open engagement with the public, with Congress, and relevant agencies. Despite the complexity of the details, the outline of the plan we need to see has three simple themes, described below. Although

not every one of our organizations endorses every detail in this letter or the accompanying attachment, we are united in support of the overarching principles expressed here. We will evaluate the outcome in Seattle on this basis.

1. Stop WTO Expansion.

The Administration must avoid rushing into more negotiations on liberalization that would place the environment and environmental laws further at risk. In light of the potential for significant environmental impacts, this is not the time to embark on further expansion of the WTO's power or the scope of its rules. Thus, we oppose the launch of negotiations within the WTO on investment liberalization, government procurement or "early harvest" of tariff reductions.

We oppose accelerated tariff reduction and other liberalization in selected sectors pending an open, participatory and balanced assessment that includes formulation of mitigating measures. Our concern is intensified with respect to environmentally sensitive natural resource sectors, such as forest and fish products. Forests and fisheries are in crisis both nationally and globally. Prioritizing liberalization in these sectors is reckless, when we know that regulations and incentives for sustainable harvesting and commerce are grossly inadequate around the world.

Multilateral investment rules beyond the current Agreement on Trade-Related Investment Measures (TRIMs) should not be the subject of negotiations at the WTO. We are concerned that the United States government may be shifting its position to support partial negotiations on investment under WTO auspices.

2. Reform WTO Rules and Procedures.

The WTO as it exists today urgently needs reform. The Administration must secure commitment to the reforms needed to ensure that existing WTO procedures and rules affirm, rather than hinder, environmental protection.

In broad terms, the WTO's limits of jurisdiction need to be defined more clearly, so that the WTO stays within its recognized realm of trade policy, and does not stray into the field of environmental regulation. Equally important, the WTO's decision-making must be transparent and must involve public scrutiny and input. Achieving these goals will require major changes in both the rules and the procedures for formulating, interpreting, applying and enforcing those rules. These changes must also be reflected in any negotiations that are launched in Seattle.

Substantively, both existing and future WTO rules must be written and interpreted so that they accord proper deference to national and international standards that serve legitimate environmental objectives. Procedurally, the terms of reference of each WTO working group or institutionalized body must provide for consideration of significant impacts on environment and sustainable development, and there must be mechanisms to ensure compliance.

3. Assess Impacts.

The Administration must provide for an assessment of the environmental impacts of proposed multilateral trade and trade policy. The fundamental question is whether the framework of laws, policies and institutions is in place to ensure that additional multilateral steps to liberalize trade will lead to environmentally and socially beneficial outcomes. If not, then the assessment must formulate needed institutional, legal and policy changes before moving forward with further talks on liberalization.

This assessment process must begin immediately. It must be open and transparent, global in scope, and conducted through a balanced, impartial process. It should be carried out in cooperation with our trading partners. A forward-looking review must be complemented by a retrospective review of past and current impacts of existing policy. The reference point for the assessment must be the procedures and criteria developed under the National Environmental Policy Act.

The statement attached to this letter provides further details on our organizations' bases for our positions and our suggestions for addressing these areas of concern. We appreciate recent overtures from the Administration that indicate openness to a more substantive dialogue, and look forward to the chance to discuss our positions further with you and your staffQ04

Sincerely yours,

David R. Downes, Center for International Environmental Law

On behalf of:

JAKE CALDWELL
National Wildlife Federation
DAN SELIGMAN
Sierra Club

DAVID SCHORR
World Wildlife Fund
ANDREA DURBIN
Friends of the Earth
JUSTIN WARD
Natural Resources Defense Council
SCOTT PAUL
Greenpeace USA
RINA RODRIGUEZ
Defenders of Wildlife and Community Nutrition Institute
ANTONIA JUHASZ
American Lands Alliance
CAMERON GRIFFITH
Consumer's Choice Council
MARTIN WAGNER
Earthjustice Legal Defense Fund
KRISTIN DAWKINS
Institute for Agriculture and Trade Policy
DOUG NORLEN
Pacific Environment and Resources Center

cc: Ambassador Stuart Eizenstat, Under Secretary for Economic and Business Affairs, Department of State, Frank E. Loy, Under Secretary for Global Affairs, Department of State, George T. Frampton, Jr., Acting Chair, Council for Environmental Quality, Frederick Montgomery, Assistant US Trade Representative for Policy Coordination, Chairman of Interagency Trade Policy Staff Committee,

Attachment

STATEMENT BY UNITED STATES ENVIRONMENTAL ORGANIZATIONS

This statement provides further detail on the concerns and recommendations regarding environmental issues outlined in the July 16 letter from several United States environmental groups.[1] Part I details our opposition to further expansion of the World Trade Organization (WTO) at this time. Part II identifies specific reforms needed to WTO rules and procedures. Part III outlines procedural and substantive elements of the environmental assessment of existing and proposed multilateral trade agreements.

I. NO WTO EXPANSION

The Administration must avoid rushing into more negotiations on liberalization that would place the environment and environmental laws further at risk. In light of the potential for significant environmental impacts, this is not the time to embark on further expansion of the WTO's power or the scope of its rules. Thus, we oppose the launch of negotiations within the WTO on investment liberalization, government procurement or accelerated sectoral liberalization, including "early harvest" of tariff reductions.

We oppose the Administration's effort to accelerate liberalization, especially in environmentally sensitive sectors such as forest products, in the absence of a careful and public assessment of the potential environmental impacts (see Part III.3 below). Aiming to reach agreement on further liberalization at the Seattle meeting itself—as the Administration proposes to do with reduction of tariffs on forest products—flies directly in the face of the Administration's commitment to review the environmental impacts of liberalization, because the schedule is too short to do a thorough assessment of effects and policy alternatives.

As we have repeatedly stated, multilateral investment rules beyond the current Agreement on Trade-Related Investment Measures (TRIMs) should not be the subject of negotiations at the WTO. Our objections to an investment agreement in the WTO go beyond the issues of establishing rights to sue for lost profits and investor-

[1] Several of our groups have elaborated our concerns in detail in a October 16, 1998 response to the USTR's Federal Register request for input regarding US preparations for the Seattle ministerial, as well as in the Transatlantic Environmental Dialogue statement delivered to governments at the recent G–8 summit. The comments in this document are intended to summarize and complement these earlier statements and express the collective views of our respective organizations; however, not every signatory necessarily subscribes to the details of each formulation.

to-state dispute resolution. We are also concerned that enforceable rights to national treatment and most favored nation status could pry open environmentally sensitive sectors in markets where regulatory frameworks are inadequate to manage the increased environmental pressures that would result. If unaccompanied by strong frameworks of environmental and labor rights, application of the principles of national treatment and most favoured nation could also increase "industrial flight" by companies seeking to avoid costs of compliance with labor and environmental requirements.

In light of these objections, we are concerned that the Administration seems to be considering support for partial negotiations under WTO auspices. Prior to the negotiation of any investment rules in any forum, an over-arching international framework is needed to ensure that international investments promote sustainable development consistent with the needs of host countries and to guarantee that the environment is protected. The development of such a framework and any subsequent investment agreement should take place within the United Nations system. Any such agreement must include investor obligations with respect to environmental and community protection.

II. Reform WTO Rules and Procedures

In its Communiqué from Cologne in June, the G–8 stated that "environmental consideration should be taken fully into account in the upcoming round of WTO negotiations." We are pleased to hear the United States join other industrialized countries in this ambitious commitment. Unfortunately, the United States' proposals to date have been entirely inadequate to the task. To make significant progress, the Administration will need to make positive proposals on both substantive and procedural rules, including existing rules of the WTO as well as the terms of reference for any further negotiations launched at Seattle. The Administration will need to make a clear political statement that affirms environmental values and define a clear process involving the right mix of agencies and other partners for achieving progress on a range of issues.

Substantively, the Administration will need to take action to ensure that the scope of WTO rules is limited to trade policy and does not intrude into matters that come under environmental law and policy. WTO rules must provide for deference to international and national environmental standards (Part II.1), and protect the consumer's right to know (Part II.2). At the same time, WTO rules can and should be applied so that they encourage the elimination of environmentally damaging subsidies that also distort trade (Part II.3). Procedurally, the Administration must take steps to ensure that all WTO forums take environmental implications of their work into account (II.4), and that their operations become transparent and accountable (II.5).

1. WTO Deference To International And National Environmental Standards And Institutions

WTO rules need to be reformed so that they stay within the bounds of trade policy and do not intrude into areas within the jurisdiction of environmental institutions and regulations. We are pleased to learn that the Administration now seems to agree that ad hoc dispute settlement decisions alone are not a solution to the impact that WTO rules as currently interpreted may have on measures to protect the environment. United States leadership of a multilateral approach to a number of issues is needed to ensure that WTO forums—including the Dispute Settlement Body—and WTO rules consistently defer to regulations and other measures adopted by international and national institutions, including measures based on the precautionary principle.

In the absence of such consistency, there is a serious risk that these institutions will be impeded from pursuing legitimate environmental objectives through negative interpretations advanced by trade policy-makers, ad hoc challenges, and the threat of adverse decisions in WTO dispute settlement. Of particular concern are the GATT, the TBT Agreement and the SPS Agreement; also relevant are the TRIPS Agreement as well as agreements on subsidies and agriculture.

Seattle is a critical opportunity for the United States to send a clear signal that trade policy must be developed and applied consistently with environmental principles, and to define a process and terms of reference for achieving agreement on how to ensure that WTO rules do not interfere with environmental measures. That process should aim at the following specific outcomes.

a. Burden and Standard of Proof. Ensuring that the complaining party in a WTO dispute settlement proceeding has the burden to show the lack of an adequate basis for challenged local or national environmental and health regulations, and that

WTO decision-makers employ a deferential standard of review, perhaps along the lines of Article 17.6 of the Anti-Dumping Agreement.I11*b. SPS. Ensuring that the provisions of the SPS Agreement:*

Do not interfere with the right of national governments to develop and enforce high environment and health standards at the level they deem appropriate;

Fully recognize the precautionary principle;

Acknowledge clearly that international standards establish minimum, not maximum standards for the levels of environmental and health protection set by WTO Members.

c. Acknowledge Multilateral Environmental Agreements (MEAs) in WTO Rules. Consistent with the recent G–8 Cologne Communiqué, there must be an affirmation that trade-related environmental measures (TREMs) authorized or required under multilateral environmental agreements or internationally recognized environmental principles are consistent with WTO rules, including Article XX of the GATT, the TBT Agreement and the SPS Agreement. Criteria should be defined indicating to the WTO how to recognize the types of agreements or principles that fit within the MEA category. Contrary to USTR's suggestion in the July 2 briefing, the concept is not to establish criteria for evaluating whether an MEA measure is legitimate. Rather, such measures will be deemed legitimate by virtue of their adoption under an MEA.

d. Build Effectiveness of MEAs including Trade-Related Measures. The Administration needs to make it a positive priority to build effectiveness of MEAs. Where trade-related measures are appropriate means for addressing the environmental problem, the Administration should support their use. A WTO decision to defer to MEAs will do little good if MEAs are written to include "carve-outs" that ensure that WTO rules prevail over MEA obligations. Disputes over the implementation of MEAs should be resolved by MEAs, not by the WTO. Thus, we are also seeking a commitment from the Administration not to advocate the inclusion of "savings clauses" in future MEAs. The Administration should also work with other countries through appropriate environmental institutions such as the United Nations Environment Programme (UNEP) to develop principles of trade policy to which negotiators of MEAs can refer during negotiations.

e. Production or Processing Methods (PPMs). Ensuring that distinctions between products based upon PPMs related to environment, human rights and internationally recognized labor standards are recognized as legitimate measures for promoting sustainable commerce that are consistent with WTO rules.

f. Procurement. A clarification or amendment to the Agreement on Government Procurement ensuring that it recognizes the right of governments to use social and environmental criteria in making purchasing decisions. Several of our organizations provided further suggestions on this topic in comments submitted to USTR by the Consumer Choice Coalition in January.

g. UNEP and other Environmental Institutions. Adoption of cooperative agreements between WTO and international environmental institutions, including UNEP, by which the WTO defers to the role of appropriate institutions in addressing environmental aspects of international decision-making. Specifically, institutions such as UNEP and the secretariats of relevant MEAs should have a role in the settlement of environment-related disputes under the Dispute Settlement Understanding (DSU) as well as the definition of key international environmental principles such as the precautionary principle. Deference to such outside expertise is necessary in light of the specialized nature of WTO as a trade policy institution with trade expertise.

We will be happy to discuss the precise legal form that these steps might take at the appropriate time. For instance, a clarification could involve language in a statement adopted by a WTO Ministerial Conference or the WTO General Council, an agreed-upon interpretation formally adopted by the General Council, or an amendment to the text of the relevant agreement.

As a general matter, we would like to emphasize that the use of trade measures that affect developing countries to accomplish environmental goals should be accompanied by assistance to those countries to help them achieve those goals. This is consistent with the Rio bargain that developed countries would assist developing countries in raising environmental standards and combating environmental problems, so that all could share in sustainable development and an improved global environment. The merit of this approach was recognized in the Appellate Body's Shrimp/Turtle decision. Unfortunately, developed countries have failed to carry out their end of the bargain, with foreign assistance budgets declining, and debt relief proposals still inadequate. A renewed political commitment from the United States and other industrialized countries would contribute significantly to multilateral agreement on the program outlined here, and would offer long term payoffs for the United States economy and environment.

2. Protection of the Consumer's Right To Know

Markets can allocate resources properly only if consumers have the necessary information to make informed decisions. Unfortunately, some WTO Members—including the United States government itself—have advanced interpretations of WTO rules that threaten to restrict the power of governments and private organizations to provide consumers with information they want about the environmental and health aspects of products and their production. We urge the United States to work with other WTO Members to launch a process at Seattle that leads toward the following outcomes:

a. Ensuring that the WTO Agreement on Technical Barriers to Trade (TBT) preserves the ability of governments and private organizations to protect the consumer's right-to-know and to promote sustainable consumption through open and transparent labeling programs, including genetically modified food;

b Ensuring that the TBT Agreement recognizes the legitimacy of regulations and standards that distinguish between products based on the environmental consequences of their manufacture, use and disposal; and

c. Ensuring that the TBT rules do not conflict with speech protected under the U.S. Constitution, including third-party certified private labeling programs.

As with the proposals in Part II.1 above, we are open to further discussion about the precise legal form that these assurances should take. Generally, however, the principle is that the WTO must recognize that the TBT Agreement effectively includes an exception along the lines of Article XX, to the extent it applies to ecolabeling.

3. Eliminate Environmentally Damaging Subsidies

We welcome and support the Administration's willingness to push for the elimination of fishery subsidies that have contributed to the current global fisheries crisis. The Seattle ministerial should unambiguously place the fishery subsidies issue on the negotiating agenda, and should do so in the context of an open interdisciplinary and inter-organizational procedure that includes other institutions with relevant and needed expertise alongside the WTO. We urge the United States to push for a similar review of other environmentally damaging subsidies, such as those for forestry, fossil fuels and nuclear energy. At the same time, WTO Members must ensure that WTO rules allow governments to craft measures that reward the social and environmental values conferred by certain activities, such as adoption of environmentally responsible technologies, artisanal fishing and development of renewable sources of energy. The ability of the WTO to play a constructive role on subsidies will be a significant test of the organization's ability to produce the oft-promised "win-win" outcomes for trade and the environment.

4. Recognizing Environmental Aspects of WTO Decision-Making

Another key question is how to reform the procedures and institutions of the WTO so that decision-making takes into account its environmental implications. The United States proposes to use the Committee on Trade and Environment (CTE) on a "rolling basis" and in an advisory capacity to address the environmental aspects of WTO decisions. But compartmentalizing environment in the CTE has not worked in the past and will not work in the future. The Administration has offered no concrete steps that would effectively link the CTE to the real decision-making forums at the WTO.

In our view, much more is needed to ensure that the WTO takes environment into account in its decision-making. As a general matter, all relevant WTO bodies—including councils, committees, and working groups—must include reference to environmental protection and sustainable development among their objectives or terms of reference, consistent with the preamble of the WTO Agreement itself.

The WTO will also have to adopt procedures that ensure that these forums take these objectives seriously. For instance, each forum could periodically consult with international environmental institutions with relevant expertise, report on the environmental implications of their work, and make recommendations on how to address environmental impacts of the trade policies with which they are concerned. The CTE might have a role through review and comment on that report. Another option is for the WTO's Director General to present a review of the WTO's record on environment and sustainable development in a section of the annual report. The United States itself could do a better job of integrating environment by including representatives from relevant agencies such as the EPA on delegations when forums such as the SPS or TBT Committees discuss environment-related issues.

5. Improved Transparency, Public Participation And Accountability At The WTO

We very much appreciate the efforts made by the Administration to advance democratic reform of the WTO. We ask that the Administration continue to include increased transparency, participation and accountability as a priority on its negotiating agenda in Seattle. However, effective achievement in this area will require more actions in addition to broader and faster access to working documents and consideration of NGO submissions in dispute settlement. It will also require, at a minimum:

a. opening of dispute settlement and appellate body proceedings to public observation;
b. NGO participation in discussions of environment-related issues by other WTO decision-making forums, such as the SPS Committee, the TBT Committee, the TRIPS Council, the Agriculture Committee, the CTE, and relevant negotiating groups; and
c. the development of a consultative process between the WTO, NGOs, member governments and businesses.

We recognize the validity of concerns raised by developing countries that they may have fewer resources than do some NGOs. The United States and other developed countries should support fuller participation by poorer WTO Members, for instance through financial and technical assistance.

A first step towards improved transparency of the WTO and trade policy must begin at home. We have indicated our willingness to work with the Administration to provide input into the negotiating agenda, yet little information and no documents have been shared with the NGO community as the Administration prepares its position for the WTO Ministerial. Only at the July 2 briefing did we hear any degree of detail about the Administration's proposed positions. We urge the Administration to be more transparent, to share information and documents, to engage the NGO community in a constructive dialogue, and to ensure balanced representation on advisory committees dealing with trade issues that have environmental implications consistent with the Federal Advisory Committee Act. Furthermore, we reiterate our request that the United States include NGOs on its delegation to the WTO Ministerial meeting, especially since other governments, such as Denmark, have already done so.

III. Environmental Assessments of Current and Proposed Trade Policies

We are pleased that President Clinton has committed the federal government to conducting an environmental review of the next round of talks at the WTO. However, the Administration needs to make significant progress in this area. We are concerned about the adequacy of the process and criteria for such an assessment. We believe that the assessment should include a review of both past and current impacts of existing trade policies on the environment and on environmental law and policy, a similar review of foreseeable impacts of proposals for negotiations, and consideration of policy alternatives. We remain very concerned about the conduct of assessments of proposed tariff reductions in environmentally sensitive sectors. Finally, we have concerns about certain process issues, including the roles of relevant agencies and cooperation with other governments.

1. Procedures and Criteria for Assessment

We are concerned that the Administration has yet to suggest any procedures or criteria for the assessment, with Seattle less than six months away. In our view, there are some clear principles with which this assessment must comply. Many of these principles are found in the National Environmental Policy Act (NEPA). The starting point for this assessment must be NEPA's mandated procedures and methodologies, as elaborated through regulations of the Council on Environmental Quality, and enriched through decades of federal agency experience with implementation.

At a minimum, the assessment must be comprehensive in scope, covering all Administration proposals for modifying or adding to existing trade policies embodied in the WTO Agreements. The assessment should be framed in terms of two basic questions. Is the framework of laws, policies and institutions in place to ensure that additional multilateral steps to liberalize trade will lead to environmentally and socially beneficial outcomes? If it is not, then what institutional, legal and policy changes must we make before we move forward with further liberalization?

The assessment must involve the full participation of civil society. In light of the short time remaining before Seattle, the assessment procedure must begin immediately. It must consider reasonably foreseeable impacts on a global scale. It must continue until the conclusion of any new negotiating round, taking into account new

knowledge as it accumulates, as well as evolving trade policy positions. It must identify areas in which existing WTO agreements and new negotiations have (or will have) significant environmental effects, and evaluate policy alternatives and mitigation measures, including reforms of existing agreements and modifications of proposed ones including the no-action alternative. And it must integrate social and development concerns.

To ensure that the results are balanced and objective, the process should be overseen by the CEQ and conducted with the full and equal participation of affected federal agencies, state and local governments, and interested members of the public. Finally, we urge the Administration to take the lead in facilitating an assessment at the multilateral level by a balanced panel of experts drawn from the WTO Secretariat, international institutions with environmental and other relevant expertise, the scientific community, and the public.

2. Assessments of Existing Trade Policies

A forward-looking assessment must be complemented by consideration of lessons learned. To date, unfortunately, governmental consideration of environmental impacts of trade policy have been inadequate. As a result, we urgently need to gain a better understanding of the impacts of past trade policies. Thus, the Administration should also conduct an assessment of the environmental impacts of the WTO Agreements adopted in the Uruguay Round, carried out consistent with the principles we have outlined for conducting an assessment.

This review should cover all relevant WTO Agreements, such as the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), the Agreement on Technical Barriers to Trade, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and agreements on subsidies and agriculture. In relation to the TRIPS Agreement, we are concerned that the expanded scope and enforcement of intellectual property rights required under the WTO TRIPS Agreement may affect the transfer of technology required under multilateral environmental agreements (MEAs), the rights of farmers and indigenous peoples, and the equitable distribution of benefits required under the Biodiversity Convention.

3. Assessment of Proposals for Accelerated Sectoral Liberalization

Beginning in the context of Asia-Pacific Economic Cooperation (APEC), and more recently in the WTO, the Administration has proposed accelerated reduction of tariffs, accompanied by examination of non-tariff measures, of a number of sectors, including environmentally sensitive sectors such as energy, chemicals, fish and forest products. In light of the potential environmental impacts, we urge the Administration to assess carefully the environmental effects of accelerated liberalization in all sectors, and to define and implement policy measures to maximize environmental benefits and mitigate harmful impacts. The United States should not push for accelerated liberalization until full environmental assessments have been conducted—of the proposals for both tariff and non-tariff measures—along the lines discussed in this letter. In light of the severe threats confronting forests and fisheries, and the demonstrably inadequate national and international frameworks for conserving them, this approach is particularly important with respect to the fish and forest product sectors.

We appreciate the step in the right direction represented by the joint analysis of the economic and environmental effects of the forest product initiative to be conducted by CEQ and USTR. We are skeptical, however, whether the review as defined in the June 25, 1999 Federal Register notice will be an adequate basis for sound policy making. Even if it is, we are equally concerned that the review's results will not be taken into account in the ultimate decision. Thus, we call on the Administration to explain on the record the environmental basis for whatever policy decision it takes. As currently proposed, the review does not reflect key principles of NEPA. For instance, the Federal Register notice allows only 30 days for the public to provide input, and it is unclear whether there will be any other opportunities for public participation.

4. Assessment of the Built-In Agenda

Services. We have concerns that negotiations on services could have some of the same far-reaching implications for domestic environmental and health regulation as would investment liberalization. Services, like investment, involve activities within a country's territory that relate to a host of regulatory functions performed by federal, state and local authorities. When it comes to trade liberalization, services, like investment, raise a host of concerns about community values, regulation and sov-

ereignty that are not so directly posed by goods. We urge the Administration to assess environmental and social implications as it develops its positions.

Agriculture. The United States has called on WTO members to carry forward with agricultural negotiations with the objectives of gaining "further deep reductions in support and protection, while encouraging non-trade distorting approaches for supporting farmers and the rural sector." We share the Administration's desire to reform policies and programs that encourage environmentally damaging expansion and intensification of production. At the same time, government agricultural policy can and must reflect the multiple environmental and social functions that agriculture plays. Support for environmentally responsible agriculture can help level the playing field for farmers who take responsibility for the impacts that production has on the environment of their neighbors, and at the same time have to compete with producers that externalize environmental costs onto society. Government policy also should take into account the social values that independent farmers provide to communities.

We urge the Administration to make an effort to ensure that the United States approach to agriculture at the WTO strikes a better balance among these policy objectives than in the past. The United States continues to maintain direct and indirect subsidies and protections that distort agricultural markets and threaten our environment, such as below-market pricing for water from government-funded projects and for grazing on public lands. The Administration should carry out a thorough review and restructuring of these policies and programs.

The agricultural negotiations on the built-in agenda will offer governments a chance to develop a multilateral understanding of which policies and programs should be reduced, and which should be permitted, on environmental and social grounds. The assessment we are calling for will provide an opportunity for this. Governments should also explore how to help developing countries implement such support, whether through multilateral financial and technical assistance or through some system of preferences. We urge the Administration to provide leadership on the issue of food security in these talks. Governments must consider the impacts that dumping of food exports have on the productive capacity of countries whose populations suffer from chronic hunger, and take this into account in defining relevant trade policies.

Submitted by:

DAVID R. DOWNES,
Stephen Porter, Center for International Environmental Law;

On behalf of:

JAKE CALDWELL, NATIONAL WILDLIFE FEDERATION;
DAN SELIGMAN, SIERRA CLUB;
DAVID SCHORR, WORLD WILDLIFE FUND;
ANDREA DURBIN, FRIENDS OF THE EARTH;
JUSTIN WARD, NATURAL RESOURCES DEFENSE COUNCIL;
SCOTT PAUL, GREENPEACE USA;
RINA RODRIGUEZ, DEFENDERS OF WILDLIFE AND COMMUNITY NUTRITION INSTITUTE;
ANTONIA JUHASZ, AMERICAN LANDS ALLIANCE;
CAMERON GRIFFITH, CONSUMER'S CHOICE COUNCIL;
MARTIN WAGNER, EARTHJUSTICE LEGAL DEFENSE FUND;
KRISTIN DAWKINS, INSTITUTE FOR AGRICULTURE AND TRADE POLICY;
DOUG NORLEN, PACIFIC ENVIRONMENT AND RESOURCES CENTER.

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Statement of Benjamin Cohen, Senior Staff Attorney, Center for Science in the Public Interest

The Center for Science in the Public Interest[1] ("CSPI") welcomes this opportunity to present its views on United States negotiating objectives for the World Trade Organization ("WTO") Ministerial conference to be held in Seattle from November 30 through December 4, 1999. Our testimony focuses on the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), which was negotiated as part of the Uruguay Round of Trade Agreements and ratified by Congress in 1994.

As a founding member of the International Association of Consumer Food Organizations—along with the Japan Offspring Fund and the Food Commission UK—CSPI participated as an observer at both the June 1999 meeting and the 1997 meeting of the Codex Alimentarius Commission.

Let me state at the outset that we support expansion of international trade and recognize the benefits that it may bring. We also recognize that international harmonization of food safety standards facilitates trade. The benefits of promoting trade through harmonization, however, must be balanced against the possible harm to consumers that harmonization entails.

The international harmonization process will only benefit consumers if national regulatory standards are harmonized in an upward manner that provides the public with the greatest degree of protection from unsafe foods and deceptive trade practices. Unfortunately, the SPS Agreement, as it has been interpreted and applied during the last five years by the WTO, threatens United States regulatory requirements because it is leading to just the opposite, i.e., to "downward harmonization."[2] We, therefore, urge Congress to support reforms to the SPS Agreement that would protect United States food safety and deception safeguards from being weakened in the name of facilitating international trade.

One of the primary purposes of the SPS Agreement is to promote trade by encouraging countries to develop and rely on international regulatory standards for food. The SPS Agreement specifically refers to standards set by a United Nations ("UN") affiliated organization called the Codex Alimentarius Commission ("Codex"), which was established in 1962 by the UN World Health Organization and Food and Agricultural Organization.

Prior to 1995, national governments were free to accept or reject Codex standards. However, with the ratification of the SPS Agreement, Codex's role has changed greatly. Article 3.2 of the SPS Agreement provides that a country employing a Codex "standard, guideline or recommendation" is presumed to be in compliance with its WTO obligations. Article 3.3 of the SPS Agreement provides that a country that has a regulatory requirement resulting in a higher level of protection than a Codex "standard, guideline, or recommendation" is presumed to have erected a barrier to international trade unless the country can show that its standard has a "scientific justification."

A country that the WTO finds has erected such a barrier must either lower its regulatory requirement to comply with the Codex standard or pay an international penalty. This penalty can take the form of either compensating the foreign government whose exports to the country have been limited or permitting that country to impose trade restrictions on imports from the country that maintained the higher food safety standard.[3]

The Codex Alimentarius Commission has had three meetings since the SPS Agreement was ratified in 1994. In 1995 Codex—by a vote of 33 to 29 with seven abstentions—approved the use of growth hormones for cattle. This Codex decision helped the United States government win a legal battle at the WTO to either sell

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[1] CSPI, a nonprofit organization based in Washington, DC., is supported by approximately one million members who subscribe to its Nutrition Action Healthletter. CSPI has been working to improve the nation's health through better nutrition and safer food since 1971.

[2] As President Clinton put it in a speech to the WTO last year, "We should level up, not level down."

[3] For example, last month the United States announced it would impose 100 percent tariffs on $117 million of imports from Europe because the European Union ("EU") has refused to repeal its ban on hormone-treated beef after the WTO ruled in 1998 that the ban as applied to imports violated the SPS Agreement. In 1988 the EU adopted the ban on hormones in cattle for growth promotion purposes in both domestically produced and imported meat.

hormone-treated beef in the European Union or receive financial compensation.[4] However, since that time the United States has not fared well. At the 1997 Codex meeting the United States lost two key votes. Codex

- adopted—by a vote of 33 to 31 with 10 abstentions—an international safety standard for natural mineral waters that permits higher levels of lead and other contaminants than the Food and Drug Administration ("FDA") now allows; and
- also adopted—by a vote of 46 to 16 with seven abstentions—an international standard for food safety inspection systems that permits self-evaluation by the companies or nongovernmental third-parties even though in the United States such food safety inspections are the responsibility of the United States Department of Agriculture ("USDA"), the FDA, and State governments.[5]

The United States avoided losing any recorded votes at this year's Codex meeting by acquiescing to numerous Codex standards that provide less protection to consumers than the United States now requires. At its June 1999 meeting Codex:

- approved pesticide residue levels that do not take into the account the health effects of pesticides on children, as mandated under United States law;[6]
- approved an amended standard for natural mineral waters that still permits higher levels of lead and other contaminants than the FDA now allows;[7]
- approved a safety standard for dairy products that does not require pasteurization even though pasteurization of dairy products is generally required by the FDA;[8]
- sanctioned the use of five food additives which, while presumably safe, have not been formally approved by the FDA for use in the United States; and
- defeated attempts to strengthen current Codex nutrition labeling requirements to make them more akin to United States law.[9]

The United States presumably acquiesced to these weak Codex standards because it believed that it would not prevail if it insisted on a recorded vote.[10]

The United States' acquiescence to these Codex standards means that it may be only a matter of time before current FDA and USDA regulations are challenged as trade barriers by countries invoking the Codex standards as evidence that United States regulatory requirements are unreasonably high. This process is unacceptable.

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[4] The United States' legal victory at the WTO has not, of course, led to any United States exports of hormone-fed beef to the EU. The United States has rejected EU offers of either expanding exports of non-hormone fed beef or having a label on the beef saying that it is from hormone-fed cattle. The EU has rejected the United States' offer to label the beef as coming from the United States.

[5] This 1997 Codex decision may partially explain why the United States Department of Agriculture ("USDA") is permitting imports of meat and poultry from 32 foreign countries even though the USDA does not yet have enough information from any of these foreign governments to determine whether its salmonella testing system provides a level of safety "equivalent" to that provided by the salmonella testing requirements that large United States meat and poultry plants have had to comply with since January 1998. USDA's regulations, announced in July 1996, require that in the United States salmonella samples be taken by government inspectors and analyzed in government laboratories. In many foreign countries—including the five (Canada, Australia, New Zealand, Denmark, and Brazil) that account for about 94 percent of our imported meat and poultry—these salmonella tests are done privately.

On June 8, 1999 the House of Representatives adopted, by voice vote, Representative Meek's floor amendment to H.R. 1906, the FY 2000 appropriations bill for the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, that cuts off USDA funds for the processing of imports of meat and poultry from any foreign country for which USDA has not decided by March 1, 2000 that the foreign meat and poultry inspection system provides a level of safety equivalent to that provided by the domestic meat and poultry inspection system.

[6] See section 405 of the Food Quality Protection Act of 1996, P.L. 104–170, amending section 408(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 346a(b).

[7] Codex approved a level for lead of .01 mg/l, a level for nitrate of 50 mg/l, and a level of 3 mg/l for nitrite. The FDA's ceilings are .005 mg/l for lead, 10 mg/l for nitrate, and 1 mg/l for nitrite. 21 C.F.R. § 165.110(b)(4)(iii)(A).

[8] The Codex provision applies to butter, milk fat products, evaporated milks, sweetened condensed milk, milk powders and cream powders, cheese, whey cheese, and cheeses in brine. The FDA requires pasteurization for milk and all milk products sold in interstate commerce unless the FDA has by regulation exempted the product from pasteurization. 21 C.F.R. § 1240.61. The FDA has exempted certain cheeses—such as asiago fresh and soft, blue, brick, caciocavallo siciliano, cheddar, colby, edam, gorgonzola, gouda, and hard—from pasteurization. 21 C.F.R. § § 133.102, 133.106, 133.108, 133.111, 133.113, 133.118, 133.138, 133.141, 133.142, and 133.150.

[9] The current Codex standard on nutrition labeling requires that when nutrition labeling is provided, the amount of calories, fat, protein, and carbohydrate be listed. The U.S. proposed that saturated fat, sugar, sodium, and fiber to be added to the list to make the Codex standard more compatible with U.S. requirements. Several governments objected to this proposed amendment, and it was not adopted.

[10] For example, the United States had lost a recorded Codex vote (33 to 31 with 10 abstentions) on mineral water standards in 1997 and had lost the pasteurization issue in a Codex committee.

Food safety and consumer protection must not be sacrificed in the name of harmonizing regulatory requirements and facilitating trade.

Accordingly, at the Ministerial Meeting in Seattle, the SPS agreement should either be interpreted[11] or renegotiated so as to give the United States the ability to prevent a downward harmonization of food safety standards. Requiring that Codex decisions should become the presumptive international food safety standard only if they are virtually unanimous would permit the United States to protect domestic regulatory requirements by insisting on a recorded vote even when its views are shared by only a minority of national governments.

Another portion of the SPS Agreement that should be renegotiated deals with situations where nations may maintain regulatory requirements when the relevant scientific evidence to assess the need for the requirement is uncertain. Article 5.7 of the SPS Agreement says

"In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time." (emphasis added).

At its meeting in Brussels, Belgium in April 1999, the Transatlantic Consumer Dialogue[12] ("TACD") unanimously recommended that the word "provisionally" be deleted from Article 5.7.[13] "Provisionally" suggests a relatively short period of time. But it may take decades to collect enough data for a government to determine whether, say, a particular food additive causes cancer in people. "Provisionally" should be replaced in Article 5.7 with "a reasonable period of time."

In conclusion, almost five years of experience with the SPS Agreement indicates that it jeopardizes FDA and USDA regulations protecting consumers from unsafe food and misleading trade practices. This Committee should take the lead in telling the Administration that the SPS Agreement should be changed to make it clear that food safety and consumer protection are not negotiable items in the quest for free trade.

Statement of Stephen G. Lodge, Director, Legislative Affairs, National Confectioners Association, McLean, Virginia, and the Chocolate Manufacturers Association, McLean, Virginia

Mr. Chairman and members of the subcommittee, thank you very much for allowing us the opportunity to testify before your panel regarding the United States negotiating objectives for the Seattle Ministerial meeting of the World Trade Organization (WTO), due to start in November. In particular, our associations are eager to share with you our suggestions on specific objectives for the negotiations and our comments on the anticipated impact of these WTO negotiations on jobs, economic opportunity and the future competitiveness of U.S. manufacturers in our industries.

My name is Stephen Lodge and I am the Director of Legislative Affairs for the Chocolate Manufacturers Association (CMA) and the National Confectioners Association (NCA). CMA and NCA together represent 270 companies that manufacture over 90% of the chocolate and confectionery products in the United States, and an-

[11] As a technical matter, this could be done by interpreting the phrase in Article 3.3 of the SPS Agreement "international standards, guidelines or recommendations" to refer only to those decisions made by a virtually unanimous Codex. Other Codex decisions would be considered as merely "advisory."

[12] The TACD was established in 1998 to provide consumer input into United States-European Union trade relations in various areas, including food and agriculture policy, and to counterbalance the work of the Transatlantic Business Dialogue. About 60 consumer leaders from 16 countries—including CSPI—agreed on 20 resolutions that could affect critical trade issues.

[13] There is only one WTO decision interpreting Article 5.7, and it did not deal with the issue of what "provisional" means. Japan—Measures Affecting Agricultural Products (February 22, 1999). Instead, in that decision the WTO Appellate Body focused on the phrase "reasonable period of time" in Article 5.7 and said (at 25) that "what constitutes a 'reasonable period of time' has to be established on a case-by-case basis and depends on the specific circumstances of each case, including the difficulty of obtaining the additional information necessary for the review and the characteristics of the provisional SPS measure."(emphasis in original). The WTO held that Japan had not reviewed within a reasonable period of time its 1987 varietal testing requirements for imported apples, cherries, peaches, walnuts, apricots, pears, plums, and quince that Japan asserts are designed to protect Japan from the codling moth.

other 250 companies that supply those manufacturers. The industry generated $22.7 billion in sales last year. Approximately 65,000 jobs in the US are directly involved in the manufacture of confectionery and chocolate products. Member companies are located in 34 of the 50 states, with a particularly large presence in California, Illinois, New Jersey, New York and Pennsylvania.

The industry is the second largest consumer of refined sugar and other sweeteners in the US; the second largest user of peanuts; and uses nearly $400 million worth of dairy products.

Last year the industry exported more than $600 million in chocolate, chocolate confectionery, and sugar confectionery products to more than 50 countries around the world.

EXECUTIVE SUMMARY

We urge that the mandate for the new round of trade negotiations include the following:

1. The comprehensive negotiation and elimination of the high level of global agricultural protection that remained after the Uruguay Round. All agricultural products should be included. The confectionery industry's priorities are sugar, peanuts, and dairy.
2. The treatment of processed foods, including products of Chapters 17 and 18 of the Harmonized System, as a distinct agenda item in the negotiations separate from agricultural commodities.
3. The elimination of all tariff and non-tariff barriers to processed foods, including chocolate and confectionery.
4. The creation of opportunities for accelerated liberalization in certain sectors such as the elimination of duties on cocoa products and cocoa containing products classified in Chapter 18 of the Harmonized System.
5. The on-time implementation of existing WTO agreements, in particular the Customs Valuation Agreement, by all countries who have committed to do so by 2000. The Valuation Agreement is important because non-compliance can undermine or completely nullify WTO Members' tariff reduction commitments. The comprehensive use and correct application of the provisions of this Agreement by all existing and acceding WTO members are an essential foundation on which to build additional market liberalization undertakings in the new round.

INTRODUCTION

The US confectionery industry has made free trade and the maintenance of an open US market an operating principle for 20 years. US duties on chocolate and confectionery products were reduced to 5% and 7% in the Tokyo Round and further reduced as a result of Uruguay Round negotiations. The final bound tariff rates on categories of concern to the industry are shown below:

HS No.	Description	Bound rates −2000
1704.10	Gum	4%.
1704.90	Sugar confectionery	4.5%.
1806.20	Bulk chocolate (certain sub-categories may be subject to quota).	0% −4.3%+52.8c/kg
1806.31	Chocolate, filled	5.6%.
1806.32	Chocolate, unfilled	4.3%.
1806.90	Chocolate, other	6%.
1905.30	Sweet biscuits	0%.

Note: Products packaged for consumption at retail as candy or confectionery are not subject to sugar or dairy quotas

The industry has maintained this free trade stance in spite of excessively high raw materials costs for sugar, dairy and peanuts which result from US domestic price support programs and tariff and non-tariff barriers that block US industry access to these commodities at world prices. Our industry pays 2–3 times the world price for these key ingredients, incurring millions of dollars in additional costs each year. Despite this, we have never asked for import protection, preferring instead to compete with imported confectionery on the basis of price and product quality.

MARKET ACCESS

US manufacturers of chocolate and non-chocolate confectionery products exported over $667 million worth of these goods in 1997. This represented 6% of total produc-

tion, and asignificant increase over just 1% in the mid–1980's. This growth demonstrates our members growing interest in, and reliance on, foreign markets to achieve their revenue and profitability goals. Market access improvements achieved via the upcoming round of negotiations will be critical if our members are to take advantage of new export opportunities in expanding overseas markets.

US tariffs on chocolate and non-chocolate confectionery products, which today range from 4.1% to 6.2%, are among the lowest in the world. In addition, more than 140 developing and least developed countries enjoy duty free access to the US confectionery market through the Generalized System of Preferences (GSP), which expired on June 30 but is expected to be renewed.

Unfortunately, the US industry does not enjoy the same level of access to most foreign markets. The attached survey of global tariffs on the industry's products highlights the substantial barriers that still exist for our member companies. Tariff rates are above US rates in almost every market, and in some cases exceed 35%, such as Hungary (37%), Poland (45%), Dominican Republic (35%), Egypt (40%), India (40%) and Vietnam (50%). Clearly, substantial progress must be made in the new round in order to achieve the level of access already available to foreign companies exporting to the US market.

The industry's objective is the total elimination of tariffs on chocolate and non-chocolate confectionery products around the world. Toward this objective we urge that the US agenda include the following.

First, processed foods should be seen as the catalyst for agricultural growth and every possible restraint to their movement among global markets removed. Processed food production and trade not only adds value to agricultural commodities but creates demand by stimulating consumer interest and expanding markets. Keep in mind too that American jobs are retained and even increased with the continued development of processed foods in the United States. The new WTO round presents an opportunity to begin this process. *Therefore, one objective must be to de-couple processed food tariff negotiations from those for agricultural commodities.*

By separating processed foods from commodities it may be possible to achieve the level of liberalization we seek. We ask that the US Government formally support proposals such as the APEC Early Voluntary Sectoral Liberalization (EVSL) on processed foods. Whether by that name or any other, *the goal should be to remove all tariff barriers to processed foods including chocolate and confectionery.* It is estimated that full tariff liberalization of the processed foods sector within APEC countries alone would result in economic gains of US$32 billion. The global benefits would equal many times that amount.

Second, the *US should support the elimination of duties on all cocoa and cocoa-containing products which are classified in Chapter 18 of the Harmonized System.* Duty elimination for these products would benefit many of the cocoa producing countries in Asia and South America still suffering from recent financial crises, and would support other multilateral efforts to rebuild these economies. Such trade liberalization could also ultimately lead to lower prices and increased consumer demand for chocolate and non-chocolate confectionery products around the world, creating new opportunities for US exporters.

AGRICULTURE

The industry urges a comprehensive negotiation that includes all agricultural products and all countries including the US and the European Union. US leadership for this round is essential, and to hold certain commodities such as peanuts and sugar outside the scope of negotiations would be disingenuous and potentially destructive of progress. Similarly, the European Union should not be allowed to divert attention from the changes needed to reform their domestic sugar and dairy regimes.

A comprehensive negotiation should also mean that all mechanisms of agricultural support are on the table including quotas and quota allocations, in-quota and out-of-quota tariff rates, and licensing regimes. The industry asks that the US agenda include preparedness to reform the peanut, sugar and dairy programs in response to this multilateral opportunity.

PEANUTS

The confectionery industry estimates that in 1998 member companies spent $226 million for raw and roasted peanuts. The industry ranks as the second largest US industrial consumer.

Neither the Uruguay Round nor the Freedom to Farm bill resulted in reform of the US peanut program. US producers remain protected from international competi-

tion, and continue to benefit from domestic prices nearly twice the world price. The Uruguay Round Agriculture Agreement (URAA) established a small tariff-rate-quota of 56,938 metric tons for peanut imports. However, it also set out-of-quota tariff rates at 163.8% for in-shell peanuts and 131.8% for shelled peanuts—levels much higher than those agreed to for most other US commodities. The table below provides detail:

Product	Bound tariff rate	Uruguay round reduction (percent)
Peanuts, in shell, over-quota	163.8% ad val	15.
Sugar, refined, over-quota	$0.3574/kg (141.3% ad val.)	15.
Peanuts, shelled, over-quota	131.8% ad val	15.
Peanut butter and paste	131.8% ad val	15.
Butter, over-quota	$1.541/kg (90.6% ad val.)	15.
Cheddar cheese, over-quota	$1.227/kg (61.35% ad val.)	15.
Boneless beef, over-quota	26.4% ad val	15.
Rice, in the husk	$0.018/kg (10.9% ad val.)	36.
Wheat	$0.0035/kg (3.78% ad val.)	55.
Corn, yellow dent	$0.0005/kg (0.6% ad val.)	75.
Beer	Duty free	100%
Soybeans	Duty free	N/A
Pasta, uncooked, not prepared	Duty free	N/A
Hams, fresh, unprocessed	Duty free	N/A

The Freedom to Farm bill subsequently required most US agricultural producers to make historic shifts toward the free market. Unfortunately, the peanut program remained virtually unchanged, with only a slight decrease in the support price and a continuation of its outdated quota requirements.

In fact, since the US peanut program is so out of line with most other FAIR Act reforms, it has become a target for countries wishing to use examples of US protectionism to avoid liberalizing their own markets. The most difficult aspect of the peanut program is its two-tier pricing mechanism, which works much like an export subsidy. Canada recently used the program to justify its two-tier dairy pricing system, but a WTO panel ruled that this system violates Canada's Uruguay Round commitments. Reform of the peanut program is therefore essential if the US is to achieve its stated goal of eliminating export subsidies in the next round of negotiations.

These negotiations provide an historic opportunity to achieve real reform of the US peanut program by reducing its trade distorting effects and increasing competition. CMA and NCA encourage US negotiators to ensure that peanuts remain on the table throughout the next round, and to agree to the following reforms of the peanut program:

- a substantial reduction in out-of-quota tariff rates or increase in the quota amount,
- an immediate opening of the import quota to all suppliers (countries), and
- elimination of the import quota by 2008 to correspond with the NAFTA.

SUGAR

The Uruguay Round agreements and Freedom to Farm bill also made only minor changes to the US sugar program. Imports continue to be tightly restricted through the use of tariff-rate-quotas for both raw and refined sugar and on products containing sugar. As a result domestic prices typically average 2–3 times the world price.

Our industry is the second largest user of sugar in the US. The industry spends millions of dollars each year in sugar-related raw materials costs. Further, US jobs are being lost to foreign manufacturers with access to world priced sugar. Only a substantial reform of the US sugar program will allow our members to compete on an equal basis with their foreign competitors in the US and foreign markets.

The sugar program also costs US consumers in the form of higher prices paid for sugar and sugar-containing products. A 1995 US Department of Agriculture (USDA) study entitled Sugar: Background for the 1995 Farm Legislation stated that consumers paid $178 million for each cent per pound that the sugar program pushes US prices above the world price. Recent estimates[1] based on that USDA study con-

[1] Updated estimates produced by Public Voice for Food & Health Policy, Washington, DC

clude that US consumers pay $1.8 billion in additional costs per year for their purchases of sugar and sugar-containing products.

The U.S. is admittedly not the only WTO member that contributes to the distortion of world trade in sugar. The European Union does so by fixing the intervention price for white sugar at approximately three times the world price, controlling production through national quotas, and subsidizing refined sugar exports in order to compete on the world market and clear the internal market of excessive inventories. Although internal efforts to reform the regime have thus far failed, the combination of the EU's planned enlargement and the new round of WTO negotiations provides an opportunity to exert multilateral pressure to achieve change.

In order to do so, U.S. negotiators must be willing to substantially reform the U.S. sugar regime. Therefore, as part of the upcoming negotiations, CMA and NCA urge that the U.S. sugar program and all of its implementing mechanisms be fully on the table for negotiation. Similar to our comments regarding peanuts, we also ask that out-of-quota tariff rates be substantially reduced or that the quota amount be increased, that the import quota be opened up to all countries and that the import quota be eliminated by 2008 to correspond with NAFTA.

DAIRY

It is estimated that the U.S. confectionery industry consumed nearly $400 million in milk products in 1998.

Government programs in the US and the EU continue to protect domestic dairy producers from foreign competition and distort world trade. These interventionist programs result in millions of dollars in unnecessary raw materials costs for our members each year, and ultimately lead to higher prices on dairy products for consumers.

The 1996 Farm Bill mandated an end to US price supports, replacing them with a recourse loan program, but the industry continues to be protected by a restrictive tariff-rate-quota system with very high out-of-quota duty rates. Importing dairy products into the US is further complicated by an import licensing system that is often manipulated by non-users, making it even more difficult for our members to obtain their raw materials at reasonable prices.

The EU regime aims at supporting the whole milk price paid to farmers by fixing intervention prices for butter and skim milk powder (SMP) which are more easily stored. The EU's structural surplus in milk, and, in particular butter, led to the establishment of production quotas in 1984 in an attempt to stabilize the market. These price supports and limits on production have forced the EU to rely heavily on subsidies to facilitate dairy exports, which severely distort world trade in these products.

While the limited reforms put in place by the US Farm Bill are unlikely to have much impact on domestic dairy prices while import restrictions remain in place, it does leave US producers in a slightly different position than their European competitors entering the next round of WTO negotiations. The EU failed to achieve real reform of its dairy program as part of the recently adopted Agenda 2000 package, so it will continue to rely on subsidies to export its surplus production. US negotiators should take advantage of the opportunity the next round provides to level the playing field for US and EU dairy producers while giving our members access to these raw materials at reasonable prices.

CONCLUSION

To summarize our remarks, the National Confectioners Association and the Chocolate Manufacturers Association urge US negotiators to take advantage of the opportunity presented by the upcoming round to:

1) achieve the elimination of all tariff and non-tariff barriers to trade in processed foods, including chocolate and confectionery, and

2) reform the trade distorting sugar, dairy and peanut programs in the US that force our members to pay two-three times the world price for these essential raw materials. These programs must remain on the negotiating table in the next round of trade talks.

Again, Mr. Chairman, our associations appreciate having the chance to present these comments regarding this very important round of upcoming trade negotiations. We would be very pleased to provide further information in this regard to your subcommittee if there are any questions.

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Statement of Edward J. Black, President, Chair, Computer & Communications Industry Association, and Pro Trade Group

The Pro Trade Group is pleased to have the opportunity to provide testimony to the Subcommittee on the U.S. Agenda for the World Trade Organization (WTO) Ministerial, which will meet in Seattle, Washington, beginning on November 30, 1999. We also will make some comments on certain issues of importance to the Pro Trade Group [1] that were not discussed in detail at the hearing.

We commend the Subcommittee for conducting this hearing, as the November, 1999 WTO Ministerial is anticipated to represent the largest trade event in U.S. history and, more important, an opportunity to launch a new round of multilateral trade negotiations that will establish rules for trade in the millennium and beyond.

I. Overall Agenda

1. Consensus Issues

1. At the Subcommittee's hearing, industry testimony evidenced a degree of consensus on certain issues and disagreement on other issues.

There appears to be broad industry support for liberalizing industrial tariffs; further liberalizing agricultural policies (especially in the biotech area); liberalizing government procurement and services; and for enforcing more aggressively intellectual property rights. These goals which were discussed in detail at the hearing by Deputy USTR Esserman, are generally supported by the PTG.

Another issue of particular importance to the PTG on which there appears to be some consensus is the issue of regulation of electronic commerce. We concur in the testimony of ACTPN to the effect that electronic commerce should not be classified as a good or service. We also concur in the testimony of ECAT that a top priority for the Ministerial should be to ensure that the current standstill regarding tariffs on electronic transmission becomes permanent. Our detailed comments on this issue are set forth below, in the section on "Pro Trade Group Priorities."

2. Non-Consensus Issues

Several areas of disagreement emerged at the hearing. The first is the issue of whether or not the Ministerial, and a possible new round of trade negotiations, should address labor and environmental issues. This debate is well known to the Subcommittee, in particular due to the

failure in 1997 of Congress to approve fast-track negotiating authority. Generally, industry appears to prefer that a new round of trade negotiations focus on such market access issues as tariffs, subsidies and investment. But opponents of fast-track authority and some others insist that a new round also address such issues as workplace standards, child labor and the relationship between trade and the environment.

At the Subcommittee's hearing, ECAT called for the United States to avoid globally divisive issues such as non-trade related labor, environmental matters and competition policy. And the American Farm Bureau took the position that environmental and labor issues should be addressed only in a manner that facilitates, rather than restricts, trade.

Our view is that the principal focus of the Administration's efforts should be to conclude unfinished business from the Uruguay Round and attempt to advance trade liberalization into other areas, without becoming unnecessarily diverted by potential controversies. However, realistically, without fast-track authority, the Administration cannot expect to achieve maximum concessions from a new round of trade negotiations. We also think there are important issues that ought to be addressed even if controversial. Accordingly, we concur in the attention paid to these issues by Ms. Esserman in her testimony. Further, we generally support the conclusions of the Economic Strategy Institute in its June, 1999 paper "Setting U.G. Goals for WTO Negotiations," regarding these issues. Specifically, failure to address the international consequences of environmental standards can create artificial cost advantages that distort trade. Similarly, cost advantages to producers from child labor and violation of basic worker rights can result in unfair trade. Accordingly, we urge

[1] The Pro Trade Group (WTO) is a coalition of multinational corporations and trade associations founded in 1987 which represents agricultural, consumer, industrial, retail, and consumer interests. The PTG pursues an open-trade, export-oriented trade policy. These comments reflect a consensus of PTG views rather that the views any particular PTG member.

the Administration to explore the possibility of multilateral agreements on trade related consequences of the environment and labor standards at the Ministerial.

Another area of potential controversy relates to the issue of whether or not competition policy should be a focus of the Ministerial. We believe that private interference with trade remains one of the most important areas largely outside current WTO rules that distorts trade and acts as a barrier to investment. One major undertaking of PTG last year related to a series of corrupt judicial awards in Ecuador that unfairly resulted in a total of $150 million in judgments against a series of U.S. multinationals. Working effectively with the Administration, the PTG was able to save one such multinational about $50 million. Our views on this subject are described in detail under PTG Priorities, below. Generally, we support a WTO policy that provides that WTO-anticipated market access benefits may not be limited or impeded by unfair governmental or private practices.

II. Pro Trade Group Priorities

Beyond the issues generally discussed at the Subcommittee's hearing, and commented on above, there are a number of additional WTO-related issues which are important to the PTG and to some of its members. These are discussed below.

A. International Harmonization of Manufacturing Standards

1. Since late 1995, U.S. and European business executives, under the auspices of the Trans-Atlantic Business Dialogue, have promoted the promulgation by U.S. and European Governments of "mutual recognition agreements" (MRAs), related to manufacturing. The goal of this effort is to harmonize manufacturing standards and so to reduce manufacturing costs. Similar goals have been pursued within Asia.

2. While the PTG strongly supports international efforts to lower manufacturing costs, we believe that these efforts have the potential for placing manufacturers from outside the regions negotiating MRAs at a competitive disadvantage. Accordingly, in 1996 we successfully lobbied for this issue to be addressed within the WTO's Technical Barriers to Trade Committee. Given the progress since then resulting from the TABD, UN Working Party 29 and others, we urge the Administration to seek a review of this issue at the Ministerial.

B. Technology Issues

Internet

1. Similarly, we urge the Administration to seek at the WTO Ministerial recognition by our trading partners that national laws attempting to regulate the Internet are difficult to enforce and that relying on self-regulation to the maximum extent possible is the preferred way to respond to Internet issues.

2. The specter of Federal Trade Commission attempts to regulate the Internet in the United States has already been raised. The potential for Internet regulation is equally great abroad:

- The European Parliament has approved a proposal that would hold ISPs liable for the transmissions of "illegal" web content.
- At a recent international symposium on "Hate on the Internet," one speaker called for imposing liability on ISPs and payment of fines for the dissemination of "hate propaganda."

3. The Internet related technology industry hopes to rely on industry self-regulation. To be sure, while there are legitimate policy issues to address, the explosive growth of the Internet, as a provider of information, recreation, goods and services is really less than five years old and still evolving. We all expect that use of the Internet will continue to grow significantly, and the creators of websites, gateways and portals are confronting these issues for the first time, along with the policymakers.

4. We are witnessing proposals that create new regulatory schemes, and in some cases, more burdensome schemes for Internet activity as opposed to the same actions taken offline. But the nature of the Internet as a global medium is unique. This makes national laws difficult to enforce because the material can originate outside of the borders of the nation that seeks to restrict the flow of information. Further, in the United States, there is certainly no suggestion that the government become the only ISP and filter out objectionable or illegal material. ISP regulation would be virtually unworkable and extremely costly, and the net effect would be to damage the emerging promise of the Internet.

5. There are no ready-made answers in this debate. However, to the extent possible, socially responsible self-regulation is the preferable option and may actually prove to be more effective than statutory enactment. Second, in areas where formal

regulation may occur, we strongly believe that, at a minimum, Internet activity should be regulated with no greater burdens than those imposed on offline activities.

E-Commerce

1. As discussed above, the PTG feels that the current standstill on tariffs on Electronic Commerce ("E-Commerce") should become permanent and that E-commerce should not be classified as a good or services.

2. There has been widespread and enthusiastic support in the private sector, and on a bipartisan basis in Congress, for the goals and objectives of government re-engineering and reinvention. Indeed, the drive toward streamlining functions has led to the concept of "electronic government" with an eye to enhanced accessibility to citizens. These are worthy objectives which the PTG strongly supports.

3. However, in pursuing the goal of achieving electronic government, a growing number of public sector agencies are seeking authority to enter the world of electronic commerce as well, with intentions of offering competitive products and services in the open commercial market place. These plans and initiatives raise many profound public policy issues and concerns.

4. In its landmark policy initiative "A Global Framework for Electronic Commerce" the White House has appropriately championed the simple policy principle that the government's role in the Internet and electronic commerce should be limited, and that industry should lead. We agree and believe that the proper approach is reflected in the long standing executive branch policy directive "OPM Circular A–76," which has been promulgated by the last eight Presidents, going back to Eisenhower. The core policy principle is clear: "In the process of governing, Government should not compete with its citizens."

Nevertheless, plans are proliferating throughout government to launch competitive electronic commerce service offerings in the private market place, in direct contravention of these established policies to the contrary.

5. The PTG is deeply concerned at the economically disruptive and inappropriate role governing agencies are seeking to establish for themselves in electronic commerce. OMB Circular A–76 is correct: government should not compete with its citizens. These well-considered and long-standing policy principles should be established with clarity in law and regulation so that the monopoly role of government in free enterprise which has plagued other western democracies does not become the defining flaw of the New Economy in the United States, and does not become a new form of market barrier in overseas markets to U.S. technology and software companies. We believe that these principles should be discussed at the Ministerial.

C. Timely Implementation of Customs Valuation Code

1. By January 1, 2000, WTO members are required to meet Uruguay Round commitments under the Customs Valuation Code. Yet, due to the Asian financial crisis beginning in 1997, a number of countries reneged on their scheduled implementation of this Code.

2. We anticipate an effort by some WTO members to attempt to postpone this deadline for implementation. We strongly urge the Administration to resist any such effort.

3. Arbitrary uplifts to customs valuation are common in certain developing countries. Such uplifts distort trade and discourage investment. Accordingly, the PTG strongly supports full implementation of this Code on schedule.

D. Judicial Reform

1. WTO rules related to trade in goods provide only limited guidance regarding regulation of foreign investment. Further, the Agreement on Trade-Related Investment Measures fails to address a variety of issues necessary to ensure fair market access and proper treatment of foreign investment.

2. In this environment, trade and investment problems are compounded by judicial corruption, as noted above. Accordingly, we urge the United States to use the WTO Ministerial as a forum for discussing this problem, as well as ongoing efforts by such groups as the World Bank and the Inter-American Development Bank.

E. WTO Reform

1. The Administration should consider a number of reforms to the WTO. First, WTO National Trade Policy Reviews should be made more complete, and non-confidential versions of submissions should be required and made available to interested parties. Second, reforms should be considered to accelerate and strengthen WTO enforcement.

2. Furthermore, the WTO Dispute Resolution mechanism should be reformed in several respects. First, Dispute Resolution Panelists should be directed to draw adverse inferences from the non-cooperation of interested parties. Second, transcripts of panel hearings should be published and comments sought from interested parties.

3. Finally, we urge the Administration to aggressively pursue the accession to the WTO of such countries as China, Ukraine, Russia, and other trading partners.

We welcome the opportunity to work with this Administration to meet these goals.

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Statement of Arthur S. Jaeger, Assistant Director, Consumer Federation of America

I am pleased to present views on behalf of the Consumer Federation of America, a nonprofit association of more than 260 pro-consumer groups, with a combined membership of more than 50 million people.

Many highly publicized trade issues affect consumers. I wish address one that is often overlooked. It is trade restrictions erected under the federal sugar and peanut programs. These two antiquated farm programs cost consumers hundreds of millions of dollars a year in higher prices for sugar, peanuts, and processed foods.

The sugar and peanut programs have their roots in the 1930s, when federal farm programs were seen as a temporary means to get family farmers through hard times. They have long since outlived their usefulness. But when Congress recently pushed many other farm subsidies in a free-market direction, the sugar and peanut programs were barely touched.

Today, these programs largely benefit wealthy growers and agribusinesses, who help perpetuate the programs in Congress with generous campaign contributions. They are corporate welfare at its worst. As CFA's chairman, former Ohio Senator Howard Metzenbaum, put it in 1995, these programs "systematically transfer hundreds of millions of dollars a year from consumers who need help to wealthy producers who don't. This is money consumers could use to buy additional food or clothing, help pay the mortgage and supplement savings." The sugar program is also environmentally harmful, helping to pollute the Everglades by encouraging the overproduction of cane sugar in Florida.

Both programs rely on systems of price supports, production limits, and import restrictions to keep prices paid to U.S. producers well above the world market. For sugar, the domestic price is now more than four times the world price, or about 22 cents per pound for sugar cane. For peanuts, the support price of $610 per ton is $260 per ton more than the world price.

The manufacturers who pay these inflated prices typically pass on their costs to consumers in the retail prices of their products. The consumer tab for the sugar and peanut programs approaches $2 billion annually—$1.4 billion for sugar[1] and $300 million to $500 million for peanuts. Those aren't my estimates; they're from the U.S. General Accounting Office in the early 1990s. Consumers pay this hidden subsidy each time they buy a food product containing peanuts or sugar at the grocery store. It amounts to a regressive, hidden food tax, hitting poor Americans the hardest.

In recent years, the sugar and peanut programs have also cost the U.S. economy thousands of jobs, as dozens of sugar refineries and peanut shelling plants across the nation have closed. High prices have lowered demand and stimulated production of alternative products. Since 1981, 12 out of 23 U.S. cane sugar refineries—or 40 percent of capacity—have closed. At least 3,300 refinery workers lost jobs in these closures. Other refineries have cut their workforce to survive. C&H Sugar Co., outside Sacramento, for example, employed 1,400 workers in 1987. Today, the workforce is less than 600. Likewise, in the last five years, nine peanut processing and shelling plants, eight manufacturing plants and seven storage operations have closed. Other food processing plants have quit manufacturing peanut butter or have started importing it from other countries. Some sugar and peanut processing plants have simply relocated outside the United States, where prices are significantly lower.

The beneficiaries of these programs are more likely to be wealthy growers than struggling family farmers. Under the sugar program, more than 40 percent of the benefits go to only one percent of the growers. Some reap benefits in excess of a million dollars a year. Under the peanut program, more than half the benefits go to less than 10 percent of the eligible growers. Two out of three peanut program

[1] The world price for sugar has dropped four cents per pound since late 1997. This may have increased the consumer cost of the sugar program.

beneficiaries don't even farm their own land. Rather, they rent to others and collect the subsidy as absentee landlords.[2]

All Americans will benefit from reform of these two programs, and a good place to start is by phasing out the import protections that are a cornerstone of both. Tariffs on most major agricultural commodities entering this country are negligible. For soybeans, corn, wheat and rice, for example, tariffs are either nonexistent or under 20 percent. Those on sugar and peanuts, on the other hand, range anywhere from 100 percent to 170 percent. They are designed solely to protect small segments of the economy.

Some contend that reforming these programs would force most—if not all—sugar and peanut producers out of business. Clearly, if the sugar and peanut programs were eliminated, some inefficient growers would go out of business or switch to other crops. But reductions would not necessarily be severe. A 1995 analysis by the respected Food and Agricultural Policy Research Institute estimated that, if both the sugar program and the related tariff protections were eliminated, production would decline only slowly—by about 11 percent over five years for sugar cane and less than that for sugar beets.

At the Seattle trade talks, the United States should propose major reductions in tariffs on sugar and peanut imports, phased in over several years. If there is no agreement on phasing out tariffs, import quotas should be raised substantially, to allow more imports at the world price. These reforms complement legislation now pending in Congress to reduce sugar and peanut price supports.

I am not a trade expert. But it doesn't take a Ph.D. to realize that, in addition to hurting consumers, U.S. restrictions on sugar and peanut imports limit our ability to open markets for other agricultural commodities. When this country condemns foreign agricultural subsidies while maintaining blatant protections at home, the hypocrisy is hard to miss.

A recent ruling from a World Trade Organization dispute settlement panel is a case in point. The United States challenged Canadian import restrictions on milk and complained that Canada's two-tiered milk pricing system amounts to an export subsidy. The WTO panel ruled in our favor, setting an important precedent.

While the parallels are not exact, Canada's dairy policy includes production quotas, support prices and border protections similar to those in our own sugar and peanut programs. How can we criticize our neighbors for agricultural trade policies that closely mimic our own? Quite simply, we can't—at least not with a straight face.

The United States rightly has ambitious goals for agriculture in the coming round of trade talks. Many small farmers in this country are hurting, in part from a drop off in exports. Opening up agricultural trade is a key to helping them. If the sugar and peanut programs aren't reformed, it will be next to impossible to open new markets so U.S. farmers can sell more abroad. Like those who raise wheat, corn and other crops, sugar and peanut producers need to begin adapting to the world marketplace.

The federal sugar and peanut programs have been picking the pockets of U.S. consumers for decades. Now these programs are undermining our trade objectives and colliding with efforts to help small farmers. Beginning now to dismantle these programs by phasing out the import protections both commodities enjoy would be an unqualified step in the right direction.

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Statement of DaimlerChrysler Corporation

DaimlerChrysler has a strong interest in free and fair world trade. Expanded trade and investment opportunities benefit our worldwide activities and global production, assembly, sales and financial services network, as well as our employees who gain from job creation and increased living standards. Consequently, DaimlerChrysler strongly supports a new round of WTO negotiations to continue the process of trade and investment liberalization. Once begun, this round should be completed as quickly as possible and preferably within a 3-year timeframe in order to keep pace with business developments. Within this context, it is essential that fast track authority be renewed.

[2] Nonetheless, the loss of family farms is a particular concern of the Consumer Federation of America. Small farms add much to the economic and social fabric of the nation and efforts should be made to save the remaining family farms. CFA stands ready to work with all sides to find a solution to this problem and would not rule out a means-tested program to support small family farms.

DaimlerChrysler believes in the importance of a world trading system. We also recognize that public support for further trade liberalization is dependent on the credibility of that system. There are areas within international commerce that are not adequately covered by existing WTO rules. Where these deficiencies are used as ways of impeding access to markets, they should be addressed.

Following is a preliminary list of issues that have been identified by the company as priorities for the New Round. They are divided into two sections—priority issues to be addressed, and institutional issues which are also of great importance in order to ensure that the priorities, if achieved, are fully implemented.

PRIORITY ISSUES

Elimination of Non-tariff Barriers

As tariff barriers are gradually reduced and agreements to eliminate trade-related investment measures are implemented, non-tariff barriers such as import quotas, licensing requirements, and technical barriers to trade including standards, labeling, testing and certification become the principal means of restricting imports and protecting local industries. These practices can far outweigh the significance of any reduction or elimination of tariffs, in some cases nullifying or impairing the expected benefit of tariff concessions. It is crucial that the trade opening effect of tariff reductions not be outweighed by maintaining or increasing non-tariff barriers. Examples of effective non-tariff barriers include barriers to setting up effective distribution networks, continuously changing or non-transparent regulations, expensive and time-consuming certification or testing processes unique to importers, and restricting availability of registration information to foreign companies for marketing purposes. The new round must place increased emphasis on the elimination and prevention of non-tariff barriers and work should continue in all appropriate fora on standards harmonization.

WTO Investment Rules

Increasingly, access to markets involves investment, but there are no WTO rules that address foreign direct investment in non-service sectors. For example, WTO rules would not prohibit Chinese restrictions on equity in automobile manufacturing (maximum 50% ownership of a joint venture). New WTO rules are necessary to address such investment-related issues to ensure fair and open investment opportunities. Within an economy there should be no discrimination between domestic and foreign-owed companies in the application of national law, regulations, or taxes. Such a National Treatment clause should be binding on all levels of government. National investment provisions should be transparent and all liberalization commitments should be bound to ensure predictability. A foreign-owned company should be free in all entrepreneurial decisions such as the repatriation of funds, employment of personnel of its choice, sourcing and use of profits. Protection of foreign investors against expropriation or nationalization should also be included.

WTO Environment Rules

There is a major link between trade issues and competitiveness, including issues related to trade and environment. Consequently, environmental regulatory proposals should be developed in a way to ensure that competitiveness is impaired to the least possible extent and should apply to all WTO members. Furthermore, policies intended to achieve environmental objectives should not be misused for protectionist purposes. Consequently, the new round should develop WTO-consistent criteria for the use of trade measures contained in multilateral environmental agreements.

Trade Facilitation

Trade facilitation must be moved into the new WTO round since customs procedures and lack of transparency are among the most significant non-tariff barriers to trade. Compliance with procedural requirements may represent from 2% to 10% of overall product cost. As such, both business and governments can achieve long term benefits as a result of increased efficiencies. In order to reduce procedural obstacles, divergent and/or unclear documentation requirements, arbitrary enforcement of rules and procedures, delayed clearance of goods, and continuously changing rules, WTO agreement is necessary. The new round should develop comprehensive and multilateral rules to simplify and modernize trade procedures; regulations and documentation must be made as transparent as possible and procedures and documents must be simplified and harmonized. Procedures for combating corruption and fraud should be mandated.

Tariff Measures

Reduction of Tariff—DaimlerChryler does not view this as the most important priority because non-tariff barriers often are far more onerous, and duties can be replaced by national levies. However, in countries with excessive duties, which render imports financially impossible, these duties should be substantially reduced.

Tariff Binding—While the applied vehicle tariffs in the US and EU are bound at that level, many countries have not bound their tariffs at the current levels applied. This provides the opportunity for increasing tariffs from current levels, thus impairing trade predictability and reliability. As tariffs are reduced, they must be bound at the new levels.

INSTITUTIONAL ISSUES

Implementation of Existing Commitments

A primary objective of the Seattle Ministerial should be an increased emphasis on the implementation of existing WTO commitments. The promise of new agreements is less appealing if existing agreements are ignored. Emphasis on implementation becomes even more important as many commitments negotiated during the Uruguay Round, for example the agreement to eliminate trade-related investment measures, take effect on January 1, 2000 after significant transition periods. Another priority for the new round is full and timely implementation of the TRIPs (trade related intellectual property) agreement.

Commercially Meaningful Dispute Settlement

The dispute settlement understanding negotiated in the Uruguay Round was intended to provide a means of enforcing WTO agreements. While it gave the WTO much more authority than its predecessor, the GATT, recent experience has proven that it still has significant weaknesses. First, the process from beginning to end can take up to three years. This is much too long given the fast pace of international business. Second, even after a decision is passed down, a country may fail to implement a solution to fully resolve the complaint, thereby forcing the initiation of a second complaint and extending the period during which the offending behavior continues. A process should be developed for expedited consideration of such cases. This process should also be used for failure to implement WTO agreements that include substantial transition periods for implementation, such as the TRIMs agreement. It should not be necessary to file a WTO case on January 1, 2000, taking up to three years to resolve, in order to find a country in violation of a TRIMs commitment made in 1995 (with a 5-year transition period). This would, in effect, add another three years to the transition period. In the interim, a cease-and-desist process should be established so that the practices do not continue, so as not to reward the outlying countries with a de facto extension of the deadline.

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Statement of Defenders of Wildlife

Defenders of Wildlife (Defenders) is a non-profit conservation organization with over 300,000 members and supporters dedicated to the protection of all native wild animals and plants in their natural communities. Defenders welcomes the opportunity provided by the Subcommittee on Trade of the Committee on Ways and Means to provide written testimony for the public record on U.S. negotiating objectives for the 1999 World Trade Organization (WTO) Ministerial meeting.

We applaud the commitment of the Office of the United States Trade Representative (USTR), in its statement by Ambassador Esserman, to sustainable development, including protection of the environment, and to institutional reform that can strengthen transparency and ensure citizen access to the WTO. However, we are dismayed by the U.S. government's lack of progress in recent years to back up these stated commitments. We are also deeply disappointed with the limited scope of the Administration's recently announced objectives with respect to the environment for Seattle. Repeated requests by the environmental community to the Administration to seek meaningful institutional reform of the WTO go well beyond transparency and improved means for stakeholder contacts with delegations and the WTO. We therefore would like to reiterate some of those requests today.

We urge the U.S. to seek meaningful institutional reforms, in addition to increased transparency and increased citizen access, that ensure that existing WTO rules and procedures affirm, rather than hinder, environmental protection. Examples include commitments to secure: more clearly defined limits to WTO jurisdiction

so that it does not delve into the field of environmental regulation; deference to national and international standards that serve legitimate environmental objectives in existing and future rules; and a meaningful, transparent assessment of the environmental impacts of proposed multilateral trade and trade policy developed according to principles of the National Environmental Policy Act; criteria for trade measures based on unsustainable production and process methods, and others. Without these and other previously suggested reforms of the WTO, its policies will continue to place at risk the environment and the sovereign right of all governments to regulate in the public interest and to protect the environment.

Defenders has also recently joined others in the environmental community to oppose expansion of the WTO that would further jeopardize the environment. Today, we reiterate our request that the U.S. withdraw its support for accelerated phase-out of tariff and non tariff barriers for forest products at the WTO, and we urge the U.S. to develop an environmentally justifiable alternative that has been subject to thorough environmental impact analysis, and that gives priority to conserving forests, and not simply treating them as commodities for exploitation.

The proposed Accelerated Tariff Liberalization (ATL) of the forest-products sector for the timber industry, which is part of the "early harvest" agenda for completion at Seattle, carries highly uncertain and potentially damaging consequences for the environment. Logging often destroys natural habitats, resulting in the loss of biodiversity and sometimes leading to the local, and possibly global, extinction of species. See e.g. United States Forest Service, Rocky Mountain Research Station The Scientific Basis for Conserving Forest Carnivores: American Martin, Fisher, Lynx, and Wolverine in Western United States, GTR. RM–254, September 1994. Although estimates of the rates of loss vary, few can deny the reality of the current losses of both flora and fauna. The World Conservation Monitoring Center considers this type of habitat loss to be the biggest current threat to biodiversity. An increase in unsustainable logging practices through industrial logging will only perpetuate these problems and accelerate the deforestation of the world's forests and increase threats to biodiversity.

The American Forest and Paper Association has predicted that ATL in the forest products sector will lead to the increased consumption of wood products world-wide. Increased consumption will undoubtedly lead to increased logging. Tariff elimination will also decrease the costs of production, cost reductions which can often lead to increase logging rates, according to previous studies by the U.S. Department of Commerce. By extension, increased logging will only serve to perpetuate the already well documented negative environmental and social impacts of industrial logging operations.

Defenders would like to reference its written and oral testimony submitted to the International Trade Commission (ITC) on Public Investigation No. 332–400 as part of this testimony. The pre-hearing brief submitted by Defenders and Earthjustice Legal Defense Fund includes findings by the Commerce Department that show a decrease in stumpage fees in Canada increased harvest levels. This data supports our concern that tariff liberalization will indeed increase harvest levels worldwide. The Administration's claim that removing tariffs will have no significant effects on the environment cannot possibly be squared with these findings made in 1992 and again in 1993. Our post-hearing brief submitted to the ITC, "Addressing the Underlying Causes of Deforestation," further addresses the issue of global deforestation. This report, available on the world-wide web at "http://www.bionet-us.org/," concludes that trade and consumption, including the current trade liberalization process and rising consumer demands, as well as international economic relations and financial flows, including the regulation of transnational companies, are two of the four major categories leading to deforestation and degradation of the world's forests.

Our forests can not afford further liberalization. According to the World Resources Institute (WRI), nearly one-half of the world's original forest cover is gone. Of the remaining original forests, most is severely degraded, while only 22 percent remains as large tracts of relatively undisturbed primary or "frontier" forests. WRI and other organizations have named commercial logging as the greatest threat to frontier forests. According to World Wildlife fund mapping projects, in North America, all but 5% of the forests in the lower 48 states have been logged at least once. For all of the above-mentioned reasons, Defenders of Wildlife can not support any liberalization of trade in the forest products sector.

Thank you for the opportunity to voice some of our recommendations for a U.S. government agenda at the WTO that fully incorporates environmental priorities. We offer our further assistance to members of the Subcommittee on Trade in support of such objectives.

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Statement of Distilled Spirits Council of the United States, Inc.

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), for inclusion in the printed record of the hearing on United States Negotiating Objectives for the WTO Seattle Ministerial Meeting. DISCUS is the national trade association representing U.S. producers, marketers and exporters of distilled spirits.

I. Overview

DISCUS enthusiastically supports efforts within the WTO to further liberalize international trade and to strengthen the multilateral trading system. The U.S. distilled spirits industry has greatly benefitted from the tariff elimination commitments secured during the Uruguay Round negotiations and in subsequent negotiations under the WTO's auspices. In addition, on behalf of our industry, the United States has utilized the WTO's dispute settlement mechanism to successfully challenge discriminatory liquor tax regimes maintained by Japan and Korea. The elimination of Japan's discriminatory treatment of imported spirits has lead to an increase of nearly 25 percent in U.S. spirits exports to Japan, while saving U.S. companies nearly $100 million in taxes and tariffs annually. Discussions with Korea on its plans for complying with the recent WTO ruling are now underway, and we look forward to competing on an equal tax basis in this important market in the near future.

The improved market access conditions secured under the WTO have been a major factor in the doubling of U.S. exports of distilled spirits since 1990. In 1998, exports of U.S. distilled spirits grew to $528 million, a record high. They now account for over 25 percent of our members' total sales, compared to 11 percent at the beginning of the decade. More importantly, for U.S. distilled spirits companies, the continued growth of exports in the years ahead holds the key to their commercial well-being.

While the recent growth in U.S. distilled spirits exports has been significant, the majority of our trade is destined for developed and relatively mature markets, such as Europe and Japan, where tariffs already are low and will soon be eliminated. Developing countries, particularly in Asia and Latin America, offer tremendous market potential for U.S. distilled spirits, but most of them have resisted meaningful liberalization of their relatively high tariffs and other market access barriers to imports of distilled spirits. The new round of trade negotiations to be launched at the WTO Ministerial Meeting in Seattle in November offer an excellent and timely opportunity to tackle these barriers and create new export opportunities for U.S. distilled spirits companies.

II. Priority Objectives for the New Trade Round

After careful review and consideration, DISCUS has identified the following six areas as its priority objectives for the upcoming negotiations:

A. Tariffs

The most pervasive barrier to U.S. distilled spirits exports continues to be high tariffs. Numerous developing country members of the WTO maintain tariffs on distilled spirits in the double digit range, and some maintain prohibitive tariffs. India, for example, assesses an exorbitant tariff of 230 percent, while Indonesia's tariff is 160 percent and Poland's tariff is 105 percent. Several regional groups within Latin America and the Caribbean also maintain high common tariffs which significantly inhibit the ability of imported distilled spirits to compete with national products.

In the Uruguay Round negotiations, other than the "Quad" countries, only twelve countries agreed to tariff reduction commitments which resulted in actual reductions in the tariffs they imposed on imported distilled spirits. In all other instances, the concessions agreed to by Uruguay Round participants, when fully implemented in 2004, will continue to exceed current applied rates. Thus, while the negotiations were enormously successful in eliminating tariffs maintained by the "Quad" countries, U.S. exporters of distilled spirits were not able to secure improved terms of access to many other important markets.

The new negotiations should give priority attention to further reducing and where possible eliminating tariffs on distilled spirits, particularly with respect to those developing countries maintaining tariff peaks in the sector. The application of a tariff cutting formula would appear to be the most promising approach for securing the

elimination of these high tariffs. It also is extremely important that the tariff commitments agreed to in the negotiations pertain to *applied* as well as bound rates. Ideally, the negotiations should be based on applied rates. However, if this does not prove possible, the formula chosen should be designed to require reductions in applied rates proportionate to those agreed to for bound rates.

B. Nontariff Measures

U.S. distilled spirits products are subject to thorough testing and control procedures in the United States, yet many WTO members continue to maintain redundant testing and certification requirements. A number of WTO members also continue to impose restrictive import licensing, registration and state trading requirements in the distilled spirits sector. We urge the United States to place a high priority on securing the elimination of these unwarranted nontariff barriers in the upcoming negotiations.

C. Services Barriers to Trade

While U.S. distilled spirits companies may export their products to most countries, a number of WTO members limit the ability of U.S. companies to import, distribute and advertise their own products within their markets. These restrictions limit the ability of U.S. distilled spirits companies to build their brands in these markets and to compete effectively with national products. We recommend that the United States use the upcoming services market access negotiations to secure appropriate commitments providing for the elimination of restrictions on U.S. companies' access to distribution and advertising services in these markets.

D. Trade Facilitation

The upcoming negotiations also provide an excellent opportunity to liberalize and, where possible, eliminate procedural and regulatory obstacles to the movement of distilled spirits in international trade, particularly in the area of customs procedures. Trade facilitation measures which would benefit U.S. exporters of distilled spirits include the simplification and harmonization of customs procedures, the elimination of excessive and often redundant certification and documentation requirements, and the provision of enhanced regulatory transparency.

E. Intellectual Property

U.S. distilled spirits companies are interested in securing improvements to the protection provided for geographical indications and trademarks under the WTO TRIPs Agreement in order to ensure the integrity of the content and presentation of their products in foreign markets. Accordingly, we recommend that the United States utilize the mandated review of the TRIPS Agreement to clarify and strengthen the protection provided for geographical indications for distilled spirits and to expand the protection for trademarks provided under the Agreement to include trade dress and other distinctive forms of packaging.

F. Dispute Settlement

The U.S. distilled spirits industry's experience with the WTO dispute settlement mechanism has been extremely positive. The system has produced clear cut rulings against the discriminatory liquor tax practices maintained by Japan and Korea and a third, equally strong, ruling against Chile is expected to be announced shortly. These rulings have provided the basis for securing the elimination of these longstanding barriers to U.S. distilled spirits exports. Nevertheless, despite this very positive experience, DISCUS believes that the Dispute Settlement Understanding (DSU) can and should be improved upon. In particular, we recommend that the United States seek to strengthen those provisions of the Understanding pertaining to compliance with panel rulings and recourse to retaliation, in order to ensure that the WTO continues to provide an effective means for enforcing the market access commitments secured in the negotiations.

III. Parameters for the Negotiations

A. Scope

DISCUS's priority objectives, as outlined above, fall within the scope of the additional negotiations mandated by the various Uruguay Round agreements. Accordingly, at the Seattle Ministerial meeting, we would urge the United States to take whatever steps are necessary to ensure that these negotiations are initiated, as previously agreed, by no later than January 1, 2000. The United States should stead-

fastly oppose any and all efforts to introduce procedural obstacles to the on-time launch of these mandated negotiations.

We understand that it will be necessary to add additional subjects to the agenda for the negotiations. Adding a *limited* number of additional subjects is likely to increase the prospects for success, by establishing a broader basis for the political tradeoffs necessary to allow the negotiations to produce a package of agreements acceptable to all participants. Negotiations on market access barriers to manufactured goods would be, in our view, the most appropriate subject to be added. However, adding numerous additional subjects, particularly controversial ones such as trade and the environment, workers rights, and competition policy, is likely to complicate and protract the negotiating process. We strongly recommend that the United States work with other like minded countries to limit the number of additional subjects added to the agenda to only those which are truly ripe for negotiation and absolutely necessary to a successful outcome.

B. Time Frame

In order to maximize the benefits for U.S. exporters of enhanced access to foreign markets and to maintain the credibility of the WTO itself, it is absolutely essential that the negotiations are completed, and the results fully implemented, within the shortest possible time period. We urge the United States to secure a binding commitment at the Seattle Ministerial to complete the negotiations within three years—i.e., by January 1, 2003—and to ratify and fully implement the results within no more than five years thereafter. Of all the decisions to be taken at Seattle, this is the most important one. We recognize that multilateral trade negotiations involving more than 130 countries will be complicated and difficult. However, without a tight and enforceable deadline, it will be nearly impossible to bring the negotiations to a successful conclusion within a time frame in which the results will still be relevant to U.S. exporters.

C. Participation

We recall that countries in the process of acceding to the GATT were allowed to participate in the Uruguay Round negotiations. Many of these countries offered only minimal concessions, and some have not yet completed the accession process nor fully adhered to the agreements reached in the Round. Yet all of these countries received the benefits of the market access concessions agreed to by WTO member countries in these negotiations.

To avoid this problem of "free riders," DISCUS believes that participation in the upcoming negotiations should be limited to only those countries which are members of the WTO as of January 1, 2000. Countries which are in the process of acceding to the WTO, but have not yet completed their accession negotiations, should not be permitted to participate until they have done so. Such a policy has and will continue to create an added incentive for the various acceding countries to complete the accession process this year. It also would ensure that the acceding countries are required to make market access commitments in the new round of negotiations, in addition to those agreed to as part of their terms of accession.

IV. Negotiating Authority

Although not directly related to the scope and agenda for the Ministerial Conference, the mere fact that the United States will host and chair the Conference creates an imperative and offers an excellent opportunity for the Administration and Congress to forge a new political consensus in support of further trade liberalization within the WTO framework. In order to shape the preparations for the Ministerial Conference and influence the decisions taken at the Conference, it is simply essential that the United States be fully authorized to participate in the negotiations and the work program which emerges from the Ministerial meeting. Without such authority, it will be extremely difficult for the United States to ensure that the decisions taken at the Ministerial Conference fully address the interests of U.S. exporters.

Accordingly, we would urge the Congress to work with the Administration and provide the leadership required to enact "fast track" legislation or, in the short term, to issue a clear and unambiguous mandate that will demonstrate to the WTO membership that the United States Congress fully supports the active participation of the United States in the new round of negotiations within the WTO. Such action by the Congress is essential to prevent other WTO members from using the absence of "fast track" legislation as and excuse to block efforts within the WTO to further trade liberalization. DISCUS has strongly supported renewal of "fast track" negoti-

ating authority and approval procedures in the past and we stand ready to work with the Congress once again to achieve this goal as soon as possible.

V. SUMMARY

DISCUS strongly supports the launch of new multilateral trade negotiations within the WTO. Such negotiations offer an excellent opportunity to further open markets, particularly those of developing countries, for U.S. distilled spirits exports. Our priority objectives for these negotiations are:

- reduction/elimination of tariffs on both a bound and applied basis;
- liberalization of non-tariff trade barriers;
- liberalization of restrictions on access to services, including distribution and advertising;
- enhanced measures to facilitate trade in distilled spirits;
- stronger protection of geographical indications and trademarks; and
- a strengthened WTO dispute settlement mechanism.

These negotiating objectives can be pursued within the context of the mandated negotiations provided for under the Uruguay Round agreements. We support the inclusion of a limited number of additional subjects in order to ensure that the negotiations produce a package of agreements acceptable to all participants. However, the various additional subjects included should not undermine the more important goal of completing the negotiations and implementing the results within the shortest possible time frame. Participation in the negotiations should be limited to WTO members in order to provide an added incentive for acceding countries to complete the accession process quickly, and to ensure that all participants in the negotiations make appropriate market opening commitments.

In addition, we would urge the Congress to mount a renewed effort, together with the Administration, to enact "fast track" legislation or, in the short term, to develop an alternative mandate. Such action is essential to prevent other WTO members from using the absence of "fast track" as an excuse to block efforts towards further trade liberalization within the WTO.

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Statement of Dresser-Rand Company, The Woodlands, Texas

I. INTRODUCTION

These comments are submitted on behalf of the Dresser-Rand Company pursuant to the Honorable Philip M. Crane's July 8, 1999, announcement of a public hearing on the U.S. negotiating objectives for the WTO Seattle Ministerial Meeting. Dresser-Rand is a leading supplier of energy conversion solutions worldwide. The Dresser-Rand Company is a partnership between Dresser Industries, Inc. of Dallas, Texas and Ingersoll-Rand Co. of Woodcliff Lake, New Jersey. Dresser-Rand combines the facilities and expertise of these two companies, along with that of Worthington Steam Turbine Division, Turbodyne, and Terry Corporation, in the design, manufacture, sale, and servicing of power equipment, such as turbines and compressors. Dresser-Rand's headquarters are located at 1 Baron Steubon Place, Corning, New York 14830 (tel. 607–937–6441).[1]

Dresser-Rand has a keen interest in increasing access to potential export markets. Dresser-Rand's exports accounted for over half of company sales for the past several years. Dresser-Rand equipment is used principally in the petroleum, petro-chemical and chemical industries and in electric power generation. Dresser-Rand businesses and affiliates are also service providers, providing service and maintenance for our turbines and compressors, as well as providing engineering and construction services. Dresser-Rand employs over 7,500 people worldwide. The company has ten manufacturing and testing facilities, over twenty service centers, and seventy regional offices around the world, as well as three joint ventures.

The May 1998 WTO Ministerial Declaration invited recommendations concerning the negotiation of issues related to existing agreements as well as other possible fu-

[1] The primary manufacturing facilities for turbines and compressors are located in the state of New York (Olean, Painted Post, Wellsville) with additional facilities in Broken Arrow, Oklahoma. Electronic control systems for these products are manufactured by Dresser-Rand in Houston, Texas. The company manufactures electronic motors for use in turbo-compressor trains and generators for turbine-generators in Minneapolis, Minnesota. Dresser-Rand's international operations include compressor and turbine manufacturing facilities in LeHavre, France; Kongsberg, Norway; and Oberhaussen, Germany.

ture work.[2] Dresser-Rand supports the U.S. negotiating objectives identified by Ambassador Esserman at the August 5, 1999 hearing and suggests including the following additional objectives that would benefit the energy sector in the areas of services, technical barriers to trade, antidumping, government procurement, competition policy, and industrial market access.

II. Mandated Negotiations

A. General Agreement on Trade in Services (GATS)

Article XIX of the General Agreement on Trade in Services requires Member States to enter into successive rounds of negotiations, beginning not later than five years after the date of entry into force of the WTO Agreement and periodically thereafter. The negotiations will focus on achieving a progressively higher level of liberalization. As an exporter of pre-sale and after-sale services in the areas of engineering and technical support, as well as project construction, installation and repair, Dresser-Rand fully supports WTO efforts to liberalize the service sector.

In order to go beyond the outline of a global regime to promote trade in services as established in GATS, the United States advocates the development of more specific negotiating objectives, including possible "sectoral" negotiating modalities. The United States has identified the energy services sector as a sector of potential export interest.[3] Dresser-Rand strongly agrees and is itself a significant exporter of services in the energy sector. We support the development of sectoral negotiating modalities that focus on liberalizing measures to increase market access for energy-related services.

Such services include engineering, equipment installation and start-up (and the associated temporary entry of technicians and equipment), on-site performance testing, and repair services. In the context of procurement of such services, Dresser-Rand submits that the WTO Agreement on Basic Telecommunications and its associated Reference Paper include model provisions that would be usefully engrafted onto a multilateral agreement on procurement of services. That model provides fair rules to prevent unfair competition in energy goods and services trade through procompetitive regulatory principles, disciplines on suppliers, and protection of the procurement process.

Finally, the United States should be careful in its approach to liberalization in the GATS to take into account the overlap with any other areas under negotiation, including market access, non-tariff measures, standards and licensing, and government procurement.

III. Review of Existing Agreements

A. Technical Barriers to Trade (TBT)

Dresser-Rand supports efforts by the United States to harmonize technical standards in the energy sector on a multilateral basis. The Second Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, issued on May 3, 1999, reported that Japan has now accepted the American Society of Mechanical Engineers standards as equivalent to its domestic technical standards for compressors and other equipment under its High Pressure Gas law. In addition, Japan has simplified the application requirements for compliance with the High Pressure Gas law requirement governing imported compressors and other equipment. The Japanese Government has also submitted a bill which would revise the Electric Utility Industry Law to address issues concerning welding and inspection requirements in power facilities.[4] Dresser-Rand applauds this success in reducing technical barriers in the energy sector in Japan.

The progress made with respect to Japan in the Second Joint Status Report should be used to encourage other countries to adopt similar domestic legislation as part of the effort to harmonize technical standards. Dresser-Rand urges the United States to seek greater participation, pursuant to Article 2.6 of the TBT Agreement, in international standards organizations. Dresser-Rand believes that energy standards should be pursued as a priority sector to achieve harmonization. With a multitude of national standards comes greater potential for discriminatory, trade-restrictive regulations. Dresser-Rand agrees with the United States that the TBT

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[2] *Ministerial Declaration adopted on 20 May 1998*, WT/MIN(98)/DEC/1 (May 25, 1998).

[3] *Further Negotiations as Mandated by the General Agreement on Trade in Services (GATS): Communication from the United States*, WT/GC/W/295 (Aug. 5, 1999).

[4] Second Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy (May 3, 1999).

Committee can make significant improvements without the necessity of negotiating a new agreement.[5]

B. Antidumping Agreement

Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) permits countries to address third-country dumping complaints. Third-country dumping occurs when an industry producing an exported product in one country is being injured by imports from another country to the same ultimate market. Article 14 permits the exporting country to petition the importing country for relief. The procedure for obtaining relief, however, is not automatic or readily available. Dresser-Rand remains concerned that discriminatory pricing will affect competition for steam turbines and turbo-compressors in the absence of stronger rules against third-country dumping.

Therefore, to ensure a fair and expeditious review of third country dumping petitions, the United States should negotiate for stronger third-country dumping provisions in the Antidumping Agreement that clearly provide for (1) an investigation upon request of a complaining country that has adjudge the petition to state a prima facie case, and (2) relief whether or not there is a local producer in the importing country.

IV. New Issues for a New Round of Multilateral Trade Negotiations

A. Government Procurement

Much of the plant construction and heavy equipment procurement in the energy sector is the result of projects undertaken by state-owned energy companies or utilities. Government procurement figures large in this sector because in many countries the state owns or operates utilities as well as petroleum production and refining.

Article XXIV(7)(b) of the Government Procurement Agreement requires Member States to undertake further negotiations not later than the end of the third year from the date of entry into force of the Agreement and periodically thereafter. The goal of additional negotiations should be to improve the Agreement and to achieve greater possible extension of its coverage among all Parties on the basis of mutual reciprocity. To this end, Member States have drafted a multilateral transparency agreement. Dresser-Rand supports the promise of an agreement to be signed at the Ministerial.[6] Dresser-Rand would support inclusion of the following principles in its negotiating position with respect to any agreement on government procurement practices:

- An agreement on transparency in government procurement practices should be multilateral, not plurilateral.
- As a general principle, an agreement should require procuring entities at all levels of government (i.e., central, sub-central, government-owned or influenced enterprises) to assure that all relevant and sufficient information is made available to all potential suppliers in a timely manner through broadly and freely accessible media.
- An agreement should require that all of the laws, regulations, administrative and judicial decisions, guidelines, and policy statements that directly affect or relate to government procurement practices by parties should be transparent.
- An agreement should require that procurement opportunities be transparent. Procurement opportunities should be published in a known and accessible medium (i.e., an official journal, designated journal or newspaper, internet, etc.).
- An agreement should state that open competitive tendering is the preferred method of procurement.
- An agreement should specify the limited circumstances in which single tendering is permitted, and provide for at least a minimum level of transparency in single tendering.
- An agreement should provide that all relevant information that a potential supplier needs to assess its interest and determine whether to submit a bid should be transparent and made freely available to potential suppliers.

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[5] *General Council Discussions on Implementation Issues on 26 October 1998: Communication from the United States*, WT/GC/W/107 (Nov. 3, 1998).

[6] *General Council Discussion of Singapore Work Program Issues and Other Issues of Concern to Members Pursuant to Paragraphs 9(b) and (d): Communication from the United States*, WT/GC/W/139 (Jan. 27, 1999); *The WTO's Contribution to Transparency in Government Procurement: Communication from the United States*, WT/GC/W/289 (Aug. 4, 1999); *see generally Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 ("Title VII")*, 64 Fed. Reg. 25,525 (USTR May 12, 1999).

• An agreement should require parties to make transparent the criteria employed to assess and select contract bids (e.g., price preferences or qualification requirements favoring domestic suppliers) in the awarding of contracts.

• In the case of contract challenges, an agreement should provide for due process and transparent complaint procedures.

The issue of whether to require domestic review mechanisms to address supplier complaints has been raised in the context of drafting the transparency agreement.[7] Those discussions have highlighted the fact that some, but not all, participants in the Working Group on Transparency in Government Procurement already maintain domestic review mechanisms, either administrative or judicial or both, to resolve suppliers' complaints.[8] As a result, the United States has pressed for a provision in the transparency agreement that includes a requirement that signatories ensure that there are transparent, timely and independent decisions on complaints or appeals relating to the transparency of procuring entities' actions and procedures. The United States has proposed the following draft language:

> Members shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of procurement actions that may be inconsistent with the requirements of this Agreement, as implemented in Members' law. Such tribunals or procedures shall be independent of the agencies responsible for procurements covered under this Agreement and shall provide for rapid decisions that, as appropriate, can effect the modification or reversal of any inconsistent actions.[9]

Dresser-Rand supports inclusion of a domestic review provision in any government procurement agreement. In addition, anti-competitive behavior in the context of the procurement process should be actionable under the domestic review mechanism. As suggested by the United States in February 1998, any domestic review provision should require remedial relief, whether in the form of retendering procurements or damages to cover legitimate claims.[10]

B. Competition Policy

Dresser-Rand supports the U.S. position to discuss and pursue competition policy coordination on a bilateral basis. The U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy addresses the deregulation of the Japanese energy sector and related competition issues. To the extent that the Enhanced Initiative can serve as a model for dealing with such issues as cartels, exclusive dealing arrangements and similar anti-competitive practices in the new Round, Dresser-Rand generally supports the review of competition policy to improve market access in Japan and elsewhere.

One area of particular concern to Dresser-Rand is the lack of an effective review mechanism for anti-competitive behavior exhibited when competing in the bidding process for government or private jobs in the energy sector. Just as a review mechanism would improve the government procurement process, so, too, it would provide a built-in forum to address complaints with respect to private procurement.

The United States, however, has made it clear that the work of the Committee on Trade and Competition Policy is not sufficiently well-developed to serve as the basis for multinational negotiation.[11] There is no consensus among WTO Members on what the principles of "fair" competition should be. Nor is it clear that the WTO is the appropriate forum for a negotiation on competition policy. Moreover, some nations have attempted to undermine the Antidumping Agreement or to re-open matters resolved in the Uruguay Round, by "merging" anti-dumping and competition policy. This has been unacceptable to the United States and should not be allowed. There are many activities of the WTO that serve important purposes, but many of these are arguably inconsistent with competition theory, such as, special and differential treatment, subsidies, balance of payments exceptions, national security, even MFN and national treatment. Dresser-Rand urges the United States to prevent efforts to tie competition policy to other areas.

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[7] *Review Mechanisms: Communication from the United States*, WT/WGTGP/W/15 (Feb. 19, 1998); *Report (1998) To The General Council*, WT/WGTGP/2 (Nov. 17, 1998); *Domestic Review Mechanisms: Submission by the United States*, WT/WGTGP/W/23 (June 24, 1999).

[8] *Domestic Review Mechanisms: Submission by the United States*, WT/WGTGP/W/23 (June 24, 1999).

[9] *Id.*

[10] *Review Mechanisms: Communication from the United States*, WT/WGTGP/W/15 (Feb. 19, 1998).

[11] *General Council Discussion of Singapore Work Program Issues and Other Issues of Concern to Members Pursuant to Paragraphs 9(b) and (d): Communication from the United States*, WT/GC/W/139 (Jan. 27, 1999).

C. Industrial Market Access

The United States has identified market access for industrial products as a prime negotiating area for the new Round.[12] Specifically, the United States hopes to build upon the Accelerated Tariff Liberalization Initiative, begun in APEC and including the energy sector, by maximizing the opportunities for more broad-based market-opening. To that end, the United States has identified the following objectives:

- reduce existing tariff disparities;
- provide recognition to Members for bound tariff reductions made as part of recent autonomous liberalization measures, and for WTO measures;
- use of applied rates as the basis for negotiation, and incorporation of procedures to address non-tariff measures and other measures affecting conditions for imports; and
- improve market access for least-developed WTO Members by all other Members through a variety of means.[13]

Dresser-Rand supports a request/offer approach generally for tariff and non-tariff trade liberalization. In the context of new round negotiations, Dresser-Rand would also support zero-for-zero tariff elimination.

V. Conclusion

Dresser-Rand generally supports the U.S. negotiating objectives identified at the August 1999 hearing. In addition, Dresser-Rand urges the United States to: (1) negotiate liberalization of the services sector on a sectoral basis; (2) incorporate protections found in the WTO Agreement on Basic Telecommunications and its associated reference paper in the context of any improvement in government procurement rules or in the context of any bilateral agreements concerning competition policy for the energy goods and services sector; (3) extend the progress in the Second Joint Status Report on U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy to harmonize technical standards in the energy sector in other countries; (4) strengthen the third-country dumping provisions; (5) conclude a multilateral transparency agreement for government procurement practices that includes a domestic review provision; and (6) extend any domestic review mechanism or panel to anti-competitive behavior in both public and private sector contract negotiations for power equipment and associated services.

Respectfully submitted,
Dresser-Rand Company
Woodlands, TX 77380

Statement of Federal Express Corporation, Memphis, Tennessee

I. Introduction

This statement for the written record is submitted by Federal Express Corporation ("FedEx") in connection with the hearing held on August 5, 1999, by the Subcommittee on Trade of the House Ways and Means Committee on the U.S. negotiating objectives for the WTO Seattle Ministerial Meetings.

In its July 8, 1999 notice concerning the hearing, the Subcommittee noted that it was interested in examining "specific objectives for the negotiations," as well as the "anticipated impact of launching a new round of WTO negotiations on jobs, wages, economic opportunity, and the future competitiveness of U.S. manufacturers and services." FedEx appreciates the opportunity to address the issues identified by the Subcommittee.

FedEx previously has commented on issues related to those addressed in this statement in a number of contexts. FedEx provided oral testimony and written briefs in the U.S. International Trade Commission ("ITC") investigations on the GATS specific commitments undertaken by our major trading partners (Canada, the EU, Japan, and Mexico) (Inv. No. 332–358, USITC Pub. 2940 (1996)), Latin American countries (Inv. No. 332–367, USITC Pub. 3007 (1996)), and APEC countries (Inv. No. 332–372, USITC Pub. 3101 (1998)). FedEx filed extensive information with the Office of the United States Trade Representative ("USTR") in response to its request for comments on preparations for the Third WTO Ministerial Conference. See

[12] Statement Circulated by the U.S. Delegation of Ambassador Susan Esserman, Deputy U.S. Trade Representative (July 29, 1999).
[13] *Id.*

63 Fed. Reg. 44,500 (USTR 1998). Most recently, FedEx submitted testimony and briefs in relation to the USTR's request for comments published in the Federal Register on April 14, 1999. See 64 Fed. Reg. 18,469 (USTR 1999).

In this statement, among other things, FedEx addresses three primary negotiating objectives that the U.S. administration should pursue in the context of GATS negotiations on express delivery services. In general, these objectives concern sector-specific negotiations for express delivery services, trade facilitation measures, and electronic commerce. The information contained in this statement is provided in two parts. The first part is an overview of FedEx and the express delivery services sector, and demonstrates the key role the sector plays in trade facilitation and global economic development. In the second part, FedEx outlines major negotiating goals for the express delivery services sector in the next round of WTO negotiations, which, if achieved, would result in meaningful trade liberalization and a quantifiable, positive economic benefit to the U.S. exporting sector.

II. Overview of FedEx and the Express Delivery Services Sector

A. FedEx

FedEx is the world's largest express all-cargo integrated transportation company. FedEx specializes in fast, reliable transportation services for documents, packages, and freight of all sizes and weights. FedEx offers seven international document and package delivery services and four international freight services, most of which include customs clearance services. FedEx operates 625 planes and 42,500 vehicles, and relies on over 145,000 employees to deliver more than 3.2 million items every day in over 210 countries around the world.

B. The Express Delivery Services Sector

The U.S. express delivery services sector provides fast, efficient, and reliable pick-up, transport, and delivery of a wide variety of goods of all sizes, shapes, and weight. The distinguishing characteristic of the service provided by the sector is the just-in-time shipment of goods and services. The "just-in-time" concept not only implicates the timely delivery of goods to production facilities, it also encompasses the "time-definite" needs of the customer—either the shipper, the recipient, or both. Every day in the United States and around the world, consumers determine for a variety of reasons to pay a premium for either shipping or receiving goods or services on a just-in-time basis. Express delivery companies transport and deliver on a time sensitive basis such items as business, commercial, educational and official documents; packages; finished goods; parts and components necessary for the manufacture of industrial goods; raw materials; high-value items; perishable goods; and emergency supplies and medical equipment.

The U.S. express delivery sector is a key contributor to the economic prosperity of the United States. The sector employs more than 400,000 people and has a combined annual revenue of more than $45 billion. One express delivery company is the fifth largest private employer in the United States. The sector operates more than 1,000 aircraft and 184,000 vehicles in providing express delivery services. On a daily basis, they deliver more than 4.1 million packages by air to more than 211 countries. The sector also significantly contributes to the economies of other countries. The two largest companies employ more than 50,000 people outside the United States.

In addition, U.S. express delivery companies doing business overseas expand the economies of those countries through the local sourcing of goods and services, e.g., fuel, equipment, telecommunications, and technical labor. Hence, the sector is important because it does more than just facilitate trade, it also acts as an expander and promoter of international trade. Consequently, the elimination and reduction of trade impediments and other measures restricting the services provided by the express delivery sector should be a primary objective in the next round of WTO negotiations.

C. The Benefits of Liberalization in Trade in Express Delivery Services

The services provided by the express delivery services sector are a key facilitator to international trade. The world trading community is increasingly bound together by international aviation. Projections forecast that by 2015 thirty-seven percent (37%) by value of all international freight and cargo will be moved by the express delivery services sector. Excluding bulk commodities (oil, grains, etc.), by that date nearly fifty percent (50%) of the value of all global trade will be transported by the sector. Industry analysts have estimated that the growth rate for air cargo (meas-

ured in revenue ton miles) will exceed the growth rate of world passenger traffic (measured in revenue passenger miles) over the next twenty years.

As the world advances into the twenty-first century, more and more of world trade will be represented by the kind of goods transported by express delivery companies, high-value items such as electronic goods, computers and computer parts, optics, precision equipment, medicine and medical supplies, pharmaceuticals and chemicals, aircraft and auto parts, avionics, fashions, high-value agricultural and perishable goods, and intellectual property. Thus, the services provided by the sector are vital to trade liberalization and trade expansion in the Western Hemisphere and throughout the world, and will be increasingly essential to the future growth of international trade and commerce.

Unfortunately, the ability of the express delivery sector to provide efficient and reliable service is impeded and adversely affected by a large number of governmental measures applied to express delivery services. To provide its service, the sector integrates, i.e. performs, a large number and variety of services including pick-up of the item, ground and air transport, delivery, warehousing, distribution, customs brokerage and customs clearance, and the completion of all types of required administrative, commercial, and customs procedures. Effective trade liberalization for the sector necessarily involves the reduction or elimination of all trade restrictions and trade-distorting measures applied to the various services required to be performed in the performance of express delivery services.

The removal of trade barriers and other impediments to the efficient operation of express delivery services will stimulate trade expansion and have a dynamic effect on all international business sectors. In particular, meaningful trade liberalization in the express delivery sector will act as a catalyst in encouraging small and medium-sized businesses to grow through expanded exports by freeing them from the burdens associated with otherwise arranging for the transport and delivery of their goods in international trade. For these reasons, the achievement of meaningful trade liberalization in express delivery services should be a primary goal of the United States in the next round of WTO negotiations.

III. Major Goals for Federal Express in the Next Round of WTO Negotiations

In the aforementioned submissions to the USTR concerning the upcoming GATS negotiations, FedEx made the following recommendations.

- Sector-specific negotiations: negotiations related to the express delivery services sector should be conducted on a sector-specific basis.
- *Electronic commerce:* electronic transmissions should remain free from the establishment or application of government measures that restrict and distort electronic commerce trade.
- *Trade facilitation:* GATS negotiations should include a focus on trade facilitation measures, an area in which "early harvest" can be achieved in the GATS negotiations, and result in immediate economic benefits to the U.S. trading community.
- *Down payment:* all service sectors and subsectors should be inscribed in the WTO National Schedules of Specific Commitments of respective WTO Members at the start of negotiations. Negotiations could then proceed on basis of limitations and reservations.
- *Down payment:* use of the "unbound" classification should be eliminated from negotiations on specific commitments.
- *Negative list approach:* the Uruguay Round results demonstrate that a negative list approach is warranted for trade in services negotiations, or, in the alternative, a negative-positive hybrid approach.
- *Standstill:* formal adoption of a standstill obligation at the outset of the negotiations.

FedEx believes that the Administration should pursue, for purposes of the WTO Ministerial Meeting, the following three negotiating objectives.

A. U.S. Negotiating Objective: That Negotiations concerning Express Delivery Should be Undertaken on a Sector-Specific Basis (Approach).

Except as noted below with respect to air traffic rights, the WTO negotiations should address all measures that affect trade in express delivery services. GATS Article XIX envisions successive rounds of negotiations with the aim of achieving progressively higher levels of liberalization for trade in services. The objective of such negotiations is to provide effective market access through the reduction or elimination of measures that adversely affect trade in services. For the following reasons, meaningful liberalization for the express delivery services sector only can be achieved through a sector-specific approach.

• Express delivery services are not adequately classified within any single sector or subsector contained in the sector classification list used in the Uruguay Round negotiations for negotiations on specific commitments. A sector-specific approach would require that all express delivery services be addressed in a single context/classification.

• In order to achieve meaningful trade liberalization, negotiations in express delivery services must address all applicable services, and all applicable governmental measures, in a single undertaking. This can only be done under a sector-specific approach. Governmental measures that restrict trade in express delivery services are of such a diverse and complex nature that meaningful trade liberalization will occur only to the extent that sector specific rules and principles are developed for the express delivery sector. This means that the sector must receive sector specific treatment/examination during the negotiations.

• Liberalization for express delivery services would result in enhanced cross-border movement of components, materials, goods, and finished products, and would facilitate international trade in many services. A sector-specific approach in the negotiations for express delivery services would ensure that such maximum trade benefits for goods and services are achieved in the next round of negotiations.

• Given the complex and technical nature of the sector, the development of rules and obligations would require participation by applicable non-governmental organizations and representatives of the private sector. A sector-specific approach is required to address all applicable trade and industry issues in a cohesive and focused manner.

The GATS Annex on Air Transport Services ("Annex") requires the Council for Trade in Services to review, at least every five years, the operation of the Annex and developments in the air transport sector, in order to consider the application of the GATS to the air transport sector. FedEx believes that the application and operation of the Annex should be subject to review early in the prospective GATS negotiation process.

In prior submissions, FedEx has demonstrated that the Annex should remain in effect with respect to air traffic rights. Air traffic rights were excluded from GATS coverage on the basis of a number of legitimate reasons based on international trade law, rules, and principles. That basis has not changed. In addition, developments in air transportation since the entry into force of the GATS do not warrant altering the application of the Annex with respect to air traffic rights. The following table reflects some of the principal basis that warrant the continued exclusion of air traffic rights from GATS coverage.

• It is unlikely that negotiations on air traffic rights under the current structure of the GATS legal framework would result in meaningful trade liberalization.

• There continues to exist an international organization that provides a high level of specialized expertise and regulation in air traffic rights.

• Air traffic rights are intertwined with national and state concerns regarding national sovereignty, national security, and other activities traditionally reserved to the state under international trade arrangements.

• The application of traditional trade rules and principles to air traffic rights is inherently difficult, and in some instances impractical, due to the nature of air transport services and the manner in which the sector operates.

B. U.S. Negotiating Objective: That Trade Facilitation Measures Be Established for the Express Delivery Services Sector.

Trade facilitation measures include measures that facilitate trade in goods, such as simplifying customs and transportation procedures to speed up the import, export, and trade of goods. According to the WTO, "trade facilitation is a concept that can cover a broad range of activities" which cut across any and all sectors of economic and commercial activity. WTO Doc. G/C/W/70, *Trade Facilitation, Background Note by the Secretariat*, Mar. 11, 1997, at 3. This includes trade in services. Almost any measure taken to facilitate the cross-border transaction of business would qualify as a trade facilitation measure for purposes of international trade negotiations.

There is logic to addressing trade facilitation measures at the outset of the next round of WTO negotiations, including in trade in services. Allowing the negotiations to address less divisive trade facilitation issues at the outset could give them needed momentum. In addition, without trade facilitation advances, market access gains may be diluted if trade is otherwise frustrated by non-tariff barriers.

Trade facilitation should be adopted as a trade concept applicable to all efforts to liberalize trade, and not as a stand alone responsibility of a particular group. Trade facilitation efforts should be undertaken by all WTO Working Groups and subcommittees in review of the operation and implementation of the WTO Agreements,

and should be made part of the negotiation process of successive trade negotiations, including those of the GATS.

FedEx believes that early trade facilitation progress can be had in the area of customs related measures. Customs related measures often adversely affect the provision of express delivery services. Customs related difficulties for express delivery services have been discussed within the WTO discussions on preparations for the 1999 Ministerial Meetings. WTO Doc. G/C/W/70, *Trade Facilitation: Background Note by the Secretariat, Feb.* 28, 1997, *at* ¶ 1, *citing* WT/MIN(96)/DEC.

Initial trade facilitation work for the express delivery services sector could be based on the *Guidelines Which May Be Applied to Simplify and Harmonize Customs Formalities in Respect of Consignments for Which Immediate Clearance is Requested* (hereafter referred to as the "WCO Guidelines on Express Shipments"). The establishment of the WCO Guidelines on Express Shipments was initiated during the 1980's by the "rapid growth in air traffic, and more particularly the problems raised by on-board courier and fast parcel services." *Id.* at ¶ 1. The WCO Guidelines on Express Shipments offers a range of solutions to customs officials with respect to efficient and expedited processing of express shipments. They address a wide range of issues with respect to the efficient movement of cargo, including documentation, low-value consignments, immediate and conditional clearances, transport costs, examination of shipments, and cooperation between customs and shippers.

The WCO Guidelines on Express Shipments offer an excellent starting point for advancing trade facilitation efforts under the WTO and, in particular, the GATS. Given the role of the express delivery services sector as a trade facilitator, the adoption and implementation of guidelines on express shipment would enhance export promotion and facilitate the cross border movement of all goods and services. Since the WCO Guidelines on Express Shipments are cognizable under the WTO (*vis-a-vis* the WCO and its predecessor the CCC), and have been adopted on an international basis by the express delivery services sector, the WCO Guidelines on Express Shipments represents a viable prospect for trade facilitation efforts.

C. U.S. Negotiating Objective: That the Current Standstill Obligation on Customs Duties on Electronic Commerce Remain in Effect.

A chief element of express delivery services is heavy reliance upon advanced information technologies, the Internet, and E-commerce. In the WTO Ministerial Declaration on Global Electronic Commerce (May 1998), WTO Members agreed to refrain from applying measures to electronic commerce that are more trade restrictive than those in place on May, 1998. In particular, WTO Members agreed not to apply duties to electronic transmissions.

The governing principle in future negotiations should be that the imposition of customs duties where such duties do not currently exist is contrary to trade expansion under conditions of progressive liberalization. Indeed, WTO Members should formally recognize that such duties constitute barriers to trade in services and have the potential to dilute the trade promotion and facilitation benefits of electronic commerce. The GATS most-favored-nation and national treatment principles should have unconditional application to the provision of internet access and to other forms of electronic commerce, such as processing data telephonically.

In addition, WTO Members should ensure that all measures affecting electronic commerce are administered in a reasonable, objective, and impartial manner. The trend towards applying internationally recognized and accepted commercial legal standards to electronic commerce should continue, and the application of country specific, non-transparent laws should be discouraged. Strong disciplines must be developed to prevent domestic service suppliers from adopting or engaging in practices relative to electronic commerce which would reduce the competitiveness of foreign service suppliers.

VIII. Conclusion

FedEx appreciates the opportunity to present this statement of its views and recommendations to the Subcommittee on Trade with respect to the progress and potential impact of the 1999 WTO Ministerial Meeting in Seattle.

Respectfully submitted.
By: M. Rush O'Keefe, Jr., Esq.
Vice President, Legal
Federal Express Corporation

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Statement of Floral Trade Council, Haslett, Michigan

The Floral Trade Council (FTC) submits these comments for inclusion in the record of the Subcommittee on Trade's hearing of August 5, 1999, on U.S. negotiating objectives for the World Trade Organization (WTO) Seattle ministerial meeting. The Floral Trade Council (FTC) is a U.S. trade association composed of growers and/or wholesalers of fresh cut flowers. The FTC is based in Haslett, Michigan, and its members are located throughout the United States.

The FTC follows international trade negotiations closely. The FTC submitted comments to the Committee on Ways and Means in 1993 and 1994 during the Uruguay Round, and it appreciates the opportunity to participate in the Committee's preparation for the upcoming WTO ministerial meeting.[1]

The FTC's close interest in WTO negotiations derives from the international nature of the fresh cut flower industry. Despite their high perishability, cut flowers are a heavily traded product in the international market. Through modern transportation, growers in Kenya supply florist shops in Germany, Dutch grown flowers are sold in the United States, Colombian flowers are shipped to Russia, and fresh cut flowers from the United States are exported to Taiwan.[2]

INTERNATIONAL TRADE AND THE U.S. CUT FLOWER INDUSTRY

As we enter the next millennium, the future of the domestic fresh cut flower industry is uncertain. In recent years, U.S. producers have suffered severe economic hardship. Between 1996 and 1997, employment figures for growers of four varieties of cut flowers tracked closely by the FTC—standard carnations, miniature carnations, standard chrysanthemums, and pompom chrysanthemums—declined collectively by 12.5 percent.[3] This comports with the general trend of the past several years of the U.S. industry losing approximately 10 percent of its growers annually.[4]

Of the world's major fresh cut flower consuming countries, the United States has the most open market. The United States imposes no duties on the importation of flowers from some of the world's largest flower producing countries, e.g., Colombia, Ecuador, Israel, and Mexico, while producers in other major exporting countries, e.g., the Netherlands, pay nominal tariffs upon entry into the United States. Meanwhile, the world's other major country markets for fresh cut flowers maintain stricter import policies, in the forms of tariffs and non-tariff measures, than does the United States.

This situation adversely affects U.S. producers in two ways. First, barriers abroad hinder the ability of U.S. growers to export. Second, and perhaps most harmful to producers in the United States, protected markets abroad have resulted in the world's excess flower production, often by default, entering the United States and saturating the domestic market.

To address economic distortions that currently exist in the international market for fresh cut flowers, the FTC requests that the United States adopt the following policies in preparation for the upcoming round of multilateral trade negotiations.

ZERO-FOR-ZERO TARIFF ELIMINATION

The FTC requests that the United States pursue a policy of zero-for-zero tariff elimination during upcoming WTO talks. In other words, the FTC requests that the United States offer duty-free treatment for all imports of fresh cut flowers.[5] In re-

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[1] See Uruguay Round of Multilateral Trade Negotiations, Hearings Before the Subcomm. on Trade of the Comm. on Ways and Means, 103rd Cong., 1st Sess. 315 (1993) (Written Statement of the Floral Trade Council). Trade Agreements Resulting from the Uruguay Round of Multilateral Trade Negotiations, Hearings Before the Comm. on Ways and Means, Subcomm. on Trade, 103rd Cong., 2nd Sess. 776 (1994) (Written Statement of the Floral Trade Council).

[2] Markus Frimmersdorf, U.S. Department of Agriculture, Foreign Agricultural Service, Germany: Cut Flowers and Ornamental Plants at 12, AGR Number: GM6052 (August 15, 1996); Chris J.M. Langezaal, U.S. Department of Agriculture, Foreign Agricultural Service, The Netherlands: Cut Flower Production and Trade at 1, AGR Number: NL6114 (August 8, 1996); John Helmer, Russia's Airline Fills Unusual Niches in International Cargo Transport, JOURNAL OF COMMERCE (August 4, 1998); David Hill, U.S. Department of Agriculture, Foreign Agricultural Service, Taiwan Market Brief: Cut Flowers at 2, AGR Number: TW5322 (July 31, 1995).

[3] Source: U.S. Department of Agriculture, Floriculture Crops: 1997 Summary (April 1998) at 14, 16, 18, and 20.

[4] Everything's Coming Up Roses for Firms on Valentine's Day, JOURNAL OF COMMERCE (February 14, 1996).

[5] Fresh cut flowers are classified in the U.S. Harmonized Tariff Schedule under 0603.00.

turn, the United States should insist upon the same treatment for U.S. grown flowers sold in other markets and see that unnecessary non-tariff barriers to U.S. flower imports are removed.

While such a policy would call for zero tariffs around the world, the FTC seeks, at the minimum, tariff elimination in all member countries of the Organization for Economic Cooperation and Development (OECD) and all major flower producing and consuming countries. This would permit U.S. growers to compete better internationally and to capture a larger share of the global market.

Zero-for-zero tariff elimination, contingent upon the removal of certain non-tariff barriers, would result in a true international free market for cut flowers. Such a policy would end inequities in tariff levels that give our foreign competitors unfair advantages. For example, U.S. growers currently exporting to the European Union (EU) from November 1 to May 31 must pay tariffs ranging from 9.9 to 11.3 percent;[6] when exporting between June 1 and October 31, a period of high productivity and low demand in the international flower market, they pay even higher tariffs of 14 to 16 percent.[7]

In contrast, EU flower growers exporting to the United States pay, throughout the year, an average tariff of only 5.6 percent.[8] As such, zero tariff levels would put U.S. and EU growers on an even footing.

Zero-for-zero tariff elimination would change the current situation in which a large number of the world's cut flower producing countries enjoy unfettered access to the U.S. market, unencumbered by tariffs, through the Andean Trade Preference Act,[9] the North American Free Trade Agreement, the Caribbean Basin Economic Recovery Act, the United States-Israel Free Trade Area Agreement, and the Generalized System of Preferences program, while at the same time the markets of other countries remain relatively closed.

Zero-for-zero tariff elimination would also enable producers in other countries to sell more of their products in third markets, thus relieving pressure on U.S. growers who compete with imported flowers in the United States.[10]

While the FTC strongly supports further trade liberalization through zero-for-zero tariff elimination, this support is predicated upon the increased harmonization of pesticide usage and the elimination of unfounded phytosanitary barriers by certain countries, e.g., Japan, as discussed below.

In addition, the policies advocated by the FTC in this submission, including tariff elimination, should be applied as soon as possible to countries seeking membership in the WTO if they do indeed become members. Such countries include Taiwan—a relatively large flower producing and consuming country,[11] China—a potentially large exporter and/or importer, and Russia—currently a very large market.[12]

MARKET ACCESS

If zero-for-zero tariff elimination cannot be accomplished during the upcoming negotiating round, the FTC requests, at the least, that U.S. officials pursue increased access abroad for U.S. grown flowers in particular markets.

With its large population, a culture that appreciates flowers, and zero tariffs on flower imports, U.S. growers see Japan as a major potential market for their products.[13] U.S. producers have made attempts to enter Japan, but due to overly strict phytosanitary regulations and exceedingly expensive requirements to comply with such regulations, they have been unable to do so. U.S. negotiators should seek a

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[6] OJ No L 292, 30.10.98, p. 85.

[7] Id. at 84.

[8] U.S. Harmonized Tariff Schedule 0603.10.30 to 0603.90.00.

[9] The FTC recognizes that the European Union (EU) operates a special GSP program for imports of products from the Andean countries (Bolivia, Colombia, Ecuador, and Peru), including imports of fresh cut flowers. See Council Regulation (EEC) No 3835/90 of 20 December 1990, OJ No L 370, 31.12.90, p. 126. This program, like the Andean Trade Preference Act (ATPA) of the United States, was designed to encourage the cultivation of non-illicit crops in those countries. However, unlike with the ATPA, it appears that the EU's special GSP exemption from import duties can be suspended if production is damaged in one of the EU member states. According to a press report, import duties of 70 percent were imposed on imports of carnations from Colombia in 1992 following complaints that Greek growers were being harmed by such imports. 1992—The European Community Roundup Week of Nov. 16, JOURNAL OF COMMERCE (November 18, 1992).

[10] See Flower Growers Applaud GATT, JOURNAL OF COMMERCE (December 16, 1993).

[11] See David Hill, U.S. Department of Agriculture, Foreign Agricultural Service, Taiwan Market Brief: Cut Flowers at 3 and 5, AGR Number: TW5322 (July 7, 1995).

[12] See Russia a Growing Market for Fresh Flower Industry, JOURNAL OF COMMERCE (June 23, 1998).

[13] Tariff Schedule of Japan at 0603.00.

commitment that Japan permit pre-clearance inspections at the principal ports of export in the United States in lieu of recognizing the integrity of domestic inspections. Preferably, in order to reduce costs, pre-clearance inspections would not require the direct involvement of Japanese officials. Instead, the U.S. Department of Agriculture would certify the shipments.

U.S. growers, many of whom are located in California, would welcome the opportunity to sell their products in other countries in Asia, such as Korea. But with a tariff on fresh cut flowers of 25 percent, and Korea's phytosanitary policies that appear specifically to target imports, the FTC recognizes that it will be difficult to gain access to that market.[14] Regardless, the FTC requests that U.S. trade negotiators attempt to reach a commitment with Korea on market access for U.S. fresh cut flowers.

ANTIDUMPING

As noted above, distortions in the international fresh cut flower market have resulted in the world's excess flower production often flooding the U.S. market, in part due to closed markets in third countries. These conditions have caused U.S. growers to resort frequently to our country's antidumping laws. Without these laws, the domestic flower industry would have suffered even greater harm over the years.

As the WTO Antidumping Agreement and the changes it brought to U.S. antidumping law, such as sunset reviews, are still in the process of implementation, the FTC strongly urges U.S. negotiators to oppose the reopening of this agreement during upcoming negotiations.

SUBSIDIES

The U.S. fresh cut flower industry, which receives no subsidies, has suffered as a result of artificial advantages provided to its competitors through governmental support. The FTC has resorted to the countervailable subsidy laws to address injurious foreign subsidization, and it encourages the United States to strengthen these laws.

With regard to export subsidies, the FTC asks U.S. negotiators to propose an end to all such government programs. The international floricultural market today may be distorted in part through such subsidies. For example, Israel's government provides grants to cover up to forty percent of investment costs in export oriented "high tech agriculture" industries, and the flower industry is given priority in this program.[15] As the vast majority of Israeli grown flowers are exported, flowers benefiting from these grants compete directly with U.S. products in the international market. Consequently, Israel's program makes it more difficult for U.S. flowers, and flowers from other countries currently entering the United States, to be sold outside of our borders, namely in Europe.

PESTICIDE HARMONIZATION

U.S. growers are perhaps the most heavily regulated flower producers in the world. The federal and state governments are increasingly banning the use of certain pesticides, fungicides, and herbicides of great importance to the domestic industry. At the same time, however, our competitors in other countries are not necessarily constrained by such laws. This situation results in significant cost and quality advantages for growers outside of the United States.

The FTC strongly encourages U.S. negotiators to advocate increased international harmonization of the use of pesticides, fungicides, and herbicides. Such harmonization could occur within the framework of Article 3 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

PATENT RIGHTS

The United States is an international leader in plant breeding, so the FTC is concerned about the failure of foreign growers to pay royalties to patent holders. Plant breeders suffer when they are unjustly denied royalties. According to some estimates, U.S. developers of cut flower varieties have lost up to $30 million annually in royalties on flowers imported into the United States.[16]

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[14] Tariff Schedule of Korea at 0603.00. U.S. Trade Representative, 1999 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS at 278.

[15] Tully Friedgut, U.S. Department of Agriculture, Foreign Agricultural Service, Israel: Review of Flower Production and Exports at 1, AGR Number: IS6018 (August 6, 1996).

[16] S. African Grape Ruling a Landmark, JOURNAL OF COMMERCE (January 8, 1997).

U.S. cut flower growers suffer from the current situation as they pay full patent royalties—but their competitors often don't. According to the National Association of Plant Patent Owners, foreign exporters of roses to the United States save up to 75 to 85 cents per plant by not paying royalties.[17] With more countries increasingly developing cut flower industries, this problem can be expected to worsen in the future unless adequate measures are taken soon at the multilateral level.[18]

The FTC would like to express its gratitude to Congress for the passage in the 105th Congress of H.R. 1197, the Plant Patent Amendments Act of 1998, which was signed into law. Prior to passage of this law, the U.S. Customs Service was only able to seize full plants propagated without the authorization of the patent holder, and not parts of plants, like flowers.[19]

SPS AGREEMENT

The FTC is generally pleased with the SPS Agreement as written. While the FTC is concerned that U.S. growers have faced unjustified phytosanitary barriers when attempting to export to certain markets, e.g., Japan, the FTC believes that the SPS Agreement provides the appropriate mechanism for addressing such barriers. In addition, U.S. greenhouses are occasionally threatened by invasive pests and diseases, and the FTC is confident that the SPS Agreement provides the right balance between protecting from true risks and facilitating trade.

Consequently, the FTC asks that the United States oppose efforts to make any major changes to the SPS Agreement. Above all, science must remain the basis for this agreement.

While the FTC does not seek modification of the SPS Agreement, it does request that U.S. officials discuss with their foreign counterparts the development of financially viable means of countries self-certifying cut flower exports. (see above discussion of Japan)

CONCLUSION

The FTC appreciates the opportunity to present these comments to the Subcommittee on Trade. The FTC's members look forward to working further with the Congress during the upcoming WTO trade round.

Sincerely,

KENICHI BUNDEN
President of the Floral Trade Council

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Statement of Bob Crawford, Commissioner of Agriculture, State of Florida

Thank you for the opportunity to present to you our comments and our interests on the agenda to be discussed at the third Ministerial conference of the World Trade Organization (WTO) and on the importance of international trade and equivalencies for our agricultural products. These multilateral negotiations are exceedingly important to our state and we agree with USTR that it is a high honor for the U.S. to host the first meeting of this next round. We appreciate Ambassador Sue Esserman's comments that we want "assurance that the WTO is transparent, accessible and responsive to concerns of citizens." This opportunity today, as well as the listening sessions just recently held by USTR and USDA, are excellent examples of such responsiveness. We hope that the input provided to USTR, USDA, and Congress will be incorporated into the upcoming agenda.

International trade in perishable and seasonal agricultural products as well as animal agriculture, timber, nursery, foliage and aquaculture products are all important to the State of Florida. Florida agriculture is second in the nation in cash receipts for vegetable crops with total agricultural crop cash receipts of over $6 billion, $2 billion in forest receipts and a $54 billion impact to our state's economy. Approximately 19% of our agricultural production is exported.

I offered testimony at the first hearing by Congress on the WTO Ministerial when the House Agriculture Committee Subcommittee came to Palm Beach, Florida last year. On June 4, Florida was pleased to host the first USTR/USDA listening session for agriculture on the WTO Ministerial. In addition, the Florida Department of Agriculture and Consumer Services (FDACS) submitted comments to the U.S. Trade

[17] U.S. Grower Renews Patent Battle, JOURNAL OF COMMERCE (May 22, 1996).
[18] See id.
[19] S. African Grape Ruling a Landmark, JOURNAL OF COMMERCE (January 8, 1997).

Representative on October 16, 1998, regarding the upcoming WTO ministerial and on January 8, 1998, relating to the triennial review of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) of the WTO. We have provided comments through our agricultural coalition, NFACT, representing agriculture in the states of New Mexico, Florida, Arizona, California and Texas. These five states produce mainly specialty crops and livestock and account for 23% of the U.S. cash receipts for total agriculture. On a trilateral basis, at the recent National Association of State Department's of Agriculture Accord of all Commissioners, Secretaries and Directors of Agriculture in Mexico, Canada, and the U.S., the WTO Ministerial was recognized for its significant importance to our three countries' agriculture and a consensus letter on important agricultural issues for the upcoming ministerial has been sent to both trade and agriculture officials in all three NAFTA countries.

Florida's agricultural industry and our agency will be present and as proactive as permitted at the upcoming WTO Ministerial in Seattle. We realize the globalization of commerce. We must work to gain appropriate access to allow trade in our agricultural products as well as to work with USTR and our trading partners for fairness and equivalency in trade matters. The major issues we feel should be addressed include the following items.

Perishable and Seasonal Agriculture and General Issues

Issues important to seasonal and perishable or specialty agriculture were not fully addressed during the last round of multilateral trade negotiations. We have requested that these issues be addressed on the agenda in the upcoming Ministerial Round. We must have some mechanism to address price collapses in perishable commodities. We desire specific rules to deal with seasonal and perishable agricultural products, as well as enforcement of scientifically based sanitary and phytosanitary issues, workable and timely safeguard mechanisms, rapid dispute settlement resolutions, open market access, and elimination of tariff and non-tariff barriers to trade. We, along with other states with similar interests, pledge to work with USTR, USDA and our Congressional Delegation to affect policy matters both in the international WTO Ministerial negotiations and to forge needed changes in domestic law to gain a conducive situation to trade in our agricultural products.

Market Access

We are pleased that recent statements from Ambassador Sue Esserman have focused on the need for market access for our U.S. products. The lack of reciprocal free market access for the U.S. to the nations who freely trade their agricultural products in the U.S. is a pervasive and highly significant issue. Five years have elapsed since the signing of the North American Free Trade Agreement yet not one Florida orange has been able to be shipped to Mexico. Chile is one of the major agricultural trading partners of the U.S. with a whole host of fruits and vegetables freely sold in our markets in increasing quantities each year with $628 million imported by the U.S. last year in the consumer agriculture category. Yet, the U.S. was denied the right to export similar products to Chile and we exported only $38.9 million in the same category. Other nations denying access to our commodities include Australia, New Zealand, Argentina and China. The USDA statistics for Mexico, Chile, Australia, New Zealand and Argentina show that we imported $6.35 billion to exports of $2.12 billion in the consumer agricultural product category which includes meat, dairy, and fresh fruits and vegetables.

We applaud the recent efforts of the USTR and USDA to gain an agreement on citrus, meat and wheat with China. We look forward to the finalization of this process by visits of inspecting officials from China so that the door can finally be legally opened to citrus shipments. Although concentrated efforts by both USTR and USDA in the past two years opened Japan to trade in U.S. tomatoes, many other commodities remain restricted. Even trade in tomatoes remains difficult as Japan continues to request specific varietal testing, an issue which was resolved with WTO by your office for apples.

The United States has permitted free market access for many nations around the world. It is unacceptable that a large number of these nations do not allow any reciprocal marketing of U.S. agricultural products. Any further multilateral negotiations need to make clear market access for U.S. products a mandatory provision of the agreements.

Market access is denied for a host of reasons. The most frequent reason we experience for denying market access for our products is scientifically unfounded sanitary and phytosanitary reasons. This constitutes the most flagrant non-tariff trade bar-

rier. The lack of rapid dispute settlement mechanisms exacerbates the denial of market access for phytosanitary reasons.

General Rules for Perishable Commodities

No specific rules exist to deal with general trade or dispute resolution involving perishable and seasonal commodities. The former head of the Uruguay Round agriculture negotiating team when asked, at the Ag Forum immediately preceding the FTAA Business Forum in Belo Horizonte, if specific rules for perishable commodities were needed, agreed that specific rules could be helpful and may be advisable. Florida has sought recognition that trade remedies should be available on perishable and seasonal agricultural products that reflect the commercial realities of these products. The Agreement on Agriculture already recognizes the need for separate treatment or timelines. We request that the U.S. consider adding discussion of the need for rules for perishable and seasonal commodities as an item on the agenda for the upcoming ministerial in Seattle. Similarly, the U.S. should include in the negotiations consideration of what, if any, special rules may be needed to cope with commodity price collapses such as have been experienced in livestock and grain.

Sanitary and Phytosanitary Issues

The SPS and market access issues are intertwined, and the SPS issue becomes both an import and export issue. When we attempt to address market access issues, often, before we can even confirm the absence of such a problem in our state, we detect another pest or disease entry that must be immediately addressed with intensity of personnel and capital investment.

The prevention, control and eradication of introduced plant and animal pests and diseases is a dramatic budget burden on our states. From 1995 through 1998, Florida spent over $140 million in state funds to eradicate new plant and animal pests and disease introductions including many detected for the first time in the continental U.S. Since this list was compiled, additional species of foreign ticks as well as the African hive beetle that is decimating the honey bee industry have been detected in Florida for the first time in the continental U.S.

The budgets and staffs of the Customs, USDA and FDA for border inspections and surveillance have not kept pace with the increased volume of trade across our U.S. borders. The inadequate budgets of U.S. agencies is a domestic issue, but it can not be fully remedied by Congressional appropriations. We must have full implementation of the SPS Agreement by all trading partners, along with tighter domestic measures for pest and disease prevention in the nations with whom we trade, and increased resources for federal agencies for prevention, early detection and eradication of pest and disease introductions to not only reduce our resource demand but to aid market access.

With all SPS matters, the critical factor is a strict adherence to sound science. Recognition of sound science will allow free market access in many instances. We appreciate the sanitary and phytosanitary concerns of our trading partners. However, if we clearly demonstrate scientifically the absence of hazard and if, in addition, we accept products from pest free zones or certified product from our trading partners, we must demand their reciprocity and open doors to our products.

Request-Offer Approach to Negotiations

As differences exist within product categories as to what makes sense for market access abroad, the formula approach for negotiations can sometimes be harmful to U.S. commercial interests. Thus, the Florida agricultural community supports the request-offer approach, coupled with negotiations for subsidy and non-tariff barrier reforms, in upcoming WTO negotiations.

Dispute Resolution

We appreciate the commitment USTR made to focus on dispute resolution, and we would ask that you include in that discussion rapid provisions to deal with perishable products. The U.S. has utilized the dispute settlement process many times in the WTO. Yet, dispute settlement with perishable commodities is fundamentally more difficult due to the perishable nature of the traded item and the very lengthy process of resolution. We request that some consideration be made for a more rapid dispute settlement process to be accessed when a perishable commodity is involved.

COMPLIANCE WITH WTO DISPUTE SETTLEMENT FINDINGS

A goal of U.S. negotiators during the Uruguay Round was to increase access for U.S. agricultural products into markets that were already relatively closed. For this reason, U.S. agricultural producers were, overall, supportive of the implementation of these agreements by the United States. However, four years after the conclusion of the Uruguay Round, some of Florida's agricultural producers question the success of the trade agreements that resulted from it. Namely, Florida's farmers and ranchers are disappointed that other countries have failed to abide by the decisions, most recently the beef hormone panel and Appellate Body decisions against the EU's actions, that have resulted from the WTO's dispute settlement process.

Florida's farmers and ranchers are wary of negotiations that will result in a further decline in the modest protection afforded to them while our trading partners do not abide by their current obligations. The failure of the European Union, a major agricultural producer, to come into compliance with decisions of the Appellate Body of the WTO is especially troubling.

WORKABLE SAFEGUARDS

Currently, we believe that no workable safeguard mechanisms exist for perishable commodities. Although previous agreements attempted to utilize Tariff Rate Quotas and snap back provisions, these have not proved effective in use and we hope that this issue can be discussed at the upcoming Ministerial.

EQUIVALENCY OF REQUIREMENTS

Lack of harmonization and equivalency regarding chemical usage, pesticide registrations, and food safety standards place an unnecessary burden upon U.S. industry, are sometimes used as non-tariff trade barrier reasons to deny market access and should be addressed. Differing pesticide regulations with Canada frequently leads to unresolved trade issues. Lack of equivalency in chemical requirements also places our Florida and U.S. growers at a competitive disadvantage. For instance, while some amelioration of the U.S. phase-out of methyl bromide occurred, our producers still face competitive disadvantage with many of our trading partners who will be permitted extended usage. Research has still not identified nor approved effective alternatives. Those alternatives that partially replace methyl bromide present environmental contamination concerns that offset their benefits. The lack of equivalency in the environmental and labor arena as well as currency devaluation problems represent difficult issues to address yet do not allow our producers to be competitive.

FTAA VERSUS WTO MINISTERIAL CONSIDERATION OF AGRICULTURE ITEMS

Negotiations have been ongoing for the Free Trade Area of the Americas (FTAA) Agreement. Although these negotiations are continuing, we believe that many of the agricultural issues are broad, world wide issues that would be better addressed in the upcoming round of multilateral negotiations instead of finalizing the issue in the FTAA negotiations.

ANTIDUMPING AND COUNTERVAILING DUTY LAWS

The FDACS supports the ability of the United States to maintain strong antidumping and countervailing duty laws. Without these laws, Florida's farmers and ranchers would be even more vulnerable to unfair trade practices of producers in other countries. As such, the FDACS does not favor the reopening of these laws for negotiation during the next round of the WTO.

If negotiations on the Antidumping Agreement of the WTO are reopened, the FDACS requests that the USTR examine possible changes to the WTO Antidumping Agreement that could benefit Florida's specialty crop growers. In particular, the FDACS would like to see the definition of industry clarified to provide for separate industries for perishable products grown in particular seasons. Such a definition would aptly describe Florida's fresh winter vegetable industry, which, during the winter months, produces the vast majority of vegetables grown in the United States. We would also like to see the definition clearly permit livestock producers and other agricultural producers to bring cases on products sold at retail. To the extent such changes can be done at the national level without WTO modifications, we urge the Congress to make such changes promptly.

TARIFF RATE QUOTAS

Tariff rate quotas (TRQs) provide a modicum of protection for producers of import-sensitive agricultural products who must compete in world markets characterized by price distortions. The TRQ on beef provides the United States with a limited ability to protect Florida's ranchers from distortions in the international beef market, and a major goal of the United States during upcoming WTO negotiations should be to maintain the right to impose TRQs on these types of product.

Similarly, Florida's sugar industry is efficient and cost-competitive in the international market. But the support of domestic sugar producers by other governments results in a world dump market price for sugar. Some foreign sugar producers receive not only massive governmental support, but also have highly protected domestic markets. For example, the average EU tariff on imported sugar in 1997 was 61.8 percent. The distorted and volatile international sugar market results in a very import-sensitive sugar industry in Florida and other states. To alleviate the effects on Florida farmers caused by distortions in the international price of sugar, the FDACS encourages the USTR not to negotiate away the ability of the United States to maintain this TRQ at current levels *prior* to the elimination of all export and domestic subsidies on sugar.

EXPORT SUBSIDIES

The United States should negotiate for an end to all export subsidies in upcoming WTO talks. In doing so, the United States should address practices that in effect permit countries to avoid export subsidy commitments, such as pooling arrangements and dual pricing systems, which, by creating artificially low export prices for many foreign producers, undercut U.S. products in the world market.

STATE TRADING ENTERPRISES

State trading enterprises (STEs) provide support to domestic producers through a variety of arrangements. Their presence in agricultural trade has greatly facilitated the ability of foreign countries to restrict trade from the United States. Efforts to date in the GATT and now the WTO to ensure compliance with Article XVII principles have been fruitless. The FDACS suggests that the United States advocate the elimination of STEs during upcoming WTO negotiations.

SUMMARY

International trade in perishable and seasonal specialty crops as well as animal agriculture is very important to the State of Florida. We request that you consider for the agenda for the WTO Ministerial the need for rules for perishable and seasonal agriculture, enforcement of sanitary and phytosanitary provisions, market access, workable safeguards, equivalency of requirements, antidumping and countervailing duty measures, tariff rate quotas, export subsidies, state trading enterprises, and workable dispute settlement provisions. We urge the U.S. Trade Representative to negotiate actively for increased market access for Florida's agricultural products, preferably through the request-offer approach. We appreciate the opportunity to provide you our position as the U.S. prepares for discussions in Seattle in November.

[Attachments are being retained in the Committee files.]

Statement of Mary Sophos, Senior Vice President, Government Affairs, Grocery Manufacturers of America

My name is Mary Sophos and I serve as Senior Vice President of Government Affairs for the Grocery Manufacturers of America (or "GMA"). GMA welcomes this opportunity to present our views on US negotiating objectives for the WTO round to be launched this November in Seattle, Washington. GMA is the world's largest association of food, beverage and consumer product companies. With US sales of more than $450 billion, GMA members employ more than 2.5 million workers in all 50 states. Led by a board of 42 Chief Executive Officers, GMA speaks for food and consumer product manufacturers at the state, federal and international levels on legislative and regulatory issues. GMA also leads efforts to increase productivity and efficiency in the food industry.

GMA views the upcoming WTO Ministerial in Seattle as a crucial opportunity for the United States to continue its agenda of pressing for trade liberalization through market access measures, reduced tariffs and the dismantling of disguised (and,

frankly, not so disguised) barriers to trade. Increased market access is a *vital* issue for our members both with respect to processed food products and primary agricultural commodities. Given the importance of the food and agricultural sector, increased access is also critical for the US economy.

Processed food products now account for a *higher* percentage of US agricultural exports than primary agricultural commodities. In 1998 consumer food exports accounted for 39% of all US agricultural exports, while bulk commodities represented 38%. Together, consumer and intermediate products (which have also undergone some processing) now account for 62% of total exports. These figures represent a significant change—only 25 years ago, consumer food exports constituted just 10% of the total US agricultural exports pie, while bulk commodities accounted for 76%. Not surprisingly, the bulk of this growth has come from Mexico and Canada, where tariff and non-tariff barriers are being successfully dismantled under the NAFTA agreement. Globally, however, processed food exports still face tariff barriers that are, on average, five times the U.S. rate.

GMA respectfully offers its initial views on four important issues we face as the US prepares for the next Ministerial:

- First, we believe it is essential to improve market access for processed food products and primary agricultural commodities through reduced tariffs, elimination or further liberalization of TRQs and other mechanisms;
- second, GMA recommends that the elimination of agricultural export subsidies should be priority for the upcoming negotiations;
- third, state trading enterprises need to be opened to public scrutiny and we must ensure that their commercial activities are market based; and
- fourth, the Sanitary and Phytosanitary ("SPS") Agreement and the reliance of SPS measures on scientific principles has been an important check on limiting disguised trade barriers—we should not reopen the Agreement at this time lest its integrity be compromised.

EXPANDING MARKET ACCESS FOR PROCESSED FOOD AND PRIMARY AGRICULTURAL PRODUCTS

The tariffication and commitment to reduce tariffs by 36% on a simple average basis that occurred in the Uruguay Round was a critical *first* step in improving market access. We must now build on that foundation by achieving a significant expansion of market access in the upcoming negotiations. We recognize that the most effective mechanism for achieving increased market access may vary from product to product—therefore, the US should consider and pursue several mechanisms in the next Round. Application of a formula tariff cut that would result in *major overall reductions in tariff levels*, substantial reduction in tariff peaks, and, where appropriate for specific products, a zero-for-zero tariff agreement would contribute significantly to increasing market access for agricultural commodities and processed food products. Current tariff rates are too high—as the USDA's Economic Research Service has reported, agricultural tariffs now average over 40%, while average industrial tariffs have declined to an estimated 4%.

GMA also recommends that the U.S. seek a *significant expansion of the minimum market access commitment* for processed food and primary agricultural products achieved during the Uruguay Round. Quotas also represent a major barrier and, as a result, the US should pursue substantial increases in applicable quotas, significant decreases in out of quota tariff rates and elimination of in-quota duties.

Lastly, if our commitment to expanding market access abroad for US products is to be taken seriously by our trading partners, domestically favored industries and products must not be excluded from the upcoming negotiations. Tariffs and quotas on sugar, peanuts and dairy products must be liberalized. The US must not shy away from helping lead the way in that liberalization. Simply put, our negotiators will have a much stronger position in world trade talks once they are able to demonstrate serious resolve to open markets by further opening of the American market for sugar, peanuts and dairy products. We strongly recommend that sugar, peanuts and dairy products be kept on the table in the negotiations.

ELIMINATION OF EXPORT SUBSIDIES

Let me now turn to the issue of subsidies. If we are to ensure a level playing field for agricultural commodities and processed food products, the *massive export subsidies* provided by many of the US' most important trading partners *must be eliminated*. Our goal is to see export products compete on their quality, merit and consumer interest, not the degree to which they have been subsidized. Therefore, the elimination of export subsidies on all primary agricultural commodities and proc-

essed food products should be an important US objective in the upcoming negotiations.

While we are also concerned about achieving a reduction in domestic support for agricultural commodities and processed food products, we believe the most effective means to ensure a lessening of this support is to focus on increasing market access and eliminating export subsidies. Working together, these two tools provide the needed discipline in the marketplace and will inevitably result in the desired reduction of domestic support.

STATE TRADING ENTERPRISES

With regard to State Trading Enterprises (or "STEs"), greater openness and stricter disciplines are needed. STEs play a significant role in agricultural trade, and we must ensure that their commercial activities are market based and their actions open to public scrutiny. STEs should not be a vehicle to evade previous (and future) trade liberalization commitments. Greater transparency will help ensure that import STEs do not inhibit market access and export STEs do not engage in trade-distorting practices.

THE SPS AGREEMENT

GMA strongly urges the US to exclude the Agreement on Sanitary and Phytosanitary Measures (SPS) from the scope of the talks at the upcoming third Ministerial Conference. The SPS currently requires that any measures taken with respect to the Agreement be based on scientific principles. SPS' reliance on scientific and international standards is essential if we are to ensure that arbitrary health and safety regulations are not used as disguised trade barriers. The SPS agreement also does nothing to hinder the right of countries to determine the appropriate level of protection from any genuine risk. In fact, Article 3.3 of the Agreements states that countries can maintain health and safety measures that result in a *higher level* of protection than would be achieved by adherence to an international standard, provided that the higher level of protection is the result of a risk assessment.

New negotiations regarding the SPS Agreement are neither mandated nor warranted in the present circumstances. Further experience with the Agreement is needed before sound judgments can be made as to whether the Agreement requires any substantive revision. Any reopening of the Agreement at this time could lead to a weakening of its provisions—a result which GMA strongly opposes and which would represent a significant step backwards in eliminating unwarranted restrictions on trade.

CONCLUSION

We are encouraged that USTR has tabled proposals in Geneva with very similar negotiating objectives for agriculture to the ones presented above. In the coming months, however, more specific proposals will need to be carefully developed and concrete negotiating objectives set. On behalf of GMA, let me pledge our full cooperation in doing everything we can to ensure that the Seattle Ministerial Conference and the next Round are successful in liberalizing trade in agricultural commodities and processed food products. We look forward to working closely with you in the months ahead. Thank you for this opportunity to share our initial views.

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Statement of the Intellectual Property Committee

The Intellectual Property Committee (IPC) is pleased to provide its views to the Subcommittee on Trade of the Committee on Ways and Means on the US objectives for the 1999 WTO Ministerial meeting. The IPC will focus its comments on issues related to intellectual property protection and enforcement, namely, the importance of the proper and timely implementation of the WTO TRIPS Agreement; the built-in agenda for further intellectual property negotiations that is already called for by the TRIPS Agreement; and the appropriate timing for the launch of any negotiations for higher levels of intellectual property protection that may result from the Seattle Ministerial meeting.

The views of the IPC on the need for the highest standards of intellectual property protection and enforcement worldwide and, in particular, on the proper and timely implementation of the TRIPS Agreement are well known to the Subcommittee. IPC representatives have appeared before this Subcommittee on numerous occasions over the course of the Uruguay Round negotiations and since the com-

pletion of the Round. Most recently, in September 1997, the IPC provided its views on the role that the WTO Singapore Ministerial could play in meeting US policy objectives of the proper and accelerated implementation of the TRIPS Agreement.

The IPC, which was formed in March 1986—six months before the Punta del Este ministerial meeting that launched the Uruguay Round—is the only business group that has as its specific mission the mobilization of domestic and international support for improving the protection of intellectual property. The members of the IPC—General Electric, Johnson & Johnson, Merck, Monsanto, Pfizer, Rockwell International, Texas Instruments and Time Warner—represent the broad spectrum of private sector US intellectual property interests.

The IPC achieved a significant milestone in 1988 when it developed a US-European-Japanese industry consensus in support of inclusion of intellectual property in the Uruguay Round of multilateral trade negotiations. The 100-page report defined in detail the minimum standards for ensuring fundamental protection for all categories of intellectual property and proposed procedures for enforcing that protection. Over the course of the ensuing GATT intellectual property (TRIPS) negotiations, the IPC managed the trilateral industry consensus, which ensured that industry's view shaped the final TRIPS Agreement. The IPC continues to collaborate closely with our private sector counterparts abroad in support of our mutual objective of strong worldwide intellectual property protection.

The IPC's long support and continuing search for improved worldwide intellectual property protection stem from the inexorable link between intellectual property protection and American competitiveness and job growth. America's competitive edge rests ultimately on our creativity and resourcefulness—the unique ability of Americans to generate new ideas and develop new ways of looking at the world. Our most internationally-competitive industries depend on intellectual property protection: for example, the computer software, motion picture, sound recording, pharmaceutical, chemical and electronic industries are among the largest and fastest growing segments of the US economy. Employment in these industries is growing at a faster rate than employment in the economy as a whole. Furthermore, the foreign sales of these industries make major positive contributions to the US balance of payments.

THE TRIPS AGREEMENT AS A BASELINE FOR INTELLECTUAL PROPERTY PROTECTION

Any discussion of the treatment of intellectual property at the Seattle Ministerial must begin with a snap shot of where we are today with respect to implementation of the obligations contained in the TRIPS Agreement.

The TRIPS Agreement, as the first internationally negotiated agreement that contained minimum standards for both the protection and enforcement of a broad range of intellectual property elements, represented a major advance in the field of intellectual property protection. The IPC, therefore, believes that it is critical that the United States make it clear at the Seattle Ministerial that the TRIPS Agreement provides a baseline for the protection and enforcement of intellectual property rights and that the United States will not be a party to any weakening of the agreement. In this regard, we welcome the recent Communication of the European Commission that "any initiative for future negotiations should not lead to a lowering of standards" and that the "present achievements and current transitional periods must not be reopened on the occasion of new negotiations."

EXPERIENCE TO-DATE WITH TRIPS IMPLEMENTATION

A pattern of TRIPS implementation has emerged since January 1, 1996, when the TRIPS Agreement went into effect for the developed countries. As a result of the efforts of the countries themselves to pass the necessary conforming legislation, the subsequent review of their TRIPS implementation in the WTO TRIPS Council and the launch of consultations and dispute settlement cases when needed to fill in the gaps in national protection, the level of protection in those countries has moved towards the levels required by the TRIPS Agreement.

Whether this pattern can be successfully duplicated when the TRIPS Agreement goes into effect for the developing countries on January 1, 2000 is, however, an open question. While there is evidence that a number of developing countries have begun the process of conforming their laws to the TRIPS Agreement and may well meet the January 1, 2000 deadline, many others will not be in a position to do so. Many of these countries will not have generated the necessary domestic political consensus to pass strengthened intellectual property protection. If Argentina's current refusal

to provide exclusive marketing rights, as required by TRIPS Article 70.9, is any indication of the attitude of certain key developing countries to TRIPS implementation, the next phase of TRIPS implementation will require a greater use of the WTO dispute settlement process than was the case with respect to TRIPS implementation in the developed countries.

In this regard, the IPC supports the emphasis placed on TRIPS implementation in USTR's April 30th announcement of the results of its 1999 Special 301 Annual Review and the out-of-cycle review of developing countries that will take place in December 1999. The IPC expects that the out-of-cycle review will result in US action, including the possible launch of dispute settlement cases, against those developing countries that will have failed to meet their TRIPS obligations by then.

The proper and timely implementation of the TRIPS Agreement on January 1, 2000 by the developing countries remains the highest priority for industry and cannot be compromised. The proper and timely implementation of the TRIPS Agreement will not only benefit US rights holders in the developing countries but also rights holders in our Quad partner countries. As such, TRIPS implementation should be of concern to the other Quad countries. The IPC urges the Administration to encourage its Quad partners to take a more active approach in ensuring proper and timely TRIPS implementation in a manner similar to the program currently underway in the United States. Only through worldwide TRIPS implementation can industry receive the benefits of what we negotiated in the Uruguay Round.

TRIPS Implementation as the Highest Priority

The IPC urges the United States and our trading partners not to fall into the trap of thinking that the negotiation of the TRIPS Agreement has by itself solved the intellectual property problems that we are facing today. The translation of the TRIPS Agreement into improved intellectual property protection on the ground—TRIPS implementation—is the critical issue. Included in the concept of TRIPS implementation is not only the proper and timely implementation of the intellectual property standards currently found in the agreement but also the effective enforcement of these standards.

TRIPS implementation is neither part of the "built-in agenda" nor among the "new" issues of an expanded trade agenda. A common pitfall associated with the launch of a new round of negotiations is to launch new issues before the results of the previous negotiations are fully implemented. Because of the long and discriminatory transition periods and uneven national implementation for intellectual property, we need a Seattle Ministerial meeting that will make certain that the trade momentum in favor of strong worldwide intellectual property protection that we achieved over the last thirteen years is not dissipated. Trade Ministers in Seattle should commit their governments to the proper and timely implementation of the already-completed Uruguay Round agreements before agreeing to any new negotiating objectives for the trade agenda. The necessity of strengthening the TRIPS Agreement was foreseen in the agreement itself and is an integral element of TRIPS implementation. Under the procedures outlined in Article 71.1, the TRIPS Council will review both TRIPS implementation beginning in 2000 and the agreement itself in 2002.

Our pursuit of the proper and timely implementation of the TRIPS Agreement may appear to the Subcommittee to be single-minded, and to a large extent, it is. While the successful negotiation of the TRIPS Agreement was a testament to the joint efforts of US industry and government, industry's participation in that effort was motivated by the expected commercial benefits from the improved intellectual property protection that would result from the TRIPS Agreement. Until industry begins to realize those commercial benefits, some elements of the TRIPS Agreement remain only promises. The value of the TRIPS Agreement is in its timely and proper implementation.

The resistance to TRIPS implementation is already evident. While many developing countries have recognized the need to take the necessary steps to meet their TRIPS obligations by January 1, 2000, others are seeking to push off the inevitable. For example, this past June, the Dominican Republic, Egypt and Honduras joined Cuba in proposing that the Seattle Ministerial Declaration extend the TRIPS transition period for the developing countries beyond its originally scheduled expiration date of January 1, 2000. We can probably expect additional proposals aimed at reopening the TRIPS Agreement from the developing countries in anticipation of the upcoming Seattle Ministerial.

The failure of developing countries to comply with their minimum obligations under the TRIPS Agreement in a proper and timely fashion will have three detrimental results: 1) the delayed commercial gains for WTO members that have al-

ready met their TRIPS obligation will not be realized, effectively extending the bargained-for transition periods beyond that allowed by the TRIPS Agreement; 2) the WTO's dispute settlement process could very well be inundated with intellectual property complaints on January 1, 2000, possibly overloading the system; 3) the legitimacy of the WTO as a body that establishes and enforces international rules will seriously be called into question.

In order to ensure that US industry receives the commercial benefits of what we negotiated in the Uruguay Round, the IPC believes that the Seattle Ministerial Declaration should state in strong terms that the effective and timely implementation of the TRIPS Agreement is a priority and the responsibility of all WTO members. The Seattle Ministerial Declaration should also call for the completion of the review of TRIPS implementation that is contained in TRIPS Article 71.1 by December 31, 2001, at which time the Ministers should consider whether to launch new negotiations. Should the Ministers decide at that time to launch intellectual property negotiations, the IPC believes that it will be important at that time to examine and ensure (i) that standards and principles concerning the availability, scope, use and enforcement of intellectual property rights are adequate, effective and keeping pace with changing technology, including the further development of the Internet and digital technologies; and (ii) that Members have fully attained the commercial benefits the TRIPS Agreement intended to confer.

THE BUILT-IN AGENDA FOR TRIPS

The IPC believes that it is not necessary to launch immediate intellectual property-related trade negotiations at the upcoming Seattle Ministerial to ensure continued progress in gaining improved worldwide intellectual property protection. The built-in agenda for the TRIPS Agreement already provides a program, in and of itself, for the timely and proper implementation of the agreement and for the strengthening of some of the protection currently found in the agreement of interest to US intellectual property right holders. Moreover, the TRIPS built-in agenda provides a timeline and focus that accommodate the need to move forward on outstanding WTO issues. The WTO agenda includes:

- *The review, mandated by TRIPS Article 27.3(b), of the exclusions from patentability for certain plants and animals*—the so-called "biotech exclusion"—which is to occur "four years after the date of entry into force of the WTO Agreement," that is, in 1999;
- *The review by the TRIPS Council, mandated by Article 71.1, of TRIPS implementation in the year 2000* ("after the expiration of the transitional period referred to in paragraph 2 of Article 65"). This review, when coupled with the results of the review already undertaken by the TRIPS Council of TRIPS implementation by the developed countries, should serve to identify those countries that have not met their TRIPS obligations;
- *The Council's review in 2002 of the TRIPS Agreement itself, also mandated by TRIPS Article 71.1* and which is to have "regard to the experience gained in its implementation." Such a review could serve the purpose of identifying improvements that should be made in the TRIPS Agreement;
- *The option provided by TRIPS Article 71.1 to the TRIPS Council to "also undertake reviews in light of any relevant new developments* which might warrant modification or amendment of this Agreement"; and
- *The launch of dispute settlement cases* against countries that fail to properly implement their TRIPS obligations and the resultant development of WTO jurisprudence on the interpretation of the obligations found in the TRIPS Agreement.

OTHER INTELLECTUAL PROPERTY-RELATED ISSUES THAT MAY COME UP AT THE SEATTLE MINISTERIAL

Expiration of the Nullification and Impairment Moratorium on January 1, 2000. The IPC believes that the WTO dispute settlement mechanism that was negotiated in the Uruguay Round is central to the enforcement of the TRIPS Agreement. As such, the IPC is very concerned with ensuring that dispute settlement meets the objectives set out for it in the TRIPS Agreement.

The minimum standards contained in the TRIPS Agreement seek to ensure that WTO Members provide for both the availability and enjoyment of intellectual property rights. Without the ability to reap the commercial benefits from an intellectual property right, the right itself does not have any value. Even though the developing countries still have more than four months to go before they must implement the TRIPS Agreement, some are already seeking to circumvent the intent of the TRIPS

Agreement by enacting legislation that negates the value of the protection contained in the TRIPS obligations. For example, the Philippines and Israel have implemented laws and are proposing regulations that effectively seek to nullify the commercial benefits that flow from intellectual property protection. The WTO nullification and impairment provisions are intended to deal with these types of indirect attacks on the intellectual property protection and enforcement required by TRIPS. The IPC believes, therefore, that the ability to bring nullification and impairment cases under the TRIPS Agreement is as important as the ability to bring direct violation cases.

The application of the Dispute Settlement Understanding (DSU) to nullification and impairment cases involving the TRIPS Agreement was, however, severely circumscribed in the closing stages of the Uruguay Round negotiations. Article 64.2 imposed a five-year moratorium on the application of the DSU to such cases. While Article 64.3 calls for an examination by the TRIPS Council of the "modalities" for nullification and impairment cases and submission of its recommendations to the Ministerial conference for approval, it also requires a consensus—that is, a unanimous vote—by the Ministerial Conference to approve the recommendations and extend the moratorium. Absent such a consensus, the moratorium will expire on January 1, 2000.

The IPC applauds the current US opposition to efforts spearheaded by Canada and Hungary, among others, and we now understand, endorsed by the European Commission, that are currently underway in the TRIPS Council to continue the moratorium for such cases. The United States should continue to make it clear that the extension of the moratorium is not acceptable and that the moratorium should expire as scheduled.

Cooperative Efforts to Build Intellectual Property-related Infrastructure. The IPC urges that the Ministerial declaration also underscore the importance of providing special training facilities and assistance to the developing countries, and especially to the least developed countries, to ensure that they build the needed intellectual property-related infrastructure for the proper and timely implementation of the TRIPS Agreement.

The forms of technical cooperation (assistance in preparing legislation, training, institution-building and in modernizing intellectual property systems and enforcement) included in the joint initiative announced by the WTO and WIPO last July, are currently geared to those developing countries that are facing the January 1, 2000 deadline, but are also applicable to the situation facing the least developed countries. Such assistance should be provided not only through such multilateral institutions as the WTO, WIPO and the World Bank but also as part of the bilateral assistance programs of the individual WTO member countries.

SUMMARY OF POSITION AND CONCLUSION

To summarize, the IPC believes that the Seattle Ministerial Declaration should:

- Emphasize implementation of the TRIPS Agreement by all members of the WTO.
- Support, where appropriate, the provision of special training facilities and technical assistance to developing and least developed countries in order to ensure the proper development of the necessary infrastructure for the enforcement of the standards contained in the TRIPS and other intellectual property agreements.
- Ensure that the review of the implementation of the TRIPS Agreement that is called for in TRIPS Article 71.1 is completed by December 31, 2001, at which time the Ministers should consider whether to launch negotiations on intellectual property.
- Encourage worldwide ratification of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty and prevent any attempts to delay the current ratification by folding the treaties into the WTO.
- Ensure, as provided in the TRIPS Agreement, that the Nullification and Impairment Moratorium expires on January 1, 2000.

The Seattle Ministerial will set the agenda for a new round of trade negotiations. It would be unfortunate if the United States and the other Quad countries, out of a desire to appear forward looking, were to inadvertently pull the rug out from under the implementation of the Uruguay Round results we all worked so hard to achieve.

A disproportionate focus on new intellectual property-related issues for the Seattle Ministerial would perpetuate a misperception that the developed countries are ambivalent about the proper and timely implementation of the TRIPS Agreement. A strong Ministerial statement in Seattle on intellectual property along the lines that the IPC has proposed would highlight the importance of TRIPS implementation,

boost US efforts to gain effective intellectual property protection and enforcement around the world and ensure that, if warranted, intellectual property negotiations can be launched at the proper time.

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Statment of Pharis J. Harvey, Executive Director, International Labor Rights Fund

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to offer testimony in these proceedings. My name is Pharis Harvey, and I am Executive Director of the International Labor Rights Fund. The ILRF is a non-profit organization that has worked for many years for the adoption and enforcement of domestic and international mechanisms to promote and enforce workers fundamental human rights. We have been particularly active in campaigns to establish and to monitor the link between international trade and labor standards.

My comments therefore are addressed to the issues of:

- Trade and Labor Standards,
- Access and Transparency,
- Assessment, and
- Need for Bilateral Discussions

Although neither of these issues is, as yet, a part of the agenda for this year's Ministerial Meeting, each is an issue which the United States should strive to ensure is included on the WTO's post–1999 agenda for negotiations and further work.

I. TRADE AND LABOR STANDARDS

With regard to Trade and Labor Standards, my comments are directed to the issues of evidence to be drawn from existing trade and labor linkages, re-visiting the Singapore declaration, ILO-WTO relations, and the efforts of the Administration to build support for these issues.

The United States should press for a new Ministerial Declaration on trade and labor standards, to be adopted in 1999, based on a re-consideration of the 1996 Singapore Declaration; request regular reports from the WTO on its efforts to collaborate with the ILO; and strive for the adoption of a formal ILO role at the forthcoming WTO Ministerial Meeting.

In December of 1996, the United States failed in its efforts to have the WTO create a working party to examine the relationship between trade and labor. The issue did appear as part of the final communiqué from the Ministerial, although in a one-sided way; the Singapore Declaration recognizes that economic growth contributes to compliance with core labor standards, but it does not refer to the prospect that observance of core labor standards might be a positive influence on economic growth as the OECD reported in May 1996.

The Singapore Declaration called for the ILO and the WTO to continue their cooperation in their fields of mutual interest, but here also the effort appears to have been one-sided. While the ILO's Governing Body Working Party on the Social Dimensions of the Liberalization of Trade regularly publishes studies and updates on the issues and assesses the activities of other international actors, the WTO appears not to undertake any activities in this area at all. The ILO conference in June 1998 adopted a new Declaration on fundamental principles and rights at work reaffirming the rejection of labor standards as a means of protectionism and including a follow-up reporting mechanism. We are unaware, however, of any activities in this field by the WTO or any reports on the collaboration of these two organizations in the intervening period. The United States should demand that the two organizations publish a joint report on their collaborative activities.

The United States should press for a new Ministerial Declaration on trade and labor standards to be adopted at the 1999 Ministerial. The new declaration should refer both to the Singapore Declaration and the new ILO Fundamental Declaration. It should address the question of whether observance of core labor standards can make a positive contribution to economic growth and international trade. It should also set a broad program of work for the WTO and its negotiations on trade and labor in the next millennium.

Previous Declarations have acknowledged the ILO's leading role in the field of labor standards. A new declaration should require that the ILO be given an acknowledged role at the WTO in its discussion of trade and labor issues. In this regard, we propose that the United States press for the inclusion of the ILO as a formal participant at the 1999 Ministerial.

II. Access and Transparency

The United States should press the WTO to adopt a high degree of transparency, both in access to its documents and in the conduct of its dispute settlement. The WTO oversees the rules regulating the international trading system. Both the rules and the system itself are intended to increase the economic participation of all people and the benefits they derive from economic growth and trade. Under the circumstances, the greatest possible degree of openness, transparency, and accountability to the people ultimately intended to benefit from WTO activities is nothing short of essential. The United States should take every opportunity to press the WTO to become more transparent in two vital areas: access to documents, and dispute settlement.

Access to information is crucial. Accordingly, the WTO should take steps to ensure that greatest possible access to its official documents, in the shortest possible time frame. As a base line, the presumption should be that all WTO documents would be publicly available. Relevantly this includes draft agendas, WTO secretariat working documents, official minutes, and the formal contributions of WTO members. All documents in these categories should be made publicly available as soon as they are available in all of the WTO's official languages. Since confidentiality may be necessary for some documents, standing guidelines for confidentiality should be promulgated after negotiation of their content with NGO and civil society representatives. The WTO should carry out strict oversight to ensure that confidentiality guidelines are being met, and that documents on topics that are no longer confidential are released publicly as soon as possible. The WTO should take the lead on devising appropriate means of disseminating all publicly available documents, including via libraries, electronic media, and document depositories. Naturally, it will be necessary for the WTO to take into account the varying capacities of some NGOs to gain access to material, particularly those that do not have access to electronic media.

The Dispute Settlement Process should be as open and transparent as possible, exempting only genuinely confidential information. As President Clinton suggested in his speech to the WTO Ministerial in May, civil society should have the opportunity to participate in the dispute settlement procedures. It could do this by means of briefs submitted amicus curiae. It may be appropriate to empower or require the dispute settlement panels to consult directly with NGOs as independent experts in particular fields.

III. Assessment

The United States should conduct and/or participate in studies of existing US and EU trade and labor linkages to determine the legitimacy of the opposition's claims. Opposition to any linkage between trade and labor standards in the WTO takes several forms. Among the objections is that any mechanism for enforcement of core labor standards through trade remedies would become (or is intended to be) a means for protectionism, disguised or otherwise. Another ground of opposition from some quarters is that the WTO and its rules-based system are inherently biased against the interests and cultural perspectives of developing countries. In our view, the operation of certain of the existing international trade and labor linkages provides fertile ground for study to determine whether these fears are well founded.

We propose that the United States press for the conduct of an independent study of the application of certain existing trade and labor linkages. The United States should offer as a subject of study its own experience with the North American Agreement on Labor Cooperation, the United States' GSP program, and the OPIC worker rights linkage. The European Union should be encouraged to offer as a fourth subject of study the administration of the worker rights linkage in its GSP program. A small international team should conduct the study, with involvement from relevant governments, civil society and international organizations. As to the latter, obviously the WTO and the ILO would need to be key participants.

IV. Need for Bilateral Discussions

Finally, the United States should work actively to build bilateral support for these initiatives. Now is the right time for the Administration to begin work to build the necessary political support to move these issues onto the WTO agenda. Several Heads of State and Heads of Government, including President Nelson Mandela and Prime Minister Tony Blair, adopted positions at last year's WTO Ministerial which were supportive of President Clinton's proposals for consideration of trade and labor issues, and for dialogue between the WTO and civil society. The United States must press at every opportunity for commitments from its many friends in the field of trade to use their best efforts to achieve these goals at this year's Ministerial. We

have no doubt that the Administration's efforts to obtain the support of those governments presently opposed to any linkage, or even to a discussion of the issue, will be considerably enhanced by the evidence of the study we have already proposed on the application of existing trade and labor linkages.

In its ongoing bilateral relationships, the United States should strive for constructive dialogue on the issue of trade and labor standards, particularly with those developing nations that have been stridently opposed to any link. The Administration should discuss with these countries their ideas on possible measures in a trade-labor linkage to safeguard against protectionism and cultural domination. The Administration should also consider development initiatives that could be pursued in tandem with efforts to seek support for a trade and labor link, including the important issue of debt relief. There is an obvious relationship between this issue and the trade and labor link, given the pressure that foreign debt puts on developing countries to pursue export oriented development policies.

Members of the Subcommittee, I am certain that each of you is aware of the significance of this hearing today. The United States is in a unique position to advance debate within the WTO on the issue of Trade and Labor Standards and to press for better mechanisms for transparency and accountability in WTO operations. It is my sincere hope that the proposals and suggestions I have made here today will help USTR to move forward in achieving these important goals. Thank you.

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Statement of International Mass Retail Association, Arlington, Virginia

I am writing on behalf of the International Mass Retail Association (IMRA) to provide the mass retail industry's viewpoint on U.S. preparations for the World Trade Organization's 1999 Ministerial meeting, and specifically on agenda issues that we believe the United States should include in the next multilateral round of trade negotiations.

By way of background, IMRA represents the mass retail industry—consumers' first choice for price, value and convenience. Its membership includes the fastest growing retailers in the world—discount department stores, home centers, category dominant specialty discounters, catalogue showrooms, dollar stores, warehouse clubs, deep discount drugstores and off-price stores—and the manufacturers who supply them. IMRA retail members operate more than 106,000 American stores and employ millions of workers. One in every ten Americans works in the mass retail industry, and IMRA retail members represent over $411 billion in annual sales.

Increasingly, IMRA's members are operating stores in more than one market. As part of our industry's global expansion, our members face some important barriers to investment and trade. These barriers pose a significant problem, not only for our members, but for the many product suppliers with whom they work in strategic alliances. IMRA strongly believes that the United States should make distribution services, including retailing, a prime focus of the upcoming GATS 2000, "built-in" services agenda.

DESCRIPTION OF THE DISTRIBUTION SECTOR

Retailing, wholesaling, franchising and commission agents' services are traditionally considered the prime elements of the distribution service sector in the General Agreement on Trade in Services (GATS). While IMRA believes this is essentially a correct view, we also feel that distribution services should be viewed quite broadly as the unfettered ability to move merchandise through a supply chain. These activities include not only retailing, wholesaling, franchising and commission agents' services, but many additional ancillary activities and services.

The traditional distribution sector, which moves products through the supply chain to the ultimate individual consumer, is also characterized by additional activities including, but not limited to, inventory management, direct contracting for production of merchandise domestically and internationally, customs brokerage activities, consolidation and deconsolidation of merchandise, delivery and transportation services, storage services, garage services and fleet maintenance, sales promotion, marketing, advertising, installation and product service.

We have urged the United States government to take this broad view of distribution services as they move into the next round of service negotiations. It is absolutely essential that negotiations do not view sectors narrowly, because oftentimes service providers work in strategic partnerships. This is especially true with distribution services.

IMPORTANCE OF THE DISTRIBUTION SECTOR TO NATIONAL ECONOMIES

Supply chain issues have become an integral part of consumer product manufacturing and marketing. No economy can be truly modern if it imposes barriers that slow the movement of goods between and among manufacturers, wholesalers, retailers and the consuming public. The most efficient economies-where consumers enjoy a high standard of living, a wide array of consumer goods, and low consumer prices-are those in which the distribution economy has been left relatively free of government regulation and barriers to investment and market entry.

Retailers and product manufacturers, working together in strategic alliances, have increasingly re-engineered the supply chain in industrialized nations. These technological advances have resulted in the emergence of large-scale mass retailing, which is capable of providing consumers large quantities of mass-produced products and exceptionally low prices. Mass production and mass retailing are important factors in the quality of life in the United States. Finally, these sectors consistently produce large numbers of jobs both directly and in ancillary services such as the transportation sector. Retailers are the largest private-sector employers in the United States economy.

Supply chain reengineering will continue to be a key element in global expansion of the retailing industry. Today the number of global retailers—those operating in more than one market—is expanding at a very rapid rate. What's more, these international businesses are growing faster than their domestic-only counterparts. These companies are radically changing the nature of retailer-supplier alliances. As these companies become truly multi-national, they will create vast new market opportunities for consumer product brands and manufacturers. Their relationships with product producers will be global, not local. These companies will become, over time, the export facilitators for most small and medium-sized product producers, regardless of their geography. These companies will create consumer markets where there were, here-to-fore, none at all, and they will be one of the main facilitators in creating international brands. Their role in supporting merchandise exporting can be critical to long-term U.S. trade and economic policy.

Consequently, IMRA strongly believes that the United States should focus on achieving market access improvements in distribution services as one of the primary agenda items of the next WTO round. Achievements in this sector can have important side benefits for U.S. merchandise exports.

SPECIFIC OBJECTIVES OF THE DISTRIBUTION SECTOR—BARRIERS AND REGULATORY CHALLENGES

Retailers face a number of barriers to market entry, including the following:

Local equity requirements in excess of 49 percent, which require retailers to take a minority interest in joint-ventures.

Licensing requirements that, in addition to local equity, require approval of the store or facility's location and joint-venture partner. Often these requirements make it difficult for retailers to reach "critical mass" with respect to the number of local outlets. Mass retailing requires high sales volumes, in order to achieve profits. The mass retail model cannot be achieved in countries that require store-by-store licensing.

Competitive needs testing that allows domestic competitors a veto power over investments. Often times retailers are subject to review processes that allow competing local and domestic businesses the opportunity to disapprove a new store location or new investment.

Zoning and store-size restrictions and hours of operation restrictions, which although not trade-distorting, make investment unattractive in some markets.

Merchandise availability and import restrictions. High tariffs and local quota regimes are the chief culprits affecting retailers. Because retailers resell merchandise, any restrictions that affect the availability or price of merchandise are problematic. Import restrictions are not only a problem with our trading partners, but with the U.S. as well. The United States maintains high import barriers in some consumer products such as textiles, apparel and footwear.

Transportation barriers. Retailers depend upon the ability to move merchandise quickly from the manufacturer (domestic) or the port of entry (imports), in just-in-time supply chains. Restrictions on the free movement of goods or non-transparent customs procedures that delay importation of goods have an impact. In addition, some retailers and many wholesalers need the ability to deliver goods directly to the consumer. Restrictions on air couriers or other modes of direct delivery have a critical impact on the ability to conduct retailing and wholesaling in some markets.

Standards. Retailers deal in a wide-variety of consumer products. Conflicting and overlapping product standards and testing methods make it difficult to integrate

global or regional operations. In addition, testing and certification practices can and do become non-trade barriers.

IMRA Recommendations for the WTO agenda

GATS Agenda—Services 2000 Negotiations

Because of the critical role that distribution services play in promoting exports and building consumer markets, IMRA strongly urges the United States to make the distribution sector a prime focus for the GATS 2000, "built in" WTO agenda. We urge the United States to:

Obtain the broadest possible global GATS commitments on distribution services. In particular, IMRA urges the United States to seek a cap on local equity requirements for distribution sector investments of 49%, and the elimination of competitive needs or investment screening tests.

Obtain broad commitments to achieve open trade and investment policies in the telecommunications sector. Retailers need to have a choice of suppliers and services, and have the option of building their own private data communications networks.

Obtain broad commitments to achieve more open trade and investment policies in the multi-modal transportation sector, and direct delivery services. Retailers require the ability to choose transportation suppliers and services, and have the option of building their own, private trucking fleets for local product delivery, or to contract with private delivery services for direct product delivery to customers.

Begin work on regulatory issues that affect retailing, including store size regulations and hours of operation that, while not necessarily trade-distorting, affect the ability of large scale retailing to achieve operating efficiencies.

Other WTO Agenda Items

IMRA also urges the United States to pursue other negotiating objectives, as follows:

Reduce barriers to consumer products. IMRA supports efforts to lower import tariffs on all consumer products and to eliminate any quotas that may exist on such products. Modern and efficient distribution of goods requires the elimination of barriers at the border. Quotas drive up costs and add non-transparent administrative burdens. ISAC 17's interests in lowering tariffs and eliminating quotas is strong and deep, and applicable as much to U.S. tariffs and quotas as to those maintained by our trading partners. For this reason IMRA urges the United States to:

- Seek broad and meaningful market access negotiations on the widest array of consumer goods possible, including the reduction of U.S. peak tariffs on products such as textiles, apparel and footwear.
- Reaffirm the global commitment to ending textile and apparel quotas by 2005, as part of the review required by the Agreement on Clothing and Textiles.
- Work to eliminate quotas on consumer products maintained by our trading partners in countries such as India.
- Work to eliminate and discipline gray area measures, including U.S. measures like the Softwood Lumber Agreement, which are clearly outside the basic rules contained in the General Agreement on Tariffs and Trade.

Support efforts to improve trade facilitation, specifically in the customs area. Transparent customs administration that facilitates rather than hinders the movement of trade across national boundaries is absolutely essential to a modern distribution economy.

Work to achieve reciprocity or mutual recognition of testing and certification for national standards. Currently, many countries require importers to conduct their testing, certification and documentation for regional or country-specific standards, within the country or region. Such a requirement presents a non-tariff barrier. Retailers should have the ability to use authorized domestic testing labs for certifying compliance with national or regional standards of the destination market.

Maintain tariff neutrality for electronic commerce goods. Currently, the United States is pursuing a position that electronic transmissions associated with e-commerce should remain tariff free. ISAC 17 supports this objective, however we urge the United States to maintain tariff neutrality for products that can be delivered via the Internet, by pursuing a zero tariff strategy across the board for such products.

Certain products, most notably books, videos, software, and musical performances, can be delivered both in the physical world and also electronically via the Internet. Eliminating tariffs on the electronically transmitted products, without also eliminating the tariff on the physically delivered products would upset tariff neutrality. It makes no sense to impose a tariff on a physical product and not on its cyber

counter part. Such a policy would exacerbate intellectual property difficulties that already exist in the marketplace for videos, music and software. Consequently, IMRA urges the United States to seek zero tariffs on all books, videos, musical recordings and software, regardless of the mode of delivery.

CONCLUSION

The distribution economy is an enormous facilitator of international trade and U.S. exports. Retailers who purchase or develop operations in foreign consumer markets tend to take their supply chain relationships with them, providing many new export opportunities for U.S. brands and small U.S. manufacturers. The United States should recognize this key and emerging role of the industry by making distribution services one of the primary focus industries for the next WTO round.

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Statement of Wingate Lloyd, ITT Industries, White Plains, New York, on behalf of the U.S. Chamber of Commerce

INTRODUCTION

I am Wingate Lloyd, consultant with ITT Industries. I am pleased to testify on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing nearly three million companies, 3000 local and state chambers of commerce, 775 business associations, and 85 American Chambers of Commerce abroad.

The World Trade Organization (WTO), consisting of 135 member states, is responsible for the administration of existing trade agreements and serves as a forum for the trade liberalization negotiations that benefit millions of Americans. Liberalized trade ensures that American businesses, farmers, workers and consumers are able to trade their products under conditions that are fair and beneficial. Under the rules of the WTO, foreign markets are made more accessible to American producers, and American consumers are afforded a wider choice of products and services. As the largest economy in the world, the United States has the most to gain from an organization that works to reduce or eliminate tariffs, quotas, and subsidies, expand trade, and monitor participating nations to ensure that the rules of fair trade are being observed. Given that 96% of the world's consumers live outside the United States, foreign trade is vital to our future economic growth and prosperity.

Allow me to state at the outset that the Chamber strongly supports the productive, broad-based multilateral talks in the WTO and wants these upcoming negotiations to achieve specific commercial benefits as expeditiously as possible. These negotiations should aim at assuring more complete implementation of existing commitments under the WTO, further reducing trade barriers, and strengthening multilateral disciplines on unfair trade practices. The Chamber strongly supports the WTO and its objectives in creating an open and free global trading system, and is determined to maintain open markets, resist protectionism, and sustain the momentum of liberalization. We support the elimination of protectionist measures and support strong dispute settlement mechanism. We strongly favor opening service markets in the developing world and dismantling obstacles to agricultural trade. Specifically, the Chamber would like the Seattle Ministerial meeting to address:

THE BUILT-IN URUGUAY AGENDA

Services

International trade in services presents challenges to the multilateral trading system that equal in importance and complexity those challenges facing trade in goods. The WTO should remain the primary focus for services trade negotiations, with bilateral and regional cooperation playing a supporting role. The following broad principles should be applied in future services negotiations:

- The General Agreement on Trade in Services (GATS) 2000 negotiations should seek to achieve much broader coverage of services sectors through new or improved national schedules of commitments and should go well beyond the standstill agreements which characterize many of the Uruguay Round commitments.
- The importance of enlisting domestic regulators in the process of services sector liberalization needs to be recognized. Reference principles should be adopted that move regulatory regimes to adopt a more competitive approach to their rule-making.
- The ministers should closely monitor ratification and implementation of both sectoral agreements already signed and new agreements negotiated in the GATS 2000 talks.

- Countries that are candidates for WTO membership must make strong commitments to services liberalization as part of their accession process.
- The WTO should guarantee foreign service providers the right to service their distributed products before and after the sale, and to sell on a wholesale or retail basis using direct selling methods.

Agriculture

The goal is an agriculture trading system free of restrictions and distortions on trade in processed and unprocessed foodstuffs. Such a system should include further reductions and the scheduled elimination of tariffs and tariff rate quota expansions; the elimination of export subsidies, tighter disciplines on state trading enterprises; full participation by developing countries in the negotiations; tighter disciplines on technical measures; and insistence on science based regulation, especially as it pertains to biotechnology (e.g. genetically modified organisms (GMOs) and beef hormones). Regulatory inconsistencies among developed countries, particularly with respect to GMOs, place U.S. foodstuff companies at a severe disadvantage with respect to their competition. The U.S. Chamber opposes increasing attempts to apply the "precautionary principle" to various sectors of trade. If left unchecked this will constitute a major new non-tariff trade barrier.

IMPLEMENTATION OF MEMBER COMMITMENTS FROM THE URUGUAY ROUND

a) Intellectual Property Rights and E-Commerce

U.S. business assigns high priority to adequate and effective enforcement of intellectual property rights by WTO members. Foreign intellectual property rights violations continue to cost U.S. firms billions of dollars annually. At the Seattle Ministerial and beyond, actions should be taken to ensure prompt and full implementation of commitments undertaken by WTO members under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Substantial resources should be committed to monitoring compliance by signatories. U.S. business is concerned that many developing countries which were given transition periods in which to comply with TRIPS are not adequately preparing for full implementation of the Agreement by agreed deadlines. Compliance with those deadlines should not be reopened in future WTO negotiations.

U.S. business supports a market-driven approach to electronic commerce that promotes private investment and that continues a no tariff policy. We favor minimal government intervention in the regulations of this industry.

b) Tariff Liberalization

WTO members are committed to reducing or eliminating tariffs and non-tariff barriers on a wide range of industrial and agricultural goods. Tariffs and non-tariff barriers continue to restrict trade flows around the world and the ability of U.S. business to compete fairly in international markets. In an effort to protect infant or developing industries, many developing countries continue to maintain very high tariffs on a number of significant U.S. exports. Other barriers include import permits, duties, domestic content requirements, and sanitary/phytosanitary restrictions.

The WTO should build on the results of Uruguay Round tariff liberalization. The U.S. government should urge that the WTO take a more aggressive role in promoting further tariff reductions. In particular, the U.S. government should assign high priority to increasing the number of signatories to existing Uruguay Round tariff elimination agreements. The U.S. government should make vigorous efforts to extend reciprocal tariff elimination to other product sectors. Steps taken at the Seattle Ministerial should include

(i) Adoption of reciprocal tariff cuts proposed in the Accelerated Tariff Liberalization (ATL) considered at the last APEC summit;

(ii) Conclusion of the second International Technology Agreement (ITA II) negotiations by the end of the Seattle Ministerial; and

(iii) Initiation of liberalization in additional sectors.

Government Procurement

WTO members should commit to more open and transparent government procurement.Host government preferences for local companies, and non-transparent contract award processes have effectively shut U.S. companies out of lucrative markets. The Chamber supports the continuation of the dialogue on measures in WTO to combat corruption, as well as broader public dissemination of procurement information.

Expanded Market Access

WTO negotiations should focus on liberalizing industries, such as energy, telecommunications, and utilities that are heavily regulated in many countries.

Subsidies

U.S. business objects to the necessity of competing in many foreign markets with companies receiving government subsidies and preferential financing. U.S. business supports an expedited subsidy notification procedure. The U.S. government should continue to monitor closely operation of the WTO Subsidies agreement. U.S. business supports continuation of the Agreement's "dark amber" category, which is scheduled to expire this year.

Anti-Dumping

The proliferation of newly established anti-dumping regimes in a number of WTO member states is a growing concern for U.S. business. The WTO should monitor these regimes to ensure that they are implemented and administered in a consistent and professional manner and in full compliance with WTO standards.

UNFINISHED BUSINESS

a) Trade and Investment.

U.S. business seeks a set of legally binding multilateral rules which establish the highest standards for the liberalized treatment and full protection of investment. The WTO Trade-Related Investment Measures (TRIMs) agreement represents a useful step forward in multilateral cooperation but does not address numerous other important investment issues. The WTO rules and agreements pertaining to investment should be further strengthened.

Trade, Labor and Environment

U.S. business is facing an increasing threat of non-tariff barriers to trade which incorporate measures affecting "production of process methods" (PPMs), i.e., using *how* a good is made, as criteria for entry of goods or qualification for foreign ecolabels. Such measures would bar exports to a country if environmental or labor standards of production in the country of origin did not comply with the environmental or labor laws of the export destination. U.S. business strongly opposes such application of PPM criteria to trade. Further, the WTO must clarify how multilateral environmental agreements (MEAs) relate to the WTO system. To avoid creation of potentially significant new trade barriers, strict guidelines for the application of trade measures under MEAs must be established.

U.S. business reiterates its support of multilateral cooperation on labor and environmental issues, but stresses that these important issues should not be addressed in trade negotiations, whose intended purpose is to remove barriers to global trade and investment Pursuing labor and environmental goals in multilateral trade negotiations creates a serious risk that U.S. commercial competitiveness will be held hostage to non-commercial objectives. Many developing countries strongly oppose using trade negotiations to address labor and environmental issues. However, the use of trade sanctions to enforce labor and environmental agreements would have a seriously disruptive impact on the global trading system. As an example of constructive international cooperation, the U.S. Chamber welcomes the adoption by the International Labor Organization (ILO) of the 1998 Declaration of Fundamental Principles and Rights at Work and urges governments to cooperate in the implementation of follow-up procedures.

FUNCTIONING OF THE WTO SYSTEM

The next round of WTO negotiations should focus firs and foremost on expanding market access. However, WTO member states should also make needed improvements in the functioning of the WTO system as soon as possible, including:

a) Strengthening Dispute Settlement

The WTO Dispute Settlement Mechanism (DSM) represents a major improvement over the dispute settlement process provided under GATT. Nevertheless, there are deficiencies in the WTO DSM that need to be addressed. U.S. companies rely heavily upon the DSM to ensure that WTO member states implement their obligations in a timely and complete manner. Therefore, improvements to the operation of the DSM are a matter of priority concern to U.S. business and should be expeditiously addressed. Such improvements should include:

- *Greater Transparency*. Action should be taken to ensure that the business community has greater access to the factual situations and arguments submitted to the WTO Dispute Settlement Body, as well as to the final reports of the panels and the Appellate Body.
- *More Expeditious Procedures*. U.S. business favors changes to the DSM which would (a) avoid delays in the establishment and operation of panels and changes and (b) encourage speedier implementation of panel results. The slowness of dispute settlement rewards WTO members who have not complied with their obligations by giving them the opportunity to delay implementation and then renegotiate earlier commitments. The U.S. government should use the Dispute Settlement Body review currently underway in the WTO to press for early improvements.

CONCLUSION

Let me conclude by reiterating that the Chamber strongly supports the WTO and its objectives in creating an open and free global trading regime. The WTO's market-opening efforts lead to domestic job creation and a better standard of living for member countries. Closing borders to trade is detrimental to economic well-being because protective trade policies result in less competition, business inefficiencies, and job losses. While the WTO goal of opening markets serves American interests in a direct and meaningful way, the United States must also continue to strengthen its competitiveness at home. This means continuous improvement in the quality of U.S. production processes, technologies, and the workforce. Support for the WTO should be seen as a useful part of the larger U.S. strategy to realize the economic potential of the global marketplace.

That concludes my statement and I will be happy to answer any questions.

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Joint Statement of the National Retail Federation and J.C. Penney Company, Inc.

I. INTRODUCTION

The National Retail Federation (NRF) is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalogue, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people—about 1 in 5 American workers—and registered 1998 sales of $2.7 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad. NRF is a founding member of the U.S. Alliance for Trade Expansion (USTrade).

The J.C. Penney Company, Inc. (J. C. Penney) and Eckerd Drug Stores operate 4,150 stores in the United States. They employ 260,000 full-and part-time workers. In addition, they operate stores in three countries, which are supplied with in part with products made in the United States. In 1998, they had combined sales of $31 billion.

II. RETAIL PRIORITIES

The NRF, J.C. Penney, and the entire U.S. retail industry support U.S. sponsorship of and participation in the upcoming round of negotiations under the auspices of the World Trade Organization (WTO) at the Seattle Ministerial Conference. Significant gains in trade liberalization and economic growth have been made in previous rounds of multilateral negotiations. We would like to see that progress expanded upon in the upcoming round.

On behalf of the retail industry, we want to express our concern on four key issues that we hope will be addressed in the next round of multilateral negotiations.

A. Harmonization of Rules of Origin

The first issue of key importance to American retailers is the successful completion of the effort to harmonize international rules of origin. Determining the country of origin of products is an important responsibility in the administration and regulation of trade as it includes such functions as collecting statistics, applying proper tariff rates, allocating and tracking quotas, and effectively enforcing trade and customs laws. Differing rules of origin among WTO Member Countries being applied

to the same products has proven cumbersome on import/export transactions and impedes the expansion of international trade. Drastic and ill-conceived changes in the rule of origin could substantially disrupt current trade. This was amply demonstrated in July 1996 when changes in textile and apparel rules of origin resulted in onerous adjustment problems for U.S. importers of textile and apparel products, especially since these categories are still subject to a rigid quota system. NRF and J. C. Penney would encourage negotiators to remain mindful of the impact of any proposed changes on the ability of U.S. retailers to supply their customers with products within current quota and/or visa systems. We believe that any proposed changes in the rules of origin should be clearly articulated in a negotiated settlement that is simple to understand and does not materially interrupt current trade. Conversely, negotiators should reject rules that place unreasonable burdens on U.S. importers and could be subject to arbitrary and inconsistent interpretation by those responsible for implementing and administering them.

B. Customs Administration

The second issue of concern to America's retailers is Customs administration. NRF and J. C. Penney hope that this new round of multilateral talks can include negotiations to increase and enhance the transparency and speed of Customs administration. On this issue, retailers would like to see the creation of multilateral disciplines to facilitate the separation of the processing of goods by Customs officials from the processing of the documentation associated with the importation of those goods. Currently, the administration of Customs functions can be considered non-tariff trade barriers. Also, NRF and J. C. Penney would like to see negotiators seek to reduce the delays between arrival of goods to, and release of goods from, the custody of Customs authorities. This could be accomplished first by developing a uniform measurement and notification of arrival-to-release times by WTO Members. Ultimately, a schedule for graduated reductions in these arrival-to-release times could be established. As an example, the U.S. Customs clearance process normally ranges from 1 to 5 days, but can be as long as 90 days on a rare occasion. By comparison, Mexico and Chilean Customs clearance procedures may range up to 3 days, and Brazilian Customs clearance procedures up to 40 days depending upon the port of clearance. Uniform clearance procedures will significantly aid retailers in providing consumers with goods on a more timely basis, preventing delays in shipping that are absorbed by consumer prices.

C. Implementation of the Agreement on Textile and Clothing (ATC)

Third, NRF and J.C. Penney are concerned about the continued progress of efforts to liberalize textile and apparel trade through the implementation of the Agreement on Textiles and Clothing (ATC). The decision of the U.S. to put off integration of many products into the ATC until the final December 24, 2004 deadline effectively will postpone any meaningful benefits to American families through liberalization of trade in this sector until U.S. quotas on these products are finally terminated. Even after quotas are phased out, companies will still face significant barriers as high tariffs will continue to keep the cost of these goods very high. The average U.S. apparel tariff is 16 percent, in comparison to the average tariff for all other goods, which is less than 4 percent. To date, the U.S. has eliminated only two of its 750 import quotas, which is only 6 percent of U.S. textile and clothing subject to restrictions. American consumers must pay these tariffs in addition to costs imposed on them from textile and apparel quotas. Furthermore, we believe this issue is also of critical importance to many developing countries from which the United States will be seeking concessions on a host of sensitive issues. As a result, retailers strongly recommend significant reductions in textile and apparel tariffs and urge a commitment from the WTO Ministerial Conference to continue progress on the implementation of the ATC, avoiding policies, practices, or initiatives that may undermine the benefits and timely implementation of the agreement.

D. Trade in Distribution Services

The fourth issue of concern to retailers is liberalization of trade in distribution services. The U.S. retail industry strongly supports negotiations to strengthen commitments from other countries on the distribution services sector. U.S. retailers realize that there are many attractive business opportunities outside the United States. Many foreign countries, in regions such as Latin America and Asia, have a growing middle class that increasingly demands the quality of service and broad selection of products that U.S. retailers can offer at competitive prices. Notwithstanding the current global economic situation, many U.S. department, specialty, discount and mass merchandise retail companies have opened stores abroad and are

looking to expand their foreign operations to meet growing consumer demand outside the United States.

In many countries, the opportunities for U.S. retailers to establish and maintain a presence are limited by various laws, regulations, and policies. Countries such as Japan and Brazil have protected their small stores from competition by limiting the size of retail establishments and placing onerous restrictions on where they can locate. Additionally, restrictions to protect so-called "cultural industries" by other countries have significantly hindered the establishment of retail operations by large U.S. booksellers. The U.S. retail industry strongly encourages negotiators to seek the elimination of foreign restrictions to trade in distribution services. It would be worth emphasizing the economic and employment benefits other countries could realize by liberalizing their distribution services sector. With registered sales receipts of more than $2.7 trillion in 1998, and having a significant multiplier effect throughout the U.S. economy, the retail industry adds substantially to U.S. Gross Domestic Product (GDP), economic growth, and employment. We invite U.S. negotiators to impress upon their counterparts that an open and thriving retail industry specifically, and distribution services sector generally, can be an important factor in improving the standard of living of their citizens, expanding economic activity and growth, and developing a modern consumer society.

CONCLUSION

In conclusion, NRF and J. C. Penney would like to thank Chairman Crane, Ranking Member Levin and the Members of the Trade Subcommittee for the opportunity to provide comments on the efforts to develop an agenda for the United States in the upcoming Seattle Ministerial Conference. America's retailers would like to reiterate that this is an important opportunity for the United States, U.S. companies, their employees, and consumers. We look forward to working with you in the coming months to prepare for the launching of the Seattle round of negotiations. We also look forward to working with you in the following years to bring the round to a successful and timely conclusion.

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Statement of the Labor/Industry Coalition for International Trade (LICIT)

LICIT appreciates this opportunity to testify on U.S. objectives for the Seattle Ministerial and the ensuing round of WTO talks.

Celebrating its 20th anniversary this year, LICIT brings companies and unions together in support of increased and equitable international trade. Among the companies and labor unions who have endorsed LICIT's latest paper are: American Flint Glass Workers; AMT—The Association for Manufacturing Technology; Bethlehem Steel Corp.; Communications Workers of America; Corning Inc.; DaimlerChrysler; International Brotherhood of Electrical Workers; Milacron Inc.; Motorola, Inc.; Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE); Union of Needletrades, Industrial and Textile Employees (UNITE); and United Steelworkers of America/United Rubber Workers Conference.[1]

The goal of the Seattle Ministerial is to launch and set parameters for a new round of multilateral trade negotiations. The main focus of these talks will be revisions to the existing WTO rules on agriculture, services and intellectual property. There is much that the United States can and should seek to accomplish within the parameters of this "built-in agenda." However, none of these positive results can be achieved unless the United States resolutely blocks efforts by a handful of WTO Members to go outside this agreed list of topics and reopen debate over the WTO's antidumping and anti-subsidy rules.

IMPORTANCE OF EFFECTIVE ANTIDUMPING AND ANTI-SUBSIDY RULES

Antidumping and anti-subsidy rules are a pillar of the WTO and an essential element of the multilateral trading system. From its inception, the GATT has provided that injurious dumping "is to be condemned" and has provided for remedies to offset and deter dumping and trade-distorting government subsidies. These rules are designed to ensure a basic level of fairness and to prevent abuse. The clear intent of the countries who want to reopen these rules, however, is to weaken them. Allowing this effort to succeed would inevitably lead to abuse of the world's open markets—

[1] Members do not necessarily associate themselves with every LICIT report or recommendation.

including that of the United States, the world's most open market—and would rapidly undermine confidence in the WTO itself.

The *Antidumping Agreement* has been a particular focus of attacks by certain WTO Members as the Seattle Ministerial approaches. Yet, as the United States observed in a July 1998 submission to the WTO Working Group on the Interaction between Trade and Competition Policy, the antidumping remedy is:

> necessary to the maintenance of the multilateral trading system. Without this and other remedial safeguards, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system. . . . [T]he antidumping rules represent an effort to maintain a "level playing field" between producers in different countries . . . [and] are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization.

Without these essential rules and the accompanying rules on trade-distorting subsidies, past successes in trade liberalization could not have been achieved and future progress on the core WTO trade agenda would become impossible.

THE ANTIDUMPING AND SCM AGREEMENTS SHOULD NOT BE REOPENED

The Committtee on Ways and Means, in its 1997 markup of fast track legislation, approved by voice vote and *without dissent* a provision instructing U.S. negotiators to *reject* any agreement that would weaken current disciplines against dumping and subsidies:

> In the course of negotiations conducted under this title, the United States Trade Representative shall—. . . preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping and countervailing duty laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies. . . .

The fast track bill reported by the Senate Finance Committee in 1997 also contains language highlighting the importance of strong rules against dumping and subsidies.

The implication of these actions by the committees of jurisdiction are clear: the United States cannot join in any consensus to reopen negotiations over the WTO's antidumping and anti-subsidy rules. For several reasons, this is an eminently sound and sensible position:

- The current WTO antidumping and anti-subsidy rules were concluded only with great difficulty during the Uruguay Round, have hardly been tested, and certainly have not proven defective. Moreover, there are many new users of antidumping and anti-subsidy laws, often developing countries, trying to come into compliance with Uruguay Round rules. What is needed is a period of repose and certainty, not continued shifting of the WTO rules which could spur confusion and negatively affect all WTO Members' exports.
- Antidumping measures affect only a tiny fraction of world trade. Where applied, they simply ensure a modicum of fairness. It would hardly be plausible to argue that use of antidumping is a major problem in international trade. There is other, much more important, work to do in Geneva. The same applies to countervailing measures under the SCM Agreement.
- Reopening the Antidumping and SCM agreements will only serve to make the next WTO round impossible to conclude, or else make its results impossible for the United States to digest. Conversely, avoiding another divisive fight over antidumping is the best way to promote progress on the far more important issues that comprise the agreed, built-in agenda for the next round.
- The only unresolved antidumping issue from the Uruguay Round, referred to the Committee on Anti-Dumping after the Marrakesh Ministerial, was circumvention.[2] Unless and until some further agreement is reached on this point, the United States can continue with its current approach to preventing circumvention of valid AD/CVD orders. Adding clarity to the WTO rules (while certainly desirable and important) does not require, or justify, re-opening the agreement. Likewise, the only SCM issue requiring near-term attention is the pending expiration, unless extended by Ministerial decision, of the "greenlight" provisions of Arts. 8 and 9 and the "dark

[2] See Agreement on Implementation of Article VI of GATT 1994: Statement on Anti-Circumvention, MTN/FA III–11(a).

amber" provisions of Art. 6.1. Resolving this matter does not require or justify any reopening of the remainder of the SCM Agreement.

IMPLEMENTATION OF URUGUAY ROUND RULES

There have been only minor problems with WTO Members' implementation of the Antidumping Agreement, and certainly none that justify reopening the Agreement itself. While continued monitoring (within the Committee on Anti-Dumping) of how the Uruguay Round rules are being implemented makes sense, that is of course very different from re-negotiating those rules. The United States should be very clear about the distinction, and should be careful not to agree to anything under the "implementation" rubric that will in practice lead to reopening. The same is true with respect to the SCM Agreement.

There are two Marrakesh Ministerial Decisions indirectly relating to antidumping that have not yet been properly implemented, but they should be addressed as part of the pending review of the WTO Dispute Settlement Understanding and resolved prior to any post–1999 negotiations. The first calls for an examination of the Antidumping Agreement Art. 17.6 standard of review, to determine whether it deserves broader application in WTO dispute settlement proceedings.[3] The second recognizes the need for consistent WTO panel resolution of AD and CVD disputes—in other words, it makes clear by implication that the Art. 17.6 standard of review applies equally to panel reviews of CVD measures.[4] While quite important, neither of these dispute settlement issues provides any reason to reopen the underlying substantive (Antidumping and SCM) agreements.

NEEDED REFORMS TO THE WTO DISPUTE SETTLEMENT UNDERSTANDING

As a separate item with a connection to the Seattle Ministerial, reforms must be made to the WTO Dispute Settlement Understanding (DSU). These reforms, which were supposed to be completed by the end of 1998 as a result of the 4-year review, are necessary if the DSU and, in effect, all WTO rules are to work. Therefore, the U.S. Government should seek reform in the following major areas:

- The U.S. must place a high priority on the "defensive" concerns of the United States. Although the United States has been much more frequently a complainant than a defendant, this pattern cannot be expected to continue. The U.S. should therefore insist that any legal instrument extending the DSU 1) notes the critical importance of the Antidumping Agreement standard of review, and 2) clarifies the applicability of that standard to CVD disputes. One of the pillars of trade liberalization, after all, is the guarantee of effective remedies against unfair trade.
- The system needs to become more transparent. The United States should seek to amend the DSU by: 1) requiring Members to submit, promptly after each submission to a panel, a public version sufficient to permit a full understanding of the arguments; 2) requiring panel and Appellate Body meetings to be opened to all WTO Members and to the public; and 3) allowing affected private parties to participate fully in panel proceedings. This would enhance the credibility and performance of the system by allowing governments to fully utilize the resources and expertise of affected private parties who are normally the real parties of interest in WTO cases.
- The operation of the DSU has not provided a clear solution to market access problems when government enlists the assistance of the private sector in restricting access to its market. Solutions must be found to problems of market access in countries that employ these hybrid missions. As currently constituted, the system is structurally biased in favor of countries that maintain opaque barriers, and against countries with transparent legal regimes like our own.
- The DSU should also be revised to set clear limits on the WTO Secretariat's role in dispute settlement proceedings. It is inappropriate for Secretariat officials—who often do not accept or agree with the substantive rules which panels are supposed to be enforcing—to be substantively involved with panel deliberations. The Secretariat does not exist to espouse positions attacking individual articles of the GATT, or to side with particular Members who want to rewrite the Uruguay Round results in particular subject areas. The United States should therefore insist on a thorough review of the Secretariat and its funding.

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[3] Agreement on Implementation of Article VI of GATT 1994: Statement on Standard of Review for Dispute Settlement Panels, MTN/FA III–11(b).

[4] Statement on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures 1994, MTN/FA III–12.

CONCLUSION

The built-in agenda for the next round is an important one. There may also be other WTO issues on which the United States can and should seek progress at Seattle and in the talks that follow. However, to achieve a result that will enhance U.S. trade objectives and the status of America's working men and women, it is essential that the United States defeat any and all efforts to weaken the existing fair trade rules of the WTO. In practice, this means that those rules should not be reopened at all. LICIT looks forward to working with this Committee, with the Congress as a whole, and with the Administration to ensure that the promise of the upcoming multilateral talks is not squandered through a useless and unwise debate over antidumping and anti-subsidy rules.

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Statement of Arthur H. Smith, Vice President, General Counsel & Secretary, Libbey Inc., Toledo, Ohio

Libbey Inc., headquartered in Toledo, OH is a leading producer of glass tableware and a producer of ceramic dinnerware in the United States and is a provider of metal flatware to U.S. foodservice customers. The company is actively involved in international trade and is keenly interested in developments within the World Trade Organization ("WTO") and regional trade organizations. These Comments are in response to the Subcommittee's Advisory of July 8, 1999 inviting public comment on U.S. negotiating objectives for the WTO ministerial meeting to be held in Seattle, WA November 30–December 4, 1999.

The Subcommittee is well aware that implementation is critical to the success of any trade agreement. The United States has a history of full and timely implementation of its obligations. U.S. companies are entitled to expect that our trading partners will reciprocate. Thus, Libbey strongly supports efforts by the United States to monitor and encourage compliance with all agreements by trading partners. Libbey likewise urges the United States to seek effective and transparent notification of compliance for all countries and all agreements.

Also in regard to implementation, Libbey supports efforts by the United States and various international organizations, including the WTO, to provide technical assistance to developing countries in meeting agreed-to obligations. This assistance is especially critical in the areas of intellectual property, customs valuation, pre-shipment inspection. Libbey addresses these and other areas of particular interest below.

INTELLECTUAL PROPERTY PROTECTION

In the area of intellectual property, Libbey is particularly concerned with trade dress and industrial design. The United States and Japan, inter alia, have raised implementation of the Trade Related Intellectual Property ("TRIPs") Agreement as a priority issue for Seattle. Libbey in particular urges progress towards explicit recognition of trade dress rights, whether or not there has been an application for "industrial design" protection. Libbey calls on the United States to support extension of the duration of protection provided under Article 26.3 to as long as the industrial design is in commercial production in a member country.

CUSTOMS VALUATION AGREEMENT AND PRESHIPMENT INSPECTION

Because Libbey exports to a number of countries around the world, it is acutely aware of the importance of commercial certainty that the implementation of the Customs Valuation Agreement provides to exporters. With the transition period for implementation of that Agreement about to expire for many developing countries, there is an urgency to be sure that countries due to conform to the Agreement are able to do so on a timely basis.

As the Subcommittee knows, more than thirty countries currently require preshipment inspection ("PSI") because their own customs infrastructures are not sufficiently developed to provide these services. Libbey understands the problems that have lead many developing and least developed countries to substitute a third party for their national customs service. Libbey believes, however, that there is a need for both a phased reduction in the number of countries relying on PSI companies and WTO supervision of PSI activities other than handling individual company complaints.

INDUSTRIAL TARIFF REDUCTIONS

Libbey is not opposed to inclusion of industrial tariffs in any upcoming negotiations as long as such negotiations are done on a request/offer basis. Glassware and ceramic dinnerware have long been viewed as highly import sensitive. This continues to be the case in 1999. Libbey specifically urges the United States to oppose efforts by some countries to have tariffs on industrial goods reduced on a formula basis or for singling out tariff peaks for above average tariff reductions. Such proposals will prove counterproductive to efforts by the United States and others to have the new negotiations conclude within a reasonable period of time.

Libbey supports Australia's proposal to lower imposed tariff rates to the bound rates. Many developing countries in particular agreed to bound rates that were substantially higher than existing applied rates. Such differences can create market uncertainties, particularly in countries where there has been frequent resort to tariff modifications. There are provisions within the WTO to address import surges and unfair trade practices. It would make sense to eliminate the commercial uncertainty the tariff variability currently provides.

SERVICES AND ELECTRONIC COMMERCE

Libbey strongly urges the United States to make liberalization a particularly priority in certain service sectors. These include: distribution services; tourism (primarily restaurants); and transportation. These are of concern to Libbey as a supplier to the food service industry. In addition, Libbey supports further liberalization in financial and telecommunication services, as this reduces the cost of business in general. Finally, Libbey would benefit from expanded right-of-establishment for U.S. retail, wholesale and restaurant/bar enterprises.

Related to business facilitation is minimal government interference with electronic commerce. Issues such as taxation, privacy and other regulation are significant concern to Libbey. The company supports the U.S. position of minimal government interference in this area, and urges the United States to make this goal of WTO work on electronic commerce as well.

DISPUTE SETTLEMENT

Libbey has not to date had direct interest in a dispute at the WTO. The company concurs, however, with proposals of the United States and others that seek greater transparency and improved access to the dispute settlement process within the WTO. The following would all promote support for the WTO system: timely derestriction of panel documents and public party briefs; access to panel and Appellate Body proceedings for representatives of private interested parties as well as a mechanism to permit amici briefs from such parties; and the availability of public transcripts of panel and Appellate Body meetings.

Libbey understands that the ongoing dispute settlement review process has raised dozens of possible modifications to the system. Libbey would hope that any modifications that are ultimately accepted reflect the commercial reality that the existing system is already overlong, taking three years or more through appeal and implementation for the aggrieved U.S. industry to expect any relief. Changes to the system should not increase timelines for either disputes or implementation of changes required.

GOVERNMENT PROCUREMENT

Libbey believes that transparency in government procurement promotes government efficiency and promotes trade liberalization. Libbey supports the ongoing initiative to develop a transparency agreement that would be applicable to all WTO members. Indeed, Libbey continues to hopes that such an initiative will be completed by the time of the Ministerial.

ANTIDUMPING, SUBSIDIES AND COUNTERVAILING DUTY MEASURES, AND SAFEGUARDS

Libbey has not to date had to use U.S. trade laws. The existence of effective laws, is, however, critical to trade liberalization. Libbey opposes any general reopening of the Antidumping Agreement, which has been operating fairly well in its first 5 years. Libbey also opposes the selective re-opening of the existing rules system in the Antidumping Agreement. The United States should make clear to its trading partners that any rebalancing of that system would open up other areas, such as tariff bindings and the acceptability of concepts such as "special and differential treatment." Given that improved operation of the dispute settlement mechanism provides any party access to review for any antidumping, countervailing duty or

safeguard action by another party, a re-examination of the relatively new Antidumping Agreement is not warranted.

With regard to the Subsidies Agreement, Libbey observes that the serious prejudice provisions in Art. 6.1 has thus far not proven useful. Libbey would support either elimination of Articles 6.1, 8 and 9 pursuant to Article 31 of the Agreement, or extension with review by the end of 2001. In the safeguards area, Libbey suggests that the United States undertake a review of the hundreds of gray area measures in place during the Uruguay Round negotiations, which were to have been phased out by January 1, 1999. Such a review would ensure that such measures have been eliminated in fact.

COMPETITION POLICY

It is Libbey's understanding that there are a number of countries that seek to have competition policy included on the Seattle Ministerial agenda. For example, Japan's submission indicates that it plans to raise the issue of measures affecting competition at the ministerial. The European Union has over time also expressed a keen interest in the issue, as have Hong Kong and other members.

Libbey's position on this issue is that the WTO is not the appropriate forum in which to raise this issue or that, at a minimum, it is premature to have the issue considered as part of the Seattle process. As the process within the Organization of Economic Cooperation and Development ("OECD") has demonstrated, it is extremely difficult to get even active antitrust administrators within developed countries to agree on what should be viewed as hard core competition problems. The exchange of information process within the WTO over the last two years suggest that at most, a process of continuing to exchange information should be pursued.

Moreover, it is disturbing that a number of countries believe that the consideration of adding competition issues to the WTO agenda would permit a reopening of the rules area, in particular antidumping. None of the WTO articles has been evaluated on a "competition" basis (particularly since there is no agreement on what "competition policy" should be across borders). While Libbey would not object to considering whether there is a consensus on competition principles, since the objective of many countries appears not to be expanded disciplines on anticompetitive behavior but rather a weakening of the existing rules regime, the United States should simply oppose inclusion of competition policy on the agenda.

Should competition policy be included, the United States must insist on not reopening other areas. Finally, if areas are reopened, all should be reopened and examined including S&D, whether Most Favored Nation and national treatment are always consistent with competition policy, etc.

STATE TRADING ENTERPRISES

While in most parts of the world, products of interest to Libbey are not produced or sold through state trading enterprises, Libbey agrees with the position of the United States and others that state trading enterprises should be reexamined, including ways to in fact ensure that such entities, if they continue, act in a manner consistent with WTO obligations. State trading enterprises are provided with significant rights and privileges under Article XVII and, through their operation, they can erect significant barriers to trade.

MULTILATERAL AGREEMENT ON INVESTMENT

The United States and other countries tried hard during the Uruguay Round to obtain a substantial agreement on investment. The Agreement on Trade Related Investment Measures ("TRIMs"), which does little more than restate preexisting obligations, was the only result. Efforts within the OECD to fashion an investment agreement were not successful there. It is hard to imagine how reconsidering investment within the WTO will advance meaningful rules on investment liberalization in the near future. Nonetheless, investment restrictions abroad (including trade-balancing and local content requirements) are important to industrial producers like Libbey. Thus, Libbey agrees with countries such as Japan that have urged that investment is an important area for WTO consideration. However, no agreement should be accepted which does not significantly liberalize investment around the world.

LABOR AND ENVIRONMENT

Libbey views the work of the WTO Committee on Trade and the Environment as valuable, at least in the area of transparency, and also in terms of efforts to define

how multilateral environmental agreements relate to the WTO. Libbey is among the many U.S. industries that face artificial competitive disadvantages because the labor and environmental standards of the United States are not internationally agreed to or applied. Although there is an existing forum for discussion of substantive labor rights, the International Labor Organization, the issue of whether violations of core labor rights should result in trade action could, in Libbey's view, be explored by the WTO in a fruitful manner.

Libbey thanks the Subcommittee for the opportunity to provide these comments.

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Statement of Micron Technology, Inc., Boise, Idaho

Micron Technology, Inc. ("Micron") appreciates the opportunity to provide trade policy recommendations for the upcoming WTO Ministerial Meeting in Seattle this November.

Micron is a manufacturer of dynamic random access memory (DRAM) semiconductors, static random access memory (SRAM) semiconductors and flash memory. Micron also, through its subsidiary, Micron Electronic Industries, manufacturers personal computers, laptop computers and servers. Micron's U.S. facilities are located in Boise, Idaho and Lehi, Utah. Micron also has facilities in Italy, Japan, and Singapore. Micron employs approximately 8,000 people in the United States.

Micron is vitally interested in several issues that are likely to be raised in the context of a new trade round. Specifically, Micron is concerned that there will be a concerted effort by U.S. trading partners to introduce weakening changes to the WTO Antidumping Code, either in the context of antidumping discussions or through discussions held in the context of trade and competition policy. Micron is also concerned about the ongoing efforts in the WTO to harmonize rules of origin. To the extent that these efforts will continue in the context of the new round, Micron stresses the importance of ensuring that the provisions of the antidumping and countervailing duty laws continue to be enforceable once harmonization has occurred. Micron also favors elimination of remaining duties on semiconductors and semiconductor manufacturing equipment. Finally, Micron believes that in the context of the Agreement on Subsidies and Countervailing Measures ("SCM"), that the purpose of the "greenlight" subsidy provision has been served and that it should be allowed to expire at the end of this year as contemplated in the SCM. The serious prejudice provisions, however, should be extended.

NO CHANGES SHOULD BE MADE TO THE WTO ANTIDUMPING AGREEMENT

Micron believes that in order to preserve the consensus for an open international trade regime, national authorities must have the tools to deal effectively with instances of injurious unfair trade practices. Under the auspices of the Uruguay Round, very significant changes were made to the Antidumping Code, which went into effect only at the beginning of 1995. Many of these changes served generally to weaken disciplines against dumping, and thus weaken the U.S. antidumping law. Despite the fact that these changes were made fairly recently, several countries have announced their intention to seek a reopening of the Agreement on Implementation of Article VI if the General Agreements on Tariffs and Trade 1994 (Antidumping Agreement) with the aim of further limiting the efficacy of the dumping provisions. Japan, for example, in a communication to the WTO General Council regarding preparations for the Ministerial dated July 6, 1999, recommends clarifying relevant articles, with the aim of limiting "the abuse of antidumping measures." Their very clear intention is to introduce additional provisions that will weaken antidumping remedies. The government of South Korea has voiced similar recommendations.

Strong antidumping laws are critical to the semiconductor industry. Our industry has long been plagued by significant dumping that very nearly eliminated the entire DRAM industry in the mid–1980's when Japanese producers lost millions of dollars in order to drive U.S. producers out of business. Korean and Taiwanese semiconductor producers have engaged in similar tactics.

As this committee is well aware, the United States has the most open trading regime in the world, and its companies operate on the basis of market principles. Other countries, by contrast, still maintain significant barriers to trade, and often their domestic producers do not operate within a market-based framework, but benefit from significant government protection and support. The U.S. antidumping laws are really this country's last bulwark against the unfair and injurious trade practices of many countries. Micron believes that the Antidumping Agreement should

not be reopened in this negotiation, and that antidumping disciplines should not be weakened or sacrificed in order to achieve agreement in other negotiating areas.

In addition, there are several countries that would like to use discussions in the WTO about trade and competition policy as a back door to making changes in the antidumping area. This must not be allowed to happen. Trade and competition discussions have thus far not proceeded beyond very general discussions about national laws curbing anticompetitive practices. Micron therefore believes that the issue of international rules governing competition is not ripe for this round of trade negotiations. Moreover, any discussion in this area should not be used to alter in any way existing WTO antidumping disciplines.

NATIONAL TRADE LAWS MUST BE PRESERVED WHEN ORIGIN RULES ARE HARMONIZED

Micron believes that the work program undertaken in Uruguay Round with respect to harmonizing national rules of origin must not in any way undermine the use or effectiveness of antidumping or countervailing duty laws. The current Agreement on Rules of Origin specifies that a single origin rule should apply to all trade matters from collection of Customs statistics to antidumping enforcement. While a single rule may be fine for certain industries, it would be very detrimental to U.S. semiconductor manufacturers concerned about dumping, if origin is established on the basis of the country in which final assembly occurs.

Current U.S. law bases origin for semiconductors for Customs purposes on country of final assembly. In antidumping cases, however, origin is determined on a case-by-case basis. In the semiconductor area, antidumping orders are administered on the basis of where a semiconductor is fabricated. If a final assembly rule were adopted for all purposes, the antidumping law would no longer be of any benefit for U.S. semiconductor producers, since foreign fabricators could very easily move final assembly to another country, thus avoiding the order.

For certain products it clearly would make most sense to have different rules for antidumping purposes and for general trade purposes. If this is not possible, however, Micron urges our negotiators to adopt harmonized origin ruled based on the country in which a semiconductor is fabricated.

DUTIES ON SEMICONDUCTORS AND MANUFACTURING EQUIPMENT SHOULD BE ELIMINATED

Micron firmly supports continued elimination of industrial tariffs in any new round of WTO negotiations. Micron believes that more countries should be encouraged to eliminate their duties in accordance with the 1997 Information Technology Agreement. In addition, negotiating authority should be sought to negotiate elimination of all remaining duties on semiconductor manufacturing equipment and materials.

THE SUBSIDIES CODE GREEN LIGHT PROVISION SHOULD BE ALLOWED TO EXPIRE

Under the Agreement on Subsidies and Countervailing Measures that was negotiated during the Uruguay Round, WTO countries agreed to permit non-application ("greenlighting") of countervailing duty measures to certain types of subsidies, including subsidies for environmental compliance, regional subsidies and certain research and development subsidies. WTO countries agreed that, unless specifically extended by WTO member countries, green lighted subsidies would once again become actionable subsidies after December 31, 1999.

Micron believes that the benefits of the Green Light provision have run their course, particularly with respect to R&D subsidies. R&D subsidies, to the extent that they are specific to an enterprise or industry or group thereof, should be subject to countervailing duty disciplines and WTO challenges when they result in material injury, serious prejudice, or nullification and impairment. In today's competitive global climate there is simply no reason to exempt an entire category of subsidies from internationally-agreed to disciplines, particularly in area of R&D, where government subsidies can result in significant unfair advantages for national firms.

Micron also believes that the serious prejudice provisions, which are also due to expire, should be permanently extended. These provisions have helped to increase disciplines against dark amber subsidies, several of which have been subject to WTO dispute settlement challenges.

CONCLUSION

Micron supports the efforts of the United States to build a more open international trading environment. We appreciate this opportunity to express out views.

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Statement of North Dakota Durum Wheat Farmers

These comments are submitted by durum wheat farmers located in North Dakota (whose names and addresses appear at the end of these comments) in response to the Subcommittee on Trade's Advisory of July 8, 1999 regarding the Subcommittee's hearing on U.S. negotiating objectives for the WTO Seattle Ministerial Meeting. We appreciate this opportunity to raise the concerns of wheat farmers such as ourselves so they may be addressed in the upcoming negotiations.

Farmers, and wheat farmers in particular, have long been supporters of trade liberalization. We have supported trade liberalization because we believed that opening foreign markets by reducing tariffs and other barriers to U.S. exports would benefit U.S. farmers, who can compete with any farmers in the world absent programs or policies that distort trade. Lately, however, large segments of the farming sector, including wheat farmers, have come to question whether we have received all of the benefits of "free trade" to which we were entitled. The answer to that question is, sadly, "no."

The upcoming WTO negotiations present an opportunity for policymakers to restore the faith of farmers in the effectiveness of trade agreements. Much is at stake, including the lives and livelihood of tens of thousands of farmers across the country.

It is with these thoughts in mind that we identify what we believe should be our country's negotiating objectives. First, agriculture *must* be the top priority for the upcoming negotiations. As the Subcommittee's Members are no doubt aware, U.S. agriculture is in crisis. Oversupply and historically low commodity prices threaten to push large numbers of small farmers out of business. While emergency relief measures such as those being considered by Congress and the Administration can help in the short-term, the upcoming trade negotiations provide the opportunity to reach long-term solutions.

The negotiations must focus on the elimination of foreign export subsidies and other programs that distort trade. Our negotiators should also focus on practices that allow countries to avoid export subsidy commitments, such as pooling arrangements and dual pricing systems. These types of practices undercut U.S. products in the world market by creating artificially low export prices for many foreign products.

The negotiations must ensure that U.S. farmers have full and unimpeded access to foreign markets. Too many countries currently do not allow reciprocal marketing of U.S. agricultural products, even though the United States has granted such access to them. This cannot be permitted to continue.

Sanitary and phytosanitary (SPS) issues are important to ensuring market access. Sound science must be the touchstone for SPS standards. At the same time, effective enforcement against pest and disease prevention, including karnal bunt, must be given appropriate priority as well.

Resolution of disputes must be made speedier. The recent dispute with the European Union over beef hormones exposes the important shortcomings in the current system, and is a prime example of how the promises of the benefits of the new and improved trading system under the WTO have not come to fruition for America's farmers.

Elimination of state trading enterprises (STEs)also should be a priority. Our experience with the Canadian Wheat Board, for example, has shown how STEs provide support to domestic producers through different means, and also has enhanced the ability of foreign countries to restrict trade from the United States. Efforts to ensure compliance with Article XVII principles have been unavailing. Elimination of STEs appears the only likely solution.

As important as opening foreign markets and removing various impediments to U.S. exports is, we think it is no less important that farmers in the United States have available to them effective remedies when injurious imports enter our market, particularly when such imports are either being sold at dumped prices or are being subsidized. The United States should resist efforts to re-open international agreements on antidumping and countervailing duties which would likely result in weakening of those remedies. Accordingly, we oppose proposals to reopen these agreements.

Finally, a review of barriers that exist with respect to access to purchase registered chemicals and pesticides should be undertaken without delay, whether in the Seattle context or separately as a NAFTA issue. Today, U.S. farmers face obstacles in trying to purchase certain pesticides in Canada, where they are available at much lower prices than in the United States because of differences in patent protec-

tion. These result in significant artificial cost disadvantages for U.S. farmers vis-à-vis our Canadian competitors. We respectfully urge our negotiators to bring this important problem expeditiously to the negotiating table, whether under the TRIPs Agreement, bilaterally, or on a NAFTA-wide basis, to obtain harmonized patent protection for registered chemicals and pesticides so that U.S. farmers are not needlessly disadvantaged.

Once again, we appreciate this opportunity to provide input into the negotiating agenda.

Respectfully submitted,

JEROME ANDERSON
Ross, ND 58776–9096
MARSHALL CRAFT
Stanley, ND 58784
LOUIS KUSTER
Stanley, ND 58784
CURT TRULSON
Ross, ND 58776

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Statement of Pharmaceutical Research and Manufacturers of America (PhRMA)

SUMMARY

The Pharmaceutical Research and Manufacturers of America ("PhRMA") urge the United States to pursue every opportunity for improving the ability of the innovative pharmaceutical industry to compete in foreign markets. The United States has a substantial interest in ensuring that our trading partners do not erect barriers to our ability to compete in their markets, through non-market-based price controls, inadequate intellectual property protection standards, unfair or coercive government procurement practices, high tariffs or other measures. We urge the U.S. Government to approach the Seattle Ministerial Conference and the new round of negotiations in the World Trade Organization ("WTO") with a view toward removing these impediments to trade. We stand ready to work with the Office of the U.S. Trade Representative ("USTR"), other key actors in the United States Government, and the Congress, to pursue an effective course of action in the new round and through other opportunities.

To summarize our more detailed comments that follow, PhRMA has identified the following five priority areas. Among these negotiating objectives for the new round, our member companies place highest priority on the issues of intellectual property protection and non-market-based price controls.

- *Intellectual property*. Preclude any attempt to reduce, dilute or delay implementation of existing TRIPS obligations, ensure the possibility of initiating work to enhance the Agreement at a suitable time during the next round, and seek to enhance existing standards through other bilateral and multilateral fora.
- *Price controls*. Ensure that WTO Members identify, eliminate, or substantially reduce trade-distorting price controls and non-market-based government interventions in the pharmaceuticals market, as these measures undermine the goals of free trade.
- *Government procurement*. Pursue expansion of the plurilateral Agreement on Government Procurement to ensure the coverage of governmental and quasi-governmental entities responsible for direct and indirect procurement of and/or payment for pharmaceutical products.
- *Sanitary and phytosanitary measures*. Emphasize the importance of transparent and non-discriminatory rules, and oppose any attempts to undermine the risk assessment and sound science standards of the Sanitary and Phytosanitary Measures Agreement.
- *Customs and tariff issues*. Expand the pharmaceutical tariff agreement to cover both additional products and countries, complete the World Customs Organization's harmonization work program under the Agreement on Rules of Origin, and implement the Customs Valuation Agreement by developing countries.

STATEMENT

The Pharmaceutical Research and Manufacturers of America is a trade organization representing approximately 100 U.S. companies with a primary commitment to pharmaceutical research. This year, PhRMA members are expected to invest over $24 billion in research and development efforts to identify and bring to market new drugs. Our members employ over 208,000 Americans in a variety of high-skill, high-wage jobs. The industry's annual worldwide sales are expected to exceed $134 billion, an increase of nearly 8 percent over 1998 figures. One third of this revenue comes from sales of our products in foreign markets. Our ability to compete successfully in those markets is dependent on effective, non-discriminatory trade rules that protect our technology and products.

The Uruguay Round of multilateral trade negotiations produced significant gains in the area of patent protection, particularly in the creation of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). USTR and other trade agencies have already stated their commitment to enforcement of existing trade agreements. PhRMA considers such efforts to be of critical importance, particularly with regard to Uruguay Round commitments on the protection of intellectual property rights, sanitary and phytosanitary measures, and customs valuation. Such efforts will not be sufficient, however, to address the problems that the industry faces abroad. Accordingly, PhRMA urges the members of the Subcommittee to ensure that the U.S. Government pursues a forward-looking set of negotiating objectives in future trade negotiations. In these negotiations, the U.S. Government should advocate the creation of new trade rules to address, inter alia, the two most critical issues facing our innovative industry: insufficient intellectual property rights protection and non-market-based price control measures.

Intellectual Property

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was one of the most significant achievements of the Uruguay Round. The standards established by TRIPS represent a vast improvement over the patchwork of bilateral and multilateral agreements that existed at the time the Round was concluded.

But the Agreement is more than simply a set of standards for protecting inventions, trademarks and other forms of intellectual property. From the outset, the TRIPS negotiators realized that the mere adoption of laws that reflect the standards of the TRIPS Agreement would not achieve the goal of delivering adequate and effective protection for intellectual property. As a result, the Agreement was structured as an innovative effort to establish a baseline level of intellectual property protection through a combination of legal norms, effective enforcement procedures and efficient registration systems. The objective of the Agreement must be recognized to be the establishment of functional intellectual property systems in all WTO Members that deliver adequate and effective protection of intellectual property rights. Thus, unless and until viable, efficient and effective intellectual property systems are established in all WTO Members, the potential of the Agreement to deliver more effective protection for innovation-based U.S. industries will not be realized.

Many developing country WTO Members have used their transition period to establish the necessary reforms to bring their regimes into compliance with the TRIPS standards. However, a far larger number of developing country WTO Members have not made these legislative reforms. More distressing is the fact that few developing countries have undertaken reforms in the areas of enforcement or in development of improved registration systems (e.g., procedures for granting patents and registering trademarks) that are critical to giving effect to the obligations of the Agreement.

PhRMA and its members applaud the efforts of the United States—directly and through its support of the World Intellectual Property Organization (WIPO) and other relevant multilateral organizations—to provide technical assistance to developing country officials focused on legislative reform. PhRMA believes these efforts must be complemented by additional activities to help developing country industrial property officials establish efficient and cost-effective procedures for granting rights. This assistance should include training of officials responsible for review and granting of patents, and development of relationships between the U.S. Patent and Trademark Office and other major industrial property offices that would enable these developing country industrial property offices to expedite the application review and granting process. The United States should also expand its efforts to provide training and other forms of assistance to courts, customs authorities and law enforcement officials in developing countries to help those countries develop effective enforcement measures.

In addition to providing technical assistance, PhRMA encourages the United States to not hesitate in promoting reform by vigorously pursuing those developing country WTO Members that fail to meet their obligations under the TRIPS Agreement. PhRMA and its members strongly encourage the United States to use the dispute settlement procedures of the WTO to promote compliance and to confirm the nature of the existing obligations of the Agreement. PhRMA and its members believe the United States should complement these WTO-based enforcement efforts with bilateral discussions with those WTO Members that fail to implement their obligations under the TRIPS Agreement or otherwise undermine the intellectual property of innovative U.S industries.

In moving forward toward the Ministerial Conference and beyond, it is important to recognize that work has already begun within the WTO that could enhance the Agreement.

- Under the built-in agenda, the TRIPS Council has begun its review of the protection required by the Agreement for plant and animal innovation and on the issue of expiration of the moratorium on use of non-violation grounds in dispute settlement proceedings involving the TRIPS Agreement. The U.S. Government should make it a priority to ensure that these reviews produce favorable outcomes that will strengthen the obligations of the Agreement.
- The TRIPS Council will conduct reviews of implementation of the Agreement by developing country WTO Members over the next 18 to 24 months. These reviews will shed light on the results of efforts taken by these Members to bring their systems into compliance with their obligations. PhRMA looks forward to working with USTR to ensure that this process, as intended, results in improved global intellectual property protection standards by all developing country WTO Members.
- Work planned under the built-in agenda will also include reviews specified in Article 71 of the Agreement, including the comprehensive review of the Agreement starting in the year 2002. These reviews will provide an opportunity for the United States to elaborate its views on a number of the provisions, and will provide other WTO Members a similar opportunity to indicate how they view the Agreement.
- Several disputes concerning obligations of the TRIPS Agreement are now pending before the WTO Dispute Settlement Body (DSB). Additional disputes are likely to commence after expiration of the second transitional period specified in the Agreement (i.e., after January 1, 2000). The results from these dispute settlement proceedings will help to identify any weaknesses or deficiencies in the Agreement so that corrective action can commence.

The results from this work under the built-in agenda and from the decisions of the DSB will provide important insights into the nature and effectiveness of the current obligations of the Agreement, and may point to a need to clarify or enhance certain parts of the Agreement.

A number of developing country WTO Members have submitted proposals to the General Council in preparation for the WTO Ministerial, some of which suggest that the TRIPS Council conduct work on ways to decrease the level of protection afforded under the Agreement. Other proposals seek to extend the transitional periods for implementation of the Agreement. Proposals along these lines are extremely troubling to PhRMA and its members. The suggestion that it would be appropriate for the TRIPS Council to pursue a work program to weaken the TRIPS Agreement before the Agreement has even been fully implemented raises serious questions about the commitment of these Members to honor the obligations they accepted during the Uruguay Round. Similarly, it is extremely troubling that certain WTO members are advancing proposals to extend the transition period at the time when these countries are required to have implemented their obligations. The U.S. Government must be prepared to respond to these proposals in a way that forecloses any opportunity to weaken the current Agreement and that does not prejudice future enhancements to the Agreement.

Accordingly, PhRMA and its members recommend that the U.S. Government stress the following principles concerning the TRIPS Agreement during the Ministerial Conference.

First, PhRMA and its members believe it is imperative for the United States to dispel any notion that the Ministerial Conference or the new round could provide an opportunity to reduce, dilute or delay implementation of the obligations mandated by the current text of the TRIPS Agreement. The obligations undertaken by all WTO Members in the Uruguay Round on intellectual property must be respected and met by developing country WTO Members through timely and full compliance with both the spirit and letter of the TRIPS Agreement. Accordingly, the U.S. Government must preclude any deliberations in the Ministerial Conference that would call into question the existing obligations of the Agreement. The U.S. Government should work closely with developed country WTO Members to ensure consistent in-

terpretations of TRIPS. Moreover, the Quad countries should ensure that they are fully compliant with TRIPS provisions prior to the Ministerial, including patent and trademark obligations and enforcement.

PhRMA and its members believe the United States Government must complement this stance on timely and full implementation by aggressively opposing any efforts by developing country WTO Members to begin work in the new round that could dilute or weaken the obligations of the Agreement. In particular, we urge the United States Government to oppose proposals that could raise the possibility of diminishing the patent obligations of the Agreement, such as by narrowing the obligations concerning patent eligibility for plant and animal inventions, or by loosening the restrictions use of patented inventions without the permission of the patent owner.

Similarly, the United States Government must be prepared to not only oppose but to foreclose the possibility of addressing certain concepts that are likely to be advanced during the deliberations on the new round. The two issues of immediate concern are the expiration of the moratorium on use of non-violation grounds in WTO dispute settlement proceedings involving the TRIPS Agreement and extension of the transition periods for compliance.

On the former issue, PhRMA is concerned that there appears to be support among a number of WTO Members for an extension of the moratorium on invocation of non-violation grounds in WTO dispute settlement proceedings involving the TRIPS Agreement. PhRMA and its members believe that a temporary or indefinite foreclosure on use of non-violation grounds in dispute settlement proceedings will deprive intellectual property owners of the full protections afforded by the Agreement. Given the resistance of certain WTO Members to substantive intellectual property reform, it is crucial that the U.S. Government preserve all of its options in the dispute settlement process to remove direct and indirect impediments to TRIPS compliance. The United States Government should accordingly strongly oppose any effort to extend the moratorium specified in Article 64.2, including a temporary extension of the moratorium during the new round.

On the latter issue, PhRMA and its members believe the United States Government must oppose any effort to extend the transition periods for compliance with the obligations of the Agreement for developing countries. The five years provided to developing countries to date has been more than adequate to enable these countries to undertake the legislative and regulatory reform needed to place their systems into compliance with the TRIPS standards. Countries that have chosen to delay implementation with the hope that the transition periods will be extended should not be allowed to succeed in their efforts to avoid the obligations they undertook as part of the Uruguay Round. PhRMA and its members strongly urge the United States to oppose any effort to delay the effective date of any of the obligations of the Agreement.

Second, PhRMA and its members recommend that the United States Government seek assurances in the Ministerial Conference that developments arising out of work on the built-in agenda are framed so as to provide only for the possibility of enhancing the levels of protection offered under the Agreement. The United States Government should also ensure that the WTO Ministerial Declaration reserves the possibility of initiating work to enhance the Agreement at a suitable time during the next round.

We urge this approach recognizing that, although the TRIPS Agreement holds the potential for significantly improving the global environment for the protection of intellectual property rights, it was a carefully negotiated compromise that addresses only parts of the global intellectual property regime important to our industry. Unfortunately, the Agreement does not satisfactorily resolve a number of issues of critical importance to the research-based pharmaceutical industry. Examples of deficiencies in the Agreement include:

- impediments to the enforcement within the WTO dispute settlement process of obligations in the TRIPS Agreement concerning the exclusive right of a patent owner to prevent importation of products obtained outside the jurisdiction of the member;
- an absence of comprehensive patent eligibility through the authority of Members to exclude plant and animal inventions from protection under patents;
- a lack of precision in the definition of obligations concerning use of data or conclusions drawn from data generated to prove the safety and efficacy of pharmaceutical and other regulated new products and new indications of existing products;
- an absence of means to realize an effective term of patent protection where the ability to market the patented product has been impeded through regulatory delays or procedures;

• inadequate safeguards regarding trade in counterfeit pharmaceutical products and incomplete protection for trademarks and trade dress of pharmaceutical products; and

• overly generous transitional periods for certain developing countries with respect to product patent protection for developing countries.

Also, while the Agreement imposes general obligations concerning the overall efficiency of systems for granting rights, there is a pronounced need for systems that grant rights in a more efficient and cost-effective manner. PhRMA members will not realize the benefits of the current agreement until such systems are established.

Third, PhRMA and its members recognize that the WTO is not the only forum available to pursue enhancements to the global intellectual property system. For example, there are a number of activities underway in WIPO that could improve the ability of innovative U.S. industries to obtain and enjoy effective protection. Recognizing this, PhRMA and its members believe the United States Government should complement its efforts within the WTO by seeking to enhance these standards through opportunities within WIPO and other international intergovernmental institutions, and in its bilateral and multilateral negotiations.

Non-Market-Based Price Controls

PhRMA believes that in this round of trade negotiations, the U.S. Government should ensure that WTO Members identify, eliminate, or substantially reduce trade-distorting price controls and non-market-based government interventions in the pharmaceuticals market. The elimination of government-imposed price controls should be a U.S. negotiating priority, because such measures lead to international market distortions that profoundly undermine the goals of free trade.

In a growing number of foreign markets, PhRMA member companies face non-market-based measures designed to regulate prices and the consumption of pharmaceutical products, under the justification of "cost containment." While the pharmaceutical industry recognizes the need for governments and consumers to contain costs, the price and market regulation approaches used by governments are problematic and are often discriminatory against U.S. innovators. Unfortunately, these government-imposed interventions generally fail to contain costs and lead to delays in patient access to new and important medicines.

Different countries employ a wide variety of price and volume control measures. Some national health authorities calculate a price for products or groups of products based on expert advice or on the products' cost of production. Other governments fix prices based on the average price for a product in a "basket" of other countries. Still others limit the amount of profits a pharmaceutical company can earn. Cost control programs are sometimes "voluntary" (i.e., imposed through company-specific or industry-wide agreements with the government), but are often mandatory. However, even programs that are nominally voluntary frequently permit the health authorities to impose cost controls if the industry is not sufficiently cooperative. In France, for example, if companies do not voluntarily limit their sales growth, the government imposes industry-wide penalties. Similarly, in the United Kingdom, the health authority retains the discretion to impose price or profit control measures even if the industry agrees to participate in a voluntary cost control scheme.

Despite the variety of approaches used by governments to control the prices of or spending on drugs, all of these cost containment interventions have one feature in common: they incorporate a non-free-market based approach to the purchase and consumption of pharmaceuticals, and therefore distort free trade of these products and open competition.

These government interventions in pharmaceutical pricing and purchasing have several adverse effects, which are frequently overlooked by national legislatures and health care authorities. These measures have an impact not only on the trade of goods and services, but as importantly, on the ability of patients to access pharmaceutical products.

• Government-imposed market interventions generally lead to lower than market-based prices, and, consequently, directly reduce the industry's revenues. The reduction in revenues undermines the value of a company's patent rights and therefore directly contradicts the intent of the TRIPS Agreement to provide for protection of intellectual property rights. More importantly, these measures and their impact on industry revenues make it difficult for pharmaceutical companies to fund the necessary R&D to continue to develop innovative products.

• These government interventions are focused on the pharmaceuticals industry, rather than addressing commercial health sectors across-the-board. As a result, such measures discriminate against the pharmaceutical industry in particular.

• Most often, government interventions in the market for pharmaceuticals are intended to reduce government budgetary expenditures. However, in some cases,

their objective is to protect the domestic pharmaceutical industry from imports. Under these circumstances, there is clear discrimination against foreign products, in violation of requirements for national treatment of all products.

• Moreover, these measures generally are targeted toward innovative products. As a result, they disproportionately impact the U.S. industry, which has historically been at the forefront in the development of innovative, fast-growing and profitable pharmaceutical products.

PhRMA believes that it is critical for the United States Government to address the use of such government-imposed interventions within the pharmaceutical markets of its trading partners. There are several avenues by which this could be done.

The WTO Agreement already addresses some aspects of these non-market based measures. For example, paragraph 9 of Article III of the General Agreement on Tariffs and Trade 1994 acknowledges that internal price control measures can have prejudicial effects on imported products, in that some measures may discriminate against innovation and therefore against certain companies. In addition, these measures seriously undermine the protection afforded by other parts of the WTO Agreement, including the TRIPS Agreement and the General Agreement on Trade in Services. TRIMS also precludes measures that would require domestic investment or production in order to obtain an advantage, and might thereby invalidate some of the cost containment mechanisms in place. It may also be possible to address these measures on the issue of protection of domestic industries. Lastly, recent OECD documents have called for reforms to regulatory regimes that slow innovation and reduce competitiveness, and for keeping markets open to international trade and investment, and therefore staying the course of market-based approaches.

Government Procurement

PhRMA urges the United States to pursue the expansion of the scope of the plurilateral Agreement on Government Procurement to ensure the coverage of governmental and quasi-governmental entities responsible for the direct and indirect procurement of and/or payment for pharmaceutical products. Currently, although many Parties to the Agreement have listed their Ministries of Health in their respective schedules, the entities that actually procure pharmaceutical products are not listed and often do not adhere to the rules set forth in the Agreement. This is compounded by the problem of governments acting as monopsonistic purchasers, leading to many of the same distortionary and inefficient market results as are more generally feared under monopoly seller conditions. In addition, government procurement operates within a regulatory framework in which competition policy, reimbursement rules, and drug marketing approvals are all established by the same government, often resulting in less than transparent outcomes. Furthermore, the Agreement on Government Procurement is a plurilateral agreement to which only 26 of the 134 WTO Members have acceded. WTO Members who are not a party to this Agreement should be encouraged to ratify it and bring their procurement policies in accordance.

PhRMA applauds the efforts of USTR to reach an agreement at Seattle on transparency in government procurement that would cover all WTO Members. The United States must seek to broaden the WTO's inquiry into transparency in government procurement practices to encompass the impact of government corruption on trade. In addition, PhRMA believes that the core elements of the Anti-Bribery Convention completed under the auspices of the Organization for Economic Cooperation and Development should be extended to all WTO Members, and made enforceable through WTO dispute settlement.

Sanitary and Phytosanitary Measures

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) contains a number of disciplines that have benefited or could benefit the U.S. pharmaceutical and biotechnology industry, such as the requirement that regulatory decisions be based on sound science and on a risk assessment. However, some of the principles of the Agreement—such as regionalization for animal diseases and the development of international standards—have proven to be difficult to apply. Both the strengths and the weaknesses of the Agreement were evident during the discussions between the United States and the European Union ("EU") on the implementation of the EU Commission Decision on the prohibition of the use of materials presenting a risk as regards transmissible spongiform encephalopathies (the so-called SRM ban) which, as originally drafted, would have inflicted billions of dollars of commercial damage on the pharmaceutical industry without any clear safety benefit to consumers.

Accordingly, the U.S. Government should emphasize the importance of implementation of transparent and non-discriminatory rules consistent with the intent of the

SPS Agreement, and should oppose any attempts to undermine its risk assessment and sound science standards, particularly with respect to the "precautionary principle."

PhRMA also believes that USTR should use the built-in agenda of the Agriculture Agreement to elaborate key provisions of the SPS Agreement, focusing on the need to base measures affecting trade on sound science, rather than on political goals or vaguely phrased "consumer concerns" not grounded in fact. However, the U.S. Government should resist at all costs any effort to dilute the disciplines already found in the SPS Agreement, or to limit the scope of their application.

Customs and Tariff Issues

Finally, in addition to the issues described above, PhRMA member companies assign considerable importance to the following customs and tariff objectives:

• *Continuing the expansion of the pharmaceutical tariff elimination agreement, to cover both additional products and countries*. The current agreement, reached in the Uruguay Round, brought significant benefits to millions of patients by eliminating the unnecessary tax on research and development, which serves no trade protective purpose in a globalized industry. PhRMA strongly believes that the agreement can be improved upon by revising the tariff nomenclature to permit coverage of new products without the cumbersome process of negotiating update agreements every three years. In addition, the many less-developed countries that have received "free rides" under this plurilateral arrangement should be brought into the fold, either through their direct inclusion in the pharmaceutical zero-for-zero agreement, or through full participation in the Accelerated Tariff Liberalization initiative. Finally, all additional countries acceding to the WTO should be required to become signatories to the zero-for-zero tariff agreement.

• *Prompt completion of the World Customs Organization's harmonization work program under the Agreement on Rules of Origin*. This agreement will permit the industry to apply predictable origin rules for labeling and other purposes, based on the U.S. position that chemical reactions, normal dosage formulation, and activities resulting in a change in tariff heading confer the origin status of the country in which the prescribed activity took place. The failure to complete this work under the Uruguay Round schedule has resulted in uncertainty (and potential liability) in the industry and the international marketplace, due to conflicting local regulations and rulings, and questions about the applicability of foreign customs origins rules to drug registration agency rules.

• *Full implementation of the Customs Valuation Agreement by developing countries*. This agreement lends predictability to customs valuation of traded finished drug products, bulk active ingredients, and intermediates. Arbitrary valuation schemes for dutiable products based on minimum values, projected resale prices, or other non-WTO compliant approaches, compound the negative effects of those countries' failure to participate in the zero-for-zero tariff agreement. The U.S. should urge all WTO members to adhere to the implementation schedule of the GATT/WTO Customs Valuation Agreement, without agreeing to requests for further delays.

Conclusion

PhRMA appreciates the opportunity to present these comments on the upcoming WTO Ministerial Conference in Seattle. PhRMA looks to USTR and other U.S. trade agencies to seek significant improvements in the proposed new trade round to existing international trade rules, with the objective of eliminating all constraints to the operations of free markets on a global basis. At the same time, the U.S. Government must continue to seek compliance with existing WTO rules through vigorous enforcement efforts. PhRMA is committed to work closely with the Subcommittee to ensure that these objectives are adequately reflected in the Ministerial Declaration to be issued in Seattle later this year and in the ensuing round of negotiations.

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Statement of PPG Industries, Inc., Pittsburgh, Pennsylvania

PPG Industries, Inc. ("PPG") is an U.S. producer of flat glass, fiber glass, chemicals and coatings. With production facilities both in the United States and abroad, PPG manufactures and markets its products on a global basis. Thus, the company has a strong interest in expanding free trade and ensuring a fair international trading system.

In support of liberalizing trade and further reducing tariff and non-tariff barriers, PPG offers the following suggestions with respect to negotiating objectives for the World Trade Organization Ministerial meeting in Seattle.

I. Implementation of Existing Agreements

The existing GATT 1994 Agreements which came out of the Uruguay Round and the work programs initiated by those agreements set forth the rights and obligations of all the WTO member countries. These are the rights and obligations for which the United States bargained as part of the multilateral negotiations that led to the creation of the WTO.

To the extent that member states have not and are not meeting the requirements of their obligations, the U.S., in some measure, is not receiving the rights for which it bargained. Implementation of these agreements and their accompanying work programs are of great importance to U.S. businesses. Further discussion of the WTO work programs appears under heading III below.

A. Agreement Compliance

Many WTO Members have not notified the appropriate Committees of their implementing legislation. This includes notification in important areas such as antidumping, countervailing duties, and customs valuation. Lack of notification suggests the possibility of non-compliance. Until there is appropriate notification, a given Committee cannot decide whether there is compliance.

Even when there has been compliance with basic reporting requirements, some Committees have not been able to obtain responses to follow-up questions regarding implementation. For example, the Committee on Subsidies and Countervailing Measures in a report prepared for the Singapore Ministerial noted that it had not been able to obtain answers to questions that had been put to Members following review of implementing legislation. [See Report (1996) of the Committee on Subsidies and Countervailing Measures at 5–6, G/L/126 (10/28/96).] The unanswered questions included questions regarding: perceived inconsistencies between the Agreement, newly-enacted legislation by various member countries, and pre-existing legislation and the potential for actions inconsistent with the Agreement if based on that pre-existing legislation. [Id. at 6.]

In these circumstances, it is hard for an U.S. company to measure the extent of the benefits that arise from the Agreements or to discern opportunities that might exist.

B. Future Compliance

Developing countries joining the WTO have been able to postpone compliance with a number of different agreements. For example, fifty-one countries have postponed compliance with the Agreement on Implementation of Article VII of the GATT 1994 for five years. [See Report of the Committee on Customs Valuation to the Council for Trade in Goods at 1, G/L/121 (10/29/96).] The TRIPS and TRIMS Agreements also include provisions which allow developing countries to delay implementation for five years.

This means that those developing countries which were original Members of the WTO and opted to delay compliance will all have to be in compliance by January 1, 2000. It is important for the WTO to begin steps now to ensure that these countries meet their obligations in a timely manner.

C. Reporting

Annex 1A to the Agreement Establishing the World Trade Organization containing the Multilateral Agreements on Trade in Goods establishes 175 notification obligations or procedures, of which twenty-six are periodic, for member states. [See Report of the Working Group on Notification Obligations and Procedures, G/L/112 at 3 (10/7/96).] WTO materials published to date indicate that many Members have not met these obligations.

For example, Article 25 of the Agreement on Subsidies and Countervailing Measures requires that Members provide a new and full notification of all subsidies every third year and updated reports in every intervening year. The first full notification was due on June 30, 1995 but only 76 of 131 Members had reported as of July 31, 1997, two years after the due date. Moreover, as of the mid–1997 due date for reporting, only 48 countries had provided their 1996 update and only nine had provided the 1997 update. [See WTO Annual Report 1997, Vol. 1 at 108.]

In addition, under Article 18.5 of the Agreement of Article VI of the GATT 1994 and a decision of the Committee on Anti-Dumping Practices, Members were required to notify their antidumping legislation and/or regulations by March 15, 1995. [See WTO Annual Report 1997 at 110.] As of June 30, 1997, forty countries had not made any such notification. Thus, significant numbers of countries have avoided scrutiny of their subsidies and their antidumping regime, despite their commitments as WTO Members.

In some measure, this broad failure to meet reporting requirements may be attributed to lack of resources. PPG therefore urges the United States Government to support the provision of assistance to developing countries that seek it.

Regardless of the reasons, the lack of compliance and reporting reduces the value of U.S. participation in and support for the WTO. To enhance the value of U.S. membership, the United States should support a number of different efforts, including:

(1) Ensure adequate funding for both U.S. monitoring agencies and a strong U.S. presence in Geneva;
(2) In particular, the USTR should ensure sufficient resources for participation in WTO dispute settlement proceedings;
(3) Work with WTO officials to ensure rapid public dissemination of all data submitted as a result of WTO notification requirements.

II. Mandated Negotiations

Article XIX of the General Agreement on Trade in Services calls for negotiations leading to progressive liberalization of trade in services. At the Singapore Ministerial, the Ministers endorsed the GATS Council's beginning to consider the guidelines and procedures for Article XIX negotiations. [See WTO Annual Report 1997 at 119.] Reduction in the costs of services (including financial, telecommunications, transportation, and distribution services) will enhance the ability to compete of PPG and other U.S. businesses that sell abroad.

PPG supports U.S. participation in negotiating efforts that will lead to greater liberalization in the service sectors. In particular, PPG urges the U.S. Government to focus on securing liberalization of distribution services, a service sector, which has effectively closed certain foreign markets to participation by U.S. goods manufacturers.

III. Review of Existing Agreements and Work Programs

As discussed under heading I above, many WTO Members have not yet fully complied with the notification and reporting requirements to which they agreed. Absent such reporting, it is not clear that those Members who have not reported are in compliance with existing agreements. In some instances, this makes it hard to determine the efficacy of existing Agreements.

In addition, PPG has the following specific comments regarding existing agreements and work programs:

A. Antidumping

The United States should focus the attention of the Members and the organization on the remaining implementation and notification failures. The United States should strongly oppose proposals, which would permit a general reopening of negotiations on either the subsidies or the antidumping agreements. These agreements, achieved after particularly difficult negotiations, have been in place for less then five years. Hence, such reopening is premature given the lack of experience and the evolving body of law within member countries as well as under the WTO Dispute Settlement Understanding, and should be strongly opposed.

Moreover, PPG further urges USTR to consider effective and meaningful anti-circumvention provisions, particularly in the antidumping agreement. Circumvention of legitimate and necessary remedies provided for by the agreement is the real issue of concern with regard to the operation of these agreements, not the ungrounded fears of some member countries that the remedies under the agreements might lead to unspecified abuses. [See, WT/GC/W/145, 8 February 1999, Communication of the Government of Japan.]

B. Subsidies

PPG agrees with suggestions of the United States and some other WTO Members that implementation could be improved by modifying the notification and review process such that updating notifications are eliminated and full notifications are made every other year, permitting a regular cycle in which subsidies are notified in the first year and reviewed in the second, etc. [WT/GC/W/107, 3 November 1998, Communication from the United States.]

Article 31 of the subsidies agreement calls for the WTO to review the operation of Article 6.1 (serious prejudice), and Articles 8 and 9 (non-actionable subsidies), and determine whether these articles should be modified or eliminated. PPG supports the continuation of these articles.

PPG further proposes that tighter rules be developed to preclude the circumvention of export subsidy commitments so that there is a fully shared understanding of what is permitted and precluded by commitments on export subsidies. PPG also encourages the President to vigorously pursue the application of countervailing duty laws to identifiable subsidies in non-market economies. Some of these subsidies, such as export subsidies, are easily identifiable and quantifiable.

C. Customs Valuation

PPG agrees with USTR that technical assistance should be focused on active assessment of specific needs of particular Members, to avoid a situation where a Member might refer to the lack of effective assistance as an explanation for a failure to meet obligations by the agreed-upon deadline.

PPG also shares the United States' concerns regarding the increased use by some Members of questionable valuation methodologies, sometimes combined with a preshipment inspection regime, as a substitute for more selective trade remedies, or to otherwise raise broad market access barriers. PPG agrees that Members should consider appropriate ways to address the misuse of valuation methodologies short of dispute settlement procedures, given the important relationship between valuation and market access. [See WT/GC/W/107.]

D. Dispute Settlement

PPG believes that to date the WTO dispute settlement process has worked reasonably well. However, the process could be significantly improved if it were more transparent. To that end, PPG supports public access to panel and appellate body proceedings, including access to adequate and timely public versions of submissions. In addition, the companies actually involved in the dispute should be allowed to submit amicus briefs and make oral presentations in both panel and appellate body proceedings. In this context, PPG welcomes the recent decision of the appellate body in the Shrimp-Turtle dispute, holding, among other things, that the agreement does not require that panels reject unsolicited submissions.

E. Rules of Origin

Currently, Article 1.2 applies the Rules of Origin agreement to antidumping and countervailing duties and to safeguard measures under Article XIX. In the absence of adequate anticircumvention provisions applicable to antidumping and countervailing duties, PPG proposes that USTR should seek the modification of Article 1.2, to eliminate antidumping, countervailing duty, and safeguard measures from the scope of the Agreement on Rules of Origin.

F. Trade-Related Investment Measures (TRIMS)

PPG encounters substantial obstacles in its export business in the form of trade related investment measures. Thus, PPG urges USTR to pursue a reopening of the TRIMS agreement to strengthen its provisions.

Article 9 of the TRIMS agreement calls for a review of the operation of the current agreement and consideration of whether the current agreement should be complimented with provisions on investment policy and competition policy. The agreement could be modified to allow majority interests by any member country in any business in other member countries, and to prohibit restrictions on the repatriation of investment and earnings. In addition, notification and elimination provisions should be enforced, pursuant to Article of 5 of the TRIMS agreement (notification and transitional arrangements). Efforts to broaden the agreement to include provisions on investment policy or competition policy, however, are premature (please see below at heading V.).

G. Trade Related Aspects of Intellectual Property Rights (TRIPS)

PPG shares the concerns of USTR that many developing country Members have as yet not started to conform their laws to the TRIPS agreement in preparation for full implementation of their TRIPS obligations no later than January 1, 2000. While PPG generally supports the WTO's efforts to integrate all developing countries in the multilateral trading system, this should include the enforcement of all obligations under the agreement by the agreed upon deadlines.

IV. Integration of Least-Developed Countries

The integration of all developing countries in the multilateral trading system should include the enforcement of all obligations under the agreement, including the notification provisions, to all Members. In this context, PPG Industries also refers to its comments regarding Customs Valuation under heading III C above, and the

need for effective and specific technical assistance to developing countries that require it.

In addition, PPG Industries believes that benefits under the Generalized System of Preferences should be limited to the least developed countries. The current system grants preferential treatment to countries that do not need such preferences to compete in export markets. As a result the benefits of GSP for the least developed countries are diluted and MFN treatment is unfairly withheld from third country suppliers.

SINGAPORE MINISTERIAL MEETING WORK PROGRAMS

A. Trade and Investment

Negotiations within the OECD of an agreement on trade and investment have, to date, not been completed, and an agreement does not appear imminent. The OECD countries, of course, are much more homogenous in their stages of development and economies than the Members of the WTO. Given the apparent difficulty for the similar countries to reach an investment agreement, the likelihood of a WTO agreement in the near term does not appear strong.

PPG suggests that the United States support placement of these WTO negotiations on hold until such time as the OECD countries have reached an accord. Moreover, PPG believes that attempts to achieve a broad agreement on investment issues are premature, in light of the current international financial crisis and concomitant changes in the views of the trading partners regarding the desirability of the regulation of capital flows.

B. Trade and Competition Policy

Because of the great disparity in definitions of competition policy and what constitutes anti-competitive practices, it does not appear likely that any meaningful result can come from consideration of these issues. In connection with competition policy, PPG supports the views of the U.S. Department of Justice and the Federal Trade Commission that there are other, more practical, things countries can do to collaborate on competition policy.

PPG, however, has encountered anti-competitive practices in various arenas around the world and would like to see such practices outlawed. The most practical approach to global anti-competitive practices that PPG is aware of is the international coordination and information exchange undertaken by the Justice Department and the Federal Trade Commission. Therefore, PPG urges the President to support the suspension of the WTO effort in this area while supporting the efforts of Justice and the FTC.

PPG also urges the United States to strenuously oppose any efforts to use this working group as a means for re-opening consideration of any other WTO agreements, such as the antidumping agreement.

C. Transparency in Government Procurement

The stated goals of the Working Group on Transparency in Government Procurement are to study country procurement practices that foster transparency and then to develop recommendations for elements to be included in an agreement. [See WTO Annual Report 1997 at 142–43.] Such efforts will be beneficial, and the United States should support them. PPG believes that more tangible and significant results in the area of government procurement may be achieved by obtaining significantly more signatories to the Agreement on Government Procurement. PPG asks that the President include this as an objective in the United States trade negotiations.

VI. ELECTRONIC COMMERCE

Electronic commerce has great potential for the reduction of transaction costs, and the opening of additional markets. In addition, the application of electronic technology to the notification process holds the potential of increased transparency and improved implementation. [See also, infra, Tariff Bindings; WT/GC/W/107, 3 November 1998, Communication from the United States (PC Integrated DataBase).] Any review of electronic commerce issues, however, should be undertaken in the spirit of minimizing government interference, relying instead on self-governance by users and transparency. Government intervention will likely result in unneeded restraints, distort the development and application of new technology, and add costs. Thus, such intervention will compromise benefits attainable from the new technologies.

For example, the European Union has put into place a privacy directive that went into effect on October 23, 1998. [See Directive 95/46/EC, OJ L 281 (Nov. 23, 1995).]

While it is important to preserve citizens' privacy rights, it is possible that the approach taken by the EU will result in undue and extreme limitations on the movement of electronic data between countries over the long-term. Such limitations are likely to be disruptive, and the USTR should continue its efforts to reach an agreement with the EU which will avoid draconian results. In this matter and in the other E-Commerce arenas, the United States should support a program of limited government involvement and/or restriction.

RESPECTFULLY SUBMITTED,
PPG Industries

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Statement of Hon. Jack Quinn, a Representative in Congress from the State of New York

Mr. Chairman and Members of this Committee, thank you for this opportunity to testify today on the upcoming WTO negotiations in Seattle.

These negotiations present the United States with an important opportunity to greatly expand fair trade. Unfortunately, a handful of countries are seeking to use these negotiations to weaken anti-dumping and countervailing duty rules. These rules have been extensively negotiated in previous rounds, and we must send a clear messgae to the Administration that attempts to dilute international fair trade rules will not be tolerated.

As you well know, these laws are vitally important to our basic manufacturing and agricultural sectors. They have been particularly important to the U.S. steel industry and its workers. Foreign-government subsidies and closed foreign markets continue to fuel a recurrent worldwide steel crisis, and it is U.S. mills and workers that have borne the brunt of the adjustment costs.

The United States, in fact, accepts a disproportionate share of steel exports from around the world, especially Asia. Public and private barriers—such as government-imposed quotas and mill-to-mill agreements—limit imports into other major markets such as the EU and leave the United States as the world's "dumping ground." Most recently, our markets have been a target for steel turned loose by the collapse of demand in Asia and Russia.

Adjusting to the structural crisis in steel has been painful for our firms, workers, and communities. The industry has transformed itself, however, and modernized U.S. mills are now among the most efficient in the world. But U.S. mills cannot compete against foreign governments treasuries and foreign firms operating in protected markets.

Mr. Chairman, our anti-dumping rules and countervailing duty laws are the last line of defense against unfairly traded imports. Maintaining fair trade requires anti-dumping rules and countervailing duty rules—which ensure that exporters in closed markets do not abuse our open market policies.

Other countries' efforts to reopen the WTO agreements on these fair trade rules are poorly disguised attempts to weaken these rules. U.S. negotiators must not allow this to happen. This Committee approved an amendment to fast track legislation in 1997 that would instruct U.S. negotiators to reject any agreement that weakens disciplines against dumping and subsidies. We should send a strong message to the Administration that this issue continues to be a top priority. We cannot abandon these critical laws.

Indeed, we must work instead to enhance these laws. In this regard, I am proud to be a cosponsor of the English-Cardin bill, the "Fair Trade Enhancement Act." The amendments in this bill respond to the fact that current U.S. law makes relief unnecessarily difficult to obtain, imposing standards more onerous the those in our existing international agreements.

Having effective and up-to-date trade laws in place is important to internationally competitive U.S. manufacturing industries—particularly the steel industry, where international trade has been more heavily distorted by subsidies, closed markets, cartelization, and dumping than in any other economic sector.

I urge this Committee to send a strong message to the Administration that we will not allow our industries to be hamstrung by a weakening of international trade rules. I encourage you to support the English-Cardin—which proposes needed reforms to keep our fair trade laws a credible and effective deterrent into the next Millennium.

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Statement of Ranchers-Cattlemen Action Legal Fund

This statement is submitted by the Ranchers-Cattlemen Action Legal Fund ("R–CALF") in response to the Subcommittee on Trade's Advisory of July 8, 1999 regarding the Subcommittee's hearing on U.S. negotiating objectives for the WTO Seattle Ministerial Meeting.[1] R–CALF, a non-profit legal foundation that monitors trade issues that affect cattle producers and petitioner in antidumping and countervailing duty investigations concerning imports of live cattle from Canada and Mexico, appreciates this opportunity to provide input into the crafting of U.S. negotiating objectives and to help ensure that the economic interests of domestic cattle ranchers are effectively represented in the upcoming WTO negotiations. This statement addresses key issues for the upcoming ministerial, including: (1) export subsidies and foreign trade barriers to U.S. exports of cattle and beef products; (2) the importance of U.S. tariff-rate quotas and special safeguards for the cattle and beef industry; (3) effective trade remedy laws; (4) special rules for perishable agricultural products; (5) improvements in dispute settlement; (6) sanitary and phytosanitary issues; (7) labor and environment issues; (8) State Trading Enterprises; and (9) rules of origin and country-of-origin labeling for beef imports.

I. FOREIGN EXPORT SUBSIDIES AND OTHER TRADE-DISTORTING MEASURES

Many of our trading partners continue to provide substantial export subsidies and maintain significant trade barriers and programs which distort the flow of trade in cattle and beef products. Numerous programs and policies in addition to high tariffs impede the flow of imports of U.S. cattle and beef products into foreign markets. Other programs which artificially boost the production of cattle and beef abroad can encourage increases in imports of beef into the United States beyond the levels which would exist in the absence of such programs. R–CALF endorses the elimination of export subsidies and dramatic reductions in domestic subsidies which affect domestic production.

Listed below are examples of just a few of the programs that cause or may cause distortions in international trade flows in this sector.

Argentina

The Argentine Government and provincial governments have considered providing incentives to cattlemen to increase their herds.[2] This policy could be designed to make up for the stock decline of the past several years ands to prepare for new export demands.[3] According to embassy reports, such a program might include tax incentives or credit programs designed to increase the number of cattle.[4]

Australia

The Government of Australia maintains one of the strictest regimes on quarantine and phytosanitary regulations for imports of livestock and food products, which have been the subject of both the U.S. Trade Representative's National Trade Estimate Report[5] and WTO Trade Policy Review.[6] For some of these, the Australian Government has not completed a risk assessment that would provide the WTO-required scientific basis for imposing such restrictions.[7] Australia also continues to provide financial support for its beef and veal sector. The WTO's Trade Policy Review estimated that the sector received $A185 million in 1996.[8]

Brazil

Brazil's Agriculture Breeding Technology Development Program fosters the creation or improvement of breeding enterprises. Among other incentives, this program

[1] "Crane Announces Hearing on United States Negotiating Objectives for the WTO Seattle Ministerial Meeting," July 8, 1999 (No. TR–13).

[2] Ken Joseph, Annual Livestock Report (AGR No. AR7065), foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Buenos Aires, July 30, 1997).

[3] Ken Joseph, Annual Livestock Report (AGR No. AR6050), foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Buenos Aires, August 8, 1996).

[4] Id.

[5] Office of the United States Trade Representative, 1998 National Trade Estimate Report on Foreign Trade Barriers, at 13.

[6] World Trade Organization, Trade Policy Review: Australia (1998) 72–75.

[7] Office of the United States Trade Representative, 1998 National Trade Estimate Report on Foreign Trade Barriers, at 13.

[8] World Trade Organization, Trade Policy Review: Australia (1998) 100.

provides a deduction of up to 8 percent of income tax owed. This program, which is paired with a program for industrial development, is allocated over $300 million annually.[9]

Brazil's Amazon Investment Fund and Northeast Investment Fund provide financial backing for firms that establish investment projects in the Amazon or Northeast regions of Brazil. The cattle industry is a priority industry for the distribution of funds available through these programs.[10]

States in Brazil support programs to increase the production of beef. Incentives include tax cuts to the state value added tax, subsidized genetic programs, and sanitary assistance (such as for vaccinations). Another state program reduces the slaughter age of cattle, thus increasing beef production; through this program, producers receive a tax rebate for slaughtering younger cattle.[11]

The Brazilian Government offers tax and tariff incentives to promote exports. Exporters can receive an exemption from withholding tax for expenses in other countries for loan payments and marketing. Exporters can also be exempted from Brazil's financial operations tax for deposit receipts on export products. Excise and sales tax exemptions apply to agricultural export products.[12]

In March 1997, the Brazilian Government enacted new import financing rules, which affect imports of U.S. cattle products. The rules require that importers purchase foreign exchange to pay for most imports once they are imported or 180 days before they are imported rather than pay for them as provided under the contract. This measure provides more favorable rules to Mercosur members. It in effect raises the price of many imports.[13]

Finally, obtaining import licenses, which are required for imports into Brazil, can be burdensome, and thus impede U.S. exports.[14]

Canada

The Canadian federal and provincial governments provide numerous subsidy programs which benefit Canadian cattle producers. These subsidy programs are currently the subject of investigation by the Department of Commerce initiated pursuant to petition filed by R–CALF.[15]

Chile

Consumer cuts of U.S. beef are not permitted to enter Chile unless first graded by Chilean standards. Yet, as Chilean meat standards are derived at the time of slaughter, i.e., upon slaughter in Chile, U.S. produced beef is in effect blocked from the Chilean market.[16]

Colombia

Cattle producers in Colombia are encouraging their government to create variable import duties for beef through the Andean Price Band system in an attempt to restrict imports.[17]

European Union

The European Union's continuing ban on imports of growth promoting hormones in meat production is a very substantial barrier to U.S. cattle and beef producers' ability to export to that market. This ban is currently the focus of trade retaliation by the United States.[18]

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[9] World Trade Organization, Communication of Brazil, G/SCM/N/16/BRA (July 5, 1996).

[10] World Trade Organization, Trade Policy Review: Brazil (1996) at 112–133.

[11] Joao Silva, Livestock Annual Report (AGR No. BR7625), Foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Brasilia, August 1, 1997).

[12] Trade Compliance Center, Country Reports on Economic Policy and trade Practices: Brazil (1998), available at "http://www.mercosurinvestment.com/brazil.html" (obtained from internet on July 25, 1998).

[13] Trade Compliance Center, Country Reports on Economic Policy and trade Practices: Brazil (1998), available at "http://www.mercosurinvestment.com/brazil.html" (obtained from internet on July 25, 1998).

[14] Trade Compliance Center, Country Reports on Economic Policy and trade Practices: Brazil (1998), available at "http://www.mercosurinvestment.com/brazil.html" (obtained from internet on July 25, 1998).

[15] See Initiation of Countervailing Duty Investigation of Live Cattle From Canada, 63 Fed. Reg. 71889 (Dec. 30, 1998).

[16] Office of the United States Trade Representative, 1998 National Trade Estimate Report on Foreign Trade Barriers, at 42.

[17] Hector Sarmiento, Annual Report (Livestock) (AGR No. CO7016), Foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Bogota, August 1, 1997).

[18] See Implementation of WTO Recommendations Concerning EC–Measures Concerning Meat and Meat Products (Hormones), 64 Fed. Reg. 14486 (Mar. 25, 1999).

An EU-wide compulsory beef labeling system is set to take effect on January 1, 2000, and detailed application procedures are currently pending within the European Commission. According to the National Trade Estimates Report, "There is considerable concern that a lack of timeliness in announcing and transparency in implementing these regulations could disrupt U.S. beef sales to the EU."[19]

Japan

Japan continues to maintain high tariffs on agricultural and food products. USTR reported that the United States is monitoring Japan's implementation of the Uruguay Round measures for agriculture, including safeguard measures for beef and pork.[20]

Uruguay

The Uruguayan Government is considering implementing a program to subsidize pasture improvement. The program would call for the government to provide $75 for each hectare developed for improvement, which would total about one-half the cost of such improvements. The program would cost about $150 million over a ten year period. Such a program would upgrade about 2 million hectares over a decade instead of 20 years, which is the current rate. Supporters of this program claim that it would assist Uruguay in expanding beef production and exports by about $500 million.[21]

Venezuela

The Venezuelan Government subsidizes agricultural credits
through the Fondo de Credito Agropecuario. In addition, Venezuelan agriculture is exempt from the country's revenue tax and its tax on capital assets.[22] Venezuela is currently attempting to eradicate foot and mouth disease for the purpose of opening markets for its cattle and cattle products.[23]

II. The Important Role of TRQs and Special Safeguards to U.S. Cattle and Beef Producers

Given the significant economic difficulties which the cattle sector is now facing and the widespread barriers and distortions to trade in cattle and beef products, it is useful to highlight the importance of the tariff rate quotas and special safeguards currently in place for the cattle and beef industry. Domestic cattle ranchers who have been denied the full benefits of trade liberalization in previous trade agreements are currently in perilous economic health. Yet the industry has relatively few mechanisms in place to help it weather the current difficulties. One such mechanism is a system of tariff rate quotas (TRQs), which became operative upon the implementation of the Uruguay Round Agreements Act in 1995. A second mechanism is the special safeguards provision for imports of certain beef products, which also went into effect in 1995 and operates in accordance with Article 5 of the Agreement on Agriculture of the WTO. For the reasons discussed below, the United States should negotiate to retain these provisions in any new WTO agreement on agriculture.

Tariff rate quotas: The United States has long recognized the special sensitivities of certain agricultural products, including beef, in the marketplace. Prior to the conclusion of the Uruguay Round, the Meat Import Act of 1979 set quotas on imports of beef when the aggregate quantity of these imports on a yearly basis was anticipated to exceed a prescribed trigger level.[24] During the Uruguay Round, the United States agreed to convert the quotas established by the 1979 Act into TRQs in order to bring U.S. law into conformity with the requirements of the Agreement on Agriculture of the WTO.[25] The United States committed itself to a TRQ of 656,621 metric tonnes (MT) along with additional TRQs of 20,000 MT each for Argentina and

[19] Office of the United States Trade Representative, National Trade Estimates Report on Foreign Trade Barriers (1998) at 106.

[20] Office of the United States Trade Representative, National Trade Estimates Report on Foreign Trade Barriers (1998) at 206.

[21] Gary Groves, Uruguay Livestock Situation Update (Global Agriculture Information Network Report No. UY 8004), Foreign Agricultural Service, U.S. Department of Agriculture (July 14, 1998).

[22] World Trade Organization, Trade Policy Review: Venezuela (1996) at 89–90.

[23] Jose Pasos, Livestock Annual Report (AGR No. VE7033), Foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Caracas, July 30, 1997).

[24] Committee on Ways and Means, U.S. House of Representatives, Overview and Compilation of U.S. Trade Statutes (1995) at 123–24.

[25] USITC Pub. 3048 at 6–2.

Uruguay, dependent upon these countries being found free of foot and mouth disease (FMD) and rinderpest.[26] In particular, a total of 64,805 MT is available to countries other than Australia, New Zealand, Japan, Argentina and Uruguay, each of which has its own separate allocation. The provisions do not apply to imports from Canada or Mexico.

Even for above-quota imports, the tariffs are relatively low, particularly when compared to foreign tariff levels. Further, while there has not been occasion to invoke the special safeguards provision since it came into effect in 1995, there should not be discussion of removing what are already relatively low levels of protection before foreign barriers are fully addressed.

The importance of the TRQs to the domestic industry can be seen from the recent situation with Canada, which has been exempted from the TRQs as a result of the U.S.–Canada Free Trade Agreement and the North American Free Trade Agreement.[27] In 1989, imports of fresh, chilled and frozen beef from Canada totaled 87,110 MT. Those imports steadily increased to more than double that amount in 1994 and to nearly 270,000 MT in 1997.[28] Presumably, had TRQs for Canada been in place, these import volumes would not have grown so substantially, displacing beef produced from U.S.-raised cattle.

There is no reason to believe that this increase in imports is because Canadian cattle producers are more efficient or competitive than their U.S. counterparts. The prevalence of subsidies throughout Canada which bestow benefits on Canadian producers and questionable sanitary and phytosanitary restrictions on imports of U.S. feeder cattle have essentially resulted largely in a one-way flow of trade in cattle and beef between the United States and Canada. Permitting such largely one-way trade in cattle and beef with Canada is untenable. Expanding such one-way trade to our trading partners in general would result in the destruction of one of the most efficient producers of cattle and beef products in the world.

Special Safeguards: Article 5 of the WTO Agreement on Agriculture includes a special safeguard provision which permits countries to resort to additional duties in the event that the volume of imports of a particular product exceeds a threshold or "trigger" level, or the price of those imports falls below a trigger price level. Section 405 of the Uruguay Round Agreements Act (19 USC § 3602) requires the President to publish in the Federal Register a list of special safeguard agricultural goods as well as a trigger level and a trigger price. USDA has published the levels and prices in 1995, 1996 and most recently in March 1998. The current quantity-based trigger for beef is 817,803 metric tons. Although imports from countries with allocations under the TRQ system have not filled the levels set by the U.S. Department of Agriculture, the special safeguard provision nonetheless provides an important remedy in the event of a sudden surge in imports of beef.

III. Importance of Maintaining Effective Trade Remedy Laws

As important as it is to open foreign markets to U.S. exports, it is equally important that the current trade rules and remedies that exist to protect against dumped and subsidized imports be maintained. The trade remedy laws, including the antidumping and countervailing duty laws, are the few effective means that agricultural sectors such as cattle producers have available for addressing economic harm caused by imports of commodity products sold at below cost prices and/or that benefit from countervailable subsidies. U.S. producers of fresh garlic, fresh tomatoes, kiwifruit, sugar, oranges used to make frozen concentrated orange juice, red raspberries, fresh cut flowers, salmon, pistachio nuts, and live swine and pork, among others, have made successful use of the trade remedy laws to address injurious imports that did not conform to international trading rules when no other tools were available.

Dumped and subsidized imports of agricultural commodity products are especially harmful when commodity prices are otherwise already low. Surplus volumes of dumped and subsidized imports prolong depressed market conditions and prices

[26] USITC Pub. 3048 at 6–2, 6–4 to 6–5. In 1995, Uruguay was granted approval to export fresh, chilled and frozen meat to the United States as Uruguay was determined to be free of rinderpest and FMD, and the United States gave permission for Argentina to ship beef to the United States in June 1997 for the same reasons. See 60 Fed. Reg. 55440 (1995); 62 Fed. Reg. 34385 (1997). Uruguay was expected to fill its quota for 1998. Source: Gary Groves, Uruguay Livestock Update (AGR No. UY8001), Foreign Agricultural Service, U.S. Department of Agriculture (U.S. Embassy, Buenos Aires, March 10, 1998). Argentina was not expected to fill its quota for 1998, its first full year of eligibility, but could be expected to reach its quota within several years, which will bring increased imports into the U.S. market.

[27] USITC Pub. 3048 at 6–2 to 6–3.

[28] Source: Bureau of Census, U.S. Commerce. Based on HTS 0201.10, 20, 30 and HTS 0202.10, 20 and 30.

which would otherwise recover more quickly, thereby restoring farmers and other agricultural producers to at least sustainable, if not fully profitable, conditions. Accordingly, R–CALF opposes efforts to re-open the WTO Antidumping Agreement and other agreements governing trade remedies in the upcoming negotiations. The current agreement has been in place for only five years. It would be premature to reopen the agreement

IV. Special Rules for Perishable Agricultural Products

Agricultural commodities such as cattle and beef, as well as other products, are frequently affected by price volatility and problems arising from perishability that make it impossible to "ride out" downturns in the market. Grain and swine producers, as well as ranchers, have seen virtual collapses in prices in recent years, collapses which are widely acknowledged to be due to oversupply. Current international trading rules do not provide adequate and timely mechanisms for remedying these kinds of economic crises.

Trade remedies should be available for perishable and seasonal agricultural products that reflect the commercial realities of these products. It bears noting in this regard that the former head of the Uruguay Round agriculture negotiating team observed at the Ag Forum immediately preceding the FTAA Business Forum in Belo Horizonte that specific rules for perishable commodities could be helpful and may be advisable. The Agreement on Agriculture recognizes the need for separate treatment or timelines for perishable and seasonal commodities.

R–CALF believes that the United States Trade Representative should add to the agenda in Seattle the issues of special rules that would provide producers with effective tools to deal with these problems. Also, R–CALF requests that the United States include in the negotiations consideration of what special rules are needed to cope with commodity price collapses such as have been and currently are being experienced in livestock and grain.

V. Dispute Settlement

The agreement on dispute settlement that came out of the Uruguay Round was a substantial improvement on the previous system. However, recent disputes such as the EU Beef Hormone case indicate that additional work in this area is needed, especially in the context of compliance with panel decisions and time periods for implementation. The United States should oppose any proposals that would result in extensions of existing timelines, which would delay relief from measures that are inconsistent with WTO obligations.

VI. Sanitary and Phytosanitary Issues

Cattle producers are well acquainted with SPS issues, both as an export issue and an import issue. On the export side, questionable Canadian regulations, for example, impede the export of U.S. feeder cattle to Canada. The EU Beef Hormone dispute exemplifies the problems that cattle producers have in gaining market access for exports of beef. On the import side, the health of domestic livestock depends on effective prevention, control and eradication of pests and diseases. In short, we need full implementation of the SPS Agreement by all of our trading partners. In this regard, strict adherence to sound science is essential. If American producers demonstrate scientifically the absence of any hazards and if we also accept agricultural goods from pest free zones or certified products from other countries, we must have reciprocity and open access to our products as well.

VII. Labor and Environment Issues

The work of the WTO Committee on Trade and the Environment is valuable, at least in the area of transparency, and also in terms of efforts to define how multilateral environmental agreements related to the WTO. Cattle producers are among the many U.S. industries that face artificial competitive disadvantages because the labor and environmental standards of the United States are not internationally agreed to or applied.

The United States must stress the importance of attaining harmonization at least with our major trading partners in agriculture on these issues.

VIII. State Trading Enterprises

State trading enterprises (STEs) are another important priority that urgently needs addressing. The impact of STEs such as the Canadian Wheat Board is not limited to the commodity markets in which they specifically operate, but also other

markets for which those commodities are an input. For example, the CWB's export restrictions on feed barley distort the conditions of trade in cattle as Canadian ranchers and feedlots receive an effective subsidy for feeding their cattle that U.S. ranchers and feedlots do not. In R–CALF's view, efforts to ensure STE compliance with Article XVII principles have been unsuccessful. The actual elimination of STEs appears the only workable solution.

IX. RULES OF ORIGIN AND COUNTRY OF ORIGIN LABELING

R–CALF believes that open issues with regard to rules of origin should not be made part of the negotiations, but should instead be handled within the WTO as is.

R–CALF joins with other cattle and beef producer organizations in the call for country of origin labeling for imports of beef and beef products. Consumers are entitled to know where their hamburger, steak or pot roast comes from. Many consumers assume that a product which is labeled as USDA-approved was produced in the United States. Country of origin labeling would educate consumers.

The proposal for country of origin labeling has been criticized as possibly inconsistent with U.S. WTO obligations. R–CALF disagrees with these assessments, and believes the issue can and should be addressed on a bilateral basis. If necessary, however, the issue also can be addressed in the Seattle context.

Concerns that such labeling requirements would be very costly are mistaken. Cattle producers in numerous countries including Canada and Mexico are exploring technologies that would make it possible to track a steer or heifer from the feedlot back to the ranch or farm from which it originally came. If such technology is available, surely it is likewise possible to label the beef that is produced from these animals with the country of origin. Moreover, the estimates of the costs of such a requirement are dwarfed by the amount of trade of cattle and beef.

R–CALF appreciates this opportunity to present its views to the Subcommittee on Ways and Means on the important issues facing our negotiators in Seattle in November. We would be pleased to respond to questions or provide any additional information that the Subcommittee might need.

Respectfully submitted,

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Statement of Rubber and Plastic Footwear Manufacturers Association

The Rubber and Plastic Footwear Manufacturers Association (RPFMA) is the spokesman for the manufacturers of most of the rubber-soled, fabric-upper footwear, waterproof footwear, slippers, and components for such footwear made in this country. The names and addresses of the Association's members are attached hereto.

Rubber footwear is a labor-intensive, import-sensitive industry: labor constitutes about 40% of total cost; imports of fabric upper footwear and of slippers take more than 90% of the U.S. market and imports of waterproof footwear take close to 50%. These imports are from countries where wages are 1/15th to 1/20th of the level in the domestic industry.

The duties on rubber footwear and slippers are considerably higher than the average duty on all manufactured products imported into the United States. With insignificant exceptions, the duties on rubber footwear and slippers were not cut in the

Kennedy Round, the Tokyo Round, or the Uruguay Round, and the facts which dictated the maintenance of this industry's duty structure then are even more compelling today. The shrinkage of domestic employment from about 26,000 production workers in the 1970s to about 5,000 today and the increase in market share enjoyed by imports are clear evidence that the duties on rubber footwear and slippers cannot be considered an impediment to the ability of the products of foreign factories to come into this market.

The companies which are left in this domestic industry represent the survival of the fittest. Their state-of-the-art facilities, the quality of their products, and their name brand recognition will permit them to continue manufacturing in this country provided that the current level of tariffs on competing imports is not reduced.

The rubber footwear and slipper industry recognizes the value to our country of a successful outcome to the trade negotiations which presumably will be jump-started at the Seattle WTO meeting, for this industry knows that the health of our economy is dependent to a considerable degree on America's ability to export its products. There is, however, very little that our Government can do to improve the export prospects for rubber footwear and slippers in light of the ability of low-wage foreign producers to dominate the markets of the world. On the one hand, there is no quid pro quo which could be offered to this industry as an enhancement to its export prospects, and, on the other hand, any modification of the industry's duty structure would threaten the continued domestic presence of those companies which still produce in America. Similarly, any such modification would have a serious impact on the many domestic component suppliers—from shoelaces to shoe boxes—to the rubber footwear producers in this country.

This industry, which has already stated its basic case to the Trade Policy Staff Committee and to the International Trade Commission, expects to justify an exception from duty cuts before whatever forum is established by the "Seattle Round." Our purpose in submitting the present statement is merely to alert the Ways and Means Committee, in its oversight role, of the fact that the legitimate needs of such an import-sensitive industry as rubber footwear and slippers, as well as the suppliers to this industry, should not be overlooked in the course of this major effort to remove impediments to trade.

The history of past multi-lateral trade negotiations demonstrates that there are very few domestic industries whose survival is as threatened by imports as is the rubber footwear and slipper industry. History also demonstrates that the success of the Kennedy, Tokyo, and Uruguay Rounds was in no way blemished by the restraint shown in excluding the products of this industry from duty cuts. Accordingly, we urge the Subcommittee on Trade to seek to have the agenda for the Seattle meetings include an assurance of flexibility in the conduct of negotiations which will permit exceptions from duty cuts where warranted, as is clearly the case with respect to rubber footwear and slippers.

APPENDIX I

Rubber and Plastic Footwear Manufacturers Association Member List

AMERICAN STEEL TOE CO.
S. Lynnfield, MA 01940–0959
S. GOLDBERG & CO., INC.
Hackensack, NJ 07061–6892
APEX MILLS CORPORATION
Innwood, MA 11097
HENKEL ADHESIVES
Elgin, IL 60120
BIXBY INTERNATIONAL
Newbury Port, MA 01950
HUDSON MACHINERY WORLDWIDE
Haverhill, MA 01831
CONVERSE, INC.
North Reading, MA 01864
JOHNSON TECHNOLOGIES CORP.
Nashville, TN 37207
COTE BROTHERS CO.
Auburn, ME 04211
JONES AND VINING
Brockton, MA 02301
DRAPER KNITTING CO., INC.
Canton, MA 02021
EMTEX INC.
Chelsea, MA 02150
LACROSSE FOOTWEAR
LaCrosse, WI 54602
FRANK C. MEYER CO.
Lawrence, MA 01843
NEW BALANCE ATHLETIC SHOES, INC.
Alston, MA 02134
GENFOOT, INC.
Montreal, Quebec PQH4T1P1 CANADA
NORCROSS SAFETY PRODUCTS
Rock Island, IL 61204–7208
TINGLEY RUBBER CORPORATION
S. Plainfield, NJ 07080
SHEEHAN SALES COMPANY, INC.
Beverly, MA 01915
UNITED SHOE MACHINE CORP.
Wilmington, MA 01887
WOLVERINE LEATHERS
Rockford, MI 49351
WORTHEN INDUSTRIES, INC.
Nashua, NH 03060

KAUFMAN FOOTWEAR CORP.
Kitchner, Ontario N2G 4J8 CANADA

—

Statement of Bill Welsch, President, Safe Alternatives for our Forest Environment (SAFE), Hayfork, California

Dear Committee Members:

The membership of SAFE is deeply concerned about the upcoming meeting in Seattle and the U.S. position negotiations on world trade. We are concerned about environmental and social justice in particular.... as environmentalists, labor groups and human rights groups have been systematically and consistently excluded from having any input on government's actions while representatives of the corporate world have had an exclusive say in all matters involving trade, including in human, worker, and environmental protection laws. Social and environmental environments are forever intertwined. The fact that agents of government, and of our national and transnational corporations have politically separated this bond in their trade discussions does not alter this truth, it only reinforces the belief that corporate money can and does influence political decisions and public policy.

Agreements made under NAFTA and GATT have already revealed that our representatives in government are quite willing to abdicate their responsibility to the public, and act as agents of national and trans-national corporations....and in the process, Congress has granted special rights to corporate entities while snipping away at, and denying at times, the constitution rights of the public for which they have taken an oath to serve, (IE. Passage of a salvage logging rider that denied the citizens the right of appeal; giving trans-national corporations the right to sue the Federal government without the permission of Congress... a right not held by the public).

The intent of the WTO is also clear. The intent is to reduce labor costs and environmental protections in order to raise profits for corporations and investors by pitting the poor against the poor in third world nations; which in turn drives down wages and undercuts environmental protections in first world nations. All, in the name of "competition."

While old world colonialism is out, neo-colonialism is in. The old mercantile theory.... that colonies exist for the benefit of the mother country has been replaced with a new mercantile theory... that government exists for the benefit of corporations. Government is supposed to regulate corporations, not act as an agent thereof.

Our government came about with the consent of the governed. It was formed to protect the natural born rights of its citizens, to provide for their general welfare, and to protect them from all enemies, foreign and domestic. In protecting the natural born rights of its citizens and the rights of those residing, visiting or working in our nation, environmental and worker protection laws were passed. Any or all of these protection laws are now subjected to being overruled by an unelected body within the WTO. We the people, have no representation in this court, and no right to appeal any decision made. Human or environmental right violations are not issues taken up in this court. What is taken up, is whether or not trade is in any way being hampered by the establishment of laws protecting human or worker rights or the environment.

The problem with corporate power was, and still remains predictable. President Grover Cleveland, in a prophetic speech before Congress in December of 1888 stated: "Our survival for one hundred years is not sufficient to assure us that we no longer have dangers to fear in the maintenance, with all its promised blessings, a government founded upon freedom of the people, upon more careful inspection we find that wealth and luxury of our cities mingled with poverty and discontent with agricultural pursuits...corporations, which should be the carefully restrained creatures of law and the servants of the people are fast becoming the people's masters. Unfortunately, what President Cleveland did not foresee, was the take over of agricultural pursuits by corporate America, destroying for ever the ethos of the early American farmer and replacing family farms with corporate farm factories.

In 1935, General Smedley Butler, former U.S. Marine Commandant revealed the power of corporate America when he stated: "I spent thirty-three years in the Marines, most of my time being a high class muscle man for Big Business, for Wall Street and the bankers. In short, I was a racketeer for capitalism.

I helped purify Nicaragua for the international banking house of Brown Brothers in 1910–12. I helped make Mexico and especially Tampico safe for American oil interests in 1914. I brought light to the Dominican Republic for American sugar interests in 1916. I helped make Haiti and Cuba a decent place for National City (Bank)

boys to collect revenue in. I helped in the rape of half a dozen Central American republics for the benefit of Wall Street. In China in 1927 I helped to see to it that Standard Oil went its way unmolested.

I had a swell racket. I was rewarded with honors, medals, promotions. I might have given Al Capone a few hints. The best he could do was to operate a racket in three city districts. The Marines operated on three continents."

General David Sharp, former U.S. Marine Command, 1966, had this to say: I believe that if we had and would keep our dirty, bloody, dollar soaked fingers out of the business of other nations so full of depressed, exploited people, they will arrive at a solution of their own....And if unfortunately their revolution must be of the violent type because the "haves" refuse to share with the "have nots" by any peaceful method, at least what they get will be their own, and not the American style, which they don't want and above all don't want crammed down their throats by Americans."

What hasn't been said in the 1990's is the truth about the secret partnership of corporate America and the U.S. government in the war against peasants throughout Central America in the 80's. Under the guise of saving these nations from Communism, men, women and children were murdered, tortured and raped in the reinstitution of corporate control of Central America. At the time, we were openly trading with communist nations, and in fact supplying nations classified as "terrorists nations, " including Iraq (which at the time was under communist Russia's sphere of influence) with weapons. Our involvement in Central America with the Contras and others, aided and abetted the taking of more lives than the Serbs recently took in Kosovo. In one massacre alone, in El Mozote, El Salvador, American trained and financed troops killed over 200 people in one convent. Of 143 identifiable bodies exhumed, 131 were children, the average age of which was 6.[1] By no stretch of the imagination could these individuals have been a threat to U.S.

The fact that this administration engaged in secret talks, for several years, to create a multi-lateral agreement on trade, without any input from human rights groups, worker rights groups, or environmental groups clearly demonstrates the power and influence corporations have upon both the legislative and executive branches of government. When the pursuit of trade is based entirely on profits; when trade is carried out through the exploiting of human and natural resources with little to no concern for either, this can not be called "free trade," it is the crushing of freedom. Monetarily, we subsidize corporate America in excess of $125 billion per year. When hidden subsidizes are added, such as tax breaks, foreign aid (which at times is really corporate aid), and the decoupling of trade from human rights, the visual subsidy becomes dwarfed when compared to the unseen subsidies. We have seen no move by "free traders" in government to remove this cost from "free trade."

We are rightfully concerned about human rights and worker rights. We are concerned about the exploitation of the world's resources, particularly when the benefits of the exploitation go largely to an elite and wealthy few while the cost, the pain, and the misery is paid in varying degrees by the many, with the heaviest load placed upon the weak, the meek, the poor and the defenseless.

Naturally, as an environmental group, deforestation is a major concern, particularly when global free logging is one of the main items on the upcoming WTO ministers' agenda. Deforestation will be hastened by global free logging. Already deforestation is a world wide problem. Deforestation has played a major role in: altering climates, increasing the siltation of rivers, lakes and streams; dislocating indigenous populations, exacerbating floods, contributing to global warming and leaving a legacy of impoverishment for future generations. The doubling of the world's population is close at hand. How can future generations absorb the debts of the present, solve the problems of crime, education, medical care, etc, and continue feed the bulk the world's wealth into the hands of an unsatiable few? All wealth comes originally from the exploitation of natural resources. How long can these resources last amid rising populations and declining resources? How many of our natural resources will survive future floods, hurricanes, and forest fires, the intensity of which will be greater because of man's exploitation of these resources?

It is the duty of the government of any nation to protect the public's interest and welfare, and to protect its nations natural resources. It is not the duty of any government to act as a corporate partner, acting in the interests of private individuals and corporations at the public's expense. Any trade agreement must include verifiable human and worker rights protections as well as environmental protections. Environmental protections must based upon current knowledge and "public," as opposed to "industry" science. The end of sweat shops, child labor, and forced

[1] U.N. Truth Commission Report on El Mozote

labor must be a goal that is sought by government with the same vigor that corporations have sought private financial gain. If we are going to hail the Constitution as a "beacon of freedom" human and environmental justice must be made an integral part of any trade agreement. Instead of following the corporate lead of "pitting the poor against the poor" to keep wages down; corrupting currencies of other nations to disrupt their struggling economies and forcing nations into unfavorable trade positions, we should be building up sustainable economies worldwide. The concentration of wealth and power into the hands of a few, at the expense of the many, must also be addressed. As Ghandi once said, "The earth will supply all of man's needs, it will not supply all of man's greed."

Each nation should be able to pass laws to protect their natural resource assets, and to set high standards of worker and human rights protections. All nations should be encouraged to do so for the health of the planet and for the benefit of world peace. No trade organization should be able to set up a court system that looks only at trade barriers and profits and ignores the people and the natural world that they must live in. Corporations should not become "co-sponsors of government," or achieve an equal status with government.

Nations that refuse to cooperate should be excluded from all trade. All subsidies, including tax loopholes for corporations, should end. This is consistent with "free trade" and consistent with the thinking and philosophy of Adam Smith, the father of "free trade." Smith did not want to see the hand of government involved in free trade. We do not want to see the hand of transnational corporations involved in government affairs and directing public policy, or in our pockets.

This committee will be deciding more than U.S. policy in foreign trade. Its decision will illuminate, for the world, what is the greatest concern of our government representatives: The health and welfare of the people and their environment, or the health and welfare of the world's richest individuals and the corporations from which they direct public policy. This vote will determine whether members of Congress are to be seen as "straw bosses" for transnational corporations, or representatives of the people.

While our forefathers did not practice what they wrote or preached in drafting up and approving our Constitution, they did provide a foundation upon which to build a true government, of the people, by the people and for the people. We ask this committee to put some truth and action behind the words of this noble document, and end U.S. support for the WTO and its present policies.

Sincerely,

BILL WELSCH
President: SAFE

Statement of Steve Judge, Senior Vice President, Government Affairs, Securities Industry Association

Mr. Chairman and Members of the Subcommittee, my name is Steve Judge and I am senior vice president, government affairs, of the Securities Industry Association ("SIA").[1] Thank you for giving me this opportunity to present the securities industry's views on U.S. preparations for the World Trade Organization (WTO) Ministerial Meeting in Seattle. SIA strongly supports the inclusion of financial services in the Year 2000 Round because it will build on the important progress achieved in the 1997 negotiations.

My testimony will address the following key points: 1) the existing framework for open and fair markets; 2) the importance of financial services to the U.S. economy; 3) the need to further market liberalization; and 4) the securities industry's objectives for the Year 2000 Round.

DEVELOPING A FRAMEWORK FOR OPEN AND FAIR MARKETS

The World Trade Organization (WTO) Financial Services Negotiations were successfully concluded December 12, 1997. The agreement was the first of its kind for

[1] The Securities Industry Association brings together the shared interests of more than 740 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. The industry generates approximately $270 billion in revenues yearly in the U.S. economy and employs more than 380,000 individuals.

financial services, resulting in the creation of a MFN-based global framework for the provision of financial services, and, more importantly, specific commitments by the 102 parties to the agreement to reduce and eliminate many discriminatory barriers.

The financial services sector, including the U.S. securities industry, secured meaningful benefits from this agreement, including:

- creation of international rules for all financial services firms;
- reduction and removal of many discriminatory restrictions;
- institution of a dispute settlement system for agreement violations;
- specific liberalizing measures to be taken in emerging markets; and
- establishment of a "floor" from which to build future liberalization.

Despite these advances, we believe there is more to be done to secure open and fair markets for U.S. providers of financial services. Remaining barriers to entry and discriminatory treatment stifle the innovation and creativity of the securities industry, thus making the Year 2000 Round (the "Millennium Round") of tremendous importance. U.S. negotiators will have another opportunity to eliminate obstacles from foreign markets that hamper the competitiveness of U.S. firms and reduce U.S. economic growth and job creation. Moreover, liberalization will result in real benefits in key developing markets, enhancing and strengthening capital market efficiency, and increasing financial sector stability.

THE FINANCIAL SERVICES SECTOR IS A CATALYST FOR U.S. ECONOMIC GROWTH

The U.S. financial services sector is a key component of the U.S. economy. Importantly, its continued strength is dependent on unfettered access to foreign markets. Whether firms are raising capital for a new business, extending credit for a corporate acquisition, managing savings for a retail customer, or supplying risk management tools to U.S. multinationals, this sector touches all aspects of the U.S. economy. In light of the financial service sector's unique role in the U.S. economy, its health is essential if the U.S. economy is to continue to show rates of economic growth and job creation it has during this decade.

The U.S. financial services industry's impressive strength is best illustrated by these numbers. Financial services firms contributed $626 billion to U.S. Gross Domestic Product (GDP) in 1998, about 7.7 percent of total GDP. A record six-million employees[2] support the products and services these firms offer. Perhaps most impressive is how this industry has increased its relative importance to the U.S. economy. From 1980–1997, the U.S. securities industry's contribution to total output of the U.S. economy increased by 8.4 times—three times the increase of the overall economy.[3]

It is important to underscore that financial services firms are also exporters. In 1998, exports totaled $15.8 billion, with a trade surplus of $5.9 billion. Clearly the cutting edge services and products U.S. financial services firms offer are eagerly sought by foreign individuals, institutions and governments. The continued well being of this sector is directly linked to its ability to sell its products in foreign markets.

The reason for the U.S. financial services sector's increasing commitment to foreign markets is clear. Over the last decade, the U.S. economy and securities markets—while still the largest in absolute terms—have seen their share of the global pie shrink. Approximately 80 percent of the world's GDP and half of the world's equity and debt markets are located outside the U.S. Indeed, many of the best future growth opportunities lie in "non-U.S." markets. U.S. investors and corporations have already tapped these new markets, with U.S. securities firms establishing substantial foreign operations to serve the growing international focus of their clients. The graph below illustrates this point.

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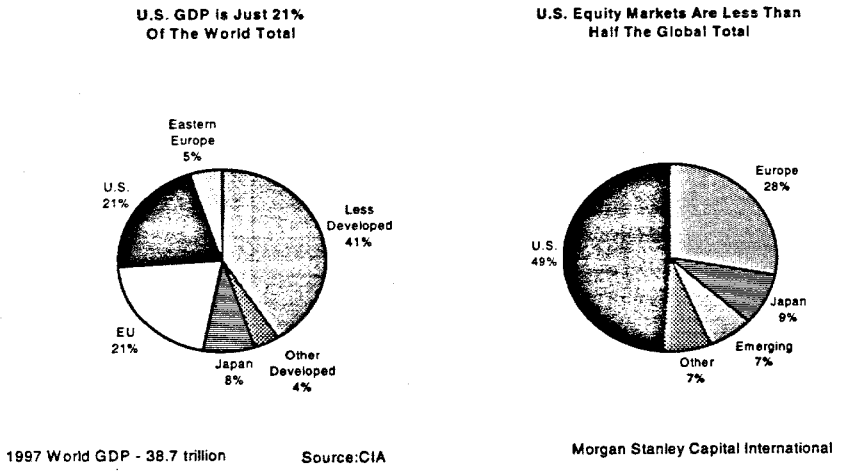
[2] Approximately six percent of total non-farm employment.

[3] U.S. Department of Commerce.



EXPANDING BUSINESS OPPORTUNITIES FOR U.S. FINANCIAL SERVICES FIRMS

The 1997 financial services agreement reflects a commitment by both developed and developing countries to enforce international rules in financial services. Since increasing levels of securities transactions are occurring on a global basis, and foreign firms are establishing operations abroad, there was a clear need to establish an infrastructure on which to build an open and fair global market for financial services.

From SIA's perspective, the WTO financial services agreement was a critical development in global trade policy because it not only "locked-in" current levels of access, but also produced commitments by countries to eliminate and reduce some of the most egregious and discriminatory practices.[4] Moreover, in developed countries—many of which already have open and fair markets—the accord guarantees the current level of access which foreign financial services firms enjoy.

The central purpose of the 1997 negotiations was to remove the barriers foreign firms and their clients face in the world's developing markets (see chart below). In that regard, the pact will lead to the reduction and elimination of some onerous barriers foreign firms face, and a correspondent increase in business opportunities. For example, U.S. securities firms are now permitted to have majority control of a domestic securities company in nearly all WTO countries. U.S. consumers will also benefit because these commitments expand the ability to acquire foreign securities in the local market. Most important, this agreement is the base from which the Year 2000 Round will begin.

Benefits of the 1997 WTO Financial Services

AGREEMENT FOR THE SECURITIES INDUSTRY

Indonesia

- Existing investments of foreign firms protected
- Elimination of portfolio investment limitations

Philippines

- Foreign majority ownership permitted
- Existing investments of foreign firms protected

South Korea

- Increased foreign access to listed stocks
- Expanded foreign access to existing securities companies

[4] It should be noted that many countries left certain activities "Unbound"; that is the country may introduce a measure inconsistent with market access or national treatment, and may grow more restrictive in the future.

Thailand

- Foreign ownership limits lifted for ten years

SIA'S OBJECTIVES AND GOALS FOR THE UPCOMING ROUND

SIA strongly supports the inclusion of financial services in the Year 2000 Round. SIA's objective is to achieve substantial liberalization of financial services markets in developing and developed countries. As the negotiations progress, we will recommend that negotiators reject deficient offers, such as those that codify the status quo without any progress; enshrine existing discriminatory practices; or, do not fully grandfather existing investments and operations.

While SIA is still formulating its objectives for the upcoming talks, and will develop a specific list of country priorities, we believe a successful financial services trade agreement must incorporate the following core principles:

1. Binding Commitments to Open Markets

In the last Round, many of the commitments made were to "lock-in" current practice. While some progress was made on efforts to reduce and eliminate existing barriers, much work remains to be done. For example, in the case of Malaysia, foreign ownership of local securities firms is limited to minority ownership. To meet the GATS goal of "Progressive Liberalization" (Appendix A) the Year 2000 Round negotiations must result in substantial binding commitments by countries to remove specific financial services barriers.

Unless specific barriers are lifted, the agreement will provide little tangible benefits to the U.S. Importantly, any agreement reached during the Year 2000 Round must grandfather existing investments and not create new restrictions. This is particularly important given that during the past two years, many countries have opened their markets beyond the commitments they made at the conclusion of the last Round. Current access must be made part of any final agreement.

2. Freely Established Commercial Presence

Establishing and developing relationships are critical elements in providing financial services. Increasingly, services must be delivered by having a business presence in the host country. Despite the progress made during the last Round, many developing nations still deny foreign investors the right to structure their businesses efficiently, or prevent them from establishing a commercial entity at all. In many cases, establishment is limited to minority joint venture, or hindered by an "economic-needs test."

The ability to operate competitively through a wholly-owned commercial presence or other form of business ownership must be a fundamental element of an agreement. Non-residential financial services companies must be given every opportunity to establish a viable business presence outside their home country. Once established, companies in foreign markets should receive the same (i.e., national) treatment as domestic companies.

3. Elimination of Investment and Equity Limitations

U.S. institutional and retail investors hold nearly $1.2 trillion of foreign stocks. Increasingly, U.S. investors are looking to securities from developing markets to diversify their holdings. However, U.S. investors are often constrained by ceilings and limitations on the purchase of these securities, which artificially raise their costs. Additionally, these limitations also have costs to the local markets, reducing liquidity and increasing volatility. These restrictions should be reduced and, eventually, eliminated.

4. Transparent Laws and Regulations

In negotiating greater access for goods, reductions in tariffs provide a readily available way to reduce barriers to trade; i.e., tariffs on widgets can be reduced from 50 percent to ten percent over a five-year period. Financial services firms, however, are confronted with non-tariff barriers. These barriers come in two forms—regulatory shortcomings and lack of transparency in the implementation and application of regulations—and prevent access in the same way as tariffs. However, unlike tariffs, no quantitative mechanism exists to reduce regulatory barriers.

We would urge negotiators to work on provisions that would, inter alia, eliminate preferential access to regulatory proposals; require public availability of proposed regulations; provide an adequate public comment period on new regulations; and mandate the enforcement of regulations in a non-discriminatory manner.

From a business standpoint, ensuring a high level of transparency is as essential to a successful financial services agreement as tariff cuts are to an agreement on

trade in goods. Lack of transparency in the implementation of laws and regulations—including limited public comment periods on proposed regulations, non-transparent approval mechanisms for firms and financial products, or other practices which are not dealt with pursuant to written regulations—can seriously impede the ability of securities firms to compete fairly.

Regulatory prohibitions also limit the ability of U.S. firms to compete in foreign markets. In some cases, the sale of specific products requires regulatory approval. In other instances, the ability to establish is impaired in light of restrictions on new licenses. Elimination of these barriers is complicated, especially in light of the ability of countries to claim that they are "prudential" in nature; that is, they exist to protect the safety of consumers and soundness of the marketplace. However, we believe that many of these restrictions go beyond any legitimate prudential objective.

5. Reasonable Transition Periods

The securities industry understands that local financial services firms in developing markets will need time to adapt to new competitive pressures. In this regard, reasonable transition periods should be considered, with remaining restrictions progressively eliminated throughout the transition. The transition time frames, however, must be accompanied by an initial down payment that results in immediate liberalization. Permanent restrictions on market share, activities or geographical location are unacceptable. NAFTA's sector specific transition periods is a useful model to study. For illustrative purposes, the transition periods for the securities industry in NAFTA are in Appendix B.

6. Increased Cross-Border Access

The cross-border provision of financial services should be an important element of a WTO financial services agreement. Cross-border provisions should, for example, include the right to buy and sell financial products cross-border and the right to participate in and structure transactions. We believe this can be accomplished while addressing appropriate prudential concerns.

CONCLUSION

Mr. Chairman, we believe these negotiations offer Congress and the Administration another opportunity to secure open and fair access to foreign markets for U.S. firms and their clients. The start of the 21st century will find the U.S. securities industry on the leading edge of international technology, finance and innovation. If it is to remain there, however, it must be able to meet the demands of both its U.S. and foreign clients.

Congressional leadership will be a critical factor in making sure that the Seattle WTO Summit produces a negotiating framework for the Year 2000 negotiations for that reduce and eventually eliminate barriers to trade. SIA stands ready to work with you as an active participant in these important trade talks.

Appendix A

Part IV

Progressive Liberalization

ARTICLE XIX

NEGOTIATION OF SPECIFIC COMMITMENTS

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attach-

ing to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Appendix B

NAFTA Transition Periods

For Securities Firms

THREE-TIER TRANSITION PERIOD FOR FOREIGN

SECURITIES FIRMS ENTERING MEXICO*

Period 1 (1/1/94—12/3/99)

- Four percent transitional individual firm cap
- Ten percent industry aggregate share in 1994, growing to twenty percent by the end of 1999, on a pro-rata basis
-

Period 2 (1/1/2000—12/31/2003)

- Four percent individual-firm cap removed permanently
- Industry can grow up to thirty percent; if the industry does not reach or exceed thirty percent during Period 2, aggregate cap is permanently lifted
-

Period 3 (can begin anytime during Period 2)

- If at any time the industry reaches or exceeds thirty percent in Period 2, Mexico has the option to impose a new three-year cap; after three years, the transition period is over.
- No more aggregate caps at the end of Period 3.

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Statement of Daryl Hatano, Vice President, Semiconductor Industry Association

Thank you for the opportunity to provide our trade policy recommendations for the upcoming WTO Ministerial Meeting in Seattle this November.

To begin, I would like to provide some background on the U.S. industry and outline the stakes for this industry from the new WTO round.The U.S. semiconductor industry is now America's largest manufacturing industry, contributing 20 percent more to the U.S. GDP than the next leading industry. U.S. semiconductor makers employ about 260,000 people nationwide, and the presence of the industry is widespread—35 states have direct semiconductor industry employment. And these are high paying jobs. The average wage in the semiconductor industry is approximately $55,000, nearly twice the average of private industry overall.

Semiconductors are an increasingly pervasive aspect of everyday life, enabling everything from computers to cell phones to modern defense systems to the Internet which is, in fact, a world wide web of silicon chips. They have sparked the growth of the U.S. electronics industry, which provides employment for 4.8 million Americans in all 50 states.

* phase-in caps are based on total capital of Mexican securities firms

Behind this enormous economic success is the ever shrinking transistor. A transistor is an electronic circuit, which is the basic building block for an electronic system. A decade ago, we were able to integrate thousands of transistors on a single chip. By steadily shrinking the size of the transistor, we now place millions of transistors on a single chip.

The industry has succeeded in quadrupling the number of transistors per chip every three years over the last several decades. The resulting steady decreases in the price of a chip's capability is called "Moore's Law."

The implications of Moore's law cannot be overstated. The Commerce Department tracks the revenues our industry collects. However, a future historian looking back at this century might instead focus on the revenues we do not collect—that is the effect of the rapid and constant price decline of the transistor. Economist Kenneth Flamm has concluded that the impact of chip price declines has had from two to five times the impact on the U.S. economy that the railroad had during a comparable period during the last century.

Moore's law has become the axiom of the information age. It will continue to make microchips more affordable, allowing additional millions around the globe to enjoy the benefits that many Americans take for granted—such as cellular telephones, email and access to the Internet. And in America, microchip advances will transform our economy into one where ecommerce is the norm.

To continue the progress described by Moore's Law requires massive investments in research and development to invent ways to etch ever smaller patterns on chips, and constant investments in new plant and equipment to replace factories which become rapidly obsolete. Last year, the U.S. chip industry invested 14 percent of sales on research and development and almost 20 percent in new plant and equipment.

Worldwide, the semiconductor industry's revenues grow about 15% per year, but its output in transistors increases from 40 to 80% per year. Today, the world consumes about 17 million transistors per person, a tenfold increase over the amount consumed five years ago. That is a lot of computing power.

The WTO negotiations for the new millennium must address the challenges of the digital age so that everyone around the world can benefit from the information economy. This is an economy where a semiconductor can be designed and manufactured in America, packaged and tested in Malaysia, and sold to a computer manufacturer in Japan who exports that computer to Europe. As product cycles become shorter, and ideas and data flow effortlessly across the globe, national trade barriers become particularly pernicious. The WTO negotiations must promote greater trade liberalization because only open markets can best insure that the benefits of information technology are enjoyed by people around the world. To this end, the following summarizes the tariff and non-tariff issues of importance to the U.S. semiconductor industry in the upcoming Seattle Ministerial and the new WTO round.

INFORMATION TECHNOLOGY AGREEMENT

The SIA believes that a central element of any new WTO round of negotiations must be continued attention to industrial tariff elimination by WTO members. The U.S. semiconductor industry has been at the forefront of efforts to eliminate tariffs on semiconductors and related products worldwide. At SIA's urging, the United States, Japan and Canada eliminated their semiconductor tariffs in the mid–1980s. In 1994, Mexico eliminated its semiconductor tariffs on a most-favored-nation basis under the North America Free Trade Agreement. In 1997, another 39 countries and customs territories agreed to eliminate their semiconductor tariffs through the Information Technology Agreement (ITA). As part of the ITA, the EU and Korea also agreed to accelerate the phase-out schedule for their semiconductor tariffs, with full elimination in 1999, in order to allow the European and Korean semiconductor industries to join the World Semiconductor Council (WSC) at its inaugural meeting in 1997.

It is worth noting that the Information Technology Agreement is unique in that countries agreed to eliminate their information technology tariffs without tying these concessions to benefits in other areas or sectors. This is due to the recognition of the benefits achieved by tariff elimination, such as lower costs for businesses and consumers and improvements in a country's information technology infrastructure.

The United States should encourage all WTO member countries to join the ITA as soon as possible and thereby permanently eliminate tariffs on semiconductors, semiconductor manufacturing equipment and related information technology products. While the United States has been successful in encouraging many countries to join the ITA and eliminate their tariffs, increased participation in the ITA remains a priority. ITA participation remains very limited in certain regions of the world. In Latin America, for example, only three countries—Costa Rica, El Salvador

and Panama—are currently signatories to the ITA. Persuading additional WTO members to join the Agreement should continue to be a U.S. trade policy priority.

In addition, the United States should require countries negotiating for accession to the WTO to follow the lead of Taiwan and to join the ITA as an interim measure as their accession negotiations continue. China, for example, has taken significant steps toward joining the ITA in recent months, and every effort should be made to encourage China to continue to move forward in this positive manner.

Expansion of the ITA to include additional products and signatories should be maintained as a separate process during the course of broader WTO multilateral negotiations. A clear goal for the end of any new multilateral negotiations, however, should be to make ITA participation mandatory for all WTO member countries. Continued attention should also be placed on the current ongoing review of the ITA to expand the product coverage of the agreement (ITA II). Every effort should be made to reach agreement among the existing ITA signatories to expand the product coverage of the agreement as soon as possible. For those countries that have yet to join the original ITA, it should also be pointed out that joining the original ITA would permit them to play an active role in determining the future direction of international efforts to expand the product coverage of the ITA.

Finally, the WTO Secretariat should be charged with fully monitoring participants' compliance with their ITA obligations, including the depth and timing of tariff cuts and coverage of already agreed-to products. Expeditious elimination of semiconductor tariffs will not only spur development of a competitive microelectronics industry in foreign markets, it will allow U.S. producers to sell advanced semiconductors to their foreign customers at the lowest possible price, thereby both increasing U.S. exports and strengthening developing electronics industries.

Electronic Commerce

Another tariff-related issue of importance to SIA is the tariff treatment of electronic commerce. SIA supports U.S. efforts to urge WTO members to continue the current practice with respect to tariff treatment of electronic commerce. Currently, no WTO member considers electronic transmissions as importations and, consequently, no member imposes customs duties on those transmissions. Given the increasing importance of electronic commerce over the Internet, SIA believes that the United States should continue its leadership in this area, and—in addition to encouraging *permanent* implementation of duty-free treatment—should urge WTO members to commit to tax-free treatment of electronic transmissions.

Antidumping and Competition Policy

SIA supports the maintenance of a strong and effective antidumping remedy as a critical component of the international trading system. The antidumping remedy is especially important with respect to the semiconductor industry given the history of injurious dumping in our sector.

The WTO Antidumping Agreement, recently renegotiated in the Uruguay Round, permits WTO members to take remedial action against dumped imports and prescribes international rules for the conduct of antidumping actions. Given the recent substantial changes to antidumping rules in the Uruguay Round, SIA believes it would be inappropriate at this time to launch a new international negotiation of an antidumping agreement and SIA would strongly oppose new negotiations in this area as part of the WTO agenda.

The continued monitoring of how the Uruguay Round antidumping rules are being implemented is appropriate, but that is very different from supporting or permitting the re-negotiation of these rules. The United States should be very clear about the distinction, and should be careful not to agree to anything under the "implementation" rubric that will in practice lead to reopening of this important agreement.

Additionally, there are a number of WTO member countries seeking to use the current discussions in the WTO over trade and competition policy to pursue their agenda of curbing antidumping trade remedies. Most of the competition policy discussion so far has been grounded in theory rather than in a factual examination of the specific barriers to international trade and investments that need to be remedied. Before attempting new international disciplines, it is necessary to understand the dimensions of the problems posed for trade by the absence of competition rules and/or their enforcement in so many markets around the world. SIA believes that the issue of competition policy is not sufficiently developed to be included in the new WTO round and that it should not be used as a mechanism to weaken existing WTO-endorsed antidumping trade remedies.

INTELLECTUAL PROPERTY

As an R&D intensive industry, the U.S. semiconductor industry is also very concerned about the full and effective protection of intellectual property rights. The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represents a major advance in the protection of intellectual property (IP). The agreement began the process of improving worldwide IP protection and allowed for staged implementation over the course of a decade. Developed countries were required to implement TRIPS almost immediately (January 1, 1996); less developed countries (LDCs), as a general rule, were given until January 1, 2000 and least developed countries have until January 1, 2006 to implement TRIPS.

In the case of developed countries, some dispute settlement cases were and continue to be necessary to strengthen national protection. Nevertheless, for the most part, TRIPS has been implemented in developed countries. There is a real concern, however, that some LDCs may not be able to meet their commitments by the January 1, 2000 deadline. Some developing countries view their obligations under the Uruguay Round TRIPS Agreement as nonbinding and may try to push back implementation of their TRIPS obligations in the next round of the WTO negotiations. Failure to meet this deadline would mean that the expected commercial gains for those WTO members that have met their commitments would not be realized. Further, it could result in a deluge of cases submitted to the WTO dispute settlement process that will present a significant challenge to the institution. In the context of the upcoming Seattle WTO Ministerial Meeting, the United States should have as a priority the full implementation of TRIPS by less developed countries by the year 2000 deadline. The Seattle WTO Ministerial should not be the occasion for delaying this obligation.

SERVICES

Semiconductor companies also face trade barriers in the area of services. The ability of U.S. firms to import, export and distribute goods within foreign markets is essential for ensuring true market access. Therefore, as part of any new negotiations relating to services, the United States should seek commitments from all WTO members to permit foreign companies to engage in trading and distribution services without restriction.

Numerous restrictions on the ability of U.S. semiconductor firms exist, especially in countries in the process of transitioning from centrally-planned to market-oriented economies.

Restrictions in some countries on "trading rights" (e.g., the ability to import and export) are significant impediments to U.S. semiconductor firms' ability to access foreign markets. If not eliminated, these restrictions may undermine the benefit of other trade liberalization measures. U.S. firms doing business abroad should not be limited to importing or exporting through certain designated enterprises. Rather, U.S. companies must be able directly to sell and service end products, spare parts and components. The United States should urge countries to provide such trading rights to all firms, without discrimination on the basis of nationality.

Equally important as the right to import and export is the right to distribute goods within foreign markets. Forcing U.S. producers to sell through foreign distributors can add significant cost and adversely affect service, inventory, and delivery. The inability to deal directly with end-users is a particular problem in the semiconductor industry, where the design and development of application-specific chips requires extensive contact between semiconductor producers and the ultimate end-users of the chips.

Similar commitments should be insisted upon with respect to all newly-acceding WTO members. In fact, such commitments should be considered to be a fundamental obligation of WTO membership.

INVESTMENT

Other non-tariff barriers exist in the area of investment. The freedom to engage in direct investment is critical to market access in many sectors and particularly for the semiconductor industry. Unfortunately, existing rules on Trade-Related Investment Measures (TRIMs) do not adequately discipline many of the restrictions placed on investment in various countries. U.S. semiconductor companies often face complex rules and requirements when engaging in foreign direct investment, including ownership restrictions, export targets, local content requirements and pressure to transfer technology.

U.S. semiconductor manufacturers frequently must grapple with policies, in the form of both official and unpublished "administrative guidance," restricting foreign

ownership, including pressure to enter into joint venture agreements with local firms. Many U.S. companies have also been pressed to agree to export targets for their overseas plants, including, for example, requirements that a certain percentage (or all) of their facility's output be exported, or requirements that the U.S. firm agree to reinvest all profits earned from domestic sales. U.S. firms also face a range of localization requirements for parts and materials for products made abroad. Firms must sometimes file localization plans with foreign investment applications and can be subject to audits to determine local content.

These ownership restrictions export targets and local content requirements may be imposed not only as strict legal obligations, but also as quid-pro-quos for decisions by government officials at both the national and sub-national level. Regardless of their form, these measures are often used as levers to obtain transfer of technology from foreign firms.

These measures can have a real and significant competitive impact on U.S. electronics firms, as advanced technology is often the key to competitive success. To the extent that our trading partners can maintain such measures, U.S. exports in the electronics sector, such as semiconductors, may be restricted. Moreover, such investment restrictions have a negative effect on the country imposing them, as they discourage the investment necessary to develop a local electronics industry on a commercially sound basis.

Improving and expanding WTO rules on TRIMs therefore should be a part of any ongoing WTO negotiations, and should include strengthened provisions prohibiting WTO members from taking any of the above measures—especially those which require a foreign enterprise to invest, enter into any form of joint venture arrangement with a domestic entity or to transfer any technology or intellectual property to a domestic entity. These strengthened provisions should also encompass measures that are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain any approval or advantage.

ACCESS TO STATE-INVESTED ENTERPRISES

Traditional market access commitments can be undermined if foreign enterprises are denied the ability to sell to state-invested enterprises—enterprises wholly or partially owned by central, provincial or local governments. Unfortunately, current WTO rules in this area are inadequate. The WTO's principal tool for addressing distortions in trade that arise from state-invested enterprises—Article XVII of the General Agreement on Tariffs and Trade—does not effectively cover the purchasing decisions of state-invested commercial enterprises. In addition, such enterprises are not covered by the WTO Government Procurement Code because their purchases are for the purpose of manufacturing commercial goods rather than for government use.

State-owned and state-invested enterprises are particularly active in the electronics sector in many countries, and frequently control a significant share of the imports and exports of electronics goods. As a result, there is a significant risk that other state-owned or state-invested enterprises may be encouraged by government officials to purchase semiconductors from other state-invested or domestic suppliers. Such discrimination could obviously have a very negative effect on U.S. semiconductor sales.

Given the inadequacy of Article XVII, the SIA urges stronger WTO rules in two areas that include affirmative obligations on the part of all WTO members. The first obligation would be to ensure that state-owned and state-invested enterprises, including partially state-invested and recently privatized enterprises that were formerly state-invested, make purchases and sales on the basis of commercial considerations. The second obligation would be to afford the enterprises of other WTO members adequate opportunity to compete for sales to state-invested enterprises.

The SIA also believes that WTO members should be required to refrain from taking any measure, including administrative guidance, to influence or direct state-owned and state-invested enterprises as to the quantity, value, or country of origin of goods purchased or sold, or otherwise impair the purchase or sale of goods. In addition, the WTO should review on a regular basis whether state-owned or state-invested enterprises are in fact making purchases on the basis of commercial considerations.

RULES OF ORIGIN

In the Uruguay Round, WTO members agreed to pursue international harmonization of rules of origin based on the substantial transformation standard. The WTO Agreement on Rules of Origin (ARO) applies to all origin rules used in non-preferential trade applications, from collection of trade statistics to product marking to antidumping and countervailing duty measures. SIA believes this work program

should be reviewed to ensure that it does not undermine the effectiveness of the U.S. antidumping law.

Under existing U.S. practice for determining origin, semiconductors that are fabricated in one country but assembled in another country are treated differently for general trade purposes (such as for customs purposes) than they are for purposes of administering antidumping measures. The treatment of semiconductors in a general trade context is determined by rules of origin, which base a semiconductor's origin on the country where final assembly takes place. Antidumping investigations, on the other hand, employ fact-specific criteria to determine that a semiconductor is "from" the country of wafer fabrication (also known as diffusion). This is because a final assembly standard would allow foreign exporters subject to antidumping orders to evade those orders by simply changing the country of final assembly—a relatively simple and inexpensive change in the semiconductor industry.

Ongoing WTO efforts to harmonize rules of origin, however, may require the U.S. Government to change its current practice, so that it would no longer be able to employ these differing approaches. This requires the establishment of new rules of origin for semiconductors that will ensure that antidumping orders on semiconductors can continue to be effectively enforced.

SIA believes that fact-based scope determinations for antidumping purposes should be decoupled from general purpose rules of origin. While the WTO origin harmonization exercise must result in origin rules that facilitate international trade through easy-to-administer and consistently-applied criteriait is equally important that the origin harmonization exercise not disrupt the existing ability of governments to administer antidumping and countervailing duty orders.

This is in fact consistent with the ARO. The ARO sets out several objectives to be achieved as a result of the harmonization exercise. The preamble to the ARO notes that, in agreeing to the harmonization effort, WTO members recognized that clear and predictable rules of origin would "facilitate the flow of international trade" and sought "to ensure that rules of origin themselves do not create unnecessary obstacles to trade" while at the same time seeking "to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994." Indeed, one of the rights of WTO members under GATT 1994 is the right to impose antidumping or countervailing duty measures to remedy injurious dumping or subsidization. Accordingly, some countries have proposed content-based origin rules for electronics products to ensure that their ability to impose antidumping or countervailing duty measures is not restricted. The European Union, for example, has proposed a 45 percent value-add origin rule for all electronics products, even through such a rule could pose an obstacle to the free flow of trade in electronics goods.

To prevent WTO adoption of onerous origin rules while at the same time ensuring the effective administration of antidumping and countervailing duty measures, SIA believes that WTO negotiators must pursue a "decoupling" approach that would allow administering authorities in antidumping and countervailing duty cases to use fact-based criteria other than rules of origin in determining the scope of antidumping and countervailing duty measures. In turn, this would permit the WTO to adopt internationally harmonized rules for general trade that are different from, and not based upon, the standards used to administer antidumping and countervailing duty measures. This would also allow the harmonization of general purpose rules of origin in a manner that will facilitate, rather than encumber, trade, while also preserving an effective antidumping and countervailing duty remedy for all products.

FAST TRACK

In addition, I would like to emphasize in the context of the WTO Ministerial that the SIA strongly believes that fast track negotiating authority is crucial to reducing trade barriers that impede the development and growth of high-value-added U.S. industries such as the semiconductor industry. In addition to reducing tariffs around the world, U.S. trade policy must continue to be focused on eliminating non-tariff barriers. Fast track legislation is essential to U.S. efforts to reduce complex non-tariff barriers that remain as significant obstacles to our exports in many countries around the world. We therefore support congressional enactment of fast track legislation at the earliest possible opportunity.

CONCLUSION

In conclusion, SIA strongly supports the efforts of the United States in pursuing stronger international disciplines on measures that restrict or distort trade and investment around the world. On behalf of SIA and our member companies, let me thank you again for this opportunity to share our views.

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Statement of Larry R. Brown, Senior Vice President and General Counsel, Timken, Canton, Ohio

Dear Mr. Singleton:

The Timken Company herein submits its comments regarding the August 5, 1999, hearing of the Subcommittee on Trade on U.S. negotiating objectives for the World Trade Organization (WTO) Seattle ministerial meeting.

The Timken Company is a U.S. producer of tapered roller bearings, ball bearings, cylindrical bearings and various steel mill products (including bearing quality steel, high alloy steel and steel tubing) with worldwide sales of $2.68 billion in 1998. Timken is based in Canton, Ohio, and manufactures its products in many countries and sells them around the world. Thus, Timken has a strong interest in a fair international trading system that seeks to reduce tariff and non-tariff barriers over time while maintaining rules that prevent trade distortions that flow from dumping or subsidization.

As an efficient producer of high quality bearings, Timken can compete effectively with any other manufacturers of such products around the world where unfair trade practices are not employed. Accordingly, Timken recognizes the benefits that liberalized trade, with its reductions in tariff and non-tariff barriers, can have for it. However, many markets have proven difficult, if not impossible to penetrate despite superior technology and product from US producers. The US must be sure that liberalization undertaken by the US is not matched by continued closed markets abroad in law or in fact.

In addition, while Timken was generally pleased with the outcome of the Uruguay Round negotiations, many members have been slow in complying with the requirements of these agreements, and some are still not fully in compliance. While there has been some focus within the WTO and other organizations on improving compliance, it makes little sense to undertake additional obligations where our trading partners have not to date implemented those obligations already undertaken.

Timken's comments are divided into three sections: (1) a review of the existing WTO agreements, (2) a discussion of mandated WTO negotiations, and (3) an examination of difficulties of compliance with the WTO agreements.

I. Review of Existing Agreements.

Full and effective implementation of the agreements concluded in the Uruguay Round should be a top priority for the WTO in general, and, in particular, in the agenda that ministers will consider in Seattle. This is true for all agreements. Moreover, for some agreements in the rules area where there is limited experience by member nations and few dispute settlement decisions, Timken supports completion of the agenda items agreed upon in Marrakesh (e.g., development of meaningful anticircumvention provisions) and extension of the Art. 6.1 and Art. 8 subsidy provisions. Otherwise, Timken urges the US to oppose any reopening of the agreements on Rules as premature.

A. Antidumping Agreement.

As is true with many agreements, notifications by member nations as required by the agreement have been incomplete, although there has been an effort in recent months to clarify which non-responding members have in fact not used domestic law during the six month time period being considered. The US should encourage member nations to improve compliance with the notification obligations of the antidumping agreement and all other agreements. Moreover, the WTO receives copies of all Rules decisions from member nations but does not make them available on the internet to the public. This would be of substantial assistance to other nations, to businesses trading internationally, and to those who advise us. The US should push for increased transparency by the publication on the WTO web site of all administrative decisions received by the WTO from member nations.

Timken urges the United States to oppose proposals that would permit a reopening of negotiations on the Antidumping Agreement. Our trading partners have not fulfilled their obligations to negotiate with the US on a meaningful anticircumvention provision for the antidumping agreement despite the agreement in Marrakesh that it was a significant problem. The existing agreement otherwise is in no need of reexamination. Many countries have only in recent years brought their laws into conformity with the WTO agreement, and there are few dispute settlement decisions on the agreement. Reopening any of the Rules areas at this time

is not only premature but would, in light of the conflict between certain major trading partners on the rules, guarantee that the new Round would not conclude within three years.

B. Subsidies.

Like the other WTO agreements, the Agreement on Subsidies and Countervailing Measures has only been in place for five years and is not an appropriate candidate for substantive revision at this time. Timken does agree with suggestions put forward by the United States and some members that implementation could be improved by modifying the notification/review process such that updating notifications are eliminated and full notifications are made every other year. This would permit a regular cycle in which subsidies are notified in the first year and reviewed in the second.[1]

Article 31 of the Subsidies Agreement calls for the WTO to review the operation of Article 6.1 (serious prejudice), and Articles 8 and 9 (non-actionable subsidies), and to determine whether these articles should be eliminated. Timken believes that Article 6.1 provides a useful definition of "serious prejudice" that should be retained. The United States should support the retention of these three provisions.

C. Customs Valuation.

Timken believes that technical assistance should be provided to those members in need of help in conforming to the Agreement on Implementation of Article VII. Such assistance should be focused on active assessment of specific needs of particular members to avoid a situation in which a member might fail to meet obligations by the agreed-upon deadline because of a lack of effective assistance.

D. Dispute Settlement.

Timken believes that, in general, the dispute settlement process has worked well. There are some significant procedural issues which should be considered for possible change, e.g., the issue of whether the Appellate Body, when it makes a legal decision that requires further fact-finding, should be able to remand to a panel. Timken believes that whatever decisions are made to resolve such procedural problems, they should not involve any extension of the already lengthy period the dispute settlement process currently takes. Businesses and their countries that have been aggrieved by a member's action already face a process that does not provide rapid relief. Further extension would extenuate any relief beyond a reasonable measure.

The United States has already expressed its concern that the WTO function in as transparent a mode as possible. Timken suggests that the WTO make available on the internet all filings in dispute settlement proceedings, including those made by non-governmental organizations and any other non-members. In this context, Timken welcomes the holding of the Appellate Body in the shrimp-turtle dispute that the Dispute Settlement Understanding does not require that panels reject unsolicited submissions.[2] At present, as Timken understands it, the WTO retains an index of such filings but does not make them available to the public on-line. Given the relatively low cost of loading these documents onto the internet, the WTO should enhance its transparency by putting them there.

E. Rules of Origin.

The Timken Company notes that the technical committee forwarded the final HTS chapters to Geneva earlier this year. It is Timken's understanding that there are literally hundreds of open issues remaining. Timken believes that the proper forum for the resolution of the rules of origin (ROO) issues is outside of the new Round. Substantively, Timken is troubled that other countries have not accepted the positions presented by the US on some of the overarching issues that remain outstanding and on issues in Chapter 84 pertaining to bearings. Timken would strongly oppose any resolution of ROO issues that would undermine the integrity of existing antidumping duty orders on tapered and other bearings. Timken has suffered from substantial evasion of the orders over time and believes it would be inappropriate to create more loopholes by accepting certain of the proposed ROO options in Chapter 84.

F. Trade Related Investment Measures (TRIMs) and Trade Related Aspects of Intellectual Property Rights (TRIPs).

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[1] See, e.g., WT/GC/W/107, Preparations for the 1999 Ministerial Conference—Communication from the United States (3 November 1998).

[2] WT/DS58/AB/R, United States—Import Prohibitions of Certain Shrimp and Shrimp Products, AB–1998–4 (12 October 1998) at 76.

As is the case with Customs Valuation, WTO members, particularly those in developing and least developed countries, are in need of technical assistance to help them implement the provisions of the TRIMs and TRIPs Agreements. Timken encourages the United States to continue to support efforts to provide such assistance. It is critical that all countries bring themselves into compliance with these two agreements by the end of the year. Seattle is too late to see that such compliance has been accomplished.

G. Integration of Least Developed Countries.

Timken supports the efforts of the WTO and its members to integrate the least developed countries into the WTO system and urges the United States to continue its support for such efforts. In addition, Timken believes that the benefits under the Generalized System of Preferences (GSP) should be limited to the least developed countries. The current system grants preferential treatment to countries that do not need such preferences to compete in export markets. As a result, the benefits of GSP for the least developed countries are diluted and normal trade relation (NTR) treatment is unfairly withheld from third country suppliers.

H. Industrial Market Access.

Timken generally supports inclusion of industrial tariffs in upcoming negotiations so long as they are addressed on a "request-offer" basis.

In addition, as U.S. and Australian communications have recognized, in some instances tariffs are applied at levels below bound rates, including through tariff regimes that appear to be complex, non-transparent, and discriminatory.[3] Thus, Timken agrees that an important objective in the upcoming negotiations should be to improve and expand market access opportunities by lowering bound tariff rates to eliminate the disparity between applied and bound rates and by ensuring that the market access results provide greater certainty and transparency in the operation of tariff regimes.

In this context, Timken also applauds the efforts of the U.S. Trade Representative to support the preparation of updated electronic versions of the members' various tariff bindings.[4] The US should ensure that such schedules when available are released to the public.

II. *Mandated Negotiations.*

Timken supports efforts to obtain liberalization in the service industry, including repair and maintenance services, financial services, telecommunication services, express integrated transportation services, distribution services, and transport services generally. On the whole, liberalization in these sectors will decrease the costs of doing business abroad and will help Timken and other U.S. exporters to achieve better access to export markets.

III. *Compliance with Existing Agreements.*

The existing Uruguay Round agreements and the work programs initiated by them represent that which the United States bargained for and agreed to as part of the multilateral negotiations that led to the creation of the WTO. To the extent member states have not and are not fulfilling their requirements, the United States is in some measures not obtaining that for which it bargained. Thus, the implementation of these agreements and any work programs inaugurated by them is of great importance to U.S. businesses, including The Timken Company. Until such time as the WTO is fully functioning and members are abiding by their current obligations, the United States should not seek major changes to WTO agreements that are not subject to further liberalization under the built-in agenda.

A. Reporting.

Annex 1A to the Agreement Establishing the World Trade Organization containing the Multilateral Agreements on Trade in Goods establishes 175 notification obligations or procedures, of which 26 are periodic, for member states.[5] WTO materials to date indicate that many members have not met these obligations.

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[3] See WT/GC/W/132, Preparations for the 1999 Ministerial Conference—Communication from Australia (21 January 1999).

[4] WT/GC/W/107, Preparations for the 1999 Ministerial Conference—Communication from the United States (3 November 1998).

[5] See G/L/112, Report of the Working Group on Notification Obligations and Procedures (7 October 1996) at 3 (7 October 1996).

For example, Article 25 of the Agreement on Subsidies and Countervailing Measures requires that members provide a new and full notification of all subsidies every third year. The first due date for new and full notifications was June 30, 1995.[6] At present, only 70 out of 119 members have submitted the notifications that were due at that time.[7] Of those 70 submissions that were received, the average length of tardiness was fourteen months.[8] For notifications due in 1998, only 35 notifications have been received, and only three of these were received by the deadline date.[9] As of July 30, 1999, some forty members had not provided *any* of the notifications required under Article 25.[10]

Similarly, under Article 18.5 of the Agreement on Article VI of the GATT 1994 and a decision of the Committee on Anti-Dumping Practices, members were required to notify their antidumping legislation and/or regulations by March 15, 1995.[11] As of June 30, 1997, forty countries had not made any such notifications.[12]

Such delays and partial responses are typical for all agreements. In these circumstances, it is difficult for a country or its citizens to discern the extent of the benefits that arise from the WTO agreements.

In some measure, this failure to notify may be attributed to lack of resources, and, as described above, The Timken Company supports the provision of assistance to developing countries that seek it. Regardless of the reasons, the lack of compliance and reporting reduces the value of U.S. participation in, and support for, the WTO. To enhance the value of U.S. membership, the Congress should support a number of different efforts, including:

- The provision of adequate funding for the U.S. monitoring agencies and a strong U.S. presence in Geneva; and
- The provision of sufficient resources for participation in WTO dispute settlement.

In addition, Timken recommends that the USTR establish a mechanism that will allow private parties, which are concerned that notified materials are not publicly available, to request determination by the USTR of the status of such documents and commitments to gain the release and public dissemination of such information.

B. Future Compliance.

Developing countries joining the WTO have been able to postpone compliance with a number of different Agreements. For example, fifty-one countries have postponed compliance with the Agreement on Implementation of Article VII of the GATT 1994 for five years.[13] The TRIPS and TRIMS Agreements include provisions that allow developing countries to delay implementation for five years. This means that those developing countries that were original members of the WTO and opted to delay compliance will all have to be compliant by January 1, 2000. It is important for the WTO to identify what, if any, efforts are being taken by developing countries to bring themselves into compliance. This approach is already taken in dispute settlement where losing countries are required to provide periodic reports of efforts being made to bring themselves into compliance. The same should be done for countries given an extended period for compliance.

IV. *Conclusion.*

The Timken Company strongly supports ongoing efforts to liberalize international trade and to strengthen our rules-based system. The upcoming negotiations should focus on the built-in agenda and traditional tariff negotiations. The existing Rules should not be reopened, although extensions of the Subsidy Articles that would otherwise expire should be agreed to and anticircumvention provisions should be added as contemplated in Marrakesh. Energy should be spent on improving compliance with existing agreements and on improving the transparency of the WTO generally and the dispute settlement system particularly. While not reviewed above, Timken strongly concurs with the existing position of the US that it is inappropriate at the present to launch negotiations in the competition policy area. There are many areas where bilateral cooperation needs to be developed before multilateral rules would be appropriate. Considering the problems experienced in the OECD on an invest-

[6] G/SCM/23, Note by the Secretariat (30 July 1999) at 2.
[7] G/SCM/23, Note by the Secretariat (30 July 1999) at 2.
[8] G/SCM/23, Note by the Secretariat (30 July 1999) at 2.
[9] G/SCM/23, Note by the Secretariat (30 July 1999) at 2.
[10] G/SCM/23, Note by the Secretariat (30 July 1999) at 1.
[11] See WTO Annual Report 1997 at 110.
[12] Id.
[13] See Report of the Committee on Customs Valuation to the Council for Trade in Goods at 1, G/L/121 (October 29, 1996).

ment agreement, Timken similarly does not believe that it is in the US's interest to negotiate an investment agreement within the WTO. Finally, Timken supports technical assistance to developing country members to assist them to come into conformity with WTO obligations but believes that all countries that are not in compliance should be required to provide periodic reports on efforts being undertaken to bring themselves into compliance.

Sincerely,

LARRY R. BROWN

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Statement of Torrington Company, Torrington, Connecticut

Founded in 1866 at Torrington, Connecticut, as a maker of sewing machine needles, The Torrington Company is now a leading worldwide producer of high-quality, precision bearings and motion control components and assemblies. The largest U.S.-owned full-line producer of antifriction bearings, Torrington is a subsidiary of Ingersoll-Rand Company. Torrington is a key supplier to the motor vehicle industry, the machine tool industry and the aerospace industry. The company has an extensive network of 25 manufacturing plants in North and South America, Europe and Asia and more than 11,000 employees. More than 50 offices are located in strategic cities around the globe, with corporate headquarters situated in Torrington, Connecticut. The Torrington Company, in 1998, was a recipient of the first annual Quest for Excellence award presented by Automotive Industries (AI), a leading industry publication. In addition, subscribers of Machine Design and American Machinist magazines voted Torrington one of America's leading manufacturing technology companies in the 1998 Excellence in Manufacturing Technology Achievement Awards.

Torrington's comments focus on a number of issues previously identified by the United States Representative as relevant to the upcoming Ministerial meeting.

I. IMPLEMENTATION OF EXISTING AGREEMENTS AND WORK PROGRAMS

A. Full Implementation and Notification

Torrington agrees with the position of the United States and other WTO members that full and effective implementation of the Agreements concluded in the Uruguay Round should be a top priority for the WTO and the agenda that Ministers will consider in November 1999. WT/GC/W/107, 26 October 1998, Communication from the United States. For a discussion of Torrington's concerns with particular agreements, see section III, infra.

II. MANDATED NEGOTIATIONS

Torrington supports efforts to obtain liberalization in the service industry, including repair and maintenance services, financial services, telecommunication services, transport services generally, express integrated transportation services, distribution services and transport services generally. In general, liberalization in these sectors will decrease the costs of doing business abroad and thus is expected to help Torrington and other U.S. exporters to achieve better access to export markets. In addition, repair and maintenance of bearings is an integral part of the bearing business, hence, liberalization efforts in this sector would likely benefit Torrington directly.

In addition, Torrington has urged USTR to continue efforts to improve market access for U.S. producers in important export markets, particularly Japan. See also, infra, Section VI.A (industrial market access).

III. REVIEWS OF EXISTING AGREEMENTS AND WORK PROGRAMS

A. Antidumping

Torrington has urged USTR to oppose the proposals by several countries seeking a general reopening of negotiations on either the subsidies or the antidumping agreement. The agreements, achieved after difficult negotiations, have been in place for less then five years. Hence, such reopening is premature. In any event, any controversies should first be handled through the already established dispute settlement procedures. USTR should focus the attention of the members and the organization on remaining implementation and notification failures. Moreover, member nations have not accomplished agreement on addressing circumvention problems as called for by the Marrakesh decisions. US focus in antidumping should be limited

to the above and should oppose any reopening of the agreement. See, WT/GC/W/145, 18 February 1999, Communication of the Government of Japan.

B. Subsidies

Torrington agrees with suggestions of the United States and some other Members of the WTO that implementation of the Subsidies agreement could be improved by modifying the notification/review process such that updating notifications are eliminated and full notifications are made every other year, permitting a regular cycle in which subsidies are notified in the first year and reviewed in the second, etc.. WT/GC/W/107, 3 November 1998, Communication from the United States.

Article 31 of the Subsidies agreement calls for the WTO to review the operation of Article 6.1 (serious prejudice), and Articles 8 and 9 (non-actionable subsidies), and determine whether these articles should be eliminated. Torrington supports the continuation of these articles.

Torrington further agrees that tighter rules should be developed to preclude the circumvention of export subsidy commitments so that there is a fully shared understanding of what is permitted and precluded by commitments on export subsidies.

C. Customs Valuation

Torrington agrees with USTR's efforts to improve technical assistance, by focusing on active assessment of specific needs of particular Members. Such efforts are particularly relevant in the context of efforts to bring about full integration of all Members in the world trading system, including developing countries. However, Torrington is concerned that many nations have not brought themselves into compliance only four months ahead of the required timeline. The US should encourage full compliance by January 1, 2000.

D. Dispute Settlement

Torrington generally supports efforts to increase transparency in the dispute settlement process. In this context, Torrington suggested to USTR that all submissions in a dispute settlement proceeding, including submissions by NGOs, be made available to the public. Finally, Torrington understands that review of the DSU process is focused on two principal issues: the appropriateness of remands for further factual information; and the clarification of Article 21 and 22 in light of recent panel experience. In this context, to the extent any modifications to the dispute settlement process are considered, Torrington is concerned that such modification would not affect the existing timelines, thus delaying relief.

E. Rules of Origin

Torrington understands that the work of the Technical Committee has not been able to resolve a number of disagreements among the Members. In this context, Torrington has urged USTR to take the position that these issues should not become a matter of negotiation in the new Round, but should be discussed separately.

F. Trade Related Aspects of Intellectual Property Rights

Torrington supported and continues to support USTR's efforts to promote effective technical assistance, such as the joint initiative announced by WTO and WIPO. WT/GC/W/107, 3 November 1998, Communication from the United States. As stated before, such efforts are particularly relevant in the context of efforts to bring about the full integration of developing country members in the WTO system. Similar to Customs Valuation and TRIMs, many developing countries are required to bring themselves into compliance by January 1, 2000. The U.S. has much to lose if such compliance is not full.

IV. Integration of Least-Developed Countries

Torrington supports efforts to integrate all developing countries in the multilateral trading system. In this context, Torrington refers to its comments above regarding the need for effective and specific technical assistance to developing countries that require it.

In addition, Torrington believes that benefits under the Generalized System of Preferences should be limited to the least developed countries. The current system grants preferential treatment to countries that do not need such preferences to compete in export markets. As result the benefits of GSP for the least developed countries are diluted and MFN treatment is unfairly withheld from third country suppliers.

V. Electronic Commerce

Electronic commerce has great potential for the reduction of transaction costs and the opening of additional markets. In addition, the application of electronic technology to the notification process holds the potential of increased transparency and improved implementation. See also, infra, Tariff Bindings; WT/GC/W/107, 3 November 1998, Communication from the United States (PC Integrated Data Base). These developments, apart from increasing international trade generally, should also facilitate the integration of developing countries in the world trading system.

Any review of electronic commerce issues, however, should be undertaken in the spirit of minimizing government interference, relying instead on self-governance by users and transparency. Government intervention will likely result in unneeded restraints, distort the development and application of new technology, and add costs. Thus, such intervention will compromise benefits attainable from the new technologies.

VI. Other Trade Matters of Interest

A. Industrial Market Access

Torrington generally supports the inclusion of industrial tariffs, where done on a request/offer basis.

Further, Torrington supports the elimination of tariffs on information technology products under the Information Technology Agreement, with the understanding, however, that such elimination in fact is limited to information technology products. Thus, bearings should remain excluded from such an agreement.

As the U.S. and Australia communications recognized, in some instances tariffs are applied at levels below bound rates, including through tariff regimes that appear to be complex, non-transparent and discriminatory. See, WT/GC/W/132, 21 January 1999, Communication from Australia. Thus, Torrington agrees that an important objective in the upcoming negotiations should be to improve and expand market access opportunities by lowering bound tariff rates to eliminate the disparity between applied and bound rates and by ensuring that the market access results provide greater certainty and transparency in the operation of tariff regimes.

In this context, Torrington applauds USTR's efforts to support the preparation of updated electronic versions of the Members' various tariff bindings. WT/GC/W/107, 3 November 1998, Communication from the United States (PC Integrated Data Base)

B. Consultations With Non-Governmental Stakeholders

Torrington supports USTR's efforts in this regard, and refers in particular to its comments under section III, D, above, regarding the public availability of all relevant documents.

C. Trade and Investment; Trade and Competition Policy

Torrington does not believe that the US should support negotiations within the WTO on either trade and investment or trade and competition. Torrington strongly supports expanded investment liberalization. However, considering the problems at multilateral agreements encountered within the OECD, Torrington does not believe that the multilateral approach through the WTO is appropriate. Similarly, Torrington concurs with the position of the US that it is not the right time to pursue multilateral negotiations on competition policy.

Respectfully submitted,

Robert T. Boyd Esq.
Vice President, Secretary and General Counsel

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Statement of U.S. Integrated Carbon Steel Producers

This statement sets out the views of the five major integrated U.S. producers of carbon steel products—Bethlehem Steel Corp., U.S. Steel Group, a unit of USX Corp., LTV Steel Co., Ispat Inland Inc., and National Steel Corp.—on the importance of not allowing bilateral or multilateral negotiations to be used as a forum for attacking U.S. trade laws, primarily antidumping and countervailing duty laws. Maintaining strong trade laws are essential to facilitating an open market policy both in the U.S. and abroad. Internationally agreed upon antidumping rules must not be open for renegotiation in any forum—not even with an original intent of

strengthening these laws. This must be a primary negotiating objective for the Administration at this year's WTO Ministerial in Seattle.

During the debate of whether to extend fast-track authority in the 105th Congress, both the House Ways and Means Committee and the Senate Finance Committee sent clear messages that U.S. antidumping and countervailing duty laws must not be compromised as a result of trade agreements entered into by the United States. The most recent, and continuing, steel import crisis has demonstrated that without strong and effective enforcement of our trade remedy laws, U.S. manufacturers and workers would be left fully defenseless against sudden massive surges of unfairly traded imports. This import crisis has been devastating, forcing several vibrant American steel companies into bankruptcy and resulting in the loss of thousands of good American jobs. As families and entire communities have struggled to survive the crushing effects of unfairly traded imports, their belief in U.S. open market policies has been tested. As such, the United States must have strong trade laws that are able to respond vigorously and effectively against unfair trade if open market policies are to succeed. The integrity of these laws must be maintained in our international trade negotiations.

TRADE REMEDY LAWS MOST EFFECTIVE METHOD FOR COMBATING CAUSES OF IMPORT CRISIS

Unfairly traded imports, and the trade distortions which enable foreign producers to engage in such practices, can best be stopped by eliminating the benefits of dumping into the U.S. market. U.S. antidumping and countervailing duty laws are the most effective tools available to achieve this end.

The roots of the steel import crisis can be found in the global overcapacity of steel. This overcapacity was created, and is maintained, by misguided economic policies of foreign governments and unfair trade practices by foreign steel producers. As demand for steel dropped due to the economic crises in Asia, Eastern Europe, and Latin America, the pressure on foreign producers to export their excess steel production into the U.S. market was exacerbated by the rapid decline in demand in these other world markets.

There are three basic causes of global steel production overcapacity. First, there is massive foreign government subsidization of foreign steel (over $100 billion in such subsidies during the past 20 years). Second, many foreign steel companies enjoy protected home markets through government intervention (e.g. quotas, import licensing). Third, anticompetitive business practices, including domestic and international cartel arrangements involving foreign steel companies, effectively create protected markets. As a result, foreign steel manufacturers can produce at levels not supported by the economic realities of the market place. In many countries, it also has enabled manufacturers to set artificially high home-market steel prices to support dumped low-price steel in the U.S. market.

Not surprisingly, countries which have engaged in unfair trade practices have been the most vocal opponents of the antidumping and countervailing duty laws. They have been well organized in seeking renegotiation of these rules during the upcoming WTO and FTAA talks. The Ways and Means Committee, as it has done before, and Congress, must demand that U.S. negotiators block any attempts at renegotiating these rules.

AMERICAN STEEL COMPANIES AND WORKERS ARE PAYING THE PRICE OF UNFAIR TRADE

American steel companies and workers have paid a heavy price over the last decade to reorganize their businesses into a world class, globally competitive, and environmentally sound industry. American steel companies invested over $50 billion dollars to modernize their plants and equipment, and have reduced their labor force by over 60 percent during that same period. Foreign producers, who have dumped their excess products into the U.S. market, and who have enjoyed the benefits of subsidies and protected home markets, have not made such sacrifices. Instead, as confirmed by the International Trade Commission's affirmative findings of injury in the recently filed hot-rolled, cold-rolled, and cut-to-length plate cases, and the high dumping margins and countervailing duty rates found by the Commerce Department, those producers have sold dumped and subsidized steel into the U.S. market.

After having made the necessary investments to modernize the industry, American steel companies and workers are now paying again—this time for the refusal by foreign manufacturers to restructure their industry. Since the beginning of the current import crisis, over 10,000 good U.S. steel jobs have been lost. Several American steel companies were forced into bankruptcy during a period of high demand. This crisis is far from over. Steel imports remain high compared to historical norms;

steel prices remain severely depressed; and the fundamental causes of this crisis remain in place. Even if trade imports and prices return to normal levels, a crisis of greater proportions could restart at any moment since the United States remains the most open and available market for the world's excess steel capacity.

ANTIDUMPING AND COUNTERVAILING DUTY LAWS MUST BE PRESERVED TO ACHIEVE AN OPEN MARKET TRADE POLICY OBJECTIVE

Strong antidumping and countervailing duty laws are essential if global and regional market opening policy objectives are to be achieved. Maintaining free trade depends on maintaining fair trade. Antidumping rules are designed to ensure that exporters based in countries with closed markets do not abuse other countries' open market policies. Weakening these rules would inevitably lead to abuse of the world's open markets—including that of the United States, the world's most open market—and would ultimately undermine confidence in the WTO itself.

Although international rules in this area were recently and comprehensively renegotiated in the Uruguay Round, our trading partners have already launched a multi-front attack on the U.S. trade laws and the WTO agreements which these laws implement. In the WTO, as well as in FTAA and APEC discussions, foreign countries continue to seek further erosion of our trade remedies. It is neither necessary nor appropriate to revisit at this time the antidumping and countervailing duty laws in international negotiations.

Statutory trade policy negotiating goals provide broad instructions to executive branch negotiators—identifying priorities and implicitly suggesting where there may be latitude to accommodate other countries' interests. The intent of the provisions in various versions of fast track legislation has been to direct U.S. negotiators to pursue stronger trade remedies as a priority objective and to alert foreign governments that agreements weakening U.S. trade laws would not be approved at the implementing stage by Congress. These provisions were adopted in recognition of the critical role these trade laws play in opening world markets and in providing for a more fair market structure in the United States. However, despite any intentions of U.S. negotiators to strengthen the antidumping laws, other countries at the negotiating table would strongly pursue weakening the trade laws, and U.S. negotiators should, accordingly, avoid opening negotiations on these laws at all costs.

Following her testimony at the Ways and Means Committee's August 5 hearing, Ambassador Esserman made an encouraging statement with regard to the possibility of reopening negotiations on the antidumping laws: *"The U.S. position is firm—it is not appropriate to have antidumping as a subject for negotiations in this next round."* This Committee should reaffirm its commitment to the trade remedy laws and demand that the Administration stand by this statement later this year in Seattle. Under no circumstances should foreign governments be allowed to reopen negotiations on the antidumping rules.

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Statement of the Government of the United States Virgin Islands

INTRODUCTION

The Government of the United States Virgin Islands (USVI)) hereby provides this written submission in opposition to any reduction in the present duties on rum in conjunction with the upcoming World Trade Organization ("WTO") Seattle ministerial meeting or any other future tariff negotiations under the auspices of the WTO.

The USVI strongly urges that rum be excluded from any WTO or FTAA negotiations on possible further reductions or eliminations of duties. As explained below, U.S. duties on low-value bulk and bottled rum have only recently been affirmed after delicate and complex discussions among the United States, the European Union ("EU"), Caribbean governments and non-governmental stakeholders. The result of these 1997 negotiations reflects longstanding United States policy to preserve tariffs on imported rum. This consistent U.S. policy is based on the fundamental fact that the rum industry and existing U.S. tariff preferences play a critical role in the economies of the USVI and other Caribbean jurisdictions. Moreover, under a Congressionally mandated program to foster the development of the USVI, federal excise taxes on Virgin Islands rum shipped to the United States are returned to the USVI treasury. This revenue—which accounts for approximately 10 percent of the USVI's total budget—secures hundreds of millions of dollars of government borrowings in support of essential public services and programs.

Any reduction or elimination of existing tariffs on low-value rum would disrupt these carefully considered trade and development programs and have devastating consequences for the fiscal stability of the Virgin Islands. In view of these serious economic consequences, Congress and the Administration must oppose any reductions in rum tariffs, particularly at a time when the USVI is struggling with a financial crisis exacerbated by the massive destruction wrought by three successive 100-year hurricanes in the last decade. Indeed, the USVI urges that Congress and the Administration index the price cut-offs established by the 1997 rum accord for inflation in order to assure that current tariff benefits for low-value rum do not diminish or erode over time.

DISCUSSION

The USVI recognizes that reduced duties and increased market access have the potential to benefit a variety of U.S. industrial producers. However, the elimination or reduction of duties on rum would cause serious economic injury to U.S. producers in the USVI and Puerto Rico—who comprise virtually all of the domestic rum industry—C and to Caribbean beneficiaries of the U.S. Caribbean Basin Initiative (CBI). Accordingly, as explained more fully below, rum must be excluded from any proposed WTO negotiations on the elimination or reduction of duties.

A. The Continued Need for Tariffs on Low-Value Rum Was Considered and Affirmed in the 1997 U.S.-EU Agreement on "White Spirits"

As part of a tariff agreement initialed at the December 1996 WTO Ministerial in Singapore, the United States and the EU committed to phase out their tariffs on "white spirits" (including rum) by no later than 2000. In response to this unexpected announcement, U.S. and Caribbean governments and producers, Administration officials and Members of Congress strongly emphasized to the USTR and EU negotiators that, unless exempted, such a drastic change in the duty structure for rum would deal a severe blow to the USVI, Puerto Rico and the island nations of the Caribbean, whose economies and governments depend heavily on revenues generated by trade in rum.

In response to these substantial concerns, the USTR and the EU returned to the negotiating table in 1997 and—with substantial input from many Caribbean governments and producers—subsequently fashioned a compromise tariff mechanism for rum. This new mechanism sought to balance trade liberalization with the particular concerns of the Caribbean region by retaining existing MFN duties (and the duty preferences of Caribbean producers) on low-priced bottled and bulk rum while substantially liberalizing (and ultimately phasing out) duties on more expensive rum. *See* U.S. Schedule XX Rectification (Apr. 2, 1997) (U.S. WTO tariff concession schedule). Pursuant to this agreement, current higher U.S. duties on low-priced rum are cut off above $3.00/proof liter for bottled rum and $0.69/proof liter for bulk rum. *See* Harmonized Tariff Schedule of the United States, heading 2208. The importance of this protection for low-value rum is underscored by the fact that U.S. and other Caribbean-region rum producers are currently seeking to index these price cut-offs against inflation and to assure that the value of these essential protections is maintained over time.

The willingness of U.S. and EU negotiators to reopen their initial tariff commitments to address the import sensitivity of low-value rum demonstrates the special and the significant role which rum generally plays for the economies and governments throughout the Caribbean. The 1997 rum agreement was a reasoned compromise agreed to by the concerned governments with substantial participation by key non-governmental stakeholders. In developing a negotiating strategy for the WTO, Congress and the Administration must recognize and continue this careful approach to the unique issues raised by rum. The Congress should strongly recommend that the United States take affirmative measures to ensure that rum is excluded from any future WTO tariff reduction negotiations.

B. The Virgin Islands Economy Is Linked By Congressional Design To The Health Of the Territory's Rum Industry

As an unincorporated territory of the United States, the Virgin Islands is uniquely dependent upon the continuing health and vigor of its rum industry.

Rum is a product of special significance to the USVI and other Caribbean jurisdictions. Rum has been produced in the Caribbean for centuries, providing important contributions to local economies, as well to the history and lore of the region. Today, the rum industry plays even greater role in the prosperity and stability of the USVI economy. Indeed, rum production is the second most important industry in the Virgin Islands, surpassed only by tourism.

Most Virgin Islands rum occupies the low-price end of the market and is sold as unaged bulk rum to regional distributors in the United States. The distributors, in turn, bottle and sell the rum under private labels or sell to national beverage companies which market under various product labels. Virgin Islands-produced rum is also sold as prepared cocktail mixes. Because Virgin Islands bulk rum is generally sold as a commodity and does not have name brand recognition, it cannot command premium prices. Rather, bulk rum is extremely price sensitive and is sold in a highly competitive environment where pennies can literally make or break a sale. As a result of this position in the market, Virgin Islands-produced rum is vulnerable to imports from low-cost countries, like Brazil, with large indigenous sugar cane industries.

In recognition of the special importance of rum to the USVI economy, successive Congresses and Administrations have maintained high tariffs on imports of low-value rum from non-CBI countries. Current U.S. tariffs on low-priced rum are 25.9 cents per proof liter for bottled rum valued at $3 per proof liter or less and 25.9 cents per proof liter for bulk rum valued at $0.69 per proof liter or less. These substantial duties are critical to the continued viability of the Virgin Islands rum industry. The importance of these tariffs was affirmed as recently as 1997 in the U.S.-EU rum agreement. Removal of the current duty on low-value rum, on the other hand, would confer an enormous advantage upon Brazilian and other non-CBI producers, who already enjoy substantial cost and production advantages and would likely expose Virgin Islands producers to immediate and destructive import competition. In short, the current duty is necessary to prevent serious injury to the Virgin Islands rum industry and, by extension, to the entire USVI economy.

Corollary to its interest in ensuring the competitive health of an historic industry, the USVI and the United States Government also have a common interest in protecting one of the USVI's principal sources of governmental revenue. Congress has, by statute, mandated that federal excise taxes imposed on Virgin Islands rum be returned to the treasury of the Islands to finance needed capital projects and public services. Under the Virgin Islands Revised Organic Act of 1954 ("ROA"), Pub. L. No. 517, 68 Stat. 12, which established a comprehensive scheme of local self-government in the Territory, Congress provided that federal excise taxes collected on rum manufactured in the Virgin Islands and shipped to the United States shall be returned to the treasury of the Virgin Islands. ROA, § 28(b) (codified at 26 U.S.C. § 7652(b), (e)). Prior to the enactment of the Revised Organic Act, the Virgin Islands was dependent upon *ad hoc* Congressional appropriations for the support of its local government. As part of its statutory scheme for the political and economic development of the Virgin Islands, Congress intended that these tax cover-over provisions generate a permanent source of funds for the Virgin Islands Government and thus contribute to the financial self-sufficiency of the Territory. *See* S. Rep. No. 1271, 83d Cong., 2d Sess. 4 (1954), *reprinted* in 1954 U.S. Code Cong. & Ad. News 2585. *See also Commonwealth of Puerto Rico v. Blumenthal*, 642 F.2d 622 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 983 (1981) (purpose of cover-over provisions is "to ease financial plight" of the Virgin Islands and Puerto Rico).

The rum industry and the cover-over provisions of the Revised Organic Act presently contribute approximately 10 percent of the Territory's total budget. For 1999, the USVI estimates that rum excise taxes returned to the Virgin Islands will total between $43 and $46 million. These cover-over revenues finance 100 percent of the Virgin Island's capital budget by securing hundreds of millions of dollars in bonds issued by the Government and sold to mainland institutions and investors. These bonds, in turn, finance needed capital improvements and infrastructure development in the Territory including, *inter alia*, the construction of schools, health care facilities, airports and other vital projects throughout the Virgin Islands—projects made all the more necessary by the hundreds of millions of dollars of damage caused by three major hurricanes over the last decade. In addition, the number of direct jobs generated by these capital expenditures run into the thousands—far outpacing the number of jobs in the rum industry, which is itself one of the largest manufacturing industries in the Territory.

The rum industry thus provides one of the principal sources of employment and government revenue in the Virgin Islands. Even a modest increase in imports from Brazil and other non-CBI producers triggered by extending duty-free treatment to low-cost rum would invariably result in depressed prices and correspondingly reduced profits for U.S. rum producers in the Virgin Islands. Because of the linkage established by Congress between the industry and excise tax revenues, even minimal displacement of Virgin Islands rum shipments to the United States by foreign competition will threaten the fiscal stability of the Territorial Government, raise the cost of the government borrowings, and, derivatively, put the entire economy of the

Islands at risk. Accordingly, current rum tariffs must not be reduced as a result of any WTO of FTAA tariff negotiations.

C. The Reduction or Elimination of Current U.S. Duties on Low-Value Rum Would Run Counter to Long-Standing Federal-Territorial Policy and Threaten the Special Fiscal Relationship Between The Virgin Islands and Its Rum Industry

Both the Congress and the Executive Branch of the United States have repeatedly recognized the unique role that the rum industry plays in the legal, economic and political relationship between the United States and its island territories in the Caribbean. The 1997 U.S.-EU agreement on rum is only the most recent expression of this historical relationship. Indeed, the United States has taken affirmative action on many prior occasions to protect the Virgin Islands and Puerto Rico rum industries[1] from potential competitive harm in the context of other trade negotiations and other trade preference programs.

Historically, all foreign-produced rum imported into the Untied States was subject to U.S. customs duty. In 1983, in response to the President's foreign policy objectives for the Caribbean, Congress enacted the Caribbean Basin Economic Recovery Act ("ACERA")—popularly known as the "Caribbean Basin Initiative"—which created a special system of tariff preferences for products (including rum) originating from eligible Caribbean countries. Pub. L. No. 98–67, 19 U.S.C. § § 2701 *et seq*. The legislation was carefully developed to balance domestic economic interests against U.S. foreign policy goals for the Caribbean. After careful Congressional deliberation, a legislative compromise was worked out to protect the Virgin Islands and its rum industry from any increase in Caribbean rum imports. Among other things, Congress enacted several compensatory measures in recognition of the heightened vulnerability of the Virgin Islands rum industry to CBI imports, including a partial rebate to the USVI of a percentage of excise taxes imposed on *foreign-produced* rum. *See* Pub. L. No. 98–67 § 214, 19 U.S.C. § § 1202, 2251 (note), 2703 (note), 33 U.S.C. § 1311 (note).

The Federal Government has also demonstrated its continued recognition of the special role of rum in the USVI's economy in its disposition of various petitions under the Generalized System of Preferences. In 1981, 1982, 1987 and 1990, the U.S. Government rejected various GSP petitions seeking duty-free entry of rum produced by non-Caribbean producers. The rejection of these GSP petitions reaffirms the import-sensitivity of the rum industry and reflects a considered judgment that the potential harm to the Virgin Islands and Puerto Rican rum industries outweighed any policy benefit to the petitioning countries.

The U.S. Government similarly safeguarded trade preferences for U.S. and Caribbean rum in the development of the Andean Trade Preferences Act ("ATPA"), which provided duty-free access to the U.S. market for certain products originating in Bolivia, Colombia, Ecuador and Peru. After careful consideration by Congress and the Administration, rum was expressly excluded from the list of products eligible for duty-free treatment under the ATPA. In explaining this action, the House Ways & Means Committee stated:

> The Committee added rum to the list of articles that would be ineligible for duty-free treatment under the Act in order to preserve the benefits that Congress has provided to Puerto Rico, the Virgin Islands, and the Caribbean Basin countries. Rum is a product which the ITC has identified as benefitting most from duty-free treatment under the CBI. . . . Andean Rum Producers have significant natural resource and cost advantages over their Caribbean and U.S. Territorial counterparts as well as large excess production capacity.

H.R. Rep. No. 102–337 at 15 (1991).

The special provisions for low-value rum in the 1997 U.S.-EU rum agreement thus are but the most recent manifestation of Federal policy in support of U.S. and other Caribbean-based rum production. After close consultations with Caribbean jurisdictions and various non-governmental stakeholders, the United States and the EU agreed to revise their tariff reduction plan for white spirits to retain existing tariffs on low-value rum originating from non-Caribbean jurisdictions. By doing so, they collectively affirmed the crucial role which rum plays for the economies and governments of the Caribbean region.

For all these reasons, the inclusion of rum in any WTO tariff reduction talks would be contrary to long-standing Federal policy against the extension of tariff preferences for low-value rum produced outside of the Caribbean. As demonstrated

[1] As in the Virgin Islands, rum production is one of the primary industries of Puerto Rico. Like the Virgin Islands, federal excise taxes imposed on Puerto Rico rum shipped to the United States are also rebated to Puerto Rico.

by the 1997 rum accord, rum is not a product which can or should be included in any across-the-board or formula-based tariff reduction schemes. Rather, any tariff discussions must address the special economic and political significance of the rum trade to the Caribbean region. The considered compromise reached in the 1997 agreement on rum provides a proper balance between the needs of the USVI and other Caribbean producers of low-value rum and liberalized trade for higher-priced rum. Congress should urge that this carefully crafted solution not be disturbed in future tariff reduction talks, including those under the auspices of the WTO.

D. The Reduction or Elimination of Current U.S. Duties on Rum Would Result In Serious Injury To U.S. Producers In the Virgin Islands And The Overall Economy of the Virgin Islands

Duty reductions for rum as part of any WTO negotiations would impose unacceptable hardships on the USVI and its rum producers. Because it lacks strong name brand identification and a well-developed national distribution network, Virgin Islands rum generally cannot command premium prices. Rather, as explained above, most Virgin Islands rum is sold at the low end of the market and is generally purchased in bulk as an unaged commodity by U.S. bottlers. In this sales environment, Virgin Islands producers must compete almost exclusively on the basis of price and, accordingly, are particularly vulnerable to competition from low-cost producers of bulk rum.

Removal or reduction of current duties on low-value rum would provide producers from outside the Caribbean region with an irresistible incentive to target the low end of the U.S. rum market currently occupied by Virgin Islands producers. Producers in various South American countries currently have numerous economic advantages relevant to the production of rum. As noted, in refusing to extend duty-free benefits under the ATPA to rum, Congress recognized that the Andean countries enjoyed significant natural resource, cost and capacity advantages over U.S. territorial rum producers.[2]

Imports from Brazil would pose a particular threat to Virgin Islands rum producers. Brazil produces 40 percent of the world's ethanol. Its alcohol producers benefit from below-world-market prices for molasses, more highly developed transportation and distribution networks, inexpensive fuel, low manufacturing-sector wages and freedom from U.S. regulatory requirements. Brazilian ethanol production is heavily subsidized and, as a result, two thirds of the country's cane crop has historically been converted to ethanol. In recent years, the Brazilian alcohol/sugar sector has faced the kinds of economic and production pressures which traditionally encourage the aggressive entry into new markets, including low domestic alcohol prices, excess supplies of alcohol (an estimated 2 billion liters in 1998), rising sugar cane output (average annual increases of 10 percent) and cash-flow pressures on producers. *See* U.S. Dep't of Agriculture, Foreign Agricultural Service, Brazil—Sugar: Annual Report 1999, Global Agriculture Information Network Report BR 90090 (www.fas.usda.gov).

Finally, the rum/cachasa production capacities of South American producers literally dwarf those of Virgin Islands and other Caribbean producers. Brazil alone produced an estimated 1 billion proof liters of rum/cachasa in 1998, as compared with USVI production of approximately 21 million proof liters.

Without the benefit of the relative tariff protection affirmed in the 1997 rum agreement, Virgin Islands producers would quickly be overwhelmed by non-CBI alcohol and rum producers in the commodity or price-sensitive segment of the U.S. market in which Virgin Islands rum competes. The total U.S. rum market would face drastic effects if even minimal percentages of Brazilian rum/cachasa production were diverted to the United States. The effects of Brazilian imports would be even more pronounced on the U.S. market for bulk rum—the market segment in which Virgin Islands rum competes. For example, Brazil could capture 10 percent of the U.S. bulk rum market by diverting a mere 1 percent of its rum to the United States. The diversion of 3 percent of Brazilian production could capture 31 percent of the U.S. bulk rum market. Clearly Brazilian rum imports alone could readily overwhelm Virgin Islands and other Caribbean producers if current duty preferences were eliminated.

The elimination of relative U.S. tariff preferences currently enjoyed by Virgin Islands rum would also seriously threaten the future of the Congressionally mandated program to finance the USVI's development needs through the return of excise taxes on rum to the USVI treasury. As explained above, this cover-over program finances some 10 percent of the USVI's annual budget and 100 percent of its capital budget

[2] H.R. Rep. No. 102–337 at 15 (1991).

and secures government bonds issued for crucial development and infrastructure projects. This vital economic program depends, however, on the continued existence of a viable rum production industry in the Virgin Islands.

Without current tariff preferences, non-CBI producers would likely use their tremendous competitive advantages to displace Virgin Islands rum from the U.S. market, thereby drying up USVI treasury revenues generated by the return of excise taxes on Virgin Islands-produced rum. This lost revenue would not be made up by the partial rebate of excise taxes on *foreign rum* granted by the CBI. The CBI provides only a limited guarantee of Virgin Islands rum revenues and simply does not make the Virgin Islands whole where foreign imports are increasing disproportionately at the bottom end of the bulk rum market—precisely the segment where the Virgin Islands industry competes. Moreover, from a practical political standpoint, even this limited rebate program would be unlikely to continue if Virgin Islands rum production ceased or were deemed no longer viable.

Finally, and perhaps most significantly, the very prospect of serious reductions in rum cover-over revenues would likely imperil the USVI's bond rating and overall economy even before any non-CBI rum producers could avail themselves of reduced U.S. tariffs. Bond markets and investors are historically wary of risk and would hesitate to provide needed bond financing at acceptable costs to the USVI based on a threatened or declining stream of cover-over revenues.

Thus, the elimination of current tariff preferences for Virgin Islands rum would have a devastating domino effect on the USVI and its economy. Without these preferences, rum cover-over revenues would seriously decline and the USVI could lose its access to the financial markets. Because of the USVI's significant dependence on rum-related revenues, these developments would ultimately put at risk the fiscal autonomy, if not solvency, of the USVI.

E. The Elimination of Current Tariff Preferences on Rum Would Be Contrary To Sound Public Policy In Light of the Precarious Fiscal State of the Virgin Islands

As noted above, current tariff preferences for Virgin Islands rum are founded on a longstanding Federal-Territorial policy which links the Islands' development with revenues from rum. This Congressionally-mandated policy provides compelling reasons to resist any elimination of tariff preferences for Virgin Islands rum. Moreover, in view of the current precarious fiscal state of the USVI, any tariff reductions for rum in upcoming WTO talks would be particularly ill-timed and inconsistent with sound public policy.

Indeed, the new administration in the USVI has inherited a fiscal state of affairs of enormous and alarming proportions. The USVI operating deficit for FY 1999 is expected to exceed $100 million, while its total recurring and non-recurring liabilities are expected to top $1.2 billion. A sizeable portion of the Government's current debt is the direct result of the three successive hurricanes which have battered the USVI over the past decade. As of December 31, 1998, these hurricane-related liabilities included $190 million owed to the Federal Government in outstanding FEMA loans. In addition, the USVI requires over $125 million in assistance for rebuilding/replacing a number of federally mandated capital projects, such as schools, prisons and environmental facilities.

The new administration in the USVI is committed to addressing this fiscal crisis as its top priority in order to avert a potential financial disaster, including the prospect of payless paydays for Government workers. With the ongoing assistance of the U.S. Department of Interior, the USVI is developing a Five-Year Fiscal Recovery Plan and is implementing a number of specific measures to reduce costs and enhance revenue collections. As part of this recovery effort, the USVI is seeking over $300 million in new Federal assistance, including FEMA disaster relief, special appropriations for federally mandated infrastructure project, and elimination of the current $10.50 per proof gallon cap on the amount of federal rum excise taxes returned to the Treasury of the Virgin Islands Government.

In light of the Federal Government's substantial involvement and interest in these recovery efforts, it makes no sense for the U.S. Government to simultaneously undermine one of the major sources of revenue of the USVI through the elimination of current rum preferences. Sound fiscal policy—as well as longstanding trade and development policies—require the maintenance of the current tariff structure and the preservation of the U.S.-EU rum accord.

CONCLUSION

For reasons discussed above, the reduction or elimination of tariffs on rum in WTO negotiations would pose an inevitable and serious threat to the health of the Virgin Islands economy and its rum industry, as well as to the fiscal autonomy of

its Government. Granting duty-free treatment to rum would have a devastating impact on one of the Virgin Islands' most significant industries and sources of governmental revenue and would be contrary to the historical and legal covenants between the Virgin Islands and the United States. Congress has, in the past, refused to abandon those covenants and, in particular, the interests of the domestic rum industry. Because of the current weakened fiscal state of the Virgin Islands Government, the case against including rum in WTO tariff reduction negotiations is even more compelling today. For the reasons set forth above, Congress should strongly urge that the United States preserve the careful compromise embodied in the 1997 U.S.-EU rum accord and exclude rum from any future WTO tariff reduction negotiations.

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Joint Statements of The Government of the U.S. Virgin Islands and the Virgin Islands Watch Producers

INTRODUCTION

The Government of the U.S. Virgin Islands (the "GVI") and Belair Watch Corporation, Hampden Watch Company, Inc., Progress Watch Co., Unitime Industries, Inc. and Tropex, Inc. (the "V.I. Watch Producers) hereby jointly file this written submission in opposition to any reduction in duties on watches and watch parts in conjunction with the upcoming World Trade Organization ("WTO") Seattle ministerial meeting or any other future tariff negotiations scheduled under the auspices of the WTO.

The watch industry is the largest light manufacturing industry in the U.S. Virgin Islands and remains one of the most important sources of private sector employment in the Territory. The GVI, which has a mandate to protect the fragile manufacturing base of the U.S. Virgin Islands, and the V.I. Watch Producers, which represent a substantial majority of the U.S. insular watch industry, strongly oppose any reduction in current tariff levels for imported watches and watch parts without enactment of new compensatory legislation to maintain the present balance of competitive advantages enjoyed by the V.I. Watch Producers and conferred by Congress.

Congress has consistently demonstrated its special concern for the health and survival of the Virgin Islands and domestic watch industries over the last quarter of a century. Since 1988, for example, Congress has recognized the import-sensitivity of watches by imposing a strenuous test before watches can even be considered for special tariff preferences under the Generalized System of Preferences ("GSP"): under the Omnibus Trade and Competitiveness Act of 1988, watches are deemed import-sensitive and thus ineligible for GSP preference *unless* the President first makes an affirmative determination that such preferences would not cause "material injury" to *either* the U.S. domestic *or* the U.S. insular watch industries. In numerous attempts over the last decade, a single foreign-owned company has petitioned for duty-free treatment of its foreign-produced watches but has repeatedly failed to meet the high burden imposed by this Congressionally established test. The administrative reviews triggered by these petitions, together with more recent trade data, conclusively demonstrate that the U.S. and insular watch industries operate in an increasingly competitive environment and are extremely vulnerable to tariff reductions and import penetration.

For reasons explained more fully below, the reduction or elimination of tariffs on watches and watch parts would have severe economic effects on the Virgin Islands watch industry—an industry which has merited special congressional concern. Accordingly, the United States must oppose any effort to reduce or eliminate these tariffs, unless Congress *first* enacts compensatory legislation to maintain the present delicate competitive balance on which the Virgin Islands watch industry depends for its survival. Elimination of duties on watches, in the absence of such compensatory legislation, would only accelerate the trend of global watch producers to move watch assembly and manufacturing operations to low-cost countries and to take advantage of significant duty savings now denied under GSP.

DISCUSSION

Watches have long and consistently been determined to be import sensitive by the Congress and the USTR. Indeed, much of the domestic production of watches has moved off-shore in search of low-cost labor and other competitive advantages, even as imports of foreign-produced watches have continued to increase at double digit rates. Any effort to eliminate or reduce duties on watches and watch parts, in the context of forthcoming WTO tariff negotiations, would only accelerate these trends at the inevitable expense of the remaining U.S. and insular watch industries.

Even if such reductions were to occur in the context of a zero-for-zero agreement, the duty-savings would necessarily and disproportionately favor foreign producers to the competitive disadvantage of domestic and insular producers. In fact, trade data suggests that total U.S. and insular watch exports equal less than five percent of total U.S. imports of foreign-produced watches. Moreover, because existing production incentive programs tie Virgin Islands watch production to the U.S. market, V.I. producers would have little opportunity to avail themselves of any reductions in foreign tariffs. Thus, the value of duty savings for foreign producers resulting from any such agreement would far outweigh any benefit to U.S. and insular producers, while increasing the competitive pressures that threaten further erosion of the U.S. market share of domestic producers and their ultimate survival. Accordingly, the GVI and the V.I. Watch Producers strongly urge that Congress and the Administration affirm existing U.S.-trade policy by opposing any reductions in duties on watches and watch parts during forthcoming WTO tariff negotiations.

A. Congress and the USTR Have Previously Determined that the U.S. and Insular Watch Industries Are Import-Sensitive and Require Special Protections

The Trade Act of 1974, Pub. L. No. 93–618, 88 Stat. 1978 (Jan. 3, 1975), included watches in the list of import-sensitive products statutorily ineligible for duty-free treatment under GSP. Beginning with the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (Aug. 23, 1988)—which amended the 1974 statute pursuant to a legislative compromise negotiated by the American Watch Association ("AWA"), Timex Corporation ("Timex") and others—watches may now be considered for GSP duty-free treatment in limited circumstances but are subject to special procedural requirements designed to prevent harm to the domestic and U.S. insular watch industries. In particular, current law limits GSP treatment only to those categories of watches "the President specifically determines, after public notice and comment, will *not* cause material injury to watch or watchband, strap, or bracelet manufacturing and assembly operations in the United States *or* the United States insular possessions." 19 U.S.C. § 2464 (emphasis added). The clear presumption of this statutory scheme is that watches will remain on the list of ineligible articles unless a petitioner has first proved the negative, *i.e.*, GSP treatment would not result in material injury to the USVI or U.S. industries.[1]

Congress' presumption that watches will remain on the statutory list of ineligible articles may be defeated only by a clear preponderance of the evidence, tested in the course of a comprehensive administrative proceeding, that duty-free treatment will not result in material injury to either the domestic or the insular watch industries. To assist in constructing the fullest possible record in compliance with its legislative mandate, the USTR has required that, in any administrative review, the International Trade Commission should provide more comprehensive analysis than the "probable economic effects" advice it normally dispenses in ordinary GSP cases.[2] Specifically, USTR has requested in past GSP watch investigations that the Commission should analyze—in *addition* to standard GSP criteria—the probable effects of duty-free treatment on USVI and U.S. watch and watch band companies with respect to such relevant factors as annual production, capacity, capacity utilization, domestic shipments, exports, inventories, employment, wages and financial experience.

In short, in making any material injury recommendation to the President based on the fullest possible record with respect to any GSP watch petition, the USTR and Commission must analyze and weigh all of the factors regularly considered by the ITC in injury investigations conducted pursuant to Title VII of the Trade Agreements Act of 1979, as amended. Unless the record clearly demonstrates that GSP treatment for watches will *not* result in adverse effects with respect to these enumerated factors, Congress has expressly prescribed that GSP treatment must be denied. The GVI and the V.I. Watch Producers respectfully submit that the USTR must not vitiate the clear congressional construct for GSP treatment of watches by agreeing to support duty reductions on a Most Favored Nation ("MFN") basis without comprehensive analysis by the Commission of probable economic effects of such reductions and the same material injury determinations that are required under the GSP statute.

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[1] The presumption in favor of current dutiable treatment is further reinforced by the legislative history of the 1988 statute. As instructed by the Senate Finance Committee Report, "watches [will] remain ineligible for GSP except those watches. . .that, if given preferential treatment, would *not* cause material injury to watch or watch band. . .manufacturing and assembly operations in the U.S. or the U.S. insular possessions." S. Rep. No. 71, 100th Cong., 1st Sess. 238 (1987) (emphasis added).

[2] *See,e.g.*, 61 Fed. Reg. 54677 (Oct. 21, 1996).

In weighing the impact of duty reductions on watches, in the context of future WTO negotiations, Commission and the USTR should also remain mindful of other expressions of Congressional intent regarding the U.S. insular watch industry. The General Note 3(a) program set forth in the Harmonized Tariff Schedule, and related production incentives of the U.S. and USVI governments, were designed to rehabilitate and promote the watch industry in the U.S. insular possessions. These incentives are working, but would be completely undermined by watch duty reductions on an MFN or GSP basis. As testimony in earlier watch investigations has made clear, the General Note 3(a) tariff incentive for the insular industry is dependent on its differential or *relative* advantage, *i.e.*, it is completely vitiated by extending similar tariff treatment on an MFN, GSP or other regional basis. The related production incentive program minimizes, but does not overcome, the labor cost advantages presently held by producers in low wage countries. Because the potential duty savings may be many times as great as the existing labor cost advantages, duty reductions under the auspices of the WTO would totally undermine the purpose of the Congressionally-sanctioned insular watch production incentives program.

B. The United States Has Consistently Denied the Petitions of Foreign Producers for Tariff Reductions Under the Generalized System of Preferences

In 1988—on the very day of the enactment of the 1988 law—a single foreign-owned producer with substantial manufacturing operations in the Philippines filed a petition requesting duty-free treatment under GSP for all watches. This petition resulted in one of the most thorough investigations in the history of the GSP program and certainly one of the most comprehensive investigations of the worldwide watch industry. Interested parties submitted for the record voluminous studies, economic analyses and numerous briefs to guide the President in his decision. In addition, the Commission prepared a comprehensive report on the probable economic effects of duty-free treatment on manufacturing and assembly operations in the United States and its insular possessions.[3] This unprecedented investigation culminated with the November 1989 decision by the President to deny duty-free treatment to a substantial majority of watch tariff categories, including all quartz watches and most categories of mechanical watches.[4] The President specifically rejected GSP treatment as to these watch categories "because of the potential for material injury to watch producers located in the United States and the Virgin Islands."[5]

In June 1991, the same foreign producer filed a petition for the inclusion of several categories of watches, previously rejected, to the list of GSP eligible articles. After challenge by the GVI, the V.I. Watch Producers and the AWA, the foreign producer withdrew its petition.

In June 1993, the company again petitioned for GSP treatment for a limited number of specific categories of watches. The USTR again rejected the petition for review on grounds that it failed to provide *any* new information on changed circumstances or to rebut the reasons why the President first rejected GSP treatment for the watches at issue in the President's 1989 decision. The petitioner also failed to demonstrate that the circumstances of the domestic or U.S. insular watch industry had improved or were better able to withstand foreign imports. Later, in 1996, Congress rejected an attempt by the same company to eliminate the material injury test in the GSP statute. And finally, in 1997, the USTR excluded, after extended review, watches and watch parts from the expanded list of eligible GSP articles reserved for Less-Developed Countries ("LDC").

This procedural and legislative history amply demonstrates that, despite substantial lobbying by a single foreign-owned producer, Congress, the USTR and the Commission have consistently concluded, after comprehensive investigation and administrative review, that the grant of duty-free treatment for watches—even on a limited GSP basis—poses a special and unacceptable risk to the U.S. domestic and insular watch industries. The GVI and the V.I. Watch Producers are unaware of any data trends to support the conclusion that the U.S. or insular watch industries are better today able to withstand foreign competition than they were during the most recent administrative reviews triggered by the various GSP petitions.

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[3] *See* Probable Economic Effects of Providing Duty-Free Treatment for Watches Under the Generalized System of Preferences (USITC Publication 2181, April 1989).

[4] The President specifically rejected GSP treatment for 40 watch categories, while granting duty-free treatment to fourteen watch classifications. These latter classifications include liquid crystal display and mechanical watches at the very low end of the price range and jeweled pieces at the very high end of the price range. This determination was premised on the understanding that the domestic and insular watch industry does not compete with digital or mechanical watches at the two extremes of the price range. *See* Proclamation 6058 of October 31, 1989 (To Amend the Generalized System of Preferences), 54 Fed. Reg. 46,348 (Nov. 2, 1989).

[5] White House Press Release of November 1, 1989.

C. Just as the Virgin Islands Watch Industry Could Not Survive Increased Competition under GSP, It is Axiomatic that the Insular Industry Could Not Survive the Extension of Duty-Free Treatment on an MFN Basis

If the Virgin Islands watch industry could not withstand increased competition from developing countries under the limitations and protections of the GSP program, it is manifestly clear that it could not withstand more broad-based competition from imports provided duty-free treatment on an MFN basis. Indeed, the overwhelming majority of U.S. watch imports over the last 10 years have been from non-GSP eligible countries, including such highly developed countries as Hong Kong, China, Japan and Switzerland.

Of the approximately 200 million watches imported into the United States in 1988, for example, Hong Kong supplied over 100 million units, China supplied 41 million units and Japan supplied over 27 million units. Insular producers in the Virgin Islands, on the other hand, shipped less than 3 ‡ million units to the United States that same year. Because Virgin Islands watch shipments to the United States have continued to decline in recent years, it would take only a slight increase in import penetration to completely overwhelm the U.S. insular industry.

Indeed, publicly available data demonstrate the decline in the health and competitiveness of the Virgin Islands watch industry since Congress established the special material injury test in 1988 and the President rejected GSP treatment for most watches in 1989. Since 1988, the USVI and its watch industry have been battered by three devastating hurricanes. Between 1988 and 1995, the number of watches shipped from the Virgin Islands to the United States for domestic consumption steadily declined from 3.44 million units in 1988 to approximately 805,000 units in 1998—a reduction of more than 75 percent. During the same period, the value of such shipments declined from approximately $36 million to less than $10 million. This sharp decline in sales has resulted in more than a 50 percent reduction in employment in the Virgin Islands watch industry from a high of 660 workers in 1988 to under 300 workers in 1998. In addition, during this ten year period, the number of Virgin Islands watch producers has dropped from seven to five.

Notwithstanding this decline, in a small economy like the USVI, 300 high-wage, high-skill jobs provided by the V.I. Watch Producers—and the many other jobs indirectly supported by their operations—continue to be critical to the manufacturing sector and the overall health of the USVI economy. Indeed, the V.I. watch industry remains the largest light manufacturing industry in this U.S. possession. Moreover, when Congress recently reauthorized the GSP program, it specifically continued the special material injury test for watch producers in the U.S. insular possessions, clearly demonstrating its continuing concern for the special role of watch production in the USVI. Under these circumstances, it is incomprehensible that the Administration should be permitted to sanction the death knell of this important Virgin Islands industry by broadly extending, on an MFN or basis, trade benefits which it has consistently denied under the substantial limitations of the GSP program.

CONCLUSION

The GVI and the V.I. Watch Producers note with approval the concern expressed by the American Watch Association for the import sensitivity of the Virgin Islands industry and its support for compensatory measures in the event of future tariff reductions. However, unless and until compensatory legislation, designed to maintain the present competitive balance, is firmly in place, the Government of the U.S. Virgin Islands and the V.I. Watch Producers must respectfully request, for all the reasons noted above, that Congress and the Administration oppose any duty reductions for watches and watch parts in forthcoming WTO tariff negotiations. Any such duty reductions would have severe economic effects for the U.S. insular watch industry. Overwhelming evidence from earlier trade investigations conclusively demonstrates that such reductions would necessarily result in material injury or threat of material injury to the U.S. and the U.S. insular watch industries in contravention of long standing and express Congressional policy.

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