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AFL-CIO Meeting - November 19, 1999

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AFL-CIO Mtg, Fri, 11/19/99, 3pm, Rm324

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

MEMBER

November 19, 1999

MEMORANDUM TO KAREN TRAMONTANO, OVP
ROBERT SHAPIRO, COMMERCE
JON ORSZAG, COMMERCE
DAVID WILCOX, TREASURY
ROBERT CUMBY, TREASURY
HARRY GRUBERT, TREASURY
WILLIAM SAMUEL, LABOR
HARRY HOLZER, LABOR
ED MONTGOMERY, LABOR
DAVID WALTERS, USTR
KEN FRIEBERG, USTR
RICK SAMANS, NEC
MALCOLM LEE, NEC
IAN BOWLES, CEQ

FROM: ROBERT LAWRENCE RL

SUBJECT Today's Meeting with AFL-CIO Representatives

This is a reminder that the meeting with the Union representatives will take place today at 3:00 p.m., in Rm. 324, OEOB. Dr. Martin Baily will chair the meeting. If you have not already done so, please provide your clearance information to Alice Williams as soon as possible. She is reachable at 202-395-5042.

The agenda items are:

1) Import surges
2) Offsets
3) Environmental regulation and competitiveness
4) The need for capital in manufacturing
5) The impact of non-neutral taxes on international investment (if time allows)

AFL-CIO MEETING
Friday, November 19, 1999
3:00 p.m.
Room 324 OEOB

Attendees: Administration

Martin N. Baily, CEA
Robert Z. Lawrence, CEA
Kathryn L. Shaw, CEA
Audrey Choi, CEA
Karon Tramontano, WH
Robert Shapiro, Commerce
Jon Orszag, Commerce
David Wilcox, Treasury
Robert Cumby, Treasury
Harry Grubert, Treasury
William Samuels, Labor
Harry Holzer, Labor
Ed Montgomery, Labor
David Walters, USTR
Rick Samans, NEC
Ian Bowles, CEQ
Bernard Carreau, Commerce
William Reinsch, Commerce
Malcolm Lee, NEC
Ken Frieberg,USTR

AFL-CIO

Thea M. Lee, AFL-CIO
Mark Levinson, UNITE
Robert E. Lucore, Teamsters
Thomas I Palley, AFL-CIO
David A. Smith, AFL-CIO
Ron A. Bloom, USWA
Owen E. Herrnstadt, IAM
Robert Pajkovski, UFCW
Michael E. Conyngham, IBT

FROM: TOM PALLEY, AFL-CIO

AGENDA FOR CEA MEETING
Friday, November 19, 3.00 - 5.00pm

(1) Trade safeguard protection legislation

(2) Offsets

(3) Enforcement of commercial clauses in trade agreements

(4) Training policy

(5) Tax issues.

PROPOSED AGENDA FOR CEA MEETING
Tuesday, November 23, 10.00 - 12.00pm

(1) Unfinished business

(2) Enforcement of labor clauses in trade agreements

(3) Labor standards and domestic labor law reform

(4) Trade related environental issues

(5) Manufacturing access to capital issues.

THOMAS I. PALLEY
PUBLIC POLICY DEPARTMENT
AFL-CIO
815 16TH STREET, N.W.
WASHINGTON, D.C. 20006
(202)637-5165
FAX #(202)508-6967

FAX TRANSMITTAL MEMO

DATE: 11/19/99

TO: Robert Lawrence, CEA

FAX NO. 395-6958

PAGES: 1
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COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

MEMBER

November 19, 1999

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5) The impact of non-neutral taxes on international investment (if time allows)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

IMMEDIATE ATTENTION REQUESTED!

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11/19/99

TO:	KAREN TRAMONTANO, OVP	456-2030
	ROBERT SHAPIRO, COMMERCE	482-0432
	JON ORSZAG, COMMERCE	482-2741
	DAVID WILCOX, TREASURY R	622-2633
	ROBERT CUMBY, TREASURY R	622-2633
	HARRY GRUBERT, TREASURY R	622-1772
	WILLIAM SAMUEL, LABOR	693-6143
	HARRY HOLZER, LABOR	693-6146
	ED MONTGOMERY, LABOR	693-6143
	DAVID WALTERS, USTR R	395-9668
	KEN FRIEBERG, USTR	395-3639
	RICK SAMANS, NEC	456-5334
	MALCOLM LEE, NEC	456-9290
	IAN BOWLES, CEQ	456-2710

FROM: ROBERT LAWRENCE, MEMBER
Tel # 202-395-5046; Fax # 202-395-6958

Remarks: Please confirm receipt of fax by calling the number mentioned above. Thank you.

R = received fax

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Tel # 202-395-5046; Fax # 202-395-6958

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006	OK	☎	96936143	002/002	00:00:36
007	OK	☎	96936146	002/002	00:00:43
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012	OK	☎	62710	002/002	00:00:37

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FROM: ROBERT LAWRENCE, MEMBER
Tel # 202-395-5046; Fax # 202-395-6958

Remarks: Please confirm receipt of fax by calling the number mentioned above. Thank you.

Robert Z. Lawrence
11/19/99 09:20:51 AM

Record Type: Record

To: Lisa D. Branch/CEA/EOP@EOP

cc: Alice H. Williams/CEA/EOP@EOP
Subject: Memo

Could you please send ths round to those who are coming to the meeting?

A reminder that the meeting today with Union Economists will take place in room 324 at 3 pm. Martin Baily will chair.
The agenda will cover
(a) import surges; (b)offsets; (c) environmental regulation and competitveness; (d) the need for capital in manufacturing and (if time allows) (e) the impact of non-neutral taxes on international investment.

11/18/99

Dr. Lawrence,

Information on "import surges"

Jason B.

Issue (?): Several union economists have claimed that existing WTO Agreements and Section 201 rules and procedures make it difficult for the U.S. to protect its domestic industries from sudden import surges. The claim is that existing laws and agreements only allow for a positive determination of injury well after the industry has started to decline and do not do enough to prevent import surges from causing such declines in the first place.

I reviewed several documents for this initial review

- Article 6 of the Agreement on Textile and Clothing
- The full text of the WTO Agreement on Safeguards
- Rules regarding ITC Procedures in Section 201 cases
- Two ITC reports in Section 201 cases: Certain Steel Rods and Lamb Imports

Initial thoughts and comments:

The purpose of the WTO Agreements and Section 201 of the 1974 Trade Act allows the U.S. to impose duties when an increase in imports poses serious injury or threat of serious injury to the domestic industry. A "surge" in imports is, by itself, not enough to conclude, either by the WTO agreements on US ITC procedures, that the domestic industry is injured by such imports or that a serious threat of injury exists. This is obvious but it should be clear that sudden import surges, without some evidence of a causal link between imports and injury, cannot warrant a response from U.S. authorities.

The WTO Agreements do provide a series of indicators as to how serious injury (or actual threat thereof) to an injury is to be determined. These include: the rate and amount of the increase in imports, the share of the domestic markets taken by imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment[1]. One could make the argument that changes to these indicators might not occur until well after a surge of imports has begun and using such indicators would appear to show no damage although the threat of such damage exists. However, the WTO Agreements allow the U.S. merely to determine that a threat of serious injury exists so that significant changes in these indicators do not have to be shown; a downward trend combined with evidence of actual or imminent import increases is good enough. (Moreover, if the claim is that these factors are not good indicators of injury, then what else is there? If we make price differences the determining factor, we go dangerously in the area of dumping, which is not what the WTO Agreements nor Section 201 intended.)

One can also argue that the amount of data it takes to build a case plus the time a case gets resolved, it might be "too late" for the U.S. to protect itself against sudden import surges. However, the WTO agreements do allow provisional safeguard measures to be taken pursuant to a injury determination. The period for such measures is 200 days. The maximum amount of time a Section 201 case can take is 120 days (150 days in complicated matters). The ITC must submit a report to the President no later than 60 days after the findings and the President must decide on action within 60 days of receiving the report. The total time (240 days) is longer than the WTO allows for such provisional measures but the President could act immediately if he thinks injury is serious enough.

The ITC does not demand that the imports have to increase by a certain amount to warrant a positive injury determination, only that imports are in "increased quantities" and that the increase is "either actual or relative to domestic production". So, even small surges in imports can be used to show damage to an industry.

The ITC traditionally looks at imports over a 5-year period. This might imply that one must prove long-term damage from a continuing pattern of import increases rather than a temporary surge in imports. However, the ITC does not require that imports have had to increased every year or that an overall import increase over the 5-year period is necessary to show damage (although I'm sure it helps). Note that the WTO Agreements do not mention that a country must show that imports have increased continuously over a specific period of time.

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[1] In addition, Article 6 of the ATC indicates that damage to be determined on a Member-by-Member basis and indicates such factors as a sharp and substantial increase in imports (actual or imminent), the level of imports as

The ITC establishes several clear-cut conditions as to whether an industry has suffered damage and whether that damage was caused by an import surge. It is possible that such conditions have not yet been proven (at least immediately) although there has been a surge in imports. For instance, if a surge in imports started in 1998, one may not see a definite pattern of decreasing domestic sales, profits, and employment until several years later. That is, there may be a lag time between changes in such conditions and import surges. However, ITC rules allow for considerable leeway between increase in imports and such indicators. Merely showing evidence of the beginnings of a downward trend in such indicators (sales, market share, profits, wages, productivity) combined with evidence of the diversion of exports into the U.S and lower capital and R&D expenditures is enough to show a threat of injury.

As an example, take the Section 201 case in the matter of certain steel rods. In this case, factors used to determine injury (production levels, capacity utilization, financial performance) really only deteriorated in one year out of the 5 year period and, in fact, improved in the year after. However, a positive determination of injury was still found by three members of the panel. In fact, in many of the ITC findings in this case, only a casual link was made between imports and injury (e.g. there was no surges in imports during periods of large price declines and profit losses). Using a shorter time period to show injury might help those who want to make a connection between import surges and damage to the industry (on the other hand, they might hinder such a case if there are delays between such surges and industry damage). However, a certain length of time is needed in order to account for other factors besides import surges that may be the cause of such damage. For instance, a change in import composition rather than an increase in imports could have been the primary source of the industry damage. Such a change would not warrant Section 201 action but might be ignored if too short a time period is used. In fact, it is only by using a longer time period that one can establish a correlation between imports and injury. Again, if the threat of such imports is imminent and too risky to wait for long-term data, one merely has to show a threat of damage.

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compared with imports from other sources, market share, and import and domestic prices

Investigations of Injury to U.S. Industries From Increased Imports

Sections 201 to 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251 to 2254) concern investigations by the U.S. International Trade Commission as to whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to a domestic industry. (See also the section of this Summary relating to injury to U.S. industries from increased imports from a NAFTA country, p. 22 infra.)

If the Commission makes an affirmative determination, it recommends to the President the action that will facilitate positive adjustment by the industry to import competition. After considering the Commission's recommendation, the President may take action in the form recommended by the Commission or may take certain other action.[15] Sections 201 to 204 also provide for the filing of industry adjustment plans and commitments in connection with an investigation, for provisional relief pending completion of the full investigative process in the case of perishable agricultural articles or critical circumstances, for Commission monitoring of relief actions taken, for Commission investigations and determinations relating to extension of relief actions, and for Commission reports on the effectiveness of the relief actions taken.

Commission Investigations and Recommendations

The Commission conducts investigations upon receipt of a petition from an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry; upon request from the President or the United States Trade Representative (USTR); upon resolution of the U.S. House Committee on Ways and Means or the U.S. Senate Committee on Finance; or upon its own motion.

If the Commission makes an affirmative injury determination, it may recommend action to the President in the form of an increase in or imposition of a duty, a tariff-rate quota, modification or imposition of a quantitative restriction, one or more appropriate adjustment measures including the provision of trade adjustment assistance, or any combination of such actions. In addition, the Commission may also recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or otherwise to alleviate the injury or threat, or that he implement any other action authorized under law that is likely to facilitate positive adjustment to import competition. For the purpose of assisting the President in determining whether to exclude a NAFTA country from a relief action, the Commission also must make a finding concerning whether imports from a NAFTA country account for a substantial share of total imports and are contributing importantly to the serious injury or threat of serious injury.

Except when critical circumstances are alleged to exist (see special timing procedure below), the Commission must make its injury determination within 120 days of receipt of the petition, request, resolution, or institution on its own motion (150 days in more complicated cases). The Commission must complete its investigation and submit to the President a report that includes the Commission's findings and any recommendations for Presidential action not later than 180 days after receipt of the petition, request, resolution, or institution on its own motion. The Commission must hold a public hearing in connection with the injury phase of its investigation and must hold a second hearing on the question of remedy if it makes an affirmative injury determination.

Except for good cause found to exist, the Commission may not reinvestigate the same subject matter within one year of completing a prior investigation. An article that has been the subject of prior relief under these sections may not be the subject of a new action unless a period of time equal to the period of the prior relief has elapsed since termination of that relief. For example, if relief was in effect for the three-year period February 1, 1992, to February 1, 1995, no new relief could be provided by the President until February 1, 1998, at the earliest. However, a special exception applies in the case of a relief action in effect for 180 days or less.

[15] Affirmative Commission determinations provide a basis for the President to take an action under article XIX of the General Agreement on Tariffs and Trade (GATT), the so-called GATT escape clause, which permits a country to "escape" from international obligations when certain conditions are present. Article XIX also provides that countries against whom actions are taken under article XIX may suspend certain concessions or other obligations under the GATT toward the country taking the actions.

Disclosure of Confidential Business Information

The Commission releases confidential business information submitted to it only under administrative protective order to authorized representatives of interested parties that are parties to a proceeding. Excepted from release under protective

Provisional Relief in the Case of Perishable Agricultural Products or Critical Circumstances

Perishable agricultural products. An entity representing a domestic industry that produces a perishable agricultural product may also petition the Commission for provisional relief, provided that such product has been the subject of import monitoring by the Commission for at least 90 days prior to the filing of the request for provisional relief. Requests for such monitoring are made to the USTR, which is authorized to request that the Commission monitor imports of a perishable agricultural product.

Upon the filing of a petition that contains a request for provisional relief, the Commission has 21 days in which to determine whether increased imports of a perishable agricultural product are a substantial cause of serious injury or threat to the domestic industry producing a like or directly competitive perishable article *and* whether the serious injury is likely to be difficult to repair or cannot be timely prevented through a full 180 day investigation. If it makes an affirmative finding, the Commission is required to recommend relief to the President, which would generally be in the form of a tariff. The President has seven days in which to consider the Commission's recommendation and provide any provisional relief. Such relief would generally remain in effect pending completion of the Commission's investigation. The Commission continues its investigation regardless of whether its preliminary determination is affirmative or negative. The 21-day provisional relief phase of the investigation is counted as part of the 120-day injury phase.

Critical circumstances. A petitioner may allege in its petition that critical circumstances exist. Critical circumstances are considered to exist if (1) there is clear evidence that increased imports of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and (2) delay in taking action would cause damage to that industry that would be difficult to repair. Within 60 days of the filing of the petition containing such a request, the Commission is required to determine whether such circumstances exist and, if so, find and recommend to the President appropriate provisional relief. After receiving a Commission report containing such a determination and recommendation, the President has 30 days in which to determine what, if any, provisional relief action to take. Such provisional relief would generally be in the form of a tariff. The Commission continues its investigation regardless of whether its preliminary determination is affirmative or negative. It begins the 120-day injury phase of a section 202 investigation only after it has completed the critical circumstances phase (that is, the 60-day critical circumstances phase is not counted as part of the 120-day phase).

Provisional relief terminates if the Commission subsequently makes a negative injury determination; when the President takes a more permanent action after receiving the Commission's report at the end of the 180-day investigation; when the President, after receiving that report, determines that he will not take any action; or when the President determines that, because of changed circumstances, relief is no longer warranted. Provisional relief may not exceed 200 days.

Monitoring, Modification, or Extension of Action

The Commission monitors developments in industries for which action has been taken under these provisions and, when the relief action exceeds three years, submits a report to the President and the Congress on the results of such monitoring not later than the midpoint of the relief period. The Commission holds a hearing in the course of preparing each such report.

Upon request of the President, the Commission advises the President on the probable economic effect of the reduction, modification, or termination of action. After taking into account a Commission report or advice and after seeking advice from the Secretaries of Commerce and Labor, the President may reduce, modify, or terminate action if he determines that changed circumstances so warrant.

Upon request of the President, or upon receipt of a petition from the industry concerned filed with the Commission not earlier than nine months or later than six months before a relief action is scheduled to terminate, the Commission is to investigate and determine whether action continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition. The Commission holds a hearing in the course of each such investigation and reports its determination to the President not later than 60 days before the action is scheduled to terminate. The President, after receiving an affirmative determination from the Commission, may extend the period of relief if he determines that the action continues to be necessary to prevent or remedy serious injury and there is evidence that the domestic industry is making a positive adjustment to import competition.

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AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby *agree* as follows:

Article 1

General Provision

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2

Conditions

1. A Member[1] may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

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[1] A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

Article 3

Investigation

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

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(a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

(c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Should these conditions apply to Article 4 as well?

Article 6

Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[2]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement not later than eight years after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

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[2]A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3,4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member[5], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

Article 12

Notification and Consultation

1. A Member shall immediately notify the Committee on Safeguards upon:

   (a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

   (b) making a finding of serious injury or threat thereof caused by increased imports; and

   (c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction,

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[3] An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

[4] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

[5] The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13

Surveillance

1. A Committee on Safeguards is hereby established, under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;

(d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

ANNEX

EXCEPTION REFERRED TO IN PARAGRAPH 2 OF ARTICLE 11

Members concerned	Product	Termination
EC/Japan	Passenger cars, off road vehicles, light commercial vehicles, light trucks (up to 5 tonnes), and the same vehicles in wholly knocked-down form (CKD sets).	31 December 1999

Table 6. Disputes at the WTO involving agricultural products

Case	Complaint (s)
A. Appellate Body Reports adopted	
1. Brazil - Measures Affecting Desiccated Coconut	Philippines
2. EC - Regime for the Importation, Sale and Distribution of Bananas	Ecuador, Guatemala, Honduras, Mexico, United States
3. EC - Measures Affecting Meat and Meat Products(Hormones)	United States
4. EC - Measure Affecting Livestock and Meat (Hormones)	Canada
5. EC – Measures Affecting Importation of Certain Poultry Products	Brazil
6. United States - Import Prohibition of Certain Shrimp and Shrimp Products	India, Malaysia, Pakistan, Thailand
7. Australia - Measures Affecting the Importation of Salmon	Canada
B. Active Panels	
8. India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	United States
9. EC - Measures Affecting Butter Products	New Zealand
10. Canada - Measures Affecting the Importation of Milk and Exportation of Dairy Products	United States
11. Canada - Measures Affecting Dairy Products	New Zealand
12. Republic of Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products	EC
13. EC - Regime for the Importation, Sale and Distribution of Bananas.	Ecuador
C. Consultations in Progress	
14. Republic of Korea - Measures Concerning the Testing and Inspection of Agricultural Products	United States
15. Republic of Korea - Measures Concerning Inspect of Agricultural Products	United States
16. Australia - Measures Affecting the Importation of Salmonids	United States
17. Brazil - Countervailing Duties on Imports of Desiccated Coconut Milk Power from Sri Lanka	Sri Lanka
18. United States - Import Prohibition of Certain Shrimp and Shrimp Products	Philippines
19. Japan - Measures Affecting Imports of Pork	EC
20. United States -Countervailing Duty Investigation of Imports of Salmon from Chile	Chile
21. United States - Measures Affecting Imports of Poultry Products	EC
22. Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States	United States
23. EC - Measures Affecting the Exportation of Processed Cheese	United States
24. EC - Regime for the Importation, Sale and Distribution of Bananas	Panama
25. Pakistan –Export Measures Affecting Hides and Skins	EC
26. United States - Tariff Rate Quota for Imports of Groundnuts	Argentina
27. India – Measures Affecting Export of Certain Commodities	EC
28. Slovak Rep. – Measures concerning the Importation of Dairy Products and the Transit of Cattle	Switzerland
29. EC – Measures Affecting Import Duties on Rice	India
30. Slovak Republic – Measures Affecting Import Duty on Wheat from Hungary	Hungary
31. United States – Certain Measures Affecting the Import of Cattle Swine, and Grain from Canada	Canada
32. Argentina – Countervailing Duties on Imports of Wheat Gluten from the EC	EC
33. Czech Republic – Measure Affecting Import Duty on Wheat from Hungary	Hungary
34. EC- Patent protection for Pharmaceutical and Agricultural Products	Canada
35. EC – Measures Affecting Differential and Favourable Treatment of Coffee	Brazil
36. Argentina – Measures on the Export of Bovine Hides and the Import of Finished Leather	EC
37. EC – Regime for the Importation, Sales and Distribution of Bananas II	Guatemala, Honduras, Mexico, Panama, United States
38. Republic of Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef	United States

Article 6 - Agreement on Textiles + Clothing (ATC)

1. Members recognize that during the transition period it may be necessary to apply a specific transitional safeguard mechanism (referred to in this Agreement as "transitional safeguard"). The transitional safeguard may be applied by any Member to products covered by the Annex, except those integrated into GATT 1994 under the provisions of Article 2. Members not maintaining restrictions falling under Article 2 shall notify the TMB within 60 days following the date of entry into force of the WTO Agreement, as to whether or not they wish to retain the right to use the provisions of this Article. Members which have not accepted the Protocols extending the MFA since 1986 shall make such notification within 6 months following the entry into force of the WTO Agreement. The transitional safeguard should be applied as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process under this Agreement.

2. Safeguard action may be taken under this Article when, on the basis of a determination by a Member[5], it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.

3. In making a determination of serious damage, or actual threat thereof, as referred to in paragraph 2, the Member shall examine the effect of those imports on the state of the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment; none of which, either alone or combined with other factors, can necessarily give decisive guidance.

4. Any measure invoked pursuant to the provisions of this Article shall be applied on a Member-by-Member basis. The Member or Members to whom serious damage, or actual threat thereof, referred to in paragraphs 2 and 3, is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent[6], from such a Member or Members individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. Such safeguard measure shall not be applied to the exports of any Member whose exports of the particular product are already under restraint under this Agreement.

5. The period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard action shall not exceed 90 days from the date of initial notification as set forth in paragraph 7.

6. In the application of the transitional safeguard, particular account shall be taken of the interests of exporting Members as set out below:

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[5]A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious damage or actual threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious damage, or actual threat thereof, shall be based on the conditions existing in that member State and the measure shall be limited to that member State.

[6]Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting Members.

(a) least-developed country Members shall be accorded treatment significantly more favourable than that provided to the other groups of Members referred to in this paragraph, preferably in all its elements but, at least, on overall terms;

(b) Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member shall be accorded differential and more favourable treatment in the fixing of the economic terms provided in paragraphs 8, 13 and 14. For those suppliers, due account will be taken, pursuant to paragraphs 2 and 3 of Article 1, of the future possibilities for the development of their trade and the need to allow commercial quantities of imports from them;

(c) with respect to wool products from wool-producing developing country Members whose economy and textiles and clothing trade are dependent on the wool sector, whose total textile and clothing exports consist almost exclusively of wool products, and whose volume of textiles and clothing trade is comparatively small in the markets of the importing Members, special consideration shall be given to the export needs of such Members when considering quota levels, growth rates and flexibility;

(d) more favourable treatment shall be accorded to re-imports by a Member of textile and clothing products which that Member has exported to another Member for processing and subsequent reimportation, as defined by the laws and practices of the importing Member, and subject to satisfactory control and certification procedures, when these products are imported from a Member for which this type of trade represents a significant proportion of its total exports of textiles and clothing.

7. The Member proposing to take safeguard action shall seek consultations with the Member or Members which would be affected by such action. The request for consultations shall be accompanied by specific and relevant factual information, as up-to-date as possible, particularly in regard to: (*a*) the factors, referred to in paragraph 3, on which the Member invoking the action has based its determination of the existence of serious damage or actual threat thereof; and (*b*) the factors, referred to in paragraph 4, on the basis of which it proposes to invoke the safeguard action with respect to the Member or Members concerned. In respect of requests made under this paragraph, the information shall be related, as closely as possible, to identifiable segments of production and to the reference period set out in paragraph 8. The Member invoking the action shall also indicate the specific level at which imports of the product in question from the Member or Members concerned are proposed to be restrained; such level shall not be lower than the level referred to in paragraph 8. The Member seeking consultations shall, at the same time, communicate to the Chairman of the TMB the request for consultations, including all the relevant factual data outlined in paragraphs 3 and 4, together with the proposed restraint level. The Chairman shall inform the members of the TMB of the request for consultations, indicating the requesting Member, the product in question and the Member having received the request. The Member or Members concerned shall respond to this request promptly and the consultations shall be held without delay and normally be completed within 60 days of the date on which the request was received.

8. If, in the consultations, there is mutual understanding that the situation calls for restraint on the exports of the particular product from the Member or Members concerned, the level of such restraint shall be fixed at a level not lower than the actual level of exports or imports from the Member concerned during the 12-month period terminating two months preceding the month in which the request for consultation was made.

9. Details of the agreed restraint measure shall be communicated to the TMB within 60 days from the date of conclusion of the agreement. The TMB shall determine whether the agreement is justified in accordance with the provisions of this Article. In order to make its determination, the TMB shall

have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned. The TMB may make such recommendations as it deems appropriate to the Members concerned.

10. If, however, after the expiry of the period of 60 days from the date on which the request for consultations was received, there has been no agreement between the Members, the Member which proposed to take safeguard action may apply the restraint by date of import or date of export, in accordance with the provisions of this Article, within 30 days following the 60-day period for consultations, and at the same time refer the matter to the TMB. It shall be open to either Member to refer the matter to the TMB before the expiry of the period of 60 days. In either case, the TMB shall promptly conduct an examination of the matter, including the determination of serious damage, or actual threat thereof, and its causes, and make appropriate recommendations to the Members concerned within 30 days. In order to conduct such examination, the TMB shall have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned.

11. In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action. In the case that consultations do not produce agreement, the TMB shall be notified at the conclusion of consultations, but in any case no later than 60 days from the date of the implementation of the action. The TMB shall promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days. In the case that consultations do produce agreement, Members shall notify the TMB upon conclusion but, in any case, no later than 90 days from the date of the implementation of the action. The TMB may make such recommendations as it deems appropriate to the Members concerned.

12. A Member may maintain measures invoked pursuant to the provisions of this Article: (*a*) for up to three years without extension, or (*b*) until the product is integrated into GATT 1994, whichever comes first.

13. Should the restraint measure remain in force for a period exceeding one year, the level for subsequent years shall be the level specified for the first year increased by a growth rate of not less than 6 per cent per annum, unless otherwise justified to the TMB. The restraint level for the product concerned may be exceeded in either year of any two subsequent years by carry forward and/or carryover of 10 per cent of which carry forward shall not represent more than 5 per cent. No quantitative limits shall be placed on the combined use of carryover, carry forward and the provision of paragraph 14.

14. When more than one product from another Member is placed under restraint under this Article by a Member, the level of restraint agreed, pursuant to the provisions of this Article, for each of these products may be exceeded by 7 per cent, provided that the total exports subject to restraint do not exceed the total of the levels for all products so restrained under this Article, on the basis of agreed common units. Where the periods of application of restraints of these products do not coincide with each other, this provision shall be applied to any overlapping period on a *pro rata* basis.

15. If a safeguard action is applied under this Article to a product for which a restraint was previously in place under the MFA during the 12-month period prior to the entry into force of the WTO Agreement, or pursuant to the provisions of Article 2 or 6, the level of the new restraint shall be the level provided for in paragraph 8 unless the new restraint comes into force within one year of:

(a) the date of notification referred to in paragraph 15 of Article 2 for the elimination of the previous restraint; or

(b) the date of removal of the previous restraint put in place pursuant to the provisions of this Article or of the MFA

in which case the level shall not be less than the higher of (*i*) the level of restraint for the last 12-month period during which the product was under restraint, or (*ii*) the level of restraint provided for in paragraph 8.

16. When a Member which is not maintaining a restraint under Article 2 decides to apply a restraint pursuant to the provisions of this Article, it shall establish appropriate arrangements which: (*a*) take full account of such factors as established tariff classification and quantitative units based on normal commercial practices in export and import transactions, both as regards fibre composition and in terms of competing for the same segment of its domestic market, and (*b*) avoid over-categorization. The request for consultations referred to in paragraphs 7 or 11 shall include full information on such arrangements.

Article 7

1. As part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all 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 through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities;

(b) ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing in such areas as dumping and anti-dumping rules and procedures, subsidies and countervailing measures, and protection of intellectual property rights; and

(c) avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

Such actions shall be without prejudice to the rights and obligations of Members under GATT 1994.

2. Members shall notify to the TMB the actions referred to in paragraph 1 which have a bearing on the implementation of this Agreement. To the extent that these have been notified to other WTO bodies, a summary, with reference to the original notification, shall be sufficient to fulfil the requirements under this paragraph. It shall be open to any Member to make reverse notifications to the TMB.

3. Where any Member considers that another Member has not taken the actions referred to in paragraph 1, and that the balance of rights and obligations under this Agreement has been upset, that Member may bring the matter before the relevant WTO bodies and inform the TMB. Any subsequent findings or conclusions by the WTO bodies concerned shall form a part of the TMB's comprehensive report.

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COMMENTS: Re: Tax competition amongst states.

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HR 1060 IH

106th CONGRESS

1st Session

H. R. 1060

To amend the Internal Revenue Code of 1986 to provide that economic subsidies provided by a State or local government for a particular business to locate or remain within the government's jurisdiction shall be taxable to such business, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 10, 1999

Mr. MINGE introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide that economic subsidies provided by a State or local government for a particular business to locate or remain within the government's jurisdiction shall be taxable to such business, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Distorting Subsidies Limitation Act of 1999'.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Competition among State and local governments for new and existing businesses has become the rule rather than the exception.

(2) State and local governments are being forced to compete against each other for businesses with scarce tax dollars that would otherwise be used for essential public goods and services.

(3) When State and local government competition takes the form of preferential treatment for specific businesses, it undermines our national economic union by distorting the allocation of resources.

(4) There is a role for competition between States and localities when it takes the form of general tax policies, regulation structures, and public services because such competition leads States and localities to provide better service, cost effective regulation, sound tax policies, and more efficient allocation of public and private goods.

(5) Federal program grants have been used by State and local governments to subsidize business location decisions to attract businesses from other States and localities.

(6) Proceeds from tax-exempt municipal bonds have been used by one State or locality to attract business from other States and localities.

(7) No single State or local government can unilaterally withdraw from this competition. Only Congress with its enumerated powers can end the economic distortions and the public costs caused by economic distortions.

SEC. 3. TAXATION OF VALUE OF TARGETED SUBSIDIES PROVIDED BY STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL- Subtitle D of the Internal Revenue Code of 1986 (relating to miscellaneous excise taxes) is amended by inserting after chapter 44 the following new chapter:

`CHAPTER 45--EXCISE TAX ON TARGETED STATE OR LOCAL GOVERNMENT DEVELOPMENT SUBSIDIES

`Sec. 4986. Targeted State or local government development subsidies.

`SEC. 4986. TARGETED STATE OR LOCAL GOVERNMENT DEVELOPMENT SUBSIDIES.

`(a) GENERAL RULE- There is hereby imposed for each calendar year an excise tax on any person engaged in a trade or business who derives any benefit during such year from any targeted subsidy provided by any State or local governmental unit.

`(b) AMOUNT OF TAX- The tax imposed by subsection (a) shall consist of a tax computed as provided in section 11(b) as though the aggregate value (determined under regulations prescribed by the Secretary) of benefits referred to in subsection (a) accruing during the calendar year were the taxable income referred to in section 11.

`(c) DEFINITIONS- For purposes of this section--

`(1) TARGETED SUBSIDY-

`(A) IN GENERAL- The term `targeted subsidy' means, with respect to any person, any subsidy--

`(i) which is designed to encourage any trade or business operation of such person to locate in a particular governmental jurisdiction or to remain in a particular governmental jurisdiction, or

`(ii) which is reasonably expected to have the effect of a subsidy described in clause (i).

`(B) CERTAIN MORE BROADLY AVAILABLE SUBSIDIES TREATED AS TARGETED SUBSIDIES-

`(i) IN GENERAL- A subsidy shall not fail to be a targeted subsidy by reason of applying to (or being available to) more than 1 trade or business operation if such subsidy is determined (under regulations prescribed by the Secretary) not to be part of the general long-term taxing or spending policies of the governmental unit.

`(ii) GENERAL LONG-TERM POLICIES- A subsidy shall be treated as part of the general long-term taxing or spending policies of the governmental unit only if the subsidy is available to all trade or business operations within the jurisdiction of such governmental unit without regard to the period during which any operation has been conducted within such jurisdiction.

`(2) SUBSIDY- The term `subsidy' includes--

`(A) any grant,

`(B) any contribution of property or services,

`(C) any right to use property or services, or any loan, at rates below those commercially available to the taxpayer,

`(D) any reduction or deferral of any tax or any fee (including any payment by any State or local governmental unit of any tax or fee),

`(E) any guarantee of any payment under any loan, lease, or other obligation,

`(F) any use of governmental facilities (including roads, facilities for the furnishing of water, sewage facilities, and solid waste disposal facilities) to the extent that the amount paid by (or assessed against the property of) the trade or business for such use is less than the amount it would pay were the charge for its use (or the assessment) determined under the same formula or other basis as is used by the State or local government with respect to other comparable facilities used by other trades or businesses, and

`(G) any other benefit specified in regulations prescribed by the Secretary.

`(d) EXCEPTION FOR SUBSIDIES FOR EMPLOYEE TRAINING AND EDUCATION- No tax shall be imposed by this section on the value of any subsidy provided for employee training or for other education programs.

`(e) SPECIAL RULES-

`(1) EXCEPTION FOR SUBSIDIES PROVIDED TO GOVERNMENTAL ENTITIES- No tax shall be imposed by this section on the value of any subsidy provided to--

`(A) an agency or instrumentality of any government or any political subdivision thereof, or

`(B) any entity which is owned and operated by a government or any political subdivision thereof or by any agency or instrumentality of one or more governments or political subdivisions.

`(2) AVOIDANCE OF DOUBLE TAX- No amount shall be includible in gross income for purposes of subtitle A by reason of any targeted subsidy on which tax is imposed under this section.

`(3) ADMINISTRATIVE PROVISIONS- For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.'

(b) DENIAL OF INCOME TAX DEDUCTION FOR TAX- Paragraph (6) of section 275(a) of such Code is amended by inserting `45,' after `44,'.

(c) CLERICAL AMENDMENT- The table of chapters for subtitle D of such Code is amended by inserting after the item relating to chapter 44 the following new item:

`Chapter 45. Excise tax on targeted State or local government development subsidies.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply to any subsidy which is provided pursuant to an agreement or arrangement entered into more than 30 days after the date of the enactment of this Act.

SEC. 4. DENIAL OF EXEMPTION FROM TAX FOR INTEREST ON BONDS PROVIDING TARGETED STATE OR LOCAL GOVERNMENT DEVELOPMENT SUBSIDIES.

(a) IN GENERAL- Subsection (b) of section 103 of the Internal Revenue Code of 1986 (relating to interest on State and local bonds) is amended by adding at the end the following new paragraph:

`(4) BONDS PROVIDING TARGETED DEVELOPMENT SUBSIDIES- Any bond if any portion of the proceeds of such bond is to be used to provide any targeted subsidy (as defined in section 4986(c)).'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 5. PROHIBITION OF USE OF FEDERAL FUNDS FOR TARGETED SUBSIDIES.

(a) IN GENERAL- Notwithstanding any other provision of law, none of the Federal funds provided to any State or local government may be used to provide any targeted subsidy (as defined in section 4986(c) of the Internal Revenue Code of 1986).

(b) RECOVERY OF FUNDS USED TO PROVIDE TARGETED SUBSIDIES- If the Secretary of the Treasury or the Secretary's delegate finds after reasonable notice and opportunity for hearing that any State or local government used Federal funds in violation of subsection (a), the Secretary or the Secretary's delegate shall take such actions as are necessary (including referring the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted) to recover the amount so used from the State or local government or the trade or business, whichever the Secretary determines to be appropriate.

(c) EFFECTIVE DATE- This section shall apply to funds provided after the date of the enactment of this Act.

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