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Folder Title:
Fast Track Notes and S 1269 [1]

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S	100	2	3	1

Antony J. Blinken
11/12/97 08:13:54 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Fast Forward

The $64 question is: how do we talk about Fast Track now? With Zedillo here tomorrow and APEC next week, some guidance is needed so we don't have people talking at cross purposes. Of course, much depends on what our plans are -- do we intend to resubmit next year or are we writing off FT for the duration? If the former, we need to stress that our interests have not changed/that there are vital opportunities/problems ahead that we need to be able to seize/that we've seen strong support in the Senate etc... and we will work to get a bill before Santiago etc... If the latter, we need to segue to a "this is really unfortunate but the President is moving forward with our trade agenda and we'll just have to work that much harder to get it done w/o FT..." Do we have an approach? Can we get it on paper?

Message Sent To:

Victoria Radd/WHO/EOP
Jason Berman/WHO/EOP
jziegler @ ustr.gov @ INET @ LNGTWY
Lael Brainard/CEA/EOP
Gene B. Sperling/OPD/EOP
Jake Siewert/OPD/EOP
LEAVY_D @ A1 @ CD @ LNGTWY
KYLE_R @ A1 @ CD @ LNGTWY

Record Type: Record

To: Virginia Canter, White House Counsel

cc:

Subject: Expiration of Special Government Employee Status

I want to inform you that I intend to terminate my Special Government Employee Status as of the close of business, Thursday, November 13, 1997.

Please let me know what, if any, other notifications are required.

Thank you.

11/10/97

TALKING POINTS ON FAST TRACK

November, 10, 1997

OPENING FOREIGN MARKETS TO AMERICAN GOODS HAS BEEN A KEY COMPONENT OF THE PRESIDENT'S THREE-PART ECONOMIC STRATEGY. The key elements of President Clinton's economic strategy have been to reduce the deficit, invest in the training and education of our people and open foreign markets to Americans goods made by American workers. The President believed in the importance of tearing down trade barriers and that is why he fought hard for fast track even though we knew it was going to be a tough fight from the start.

THE PRESIDENT ENTERED THIS BATTLE FIGHTING FOR A PRINCIPLE, HE FOUGHT ON PRINCIPLE AND WE HAVE TEMPORARILY SET ASIDE THIS FIGHT BECAUSE HE WAS UNWILLING TO COMPROMISE ON PRINCIPLE. We were pleased with the strong bipartisan majority achieved in the Senate. In the House, because we couldn't get as many Democratic votes as we would have obviously liked, we did rely on many Republicans. We want to make it clear that Speaker Gingrich fought admirably and in good faith, but there was a block of Republicans necessary for passage who were intent on linking the policy on international family planning to the fast track legislation and the President was not willing to compromise our clear principles on that issue.

WE WILL CONTINUE TO PRESS FORWARD ON GETTING THE PRESIDENT THE TRADE AUTHORITY HE NEEDS TO CONTINUE BREAKING DOWN TRADE BARRIERS. We now need to work on the completion of the remaining appropriations bills and ensure that these bills are not held hostage to the same issues. We are consulting with both sides of the aisle on the best way to proceed to get the trade authority the President needs to continue our strong economic performance.

Q: ARE YOU STILL PLANNING ON BRINGING THIS TO A VOTE THIS YEAR? WILL YOU PUSH FOR ANY CHANGES TO THE LEGISLATION? WHAT ABOUT THE POSSIBILITY OF MOVING FORWARD ON CHILE ONLY?

A: As to the timing and form, we are consulting with both Democrats and Republicans on the best way to proceed in order to secure trade authority so we can continue to help keep our economy strong.

Q: SEEING THAT YOU DIDN'T HAVE ENOUGH VOTES NOW FOR PASSAGE WHAT MAKES YOU THINK YOU CAN PASS THIS LATER IN THE YEAR OR EVEN NEXT YEAR?

A: Tearing down trade barriers to create more American jobs has and always will be a priority for this Administration. The President entered this battle on principle and he fought it on principle. That will not change later this year or next year. We will continue to work as hard as we can on securing trade authority, and we are confident that we can secure passage without compromising on our principles.

AMERICA LEADS ON TRADE

MEMORANDUM TO: AMERICA LEADS ON TRADE
WASHINGTON REPRESENTATIVES

FROM: JAMES T. CHRISTY

COALITION MEETING

REPS. DREIER, CRANE, MATSUI

2:00 PM THURSDAY NOV. 13, 1997
ROOM H-137, U.S. CAPITOL

Congressmen Dreier, Crane and Matusi have invited coalition members and supporters to meet with them tomorrow afternoon at 2 p.m. in Room H-137 of the Capitol. We expect that other leading Congressional trade advocates may also be present.

This meeting provides the only remaining end-of-session opportunity to thank our key legislative leaders face-to-face for their strong personal commitment to fast track legislation. It also offers a chance to hear directly their thoughts on next steps necessary to prevail.

Please make every effort to participate personally in this meeting and to encourage as many of your colleagues and associates as possible to attend.

Thank you.

FLORIDA DISTRICT EXPORT COUNCIL

U.S. EXPORT ASSISTANCE CENTER
P.O. BOX 590570 • MIAMI, FLORIDA 33159-0570
TEL: (305) 526-7425 • FAX: (305) 526-7434

The COMMERCIAL SERVICE
United States of America Department of Commerce

Mr. Robert R. Hendry, Chairman
Hendry, Stoner, Sawicki, Bowen & Brown, P.A.
200 East Robinson Street - Suite 500
Orlando, Florida 32801
407/843-5880/FAX: 407/425-7905

Mr. Jay Berman
Senior Advisor to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. Berman:

During the DEC meeting which you addressed in Washington on October 22, 1997, and in subsequent meetings with the Florida Department of Citrus and the Florida Department of Agriculture, we were able to develop compromises on wording of a resolution by Enterprise Florida supporting Fast Track. The citrus and agricultural industry will probably not come out in clear support but the attached resolution should reduce their opposition significantly and give substantial political cover to the legislative delegation.

This resolution is being circulated to all of our congressional delegation by Enterprise Florida.

Yours very truly,

Robert R. Hendry

RRH/bob

al\dec\berman

Enterprise Florida Resolution
October 29, 1997

Fast Track Negotiating Authority Resolution

WHEREAS, the State of Florida is the seventh largest trading state in the United States; and,

WHEREAS, Florida has a dominant position in total US trade with Latin America and the Caribbean, with thirteen of its 20 top export markets located in the Americas; and,

WHEREAS, Florida's seaports and airports are key links to North American, European and Asian trade with Latin America; and,

WHEREAS, Latin American governments have indicated they would decline to negotiate an FTAA with the United States without fast track authority, would instead negotiate a free trade agreement with the European Union, and would thus, in the absence of US negotiating authority, create a significant disadvantage for Florida exporters in their primary trading arena; and,

WHEREAS, US negotiations toward a "Free Trade Area of the Americas (FTAA)" would provide reduced trade barriers in Latin America and build a framework that would create new advantages for Florida businesses exporting to the Americas and ensure steadily improving access to those markets; and,

WHEREAS, US negotiations in other world markets, including Europe, Asia and Africa, as well as a new round of multilateral negotiations under the World Trade Organization would further reduce barriers to trade for Florida exports of goods and services and help to diversify the state's export markets; and,

WHEREAS, Florida can best seek to reduce barriers to its trade in goods and services, open new markets for its products and protect its sensitive industries if the United States is fully engaged at the bargaining table in multilateral and bilateral trade negotiations; and,

WHEREAS, Florida jobs and wages are closely interrelated to the export of goods and services because of the strong impact of international trade in Florida's economy and its future economic development; and

WHEREAS, increased demand for Florida's export products in foreign markets creates additional jobs in Florida as a direct result of increased production and export activities and as an indirect result of the additional wealth held by new employees; and

RECOGNIZING WHEREAS, Florida's Congressional representatives must be fully consulted during negotiations under proposed fast track legislation, since fast track rules mandate the President of the United States to seek permission from the Congress to enter into negotiations, and requires public hearings and extensive consultation with the Congress throughout such negotiations as well as prior to the completion of any final negotiated agreement;

NOW, THEREFORE BE IT RESOLVED, that the Boards of Directors of Enterprise Florida and its International Trade and Economic Development Division endorse and fully support the legislation that would grant the President of the United States the authority to enter into free trade negotiations under fast track procedures, and urge the United States Congress to pass this legislation.

AND, THEREFORE BE IT DULY NOTED, that Enterprise Florida expresses its deep concern over the potential impact that any future trade agreements with developing countries would have on the citrus and winter vegetable industries in the state of Florida. Therefore, Enterprise Florida strongly recommends that (a) Florida's citrus and winter vegetable products be given special consideration as extremely sensitive agricultural products in any future trade negotiations, (b) tariff reductions for these products be limited to those already negotiated under the Uruguay Round of the General Agreement on Tariffs and Trade (GATT/WTO), and (c) US trade remedies and safeguard mechanisms be revised to take into account the season and perishable nature of these products.

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
GENE SPERLING
DANIEL K. TARULLO
JOHN HILLEY

SUBJECT: Committing Ourselves to Launch the FTAA on Schedule

In connection with President Zedillo's visit November 14, you and he will appear at the OAS to witness the signature of the new hemispheric convention on arms trafficking. Your remarks to an audience of OAS representatives and invited guests, with coverage from hemispheric media, offers an occasion to highlight U.S.-Mexico cooperation and broader multilateral action against the illicit trade in firearms.

This will also be your first meeting with representatives of the Americas in the wake of Fast Track. As such, it also provides an important opportunity to reiterate that we intend to move forward on schedule with our hemispheric free trade agenda, despite this setback. We thus recommend that you take this occasion to reaffirm your intention to seek Fast Track, as stated Monday in the Rose Garden, and that you also recommit the United States to proceed with the comprehensive launch of negotiations on the Free Trade Area of the Americas on schedule, next April, in Santiago.

The nations of the hemisphere will be looking for signals of our next moves. Fast Track remains essential for the successful conclusion of the FTAA, in 2005, and for any interim agreements we might conclude before that date. Although highly desirable, Fast Track is not, however, an essential prerequisite for the launch of negotiations.

If we are to maintain leadership in hemispheric trade liberalization, and resist the gradualism favored by a number of the region's trade bureaucracies, we need to make clear we are

cc: Vice President
Chief of Staff
Mr. McLarty

moving forward. Failure to restate our intentions to launch the FTAA on schedule could lead to increased anxieties and even cause some governments to raise questions regarding the current agreed timetable for the negotiations.

If you agree, we will work with your speechwriters to ensure that your OAS remarks, in addition to celebrating progress against gun running, also reassure the hemisphere that we intend to launch the FTAA on schedule. We will also include such a statement in the communique on your meeting with Zedillo.

Zedillo may also ask you about Chile's accession to NAFTA, as may the press. Chile has consistently said it will not begin such negotiations until we have Fast Track. You can simply reaffirm your intention to pursue both, while acknowledging that they remain linked.

RECOMMENDATION

That you agree to reaffirm support for an April 1997 launch of the FTAA in your OAS remarks, and during the Zedillo visit.

Approve _______________

Disapprove _______________

Congressman Earl Pomeroy

FACSIMILE COVER PAGE

1533 Longworth House Office Building
Washington, DC 20515
Phone: 202-225-2611
Fax: 202-226-0893

SEND TO:	FROM:
Jay Berman Counsel to the President	Earl Pomeroy U.S. House
Fax number:	Date: 11/12/97
Office:	
Total pages (including cover):	

☐ Urgent ☐ Reply ASAP ☒ For your information

COMMENTS: Jay – I enjoyed getting to know you while you worked me over on FAST TRACK. Thank you for the patient substantive approach you took with this office. I became convinced on the issue and hope we might work together on it again. Very best wishes to you, Jay.

You gave the President your very best.

Earl Pomeroy

Congressman goes it alone

Pomeroy backs trade legislation by himself

By PHILIP BRASHER
Associated Press

DICKINSON PRESS 11-8-97 FP

Rep. Earl Pomeroy, D-N.D.

"Sometimes you have to go against your friends to do the greater good."
— Gary Porter, state GOP Party chair

WASHINGTON (AP) — Rep. Earl Pomeroy, in a rare and dramatic break from North Dakota's senators, on Friday endorsed fast-track trade negotiating authority for the Clinton administration.

Administration officials have been furiously scouring the House for votes. The lobbying of Pomeroy, a Democrat, included a 25-minute private meeting with President Clinton in the Oval Office and other sessions with Vice President Al Gore, United Nations Ambassador Bill Richardson and two cabinet secretaries.

"We must move forward and negotiate trade agreements that ... give us equal access to other markets," Pomeroy said.

The administration pledged to investigate Canada's pricing of durum wheat, long a sore point with North Dakota farmers.

In a letter to Pomeroy that the congressman says he drafted, U.S. Trade Representative Charlene Barshefsky promised to seek an annual audit of the Canadian Wheat Board's durum sales.

She said the administration would pursue sanctions against Canada if the audit shows that Canada is pricing its grain too low. "I wrote this as clearly as I could," Pomeroy said of the letter.

The North Dakota Grain Growers Association later announced it would support fast-track trade negotiations in light of the Clinton administration's promises on Canadian grain imports.

U.S. producers claim Canada has taken away some of their sales to American millers by selling durum below cost. Canada denies the allegation, but has refused to disclose data about its pricing. Such audits were authorized by a U.S.-Canada dispute panel but never conducted, Pomeroy said.

But Sen. Byron Dorgan, who has been leading Senate opposition to the fast-track bill, says the audits won't help.

"What we need at this point is action. The president needs to stop this wheat traffic coming in that is unfair trade," said Dorgan, D-N.D.

Pomeroy also touted a provision, added to the fast-track bill at the prodding of farm-state lawmakers, that would require the government to watch for trade barriers against U.S. agricultural exports.

The administration would then impose sanctions against countries found to be unfairly restricting imports from U.S. producers.

Pomeroy met with Clinton one-on-one at the White House Wednesday night and then had other private meetings Thursday with Gore and House Democratic leader Richard Gephardt, who opposes the legislation.

Several labor leaders, including AFL-CIO President John Sweeney, Commerce Secretary William Daley, Agriculture Secretary Dan Glickman, all visited Pomeroy in his House office.

The fast-track legislation would allow Clinton to present trade agreements to Congress for simple yes-or-no votes, and deny lawmakers the chance to amend them.

Sen. Kent Conrad, D-N.D., opposed the bill because he couldn't get some major changes in it. He wanted to force the administration to consult more closely with Congress before signing new trade agreements and then provide some way of "correcting mistakes" in existing pacts.

Pomeroy's split with his Senate colleagues drew rare praise from Gary Porter, state Republican Party chairman.

"Sometimes you have to go against your friends to do the greater good," Porter said. "Pomeroy represented North Dakota this time, and it was the right thing to do."

A4

11-11-97 Forum A4

Pomeroy is right on trade

Forum editorial

Democratic opposition, fueled by money from big labor, probably has scuttled fast-track trade legislation for this year. That's the bad news.

The good news is North Dakota Congressman Earl Pomeroy broke from his Democratic colleagues in the U.S. House and endorsed the fast-track bill. In doing so, the congressman also broke with North Dakota Democratic Sens. Bryon Dorgan and Kent Conrad.

Fast-track would give the president authority to negotiate international trade agreements. Congress then could vote only up or down. No amendments would be allowed. The idea -- and it's a legitimate one -- is to give U.S. trading partners assurances that trade pacts would not be altered or delayed by Congress.

Pomeroy's decision is significant for several reasons.

First, his analysis of fast-track is different from Dorgan's and Conrad's because it recognizes the larger global trading picture. "We must move forward and negotiate trade agreements that give us equal access to other markets," the congressman said. That's exactly right.

Second, Pomeroy decided not to throw out the baby with the bathwater. He sought and apparently received assurances that the Clinton administration would investigate Canada's alleged improper grain trading practices. The Canadian grain problem has long been a sore point with farmers in northern North Dakota. Sen. Dorgan has used cross-border grain movement as a major reason for his opposition to fast-track and other continental trade agreements.

Third, Pomeroy's political courage was showing. It's no secret labor unions have lobbied hard (and apparently successfully) among Democrats in the House and Senate to kill fast-track. Pomeroy was subject to that pressure, which likely included promises of campaign contributions from big labor. He resisted.

Presidents since Richard Nixon have had fast-track authority. With a few exceptions, they have used it judiciously to stimulate U.S. trade in a growing global market. Fast-track is a crucial tool in preserving and enhancing America's position as the world's strongest economy.

In North Dakota, that means exports. Most of what North Dakota grows and manufactures is exported. Continental and hemispheric trade agreements have, on balance, been very good for the state's economy. Pomeroy recognizes that reality. His decision to support fast-track legislation wins our applause.

(Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board.)

Document No. ______

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/10 ACTION/CONCURRENCE/COMMENT DUE BY: Immediate

SUBJECT: Fast Track Statement

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	✓	☐	McCURRY	✓	☐
BOWLES	✓	☐	McGINTY	☐	☐
McLARTY	✓	☐	NASH	☐	☐
PODESTA	✓	☐	RADD	✓	☐
MATHEWS	✓	☐	REED	☐	☐
RAINES	☐	☐	RUFF	☐	☐
BLUMENTHAL	✓	☐	SMITH	☐	☐
BERGER	✓	☐	SOSNIK	✓	☐
ECHAVESTE	☐	☐	SPERLING	✓	☐
EMANUEL	✓	☐	STREETT	☐	☐
GIBBONS	☐	☐	TARULLO	✓	☐
HILLEY	✓	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	✓	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	✓	☐	BEGALA	✓	☐
LINDSEY	☐	☐	Berman	✓	☐
MARSHALL	☐	☐	Brophy	✓	☐
				☐	☐

REMARKS:

Comments to Michael Waldman

RESPONSE:

Staff Secretary
Ext. 6-2702

'97 NOV 10 AM9:51

Draft 11/10/97 9:45am

PRESIDENT WILLIAM J. CLINTON
STATEMENT ON FAST TRACK
THE WHITE HOUSE
November 10, 1997

Good morning. As you know, we have postponed the vote in the House of Representatives on renewing the "fast track" authority that will strengthen our ability to expand exports through new trade agreements. I am, of course, disappointed that this step was necessary. We worked very hard and came very close, but it became clear early this morning that we were a few votes short. It was especially disappointing that some lawmakers who support free trade nonetheless withheld their support for this measure over a difference of principle on an entirely unrelated issue. Important as it is, I will not trade away principle to enact this trade bill, nor should I be expected to. I do want to thank Speaker Gingrich and the Republican and Democratic Members of Congress who worked so hard for this measure. This was a genuine partnership for the national interest.

I fought for this legislation because I deeply believe that America must compete and win in a global economy. The only way to meet the challenge of the global economy is to expand exports, vigorously compete for new markets, and write the rules of trade. I knew this would not be easy. Change is never easy. But the American people did not elect me merely to do what is easy. We must do more to make certain that all our people have the skills and security they need to reap the rewards of prosperity. But we cannot turn our backs on the world or retreat from the reality of the new economy.

America's has been prosperous and secure when America leads -- and as far as I am concerned, America must and <u>will</u> continue to lead. I will do everything in my power to ensure that America's leadership in the global economy remains undiminished. I plan to press forward with an agenda of opening markets and expanding exports. This temporary obstacle will be overcome. And America will not retreat from the challenges and the broad new opportunities of the 21st Century.

AL FROM Nov. 5, 1997

Dear Jay —

Thanks for finding time to come to dinner the night before the DLC conference. I've never seen you more passionate or more effective. Thanks again,

Al

U.S. COMPANIES MISSING OPPORTUNITIES

AmCham-Chile estimates a loss of at least US $480 million a year in business with Chile because of the absence of a Chile – U.S. Free Trade Agreement.

This report offers examples which serve as evidence that Chile's accession to NAFTA would benefit several U.S. companies.

TESTIMONIALS

APPLE CHILE

General Manager, Pedro Margozzini

Apple's worldwide annual sales are about US$9 billion. Chile sells US$17-20 million. Apple Chile has a 7-8% market share which puts the company in fourth place behind ACER, IBM and COMPAC. ***Apple imports everything from the U.S.*** Other companies, for example, bring lower-end models from Mexico. Producers without factories in Mexico are at a disadvantage without NAFTA, especially in sales of lower-priced models. Profit margins are low in this business, so the 11% tariff difference is very important. The executives of the firm believe ***they could increase market share significantly with NAFTA***. NAFTA would favor brand computers, as opposed to the lower-priced non-brands that come from Asia.

CATERPILLAR (GILDEMEISTER S.A.C.)

Director, Peter Furesz

Gildemeister S.A.C. is distributor in Chile of Caterpillar (CAT) equipment of the U.S. and Kenworth trucks of Canada. CAT manufactures all its heavy mining equipment, some backhoes and other construction equipment in Illinois. ***Approximately 80-85% of the company's US$ 300 million 1996 Chile sales is Caterpillar equipment from U.S.*** CAT manufacturers; the rest comes from Brazil. ***With NAFTA, the company would benefit over Japanese competition such as Komatsu as well as European manufacturers like Volvo***. "It would give us a competitive advantage over non-NAFTA member countries" says Furesz, and adds "without NAFTA, CAT, from which we buy our products for distribution, could buy more from the CAT manufacturer in Brazil, although this is not the exact equipment as the one manufactured in Peoria, Illinois."

CLOROX

Finance Manager,Rodrigo González

Clorox imports polyethylene as well as replacement parts for bottling machinery from the United States. The company does considerable purchasing from Southern Common Market countries like Argentina and Brazil. ***"I personally would prefer to buy from the U.S. because it's a more serious provider. Argentinean and Brazilian products come with a certain degree of contamination,"*** says Mr. González. Imports are 25-30% of production cost, the first or second largest expenditure.

COCA-COLA CHILE

President Andean Division, John Walter

"From a systems point of view, ***if there were zero tariffs between the U.S. and Chile, Coca-Cola would probably tend to import much more*** vending machines and other refrigeration equipment. The company imports 500 to 600 vending machines a year from the United Sates and with NAFTA, would import maybe 1,000. These machines cost US$1,700 – 2,000 each".

John Walter says Coca-Cola would also import maybe 10-15% more postmix (fountain) equipment for restaurants. These machines cost US$1,200 – 1,500 each. ***NAFTA would make U.S. refrigeration equipment more competitive***. "We buy 5,000 refrigeration units from the United States and Italy each year, and these machines wear out every seven to eight years. U.S. prices are usually good because of economies of scale, but we would switch almost all to the United States. We would also prefer to import from the U.S., bottling and canning equipment, which now comes from Germany and Italy", comments Mr. Walter.

ESSO CHILE

President – Division of Exxon Corp., Armando Pérez

"An open area is fuel products. Chile has a fuel demand of 200,000 barrels a day and only produces 160,000 barrels a day. The other 40,000 barrels are imported. Some are imported from the United States, ***but because of import duties, U.S. supplies are not as competitive as those from the Caribbean***, for example. We have to increase imports because ENAP (the national petroleum company) doesn't have the production capacity and we'd love for the U.S. to become our main supplier."

FLUOR DANIEL

General Manager, Cesare Celle
Communications Manager, Juan Carlos Olivares

Flour Daniel Chile, in importing machinery for its clients to carry out engineering products, would save 2% on deferred imports if NAFTA were in place. ***Recently the company imported US$ 13,000,000 in equipment from Canada*** to build a mining copper plant in Antofagasta. ***Instead of buying the products from the United States, Fluor Daniel bought it from Canada***, not only because the country has a lot of experience in this kind of projects, but also because of the savings the company made on duties.

Fluor Daniel has annual sales of about US$ 90 million, so it would save about US$ 1.8 million on these imports, making them more competitive. Another aspect of the NAFTA agreement is that it could possibly save the company 20% on its taxes, assuming it exempts professional engineering services as the Canada agreement does. It is not a certainty that NAFTA will provide the same exemption, but if this were the case, it would save the company several million dollars which would again translate into savings for its clients. ***This would make Fluor Daniel more competitive as a service provider in terms of costs.***

FORD CHILE

Parts & Services Zone Manager, Jaime Sepúlveda

NAFTA affects this company quite a bit. It could lower the final user price and maintenance costs. ***It would allow Ford to compete better with quality products***. Certain Korean products do not meet safety norms, and perhaps compete better only for price reasons. All Fords have high safety standards. With all the safety equipment, American vehicles are at price levels that make them non-competitive. With NAFTA, Ford's market position would improve to the benefit of the consumer.

Ford sold 8,700 units in 1996. The company expects to sell over 10,000 units this year through its distributor. Of these units, 55% or at least 5,500 are American-made. Although Asian automakers like Nissan face the same tariff disadvantage, they are able to beat Ford prices because their automobile safety standards are lower. ***NAFTA would offset this disadvantage and allow Ford Chile to increase sales by perhaps 20%. Also, with a NAFTA agreement, Chile would have to open the luxury car market***. Today, bringing a Lincoln to Chile is practically impossible with all the taxes, both tariffs and luxury tax.

"Growth of car sales in the U.S. is very slow, so they (dealers) are looking outside", says Sepúlveda. ***With NAFTA, Chile could be one of the markets to grow***.

GENERAL ELECTRIC CHILE

Country Executive, Hugo Silva

The company produces light bulbs, fluorescent lamps, and home appliances, imported from the United States and Mexico.

"Chile will have a trade agreement with the European Union (EU) soon. This will put us at a disadvantage with European competitors like Siemens, for example. If we had NAFTA today, we would have an increase in business until the signing of the EU agreement. ***If the EU agreement is signed first, our business goes down***", says Silva.

J.C. PENNEY CHILE

General Manager, Clinton Walker

The Chile store is a large store among J.C. Penney's top 50 worldwide. The company imports everything from the U.S. so ***NAFTA would allow lowering retail prices for the consumer and increasing profit margins***. "Of J.C. Penney's 1,259 stores worldwide, we are No. 1 in, among other things, bedding, label apparel, men's accessories and women's accessories. ***Nafta would help us broaden our selection of items or 'expand the mix'***."

JOHN DEERE (AGRICOLA GILDEMEISTER)

Finance and Administration Manager, Jorge Molina

In February 1997, the company bought over 90% of its machinery and replacement parts from the U.S. Eighty percent of the equipment is John Deere agricultural machinery. Now, Agrícola Gildemeister ***is importing tractors from Brazil at zero tariffs***. The tractors are manufactured by a joint venture between the Brazilian company, SLC, and John Deere. Agrícola Gildemeister recently received the first shipment of 19 tractors and will bring 20 more by the end of the year. They expect to import about ***100 tractors per year for a value of US$ 2.8 million***. Since the shipments are tariff-free, Molina says, Agrícola Gildemeister will now be able to increase John Deere's market share in Chile. Their current participation is about 10%.

Nonetheless, he still considers that Chile's accession to NAFTA would be beneficial for them. "It's easier to sell a tractor of American origin than Brazilian. Even though the Brazilian tractor is of very good quality, the market thinks American is better."

METHANEX

Administration and Finance Manager, Alvaro Darrigrandi

Methanex Corporation's sales for 1995 were US$ 1.25 billion. Once the company's third plant (now in construction) begins operating in Chile, annual sales could reach up to US$ 500 million or 40% of Methanex Corporation's total.

Methanex spends US$ 20 million per year on service stations, much of it for convenience store equipment, e.g. walk-in coolers, cash registers, ovens, lighting, gondolas, machines, etc. ***Given the U.S. tariff situation, the company is using local, Argentinean, and Brazilian suppliers***. "We'd like to consolidate these products and get them from the U.S."

"We're looking at Mercosur markets in a way we weren't looking at them before. There is an advantage there because of the U.S. import duties. ***It would be a lot more convenient for us to get everything from one supplier, and that would be the U.S.***"

PROCTER & GAMBLE

Legal & Corporate Affairs, Jorge Moreno

"With lower or zero tariffs, we could save significantly on imports of final goods and raw materials, especially for our paper products factory in Chile. We could bring products that could be much more competitive, like snack foods. ***There are thousands of U.S. products that could be more competitive and many P&G products***. I'm sure ***the U.S. is losing an opportunity considering that Mexico and Canada have already signed agreements with Chile***..." says Moreno. The European Union has already begun trade negotiations with Chile.

SOUTHWESTERN BELL, SBCI

President, Wayne Alexander

The U.S. company, SBCI, who is part owner of VTR Telecommunications, ***lost a US$200 million deal with the VTR local telephone company to the Canadian*** company, Northern Telecom (Nortel) earlier this year, ***one of the reasons being the high tariffs on U.S. imports***. Now VTR is sourcing more material from Canada rather than from the U.S. because Chile's free trade agreement with Canada allows it to save several thousand dollars annually in tariff payments.

FROM : AE SANTIAGO PHONE NO. : 232 4793 Oct. 02 1997 10:03AM P1

Bill Richardson

Rebecca

7367554

800921

EMBASSY OF THE UNITED STATES OF AMERICA

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8 pages incl cover

TO: Jay Berman

FROM: Charles Shapiro

FAX NO: 202-456-2464

DATE: 1 Oct

These are our latest 3 messages on this issue. When I spoke to Barbara Lezaeta, she said she would fax you the information the Am Cham has been collecting.

Thanks,

Charles Shapiro

UNCLAS SANTIAGO 02316
CLAN:
ACTION: POL
INFO: DAO FILES DCM ECON
Lasers:
INFO: FCS USIS

DISSEMINATION: POL
CHARGE: PROG

APPROVED: DCM:CSSHAPIRO
DRAFTED: CSSHAPIRO:MAS
CLEARED: E/POL:RFRISBIE; FCS:CPOZA

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DE RUEHSG #2316 1831205
ZNR UUUUU ZZH
R 021205Z JUL 97
FM AMEMBASSY SANTIAGO
TO RUEHC/SECSTATE WASHDC 4055
INFO RUEHBU/AMEMBASSY BUENOS AIRES 0945
RUEHBR/AMEMBASSY BRASILIA 0484
RUEHME/AMEMBASSY MEXICO 0009
RUEHPE/AMEMBASSY LIMA 0465
RUEHOT/AMEMBASSY OTTAWA 0096
BT
UNCLAS SANTIAGO 002316

STATE PLS PASS USTR FOR BARSHEVSKY

E.O. 12958: N/A
TAGS: ETRD, ECON, CI
SUBJECT: THERE GOES ANOTHER ONE -- CHRYSLER

REF: 97 SANTIAGO 000317

1. DURING A JUNE 20 MEETING WITH THE DCM, E/POL, AND FCS, CHRYSLER'S BUSINESS DEVELOPMENT EXECUTIVE FOR INTERNATIONAL OPERATIONS BRIEFED THE EMBASSY ON CHRYSLER'S NEW STRATEGY FOR THE CHILE MARKET: TO THE GREATEST EXTENT POSSIBLE, CHRYSLER WILL SUPPLY THE CHILEAN MARKET WITH AUTOMOBILES ASSEMBLED IN COUNTRIES WHICH HAVE FREE TRADE AGREEMENTS WITH CHILE.

-- DODGE MINI-VANS WILL BE IMPORTED FROM CANADA;
-- NEON SEDANS WILL BE IMPORTED FROM MEXICO;
-- AND JEEPS MIGHT EVENTUALLY BE IMPORTED FROM THE NEW PLANT IN ARGENTINA.

2. THE CHRYSLER REP NOTED THAT "WE ARE A UNITED STATES COMPANY AND PREFER TO EXPORT FROM THE UNITED STATES, BUT WE ARE IN THE BUSINESS OF SELLING CARS

AND TO DO THAT WE NEED TO MEET THE PRICES OF OUR COMPETITORS." HE ADDED THAT REGARDLESS OF WHERE THE CARS ARE ASSEMBLED, THEY WILL HAVE A HIGH PERCENTAGE OF U.S. COMPONENTS.

3. REQUEST THAT THIS MESSAGE BE SHARED WITH AIFLD.

GUERRA
BT
#2316
NNNN

UNCLAS SANTIAGO 00317
CLAN:
ACTION: ECON
INFO: FILES POL DCM
Lasers:
INFO: USIS FCS AGR

DISSEMINATION: ECON
CHARGE: PROG

APPROVED: DCM:CSSHAPIRO
DRAFTED: E/P:RLFRISBIE
CLEARED: FCS:JKOLODITCH

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DE RUEHSG #0317 0291554
ZNR UUUUU ZZH
R 291554Z JAN 97
FM AMEMBASSY SANTIAGO
TO RUCPDOC/USDOC WASHDC
RUEHC/SECSTATE WASHDC 2947
INFO RUEHAC/AMEMBASSY ASUNCION 0353
RUEHMN/AMEMBASSY MONTEVIDEO 0260
RUEHBR/AMEMBASSY BRASILIA 0329
RUEHBU/AMEMBASSY BUENOS AIRES 0669
RUCNFTA/NAFTA COLLECTIVE
BT
UNCLAS SANTIAGO 000317

STATE PLEASE PASS USTR FOR JON HUENEMANN
COMMERCE FOR 4332/IEP/WH/OSA/SCD/RTURNER

E.O. 12958: N/A
TAGS: ETRD, PREL, CI
SUBJECT: THE 11-PERCENT ADVANTAGE: SOUTHWESTERN BELL BUYS CANADIAN

REF: (A) USDOC 00209 (B) 96 SANTIAGO 05173 (NOTAL)

1. DESPITE THE FOCUS ON AGRICULTURAL ISSUES BY THE MEMBERS OF CONGRESS COMPRISING CODEL SMITH THAT RECENTLY VISITED THE REGION, ONE VIGNETTE FROM A HIGH-TECH INDUSTRIAL SECTOR WHICH SURFACED DURING THE CODEL'S SANTIAGO SCHEDULE SERVES TO UNDERLINE THE REAL-LIFE DISADVANTAGES WHICH THE ABSENCE OF A PREFERENTIAL TRADE ACCORD WITH CHILE IS HAVING FOR U.S. SUPPLIERS.

2. ONE OF THE MANY SUCCESSFUL PARTNERSHIPS FORGED IN CHILE IS A SOUTHWESTERN BELL/VTR COMMUNICATIONS JOINT VENTURE. THE COMPANY PROVIDES, INTER ALIA, A VARIETY OF VALUE-ADDED TELCOM AND CABLE TELEVISION SERVICES, AND IS NOW EXPANDING ITS CELLULAR PHONE SERVICE IN CHILE (REF A

HIGHLIGHTED THE GROWTH THAT IS OCCURRING IN THIS FIELD NOT ONLY IN CHILE, BUT ELSEWHERE IN THE REGION). IN A BRIEFING WITH THE AMERICAN CHAMBER HERE ORGANIZED BY THE EMBASSY FOR CODEL SMITH, WAYNE ALEXANDER, HEAD OF SOUTHWESTERN BELL IN CHILE, TOUTED THE COMPANY'S AMBITIOUS PLANS FOR EXPANDING VTR'S CELLULAR TELEPHONY SERVICES, AND CITED THE COMPANY'S RECENT DECISION TO PURCHASE USD 180 MILLION IN EQUIPMENT TO GET THE NEXT PHASE OF THE COMPANY'S EXPANSION OFF THE GROUND. WHEN THE TIME CAME TO DECIDE WHAT AND WHERE TO BUY, HOWEVER, VTR DECIDED TO GO WITH CANADIAN SUPPLIER NORTHERN TELCOM. WHY? VTR WILL SAVE ALMOST USD 20 MILLION IN CUSTOMS DUTIES ONCE THE CHILE-CANADA FTA GOES INTO EFFECT IN THE MIDDLE OF 1997 -- AFTER THIS TIME, CHILE'S GENERAL 11 PERCENT TARIFF RATE WILL NO LONGER APPLY TO MOST GOODS SOURCED FROM CANADA. ALEXANDER SAID HE WOULD HAVE LIKED TO HAVE PURCHASED FROM HIS HOME BASE, BUT NATURALLY COULD NOT JUSTIFY THE ADDITIONAL COSTS THAT THIS WOULD HAVE ENTAILED.

3. COMMENT: NONE NECESSARY.

GUERRA
BT
#0317
NNNN

UNCLAS SANTIAGO 01123
CLAN:
ACTION: ECON
INFO: DAO FILES DCM
Lasers:
INFO: AGR CONS FCS USIS

DISSEMINATION: ECON
CHARGE: PROG

APPROVED: E/P:RLFRISBIE
DRAFTED: E/P:CCARVER
CLEARED: NONE

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ZNR UUUUU ZZH
R 271346Z MAR 97
FM AMEMBASSY SANTIAGO
TO RUCPDOC/USDOC WASHDC
RUEHC/SECSTATE WASHDC 3429
INFO RUEHMN/AMEMBASSY MONTEVIDEO 0293
RUEHBR/AMEMBASSY BRASILIA 0369
RUEHBU/AMEMBASSY BUENOS AIRES 0759
RUCNFTA/NAFTA COLLECTIVE
RUEHAC/AMEMBASSY ASUNCION 0400
BT
UNCLAS SECTION 01 OF 02 SANTIAGO 001123

STATE PLEASE PASS USTR FOR JON HUENEMANN
COMMERCE FOR 4332/IEP/WH/OSA/SCD/RTURNER

E.O. 12958: N/A
TAGS: ETRD, PREL, CI
SUBJECT: MAKING THE CASE FOR FAST TRACK: CHILE

REF: A) STATE 45392
B) SANTIAGO 0317
C) 96 SANTIAGO 05173 (NOTAL)

1. IN RESPONSE TO REF A, POST ADDS THE FOLLOWING TO OUR OBSERVATIONS IN REFS B AND C.

DOLLARS AND CENTS
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2. THE FOLLOWING STATEMENT BY THE AMERICAN CHAMBER OF COMMERCE IN CHILE WAS PART OF AN INFORMATION PACKET PREPARED FOR THE STATE VISIT TO THE US IN LATE FEBRUARY BY CHILEAN PRESIDENT FREI:

QUOTE: IN 1996, THE U.S. EXPORTED USD 4.1 BILLION WORTH OF GOODS TO CHILE FOR A TOTAL OF 24.2 PERCENT OF THE CHILEAN MARKET SHARE. OVER THE NEXT 5 YEARS, TOTAL U.S. EXPORTS HAVE THE POTENTIAL TO GROW UP TO USD 5 BILLION ANNUALLY IF THE COUNTRY'S 11 PERCENT GENERAL TARIFF, WHICH DISADVANTAGES U.S. EXPORTERS, COULD BE REMOVED. IN 1996, FOR EXAMPLE, TARIFF PAYMENTS ALONE COST U.S. EXPORTERS USD 480 MILLION. WHILE THE U.S. DELAYS GETTING FAST TRACK CLEARANCE TO SIGN A FTA, OTHER COUNTRIES ARE ENJOYING THE PREFERENTIAL TRADE STATUS THEY HAVE OR ARE ABOUT TO HAVE IN THE CHILEAN MARKET: MEXICAN EXPORTERS FACE NO TARIFFS ON ALMOST NINE TENTHS OF THEIR EXPORTS TO CHILE; 80 PERCENT OF CANADA'S EXPORTS TO CHILE WILL BE TARIFF-FREE AS OF MID-1997; AND AS OF OCTOBER 1, 1996 MERCOSUR COUNTRIES HAVE BENEFITED ON EASIER ACCESS TO THE CHILEAN MARKET. CLEARLY AN FTA WITH CHILE IS AN IMMEDIATE NECESSITY. END QUOTE.

3. WHILE THE EMBASSY BELIEVES THAT THE CHAMBER HAS UNDERESTIMATED THE POST-U.S.-CHILE FTA GROWTH POTENTIAL OF U.S. EXPORTS TO CHILE OVER THE NEXT FIVE YEARS, THE FOLLOWING SPECIFIC CASES CITED TO US BY U.S. FIRMS OPERATING HERE HIGHLIGHT THE COMPETITIVE DILEMMA THEY FACE AS A RESULT OF PREFERENTIAL TRADING ARRANGEMENTS OF WHICH CHILE IS A MEMBER.

SOUTHWESTERN BELL: USD 180 MILLION CONTRACT LOST
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4. ONE OF THE MANY SUCCESSFUL PARTNERSHIPS FORGED IN CHILE IS A SOUTHWESTERN BELL/VTR COMMUNICATIONS JOINT VENTURE. THE COMPANY PROVIDES, INTER ALIA, A VARIETY OF VALUE-ADDED TELECOM AND CABLE TELEVISION SERVICES, AND IS NOW EXPANDING ITS CELLULAR PHONE SERVICE IN CHILE. IN JANUARY, THE COMPANY DECIDED TO PURCHASE USD 180 MILLION IN EQUIPMENT TO GET THE NEXT PHASE OF THE COMPANY'S EXPANSION OFF THE GROUND, BUT OPTED TO GO WITH CANADIAN SUPPLIER, NORTHERN TELECOM, BECAUSE VTR WILL SAVE ALMOST USD 20 MILLION IN CUSTOMS DUTIES ONCE THE CHILE-CANADA FTA GOES INTO EFFECT IN THE MIDDLE OF 1997. AFTER THIS TIME, CHILE'S GENERAL 11 PERCENT TARIFF RATE WILL NO LONGER APPLY TO MOST GOODS SOURCED FROM CANADA.

IBM: USD 35 MILLION IN ANNUAL SALES DIVERTED TO MEXICO
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5. IBM IMPORTS USD 35 MILLION WORTH OF PERSONAL COMPUTERS ANNUALLY FROM GUADALAJARA, MEXICO TO AVOID THE 11 PERCENT TARIFF ON U.S. GOODS. QUALITY OF U.S. GOODS IS KNOWN TO BE SUPERIOR AND THE PROCESS OF TRANSFERRING EQUIPMENT AND SPECIALISTS WOULD BE CHEAPER, BUT THE ABSENCE OF A FTA FORCES PREFERENCE TO TAKE THE BACK SEAT

TO THE BOTTOM LINE.

U.S. AUTOS, BUT NO AUTOS MADE IN THE U.S.
----

6. FORD BRINGS TO CHILE ESCORTS, CONTOURS, AND FIESTAS MANUFACTURED IN MEXICO AND BRAZIL INSTEAD OF THE U.S., IN ORDER TO TAKE ADVANTAGE OF THE LOWER TARIFF RATES PRODUCTS FROM THESE COUNTRIES FACE IN THE CHILEAN MARKET AS A RESULT OF MERCOSUR AND THE CHILE-MEXICO FTA.

7. GENERAL MOTORS BRINGS IN ITS CHEVY CAVALIERS FROM BRAZIL FOR THE SAME REASON. THE CAVALIER IS ONE OF THE TOP SELLERS IN CHILE.

8. ALL U.S. CAR MANUFACTURES FACE HEAVY COMPETITION FROM OPEL, VOLKSWAGEN, AND NISSAN AUTOMOBILES PRODUCED IN BRAZIL AND MEXICO.

CATERPILLAR: ESCAPING THE TARIFF BY MOVING TO BRAZIL
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9. CAT PLANS TO PRODUCE SOME OF ITS LINES OF EARTH MOVING EQUIPMENT, USED HEAVILY IN THE CHILEAN MINING INDUSTRY, IN BRAZIL RATHER THAN THE U.S. TO AVOID THE 11 PERCENT DUTY.

EXXON BUYS ITS SUPPLIES FROM VENEZUELA AND ARGENTINA
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10. ESSO-CHILE (EXXON) SUPPLIES ITS LUBRICANT PRODUCTION FACILITIES IN CHILE WITH RAW MATERIALS FROM VENEZUELA AND ARGENTINA. THESE INPUTS COULD VERY WELL BE IMPORTED FROM THE U.S. HOWEVER, CHOOSING U.S. MATERIALS, WHICH FACE THE STANDARD 11 PERCENT TARIFF, IS NOT A VIABLE ALTERNATIVE GIVEN THAT THEIR COMPETITORS FROM VENEZUELA AND ARGENTINA COME IN DUTY FREE UNDER MERCOSUR AND THE CHILE-VENEZUELA FTA.

CLOROX: LOWERING STANDARDS TO ESCAPE TARIFFS
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11. 25 TO 30 PERCENT OF THIS COMPANY'S PRODUCTION COSTS DERIVE FROM RAW MATERIALS, SUCH AS POLYETHYLENE, WHICH ARE IMPORTED FROM ARGENTINA AND BRAZIL. A NAFTA AGREEMENT WOULD ALLOW CLOROX TO PURCHASE U.S. GOODS INSTEAD, WHICH ARE OF BETTER QUALITY.

GUERRA
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Inside U.S. Trade

An Inside Washington Publication

An exclusive weekly report on major government and industry trade action

Vol. 15, No. 37 - September 12, 1997

SENATE DEMOCRATS PROMPT DELAY OF FAST-TRACK BILL UNTIL NEXT WEEK

President Clinton's decision to delay the introduction of its fast-track proposal until next week was largely prompted by demands from Senate Democrats, including Minority Leader Tom Daschle (D-SD), that the Administration lay out how the negotiating authority would be used and how broad a role Congress would play in shaping future trade agreements.

At press time, Clinton had not yet been presented with a formal decision memorandum, according to an Administration official. The "basic reason" for the further delay is so that the Administration can consult with Senate Democrats, although it is using the opportunity to "broaden our outreach" to House Democrats as well, the official said.

The main political dilemma which Administration officials are wrestling with is how craft a proposal that will

continued on page 24

EU OPINION FAILS TO SETTLE TALLOW FIGHT, COULD CAUSE NEW PROBLEMS

An opinion by a European Union Commission scientific body that the U.S. had hoped might pave the way for a relaxation of the Commission's effective ban of U.S. beef tallow exports that are not certified to be free of Bovine Spongiform Encephalopathy (BSE) has instead led to additional confusion. It is unclear whether the opinion could be used to resolve the tallow ban in a way that satisfies the U.S., and also raises the possibility of banning two additional animal product exports unless exporters can show they are free of BSE.

The opinion discusses the possibility of contracting BSE from bull semen and embryos, and says trade in those products "cannot be recommended" if they cannot be certified as being free of BSE. If the EU adopted a position that blocked these exports, it could threaten to unravel a recently agreed to veterinary equivalency agreement scheduled to go into effect on Oct. 1, a U.S. official said. The U.S. and EU agreed to treat each other's animal

continued on page 22

HOUSE, SENATE FACING TOUGH FIGHT TO PASS ENCRYPTION LEGISLATION

The House and Senate are now facing increasingly difficult circumstances in their efforts to pass legislation dealing with the use and export of encryption technology this year, according to congressional sources. The House leadership this week effectively threw up an additional barrier to passing legislation by directing the five separate committees which have handled encryption issues to hammer out compromise legislation, these sources said.

In addition, efforts to develop legislation in the Senate have slowed considerably, congressional sources said. The Senate Commerce Committee has not yet reported out a bill which it marked up in July, and the Judiciary committee, which has sequential referral of the same measure, may not be able to move on the legislation this year.

"It's premature to say" whether Judiciary can move toward a markup before the end of the year, Chairman Orrin Hatch (R-UT) told reporters on Sept. 10. Negotiations among Judiciary members "have not been too success-

continued on page 26

U.S. RENEWING FOCUS ON JAPAN AMID BAD TRADE TRENDS, FAST-TRACK FIGHT

Dramatic increases in Japan's trade surplus and the increased scrutiny trade issues will receive in the upcoming debate on renewal of fast-track negotiating authority are driving the Clinton Administration to turn up the heat on Japan. The renewed Administration focus will likely be expressed in public calls for Japan to stop exporting its way out of a recession, and increased efforts on the trade front, according to government officials.

The Administration last discussed the trade relationship with Japan in a "principals meeting" that consisted primarily of cabinet-level officials, but was also attended by lower-level officials. The Administration is likely to hold a "continuing series" of meetings on Japan in the near future, an Administration official said.

"The broad context [of the Administration's deliberations] is the deteriorating trade trends," a U.S. official said. The interagency deliberations are focused on "preserving the gains" the U.S. made in reducing the trade

continued on next page

deficit with Japan in recent years, he said.

"The rhetoric will increase substantially," the official added.

Another official warned that the U.S. intends to come forward with "every case" it can in the World Trade Organization to address problems in the U.S.-Japan relationship. But so far, the Administration has decided on few concrete trade actions beyond the conclusion of pending negotiations in sectors such as ports, civil aviation and telecommunications procurement, informed sources said.

In addition, the Administration has decided it will focus on the implementation of existing agreements in sectors such as automobiles. In this sector, talks with Japan are likely to focus on vehicles more than auto parts, an Administration official said. The situation in auto parts is better than for built-up vehicles, where numbers are "really poor," the official said. The export of parts is up 14 percent this year, he said. But Japanese efforts at deregulation in this sector seem to be at "a standstill," another official said.

U.S. Trade Representative Charlene Barshefsky largely echoed this message in a Sept. 10 White House briefing, saying trade in auto parts is "fairly strong" this year. "It's on the vehicle side where a combination of factors, including a shift in exchange rates, has dampened somewhat our exports to Japan and has increased Japanese exports to the United States," she said.

Separately, Japanese Minster of Transport Makota Koga rejected in a Sept. 8 letter demands by Barshefsky and Secretary of Commerce William Daley that Japan deregulate two features of the auto parts aftermarket, according to a Japanese official. Koga said that Japan could not remove brake parts from the so-called "critical parts list," which would allow more mechanics to replace these parts, he said. This could cause safety problems, he said.

Koga also said Japan would not allow mechanics to perform repairs on individual vehicle systems, rather than all seven MOT classifications. Both these changes would likely increase auto parts purchases from U.S. suppliers.

Barshefsky and Daley called for these two deregulations in an Aug. 15 letter to Koga (*Inside U.S. Trade*, Aug. 29, p. 12).

The U.S. and Japan will conduct a review of the 1995 auto agreement on Oct. 8-9 in San Francisco. The Administration has already held "preliminary [interagency] discussions" on a request by the Big Three automakers that Japan be cited on a watch list established under the Super 301 process for its alleged failure to implement the auto agreement, the official said.

Administration deliberations are also being driven by broader trends which go beyond the U.S.-Japan agreement. Japanese auto exports to the U.S. are up "dramatically" over the past six months, about 20 percent according to figures of the Japan Automobile Manufacturers Assn., another Administration official pointed out. Japanese exports to Europe are up by 50 percent according to these numbers, and U.S. exports to Japan are down by 17 percent, the official said. "This is a serious problem," the official said.

The Administration's overall message is likely to criticize Japan's effort to base recovery on exports and may lead to calls for a domestic Japanese stimulus package, informed sources said. But a Japanese official said that Japan has a "huge budget deficit" which makes it unlikely that there will be a supplemental budget in such sectors as public works. In addition, interest rates in Japan are "extremely low" which makes it hard to lower them further, he said.

The Japanese are "clearly exporting their way to recovery" with a 60 percent growth of their exports while non-export sectors of the economy are in "very poor shape," a U.S. official said. His message was echoed by another official who said that Japan is seeking to export-led growth instead of pursuing growth based on domestic demand. Both officials emphasized that the Administration successfully reduced the trade deficit from the beginning of the Clinton Administration until 1996, but these gains are now eroding due to macroeconomic and other factors.

"The progress achieved in 1996 is being eroded and despite Japanese government statements that its monthly surpluses are temporary, there is no sign of letting up," one official said. In addition, the initial results the U.S. achieved in trade agreements are beginning to vanish, the official said.

Moreover, there are increasing doubts about the scope, pace and commitment of the Japanese deregulation initiative that was launched by Japanese Prime Minister Ryutaro Hashimoto last year, according to a U.S. official.

On the trade front, the Administration will focus on completing pending bilateral initiatives, the implementation of existing agreements, possible new dispute settlement cases in the WTO, and new regional and multilateral initiatives, according to informed sources. The U.S. government has argued that these areas represent crucial tests for the government of Japan to demonstrate that it is committed to deregulation, market opening and the multilateral trading system, these sources said.

An early test of Japan's intentions will be the negotiation of an improved agreement covering the procurement of Nippon Telegraph and Telephone by Sept. 30, a U.S. official said. The U.S. is seeking the "renewal and improvement" of the NTT procurement agreement which expires on Sept. 30 (see related story).

Another early indicator will be whether "concrete progress" on the four sectors of the deregulation initiative can be made, the official said. The U.S. is pressing for action under the newly launched deregulation initiative, which covers financial services, pharmaceuticals and medical devices, telecommunications and housing construction. These sectors cover areas where the U.S. is seeking access for its globally competitive firms and which the

Japanese prime minister has identified as areas where Japan can benefit from deregulation.

In a related development, the U.S. and Japan met this week in Tokyo under the umbrella of the deregulation initiative to discuss distribution, transparency and competition policy. The U.S. has also asked Japan for a late October meeting of the subcabinet-level group guiding the Enhanced Initiative on deregulation, according to a U.S. official. This group is led by a Deputy U.S. Trade Representative and a Vice Minister from the Ministry of Foreign Affairs, the official said.

The initiative launched by President Clinton and Prime Minister Hashimoto seeks new and additional market access measures going beyond what the U.S. has sought before, sources said. The Administration wants the new initiative to bring high-level public scrutiny on the selected areas and are setting up a regular calendar for achieving important progress, they said.

The Administration is seeking new areas that could be covered by the deregulation initiative in internal deliberations and in talks with industry representatives, according to a U.S. official. One possible area would be foreign procurement by Japan's electric utilities, the official said.

Achieving this agenda does not need to be "acrimonious" or lead to "serious trade frictions" between the two countries, the official said. The U.S. clearly prefers to achieve these goals through serious and detailed bilateral and multilateral negotiations, according to the official.

But U.S. officials this week expressed strong disappointment that Japan failed to settle a dispute with the U.S. regarding market access for shippers and port services providers, which led the U.S. to impose sanctions on Japan for the first time since 1987. The ports issue is pending along with civil aviation talks, which are of "great economic significance" for the U.S., one official said.

On implementing existing agreements, the U.S. plans an ambitious schedule between now and the end of the year, according to informed sources. In addition to the auto agreement, the U.S. is seeking consultations on the flat glass agreement. The Administration is especially concerned about the 1995 agreement, under which competitive U.S. producers made some initial gains, an official said. Japanese government data show that Japanese distributors are not willing to handle imports for fear that it will damage their relationship with Japanese suppliers, the official said.

Before the end of the year, the U.S. is also hoping to consult with Japan on telecommunications, computers, supercomputers, and insurance, according to the official.

Regarding new multilateral initiatives, the U.S. is seeking stronger participation by Japan in sectoral liberalization efforts under discussion in the Asia Pacific Economic Cooperation (APEC) forum. Japan needs to play a larger part, because it is hard to envisage that the APEC initiative can succeed without the participation of the second largest APEC economy, the official said.

ROTH PROMISES MARKUP OF NAFTA PARITY BILL FOR CARIBBEAN COUNTRIES

The chairman of the Senate Finance Committee this week said he wants to mark up a bill that would extend the benefits of the North American Free Trade Agreement to Caribbean countries. In a Sept. 11 markup of a bill to curb shipbuilding subsidies, Sen. William Roth (R-DE) said he hoped that a NAFTA parity bill, whose inclusion in the tax portion of the budget reconciliation package he had rejected in July, could be marked up at the same time that a fast-track negotiating authority bill comes before the committee.

"It is my hope that the Administration would testify on this new CBI/NAFTA parity proposal when it presents its proposal to renew fast-track negotiating authority to the committee next week," Roth said in response to a question from Sen. Carol Moseley-Braun (D-IL).

"I've also instructed the staff to review the draft proposal with interested parties, inside and out of the Senate, as quickly as possible," Roth said. "Once this review is complete, I'm willing to mark up the CBI/NAFTA parity proposal with the fast track negotiating authority proposal."

Roth later said a NAFTA parity bill could be marked up "at the same time" as fast track, but separately from the actual fast track bill.

"I hope my colleagues will agree that this procedure I just outlined is satisfactory," he said. "I know there are several members of the committee that do want to provide NAFTA parity to certain Caribbean nations."

A NAFTA parity bill that would have granted Caribbean and Central American countries certain preferences similar to those under NAFTA was ultimately cut from a tax bill earlier this year. The version Roth said he wanted to mark up was one worked out between the Administration and Senate Finance Committee staff as a possible alternative to a less-conditional version included in the House budget reconciliation package this summer.

Roth opposed inclusion of NAFTA parity in the tax bill because doing so would have violated the so-called Byrd rule, since its budgetary impact was incidental to its overall policy impact, and because there had been no chance to vet the proposal. Roth and the Administration tried unsuccessfully to reach a compromise that would have allowed the proposal to remain in the tax bill (*Inside U.S. Trade*, Aug. 1, p. 3 & July 25, p. 29).

U.S. SEEKS TALKS ON EU BANANA REGIME AS WTO CONFIRMS U.S. WIN

An international appeals body this week dealt a severe blow to the European Union's system for regulating the import of bananas in a way that restricts access for Latin American bananas in favor of fruit from its member states' former colonies, according to a report released by the World Trade Organization. The WTO Appellate Body largely upheld the decision of an earlier WTO panel which supported the charges of the U.S. and four Latin American countries that the EU banana regime violates international trade rules.

But it tightened the original ruling in at least two ways that strengthen the hand of opponents of the EU regime, while conceding some subsidiary issues of the case to the EU, according to U.S. trade officials. The case was brought by the U.S., which does not export any bananas and grows very few, on behalf of Chiquita Brands International and by Ecuador, Mexico, Guatemala, Honduras.

The panel sided with the U.S. when it reversed the finding of the original panel that the EU does not have to adhere to the rules of the General Agreement on Tariffs & Trade in allocating a banana quota to suppliers from African, Caribbean and Pacific (ACP) countries, one official said.

The original panel found that the quota allocation was covered by a waiver the EU received from GATT rules for the Lome Convention, which covers trade preferences for former colonies, including the banana regime, according to the official.

In the second reversal, the panel found that Mexico, Guatemala and Honduras could charge that the EU regime violates the General Agreement on Trade in Services even if they did not raise the issue in their first written submission to the initial dispute settlement panel. As a result, their complaint has the same scope as that of the U.S. and Ecuador, giving "identical services findings" to all five complainants, the official said.

"It is irrefutable now--there is widespread discrimination in the regime," another U.S. official said. The finding will bring the EU to the table to negotiate a solution to the banana issue because the WTO process has ended, the official said.

"The U.S. has indicated readiness to try to work out a solution that is consistent with trade obligations and does not undermine the economies of the Caribbean," he said.

The U.S. has asked to meet with Caribbean banana producers to explore a possible settlement, and expects the meeting to take place this month, the U.S. official said. He said the U.S. did not expect to meet with the EU until after the Sept. 25 meeting of the Dispute Settlement Body, at which the appellate body report will be adopted.

A spokesman for the EU Commission said this week that the commission needs to study the "highly complex" case further before commenting publicly. After the Sept. 25 meeting, the EU will be required to state the way it intends to respond to the result, the official said.

Under WTO rules, 30 days after this meeting, the EU has to reveal whether it intends to comply with the ruling, as the U.S. is pressing it to do. WTO rules allow a member to compensate the countries that successfully challenged its regime, but the U.S. is insisting on compliance. This may be partially due to the fact that it would be particularly difficult to compensate the U.S. for any trade damage because it does not export bananas to the EU, informed sources said.

The WTO rules on dispute settlement state that the "first objective" of the system is to have a country withdraw the measures found inconsistent with international rules. Only if that is impractical, should countries resort to compensation, according to the rules. As a last resort, the DSB can authorize retaliation against the offending country.

No damage estimate has been calculated yet, a U.S. official said, but the U.S. told EU member states $2 billion, according to an internal U.S. document. The document says the "economic harm" done to the goods and services trade of the five complaining countries "may exceed $2 billion."

One of the major hurdles that will face the EU is to decide how soon it can comply with the ruling, officials said. WTO signatories are to comply in a "reasonable period," which has been defined as 15 months, they said.

The U.S. official insisted that the EU has to develop a proposal for a possible settlement, but said the U.S. would like to see a tariff-based system coupled with some direct aid to certain Caribbean countries.

An informal U.S. plan for a possible settlement foresees aid only to the Windward Islands, which the U.S. has previously identified as the least competitive producers, and therefore the most likely to suffer from changes to the EU regime. The U.S. has informally proposed a system of deficiency payments that would make up the difference between the price for bananas Caribbean producers could get in the EU market and a fixed return linked to their production price (*Inside U.S. Trade,* Aug. 1, 1997, p. 4).

The U.S. official said that proposal was still on the table, but was "just one suggestion" for a possible solution.

The U.S. would like the EU to move to a system where ACP bananas are favored over Latin American bananas through lower tariffs, according to the official. ACP bananas are now entering the EU duty-free up to a certain quota threshold, and the U.S. could accept an increase in the tariffs the EU charges for Latin American bananas, he said.

"We understand that the current tariff of basically 75 ECU [European Currency Units] per ton may not be sufficient to provide adequate protection for ACP bananas," the U.S. official said. The U.S. recognizes that this tariff may "need to increase somewhat," he said.

The official said the fact that the EU tariff was bound under the Uruguay Round agreement should not be a "restraint" in the negotiations. Another source pointed out that GATT Article XXVIII outlines a process by which countries can raise a tariff already subject to international bindings. Such a change would be easy to achieve in the banana case because the affected countries would accept the increase, the source said.

A tariff-based system would allow Latin American producers to be competitive in the EU market even if they faced a higher tariff than the ACP countries. The U.S. has told the EU it recognizes that the existing tariff-rate quota for Latin American bananas will not be abolished, but that it wants a larger TRQ and no country-specific allocations within that TRQ. This change would allow Chiquita to sell bananas at a higher profit than the existing system because it could source bananas from the lowest cost Latin American producer at any time.

The U.S. official rejected the notion that the U.S. pressed the banana case because of major financial contributions by Chiquita's owner to the Democratic and Republican parties. USTR "prosecuted the case as we would any other case that involved discriminatory practices," he said. He insisted that the outcome of the case also benefitted the Dole Foods Company, even though the company has not formally supported the WTO case.

U.S. Trade Representative Charlene Barshefsky welcomed the outcome of the case in a Sept. 9 statement, and highlighted that the case establishes an "important precedent" by establishing a broad scope of the General Agreement on Trade in Services. The final ruling upholds the panel's finding that the sale of bananas involves a wholesale services aspects covered under the GATS. This finding is "particularly important in eliminating barriers to U.S. exports in distribution and other services sectors," she said.

But a U.S. trade official said the finding does not automatically mean that each case involving the sale of goods also has a services component. The Appellate Body was "very clear" that this issue has to be judged on a "case by case basis," the official said.

ADMINISTRATION URGED TO ADDRESS FARM ISSUES TO GAIN FAST-TRACK SUPPORT

Members of the Florida and Washington congressional delegations this week put the Clinton Administration on notice that it must act now to address outstanding agricultural trade problems with Mexico if they are to consider supporting the extension of fast-track negotiating authority.

"To get the votes, it will be incumbent on the Administration in the next month or whenever they come to us [for fast-track approval to show]... some movement... in enforcing the rights vis-a-vis Mexico, because if they don't, I'm afraid fast track will go down," Rep. Clay Shaw (R-FL) warned Deputy U.S. Trade Representative Jeffrey Lang at a Sept. 11 hearing of the House Ways & Means trade subcommittee.

Similarly, Rep. Jennifer Dunn (R-WA) told Lang that it was "in the Administration's best interest" with respect to the expected upcoming fast-track vote to pressure Mexico to rescind a Sept. 1 preliminary antidumping duty of more than 100 percent imposed on U.S. exports of apples (see separate story).

Some members of the Florida delegation want the fast track to exclude Floridian crops, such as winter tomatoes and peppers, citrus products such as oranges and grapefruits, and sugar, from tariff cuts or from additional market access commitments, congressional and grower sources said.

Lang appeared before the panel as part of a day-long hearing on the Administration's July 1 report on the impact of the first three years of the North American Free Trade Agreement on the U.S. economy.

At the hearing, Shaw said that a Sept. 10 meeting of the 23-member Florida delegation had shown little enthusiasm for fast track. Florida congressional and industry sources said the Administration has "little credibility" with them on trade issues vis-a-vis Mexico under NAFTA because it made promises at the time of the 1993 vote that were never kept.

"It would be wrong to play politics on this, but there are a number of us who feel this is an opportunity to play clean-up with Mexico on some of those NAFTA issues," Shaw said.

Rep. Karen Thurman (D-FL) also pressed Lang on Florida farm-trade issues with Mexico. Thurman's office is drafting a letter to President Clinton for signature by members of the Florida delegation which calls for the fast track to exclude sensitive farm sectors from any tariff cuts in future trade pacts.

"The Congressional Delegation for the State of Florida urges you to include language in the fast track negotiation authority legislation which provides that all agricultural commodities that were subject to the minimum formula tariff cuts during the GATT Uruguay Round Negotiations, and to the maximum staging under the NAFTA, should not be subject to any further tariff cuts under new negotiating authority," according to a Sept. 9 draft of the letter.

The delegation also will urge Clinton to adopt fast-track language that would deny further market access in negotiations with other countries until those countries match U.S. access levels in products such as sugar, according to a sugar industry source.

The source said import-sensitive U.S. agricultural commodity groups were pressing for the inclusion in fast track of an agricultural negotiating objective that would incorporate the demands being made in the Florida delegation letter as well as other issues. For example, it might direct the Administration to make targeting export subsidies and the actions of state trading enterprises priorities in multilateral trade talks at the World Trade Organization scheduled to begin in 2000, he said.

Citrus and winter vegetable issues were addressed inadequately either in NAFTA itself or in several side letters signed between the U.S. and Mexico on the eve of the NAFTA vote, congressional and industry sources said.

In particular, said one grower representative, NAFTA's safeguard provisions are "totally ineffectual" for perishable commodities. The tariff-rate quotas, which set a volume limit on imports beyond which tariffs are charged at pre-NAFTA rates, cannot be activated until "the damage is done" for commodities such as tomatoes, he said.

In addition the safeguard for perishable commodities written into NAFTA's implementing legislation, which expedites consideration by the International Trade Commission under Sections 201 and 202 of the 1974 trade act, is "totally ineffective as a safety valve" for industries overrun by surges of imports from Mexico, he said.

He noted that it did not work because the way that particular U.S. law is structured makes it "virtually impossible" for the ITC to find injury to the domestic industry, as was evidenced in a case brought two years ago by the U.S. tomato and pepper industries.

At the hearing, Rep. Sander Levin (D-MI) lectured Lang on the lack of effective enforcement provisions in NAFTA's environmental and labor side agreements. He noted that only three labor practices can be enforced with trade sanctions under the labor pact -- minimum wage, worker health and safety, and child labor. Even in those cases, he said, dispute panels can only be invoked if two of the three NAFTA countries agree to do so, which gives Canada an "effective veto" over U.S. attempts to remedy lax Mexican enforcement of its own labor laws, Levin said.

DAIRY INDUSTRY SAYS USTR WILL SUPPORT 301 PETITION AGAINST CANADA

U.S. dairy industry representatives late last week emphasized that their Section 301 petition charging that Canada is violating its World Trade Organization obligations in the dairy sector has the full support of the U.S. Trade Representative's office. Therefore, these sources said, they fully expect their petition to be accepted by USTR within 45 days.

Acceptance of the petition, which was filed on Sept. 5, would likely lead the U.S. to request consultations with Canada over in the WTO.

"We've worked with USTR over the last six weeks or so, including meetings up to and including [U.S. Trade Representative] Charlene Barshefsky," Ed Coughlin, the Chief Executive Officer of the National Milk Producers Federation, said in a Sept. 5 press conference announcing the petition. When USTR officials were asked if they had any opposition to the petition, "their answer was they had no opposition," he said.

Coughlin added that USTR officials including Barshefsky had a "very positive" reaction to the petition, which was filed by NMPF, the U.S. Dairy Export Council (USDEC), and the International Dairy Foods Association (IDFA). It charges that Canada is circumventing the Uruguay Round limits on export subsidies via a new price pooling system that lowers the price of milk for companies that process it for export dairy.

The U.S. industry claimed in its petition that this system effectively subsidizes Canadian exports and is an effort to circumvent Canada's export subsidy obligations. Canada has argued that this system is not a subsidy because no levy is imposed against Canadian producers.

The petition also charges that Canada has failed to live up to its market access commitments negotiated in the Uruguay Round for fluid milk.

U.S. dairy industry sources added that it is in the U.S. interest to mount a challenge against Canada's dairy export regime because it could set a precedent for other trading partners. Failure to challenge it could mean other U.S. trading partners will likely begin examining similar regimes as a way of circumventing their export subsidy commitments in agriculture, they said.

Coughlin added that the U.S. is especially worried that the European Union may be examining this option. The EU could consider such a two-tier price system as an alternative way of subsidizing exports if the upcoming reform of the Common Agricultural Policy cut government export subsidies, some U.S. industry sources have charged.

"The U.S. dairy industry will not yield world markets to inefficient, heavily subsidized dairy industries in other countries," Tom Suber, director of USDEC, said at the press conference. The petitioners estimated that U.S. dairy exporters are losing up to $1 billion worth of sales to Canadian exports in third markets each year due to

Canadian export subsidies.

In addition to that injury, the petitioners argued that U.S. fluid milk exports to Canada are being blocked by Canada's refusal to open a 64,500 ton tariff-rate quota on fluid milk imports. Industry sources said failure to open that quota is preventing about $20 million in potential U.S. exports.

The industry groups said they were not linking USTR's acceptance of the petition to their support for fast-track negotiating authority. Suber said his group USDEC supports fast track, which is needed to negotiate agreements that result in trade and decreased export subsidies. The operating committee of USDEC was expected this week to agree on a resolution offering support for fast track, he said.

Suber added that during industry meetings over the last few weeks, there has been "no statement of 'give us this and we'll give you support for that.'" Linwood Tipton, President of IDFA, added that his group also supports fast track, and that the 301 petition is "unrelated" to fast track.

Coughlin also added that the petition was "not timed" to coincide with the Administration's pending fast track announcement, and said the NMPF has "no opinion" on fast track. Coughlin said the NMPF will need to see a fast track proposal on paper before the group can develop an opinion.

The dairy industry's petition argued that Canada has violated Article 10 of the WTO Agreement on Agriculture. That article prohibits members from applying any export subsidies not listed under the agreement in a way that would circumvent those commitments.

"This is the first case testing Article 10," Suber said last week. "USTR is aware of the argument and we have discussed it ahead of time, and we feel confident they will accept it."

Specifically, the petition said Canada is trying to circumvent its export subsidy commitments by changing the way it provides subsidies to Canadian dairy exporters. Before Aug. 1, 1995, Canada imposed a levy on all Canadian dairy producers which was used to pay dairy exporters, according to U.S. and Canadian sources. This subsidy allowed exporters to sell their products on the world market at a lower price than could be realized in Canada.

But after that date, Canada changed its system to one in which the Canadian Dairy Commission (CDC) enforces transactions in which Canadian exporters obtain milk at low prices, which in turn allow them to sell dairy products on the world market at a competitive price. The return from sales of these dairy exports and higher-priced sales of dairy products that take place in Canada are then pooled, and all dairy producers realize one average price for their sales.

This system, similar to the previous one, depends on Canadian consumers to pay higher than average prices for dairy products, which effectively support sales of dairy products in other countries at the much lower world price, the petition said.

"Since the Canadian Class 5 Pooling regime provides unlimited export subsidies not described in Article 9.1, its use constitutes a serious threat of circumvention of reduction commitments," the petition said. "The Canadian regime was established to replace a system of producer-financed export subsidies in response to the requirement of reductions of such subsidies by the Agreement on Agriculture."

At the press conference, Coughlin stressed the importance of using the WTO to force Canada to alter its dairy export regime, and warned that losing the case in the WTO might force U.S. producers to push for the adoption of similar practices in order to compete with Canadian producers.

"We're in this wholeheartedly to win this against Canada," Coughlin said at the press conference. "But frankly, if in fact the Canadian system is judged to be consistent with their obligations, I think U.S. producers would have no choice but to try to seek to join them."

However, Tipton said members of the IDFA, mostly made up of dairy processors, would be unlikely to support such a move, since it would likely result in higher milk prices in the U.S.

"U.S. consumers probably won't be anxious to pay higher prices to allow products to be exported," Tipton said. "So from the processor standpoint, I doubt processors could support such a system even if this case is lost in the WTO."

In the other part of the 301 petition, the dairy industry argued that Canada has violated its obligations under Article II:1(b) of the General Agreement on Tariffs & Trade by failing to open a 64,500 ton quota on fluid milk. The petition refuted Canada's claim that it is only obligated to allow Canadians to buy milk in the U.S. and bring it back into Canada.

"Canada insists that tourists and Canadian citizens carry milk across the border in such quantity as to fill the quota," the groups said in a Sept. 5 statement. "It has no valid documentation for this, nor does it make any effort to record milk volumes."

A U.S. industry source said the industry is seeking for the quota to be administered in a transparent way that enables the U.S. to know when the quota is filled. While sources have said only states that border Canada could practically fill the quota, the industry source said fluid milk could be trucked from any U.S. state into Canada and be counted against the quota if it were opened.

USTR REQUESTS WTO CONSULTATIONS WITH MEXICO ON HFCS DUMPING ACTION

U.S. Trade Representative Charlene Barshefsky announced last week that the United States would initiate formal dispute settlement procedures in the World Trade Organization over a Mexican antidumping action against imports of U.S. corn sweeteners. The U.S. alleged that the Mexican investigation and imposition of preliminary duties on high fructose corn syrup (HFCS) violate the WTO Agreement on Antidumping in part because the case was originally brought by the Mexican sugar industry.

The Mexican sugar industry does not produce HFCS.

"We are concerned about Mexico's actions in several respects, including a failure to determine whether there was sufficient evidence that the original petition was made by or on behalf of the domestic industry, failure to provide proper notification to the United States and failure to provide the U.S industry timely access to the relevant information needed in the presentation of its case," Barshefsky said in a September 5 statement.

Barshefsky's announcement was welcomed by U.S. HFCS producers, who have argued that because sugar and HFCS are not like products, the Mexican sugar industry does not have legal standing to request an antidumping investigation (*Inside U.S. Trade*, Aug. 29, p. 6). The Corn Refiners Association has also argued that domestic market and financial conditions, not imports of HFCS from the U.S., are causing injury to the Mexican sugar industry and prompting it to demand greater access for its product in the U.S.

"Since the beginning of this investigation, the U.S. corn refining industry has been a scapegoat to efforts by the Mexican sugar industry to force a reopening of NAFTA," Corn Refiners Association President Charles Conner said in a September 5 statement. "Today's decision by USTR demonstrates that the United States remains committed to enforcing the free and fair trade provisions of the WTO and NAFTA and will defend our right to compete in the Mexican market."

A Mexican embassy spokesman stressed that Mexico has only made a preliminary finding of injury and imposed preliminary duties on U.S. exports. Mexican authorities are still seeking to hear both sides of the issue, and the main interest of Mexico is to solve the dispute in the "best way possible," he said.

Mexico imposed preliminary antidumping duties on imports of U.S. HFCS on June 25. The additional charges per metric ton amount to "a 102.2% dumping tariff for grade 42 fructose and a 61.1% tariff for grade 55 fructose," according to the USTR release. Sweeter varieties of HFCS are designated by higher grade numbers.

The request for WTO consultations was made Sept. 4, and the consultations are expected to be held within 30 days, according to USTR.

HOUSE DEMOCRATS PRESS CLINTON TO HEED PARTY CONCERNS ON FAST TRACK

Several House Democrats this week called on President Clinton to ensure that his proposal for renewing fast-track negotiating authority reflects a position on labor and environment that can be supported by Democrats. These members pressed Clinton on fast track as the Administration delayed the introduction of its legislative proposal, which last week appeared to be leaning in the direction of congressional Republicans who want labor and environment excluded from the bill.

Rep. Jim McDermott (D-WA) met with the Administration early this week to emphasize that any fast track proposal "needs to have a strong Democratic face" to attract support from enough House Democrats, according to a congressional source. McDermott made these points "in general" and did not press for specific provisions, the source said.

"The subtext of all this is that [the President] needs to pay more attention to the [Democratic] caucus," one congressional source said.

Rep. Benjamin Cardin (D-MD) wrote Clinton on Sept. 5 to call for a proposal that would allow labor and environment provisions to be "essential parts of future trade agreements," and enforceable through trade sanctions. Cardin, who sits on Ways & Means and supported the North American Free Trade Agreement and the Uruguay Round, said such a formulation would help secure a majority of Democrats.

Rep. Bob Matsui (D-CA) said on Sept. 8 that fast track supporters will need to convince "70-80 Democrats when all is said and done." When fast track was extended in 1991, 91 of 268 Democrats supported it. With 207 Democrats in the House now, 70-80 of them would be close to the same percentage of the caucus, Matsui pointed out.

At the same time, Matsui admitted that fast track supporters will face a tough battle to secure enough votes, since the "universe" of members who might support it is "in the 80 range."

A ~~preliminary~~ vote count in August showed that 12 Democrats are currently solid fast track supporters: Matsui, McDermott, Jim Davis (D-FL), Ellen Tauscher (D-CA), Marion Berry (D-AR), Lee Hamilton (D-IN), Ken Bentsen (D-TX), Norm Dicks (D-WA), Cal Dooley (D-CA), Charlie Stenholm (D-TX), Anna Eshoo (D-CA) and John Tanner (D-TN).

The count also showed 11 Democrats "leaning" in favor of fast track at that time.

Tauscher has urged House Democrats in a Sept. 5 dear colleague letter to back "free trade, promote workers' rights, protect the environment." She is proposing a draft letter to President Clinton that would express support for fast-track and urge consideration of labor and environmental issues outside trade agreements. The draft letter says expanded trade with fast-track creates a unique opportunity to address labor and environmental issues. "We trust and anticipate that the Administration will actively use this leverage wherever it may be reasonable and effective," the draft said. "We hope that expanded trade relations will spur the creation of parallel institutions to address broader labor and environmental concerns."

At the same time, Reps. Dennis Kucinich (D-OH) and Alan Boyd (D-FL) have circulated a letter with 14 other House Democrats who say they will oppose fast track because of what they charge are the disastrous effects of NAFTA. Also signing the letter were William Delahunt (D-MA), Nick Lampson (D-TX), James McGovern (D-MA), Rod Blagojevich (D-IL), John Tierney (D-MA), ~~Bill Pascrell (D-NJ)~~, Danny Davis (D-IL), Lynn Rivers (D-MI), Debbie Stabenow (D-MI), Julia Carson (D-IN), Ted Strickland (D-OH), Bob Weygand (D-RI), James Maloney (D-CT) and Steve Rothman (D-NJ).

House Commerce Committee Chairman Tom Bliley (R-VA) this week urged President Clinton to work closely with his panel in the fight for fast-track, which he said should be limited to trade issues of market access and non-discriminatory treatment. Environmental and labor policy decisions can best be made through the appropriate legislative processes subject to regular procedures, Bliley said. "I would like to urge you to work closely with the Commerce Committee, which is charged with jurisdiction over interstate and foreign commerce," he said. "It is important that any fast-track proposal contain appropriate provisions for consultations with committees of jurisdiction."

Separately, Republican opponents of fast-track this week sought support for their position. Reps. Jack Quinn (R-NY) and Duncan Hunter (R-CA) circulated a "dear colleague" letter on Sept. 10 which called on members to oppose fast track because a "bitter debate" on this issue would "throw us off the positive message we are trying to convey" to voters. "Our members do not want to go home to face charges that they have embraced a failed policy," they said.

MATSUI SEES POSSIBILITIES FOR INCLUDING AFRICA BILL WITH FAST TRACK

Rep. Bob Matsui (D-CA), the ranking member of the House Ways & Means trade subcommittee, this week said that a bill to expand trade between the U.S. and sub-Saharan African countries could be packaged with legislation renewing fast-track negotiating authority. But Matsui cautioned that such a move would have to help pass fast track, and should be taken only if other ways to pass the Africa bill cannot be found.

"If it actually helps pick up votes, and if it is the only way we can move the Africa bill in the next month and a half, and if it doesn't detract from fast track, I would definitely support" packaging the two bills, Matsui told reporters on Sept. 8.

Matsui said he does not think that packaging the two bills would harm the effort to pass fast-track legislation, but emphasized that the move would "definitely have to pick up votes" in order to be considered. He added that an attempt to package the two would have to come from "within the committee" for it to be successful.

At the same time, congressional and industry sources cautioned that packaging the two bills would present the Congressional Black Caucus with a difficult choice about whether to support it. Ways & Means Ranking Member Charles Rangel (D-NY) has opposed the move because CBC members want to support the Africa bill but are reluctant to commit to supporting fast track.

Ways & Means Chairman Bill Archer (R-TX) last week declined to commit to attaching other legislation to fast track, though trade subcommittee Chairman Phil Crane (R-IL) said he wanted to package the two bills, as well as a third giving Caribbean countries the tariff preferences of the North American Free Trade Agreement (*Inside U.S. Trade*, Sept. 5, p. 1).

Standing in the way of passing the Africa bill in any form is a continuing dispute between the Clinton Administration and congressional sponsors of the bill, which includes Crane and Rep. Jim McDermott (D-WA). The Administration wants the bill to grant unlimited access for sub-Saharan textile and apparel products only if they use fabric cut and formed in the U.S. -- a so-called 807a program. Crane has backed the opponents of such a provision, who have argued that prohibitive transport costs to Africa make it unworkable (*Inside U.S. Trade*, June 13, p. 24).

Moving the Africa bill would also require supporters to find funding offsets, because its provisions would reduce customs collections, an industry source pointed out. The Crane bill would eliminate from the list of products exempt from the Generalized System of Preferences textile and apparel imports from sub-Saharan countries. Making these products permanently duty-free would reduce tariff revenue, requiring an offset in the bill.

Since the revenue reduction would be permanent, budget rules would require the two houses of Congress to find offsets for a longer period of time. House rules would require a five year funding provision, while the Senate would need to find ten years of funding, one source said. GSP provisions related to the sub-Saharan region would in any case have to be extended "for the long term" for them to be commercially meaningful, one industry source said.

If Congress moves to address GSP in the context of trade with Africa, the industry GSP Coalition will make an "all out effort" to extend the entire GSP program along with fast track, an industry source said. The budget bill included a 15-month extension, but the coalition would seek an addition 18 months, the source said.

In a related development, a study by the International Trade Commission released late last week concluded that granting sub-Saharan countries duty- and quota-free access would have a "modest affect" on U.S. producers, according to a Sept. 4 press release. The effect of the Crane bill would be to reduce by 0.1 percent domestic producers' shipments and have a "negligible" effect on textile producers, according to the statement.

Only seven of the 48 sub-Saharan countries currently participate in the global textile and apparel market and would be in a position to compete in the U.S. Nine others have the potential to do so, the ITC said.

U.S. imports from these countries grew by an annual average of 18.8 percent during 1991-96 to $383 million, less than one percent of total imports of these goods. The Crane bill would allow imports from the sub-Saharan region to grow "between 26.4 and 45.9 percent" and the "net welfare" to the U.S. economy would be "between $47 million and $96 million," the ITC said.

In addition, the ITC said it is unclear how much foreign direct investment would be attracted to sub-Saharan Africa if the Africa bill were passed. "However, new investment in SSA resulting from preferential access to the U.S. market would likely be in the apparel sector," it said. Entry barriers for the production of apparel are generally lower than those for textiles in terms of capital and infrastructure requirements, the ITC said.

JAPAN-CHINA WTO MARKET ACCESS PACKAGE CUTS INDUSTRIAL, FARM TARIFFS

A preliminary market access package struck between China and Japan last week would lower the average Chinese tariff from about 47 percent to roughly 18 percent for about 3,600 items, according to government officials. This includes significant tariff reductions for autos and textiles, they said.

The negotiated tariff reduction for agricultural products would cut tariffs for 120 products from about 50 percent to 18.1 percent, the officials said.

As part of the package, China is offering to phase out non-tariff barriers, such as quotas and licensing arrangements, over two to eight years, officials said. The longest phaseout period would apply to the automotive sector, they said.

The package was struck as a "framework" towards a market access agreement on the eve of Japanese Prime Minister Ryutaro Hashimoto's visit to China on Sept. 4 (*Inside U.S. Trade*, Sept. 5, p. 4). It does not include services concessions, but China did promise to make a substantial services offer soon.

Japan and China also reached agreement on the size of initial quotas and on a growth rate between 10 to 15 percent, officials said. This growth rate is progressive and will increase in the later years of the phaseout period, they said.

Regarding standards and certification, the two sides agreed that China would change its dual inspection system for foreign and domestic products. "We think we have commitments from China on unifying the two systems," one official said.

In a related development, the U.S. and China will discuss services issues in their bilateral WTO accession talks next week in Beijing, according to U.S. officials. The talks are likely to cover a range of WTO accession issues, and follow a U.S.-China session on agricultural concessions.

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HAYES DEFENDS NEGOTIATION OF CHINA TEXTILES AGREEMENT TO SENATE

Chief U.S. Textiles Negotiator Rita Hayes this week defended herself against press reports that charged a Hong Kong businessman who has contributed money to President Clinton was allowed to influence and may have benefitted from the negotiation of a bilateral textiles agreement with China earlier this year.

In a Sept. 10 Senate Finance Committee hearing on her nomination to be deputy USTR to the World Trade Organization, Hayes stressed that these reports were "not true" and were "maliciously done" in an attempt to scuttle her nomination.

"We brought back a strong deal; some are not pleased," Hayes said in response to a question from Committee Chairman William Roth (R-DE). Despite the fact that there will "always" be opposition to any deal, Hayes said the bilateral agreement with China was "hailed as one of the best agreements" by U.S. textile and apparel companies, retailers, importers and consumers.

Hayes also said it was "very discouraging" to her that three recent magazine and newspaper articles about the January negotiations were printed just weeks before her nomination hearing.

"I tried to be very transparent and very open and accessible to everybody when I was doing this agreement," she said. "And if you will let me say before I start, the people who had the most influence on me... on this textiles and apparel agreement were the textiles and apparel workers here in the United States." She said she also listened to groups representing importers and retailers as well as producers.

Hayes denied allegations in press reports that she revealed specific details of the negotiations to interested industry sources, and said she gave only general "snapshots" of how the talks were proceeding. Hayes added that while she had met and shared a limousine with a Hong Kong businessman, she had no knowledge of his background at the time and did not reveal the status of the talks to him. Recent press reports have said the businessman has contributed money to President Clinton.

Roth pointed out at the hearing that one article said the president of a U.S. textile manufacturing company that has benefitted under the agreement is the wife of White House Chief of Staff Erskine Bowles. But Hayes said that connection was not relevant and that she was never contacted by Bowles during the talks.

In February, Hayes negotiated an agreement governing China's access to the U.S. market as well as a market access deal for U.S. exports to China (*Inside U.S. Trade*, Feb. 7, p. 7 & 9). China agreed to reduce tariffs on a selected list of products beginning in 1998, and also agreed not to increase non-tariff barriers to U.S. textiles.

Hayes received support for her nomination from Senate Armed Services Committee Chairman Strom Thurmond (R-SC) and Sen. Ernest Hollings (D-SC), both of whom introduced her to the committee. She was also supported by Sens. Patrick Moynihan (D-NY) and John Breaux (D-LA). No senator explicitly said he would oppose her nomination.

Hayes told reporters after the hearing that she is confident she will be confirmed by the Senate. The Finance Committee did not vote on her confirmation this week, but also failed to act on other pending nominations. The committee will consider her nomination once Hayes has satisfactorily answered the questions posed by members following her hearing and when it has the necessary quorum, according to a Finance Committee spokeswoman. Members posing questions were Roth and Sen. John Chafee (R-RI).

Given that the committee will meet repeatedly in the coming weeks, it should not take very long to approve Hayes nomination, she said. In a related development, the Chairman and the ranking member of the Senate Governmental Affairs Committee said this week they were not looking into the reports surrounding the Hayes nomination.

Regarding her duties as USTR's ambassador to Geneva and the World Trade Organization, Hayes said she would work to ensure that WTO members adhere to their Uruguay Round commitments, and that the U.S. will be "on their case" until the agreement is fully implemented. She stressed that 11 million American's owe their jobs to trade, and that the U.S. must therefore ensure that negotiated rules are being respected.

"We believe an aggressive approach to enforcement produces results that will echo far beyond any single case," she said in her testimony. "Those results demonstrate to all nations that the WTO can be a fair and effective means of dispute settlement. They tell other nations that the United States will not allow a binding pledge of trade commitments to be treated as a dead letter."

Another goal is to expand trade, which can be done once fast-track trade negotiating authority is granted to the President, Hayes said. In addition, the U.S. will have to focus on upcoming WTO negotiations regarding financial services, as well as the built-in WTO agenda that covers services and agriculture and non-tariff barriers. These include technical barriers to trade, customs valuation, rules of origin, government procurement, and state trading.

Along these lines, Sen. Charles Grassley (R-IA), who chairs the Finance subcommittee on international trade, asked Hayes how she might argue for greater transparency in WTO proceedings given her former role as chair of the Commerce Department's Committee on the Implementation of Textiles Agreements. That body, Grassley said, is "not transparent."

Grassley also asked whether Hayes could occasionally release a list of U.S. priorities or make meeting minutes available once in Geneva in an effort to avoid future allegations that the U.S. looked after certain interests during negotiations.

In response, Hayes pledged to continue to publicly brief the U.S. industry on the status of negotiations, and also added that no one has ever asked to see minutes from CITA meetings.

On other issues, Hayes assured Roth that the Clinton Administration is working to resolve the European Union ban on about $50 million worth of U.S. poultry. She noted that USTR and Department of Agriculture officials were in France this week on this matter.

The EU implemented this ban after the two sides failed to agree that U.S. poultry processing methods were safe for human consumption. In response, the U.S. implemented a ban on about $1 million in EU poultry products, to which the EU responded by requesting WTO consultations (*Inside U.S. Trade*, Aug. 29, p. 5).

Hayes also promised to work with Moynihan and Senate Banking Committee Chairman Alfonse D'Amato (R-NY) on Canadian exports of wool suits to the U.S. The U.S. has complained that Canada is using an existing tariff-preference level exclusively for the export of wool suits to the U.S., rather than for a variety of wool products to the U.S.

Finally, in response to a question from Sen. Kent Conrad (D-ND), Hayes declined to comment in detail on what moves the U.S. might take to slow imports of Canadian grain. Conrad reiterated his argument that wheat imports from Canada have gone over the limit prescribed in a now-defunct tariff-rate quota, and that the U.S. pledged to take action if Canadian imports exceed that level even after the expiration of the TRQ.

Conrad also noted that Commerce officials would be traveling to North Dakota "soon" to begin analyzing industry data, which could eventually be used to begin a formal investigation into claims that Canada is selling wheat in the U.S. at dumped prices. He also said he would send a letter to the Administration on this issue.

Commerce agreed last month to review data on the U.S. industry's claim that Canada is dumping wheat in the U.S. (*Inside U.S. Trade*, Aug. 8, p. 7).

HONG KONG CHIEF EXECUTIVE PLEDGES PREDICTABLE TRADING REGIME

The Chief Executive of the Hong Kong Special Administrative Region this week said China is giving Hong Kong the freedom to set its own economic destiny, and promised that the recent transition of Hong Kong to Chinese rule will not disrupt existing trade and investment relationships.

"The Central Government has given us an entirely free hand in dealing with our own affairs and developing our economic, social and cultural relations," Tung Chee Hwa told U.S. Chamber of Commerce members in a Sept. 9 speech in Washington. "Chinese leaders are committed to letting us shape our destiny under the high degree of autonomy that the Basic Law has given us."

Tung said it is "deeply in China's interest" to give Hong Kong flexibility in presiding over its own affairs because China hopes this concept will serve as a "significant step towards the greater and final objective" of reunifying all of China. "I hope to set a good example for Taiwan," Tung said.

For that reason, he said China will not seek to make any significant changes to Hong Kong's legal system that would undermine trade or the ability to invest in Hong Kong.

"We will be sticking to the free market approach that has brought us prosperity in the past and aiming to improve the competitiveness of our business environment," Tung said. "I can assure you that Hong Kong will continue to manage its economy with the lightest and most steady of hands, sticking firm to free markets, small government, low taxes and fiscal prudence. We want to remain your best partner for business in Asia, the best place to find out what is going on across Asia."

Central to this promise is that the rule of law will continue to be respected in Hong Kong, he said. Tung added that the rule of law "underpins our free market," and that there is "nothing more important" than maintaining the rule of law to keep Hong Kong open and to combat corruption at the highest levels.

"The rule of law is the cornerstone of our success and we will uphold the rule of law by all means," he said. "It is the case now, it will be the case in the future, and I can speak confidently on that."

Specifically, Tung said that under the Basic Law, Hong Kong will remain a separate customs territory, and will be able to protect intellectual property rights, uphold international controls on trade in strategic commodities, and be responsible for upholding international commitments Hong Kong has made.

"Additionally, we will resolutely maintain our conservative and prudent fiscal management style, low and predictable tax structure, as well as a level playing field for all," he continued. "We will continue to encourage the contribution of the foreign community and maintain the characteristics of a leading international city."

Tung also said that the U.S. and China "make a good economic fit," and that Hong Kong will "stand ready" to service trade between the two nations. "We are well placed to develop our role, thanks to the solid foundation Hong Kong has developed over the years in its finances, its civil service and, fundamentally, in the rule of law," he said.

He said it is especially important for China to maintain the current relationship with the U.S. because Hong Kong is the second largest export market for the U.S., and also acts as a gateway to trade with China. Tung pointed out that 50,000 U.S. nationals live in Hong Kong, that over 400 U.S. companies have offices there, and that over 20 U.S. banks and financial services groups in Hong Kong manage over $100 billion in loans, debts and assets. In addition, about 60 percent of U.S. trade with China passes through Hong Kong, he said.

Tung said it is important that China join the World Trade Organization, and that there is "no good reason whatsoever" for China to not be a member. He also said the annual debate in the U.S. over whether China should be granted most-favored nation status has "gone on long enough," and permanent MFN status should be granted to China.

On politics in Hong Kong, Tung said the process of transitioning to democratically elected leaders is moving at a good pace. "The Basic Law provides that further democratic evolution will depend on the wish of Hong Kong people and the overall environment at that time with universal suffrage being the ultimate objective," he said.

Tung this week met with Secretary of State Madeleine Albright and Treasury Secretary Robert Rubin, and was expected to meet with President Clinton and members of Congress by the end of the week.

Tung said his message to Congress and U.S. officials this week would be to explain "how well we've done" in Hong Kong's transition process so far, and that Hong Kong is moving "cautiously" in this process. He also said he would stress to Congress the importance of "good Sino-U.S. relations."

GEPHARDT SEES DELAY OF FAST-TRACK BILL AS POSSIBLE HOPEFUL SIGN

House Democratic Leader Richard Gephardt (D-MO) this week kept up his campaign to convince President Clinton to propose an extension of fast-track trade negotiating authority that would unite the Democratic party, not divide it. The Administration's failure to make good on its long-standing promise to unveil a detailed fast-track proposal may mean it is reexamining whether it should offer a bill that would exclude labor and environmental issues from trade agreements, as congressional Republicans have demanded.

"The delay in sending up a detailed bill is hopefully a sign that a majority of Democrats and their concerns are being heard," Gephardt said in a Sept. 10 press conference. "Democrats want to forge a policy that unites us, not divides us."

He held out the possibility that House Democrats, with the help of Republicans, could garner the necessary 218 votes to approve a fast-track bill that would make labor and environment rules enforceable through trade sanctions. Gephardt has long argued that these issues are as relevant to trade agreements as are the protection of intellectual property rights and capital.

He pointed out that over the years U.S. perception about what is appropriate for a trade agreement has expanded to such issues as market access and now needs to extend to labor and environment.

In his press conference, Gephardt went out of his way not to attack President Clinton and his Administration for its widely signalled readiness to propose a fast-track bill without including labor and environmental issues. "The President and Ambassador Charlene Barshefsky said they agreed with what we are asking -- and I believe they do," he said. "You have to sympathize a little bit with their situation -- they have got a Republican majority that does not want it under fast-track, does not even want to talk about it."

Gephardt said he is telling the Administration that it may win its case for a fast-track with labor and environment in Congress. "We might be at the point where we can convince the majority of Democrats to actually vote for a fast-track that would put both as core treaty requirements," he said. "I think we deserve the opportunity to be able to do that."

Gephardt said he does "sympathize with the Administration's predicament." Has raised the issue of Democratic Party unity with President Clinton personally in recent meetings, and has reached out to Republican House members to discuss the fast-track issue. In a meeting he called this week, five House Republicans attended of the 15 to 20 that were invited, a congressional source said.

Gephardt's conciliatory message to the Administration was also echoed in a Sept. 5 interview with reporters, where he said Barshefsky told him personally that the Administration agrees with his substantive position on fast-track. "She said we agree with you theoretically, we are having trouble agreeing with you tactically," he said.

Republicans control the Congress and control the agenda, he pointed out, and the Administration does not believe that Republicans would bring up a bill that treated labor and the environment in fast track.

Gephardt said that a fast-track bill with labor and environment could pass Congress if supporters of that approach could secure "virtually every Democrat and about 25 Republicans." Under that scenario, the "votes are arguably there," he said.

"I think it is very close, and I think it is arguable that it won't pass the other way," he said.

Gephardt dismissed reports in a State Dept. cable that he had told the President of Brazil in an August visit that President Clinton could ultimately win the fight for fast-track authority without labor and environment provisions. "I have no idea what was said in a diplomatic cable -- what I said to the President of Brazil is that it would be a close battle," Gephardt said. "I did not say the President will win -- I think it will be close."

In his Sept. 10 press conference, which he held with Minority Whip David Bonior (D-MI), Gephardt laid out what he termed the Democratic position. He emphasized the need to have countries enforce their own labor and environmental laws, and emphasized that the U.S. must take steps to ensure an improved standard of living in countries because that will create a market for U.S. products and increase demands for goods. In addition, it would reduce the downward pressure on wages, which he said in a separate interview on Sept. 5 was a larger problem caused by agreements with developing countries than the loss of jobs from companies moving to low-wage countries.

In addition, Gephardt said he wants to address the flow of narcotics to the U.S. and to ensure that the food supply remains safe as trade in agricultural commodities expands. "We must not allow a repeat of the tainted strawberries that jeopardized the health of our people," he said.

Gephardt said in the Sept. 5 interview that he is still trying to find alternative suggestions for a possible solution that is acceptable to the Administration, Democrats and "others."

"One idea is to do Chile alone, give them fast-track for the WTO side agreements they still need to do," he said. "I am even willing to do this without language on labor and environment on their assurance that they are going to get a good treaty with Chile -- which I think they could get."

He said such a step would build confidence that the Administration could strike good trade agreements, which could then be extended to Brazil and Argentina. He said handling these issues in side agreements is not sufficient, as has been shown with the North American Free Trade Agreement. There has been little cleanup at the Mexican border under the NAFTA environmental side accord, and no improvement of labor conditions under the labor deal, he charged. Gephardt pointed out that the hourly wage in the border factories has dropped from $1 an hour in 1993 to 70 cents in 1996.

Gephardt dismissed Administration arguments that failure to pass fast track now would mean a loss of trade opportunities for the U.S. He said that Brazil and Argentina are wrapped up in implementing Mercosur, and are not ready to engage in new trade agreements. Gephardt said this is an impression formed during an August trip to Brazil, Argentina and Chile, where he met with each country's president and relevant ministers.

In addition, it is not "factually correct" to say that these countries would enter into an agreement with the European Union because they ultimately want to trade with the U.S. because it has a large market, and a large middle class. "This is the market of choice of every country in the world," he said. "We are in a dominant position with these countries."

Gephardt said that this opinion is shared by "everybody," including the U.S. companies located in these countries.

Gephardt also highlighted the importance of trade, which he said is good and positive. "We are moving to a global economy," he said. "The integration of countries in the Americas is a good thing to do." But he said the goal has to be making trade as "free," "fair," "easy" and "compatible" as trade is within the U.S.

AGRICULTURE INTERESTS URGE U.S. TO FIGHT AGAINST BROAD EU GMO LABELS

A coalition of almost fifty agriculture firms and associations late last week urged the Clinton Administration to fight against efforts by the European Union to introduce a broad labeling scheme for genetically modified agriculture products. New guidelines proposed by the EU in July could result in a system that requires the separation of bioengineered products from crops that are not bioengineered, the coalition charged in a Sept. 5 letter to the Office of the U.S. Trade Representative.

This could happen even though the EU has spoken out against this principle of segregation, the coalition said.

The letter said that mandatory segregation of modified crops could eventually be required because the EU's guidelines could lead to a labeling regime based solely on evidence of genetically modified organism (GMO) content through documentation and testing, rather than a regime that only requires labeling if a safety issue is involved.

"We are encouraged the document does not call for segregation; however, we are very concerned that it could inadvertently lead to a system, which for all practical purposes requires 'de facto' segregation," according to the letter.

"We urge the U.S. government to remain steadfast in its position that a product should not require additional labeling unless there are scientifically established issues of safety, such as the introduction of a known allergen; a significant change in nutrients or composition; or a change in identity," the letter said. "Foods required to have a label designating the origin or presence of GMOs or GMO derived substances should be evaluated on the basis of substantial equivalence and not simply because they have been derived from a GMO source."

Labeling based on GMO content alone would likely raise unwarranted questions about the safety of these products among consumers, the letter charged. The letter also urged the Administration to pursue harmonized standards and regulations for the sale of GMOs and GMO derived products in international standards-setting organizations, such as the Codex Alimentarius, as well as the Organization for Economic Cooperation & Development.

The EU decided against mandatory segregation in July, when it also issued guidelines for the labeling of GMO products, upon which legislation will eventually be drafted (*Inside U.S. Trade*, Aug. 1, p. 5).

U.S. Industry Letter on Biotechnology

September 5, 1997

The Honorable Peter L. Scher
Special Trade Ambassador for Agriculture-Designate
Office of the US Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Mr. Scher:

The undersigned organizations would like to take this opportunity to comment on the "Broad Orientation for an Extended Community Labelling System for GMO Products" issued by the European Union Commission on July 22, 1997. While many details on how this labeling system would be developed and implemented are not available, we are extremely concerned by the apparent change in policy direction the draft reflects. If implemented, it appears the new system would institute a labeling regime based solely on production and process rather than a science and health-based approach, which would be misleading to consumers. We are encouraged the document does not call for segregation; however, we are very concerned that it could inadvertently lead to a system, which for all practical purposes requires "de facto" segregation.

We urge the U.S. government to remain steadfast in its position that a product should not require additional labeling unless there are scientifically established issues of safety, such as the introduction of a known allergen; a significant change in nutrients or composition; or a change in identity. In these cases the specific change in the subject of a label, rather than the GMO process. Foods required to have a label designating the origin or presence of GMO's or GMO derived substances should be evaluated on the basis of substantial equivalence and not simply because they have been derived from a GMO source.

The U.S. government, as well as the E.U. under Article 8 of the Novel Foods Regulation, recognizes that the use of biotechnology to produce a food or food product does not necessarily change its quality, safety or nutritional composition. Originally, the E.U had approved two GMO crops with no labeling requirement based on a scientific review, which determined they were substantially equivalent to products derived from non-GMO sources.

The E.U. Commission's broad orientation on labeling would appear to replace the above approach with labeling requirements based on evidence of GMO content through documentation, testing or other process related criteria. A change such as this would totally undercut the scientific basis for not requiring labeling of products that are substantially equivalent. Labeling based on GMO content alone, and not sound science, would likely raise unwarranted questions about the safety of these products among consumers. Clarification of the inconsistencies within the orientation of labeling document as well as with previous E.U. policy on labeling of foods derived from GMO sources is critical.

We also encourage the Administration to aggressively pursue harmonized standards and regulations for the commercialization of GMOs and GMO derived products in international standards setting organizations such as the Codex Alimentarius, as well as within the OECD, the various regional trade discussions, including APEC, the FTAA and other bi-lateral consultations. These actions should prepare the groundwork for adoption of global standards permitting unrestricted trade in approved products of agricultural biotechnology in the next round of multilateral trade negotiations under the World Trade Organization (WTO).

We greatly appreciate the priority the Administration has placed on addressing issues and developments affecting the introduction and acceptance of GMOs. If you have any questions or require further information regarding our present concerns, please do not hesitate to contact us.

Sincerely,

AgroEvo USA Company
Agricultural Retailers Association
American Bakers Association
American Corn Millers Federation
American Crop Protection Association
American Cyanamid Company
American Farm Bureau Federation
American Feed Industry Association
American Frozen Food Institute
American Meat Institute
American Seed Trade Association
American Soybean Association
American Sugar Beet Growers Association
Animal Health Institute
Biotechnology Industry Organization
Corn Refiners Association, Inc.
Dow Elanco
Fertilizer Institute
Florida Sugar Cane League, Inc.
Gay & Robinson, Inc. – Hawaii
Grocery Manufacturers of America
Institute of Shortening and Edible Oils, Inc.
Mid-America Dairymen, Inc.
Monsanto Company
Mycogen Corporation
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Broiler Council
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council of America
National Council of Farmer Cooperatives
National Food Processors Association
National Grain and Feed Association
National Grain Sorghum Producers
National Grange
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
Novartis Seeds, Inc.
Pioneer Hi-Bred International, Inc.
Rio Grande Valley Sugar Growers, Inc.
The Sugar Association, Inc.
U.S. Beet Sugar Association
U.S. Chamber of Commerce
U.S. Feed Grains Council
United Fresh Fruit & Vegetable Association

Cc: August Schumacher, Under Secretary for Farm and Foreign Agriculture Services

U.S., JAPAN LAUNCH TALKS ON RENEWAL OF NTT PROCUREMENT AGREEMENT

The U.S. and Japan this week struck an agreement which will allow the two countries to begin negotiations on the renewal of an agreement which seeks to guarantee the transparency of the procurement practices of Japan's largest telecommunications company, Nippon Telephone and Telegraph. The deal ended a stalemate in which Japan had refused to discuss renewal as long as the Clinton Administration blocked applications by NTT and KDD before the Federal Communications Commission to provide service from the U.S. to some European countries.

Though U.S. Trade Representative Charlene Barshefsky said the deal paved the way for the beginning of talks to hammer out an agreement replacing the current one, which expires Sept. 30, a Japanese official cautioned that Japan has given no guarantees that a new agreement can be negotiated.

"Japan is committed to discussing the extension and the concerns of the U.S. regarding the [NTT procurement] agreement," the Japanese official said.

His statements stood in contrast to those made by Barshefsky, who said in a Sept. 8 press release that the U.S. and Japan "have confirmed their mutual intention to reach a final agreement by September 30 so as to ensure no lapse in coverage of NTT telecommunications procurements." She added that the existing agreement has been "instrumental in ensure that U.S. telecommunications suppliers, among the most competitive in the world, have a fair shot to compete for the sizeable and important procurement contracts offered by NTT."

Administration officials were in Japan this week for discussions under the competition policy working group established under the bilateral Framework Agreement. Although their discussions focused on distribution services, USTR official Byron Sigel, who co-chairs the group with Justice Dept. Special Trade Counsel Stuart Chemtob, also discussed the procurement issue, according to informed sources.

Both sides presented proposals this week, according to informed sources. The U.S. is seeking increased transparency in all stages of procurement processes, better access and participation of technical standards, standardization of interfaces to networks, increased transparency in the award of contracts, these sources said.

The two sides are likely to meet regularly in advance of the expiration of the current procurement pact, according to informed sources.

Barshefsky also touted a separate but clearly related agreement that addresses Japan's continuing restrictions on foreign investment in NTT and KDD in the context of the Enhanced Initiative on Deregulation and Competition Policy. But a Japanese official said that Japan has no intention of "unilaterally" dropping these restrictions, and repeated Japan's previous statements that it would do so only if other major countries did so as well.

At the end of the World Trade Organization talks on basic telecommunications services in February, Japan offered to drop the 20 percent limit on foreign investment in NTT and KDD if the U.S. eliminated a provision in U.S. law that limits direct foreign ownership of telecom companies to 20 percent. Barshefsky dismissed this offer following the conclusion of the talks (*Inside U.S. Trade*, Special Report, Feb. 18, p. 1).

The Clinton Administration earlier this year blocked action on NTT and KDD licenses to provide service from the U.S. to the EU in an effort to establish some leverage over Japan in the areas of procurement and foreign investment in NTT and KDD. Since then, Japan has stonewalled U.S. efforts to discuss a renewal of the agreement (*Inside U.S. Trade*, March 14, p. 1 & Aug. 15, p. 6).

FCC International Bureau Chief Peter Cowhey said in a Sept. 8 statement that the Commission would make good on a promise by FCC Chairman during a visit to Japan in July to immediately move forward on considering the applications. Senior Administration officials wrote the FCC this week to formally revoke their March request to block the licenses. Their letter is reprinted below.

Administration Letter on NTT, KDD Licenses

September 8, 1997

The Honorable Reed Hundt
Chairman, Federal Communications Commission
Washington, DC 20554

Dear Chairman Hundt:

On March 9, 1997, an interagency group, coordinated by the Office of the United States Trade Representative and including the Departments of Commerce and State, requested a delay of any action on the four pending applications reforonced in the attachment and subcequent applications under section 214 received from the same parties. We hereby revoke this request.

Sincerely,
Larry Irving
Assistant Secretary
National Telecommunication & Information Administration
Department of Commerce

Jeffrey M. Lang
Deputy United States Trade Representative

Amb. Vonya B. McCann
U.S. Coordinator
International Communications and Information Policy

Department of State

Attachment: List of pending section 214 application from NTT and KDD affiliates

Pending Section 214 Applications That Affect U.S. Trade Policy Interests

ITC-97-047	KDD America, Inc.'s application to provide non-interconnected international private line re sale services between the U.S. and Belgium, France and Hong Kong.
ITC-97-056	NTTA Communications, Inc.'s application to provide facilities-based and resale services between the U.S. and all eligible international points except Japan.
ITC-97-096	KDD America, Inc.'s application to provide resell of public switched services to Belgium, France, Hong Kong, Mongolia and Russia (points where affiliates of KDD America are established).
ITC-97-098	KDD America, Inc's application to provide re sale of public switched services to all interna tional points except Japan, Belgium, France, Hong Kong, Mongolia and Russia (points where affiliates of KDD America are established).
(no file number at this date)	NTTA Communications, Inc.'s application for authority to resale non-interconnected private line service between the United States and Ja pan, filled September 4, 1997.

WTO PANEL FINDS IN FAVOR OF U.S. IN TRIPS DISPUTE WITH INDIA

A World Trade Organization dispute settlement panel last week handed the U.S. a victory in its dispute with India over that country's alleged failure to adhere to the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

Specifically, the panel said the India had not fulfilled its obligations to provide a means of filing patent applications during the 10-year transition period which developing countries enjoy under TRIPs, after which these patents would be recognized by India. In addition, the panel said WTO members had not been adequately notified about a mechanism that India had argued did exist to serve that function.

In a Sept. 5 statement, U.S. Trade Representative Charlene Barshefsky noted that the panel ruled on the first intellectual property rights dispute brought before the WTO, and said the decision will let other WTO members know that the U.S. will be aggressive in enforcing these provisions.

"The panel decision sets an important precedent for enforcement of U.S. rights," Barshefsky said. "It serves notice that all WTO members, including developing countries, must carry out their obligations under [TRIPs]. The message from the panel is clear: for developing countries benefitting from the phase-in of TRIPs obligations, the phase-in period will not be a free ride."

In separate statements, the Pharmaceutical Research and Manufacturers of America (PhRMA) and the Intellectual Property Committee also praised USTR for pushing for and winning the panel decision.

India had not requested an Appellate Body ruling at press time, international trade sources said.

Under the TRIPs agreement, developing countries were given ten years to phase in their obligations to provide patent protection for pharmaceuticals and agricultural chemicals if they do not already. But during that period, they are required to set up a "mailbox" system under which they can receive and date patent applications, and grant patents to those applicants which first filed for them under the mailbox system.

India had argued that it had implemented such a system, and that after it expired India maintained patent applications according to its obligations under the WTO. India also argued that it was not required to make legislative changes in order to carry out this obligation.

But the panel disagreed, arguing that India had not complied with Article 70.8(a) of TRIPs because it had "failed to establish a mechanism that adequately preserves novelty and priority" of applications for product patents.

"We do not agree with India that the transitional arrangements of the TRIPs Agreement necessarily relieve India of the obligation to make legislative changes in its patent regime during the first five years of operation of the Agreement," it said.

Specifically, the panel argued that India's current arrangement poses "a few serious problems." First, without a legislative change, existing law requires India to ignore chemical and pharmaceutical patent applications. Second, even if this law were not followed, it would likely be easy for a domestic competitor to win a court case in which it argued that nothing in Indian law allows the acceptance of foreign patent applications.

For these reasons, the panel found that India was in violation of Article 70.8(a) of the TRIPs Agreement.

"In consideration of the above, we find that the lack of legal security in the operation of the mailbox system in India is such that the system cannot adequately achieve the object and purpose of Article 70.8 and protect legitimate expectations contained therein," the panel report said. "Without legally sound filing and priority dates, the mechanism to be established on the basis of Article 70.8 will be rendered inoperational."

Additionally, the panel found that India was in violation of Article 63 of TRIPs, which deals with transparency, in that it had not notified the WTO of a system which it unsuccessfully argued satisfies its obligations under Article 70.8.

"In our view, the mere existence of such possibility [of filing mailbox patent applications] is hardly sufficient, even if we take into account the fact that economic operators in this area are usually well informed about systems for the protection of their rights," the panel said. "There must be a guarantee that the public -- including interested nationals of other WTO members -- is adequately informed."

The panel also rejected India's claim that since it is allowed a ten year phase in period, it is not required to notify the WTO about its patent regime until the expiration of that period, regardless of when it decides to implement its obligations. Instead, the panel found that India's transparency obligations were activated as soon as it had implemented a regime for collecting mailbox patent applications.

Finally, the panel also found India to be in violation of Article 70.9 of TRIPs, in that it had failed to provide a mechanism for granting patent holders exclusive marketing rights. While those rights will not be able to be exercised until the end of the phase-in period in 2005, the panel recommended that India enact legislation in order to come into current compliance with Article 70.9.

OILSEEDS COALITION LAYS OUT DEMANDS FOR CHINA WTO ACCESSION TALKS

A coalition of oilseeds producers and processors has urged the Clinton Administration to negotiate a market access package with China for its entry into the World Trade Organization that would help the industry achieve the ultimate elimination of trade barriers and export incentives worldwide under its Level Playing Field (LPF) initiative. The LPF is the top trade policy priority of the industry, the American Oilseed Coalition has told the Dept. of Agriculture.

"[W]e would emphasize that, with the next round of WTO negotiations on agriculture scheduled to begin in 1999, it is important for the outcome of the accession negotiations with China to support the LPF initiative," the American Oilseeds Coalition (AOC) said in an Aug. 29 letter to Geoff Wiggins, the director of the USDA Multilateral Trade Negotiations Division. "The outcome of the accession negotiations will establish the basis from which China participates in the 1999 negotiations."

AOC wants all duties for oilseeds and oilseeds products bound at the levels currently applied in China, and argues that no duty on any product be increased above that level as part of the package. Duties in the sector should be eliminated at least by the end of a transition period, the letter said. The agriculture package should establish no tariff rate quotas or quotas for oilseeds and protein meals for which no quantitative restrictions are currently in place, according to the letter.

A TRQ for vegetable oil should be aggregated to include similar and competing oils, with immediately harmonized tariffs for all oils to avoid favoring one oil over another, according to the letter.

The coalition also wants to ensure that state trading rules not be extended to products not now covered, such as oilseeds and protein meals, the letter said. In addition, an increasing percentage of the trade in products that are subject to state trading requirements should be reserved for the private sector, the letter said.

AOC acknowledged that China will need a transition period to open its market, but emphasized that any transitional arrangement allow for import growth. U.S. exports of oilseeds and oilseeds products have increased in recent years, and this trend is expected to continue. "Consequently, it is very important that any TRQ China uses during a transition period accommodate the expected Chinese import growth," the letter said. "The two-year rolling average we have suggested previously would keep the TRQ level more closely aligned with the evolving marketplace than a regime with a fixed TRQ quantity, even if the latter incorporates a growth factor," AOC wrote.

Oilseeds Industry Letter on China WTO

August 29, 1997
Mr. Geoff Wiggin
Director, Multilateral Trade Negotiations Division
FAS, U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 5584
Washington, DC 20250

Dear Mr. Wiggin:

As you prepare for further negotiations with China in its bid to join the WTO, we appreciate the opportunity to provide comments on issues of vital interest to the U.S. oilseeds industry. The following is an update to our previous communications on this subject.

The Global Level Playing Field (LPF) initiative is the top trade policy priority for the American Oilseed Coalition (AOC), which includes the American Soybean Association, the National Oilseed Processors Association, the U.S. Canola Association, the National Cottonseed Products Association, and the National Sunflower Association. It also has the support of the International association of Seed Crushers, which is an active worldwide trade association for the oilseed industry. The LPF initiative calls for the elimination of all trade barriers and export incentives for oilseeds and oilseed products.

In a recent review of the China WTO Accession Negotiations, the AOC reaffirmed its commitment to seeking an outcome that is compatible with the LPF initiative. China is a growing factor in the world markets for oilseeds and oilseed products and has the potential to become a much larger market for U.S. exports. Achieving an outcome in the China WTO negotiations that is compatible with the LPF initiative not only would ensure growing U.S. oilseed and product exports to China, but it also would greatly aid our industry's and the Administration's efforts to achieve a LPF for oilseeds and oilseed products.

The AOC has agreed that the following principles would meet our objective of an open, transparent and predictable regime for the import of oilseeds and products into China. The overriding principles are transparency, nondiscrimination and harmonization. All products in the oilseeds complex should be treated equally.

Our specific recommendations are as follows:

* Duties for all oilseeds and oilseed products in the oilseed complex should be bound at current applied levels, though the duty on soybean meal and other protein meals should be harmonized at a level no higher than the duty on fishmeal. All duties should be harmonized at zero immediately or by the end of the transition period. In no case should the duty on any product be increased above the current applied rate.

* No TRQs or quantitative restrictions should be established for oilseeds or protein meals. No quantitative restrictions are currently in place for these products.

* A TRQ for vegetable oil should only be used as a transition mechanism to tariff-only treatment. A TRQ for vegetable oil should be aggregated to include all similar and competing oils, with immediately harmonized duty rates (within-quota and over-quota) for all oils to avoid providing a duty preference for one type of oil over another. At the end of the transition period the TRQ should disappear.

* The WTO rules on state trading should apply fully to China. State trading should not be extended to products not currently covered by state trading (i.e., oilseeds and protein meals–these commodities were not on the list of commodities subject to state trading previously submitted by China), and an increasing percentage of the trade in products subject to state trading should be reserved for the private sector.

U.S. exports of oilseeds and oilseed products to China have increased substantially in recent years and we expect this trend to continue. Consequently, it is very important that any TRQ China uses during a transition period accommodate the expected Chinese import growth. The two-year rolling average we have suggested previously would keep the TRQ level more closely aligned with the evolving marketplace than a regime with a fixed TRQ quantity, even if the latter incorporates a growth factor.

Clearly, we would like to see an outcome that achieves these objectives as quickly as possible, though we recognize that China will need a transition period in which to adjust its policies. Nevertheless, we would emphasize that, with the next round of WTO negotiations on agriculture scheduled to begin in 1999, it is important for the outcome of the Accession Negotiations with China to support the LPF initiative. The outcome of the Accession Negotiations will establish the basis from which China participates in the 1999 negotiations. In addition, a successful accession outcome will make a significant contribution to the global success of the AOC level Playing Field (LPF) initiative.

Thank you for your continued support for the oilseeds and oilseed products sector. We look forward to working with you as the Accession Negotiations move toward a conclusion.

Sincerely yours,

John Long, Chairman
American Oilseed Coalition

Mark Berg, President
American Soybean Association

Sheldon J. Hauck, President
National Oilseed Processors Association

Joe Anderson, President
U.S. Canola Association

Tim Taylor, President
National Cottonseed Products Association

Vance Neuberger, President
National Sunflower Association

cc: Robert Cassidy, Assistant U.S. Trade Representative for China.

CRANE SAYS NEXT WEEK LAST CHANCE FOR GETTING FAST TRACK THIS YEAR

House Ways & Means trade subcommittee Chairman Phil Crane (R-IL) this week said that "next week is the latest" opportunity for the Clinton Administration to submit legislation to renew fast-track negotiating authority and still expect congressional action this year. Once introduced, a bill structured in a way that could garner the support of most Republicans could pass the House in as short a time as "two weeks," Crane said at a Sept. 9 meeting of the Brazil-U.S Business Council.

This week's decision by the Administration to delay the bill makes passage "increasingly dicey," but "I still think it's doable," Crane said. The Republican leadership is already considering pushing back the House adjournment date from the original mid-October goal to perhaps as late as Thanksgiving. The scenario is complicated by the Republican congressional leadership's focus on passing a wide variety of appropriations bills before the Oct. 30 end of the fiscal year, he added.

Crane also warned that if the Administration were to adopt an approach that allows for an expansive incorporation of labor and environmental issues in fast-tracked trade pacts, it runs the risk of losing the "more than 140" pro-trade Republicans who are certain to back fast track if it has a limited application to those topics.

JAPANESE FIRM CONSIDERING LAWSUIT AGAINST FCC ACCOUNTING RATE RULE

A major Japanese telecommunications company is "seriously considering" bringing a lawsuit against a regulation approved last month by the Federal Communications Commission aimed at lowering the cost of international calls, according to an informed source. KDD, which handles the vast majority of international calls to Japan, has prepared a case which would charge that the FCC has overstepped its jurisdiction by seeking to affect the operations of foreign carriers, this source said.

"The FCC has appointed itself global telecom regulator," a source close to KDD said. The Commission is "essentially telling foreign carriers what price they can charge" to complete international calls, the source said.

The so-called "benchmarks" rule approved by the FCC on Aug. 29 sets limits on the accounting rates which U.S. companies can pay to foreign carriers to complete international calls originating in the U.S. The rule was sought by U.S. carriers in exchange for their support for the February agreement on basic telecommunications services in the World Trade Organization.

U.S. companies pressed for the rule because they feared that foreign carriers operating out of closed markets would establish operations in the U.S. and undersell them by circumventing the accounting rate system. U.S. firms received explicit assurances from the Clinton Administration that it would defend the rule against any challenge in the WTO (*Inside U.S. Trade*, Feb. 21, p. 1).

Under U.S. law, a court challenge can be brought against the FCC action within 60 days before the U.S. Court of Appeals, making Oct. 28 the last possible day on which KDD could file the suit, an informed source said.

The FCC has argued that the benchmarks rule falls squarely within its jurisdiction because its regulations require U.S. carriers not to enter into any agreement to pay accounting rates higher than the benchmarks which it sets, and informed source pointed out. Under the regulation, these benchmarks are intended to be transitional measures until telecom carriers reach the point where they can negotiate accounting rates based on the actual cost of completing international calls.

KDD is prepared to argue that the effects of the rule fall primarily on foreign carriers outside the FCC's scope of authority, even if the rule acts through U.S. companies, an informed source said. The accounting rate is a payment per minute of phone time to foreign carriers who take a call from the U.S. and route it to an end user in another country, the source pointed out.

But another source argued that there is longstanding precedent in U.S. case law, dating back to the international use of the telegraph, that the FCC has jurisdiction to regulate these charges.

The KDD lawsuit would also address "administrative issues" regarding the benchmark rule, an informed source said. For example, the lawsuit would charge that the FCC does not have the proper data to calculate the benchmarks that will substitute for the existing accounting rates.

In a related development, the European Union late last week outlined its objections to a separate proposed regulation implementing the provisions of the WTO agreement related to satellite communications services. In particular, the EU objected to a part of the regulation which would replace the so-called "effective competitive opportunities" test (ECO-Sat) for licensing foreign satellite service providers in the U.S.

Under the proposed regulation, which the FCC published on July 17, a U.S. company could block the license of a foreign carrier to provide service in the U.S. if it could demonstrate that granting the license would pose a "very high risk to competition" in the U.S. market. "Such an approach would erect additional burdens for foreign companies wishing to enter the U.S. satellite market, which would be subject to challenges by their competitors based on unclear conditions and criteria," the EU wrote in a Sept. 5 demarche.

The EU also took aim at an exemption to the most-favored nation principle which the U.S. included in its offer at the very end of the WTO telecom talks in February. That exemption will allow the U.S. to discriminate in the areas of direct-to-home (DTH) and digital broadcasting (DBS) services. The EU charged at that time that the exception violates WTO rules (*Inside U.S. Trade*, Special Report, Feb. 18, p. 1).

In last week's demarche, the EU offered a detailed rebuttal of the U.S. position that DTH-DBS services were never covered by WTO disciplines, and that the U.S. had the right to exempt them in the telecom talks. Because the U.S. included such services in its Uruguay Round commitments without excluding a particular technology, the MFN exemption this year is impermissible under WTO rules, the EU argued.

EU SIGNALS FLEXIBILITY IN DISPUTE OVER FUR TRAPPING STANDARDS

The European Union last week offered a flexible approach to resolving a long-standing dispute with the U.S. over fur-trapping standards, EU sources said this week. Negotiators from both sides met in Washington Sept. 2-3, and were expected to continue talking this week, according to a U.S. trade official.

Sources have said the two sides are stuck over EU demands that a specific set of steel-jawed leghold traps that it considers to be inhumane be automatically phased out over a period of three years, and that they not be measured against a series of negotiated "humane" standards. In contrast, the U.S. has insisted that these traps be measured against those criteria as all other traps would be, and that they should be phased out only if they fail to measure up.

As a compromise, the EU last week proposed a flexible phase out period, which could involve varying phase-out periods for steel jawed traps depending on the species of animal they are designed to trap, an EU source said this week. The source declined to comment on the specifics of the EU proposal, and said only that the EU is "very flexible" in this area.

Despite this flexibility, EU sources this week stressed that the idea of phasing out a certain set of leghold traps is an "important principle" that it must insist on.

State fish and wildlife officials met last weekend and "further refined" the proposals discussed last week, according to a U.S. official. The U.S. and EU are planning to conclude an "agreed minute" under which the U.S. will only be required to undertake efforts to ensure the deal is followed by state officials. This compromise was reached after the U.S. insisted that states were the authority for trapping issues, and that the U.S. would not interfere with that authority (*Inside U.S. Trade*, July 11, p. 6).

The U.S. official also said the U.S. was expected to provide a "more formal proposal" to the EU this week. The U.S. and EU have been trying to negotiate an agreement that would effectively exempt the U.S. from a threatened EU ban on fur caught with steel-jawed leghold traps, which the EU considers to be inhumane.

Meanwhile, the EU took another step toward implementing this ban on fur caught with leghold traps last week when it printed a list of countries that will be eligible to continue exporting furs to Europe after the ban takes effect. "Because we don't have an agreement, the U.S. is not on that list," the U.S. official said.

As the list was printed Sept. 5, the ban will take effect Dec. 5, EU sources said this week. If the ban takes effect, Canada and Russia, which have both reached a trapping agreement with the EU, will be allowed to continue to export furs to the EU (*Inside U.S. Trade*, Aug. 1, p. 6).

SENIOR USTR OFFICIAL SAYS ACCESS FOR BIOTECH EXPORTS ARE U.S. PRIORITY

A senior U.S. trade official last week vowed that the U.S. would fight barriers to exports of its bioengineered agriculture products, in whose development the U.S. is a world leader. The U.S. must ensure that policies governing trade in bioengineered products with Europe and other regions are not used to erect barriers, Special Trade Negotiator for Agriculture Peter Scher told the Senate Foreign Relations Committee September 4.

The U.S. will also make the elimination of restrictions on genetically modified foodstuffs a priority in the upcoming World Trade Organization negotiations on agriculture trade, he said. Scher testified before the committee in a hearing on his promotion to ambassador rank.

"We must ensure, without any question, that any consumer and policy debate in Europe or elsewhere about the safety and benefits of biotechnology is one based on sound science and that any policies adopted do not reduce market access for U.S. agriculture," Scher told the committee in his prepared statement.

Scher indicated that the U.S. sees the issue of bioengineered goods, including foodstuffs containing genetically modified organisms, as going beyond economics. "Our ability to market goods developed with biotechnology is more than just an economic issue," he said. "It is a humanitarian issue, it is an environmental issue, and it is an issue of global security."

Biotechnology is one of the world's best defenses against deforestation, land erosion, and depletion of water supplies, according to Scher. But such progress could be endangered by market access restrictions that block bioengineered products, he said.

Citing food safety concerns, the EU has sought to restrict imports of genetically modified crops, including U.S. genetically modified grains. Scher noted that the U.S. will continue to "work with" the EU over the next few months as well as with U.S. industry to ensure that new labelling requirements for goods containing genetically modified organisms are implemented "in a way based on science and a way that doesn't impede our exports."

Scher added that the U.S. is seeking "to ratchet up the attention" for trade in bioengineered goods within the Asia-Pacific Economic Cooperation forum, "where we feel we have more support than we've received in Europe."

In addition to biotechnology, the U.S. wants the upcoming WTO negotiations on agriculture to address state trading regimes, sanitary and phytosanitary barriers, subsidies and high tariffs, he said. The negotiations are set to begin in 2000.

"Our job must be to ensure that American farmers are not the only ones playing by market rules," he told the committee.

Scher indicated that existing Administration working groups' preparations for the negotiations are still in their early stages, however. "I do think we have to increase our efforts within the administration to coordinate our approach and our goals for that round in 1999," he said. "I will say that the first step from our perspective is gaining new fast track authority for the President."

To address state trading practices in the agriculture sector, the U.S. must also raise its complaints in the various WTO accession negotiations, including those with China, Russia and Taiwan, according to Scher. "My view...is that we need to use these accessions -- the desire of these countries to be a part of the WTO,...to ensure that we get reforms in how these enterprises work," he said.

Scher also reaffirmed the Administration position that it cannot support Chinese accession to the WTO until China adheres to its commitment to base its agricultural import standards on "sound science."

On bilateral issues, Scher acknowledged that the U.S. is considering options to open the EU poultry market to U.S. exports, despite EU food safety concerns over U.S. poultry processors' use of chlorine as a decontaminant. He also committed himself to push Russia to resolve problems with its inspection and certification of U.S. poultry processors authorized for export.

He also said the U.S. would keep the pressure on the Philippines to open its market for pork as negotiated in the Uruguay Round, and said the Administration had informed the Philippine government that it will proceed to formal WTO dispute settlement if no solution were found by the beginning of September. In addition, he said that the U.S. is going to start this month a formal decision making process to determine whether the country's benefits under the Generalized System of Preferences should be removed.

Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) indicated his support for Scher's designation to the rank of ambassador for the position of agriculture negotiator. Helms noted that USTR earned his support of the grade change by allowing no net increase in the number of USTR posts carrying ambassadorial rank.

EU OPINION FAILS TO SETTLE TALLOW FIGHT . . . begins page one

products safety inspection regime as equivalent under the agreement, he said.

"The fear is that the veterinary equivalency deal collapses, which we thought we agreed to," he said. But U.S. and EU officials acknowledged that the Commission still has to interpret the opinion. "It is clear that it's not clear," an EU official said. Other officials from both sides agreed that the opinion is "cloudy" and "confusing."

The EU Commission's Scientific Steering Committee (SSC) released its opinion, reprinted below, after a Sept. 8 meeting in Brussels. The opinion is not binding unless the Commission decides to act upon its recommendation.

The opinion said that the transmission of BSE in semen has "neither been proven nor refuted," but said such a possibility cannot be excluded. Further, it noted that the chance of BSE being transmitted from the mother to the calf "must be considered as a definite probability."

In a nomination hearing before the Senate Finance Committee this week, Chief Textiles Negotiator Rita Hayes said Department of Agriculture officials were in Europe this week to discuss the veterinary deal. The agreement was struck earlier this year under the threat of U.S. trade sanctions (*Inside U.S. Trade*, May 2, p. 1).

U.S. officials also said it is unclear whether the Commission will use the SSC opinion to relax or tighten its controversial prohibition on the use of tallow that may contain specified risk materials (SRMs), which run the risk of carrying BSE. The current list of SRMs includes brains, spinal cords, heads and spleens.

That prohibition applies under the so-called cosmetics directive, which will effectively block over $100 million in U.S. tallow exports to the EU, as well as items made from tallow such as cosmetics. Similar requirements were set forth in a July 31 EU decision, which would also affect gelatin and products containing gelatin, such as pharmaceuticals, and is scheduled to take effect Jan. 1, 1998.

The U.S. had hoped that the Sept. 8 opinion would recommend that tallow derivatives that contain SRMs, processed under certain heat and pressure conditions capable of killing any present BSE element, as well as final products made from these derivatives, could be sold in the EU. Such a derogation could allow U.S. tallow and tallow-containing products to continue to be sold in the EU.

Instead, the opinion said only that "the appropriate, validated and scientifically most up-to-date methods, including appropriate sourcing and quality of the raw material, must be used."

U.S. officials said this opinion could result in a Commission proposal to require all tallow derivatives be certified to be free of SRMs. But an EU official said the opinion means tallow derivatives can be used if they are produced under specified heat and pressure conditions.

U.S. officials said the opinion becomes more confusing in its discussion of the production of tallow itself, which seems to add requirements that go beyond the two existing EU measures.

The SSC opinion recommends that certain temperature, pressure and time requirements have to be adhered to in the production of tallow in order to kill any BSE elements present. The opinion said only these guidelines, as prescribed by the International Epizootic Organization in France, can ensure the absence of BSE in raw tallow.

But while the U.S. tallow industry meets similar requirements in the making of tallow derivatives, the industry does not currently produce raw tallow according to these specifications, sources said.

"The U.S. doesn't meet these tallow production requirements because there is no BSE in the U.S.," a U.S. official said. Aside from the difficulty in potentially having to adopt these practices, the official added that these measures would likely change the quality of the tallow, which could have unforeseen consequences.

Aside from these requirements, U.S. officials were unclear what the opinion meant when it recommended that in addition, "an infectivity of the raw material must be reduced to the maximum possible either by sourcing (geographical origin or certification of individual animals) and by avoiding the use of specified risk material." One U.S. official said the meaning of this "either/and" clause is "completely unclear."

However, the opinion also states that the only current safeguard for the production of tallow "is the certified origin of the material from which the product is derived AND an appropriate production process following acknowledged production rules."

The U.S. was also unclear on why tallow derivatives would need to be processed under certain conditions capable of killing BSE if raw tallow was also required to be processed in a similar way. "It doesn't make sense," one U.S. official said. "If [raw] tallow is clean, why clean it again [in the production of tallow derivatives]?"

An EU official said the Commission is likely to consider the SSC opinion "in the next days or weeks." While the SSC was also scheduled to form an opinion on whether to expand the list of SRMs and whether SRMs from young animals should be exempt from the EU requirements, sources said no opinion was reached during the Sept. 8 meeting (*Inside U.S. Trade*, Sept. 5, p. 14).

Meanwhile, the U.S. is also pressing for the EU to grant it BSE-free status, which would allow exports of U.S. gelatin and gelatin-containing products to continue to be sold in the EU. The Scientific Veterinary Committee, a body under the SSC, is scheduled to discuss this possibility in a Sept. 16-17 meeting. This designation is required because while tallow derivatives are processed in a way that automatically kills any present BSE element, gelatin is not. Therefore, a BSE-free designation would be the only way to allow gelatin and related products to be sold in the EU.

In addition, the Standing Veterinary Committee, made up of scientists from the 15 EU member states, are also expected to meet in early October to discuss the possibility of granting BSE-free status to EU trading partners.

EU Opinion on Tallow

Opinions adopted during the meeting of 8 September 1997
Multidisciplinary Scientific Committee/Scientific Steering Committee (MDSC/SSC)

On the security of tallow produced from bovine material.

Tallow is a raw material which is used in the food, feed, medicinal and non-food sector. In the light of actual scientific knowledge on BSE, the question is still open if Tallow could transfer the BSE agent to animals (via the feed-chain) or to man (via the food and non-food chain).

To reach a sufficient degree of security when using tallow, it is therefore necessary that either the material used for the production of Tallow is safe, i.e. not infectious, or that the production process used has shown to actual knowledge that the agent is neutralised.

Concerning the raw material it has to be accepted that, as long as no test is available which allows to diagnose non-clinical BSE cases (pre-mortem), the only way of determining that the basic raw material is safe if a procedure as described by the OIE in Chapter 3.4.13 of the OIE International Zoo-Sanitary Code on BSE, is applied.

In cases where the animal material comes from a country of low risk or from a country controlled by epidemiological surveillance, this raw material has to be classified to be suitable for human consumption. In order to minimise a possibly remaining risk of infectivity of the raw material those parts of the animals which are supposed to carry a high level of infectivity (= the Specified Risk Material SRM, as

continued on next page

defined in the corresponding opinion) shall be excluded from the production of tallow.

A third safeguard is a transformation process. So far it was accepted that no infectivity could be found after exposing even infected material over 20 minutes to a temperature of 133°C at 3 bar or an equivalent method with demonstrated efficacy. However, during the International Meat and Bone Meal Conference held in Brussels on 1 and 2 July 1997, it was not excluded that under worst case conditions, traces of infectivity could remain. This implies that the only safeguard at present is the certified origin of the material from which the product is derived AND an appropriate production process following acknowledged production rules.

Keeping in mind the remaining scientific uncertainties the SSC therefore recommends that in all cases the process "133°C, 3 bar, 20 minutes or an equivalent method with demonstrated efficacy" is to be applied, and that an infectivity of the raw material must be reduced to the maximum possible either by sourcing (geographical origin or certification of individual animals) and by avoiding the use of specified risk material.

On the security of tallow derived products

Concerning tallow derived products, the appropriate, validated and scientifically most up-to-date methods, including appropriate sourcing and quality of the raw material, must be used. Several amongst them have been listed in the scientific opinion of the SCC of 24 June 1997 and in the opinion of EMEA of 16 April 1996.

On semen and embryos

The transmission of BSE by semen has neither been proven nor refuted. Lacking appropriate data based on satisfactory experimental studies or on proper epidemiological analysis, such a possibility cannot, however, be excluded with certainly either.

On the other hand, BSE can vertically be transmitted from the mother to the calf. Maternal preference of transmission has been known to occur in the case of other TSEs, particularly scrapie. This observation coupled with the experimental transmissibility of scrapie indicates that the transmission of BSE by potentially infected embryos must be considered as a definite probability.

Therefore, in order to avoid further spreading BSE to hitherto unaffected herds or countries, the freedom of both paternal and maternal donors of germ cells from this disease must be ascertained. Could such an assurance not be obtained, the trade in semen and embryos cannot be recommended.

On Maternal transmission

Taking into account the most recently available published and non published scientific documentation, the MDSC/SSC, during its meeting of 8 September 1997, supported the general conclusion from preliminary reports on the results of the BSE Maternal Cohort Study, that maternal risk enhancement is likely to exist. The overall magnitude is estimated at 5 to 15% (95% confidence limits), but with an increased risk in the months before and after the date of clinical onset in the dam. This effect is likely due to some form of direct maternal transmission, although differences in genetic susceptibility cannot be excluded.

Contrary to initial conclusions that maternal transmission does not prolong the date at which the last new case of BSE might be expected, recent results suggest that the duration of the epidemic could be extended by a number of years. The exact number of years can presently not be estimated, as only limited simulation have been reported on. In this context, it would be relevant to analyse, from larger simulation studies, the distribution of extreme values of latest date of appearance of clinical cases. However, the MDSC/SSC supports the thesis that, in the absence of any feed borne infection and horizontal transmission, vertical transmission alone, even at a much higher rate than presently estimated, can not maintain the epidemic.

SENATE DEMOCRATS STIR INTERNAL ADMINISTRATION DEBATE . . . begins page one

attract enough Democrats in both houses while maintaining the support of the Republican leadership, the Administration official said. Congressional Democrats' input on this point has prompted further discussion within the Administration about how to achieve this goal, the official said.

Introduction of legislation before a Sept. 17 hearing of the Senate Finance Committee remains "the objective" but this date has not been nailed down, even though U.S. Trade Representative Charlene Barshefsky told a business group this week that a bill would be introduced before then, an Administration official said.

Fast track was the topic of a "principals" meeting yesterday (Sept. 11) including Barshefsky, White House Chief of Staff Erskine Bowles, Secretary of Commerce William Daley, Assistant to the President for Economic Policy Gene Sperling and Assistant to the President for International Economic Policy Dan Tarullo, the official said. The effort to hammer out an Administration proposal is a "dynamic process" that will require additional cabinet-level meetings before legislation is sent to Congress, the official said.

Daschle has asked the Administration for a Statement of Administrative Action (SAA) from the President which would "lay out how he intends to negotiate," Finance Committee member Sen. Bob Kerrey (D-NE) said on Sept. 10. An SAA submitted with fast track would outline what the President intends to do in the areas of labor, environment, "corrections," and "consultations," and "currency fluctuations," he said.

"[M]embers very much involved with these [trade] negotiations over the years...are of the opinion that consultations have not occurred...in a meaningful way," Kerrey said.

Daschle told reporters that labor, environment and agriculture are "very high on our priority list and need to be included in the fast track debate," but the Administration has not made clear how it will address these issues, he said on Sept. 10. He said that Senate Democrats are "willing to be pragmatic" since Republicans control Congress but want to go "as far as we can" in dealing with Democrats' concerns.

"Our hope is that they will be substantively responsive, but we won't be in a position to know that for a couple of days," he said on Sept. 10.

Separately, Sen. John Breaux (D-LA) said he believed fast track has enough support to pass the Senate. "A number of [Senate] Democrats will be in a position to support it, but it is "potentially more of a problem in the House," he said.

"In the Senate, you have probably greater acceptability that environment and labor provisions do not have to be part of the actual [trade] agreement," he said on Sept. 9. He said that labor and environment issues in trade agreements are "almost impossible to negotiate." He said these issues can be dealt with in side agreements along the lines of the North American Free Trade Agreement.

Breaux said Democrats on the Finance Committee have generally been supportive of the Administration's fast track request.

Senators are raising with the Administration the consultation procedures of a fast-track bill that would apply to future trade agreements covered under fast track, Breaux said. He said that Senators want a consultation process that would allow them to make changes in trade agreements that have been initialled, but not signed yet. "[O]ur concern that we have expressed in meetings has been that many times when they bring back an agreement and consult with us, it is already done and finished," Breaux said. "And they cannot get any changes."

Sen. Kent Conrad (D-ND) said this week he has called for a "memorandum of understanding" between the Administration and the Finance Committee on how the consultative process for trade agreements covered under fast track would work.

The fast-track bill should also allow for "corrections" to trade agreements, Kerrey said. Such a provision would allow changes to trade agreements in which "you acknowledge and, in some cases, both sides acknowledge" that a particular point was not intended, he said. Conrad added that the Administration "needs to put its thinking cap on" to figure out how this mechanism would work.

Currency fluctuations and their impact on trade agreements the Administration negotiates could also be addressed in an SAA, Kerrey said. Conrad went one step further, arguing that the Mexican peso crisis demonstrated that currency issues should be included in the negotiating objectives so that U.S. officials can develop rules guarding against currency changes which "materially alter" the value of tariff concessions.

Conrad said he would advocate "as forcefully as I can" the "three C's of consultations, corrections and currency," but conceded he is "skeptic" on the need for fast track.

In a Sept. 10 speech devoted to the importance of negotiating new trade agreements, Clinton highlighted the importance of labor and environment, but said they cannot stand in the way of future trade agreements. He said he has "worked very hard for the last five years to give more and more Americans the tools to benefit from change," but left little doubt that his top priority is to get a fast track bill.

"We have to make sure that all Americans can reap the fruits of the economic growth we have enjoyed as a nation," Clinton said at the White House on Sept. 10. "But we cannot do that by stepping off the path of economic growth."

Sperling outlined in a Sept. 10 press conference the options the Administration has in pursuing labor and environment goals. The Administration could pursue them as part of trade agreements, as side agreements under executive authority, or as part of international pacts on core labor standards, he said. He also highlighted possible initiatives against sweatshop labor and said the Administration could also try to tackle the issue domestically with worker training and adjustment programs.

Barshefsky said at the same press conference that the focus should be less on the actual legislation than on the goals of the Administration. The Administration wants to pursue simultaneously its goals of expanding trade and improving labor standards and promote sustainable environmental development. "There is no legislation we would put forward under which [the President] could not pursue vigorously each of those goals," she said. "The key, the critical element here is the ability of the United States to move forward on all three fronts simultaneously."

Senior Administration officials on Sept. 9 revealed that the Administration would delay the introduction of the fast track bill until next week. Barshefsky and other key trade officials told members of the Business Roundtable that bill language would be introduced in time for a hearing of the Senate Finance Committee on Sept. 17.

Barshefsky, Daley, Special Counselor to the President Jay Berman and Special Envoy to the Americas Thomas "Mack" McLarty told BRT members that the Administration needs to consult further with the Senate before introducing legislation.

Daschle said on Sept. 9 that he had asked senior Administration officials to hear concerns of Democratic senators in the areas of labor, environment and agriculture before introducing the long-promised legislation. House Ways & Means trade subcommittee Chairman Phil Crane (R-IL) told reporters that Barshefsky had told him on Sept. 8 that the Administration did not think it had the 60 votes that would be necessary in the Senate to avoid a filibuster.

Senior officials were scheduled to meet with four separate groups of Senate Democrats on Sept. 9 & 10, informed sources said.

Sen. Jay Rockefeller (D-WV) welcomed the Administration decision to delay, arguing it would help pass fast track if the Administration worked closely with Senate Democrats. "The way to make this work is for them to be open to suggestions," he said. "It is very good that this has been postponed to have a more consultative process."

Finance Committee Chairman Bill Roth (R-DE) and Ways & Means Chairman Bill Archer (R-TX) both welcomed Clinton's commitment to passing fast track but warned that further delay in introducing legislation creates more barriers to success. But Crane warned this week that the introduction of legislation next week represents the "the latest" opportunity for the passage of fast track this year (see related story).

Business groups also offered a muted response to Clinton's speech. Joseph Gorman of TRW, who chairs the America Leads on Trade coalition, urged Clinton to submit legislative language as soon as possible. This proposal should provide for fast track authority "for a substantial duration of time," "[b]road objectives for future negotiations that are directly related to trade," and a "process for regular and comprehensive Congressional and private sector consultations," Gorman said in a Sept. 10 statement.

Senate Majority Leader Trent Lott (R-MS) identified fast-track as one of three issues he wants to bring up for a vote in the "next few months." Lott said he and Bowles and White House legislative liaison John Hilley talked "a good bit" about fast track, as well as the appropriations process and transportation reauthorization on Sept. 8. Other issues the Senate must consider include Amtrak and product liability reform.

Lott backed away somewhat from previous threats to hold up fast track as long as Democrats do not yield to him on the investigation of the 1996 Louisiana Senate race. Such a move might be necessary if "the Democrats try to play games and threaten to huff and puff and interrupt the other legislative business," Lott said. "I hope we do not find it necessary to do that."

ENCRYPTION BILL FACING TOUGH FIGHT IN CONGRESS . . . begins page one

ful" in finding common ground, Hatch said.

Judiciary was granted sequential referral of a bill sponsored by Senate Commerce Committee John McCain (R-AZ) and Sen. Bob Kerrey (R-NE), the Secure Public Networks Act (S. 909). The bill represents the first attempt to find a compromise which would provide for the further relaxation of export controls and set up the legal infrastructure to manage the use of encryption keys (*Inside U.S. Trade*, June 20, p. 1).

Judiciary Ranking Member Patrick Leahy (D-VT), who has introduced legislation which would effectively overturn the Administration policy of restricting the export of encryption technology stronger than 40 bits, also said this week that efforts to find a compromise have been unsuccessful. Legislation will move "as soon as the Administration understands the issue," he said. "Right now they don't."

Kerrey said on Sept. 10 that he has asked President Clinton to become personally involved in the encryption debate and meet with congressional leaders as well as the committee chairmen in an effort to find a compromise. "It will take that kind of meeting for the President to say 'this is what I want and will you help me get it,'" Kerrey said.

But McCain said that the Administration "has not been totally engaged" on the encryption effort, and that its active involvement would be "very helpful."

Clinton wrote Senate Majority Leader Trent Lott (R-MS) on July 24 that S. 909 represents a basis for moving forward, even though the Administration does not support all provisions of the bill. Clinton said encryption legislation is needed "this year" and said he "look[s] forward" to developing a consensus on the issue.

Further complicating efforts to hammer out a Senate agreement on encryption has been the circulation of a draft bill developed by the Federal Bureau of Investigation which would impose strong controls on the domestic use of encryption, congressional sources said. Industry and civil liberties' groups have long contended that domestic control of encryption usage is the hidden agenda of the Administration on encryption.

The FBI draft contains export control provisions largely similar to S. 909 in that it would establish a presidential board to recommend periodic relaxations of export controls, a congressional source said. It would eliminate controls on exports of voice encryption products, the source said.

The FBI draft makes a consensus less likely because it amounts to an admission that the Administration, or at least the FBI, cannot support S. 909, a congressional source said. The main attraction of S. 909 was that it had tentative Administration support, though most of the high-tech industry never supported S. 909 at all, the source pointed out.

"The FBI proposal drove a stake through the heart of S. 909," one congressional source said. "[McCain-Kerrey] now makes no one happy."

House Commerce Committee Chairman Thomas Bliley (R-VA) yesterday (Sept. 11) postponed a planned markup of a bill sponsored by Rep. Bob Goodlatte (R-VA) which would effectively eliminate export controls on encryption technology. Bliley announced that the House leadership has given his committee, along with Judiciary, International Relations, National Security and Intelligence two weeks to craft a compromise bill which will then be referred to the Rules Committee for consideration.

National Security Chairman Floyd Spence (R-SC) said he is unsure whether the Goodlatte bill "will even make it to the House floor this session," and sees no reason why it would be scheduled, given its controversial nature. "But if it is, the perspective of all five committees will converge in the Rules Committee which, in turn, will have to decide what 'base bill' and which amendments are made in order."

Spence made the comments at a markup in which National Security overwhelmingly approved the Goodlatte bill with an amendment which effectively gutted the measure. The amendment would require the President to permit only the export of encryption technology which does not threaten U.S. national security.

The amendment, sponsored by Reps. Curt Weldon (R-FL) and Ronald Dellums (D-CA), passed by a vote of 45-1. The provision effectively altered the intent of H.R. 695, the Goodlatte bill, which was to provide immediate and permanent relaxation of encryption export controls. The bill would have prohibited requiring individual validated licenses for software that is "generally available."

The Weldon-Dellums amendment would explicitly confirm the authority of the Secretary of Commerce "with the concurrence of the Secretary of Defense" to regulate the export of products not controlled on the Munitions List, which is administered by the State Dept.

The President would then be required to notify Congress within 30 days of the enactment of this provision of the "maximum level" of encryption strength which could be exported "without harm to the national security of the United States," according to the amendment. This level would not be effective until 60 days after formal notification.

Following this initial determination, the President would be required to make a similar notification annually, which would also take effect only after 60 days.

The Goodlatte bill plus the new amendment would be "worse than the status quo" if enacted because it would position the Dept. of Defense to "veto" further liberalization of export controls, one industry source said.

The change to the Goodlatte bill was approved following harsh criticism by National Security members of both the substance of the Goodlatte bill and the process by which it has so far been considered by other House committees. Weldon said he does not support the Clinton Administration policy, but emphasized that its position is "not the issue and not the signal to tear down every export control."

Dellums, who was absent from the hearing, said in a written statement that the amendment establishes a "procedural mechanism to evaluate the competing issues" of national security and commercial needs.

In addition, Rep. Sonny Bono (R-CA) said that many members who are listed as co-sponsors to the bill have reservations about the national security implications of the Goodlatte bill. He said that the House Judiciary Committee passed the bill without fully examining national security issues. "None of this was mentioned, so members voted for it innocently," he said.

Bono added that he would have ceased to co-sponsor the bill if the Weldon-Dellums amendment did not pass.

NORTHWEST SENATORS TIE ACTION ON MEXICAN APPLE DUTIES TO FAST TRACK

Hinting that their support for fast-track negotiating authority hangs in the balance, legislators from the U.S. Northwest this week urged quick action by U.S. Trade Representative Charlene Barshefsky to force the Mexican government to suspend a controversial preliminary antidumping duty imposed on U.S. apples exported to Mexico. In a Sept. 10 press conference, the members charged that the case represented a threat to free trade, and thereby the President's pending request for fast-track authority.

Rep. Richard (Doc) Hastings (R-WA) and Sens. Slade Gorton (R-WA) and Patty Murray (D-WA) called the Mexican dumping duties an "outrageous threat" to U.S. apple producers. Gorton warned that this case represents a "threat to the entire free trade movement and to the President's request for fast track authority."

Gorton said that "if a nation such as Mexico that signed a free trade agreement with the U.S. and is partner to the WTO can flout its obvious and clear obligations and engage in unilateral actions of this nature, it undercuts the whole rationale the President presents for further free trade agreements."

Gorton warned that Mexico's antidumping case against U.S. apples could be held up as an example of why fast track should not be granted, which would be "damaging" to the Administration's fast track effort. A successful revocation of the duty would allow "additional opportunities" to show how well a free trade agreement can work, Murray added. The lawmakers expressed their confidence that USTR would resolve the issue swiftly and satisfactorily.

Rep. Jennifer Dunn (R-WA) also raised the apple tariff issue with Deputy U.S. Trade Representative Jeff Lang at a Sept. 11 Ways & Means trade subcommittee. The tariff, if maintained during the anti-dumping investigation, will have a "very deleterious effect on Washington growers," Dunn said.

It "would be in the administration's best interest" to get this case resolved as the fast track discussions get underway in Congress, Dunn said. Similarly, Rep. Robert Smith (R-OR), Chairman of the House Agriculture

Committee, advised Barshefsky in a Sept. 8 letter that he wants to be advised of the Administration's actions in this matter.

Meanwhile, six senators from Washington, Oregon and Idaho called for the immediate suspension of the 101 percent duty imposed by the Mexican Commerce Secretariat (Secofi) on Sept. 1, according to a Sept. 5 letter reprinted below. They also asked that the U.S. apple industry to be provided with a "legitimate opportunity to defend itself against allegations of dumping before an impartial and objective tribunal," such as in the form of an audit by Secofi.

The "draconian" Mexican duty is of "grave concern" and a "clear and blatant violation of Mexico's own antidumping law, the North American Free Trade Agreement, and the World Trade Organization's Antidumping Code," according to the letter.

The preliminary duty effectively cuts off sales of U.S. apples because it requires importers to either pay the duty or post a bond which would have to be paid in full for sales after Sept. 1 if the final determination, due out in mid-February, confirms the original decision.

In response to the heightened congressional interest, Barshefsky and USTR Special Agriculture Negotiator Peter Scher have already contacted their Mexican colleagues on the issue, Lang said. USTR is awaiting further information from the U.S. industry on what was presented to Secofi originally, but is prepared to "aggressively" pursue a resolution of the issue, including the preparation of a dispute resolution case, he said.

Meanwhile, the Mexican Commerce Secretariat (Secofi) yesterday (Sept. 11) acknowledged that in reaching its preliminary determination, it chose to use information about prices other than that provided by U.S. exporters, a U.S. industry source said. The decision was apparently made because the invoices formally submitted by one exporter to Secofi showed a higher price than three invoices the agency obtained with this exporter's name on it that showed lower prices, the source said. The exporter in question could not offer an explanation for the discrepancy, which ultimately led to the dismissal of the data, he said.

Secofi officials said this at a "disclosure conference" with representatives for U.S. apple producers held in Mexico City, the source said.

But sources close to the case said the discrepancy may have been the result of "underinvoicing," which is a common practice along the border, according to informed sources. The practice consists of an importer paying the price stated on an exporter's invoice, then creating a new invoice listing a lower price for the purpose of paying lower customs duties, they said.

Other sources charged that there are "strong indications" that the three invoices in question may have been falsified in order to provide Secofi with an excuse to disregard the data of U.S. industry and importers. This in turn could have allowed the Mexican government to use the data provided by Mexican apple growers from Chihuahua, who are just entering the height of their growing season, the source said.

Secofi officials in Mexico City and Washington, DC could not be reached for comment.

After rejecting the data, Secofi used "best information available" data gathered by the petitioner in the case, the Chihuahua Regional Agricultural Union of Fruit Producers (Union Agricola Regional de Fruticultores de Estado de Chihuahua, A.C.). If Secofi does not change its course, the next step is an Oct. 16 hearing before which the parties may submit additional information. A final determination is due in February, meaning that no U.S. apples could enter Mexico until that time.

Stating that there was "no legal basis whatsoever" for the rejection of exporters' responses, U.S. apple growers are requesting a "verification audit" of the rejected information, as well as an immediate suspension of the duties until the audits are completed.

Exporters "have every reason to expect" that Mexico will conduct the verification audit, an informed source said. "It would be a travesty if they left the duty on during the height of the season, knowing there was no real discrepancy." Another source said that Secofi "could and should have dealt with the `inconsistency' by conducting verification audits, as specified in Article 6(7) of the Antidumping Code," an industry source said. It was also suggested that Secofi could have simply disregarded the three "inconsistent" sales.

Secofi's rejection of the U.S. exporters' responses and use of "best information available" violated Article 6(8) and Annex II of the General Agreement on Tariffs & Trade Antidumping Code, according to an informed source. These essentially state that Secofi could have used alternative information provided by the Mexican grower group which originally brought the case only if the exporters had either "refused access to or not provided" the necessary information "within a reasonable period."

Apple trade between the neighboring countries has jumped since the advent of NAFTA, and the imposition of the preliminary duty does not necessarily represent a violation of rules of NAFTA, they said. But if the Mexican government "persists" in maintaining the 101 percent tariff, the NAFTA Chapter 19 dispute settlement proceedings, which provide for review by an international panel of domestic antidumping and countervailing duty decisions, could be enacted, one U.S. source said.

Domestic Mexican producers have "suffered no injury" and are "manipulating these issues to their benefit," a Mexican importer of U.S. apples said. The source also indicated that domestic producers have "never" lost money on apples, but have simply had a "ridiculous" margin of profit cut into by competition from other countries.

Senate Letter on Apples

September 5, 1997

The Honorable Charlene Barshefsky
United States Trade Representative
Washington, D.C. 20508

Dear Ambassador Barshefsky:

We are writing to alert you to a situation of grave concern to us involving the Mexican government's imposition of a prohibitive duty on U.S. red delicious and golden delicious apple imports in direct violation of its international trade obligations and Mexican law. Your assistance is urgently needed to aggressively contest the establishment of this new, unjustified impediment to trade.

Specifically, Mexico's Ministry of Commerce and Industry (SECOFI) on September 1 issued a preliminary antidumping determination imposing duties of 101.1 percent against U.S. apple imports. The effect of this action has been both immediate and severe. U.S. apple shipments to Mexico have been brought to a complete halt -- literally stranding several loads of apples at the U.S.-Mexico border. If allowed to stand unchallenged, this draconian duty will deny our nation's apple growers access to their leading export market for this fall's harvest and Mexico's consumers access to the affordable, high quality apples we produce.

We cannot offer an open U.S. market to the world's suppliers if our most competitive producers can so easily be shut off from this export market by such transparent protectionism as seen in this case.

SECOFI imposed the 101.1 percent duty on U.S. apples on the basis of "best information available" as supplied by the Chihuahua State Fruit Growers Association -- the petitioner in this case. SECOFI chose to totally disregard evidence submitted by representatives of the U.S. apple industry that conclusively demonstrated no dumping had occurred. SECOFI rejected the U.S. apple industry's submissions -- which were judged to be both timely and in proper form -- because of an unidentified "inconsistency" between the U.S. submissions and information supplied by a single, unidentified Mexican importer.

This unprecedented action is a clear and blatant violation of Mexico's own antidumping law, the North American Free Trade Agreement, and the World Trade Organization's Antidumping Code which restricts SECOFI's use of "best information available" that are not present in this case. Thus, the Government of Mexico should be called upon to immediately suspend the application of this illegal duty and restore the U.S. apple industry's access to this important export market.

Further, it should be demanded that the U.S. apple industry be provided with a legitimate opportunity to defend itself against allegations of dumping before an impartial and objective tribunal. To that end, the U.S. apple industry is prepared to cooperate fully with any audit that SECOFI may wish to conduct to verify the accuracy of the information submitted by the industry.

We stand ready to give you any assistance you might need in your efforts to achieve a prompt resolution of this critical trade problem. Thank you very much for your anticipated consideration of this urgent request for your personal intervention on behalf of our nation's apple growers.

Sincerely,

Slade Gorton (R-WA)
Gordon Smith (R-OR)
Larry E. Craig (R-ID)
Patty Murray (D-WA)
Dirk Kempthorne (R-ID)
Ron Wyden (D-OR)

NSF REJECTS JAPANESE SUPERCOMPUTER LEASE DUE TO COMMERCE RULING

The National Science Foundation (NSF) late last month revealed that it would not approve funding for the lease of a Japanese supercomputer that is the subject of a U.S. antidumping investigation.

In an Aug. 28 letter to the University Corporation for Atmospheric Research (UCAR), a U.S. weather research center under NSF authority that was prepared to lease equipment made by NEC Corp. of Japan, the NSF said it would reject this contract in light of a Commerce Department finding that NEC supercomputers were being dumped in the U.S. market. After losing the UCAR bid to Federal Computer Corporation (FCC), which was going to lease the NEC equipment to UCAR, Cray Research, Inc. initiated an antidumping case against all Japanese vector supercomputers.

"Based on these decisions, and consistent with the OMB [Office of Management & Budget] Circular A-110, which requires that all procurement matters be 'conducted in a manner to provide, to the maximum extent practical, open and free competition,' NSF has decided that it must decline UCAR's request to approve the proposed subaward to FCC," the NSF said in the letter reprinted below.

Sources close to NEC have argued that Cray's purpose in bringing the antidumping case was to prevent a Japanese company from winning a supercomputer bid. But despite the NSF decision to reject the NEC equipment for this procurement, sources said this week that the decision might make it more difficult for the International Trade Commission to find injury in the case.

Cray has argued that the dumping of Japanese supercomputers threaten to injure the U.S. company, and also argued that it has sustained real injury given that it lost the UCAR bid to allegedly dumped Japanese imports. But sources close to NEC said the ITC could decide that the UCAR procurement cannot injure Cray since the NSF has now decided against leasing NEC equipment.

After the Commerce Department found a final dumping margin of 454 percent for NEC supercomputers last month, the ITC is expected to make a final injury determination by early October (*Inside U.S. Trade*, Aug. 29, p. 1 & Aug. 22, p. 1).

Japan has warned that it is monitoring the antidumping case, and has previously hinted that allegations of Commerce prejudging the dumping case could prompt it to bring a formal complaint in the World Trade Organization. At press time, Japanese officials could not be reached for comment on the recent NSF decision.

NSF Letter on Supercomputer Procurement

August 28, 1997

Dr. Richard Anthes
President
University Corporation for Atmospheric Research
P.O. Box 3000
Boulder, CO 80307-3000

Dear Dr. Athes:

On October 31, 1996, the University Corporation for Atmospheric Research requested approval by NSF of a proposed Federal Computer Corporation (FCC) subaward, which included leased vector supercomputers from NEC Corporation (NEC). As you know, a decision by NSF has been delayed pending a final determination by the Department of Commerce of whether vector supercomputers from Japan, including those from NEC, were being sold in the United States at less than fair value.

The Department of Commerce, on August 20, 1997, determined that the supercomputers from Japan were being sold at less than fair value. In particular, it assigned a dumping margin for NEC of 454 percent. That same date, the U.S. Court of International Trade rejected NEC's charges that Commerce prejudged the outcome of its dumping investigation. *See NEC Corp. & HNSX Supercomputers, Inc. v. Department of Commerce*, No. 96-10-02360. Based on these decisions, and consistent with OMB Circular A-110, which requires that all procurement matters be "conducted in a manner to provide, to the maximum extent practical, open and free competition," NSF has decided that it must decline UCAR's request to approve the proposed subaward to FCC.

On behalf of NSF, we appreciate UCAR's patience and cooperation during the course of the Commerce Department's dumping investigation. We look forward to meeting with you in the near future to discuss how UCAR can best proceed to obtain the additional supercomputing capacity necessary for UCAR to accomplish our mutual objectives.

Sincerely,
Clifford A. Jacobs
Head, UCAR and Lower Atmospheric Facilities Section

Aaron R. Asrael
Grants and Agreements Officer

cc: Jeff Reaves

In This Issue

Inside U.S. Trade

An Inside Washington Publication

An exclusive weekly report on major government and industry trade action

September 17, 1997

Special Report

CLINTON FAST-TRACK BILL LIMITS SCOPE OF LABOR, ENVIRONMENT RULES

The Clinton Administration's proposal on renewing fast-track negotiating authority unveiled yesterday (Sept. 16) includes language mirroring demands by congressional Republicans that only labor and environment measures "directly related to trade" be included in trade agreements subject to an up-or-down congressional vote. But in a nod to Democrats, the bill also includes a strong mandate that the U.S. seek to address labor and environment issues in the World Trade Organization.

Assistant to the President for International Economic Policy Dan Tarullo yesterday refused to define the term "trade-related," but admitted that this language would unquestionably restrict what can be included in agreements covered by fast track.

"I think it's fair to say that there would be a reasonably discreet set of provisions that would be encompassed by it, but what exactly [this formulation] means in a particular trade agreement would presumably need to await [that particular trade] negotiation," Tarullo said in a Sept. 16 briefing.

Tarullo said the language largely mirrors that proposed by House Ways & Means Committee Chairman Bill Archer (R-TX). Archer said earlier this month that the "trade-related" language would allow trade agreements to address "arbitrary labor standards" or "environmental regulations" of U.S. trading partners, which impede market access for U.S. products (*Inside U.S. Trade*, Aug. 29, p. 1).

In the opening section of the bill on "overall trade negotiating objectives," the Administration proposal would require the President "to address those aspects of foreign government policies and practices regarding labor, the environment, and other matters that are directly related to trade and decrease market opportunities for United States exports or distort United States trade."

The bill would make it a "principal negotiating objective" to work through the WTO to "promote respect for internationally recognized worker rights, including with regard to child labor" and to secure a review of the relationship between labor rights to WTO rules. The U.S. shall also seek "as a principle" of the WTO that the denial of labor rights should not be a means for a country or its industries of gaining a competitive advantage, according to the bill.

In the International Labor Organization, the Administration would be required to establish "a mechanism for the systematic examination of, reporting on, and accountability for the extend to which member governments promote and enforce core labor standards," according to the bill.

On environment, the bill wants the U.S. to ensure through the WTO that trade and the protection of the environment are "mutually supportive." It calls for the "further clarification of the relationship" between environmental protection and international trade rules, an apparent reference to the work of the WTO's Committee on Trade and Environment.

Under a separate section entitled "guidance for negotiators," the Administration proposal also directs officials to take into account "domestic objectives including, but not limited to, the protection of health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto," according to the bill.

The Administration proposal also highlights the importance of agriculture by making it a principal negotiating objective to "achieve fairer and more open conditions of trade in agricultural commodities." It cites as goals the reduction or elimination of tariffs and subsidies, the development of stricter rules on state-trading enterprises, "unjustified restrictions or commercial requirements affecting new technologies, including biotechnology," unjustified sanitary and phytosanitary restrictions, technical barriers to trade and the administration of tariff-rate quotas.

The proposal also includes a mandate to reduce or eliminate trade-distorting barriers to U.S. foreign investment through adherence to the national treatment principle, freedom to transfer funds, elimination of performance requirements and the establishment standards for the expropriation of investments and the creation of procedures for settling investment disputes.

The proposal significantly expands the range of consultations with Congress required in order to qualify an agreement for treatment under fast-track rules. Negotiators are required to consult during negotiations with the congressional

continued on page 16

***This Special Report is being sent to readers of* Inside U.S. Trade, *as well as* AmericasTrade.**

A BILL

To establish procedures for notice, consultations, and implementation with regard to certain trade agreements, and for other purposes.

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

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Export Expansion and Reciprocal Trade Agreements Act of 1997".

SEC. 2. TRADE NEGOTIATING OBJECTIVES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES. - The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 3 are -

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and decrease market opportunities for United States exports or distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy; and

(5) to address those aspects of foreign government policies and practices regarding labor, the environment, and other matters that are directly related to trade and decrease market opportunities for United States exports or distort United States trade.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES. -

(1) TRADE BARRIERS AND DISTORTIONS. - The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or distort United States trade.

(2) TRADE IN SERVICES. - The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and unreasonably restrict the establishment and operations of service suppliers.

(3) FOREIGN INVESTMENT. - The principal negotiating objective of the United States regarding foreign investment is to reduce or eliminate artificial or trade-distorting barriers to United States foreign investment by -

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements and other unreasonable barriers to the establishment and operation of investments;

(D) establishing standards for expropriation and compensation for expropriation consistent with United States legal principles and practice; and

(E) providing meaningful procedures for resolving investment disputes.

(4) INTELLECTUAL PROPERTY. - The principal negotiating objectives of the United States regarding trade-related intellectual property are -

(A) to further promote adequate and effective protection of intellectual property rights, including through -

(i) ensuring full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), and achieving improvements in the standards of that Agreement;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights; and

(iv) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms; and

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection.

(5) TRANSPARENCY. - The principal negotiating objective of the United States with respect to transparency is to obtain broader application of the principle of transparency through -

(A) increased and more timely public access to information regarding trade issues and the activities of international trade institutions; and

(B) increasing the openness of dispute settlement proceedings, including under the World Trade Organization.

(6) AGRICULTURE. - The principal negotiating objective of the United States with respect to agriculture is to achieve fairer and more open conditions of trade in agricultural commodities by -

(A) reducing or eliminating tariffs or other charges that decrease market opportunities for United States exports;

(B) reducing or eliminating subsidies that decrease market opportunities for United States exports or distort agricultural markets to the detriment of the United States;

(C) developing, strengthening, and clarifying rules that address practices that unfairly decrease United States market access opportunities or distort agricultural markets to the detriment of the United States, including -

(i) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms;

(ii) unjustified restrictions or commercial requirements affecting new technologies, including biotechnology;

(iii) unjustified sanitary or phytosanitary restrictions;

(iv) other unjustified technical barriers to trade; and

(v) restrictive rules in the administration of tariff rate quotas

(7) WORKER RIGHTS AND ENVIRONMENTAL PROTECTION. - The principal negotiating objectives of the United States regarding worker rights and protection of the environment are, through the World Trade Organization, -

(A) to promote respect for internationally recognized worker rights, including with regard to child labor;

(B) to secure a review of the relationship of internationally recognized worker rights to the provisions, objectives, and instruments of the World Trade Organization with a view to ensuring that the benefits of the trading system are available to all workers;

(C) to adopt, as a principle of the World Trade Organization, that the denial of internationally recognized worker rights should not be a means for a country or its industries to gain competitive advantage in international trade;

(D) to promote sustainable development; and

(E) to seek to ensure that trade and environmental protection are mutually supportive, including through further clarification of the relationship between them.

The United States will also seek to establish in the International Labor Organization a mechanism for the systematic examination of, reporting on, and accountability for the extent to which member governments promote and enforce core labor standards.

(c) GUIDANCE FOR NEGOTIATORS. -

(1) In pursuing the negotiating objectives described in subsection (b), United States negotiators shall take into account United States domestic objectives including, but not limited to, the protection of health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(2) In the course of negotiations conducted under this Act, the United States Trade Representative shall -

(A) consult closely and on a timely basis with, and keep fully apprised of the negotiations, the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974; and

(B) take into account the need for the United States to retain the ability to enforce rigorously its trade laws in order to ensure that United States workers, agricultural producers, and firms can compete on fair terms and enjoy the benefits of reciprocal trade concessions.

(d) ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS. - In determining whether to enter into negotiations with a particular country, the President shall take into account the extent to which that country has implemented, or has accelerated the implementation of, its obligations under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act).

SEC. 3. TRADE AGREEMENTS PROCEDURES.

(a) AGREEMENTS REGARDING TARIFF BARRIERS. -

(1) IN GENERAL. - Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes and policies of this Act will be promoted thereby, the President -

(A) before October 1, 2001 (or October 1, 2005, if fast track procedures are extended under subsection (c)), may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) and (3), proclaim -

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

(2) LIMITATIONS. - No proclamation may be made under paragraph (1) that -

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) provides for a reduction in duty on an article to take effect on a date that is more than 10 years after the first reduction that is proclaimed to carry out a trade agreement with respect to such article; or

(C) increases any rate of duty above the rate that applied on January 1, 1996.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING. -

(A) AGGREGATE REDUCTION. - Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if -

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article, and

(ii) a reduction equal to the amount applicable under clause (i) had taken effect at

1-year intervals after the effective date of such first reduction.

(B) EXEMPTION FROM STAGING. - No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING. - If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of -

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS. - A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 5 and that bill is enacted into law.

(6) OTHER TARIFF MODIFICATIONS. -

(A) Subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization or as part of an interim agreement leading to the formation of a regional free-trade area.

(B) Paragraphs 1-5 of this subsection shall not limit the authority provided to the President in subparagraph (A) or in section 111(b) of the Uruguay Round Agreements Act.

(b) AGREEMENTS REGARDING TARIFF AND NON-TARIFF BARRIERS. -

(1) IN GENERAL. - Whenever the President determines that -

(A) one or more existing duties or other import restrictions of any foreign country or the United States, or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(B) the imposition of any such import restriction, barrier, or distortion is likely to result in such a burden, restriction, or effect;

and that the purposes and policies of this Act will be promoted thereby, the President may, before October 1, 2001 (or October 1, 2005, if fast track procedures are extended under subsection (c)), enter into trade agreements with foreign countries providing for -

(i) the reduction or elimination of such duty, restriction, barrier, or other distortion, or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(2) CONDITIONS. - A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2(b).

(3) BILLS QUALIFYING FOR "FAST TRACK" PROCEDURES. -

(A) The provisions of section 151 of the Trade Act of 1974, as amended by subparagraph (B) of this paragraph, (in this Act referred to as "fast track procedures") apply to implementing bills (as defined in subsection (b)(1) of such section) submitted with respect to trade agreements entered into under section (3)(b) of this Act.

(B) Section 151(b)(1) of the Trade Act of 1974 is amended by striking subparagraph (C) and inserting -

"(C)(i) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions which are necessary or appropriate to implement such trade agreement or agreements or extension and which are related to trade, either repealing or amending existing laws or providing new statutory authority; and

(ii) provisions necessary for purposes of complying with section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 in implementing the applicable trade agreement."

(c) APPLICATION AND EXTENSION OF "FAST TRACK" PROCEDURES. -

(1) IN GENERAL. - Except as provided in section 5(b) -

(A) fast track procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) before October 1, 2001; and

(B) fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after September 30, 2001, and before October 1, 2005, if (and only if) -

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before October 1, 2001.

(2) REPORT TO CONGRESS BY THE PRESIDENT. - If the President is of the opinion that fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than July 1, 2001, a written report that contains a request for such extension, together with -

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes and policies of this Act, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) REPORT TO CONGRESS BY THE ADVISORY COMMITTEE. - The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than August 1, 2001, a written report that contains -

(A) its views regarding the progress that has been made in negotiations to achieve the purposes and policies of this Act; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) REPORTS MAY BE CLASSIFIED. - The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS. -

(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ disapproves the request of the President for the extension, under section 3(c)(1)(B)(i) of the Export Expansion and Reciprocal Trade Agreements Act of 1997, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Export Expansion and Reciprocal Trade Agreements Act of 1997 after September 30, 2001.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions -

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of sections 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for -

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after September 30, 2001.

SEC. 4. NOTICE AND CONSULTATIONS.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION. - The President, at least 90 calendar days before initiating negotiations on any agreement that is subject to the provisions of section 3(b), shall -

(1) provide written notice to the Congress of the President's intent to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement or changes to an existing agreement; and

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and such other committees of the House and Senate as the President deems appropriate.

(b) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO. -

(1) CONSULTATION. - Before entering into any trade agreement under section 3(b), the President shall consult with -

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) SCOPE. - The consultation described in paragraph (1) shall include consultation with respect to -

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes and policies of this Act; and

(C) plans regarding the implementation of the agreement under section 5, including whether the agreement includes subject matter for which supplemental implementing legislation may be required which is not subject to fast track procedures; and

(D) any other agreement or agreements the President has entered into or intends to enter into with the country or countries in question.

(c) ADVISORY COMMITTEE REPORTS. - The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 3(b) of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 calendar days after the date on which the President notifies the Congress under section 5(a)(1)(A) of the President's intention to enter into the agreement.

SEC. 5. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL. -

(1) NOTIFICATION AND SUBMISSION. - Any agreement entered into under section 3(b) shall enter into force with respect to the United States if (and only if) -

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) within 60 calendar days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(C) after entering into the agreement, the President submits a copy of the final legal text of the agreement, together with -

(i) a draft of an implementing bill;

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) SUPPORTING INFORMATION. - The supporting information required under paragraph (1)(C)(iii) consists of -

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement -

(i) asserting that the agreement makes progress in achieving the applicable purposes and policies of this Act; and

(ii) setting forth the reasons of the President regarding -

(I) how and to what extent the agreement makes progress in achieving the applicable purposes and policies referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes and policies;

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce; and

(IV) why the implementing bill and proposed administrative action are required or appropriate to carry out the agreement.

(3) RECIPROCAL BENEFITS. - To ensure that a foreign country which receives benefits under a trade agreement entered into under section 3(b) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) LIMITATIONS ON FAST TRACK PROCEDURES. -

(1) FOR LACK OF CONSULTATIONS. -

(A) Fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 3(b) if both Houses of Congress separately agree to a procedural disapproval resolution within any 60 calendar-day period.

(B) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with the Congress on trade negotiations and trade agreements in accordance with section 4(b) of the Export Expansion and Reciprocal Trade Agreements Act of 1997 and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Export Expansion and Reciprocal Trade Agreements Act 1997.".

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS. -

(A) PROCEDURAL DISAPPROVAL RESOLUTIONS -

(i) in the House of Representatives -

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules;

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(B) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE. - Subsection (b) of this section and section 3(c) are enacted by the Congress -

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 6. TREATMENT OF CERTAIN TRADE AGREEMENTS.

(a) NEGOTIATIONS UNDER THE WORLD TRADE ORGANIZATION. - The provisions of section 4(a) shall not apply to agreements that result from negotiations -

(1) under the auspices of the World Trade Organization regarding trade in information technology products, or;

(2) or work programs initiated pursuant to a Uruguay Round Agreement, as defined in section 2 of the Uruguay Round Agreements Act,

that were commenced before the date of the enactment of this Act, and the applicability of fast track procedures to such agreements shall be determined without regard to the requirements of section 4(a).

(b) AGREEMENT WITH CHILE. - If an agreement to which section 3(b) applies is entered into with Chile after the date of the enactment of this Act and results from negotiations that were commenced before such date of enactment the provisions of section 4(a) shall not apply to such agreement and the applicability of fast track procedures to such agreement shall be determined without regard to the requirements of section 4(a).

SEC. 7. DEFINITIONS AND CONFORMING AMENDMENTS.

(a) DEFINITIONS. - For purposes of this Act:

(1) The term "core labor standards" means -

(A) freedom of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on forced labor;

(D) a prohibition on exploitative child labor; and

(E) a prohibition on discrimination in employment.

(2) The term "distortion" includes, but is not limited to, a subsidy.

(3) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(4) The term "internationally recognized worker rights" has the meaning ascribed to that term in section 507(4) of the Trade Act of 1974, as amended.

(5) The term "trade" includes, but is not limited to -

(A) trade in both goods and services, and

(B) foreign investment by United States persons, especially if such investment has implications for trade in goods and services.

(b) CONFORMING AMENDMENTS. - Title I of the Trade Act of 1974 (19 U.S.C. 2111 and following) is amended as follows -

(1) Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by replacing "section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988" with "section 5(a)(1) of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(2) Section 131 (19 U.S.C. 2151) is amended -

(A) in subsection (a) -

(i) in paragraph (1), by replacing "section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988" with "section 3(a) or (b) of the Export Expansion and Reciprocal Trade Agreements Act of 1997"; and

(ii) in paragraph (2), by replacing "section 1102(b) or (c) of the Omnibus Trade and Competitiveness Act of 1988" with "section 3(b) of the Export Expansion and Reciprocal Trade Agreements Act of 1997"; and

(B) in subsection (b), by replacing "section 1102(a)(3)(A) of the Omnibus Trade and Competitiveness Act of 1988" with "section 3(a)(3)(A) of the Export Expansion and Reciprocal Trade Agreements Act of 1997"; and

(C) in subsection (c), by replacing "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," with "section 3 of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(3) Sections 132, 133(a), 134(a), and 162(a) (19 U.S.C. 2152, 2153(a), 2154(a), and 2212(a)) are each amended by replacing "section 1102 of the Omnibus Trade and Competitiveness Act of 1988", each time it appears, with "section 3 of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(4) Section 134(b) (19 U.S.C. 2154(b)) is amended by replacing "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" with "section 3 of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(5) Section 135(a)(1)(A) (19 U.S.C. 2155(a)(1)(A)) is amended by replacing "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" with "section 3 of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(6) Section 135(e) (19 U.S.C. 2155(e)) is amended -

(A) in paragraph (1), by replacing "section 1102 of the Omnibus Trade and Competitiveness Act of 1988", each time it appears, with "section 3 of the Export Expansion and Reciprocal Trade Agreements Act of 1997", and by replacing "section 1103(a)(1)(A) of the Omnibus Trade and Competitiveness Act of 1988" with "section 5(a)(1)(A) of the Export Expansion and Reciprocal Trade Agreements Act of 1997"; and

(B) in paragraph (2), by replacing "section 1101 of the Omnibus Trade and Competitiveness Act of 1988" with "section 2 of the Export Expansion and Reciprocal Trade Agreements Act of 1997".

(c) APPLICATION OF CERTAIN PROVISIONS. - For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137) -

(1) any trade agreement entered into under section 3 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 3 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

Section-by-Section Analysis

Section 1. Short Title.
Section 2. Negotiating Objectives.

Section 2 of the proposal sets out the "overall" and "principal" objectives that will guide the President in negotiating future trade agreements covered by the proposal. This format parallels that of section 1101 of the Omnibus Trade and Competitiveness Act of 1988, which in turn was based on a similar structure in the Trade Act of 1974. These objectives address, among other subjects, trade barriers and distortions, including these aspects of foreign government policies and practices directly related to trade; trade in services; U.S. foreign investment; intellectual property; transparency; agriculture; and the protection of worker rights and the environment through specified multilateral institutions.

Section 2(c) calls on U.S. negotiators to take important domestic policy objectives, such as the protection of human health and the environment and national security, into account when negotiating fast-track trade agreements. Negotiators are also instructed to ensure that the United States will retain the ability to vigorously enforce U.S. trade laws. In addition to the other Congressional consultation requirements set out in the proposal, section 2(c) instructs U.S. negotiators to ensure that designated congressional advisors are kept fully informed during the course of trade negotiations.

Section 3. Proclamation Authority and Fast-Track Implementing Proposals.

Section 3(a) provides the President with authority to reduce U.S. tariff rates under specified circumstances -- without seeking further approval from the Congress -- in return for concessions from U.S. trading partners. Much of the language on this subject is derived from earlier versions of tariff proclamation authority, with antecedents dating back to the mid-1930s. The proposal adds a provision that will allow the President to implement reciprocal, tariff harmonization or elimination agreements on a sectoral or regional basis, consistent with World Trade Organization rules.

Section 3(b) provides that the President may negotiate and bring back to the Congress for approval and implementation under the fast-track procedures set out in section 151 of the Trade Act of 1974 certain trade agreements addressing tariff barriers, non-tariff barriers, or both. Those procedures call for the Congress to vote on agreements and their implementing legislation without amendment and within a fixed time period. Changes in U.S. law required to carry out a trade agreement may be included in fast-track implementing legislation only if the changes are both necessary for appropriate to implement the agreement and are related to trade. For an implementing bill to be subject to fast-track Congressional review, the President must adhere to numerous notice and consultation requirements included in the proposal.

Under the proposal, the President's tariff proclamation authority, as well as fast-track procedures for implementing legislation, will be in effect until October 1, 2001. On request from the President, proclamation authority and fast-track procedures may be extended through September 30, 2005, subject to disapproval by either House of Congress.

Section 4 and 5. Notice, Consultations, and Implementation.

Sections 4 and 5 contain a number of provisions requiring the President to notify and consult with the Congress before and during trade negotiations. These provisions ensure that the Congress is fully integrated into the formulation of U.S. goals, strategies, and decision-making for each trade negotiation. Section 5 establishes an expedited procedure for Congress to withdraw fast track if it finds that the Administration is not adequately consulting the Congress on trade negotiations.

Certain of the notice and consultation requirements included in sections 4 and 5 are drawn from equivalent provisions in the Omnibus Trade and Competitiveness Act of 1988. For example, the President must provide advance notice to the Congress before initiating a negotiation and must consult with the Congress before an agreement is concluded. The President must also describe in detail at the time he submits implementing legislation to the Congress how he intends to use existing regulatory and administrative authority to carry out the agreement.

In addition, the proposal provides for Congress and the President to receive advice from the relevant private sector advisory committees concerning any agreement that the President has negotiated -- before it is signed. The advisory committees cover a broad range of sectors and policy matters, including manufactured goods, agricultural commodities, services, intellectual property, foreign investment, labor, and the environment. Under existing law, the President must also consult with these committees regarding his objectives and bargaining positions in the negotiations. In addition, the President must solicit advice from the United States International Trade Commission, as well as views from the public, in connection with an agreement that would change U.S. tariff levels.

The proposal adds new consultation requirements to further enhance Congressional oversight of the negotiation process for fast-track trade agreements. For example, the President must spell out for the Congress before negotiations begin his specific negotiating objectives and is required to consult with the Congress over the course of the negotiations. The President also must inform the Congress of any other agreements -- in addition to the trade agreement -- he intends to conclude. The President must also state whether the trade agreement will need to be implemented in part by legislation that is not subject to fast-track procedures.

Section 6. On-going Negotiations.

The proposal waives the requirement for the President to provide advance notification to the Congress of certain negotiations initiated prior to enactment of the proposal. These include negotiations commenced in 1995 with the Government of Chile on a comprehensive trade agreement and certain negotiations under the World Trade Organization that are currently underway or that may be initiated before the President's proposal is enacted. The requirement for the President to provide notice to, and consult with, the Congress over the course of the negotiations will continue to apply to these negotiations.

Section 7. Conforming Amendments.

The proposal makes changes to other statutes necessary to ensure that earlier provisions of law applicable to fast track-trade agreements continue to apply. For example, these amendments ensure that the public and private sector views are solicited regarding any trade negotiations initiated under the proposal.

Clinton Notification on Fast Track

THE WHITE HOUSE
Office of the Press Secretary

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit a legislative proposal entitled the "Export Expansion and Reciprocal Trade Agreements Act of 1997." Also transmitted is a section-by-section analysis.

This proposal would renew over 60 years of cooperation between the Congress and the executive branch in the negotiation and implementation of market-opening trade agreements for the benefit of American workers and companies.

The sustained, robust performance of our economy over the past 5 years is powerful proof that congressional-executive cooperation works. We have made great strides together. We have invested in education and in health care for the American people. We have achieved an historic balanced budget agreement. At the same time, we have put in place trade agreements that have lowered barriers to American products and services around the world.

Our companies, farms, and working people have responded. Our economy has produced more jobs, more growth, and greater economic stability than at any time in decades. It has also generated more exports than ever before. Indeed, America's remarkable economic performance over the past 5 years has been fueled in significant part by the strength of our dynamic export sector. Fully 96 percent of the world's consumers live outside the United States. Many of our greatest economic opportunities today lie beyond our borders. The future promises still greater opportunities.

Many foreign markets, especially in the developing world, are growing at tremendous rates. Latin American and Asian economies, for example, are expected to expand at three times the rate of the U.S. economy over the coming years. Consumers and industries in these countries prize American goods, farm products, services, and the many expressions of American inventiveness and culture. While America is the world's greatest exporting nation, we need to do more if we want to continue to expand our own economy and produce good, high-wage jobs.

We have made real progress in breaking down barriers to American products around the world. But many of the nations with the highest growth rates almost invariably impose far higher trade barriers than we do. We need to level the playing field with those countries. They are the nations whose markets hold the greatest potential for American workers, firms, and agricultural producers.

Today, the United States is the world's strongest competitor. The strength of the U.S. economy over the past several years is testimony to the creativity, productivity, and ingenuity of American firms and workers. We cannot afford to squander our great advantages by retreating to the sidelines and watching other countries conclude preferential trade deals that shut out our goods and services. Over 20 such agreements have been concluded in Latin America and Asia alone since 1992. The United States must continue to shape and direct world trading rules that are in America's interest and that foster democracy and stability around the globe.

I have pledged my Administration to this task, but I cannot fully succeed without the Congress at my side. We must work in partnership, together with the American people, in securing our country's future. The United States must be united when we sit down at the negotiating table. Our trading partners will only negotiate with one America -- not first with an American President and next with an American Congress.

The proposal I am sending you today ensures that the Congress will be a full partner in setting negotiating objectives, establishing trade priorities, and in gaining the greatest possible benefits through our trade agreements. The proposal expands upon previous fast-track legislation to ensure that the Congress is fully apprised and actively consulted throughout the negotiating process. I am convinced that this collaboration will strengthen both America's effectiveness and leverage at the bargaining table.

Widening the scope of consultations will also help ensure that we will take all of America's vital interests into account. That is particularly important because today our trade agreements address a wider range of activities than they once did. As we move forward with our trade agenda, we must continue to honor and reinforce the other values that make America an example for the world. I count chief among these values America's longstanding concern for the rights of workers and for protection of the environment. The proposal I am transmitting to you recognizes the importance of those concerns. It makes clear that the agreements we conclude should complement and reinforce those values.

Ever since President Franklin Roosevelt proposed and the Congress enacted America's first reciprocal trade act in the depths of the Great Depression, the Congress and the President have been united, on a bipartisan basis, in supporting a fair and open trading system. Our predecessors learned from direct experience the path to America's prosperity. We owe much of our own prosperity to their wisdom. I urge the Congress to renew our longstanding partnership by approving the proposal I have transmitted today.

WILLIAM J. CLINTON

THE WHITE HOUSE,
September 16, 1997.

White House Fact Sheet on Fast Track

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release September 16, 1997

FACT SHEET

The Export Expansion and Reciprocal Trade Agreements Act of 1997

Today, President Clinton transmitted to the Congress the "Export Expansion and Reciprocal Trade Agreements Act of 1997." This proposal is designed to renew "fast-track" procedures for trade agreements requiring congressional approval and implementation as well as to renew the President's authority to proclaim tariff reductions in return for tariff reduction commitments by U.S. trading partners.

Background

The proposal reactivates a partnership between the President and the Congress that dates back over 6 decades. Recognizing that the high protective U.S. tariff walls it established in 1930 had only served to deepen the Depression, the Congress 4 years later enacted the first reciprocal trade agreements act. In that act, the Congress gave the President authority to negotiate mutual tariff reductions with our trading partners. The Congress renewed that authority repeatedly over the years, and successive Presidents used the authority to dramatically reduce tariff barriers around the world.

"Fast track," first put in place under the Ford Administration, is a further expression of the partnership between the President and the Congress in bringing down barriers to U.S. exports. Under fast track the Congress and the President work together, ensuring that the United States can effectively negotiate away foreign tariff barriers to U.S. products as well as non-tariff barriers -- such as quotas, protectionist product standards, and subsidies -- which foreign governments have increasingly substituted for tariffs to exclude U.S. products. Fast track lapsed along with most of the President's tariff reduction authority 3 years ago.

The President's Proposal

The President's proposed legislation serves to reunite the Congress and the President in trade negotiations. The President's proposal ensures that the Congress is fully integrated into the formulation of U.S. goals, strategies, and decision-making for each trade negotiation subject to fast-track procedures. Because the Congress and the President are united under the proposal, it tells U.S. trading partners that the United States speaks at the bargaining table with one voice and that the Congress will not seek to reopen trade agreements after they are negotiated.

The proposal also renews the President's longstanding tariff-cutting authority. The proposal adds a provision that will allow the President to implement new tariff harmonization or elimination agreements on a sectoral or regional basis, consistent with World Trade Organization rules.

The proposal calls for the President's tariff reduction authority and the new fast-track procedures to remain in effect until October 1, 2001. The President may request an extension of his tariff-cutting authority and "fast-track" procedures through September 30, 2005, subject to disapproval by either House of the Congress.

A summary of the key provisions of the proposal follows.

Negotiating Objectives

The proposal sets out "overall" and "principal" trade negotiating objectives for the President. The objectives call on U.S. negotiators to seek, for example:

-- To reduce trade barriers and trade distortions that limit market opportunities for U.S. exports, including those aspects of foreign government policies and practices directly related to trade.

-- To reduce foreign government barriers that discriminate or impose unreasonable regulatory barriers on U.S.

service providers.

-- To reduce artificial or trade-distorting barriers to U.S. foreign investment.

-- To obtain adequate and effective protection for U.S. intellectual property rights and increased access to foreign markets for U.S. businesses that rely on intellectual property.

-- To make the proceedings of international trade bodies more open to public view.

-- To secure fairer and more open trading conditions for U.S. agricultural products.

-- To promote through the World Trade Organization internationally recognized worker rights and sustainable development.

Trade Agreements Covered by the President's Proposal

The President may negotiate and bring back to the Congress for fast-track congressional approval and implementation trade agreements addressing tariff barriers, nontariff barriers, or both.

-- Thus, fast track could be used to carry out agreements concluded under the trade negotiating agenda set out in the congressionally approved agreements administered by the World Trade Organization -- for example, to further reduce tariff and nontariff barriers to agricultural trade.

-- The President could use his renewed "proclamation authority" to carry out a sectoral agreement, similar to the recent "Information Technology Agreement", which is reducing tariffs that foreign governments impose on billions of dollars of U.S. computer, electronic, and semiconductor products sold around the world.

-- Finally, fast track could be used for bilateral or regional free-trade arrangements.

Making the Congress a Partner in Trade Negotiations

In order for an implementing bill to qualify for fast-track procedures, the President must comply with numerous notice and consultation provisions designed to ensure that the Congress is a full partner with the President in critical trade negotiations. These provisions enable the Congress to set priorities, provide advice, and exercise oversight at all stages of the negotiations and after the agreement is concluded. That ensures that congressional views will be fully reflected both in the final agreement and in the manner in which the agreement is carried out. Moreover, if the Congress concludes that the President has not adequately consulted the Congress regarding a proposed agreement, the proposal creates an expedited procedure for the Congress to refuse to apply fast-track procedures.

-- The President must provide written notice to the Congress before initiating negotiations and must spell out in writing his principal objectives for the negotiations.

-- The President must consult with the Congress as negotiations progress and again before an agreement is concluded. To enhance these consultations, the proposal calls on U.S. negotiators to keep official congressional advisors fully informed regarding the negotiations.

-- Before signing an agreement, the President must inform the Congress of any other agreements he has concluded or intends to conclude with the country or countries concerned. He must also state his plans for implementing the trade agreement and whether the agreement will require additional legislation beyond that subject to fast-track procedures.

-- The proposal requires the President to describe at the time he submits implementing legislation to the Congress how he intends to use existing regulatory and administrative authority to carry out the agreement. He must also explain in writing how the agreement meets congressionally mandated negotiating objectives and serves U.S. economic interests.

-- Under well-established practice, the President collaborates with the Congress in drafting the implementing legislation and the legislation is subject to informal public hearings and "mark-ups" by all congressional committees of jurisdiction before its introduction.

Enhancing the Role of the Public and the Private Sector

The proposal adds to existing law by ensuring that the public is fully informed of the negotiations and that the President receives advice from both the private sector and the public concerning the negotiations.

-- The President must solicit views from the public, and the United States International Trade Commission, regarding any proposal to change U.S. tariffs. In addition, under the proposal, the President must notify the public of any agreement in advance of signing it.

-- The proposal adds to the existing requirement that the President must seek the views of congressionally authorized private sector advisory committees during the course of the negotiations. These groups include advisory committees on goods, services, agriculture, intellectual property, labor, U.S. foreign investment, intergovernmental affairs, and the environment. The proposal ensures that these committees will also examine and provide their views to the Congress and the President on any proposed agreement -- before it is signed.

Fast-Track Procedures

Provided the President observes each of the proposal's notice, consultation, and other procedures in connection with the negotiation of a trade agreement, the agreement and its implementing legislation are subject to fast-track consideration in the Congress. Fast-track rules call for the Congress to vote on qualifying trade agreements and implementing legislation without amendment within 60 "legislative days" -- typically a period of several months or more.

Under the President's proposal, new statutory provisions or other changes in U.S. law required to carry out a trade agreement may be included in fast-track implementing legislation only if the changes are both: (1) necessary or appropriate to implement the agreement; and (2) related to trade. These requirements prevent fast-track bills from being used to enact non-trade provisions.

Tariff-Cutting Authority

Under the renewed "proclamation authority," the President would be authorized to carry out agreements that reduce by up to 50 percent U.S. tariffs that currently exceed 5 percent ad valorem. The President would be able to eliminate duties of 5 percent or less. The proposal adds a provision that will allow the President to implement new tariff harmonization or elimination agreements on a sectoral or regional basis, consistent with World Trade Organization rules.

DASCHLE, MOYNIHAN OUTLINE SENATE DEMOCRATIC DEMANDS ON FAST TRACK

Two senior Senate Democrats as late as this week pressed the Administration to address labor and environmental issues in its fast-track proposal in ways that would improve global standards in these areas and would not threaten to erode U.S. rules. Senate Minority Leader Tom Daschle (D-SD) and ranking Finance Committee member Pat Moynihan (D-NY) told President Clinton that these issues must be addressed for a fast-track bill to garner sufficient support among Senate Democrats.

"At the outset, there is widespread recognition that export expansion will be key to continued economic growth, and broad support for the aggressive market-opening initiatives that you and your economic team have undertaken," they said in a Sept. 15 letter. "At the same time, our colleagues share the conviction that we must address ourselves to the very real human costs of globalization, as American workers compete with low-wage labor in countries with weak labor laws, minimally enforced."

Daschle and Moynihan said the Administration must take specific steps in the areas of labor, environment, agriculture, worker education and retraining and consultations with Congress. They also said that environmental, health and safety standards must move towards U.S. standards.

"If a fast track proposal is to gain the support of Senate Democrats, it must address [these] objectives," the two senators said.

A congressional source said that the fast-track proposal floated by the Administration yesterday (Sept. 16) responds to "some" of the concerns raised by Senate Democrats during consultations last week. Provisions which establish liberalization in the agricultural sector as a main negotiating objective and demand broader consultations with Congress reflect these demands, the source said (see related story).

In addition, the Administration proposal establishes labor and environment as a "principal trade negotiating objective," which was not the case before the Administration consulted with Senate Democrats last week, the source said.

Daschle and Moynihan wrote that the Administration should base a decision to enter into free trade agreements on other countries' enforcement of their labor and environment laws. It should also seek to improve the functioning of mechanisms set up in the North American Free Trade Agreement side accords on labor and environment, they said.

They also emphasized that agriculture should be a "top priority" of U.S. trade policy in upcoming negotiations in the World Trade Organization. And they called for beefed-up trade adjustment assistance and effective education and training opportunities so that U.S. workers can benefit from increased trade.

Daschle and Moynihan also emphasized the need to more directly involve Congress in the process of negotiating trade agreements. "Many of our colleagues believe that the past fast track procedural requirements have fallen short, making Congress less than a true partner in the negotiations," they wrote.

Beyond these specific demands, the senators also called for a mechanism to avoid the adverse effect of exchange rate fluctuations on tariff cuts. They also expressed the need for "a real determination, backed by sufficient resources, to enforce the agreements we reach and remedy any deficiencies that may emerge as they are implemented."

Daschle, Moynihan Letter on Fast Track

September 15, 1997

Dear Mr. President:

We appreciate the time and effort that Ambassador Barshefsky and Secretaries Rubin, Glickman and Daley dedicated last week to meeting with Senate Democrats to listen to our concerns and hear our recommendations with respect to the fast track legislative proposal that will soon come before the Congress. We thought it would be useful at this point to articulate what appears to be an emerging consensus among our colleagues as to the issues that ought to be addressed when you present your fast track proposal.

At the outset, there is widespread recognition that export expansion will be key to continued economic growth, and broad support for the aggressive market-opening initiatives that you and your economic team have undertaken.

At the same time, our colleagues share the conviction that we must address ourselves as well to the very real human costs of globalization, as American workers compete with low-wage labor in countries with weak labor laws, minimally enforced. We also have a common concern that our efforts to harmonize worldwide environmental, health and safety standards in an effort to facilitate trade should not in any measure erode our own standards. Instead, global standards must move in our direction -- to safeguard the world's human and natural resources and ensure that American producers are not unfairly disadvantaged by competitors required to meet less rigorous requirements, or none at all.

With respect to the fast track process itself, we are agreed that the new legislation must forge a more effective trade agreements partnership, one that safeguards the respective constitutional roles of the Congress in regulating foreign commerce and of the President in negotiating with foreign governments. Members of Congress must be guaranteed a meaningful role in trade negotiations, from beginning to end.

If a fast track proposal is to gain the support of Senate Democrats, it must address the objectives discussed below. This list is not exhaustive, but represents some of the concerns that we and our colleagues believe deserve top priority in our international economic policy.

<u>Labor</u>. -- We are cocnvinced that promoting respect for workers' rights worldwide remains a legitimate and important objective of our trade policy, and, as has long been recognized, an appropriate subject for trade negotiations. A decision to enter into free trade agreements with our trading partners ought, therefore, to be based on a thorough assessment of the labor (as well as environmental) laws and enforcement practices of those countries with which the United States proposes to negotiate. With respect to the North American Free Trade Agreement, we commend you for insisting upon a separate side agreement on labor as a condition for completing those negotiations. After three years, however, its shortcomings are apparent, and we urge you to pledge to make it a more effective tool to address North American labor problems.

The United States should also move aggressively in the International Labor Organization to renew a global commitment to such core labor standards as freedom of association, the right to organize and bargain collectively, and prohibitions on exploitative child labor, employment discrimination and forced labor. The ILO should be given the tools to hold its members accountable, through periodic inspection and review, for compliance with these core standards. The disgrace of child labor must be given top priority.

<u>Environment</u>. -- Despite some assertions to the contrary, there is in U.S. law a well-established linkage between trade and the environment: we have long relied on our trade laws to enforce environmental objectives. Internationally, we are convinced that upgrading worldwide environmental standards ought to remain an important goal of our economic policy. There is a growing belief, however, that current global trade rules do not sufficiently accommodate these legitimate concerns. The complex technical, scientific and legal issues involved ought to be examined, and with urgency.

As a procedural matter, the United States ought to insist that environmental experts and non-governmental organizations have the greatest possible access to the World Trade Organization and other international fora, particularly when disputes involving environmental laws and regulations are pending. And, as in the case with the NAFTA side agreement on labor, we are convinced that significant improvements ought to be made to the NAFTA side agreement on the environment to ensure, for example, that additional resources are made available, promptly, for broader clean-up efforts.

<u>Agriculture</u>. -- Despite progress made in Uruguay Round negotiations, agricultural trade barriers remain significant in many foreign markets, distorting international trade and reducing farm income in the United States. While the follow-up negotiations in the World Trade Organization, scheduled to begin by the end of December 1999, will provide an opportunity to resolve many of these problems, many others cannot wait. We must move aggressively to enforce previously negotiated trade agreements, and we must make every effort to improve these accords where they have fallen short. In general, the competitiveness of American farm products and the wide range of foreign agricultural trade barriers justify making agriculture a top priority of U.S. trade policy in the coming years.

<u>Economic security</u>. -- The process of economic globalization is already far advanced. That does not mean, however, that we can turn our backs on those workers who lose their jobs because a factory moves its operations abroad, or dismantles a production line because of stiff competition from imports. We must improve upon our current trade adjustment assistance programs, to provide workers the most effective support, education and training available and to give firms the resources to position themselves in a highly competitive global economy.

You have presided over an economic expansion that is approaching record length. For some, the rewards have been great; for others, uneven at best. Our international economic policy ought to be shaped by one overriding goal -- a sustained, across-the-board improvements in living standards for all Americans.

<u>Negotiations.</u> -- The procedures we have historically used to consider trade agreements -- the so-called "fast track" procedures -- short-circuit the normal legislative process to guarantee an up-or-down vote, within a time certain, on legislation implementing such agreements. In exchange, the Congress has demanded that it be closely consulted throughout. Many of our colleagues believe that the past fast track procedural requirements have fallen short, making Congress less than a true partner in the negotiations.

The new authority must mandate a more direct role for the Congress. Congress must have the opportunity to review and consider, on a case-by-case basis, the specific negotiations into which you propose to enter. Particular attention ought to be paid to the unfinished business of the Uruguay Round -- including agriculture, intellectual property rights protection, and services trade, as well as sectoral market access negotiations. At the same time, we must preserve the effectiveness of our domestic laws against unfair foreign trade practices. A means must also be found to address the consequences of exchange rate fluctuations that can void the benefits of negotiated tariff cuts.

Congress must be closely involved throughout the course of the negotiations, particularly as the final deals are made. And long after the negotiations are over, there must be a real determination, backed by sufficient resources, to enforce the agreements we reach and remedy any deficiencies that may emerge as they are implemented.

Some of our suggestions will require legislative action; many will not. We urge you, Mr. President, in the strongest possible terms, to commit to a package of initiative with respect to these matters that we may consider as we take up the fast track legislation.

Respectfully,

Sen. Daniel Patrick Moynihan (D-NY)
Sen. Tom Daschle (D-SD)

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advisors on trade policy appointed under Section 161 of the Trade Act of 1974. This provision requires the Speaker of the House and the President of the Senate at the beginning of each Congress to appoint from their respective bodies five members from the Ways & Means and Finance committees.

Regarding specific negotiations, the President must provide to Congress written notice of his intent to enter into talks 90 calendar days before they commence. This notification must include the intended date of initiation, specific negotiating objectives and whether the President is seeking a new agreement or changes to an existing one, according to the bill.

The President must also consult "before and after" the submission of this notification with Ways & Means and Finance, as well as "such other committees of the House and Senate as the President deems appropriate," according to the bill.

Before formally entering into a trade agreement, the President would have to consult with Ways & Means and Finance, as well as other committees which have jurisdiction over issues addressed in implementing legislation. These consultations would cover "the nature of the agreement," and how the agreement achieves goals outlined by the fast-track legislation. The President would have to report on plans for implementation, including "subject matter for which supplemental implementing legislation may be required which is not subject to fast track procedures."

Ninety days prior to entering into the agreement, the President would have to notify the entire House and Senate and publish a similar notice in the *Federal Register*. Sixty days following the conclusion of the agreement, the President would be required to submit to Congress a description of the changes necessary in U.S. laws to bring the U.S. into compliance with the agreement. Then, the President would have to submit to Congress a draft implementing bill, a "statement of any administrative action proposed to implement the trade agreement," and a broad array of supporting information.

Under the bill, Congress would have the right to deny fast-track treatment to individual trade agreements if it passed a "procedural disapproval resolution" because it had been consulted insufficiently. The resolution must be introduced by the chairmen and ranking member of Ways & Means and Rules in the House and Finance in the Senate.

The bill also appears to move in the direction of Republicans to limit the scope of provisions which may be included in legislation implementing trade agreements covered by fast track. Previous fast-track authority has allowed for changes which are "necessary and appropriate" to implement the deal. Republicans have criticized this language as allowing the Administration to put provisions in the implementing legislation that go well beyond what is required by the trade agreement.

Under the Administration proposal, the President could include in implementing bills subject to fast track those provisions that are "necessary or appropriate...and which are related to trade, either repealing or amending existing laws or providing new statutory authority," according to the bill.

It also applies to implementing legislation rules originally established in 1985 and extended in the Budget Act of 1990 which require bills to be revenue neutral. These so-called "paygo" rules require bills which lose revenue to contain specific offsets. Since trade agreements generally include tariff cuts, their implementing legislation must raise an equivalent amount of revenue.

The bill calls for a four-year extension of fast-track authority, with a provision to extend it by presidential request for an additional four years beyond Oct. 1, 2001. The President would have to notify Congress of his intention to extend fast track no later than July 1, 2001. Congress could then override this decision by passing a resolution of disapproval, but the resolution would have to be reported out of the Ways & Means and Rules Committees in the House and the Finance Committee in the Senate before coming up for floor votes.

The bill grandfathers into fast-track treatment two specific negotiations which would otherwise not be covered because they have already begun and were not the subject of specific consultations with Congress. It cites negotiations in the WTO on "trade in information technology products," an apparent reference to a second phase of the Information Technology Agreement. The first phase of the ITA was concluded in 1997.

The bill would also grandfather into fast-track work programs required under the Uruguay Round agreement. For example, this could cover on-going negotiations on the harmonization of rules of origin.

The proposal would also ensure that negotiations on a free-trade agreement with Chile would be covered under fast-track procedures, a point which has always been supported by both the Administration officials and Republicans.

...Washington Trade Daily...

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Fast Track – Today or Wednesday

A good draft of fast track trade legislation – which could arrive on Capitol Hill today or Wednesday – could move quickly, depending on how clear the Administration makes its objectives (WTD, 9/12/97), a senior Republican House Ways and Means Committee aide told reporters yesterday.

The aide admitted that the Administration has done little consulting with Republican members, but expressed optimism that the Clinton White House is moving in the right direction by not including extraneous issues – like the environment and labor – in its proposal. She told reporters that the Administration informed the committee that it is basing its plan on a 1995 committee understanding that limited side issues to those directly related to trade.

Four Criteria

The aide spelled out four criteria on which the Republican majority of the committee will judge the proposal –

- how future trade negotiations will be structured – that future talks brought back to Congress for approval under the no-amendment, limited debate procedure will deal only with matters directly related to trade;
- what functions of the authority the Administration wants from Congress are laid out – what areas will it extend to and what objectives will be the aim of future talks.
- what items will be included in the implementing legislation. She suggested that any attempt to attach side arrangements – such as those reached during the North American Free Trade Agreement talks on the environment and labor, which were not considered by Congress under fast track in 1994 – would be rejected; and
- the extent and frequency of consultations with Congress.

A poorly conceived procedure – if approved by Congress in the rush toward recessing for the year – would lead to bad consequences, such as a finalized trade agreement that is ultimately rejected by Congress, the aide suggested. The main concern of members of Ways and Means is to avoid that prospect.

The Republican aide suggested that the White House must produce at least 80 votes for fast track or risk scaring off a number of Republicans who otherwise would support the trade negotiating authority. She suggested that upwards of 140 Republicans would support a good fast track bill on the House floor.

Senate Action

The Senate does not intend to waste time either. Senate Finance Committee Chairman Bill Roth (R-Del) yesterday said US Trade Representative Charlene Barshefsky, her chief aide – Deputy USTR Jeffrey Lang – and Treasury Secretary Robert Rubin will testify on the proposal Wednesday morning.

Speaking at the convention of the Service Employees International Union yesterday, President Clinton reiterated his desire for adherence to strong environmental and labor standards. He also said that the United States must adhere to those standards. He plugged the need for fast track renewal to help open world market wider to US goods and services.

Also yesterday, the Associated Press reported that the President and Vice President Gore will meet with "skeptical" House Democrats today in an effort to gain their support for the much-needed negotiating authority.

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...Washington Trade Daily...

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White House Unveils Fast Track

After much anticipation on Capitol Hill and in downtown Washington, President Clinton yesterday uncorked the "fast track" legislation bottle to the relief of backers of a straight-forward renewal of the negotiating authority and the profound disappointment of hard-core environmentalists and labor advocates, mostly in his own party (WTD, 9/15/97).

After a one-week delay, the President sent to Capitol Hill a bill that extends his fast-track negotiating authority for six years – with an option for Congress to end it after four – and outlines the basic negotiating objectives for the upcoming half-decade. The legislative language limits inclusion of extraneous issues to those directly related to trade. The President said he will pursue labor and environment matters within the World Trade Organization – where there is a committee on the environment and a debate has begun on labor and trade issues. Administration officials explained yesterday that the Administration will not force the issue in the fast track debate.

That upset pro-labor members like House Democratic Leader Rep. Richard A. Gephardt (D-Mo) and his chief whip, Rep. David Bonior (D-Mich), who called the proposal worse than that requested by President Ford in anticipation of a North American Free Trade Agreement in the late 1980s.

Gephardt, Bonior and Others

The two Democrats spoke to the press after President Clinton and Vice President Gore met with House Democrats late yesterday afternoon. The Presidential pitch, according to one participant, hammered on the importance of opening foreign markets to US exports as an integral tool to keep the US economy growing.

Labor and the environment were raised persistently by members of the caucus, with the President and Vice President fielding every question thrown, according to another member who took part in the nearly hour-long session. The President promised to pursue a strong labor and environment agenda – but on its own, rather than as part of future trade agreements. Such a proposal, said Rep. Gephardt, was tantamount to letting big US business run roughshod over workers in developing countries. He cited environmental and living conditions along the US border with Mexico which have deteriorated – rather than improved – since NAFTA.

Nearly half the Clinton Administration Cabinet was on Capitol Hill yesterday making the last minute push for fast track. US Trade Representative Charlene Barshefsky and Treasury Secretary Robert Rubin talked to Senate Democrats yesterday at noon. Commerce Secretary William Daley predicted that there will be a lot more of that activity in the weeks ahead. Also meeting with rural members of Congress was Agriculture Secretary Dan Glickman.

Mr. Gephardt said he would seek a middle ground with other like-minded Democrats and Republicans who oppose fast-track authority to create a bill that puts teeth in future trade agreements, including the environment and trade. He has insisted that new trade agreements allow the United States to insist on provisions raising standards-of-living abroad and protecting the environment – just as past agreement have given similar support to services trade and intellectual property rights.

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In an attempt to appease those critics, commented Senate Democratic Leader Thomas A. Daschle (SD) after a meeting with USTR Barshefsky, the Administration will bring forward an extensive Statement of Administrative Action dealing with the environment and labor. He

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suggested the Administration – by the end of the week – would put forward a range of such initiatives that could go forward through executive authority alone.

Chief House Democratic backer of fast-track, Rep. Robert T. Matsui (D-Calif), predicted passage of essentially what is in the President's proposal by a bipartisan majority sometime next month – prior to the President's planned visit to Latin America in the latter part of October. Right now, however, there are a lot of "undecideds," he commented.

Republicans – like House Ways and Means Committee Chairman Bill Archer (R-Texas) – greeted the long-awaited legislation with guarded optimism, saying he was "happy" to receive the proposal. "We appear to be off to a good, constructive start," he said in a written statement. After reviewing details of the proposal with USTR Barshefsky, Senate Finance Committee Chairman Bill Roth (R-Del) said, "at first glance it provides a reasonable base on which to start." Sen. Roth will chair a hearing on fast track today with Ms. Barshefsky and Treasury Secretary Rubin.

'Directly Related'

Critical discussions lie ahead. Mr. Matsui – a member of the House Ways and Means trade subcommittee – said defining what is meant by issues "directly related" to trade will be crucial to winning more support for the proposal. Defining it will be difficult, he told WTD, because those issues have not been dealt with before. A good part of the answer will depend on the degree of consultation that the Administration agrees to do in upcoming trade negotiations. Mr. Matsui noted that the Administration's plan already includes a generous offer on consultations across Congress – prior, during and even after trade negotiations.

Business groups – like the US Chamber of Commerce and the National Association of Manufacturers – expressed guarded optimism yesterday. The America Leads on Trade coalition of businesses said it would initiate its own campaign to see fast track approved in short order. Meanwhile, the AFL-CIO unveiled a number of television and radio spots opposing fast track, primarily by taking aim at the shortcomings of NAFTA.

Details

Following is part of a White House fact sheet explaining the key provisions of the proposed legislation –

The President's proposed legislation serves to reunite the Congress and the President in trade negotiations. The President's proposal ensures that the Congress is fully integrated into the formulation of US goals, strategies, and decisionmaking for each trade negotiation subject to fast-track procedures. Because the Congress and the President are united under the proposal, it tells US trading partners that the United States speaks at the bargaining table with one voice and that the Congress will not seek to reopen trade agreements after they are negotiated.

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A summary of the key provisions of the proposal follows:

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The proposal sets out "overall" and "principal" trade negotiating objectives for the President. The objectives call on US negotiators to seek, for example –

– To reduce trade barriers and trade distortions that limit market opportunities for US exports, including those aspects of foreign government policies and practices directly related to trade.

– To reduce foreign government barriers that discriminate or impose unreasonable regulatory barriers on US service providers.

– To reduce artificial or trade-distorting barriers to US foreign investment.

– To obtain adequate and effective protection for US intellectual property rights and increased access to foreign markets for US businesses that rely on intellectual property.

– To make the proceedings of international trade bodies more open to public view.

– To secure fairer and more open trading conditions for U.S. agricultural products.

– To promote through the World Trade Organization internationally recognized worker rights and sustainable development.

Trade Agreements Covered by the President's Proposal

The President may negotiate and bring back to the Congress for fast-track Congressional approval and implementation trade agreements addressing tariff barriers, nontariff barriers, or both.

– Thus, fast track could be used to carry out agreements concluded under the trade negotiating agenda set out in the Congressionally approved agreements administered by the World Trade Organization – for example, to further reduce tariff and nontariff barriers to agricultural trade.

– The President could use his renewed "proclamation authority" to carry out a sectoral agreement, similar to the recent Information Technology Agreement, which is reducing tariffs that foreign governments impose on billions of dollars of US computer, electronic, and semiconductor products sold around the world.

– Finally, fast track could be used for bilateral or regional free-trade arrangements.

Making the Congress a Partner in Trade Negotiations

In order for an implementing bill to qualify for fast-track procedures, the President must comply with numerous notice and consultation provisions designed to ensure that the Congress is a full partner with the President in critical trade negotiations. These provisions enable the Congress to set priorities, provide advice and exercise oversight at all stages of the negotiations and after the agreement is concluded. That ensures that congressional views will be fully reflected both in the final agreement and in the manner in which the agreement is carried out. Moreover, if the Congress concludes that the President has not adequately consulted the Congress regarding a proposed agreement, the proposal creates an expedited procedure for the Congress to refuse to apply fast-track procedures.

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The proposal adds to existing law by ensuring that the public is fully informed of the negotiations and that the President receives advice from both the private sector and the public concerning the negotiations.

– The President must solicit views from the public, and the United States International Trade Commission, regarding any proposal to change US tariffs. In addition, under the proposal, the President must notify the public of any agreement in advance of signing it.

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Under the President's proposal, new statutory provisions or other changes in US law required to carry out a trade agreement may be included in fast-track implementing legislation only if the changes are both: (1) necessary or appropriate to implement the agreement; and (2) related to trade. These requirements prevent fast-track bills from being used to enact nontrade provisions.

Tariff-Cutting Authority

Under the renewed "proclamation authority," the President would be authorized to carry out agreements that reduce by up to 50 percent US tariffs that currently exceed 5 percent ad valorem. The President would be able to eliminate duties of 5 percent or less. The proposal adds a provision that will allow the President to implement new tariff harmonization or elimination agreements on a sectoral or regional basis, consistent with World Trade Organization rules.

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Around the Globe

- Brazil's Minister of Industry and Commerce yesterday criticized countries that preach free trade but practice protectionism, Reuter news service reported from Brasilia. At the presentation of a report on the trade restrictions that Brazilian goods face, Minister Francisco Dornelles called for countries such as the United States, Canada, China and the European Union to open their borders.

The report commissioned by the Ministry of Industry and Commerce identified Canada as the country with the highest individual import tariff on Brazilian goods — 339 percent. China followed closely with a tariff of 220 percent, while the United States was third with 188 percent. The average tariffs the three countries levied against Brazilian goods were all much lower, at 9.5 percent, 35.2 percent and 5.1 percent, respectively. The report said Canada restricted imports of Brazilian agricultural products, metal products and shoes. China checked the entry of cars and minerals, while the United States had barriers against tobacco, fruits and vegetables, shoes, metal and textile products, orange juice and sugar. The European Union also had barriers against Brazilian agricultural and metal products.

- Japan's merchandise trade surplus continued to surge in August amid robust exports of automobiles and electronic devices, increasing the possibility of renewed trade friction with the United States and other countries, according to a Kyodo news service report from Tokyo yesterday. The nation's global trade surplus for August totaled 742.1 billion yen, chalking up a 113.6 percent jump from a year before, the Finance Ministry said in a preliminary report. The August figure represented the fifth consecutive monthly increase.

Japan's politically sensitive trade surplus with the United States also soared 59.8 percent from a year earlier to 350.6 billion yen, posting a rise for 11 months in a row, the ministry said. A Finance Ministry official said the ministry does not rule out the possibility that Japan's trade surplus will show an up-trend over a short period. "Given the recent structural changes in Japan's trading behavior, however, the nation's trade surplus is unlikely to continue a surge over the medium and long term," he was quoted as saying by Kyodo.

"The yen's recent weakness has increased the global competitiveness of domestically made products, while capping moves by Japanese companies to shift production abroad," said Hisashi Yamada, senior economist at the Japan Research Institute. "As long as the yen remains weak against the dollar, Japan's trade surplus is expected to continue to rise."

Of Japan's global trade in August, exports advanced 14.4 percent to 3,953.3 billion yen, buoyed by strong exports of automobiles and electronic devices amid the yen's weakness. A weaker yen makes Japanese exports more competitive on the global market. The average yen-dollar exchange rate used for the August report was 117.12 yen, compared with 107.84 yen a year before. Imports in August, meanwhile, rose 3.4 percent to 3,211.3 billion yen, registering the smallest growth since July 1994 because the hike in the consumption tax from 3 percent to 5 percent in April this year continued to dampen domestic demand.

In trade with the United States, exports increased 16.9 percent to 1,065.7 billion yen, while imports grew 3.2 percent to 715.1 billion yen, the report said. Among US-bound export items, automobiles posted a 41.5 percent surge. Japan also registered continued increases in its trade surplus with the European Union and other Asian countries. The surplus with the EU climbed 96.2 percent to 150.9 billion yen for the fifth consecutive monthly rise, while that with other Asian nations grew 27.2 percent to 520.3 billion yen, also posting an increase for the fifth straight month.

Meanwhile, Finance Minister Hiroshi Mitsuzuka said yesterday Japan will not rely on foreign demand as a driving force of the country's economic growth despite the expected lingering adverse effects of the consumption tax hike, Kyodo said in a separate report from Tokyo.

At a regular press conference after the day's cabinet meeting, Mr. Mitsuzuka said, "We had expected the impact of the sales tax hike to diminish by the end of the April-June quarter, but now it looks like it will also have a slight impact (on the economy) in the July-September quarter." In an apparent effort to allay concerns about Japan's growing trade surplus ahead of a series of international financial meetings to start this weekend, Mr. Mitsuzuka added, "But we do not intend to rely on foreign demand, and further promotion of fiscal structural reform and financial system reform will boost the domestic economy."

Mr. Mitsuzuka said he is ready to explain Tokyo's stance on its economy at the meetings with world financial leaders. Finance ministers and central bankers of the Group of Seven major economies will hold a one-day meeting in Hong Kong on Saturday, which will be followed by a joint session of the International Monetary Fund and the World Bank.

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...Washington Trade Daily...

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President Asks for Fast Track Authority

President Clinton yesterday asked Congress to give him fast-track trade negotiating authority "to renew the President's traditional authority to negotiate trade deals, to open more American markets for goods and services from our country and to restore the partnership between the Congress and the President in the trade arena necessary to keep our economy strong and our leadership strong" (WTD, 9/10/97).

The shape of the suggested legislation, however, is still under construction and top-level US trade policymakers need a few more days to complete the job. White House chief economic advisor Gene Sperling told a press briefing yesterday, following the President's presentation to a gathering of business and agriculture executives, that a final bill will be sent to Capitol Hill sometime next week.

"We have to use every tool we can get to open foreign markets to our goods and services; we have to continue the fight for open, fair and reciprocal trade; we have to continue to stand against unfair trade practices; and we have to act now to continue this progress to make sure our economy will work for all the American people," the President said.

Labor and Environment

Labor and the environment are important aspects of that goal, President Clinton continued. "Our commitment to workers' rights and environmental protection are, and have long been, reflections of our fundamental values. They also have been a benefit to our own economy, and they will become more a benefit to our economy as we move into the 21st century world where maintaining a clean environment will create more high-wage jobs for working people so that social responsibility and economic markets will merge in their common interests and objectives."

"We will continue to seek even further adherence around the globe to fundamental worker rights and environmental protection, as we have for decades. We do not accept the fact that free trade should lower our standards to meet those of other countries," the President continued. "Indeed, our goals should be to persuade other countries to build on the prosperity that comes with trade to lift their own labor standards, their own people up and to make a commitment to economic growth with environmental protection – a commitment we must reaffirm this very year. Trade need not pull standards down; it must lift them up. And we can do that if we'll work at it."

US Trade Representative Charlene Barshefsky told reporters following the speech that areas once thought to be far outside the scope of international trade – such as services and intellectual property rights – are now considered proper considerations in trade agreements. She suggested that the environment and basic labor rights also fit in the definition of trade matters. "The end goal for the Administration is can the President keep our exports rolling out the door – make it here, sell it there. Can he at the same time promote and expand labor principles, particularly ... core labor standards. Can he help promote and ensure sustainable and responsible environmental development. Those are the goals. There is no legislation we would put forward under which he (the President) could not pursue vigorously each of these goals," Ms. Barshefsky said. She added: "The critical element here is the ability of the United States to move forward on all three fronts simultaneously."

Or Leave the Field to the Competitors

If Congress ultimately refuses to grant the fast-track authority, "we will leave the field to our competitors to break down more trade barriers to their own products at our expense," the President

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explained.

Treasury Secretary Robert Ruben, Commerce Secretary William Daley and USTR Barshefsky returned to Capitol Hill yesterday afternoon to continue efforts to garner a "consensus" for the emerging bill. Agriculture Secretary Dan Glickman is off to Kansas City today to address the Chamber of Commerce to bolster support for the President's trade authority; Mr. Daley said he will travel to Minneapolis today to do the same. Energy Secretary Frederico Peña will travel the country for fast track as well.

But few members of Congress who talked about it yesterday were willing to commit their support for an unseen bill. House Ways and Means Committee Chairman Rep. Bill Archer (R-Texas) – whose committee will be the first to review the legislation once submitted – offered a cryptic remark yesterday. "It will be helpful if the Administration follows up today's event by submitting to the Congress a specific fast-track proposal." Every day's delay, he said in a written statement, complicates the prospects for passing a bill. Senate Finance Committee Chairman Sen. Bill Roth (R-Del) echoed those remarks in a statement.

Group Support?

Also yesterday a broad coalition of agriculture groups announced their support for fast-track renewal, as did the National Association of Manufacturers and the US Chamber of Commerce. How strongly they will back the President's plan, however, will depend on how much environmental and labor issues are emphasized. Said NAM President Jerry: "Any fast track plan passed by Congress should avoid placing burdens on American industry and its employees. Those who want to add environmental and labor provisions to fast track legislation are trying to insert laudable goals into the bill at the wrong time and in the wrong place. Such additions will only slow the process down and potentially doom any final trade agreement."

One major agriculture group – the Wine Institute – said it would withhold its support for fast-track renewal until a number of its trade problems are resolved. The association of California wineries and vintners is concerned that the Administration is moving toward lower tariffs on bulk and bottled wine, and grape concentrate, while other producing nations continue to protect their markets.

The White House delay in sending up details of the fast track plan sounded an encouraging note to House Democratic Leader Richard A. Gephardt (Mo), who suggested that the President was reversing his stance and would make labor and the environment core ingredients in future trade agreements. The only reason that big business does not want those two important issues dealt with, according to the House Democrats' chief whip – Rep. David Bonior (Mich) – is because it does not want to pay for it. At a press conference yesterday, both members urged the Administration not to make the same mistake it did in 1993 by considering labor and the environment as only ancillary aspects of future trade agreements. While the North American Free Trade Agreement, indeed, boosted trade among the three partners, it came at a tremendous price to Mexican workers and the environment, they said.

Strong Bill Could Succeed

Mr. Gephardt said it is possible for the President to garner a majority of Democrats – especially those that have become disenchanted with NAFTA – as well as a number of Republicans to pass a good fast-track bill that encompasses labor and the environment.

The Democratic leader said he and other like-minded Democrats have redoubled their efforts in the past couple of weeks to convince President Clinton to submit a strong fast-track bill. "The delay in sending up a detailed bill is hopefully a sign that a majority of Democrats and their concerns are being heard. Democrats want to force a policy that unites, not divides us," he commented.

The two top Democrats will participate today in a Capitol Hill "teach-in" on the failings of NAFTA.

As the White House ceremony went on in the East Room, hundreds of Americans demonstrated against NAFTA outside the White House. Among them were Sue Doneth, whose daughter got hepatitis from tainted strawberries imported from Mexico. A former Customs Service border agent was also on hand to say that NAFTA has allowed unsafe Mexican trucks to enter US highways.

US Pressuring EU on Cosmetics, Pharmaceuticals

The United States is keeping up the pressure on the European Union to carve out an exception for the United States in its two new directives relating to the use of animal tissue in cosmetics and pharmaceuticals (WTD, 8/8/97).

Deputy Assistant Secretary of Commerce for Market Access and Compliance Franklin J. Vargo yesterday urged House International Relations subcommittee on international economic policy and trade chair Rep. Ileana Ros-Lehtinen (R-Fla) to bring up the subject during next month's US-European Union Parliamentary conference in Washington.

The rulings arose after the European scare over BSE – "mad cow" – disease which broke out in Britain last year and has essentially halted beef exports from that nation. A directive which banned the use of materials from cows in cosmetics went into effect on January 1. A similar directive relating to pharmaceuticals will go into force on October 1.

If applied to US pharmaceuticals, the impact could be serious – upwards of some $20 billion annually, Mr. Vargo told the subcommittee yesterday. The United States exports some $100 million of cosmetics that could be affected by the ban to Europe every year.

Since the United States is free of BSE, the ban should not apply to US products, the official insisted.

Textile Negotiator Dismisses Magazine Charges

President Clinton's nominee to be new Deputy US Trade Representative in Geneva, Rita Hayes, yesterday dismissed two magazine articles about the link between US textile policy toward China and Presidential fundraising activities as "inaccurate" and completely without merit (WTD, 7/7/97).

It is more than a coincidence that two major national magazines – *Newsweek* and *Time* – came out with the critical articles about the former textile trade negotiator over events that happened more than six months ago just two days before her Senate confirmation hearings, Ms. Hayes told the Senate Finance Committee yesterday.

Both magazines reported that Hong Kong clothing exporter Stephen Lau was allowed to sit-in on briefing sessions by then chief US textile negotiator Hayes just as negotiations for a new textile trade agreement with China were winding down. *Newsweek* reported that US industry representatives were appalled that Mr. Lau – who also was an advisor to the Chinese government during the talks – would be allowed to sit in on the briefings.

Ms. Hayes – during her confirmation hearing yesterday – explained that the briefing was an informal one, which she characterized as a "snapshot" of the talks. Since USTR no longer has a formal textile trade advisory committee, there were no strict rules on who could attend the briefings or whether she could reveal confidential information. No harm was done anyway, she said, since what she told the US executives – with Mr. Lau in attendance – was simply a description of the talks to date, something that the Chinese already knew.

Both magazines revealed that Mr. Lau was a major – albeit it indirect – donor to the Democratic party.

Ms. Hayes described the controversy to reporters afterwards as "much ado about nothing." Nonetheless, Committee Chairman Bill Roth (R-Del) directed her to provide written answers to the allegations.

Around the Globe

- The American Automobile Manufacturers Association said yesterday it has sent a letter to President Clinton expressing US automakers' growing frustration with South Korea's failure to honor its market-opening commitments under Korea's 1995 automotive trade agreement with the United States and urging the President to take action under Section 301 (WTD, 8/22/97). "Closed domestic markets are troubling under any circumstances. But the situation is particularly unacceptable when it is combined, as is the case in Korea, with government-directed policies to promote an extraordinary expansion of excess automobile capacity for export to open markets in the U.S. and around the world," the automakers said.

In 1995, after almost two years of negotiations, the Clinton Administration achieved the US-Korea Automotive Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in the Republic of Korea. The companies said they welcomed the agreement as a modest effort by the Korean government to begin reversing its long-standing policy of excluding imports from its automobile market. On the basis of the 1995 agreement, AAMA's Big Three member companies substantially expanded their investments in Korea with a view to increasing US exports to that country, the September 9 letter said.

However, the AAMA said, South Korea has not lived up to its market-opening commitments. Import sales remain far below expectations. In all of 1996, Chrysler, Ford and General Motors imported less than 3900 vehicles into a total Korean market of 1.6 million vehicles. During 1997, the Korean government has not taken any positive action to promote imports. Instead, there has been a host of continuing violations of the 1995 MOU, the letter said . The Korean government's actions deserve to be identified as priority practices that unfairly limit US market access under Super 301. "Failure by the Administration to insist that Korea adopt responsible and fair automotive trade policies will make it more difficult to expand access for US automobiles in that market and will encourage Korea to continue a pattern of irresponsible trade practices," the group warned.

- The Philippine government is set to slow down its tariff reduction program next year to boost the country's sagging manufacturing sector, the Trade Department said according to a Kyodo news service report from Manila. Trade Secretary Cesar Bautista told business leaders during a meeting yesterday that tariff cuts next year will be slowed down to 5 percent from the original goal of 10 percent. Mr. Bautista said the Department of Finance and the National Economic Development Authority have agreed to the plan.

According to the report, the country's beleaguered business sector has criticized the government's tariff reduction program as too advanced compared with other countries in the region.

- Japan's current account surplus in July surged 62.7 percent from a year earlier to 906.0 billion yen, marking the fourth consecutive monthly year-on-year increase, the Finance Ministry said according to a Kyodo news service report from Tokyo. The ministry attributed the surge to the yen's depreciation against the dollar and favorable economic situations abroad, particularly in the United States and Europe, which boosted Japan's exports of automobiles and office equipment including personal computers. Treasury Secretary Robert Rubin said earlier this week Japan needs to stimulate domestic demand and prevent a resurgence of its trade surplus (WTD, 9/9/97). But the Finance Ministry downplayed the seriousness of the latest statistics. "The surplus is unlikely to continue increasing in the long term in view of ongoing changes in Japan's economic structure," a ministry official said according to Kyodo.

In goods and services trade in July, Japan posted a surplus of 474.2 billion yen, up 421.6 percent from a year before. The surplus in merchandise trade rose 50.5 percent to 1,042.8 billion yen, up for the fourth straight month, following an 18.7 percent increase in the previous month, the ministry said in a preliminary report. Exports advanced 12.1 percent to 4,165.1 billion yen, up for the 24th consecutive month, while imports edged up 3.3 percent to 3,122.3 billion yen, rising for the 36th month in a row, the ministry said.

Among the main export items, automobiles advanced 32.3 percent on a value basis and 28.1 percent in terms of volume from a year earlier, and exports of office equipment, such as personal computers, increased 10.3 percent in terms of value, the ministry said. As for import items, airplanes marked a 179.3 percent jump, and imports of liquefied natural gas grew 28.9 percent. Imports of automobiles, however, declined 26.7 percent, following a 24.0 percent plunge the previous month. The ratio of imported manufactured products to overall imports came to 59.6 percent.

In services trade, Japan registered a deficit of 568.6 billion yen, an improvement from a deficit of 601.9 billion yen a year earlier, due partly to a rise in the number of foreign tourists visiting Japan, the ministry said.

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No Substance to Fast Track Yet

Although President Clinton will make a speech on trade today to kick off a campaign to gain Congressional fast track trade negotiating authority, he is unlikely to have in hand the details of his legislative proposal (WTD, 9/5/97), White House chief spokesperson Michael McCurry told reporters yesterday.

Fast track renewal is one of the priorities for the remainder of the current Congressional session, the President told students at American University in a speech yesterday.

But, if the President does not get the proposed legislation to Congress soon, he faces a poor prospect of getting it at all, said House Ways and Means trade subcommittee Chairman Rep. Philip M. Crane (R-Ill) yesterday. Mr. McCurry said the bill could be drafted by the end of the week. Mr. Crane said unless it gets to Capitol Hill by the end of next week, its fate is limited because of the "precious" little time left in the session. Passing it next year – in an election year – will be a tough feat to accomplish, the member told reporters following a speech to the US-Brazil Business Council.

The Longer the Wait, the Less the Prospects

The longer the White House delays, said Rep. Crane, the harder it will be for free-trade backers to marshal the support they need to pass the bill, and the easier it will be for opponents – such as House Democratic Leader Richard A. Gephardt (Mo) – to organize.

White House officials said that the President and his top aides are tinkering with the complicated language involving the environment and labor, which will be in the bill in some fashion. Mr. Crane commented that both concepts can be included in acceptable legislation as long as they refer to issues directly related to trade. Any broader concept – on which laborites and environmentalists could slap their own bigger concerns – would lose the White House the majority of Republican supporters that it needs to pass the bill, Mr. Crane commented.

Using trade sanctions would be proper to fight foreign labor or environmental regulations that act as an unfair trade barrier, one Congressional staffer explained at the Chamber of Commerce function.

Meanwhile, proponents of a strong role for labor and the environment in future trade agreements are gearing up for action this week. The Teamsters Union will picket the White House today against any extension of the North American Free Trade Agreement, and House Democratic Leader Gephardt will participate in a "teach-in" Thursday on Capitol Hill sponsored by Citizen Action and other public interest groups. Mr. Gephardt plans a press conference this afternoon to spell out his position.

But Could Move in Two Weeks

Mr. Crane suggested a "good" fast track bill could move through the House in two weeks, depending on the disposition of the Republican leadership. He refrained from predicting the bill's fate in the Senate, where it could face a filibuster in the final weeks of the session. Congress still expects to adjourn for the year by early November, Mr. Crane commented.

The Republican trade leader said that US Trade Representative Charlene Barshefsky – in a conversation earlier in the day – was unable to tell him when the bill would go to Capitol Hill.

The battle for fast track could be a close one, Rep. Jim Kolbe (R-Ariz) suggested. He criticized fellow Republicans who proclaim free-trade principals in the Capitol, but who stray away from the topic back in the district. Public sentiment – fueled by unfounded fears of unsafe imported foods and increased immigration which some say come along with trade agreements – are

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powerful forces.

President Clinton has been forthright in proclaiming the benefits of trade during his first term in office, Mr. Kolbe told the Chamber of Commerce gathering. He should not shy away from it now.

Mr. Kolbe complained that no one at the White House has been able to even outline an Administration fast-track proposal just a day before it was to be submitted. He suggested those officials still do not know what to do at this late date.

The final proposal, Mr. Kolbe continued, must be to the liking of the majority of Republicans because there is no time left in the session for drawn-out "behind-closed-door" informal drafting sessions with the Congressional leadership.

Meanwhile, US Trade Representative Charlene Barshefsky and other US officials continued to meet with members of Congress yesterday in an attempt to reach a consensus on a future bill.

House Defense Committee Guts Encryption Bill

The powerful House National Security Committee yesterday became a major roadblock to supporters of legislation (HR 695) that would do away with the Administration program of licensing exports of sophisticated encryption software and technology (WTD, 7/31/97).

By voice vote the committee approved a version of the bill that would allow the Commerce Department – with the concurrence of the Defense Department – to continue its licensing program if the President determines that constraints are necessary to maintain the national security. It also directs Commerce to upgrade its regulations as the technology advances.

The committee voted 45 to one for an amendment offered by Rep. Curt Weldon (R-Pa) and ranking committee Democrat Ron Dellums (Calif) that essentially gutted the version of the bill already approved by the House International Relations Committee. The sole dissenter was Rep. Adam Smith (D-Wash), who did not deny the serious national security implications of sophisticated encryption products that get into the wrong hands abroad, but suggested little could be done about it in the real world. He said a major Canadian software company has just developed a 128-bit encryption product and is selling it unrestricted on the world market. With continued export restraints in place, the US industry will quickly lose out to foreign competition, he argued.

Dropping Off the Bill

Several committee members – including Rep. Sonny Bono (R-Calif), who signed on to the original bill – said they were duped by proponents of the bill, who downplayed the national security threat.

Administration security officials have been briefing members of the committee along with the Select Intelligence Committee, which held a closed hearing on the issue yesterday.

Given the difficult legislative situation – with one major committee proposing one version of HR 695, in direct contradiction with the version approved by National Security – Committee Chairman Floyd Spence (R-SC) suggested that the bill would not get to the House floor for a final vote.

Without admitting total defeat, one software industry executive told WTD after the markup that there is always next year. She said she was encouraged by Administration statements that the National Security Agency only needed more time for upgrading its own de-encryption capabilities in light of the inevitable advancement of encryption technology use by terrorists and drug runners.

WTO Releases EU Banana Report

The World Trade Organization made public yesterday the decision of an appellate panel upholding US charges against the European Union for its discriminatory practices relating to the importation of bananas (WTD, 6/13/97).

A statement by US Trade Representative Charlene Barshefsky said the case was an important precedent because it broadly defined coverage under the General Agreement on Trade in Services and will be particularly important in eliminating barriers to US exports in distribution and other service sectors. The case also sets important precedents for agriculture trade in the areas of tariff quotas and import licensing.

For years the United States and a number of major Latin American banana producing nations have complained about the EU's complicated import licensing system that favors the smallest producers – mostly former European colonies in the Caribbean, Africa and the Pacific. US-based Chiquita Brands several years ago complained that the EU rules essentially had robbed it of a legitimate market, mostly for bananas from Ecuador, Honduras, Guatemala and Mexico.

Findings

The measures found to be inconsistent with WTO rules include:

- the EU's assignment of import licenses for Latin American bananas to French and British companies – whose previous business had been limited to the distribution of European, Caribbean and African bananas – taking away a major part of the banana distribution business US companies had developed over the century;
- the EU's assignment of import licenses for Latin American bananas to European banana ripening firms – which had not historically imported bananas – further taking away US company business;
- the EU's actions imposing more burdensome licensing requirements for imports from the Latin American co-complainants than for other countries' bananas; and
- the EU's discriminatory and trade-distorting allocation of access to its markets for bananas, which departed from the fair-share standard of the WTO which focuses on past levels of trade.

The United States remains committed to supporting the economies of the Caribbean countries and is ready to discuss options for easing possible economic injury due to the ruling, US trade officials said yesterday. One proposal on the table is direct aid in the form of deficiency payments to the Windward Islands – most in danger of economic damage from the ruling. Jamaica, according to a US trade official, should be accorded tariff breaks by the EU to offset its possible losses.

Not Good for Little Caribbean

European Union Commission officials remained silent yesterday following release of the ruling, saying only that they are studying the implications. But one member of the European Parliament – Britain's Glenys Kinnock – said the ruling will be disastrous for small island producers, especially in the Windward Islands, where banana production accounts for 70 percent of the foreign exchange earnings and a full 60 percent of agricultural employment. Ms. Kinnock was in Washington yesterday to emphasize the importance of maintaining trade preferences for the smallest developing countries. In a statement, she said that many members of the US Congress were sympathetic with the plight of the Caribbean.

Mercosur Wants NTB Talks First in FTAA Negotiations

A panel of officials from three of the four Mercosur nations – Brazil, Argentina and Uruguay – insisted yesterday at a forum of the US-Brazil Business Council that issues of nontariff barriers be addressed in the upcoming Free Trade Area of the Americas trade negotiations before lowering tariffs (WTD, 8/29/97).

Mercosur has helped its four member nations drop trade barriers among themselves and the outside world as well as allow major investment projects that were long stalled in the past, commented Brazilian Foreign Trade Secretary Mauricio Cortes. In practical terms, US exports to Brazil, Argentina, Uruguay and Paraguay have spurted, while Mercosur exports to the United States have remained flat, remarked new Argentinean ambassador to Washington Diego Guelar.

The cause, the official said, is high nontariff US barriers, such as dumping duties against imports of concentrated orange juice, strict meat import quotas and a complicated tariff-rate quota on sugar. His own country has access of only 20,000 tons of beef out of a total 1 million ton US quota, the ambassador said.

Mercosur has driven down tariffs significantly over the past few years, said Mr. Cortes. At the end of the last decade, tariffs were upwards of 60 percent around the region; today they have fallen to an average 12.3 percent – but not without much economic pain. Driving them down further – as desired by the United States in the upcoming trade round – would be too much and possibly disrupt the whole effort to reach a tariff-free Hemisphere by 2005, he commented.

Agriculture First

Instead, the officials agreed, negotiations that begin at next April's Hemispheric Summit in Santiago should deal with nontariff barriers in significant areas – such as agriculture, commented Brazilian Undersecretary for Integration, Economic and International Trade Affairs José Botafogo Gonçalves.

Agriculture negotiations, added Chilean ambassador to the United States John Biehl, will be difficult.

Commerce Deputy Assistant Secretary of the Western Hemisphere Regina Vargo said the major US concern about the upcoming talks is that they help the transition from subregional groups to a Hemisphere-wide accord and not reinforce the existing regional trade arrangements.

Around the Globe

- Chief Executive Tung Chee Hwa reassured US business leaders and political figures that Hong Kong will maintain its momentum of development now that it has returned to China's sovereignty (WTD, 9/8/97), Xinhua news agency reported from Washington. In a keynote address to the US Chamber of Commerce, Mr. Tung said: "I can assure you that Hong Kong will continue to manage its economy with the lightest and most steady of hands, sticking firm to free markets, small government, low taxes and fiscal prudence." He said that he was completely confident about Hong Kong's future because the Basic Law has given the Special Administrative Region full autonomy. "The Basic Law gives us far more than financial autonomy. Apart from foreign affairs and defense, it gives us full responsibility to maintain our own economic and social systems; our own legal system; our own system of government; our religious freedoms, press freedom and civil liberties," said the chief executive who arrived Monday for a four-day visit.

- South Korean government and business officials have decided to drastically step up merchandise marketing in the United States to reduce the snowballing bilateral trade deficit (WTD, 8/20/97), Xinhua news agency said. Seoul's widening trade gap with Washington, if left uncurbed, would seriously threaten the nation's current account balance this year, said officials of the Ministry of Economy and Finance. According to the ministry, South Korea's exports to the United States in the first seven months of this year declined 6.6 percent to $12.1 billion from a year earlier, while imports fell only 2.6 percent to $18.7 billion, causing the trade gap to widen to $6.6 billion. The deficit in trade with Washington accounted for 67 percent of the country's total trade shortfall of $9.86 billion during the cited period. The ministry attributed the widening trade deficit to South Korea's weak competitiveness of export goods against that of their Japanese counterparts.

  South Korean trade officials will call on their US counterparts to ensure greater access to the US procurement market for South Korean companies when they meet in an inaugural meeting of South Korea-US business cooperation committee next month, according to the ministry.

- Australia will freeze tariffs at high levels on the beleaguered textile, clothing and footwear sectors from 2000 until 2004 in a move to save thousands of jobs, government officials were quoted as saying yesterday in a Kyodo news service report from Sydney. Job security was the prime factor in the decision made at a cabinet meeting Tuesday night to freeze tariffs to 15 to 25 percent beginning in 2000. They are currently at levels of up to 37 percent. Aggressive tariff cuts will then be needed from 2005 for Australia to reach its Asia-Pacific Economic Cooperation forum target of free trade by 2010. In making its decision, the cabinet bowed to industry and popular pressure by rejecting a recommendation made by a government advisory body to slash tariffs to 5 percent by 2008.

This priority given to preserving jobs parallels Prime Minister John Howard's decision in June to freeze tariffs in the car industry at 15 percent until 2005. The textile, clothing and footwear industries employ about 100,000 workers, many of them low-paid women.

- Mexico suffered a current account deficit in the first half of this year of $1.667 billion, as compared to a $450 million surplus in the first half of 1996, El Universal/Infolatina reported from Mexico City yesterday. The deficit was higher than the $998 million deficit registered in 1995. Foreign trade for the half-year presented a surplus of $2.91 billion and transfers added another $2.331 billion but factorial services presented a deficit of $6.369 billion.
- Argentina registered a $1.86 billion trade deficit during the first seven months of this year, the National Institute of Statistics and Census said according to a Xinhua news agency report yesterday from Buenos Aires. Imports jumped 28 percent over the corresponding previous period to $16.59 billion, while exports rose only 9 percent to reach $14.73 billion. However, the country posted a $1.2 billion trade surplus with its partners in the Southern Common Market.

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If You Can't Protect What You Own– You Don't Own Anything

Comments by
Jack Valenti
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before the
House Subcommittee on Courts &
Intellectual Property

on
WIPO Copyright Treaties Implementation Act
and the Online Copryight Liability Limitation Act

Sept. 16, 1997

I am pleased that this Committee is taking a look at the topic of online service provider liability. In the revolution in cyberspace now entering a high velocity stage, there is no issue more challenging than the protection of copyrighted intellectual property. This is not something to be treated casually, or dealt with a haphazard gaze. To those who want to change copyright law to "fix" the problem, my response is "Tread lightly, think deeply."

No institution of the Congress is better situated than this Committee to give this issue the long hard look that is required. This Committee understands with appreciative clarity the ascending curve of global revenues produced by American copyright industries who deal in intellectual property: revenues emerging from an international appetite for American computer software, video games, movies, television programs, home videos, books, musical recordings. The copyright industries produce and market America's most wanted export on every continent. In this country, the copyright industries contribute a quarter of a TRILLION dollars each year to the Gross Domestic Product and each year that sublime number grows larger. Three million American jobs are directly dependent on intellectual property, and an equal number benefits indirectly. This is not bean bag business. Moreover, these industries account for over $50 BILLION in exports and foreign sales each year, also increasing every year. Over the next decade no product grown, manufactured, or created in this land will surpass American copyright industries' global sweep, enticing multi-millions of viewers, users, audiences of all cultures, countries and creeds. Which is why one of this nation's indispensable objectives must be, has to be, to protect and safeguard intellectual property against pilfering, unauthorized use and illegal copying. The plain truth is if you cannot protect what you own, you don't own anything.

The copyright industries generally, and the motion picture industry specifically, are excited about the explosive growth of the Internet and other forms of digital distribution of copyrighted works. We know that this new technology will allow us to reach more markets faster, with a greater diversity of products, and with less expense and hassle. In the long run -- and, very probably sooner than we think, digital networks will be an incredible bonanza for the American consumer. Similarly world consumers will have easy access to more entertainment choices than ever before.

But it is no secret that our excitement about these new frontiers is freighted with anxiety. The very same technology that eases the legitimate distribution of our creative products around the world also entices copyright piracy: the theft of the intellectual property that is the basis for a great economic and cultural success story that has not, to this hour, been duplicated, matched or cloned by any other nation.

Internet piracy is not a "maybe" problem, a "could be" problem, a "might someday be" problem. It is a "now" problem. Later, sooner than we think, it could become a cancer in the belly of our business. In odd corners of the World Wide Web, in linked sites based in Europe, Asia and Australia as well as the U.S., a pirate bazaar is underway. Its customers span the globe, wherever the Internet reaches, and its wares are the fruits of American creativity and ingenuity.

Today, Internet piracy focuses on computer programs, video games, and recorded music. Movies and videos are not much in evidence -- yet. That's because our audio-visual content is so rich in information that it can't yet move easily everywhere in the digital network -- the volume of flow is too great for some of the pipes. We know that the reprieve is temporary, however. The same technology that will smooth the way for legitimate delivery of video on demand over digital networks will also prime the pump for copyright pirates.

MPAA is very familiar with the great video pirate marketplaces of today. In China, in Russia, in Italy, in scores of other countries, video pirates steal more than $2 billion of our intellectual property each year. By spending millions of dollars on anti-piracy campaigns, and with the invaluable help of Congress and of the Executive Branch, MPAA is making great progress in the fight against these pirate cornucopias. I just recently returned from

Russia where in a meeting with the Prime Minister, that nation, urged on by its directors, writers, actors, producers, distributors and businessmen, has endorsed and pledged to support a spacious joint anti-piracy plan led by an amalgam of Russian and American companies. So, even Russia which is literally infested with pirates, has now determined it must now go to war against intellectual property thieves in order to save its own creative industry.

But we know that the next battleground will be in cyberspace: a virtual pirate shopping mall that -- in scope, volume and agility of operation - may dwarf those we are fighting today.

Of one fact you may be certain: The Internet will be the crucial link in the pirate operations of tomorrow. Today, the pirate who obtains, by stealth or malfeasance, a copy of the latest blockbuster picture before it is even released in the theaters must cope with formidable distribution problems. Physical copies must be smuggled across borders, warehoused, and parceled out to distributors before reaching the ultimate consumer. Alas, digital networks will soon make this complex and dangerous undertaking cheap and simple. The pirate master will be digitized, posted on the Web, and made available to Net surfers all over the world. Or, the master will be downloaded over the Internet to a digital video recorder half a world away, that can churn out thousands of pristine, perfect copies at the touch of a button, for immediate distribution to customers. By the time those pirate DVD copies hit the street, the pirate web site will have disappeared, to be set up anew tomorrow in a different country, where a different current hit will be available.

This is the context in which this Committee should plant its investigatory flag.

Let's be clear right up front. Most of the millions of customers of OSP's and Internet service providers (ISP's) are law-abiding and ethical. They use these services to reach the 'Net for perfectly legitimate purposes: to communicate by electronic mail; to participate in online communities of shared interests; to access news and information; and to reach the mushrooming number of legitimate, authorized sites that offer entertainment, including sites affiliated with all of our studios. But at the same time, OSP's and ISP's are also indispensable for the growth of Internet piracy. None of the piracy scenarios I've outlined could possibly take place without the use of these services. The question before this Committee is this: who is responsible, who is accountable, for copyright infringements that take place over digital networks? And if no one is responsible, if no one is accountable, then how will we stop the flood of piracy that will surely follow?

OSP's and other telecommunications companies have a key role to play in ensuring that this nightmare scenario never comes to pass. They must shoulder their fair share of this burden. Of course copyright owners must take the lead. Our vigilance is essential. Internet piracy demands that we become the watchmen on the tower. But also essential is the cooperation of the service providers. Our copyright law must continue to provide the right incentives to stimulate that cooperation. Accountability, under appropriate circumstances, for copyright violations committed by network users is one of the legal incentives provided under current law.

Some service providers paint a terrorizing script of their own. Unless the copyright law is changed to immunize them, so they say, they foresee a flood, not of Internet piracy, but of liability litigation. They assert that the burden of taking steps to prevent and detect online piracy will be crushing, that it will stunt the growth of the Internet and take down with it many of the high-flying cyberspace ventures that the World Wide Web has spawned.

This Committee must cast a cool, appraising eye on those predictions. They fly in the face of the experience of the first few years of this Internet revolution.

The feared flood of infringement litigation has never materialized. In fact, it is remarkable how few lawsuits have been brought in which copyright owners seek to hold OSP's or ISP's financially responsible for infringements committed on their networks. This is telling evidence that the sky is not falling, that to encourage cooperation between copyright owners and service providers in the fight against piracy. I know that in many instances, motion picture companies and online service providers have worked together quickly, quietly and effectively to nip such situations in the bud.

Of those few cases that have gone to court, none has resulted in the imposition of debilitating damage awards on an "innocent" OSP or ISP that had no involvement, other than providing network services, in infringing activity. Where providers have been held liable, it's quite clear from the facts of specific cases that they were well aware of, or were even active participants in, the violations enabled by their services.

As for the assertion that the threat of infringement liability is a dagger pressed against the jugular of the Internet, well, the best that can be said is that it simply is not so. The growth rates of the business of providing access to the Internet are astronomical. The Interactive Services Association estimates that revenue for providing Internet access nearly quadrupled between 1995 and

1997; over the same time span, the number of households in North America with online access more than doubled. The subscriber base of the single leading OSP alone, America Online, reached 6.2 million in the second quarter of 1996, more than double the total of a year earlier. These statistics are the envy of many other sectors of the U.S. economy. The forward velocity of Internet growth is approaching warp speed; and if, as some telecommunications companies claim, the copyright liability issue is a drag on that momentum, mere mortals have been virtually unable to detect it.

As the Committee takes its long, hard look at this issue of online service provider liability, it will see a legal status quo that functions well. Over many decades, the courts have developed doctrines of vicarious and contributory liability that determine when one party -- such as a service provider -- can justly be held responsible for copyright infringements that are directly committed by another party -- such as network users. In the few lawsuits that have been decided so far, the federal courts have begun to apply these doctrines to the Internet environment, and the results, by and large, have been fair and reasonable. Before jumping straight to legislative "fixes" of the online liability "problem," Congress must specifically identify what -- if anything -- is broken in the current law. In other words, it should approach this issue with care, caution and a respect for continuity in our copyright law. If it does so, I believe it will conclude that any change in the statute on this issue is, at best, premature.

You may hear the argument that giving service providers full or partial immunity from copyright infringement liability is something the United States must do in order to implement the two new treaties negotiated last year at the World Intellectual Property Organization. You should reject that argument because it is manifestly untrue. Some countries did propose that the treaty be written in a way that would require ratifying countries to establish these immunities; but all those proposals were firmly rejected in Geneva. The treaties as actually drafted give the United States, and every other country, sufficient latitude to craft the liability rules that best fit their own particular legal systems, so long as the law secures the rights guaranteed by the treaties and provides adequate remedies to deter and punish piracy.

I also urge you to approach with skepticism a variation on this argument that will certainly be put forward by some of our colleagues in the telecommunications business. It may be true, they will concede, that OSP liability relief isn't required in order to implement the treaties, but Congress should handle these issues in tandem anyway. Let me give you three reasons why you should resist this song, so lamentably out of tune.

First, ratifying and implementing the treaties should be a top priority for the United States. Implementing legislation already must address some controversial and complex issues, such as how best to outlaw circumvention of technologies used to protect copyrighted material against unauthorized access and copying. If online service provider liability is injected into this mix, the level of complexity and controversy will take a quantum leap. Any hope of rapid U.S. implementation of the treaties within the one year time frame set by President Clinton earlier this month -- will go aglimmering, and with it the solidity of the U.S. claim to leadership on global copyright policy.

Second, if treaty implementing legislation is expanded to embrace issues that are extraneous to the requirements of the treaties, it won't stop with OSP liability. There will be plenty of other copyright ornaments to hang on this legislative Christmas tree, thus further clouding the prospects for rapid U.S. adherence.

Third, even if OSP/ISP immunity legislation is "linked to," rather than "incorporated in," legislation to implement the new treaties, that subtle distinction will be completely lost on one of the important audiences for this exercise: governments around the world who are looking to the U.S. to lead the way into the new level of international copyright standards that these treaties represent. If these countries perceive that the U.S. is relaxing its liability standards at the same time that it is implementing the treaties, they will do likewise. I have great confidence that if the Congress of the United States chooses to go this route, it will at least try to ensure that strong and effective remedies against Internet-based piracy are preserved. I have much less confidence that the same will be true in the legislatures of countries around the world which are already hotbeds of video piracy.

As more and more of our trade in copyrighted materials moves to digital networks, we must remember the truism that any chain is only as strong as its weakest link. If we were to change our law to further limit the liability of OSP's and ISP's, the weakening of that worldwide chain of copyright protection would be a clear and present danger, inviting the slow undoing of America's most precious trade asset, its native-born intellectual property.

Thank you.

SPA

The Online Copyright Liability Limitation Act (H.R. 2180)
Testimony of Ken Wasch, President, Software Publishers Association
Before the House Judiciary Subcommittee on Courts and Intellectual Property
September 16, 1997

Mr. Chairman, we understand that you introduced the Online Copyright Liability Limitation Act, H.R. 2180, to determine what changes or clarifications, if any, are needed in current copyright law to ensure the rapid development of network delivery of computer software and other copyrighted works. SPA looks forward to working with you, Congressman Bob Goodlatte, and other members of the subcommittee as work continues on this important inquiry.

Over 800 CEOs and senior executives surveyed identified the effect of the Internet, intellectual property protection, and software piracy as their top concerns for the software industry. SPA and its member companies believe that service providers and software companies have a common interest in the rapid establishment and acceptance by consumers of electronic networks as a reliable, efficient, effective and robust means to conduct their business. We also have a common responsibility in ensuring that these networks are not abused by making them a haven for those who would steal others' software.

Software Publishers Association

Our fundamental principle is that copyright should protect computer software on the Internet no less than software on the street. We believe that current law provides a good balance. As a general matter, SPA approaches legislation on copyright liability for the Internet with great caution. Network distribution of software is in its infancy and, while there is no sign that copyright law is having a chilling effect on the Internet, the threat of software piracy there is quite real -- and already causing harm.

The ephemeral character of many pirate software sites makes it extremely difficult to take action against pirates without help from service providers. We have had good experiences in obtaining the help and collaboration of service providers in removing and/or blocking access to infringing material. In part, we believe such collaboration is due to the incentives now provided by the copyright law for online services and other intermediaries to cooperate with software companies.

We have concerns that H.R. 2180 would make it more difficult to protect software companies from piracy on the Internet. Because H.R. 2180 would exempt direct infringers as well as indirect infringers, it would require software companies to prove not only infringement but active wrongdoing to fight software piracy on the Internet -- a higher burden than that needed to fight software piracy on the street. Moreover, by limiting the remedies for contributory infringement to injunctions, the bill reduces the incentive for service providers to cooperate with software companies when they discover piracy on their systems. We are pleased, however, that H.R. 2180 would not require "notice and take-down" -- that is, actual notice of infringement as a prerequisite to bringing a lawsuit, which in our opinion would reduce the incentive for cooperation.

We do not see an urgent need to legislate on the matter of liability of providers of networking services. Court cases to date have been fairly decided, and we do not see compelling evidence of a chilling effect in the marketplace from an absence of specific rules. That is not to say that such need will never arise, but we would like to have more experience with information based economic activity before we write new rules. Moreover, our efforts to cooperate with service providers in sharing responsibility for respecting copyright have been encouraging.

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Balance of Responsibilities on the Internet and the Online Copyright Liability Limitation Act (H.R. 2180)

Testimony of

Ken Wasch
President

Software Publishers Association

Before the
Subcommittee on Courts and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.
September 16, 1997

CURRICULUM VITAE Of KEN WASCH

Kenneth Wasch is the founder and president of the Software Publishers Association (SPA), the principal trade group of the personal computer software industry. Wasch's long-term interest in computers and software, coupled with the industry's need for a central trade organization, led him and an initial group of 25 software firms to establish SPA in 1984. Since then, Wasch has led the association from infancy to its present position of representing more than 1,200 member companies in North America and abroad.

Prior to founding SPA, Wasch spent eight years as a staff attorney for the U.S. Department of Energy where he was involved with price regulation. He received his bachelor's degree in economics and international relations from Lehigh University and his law degree from SUNY Buffalo, New York.

Recently, Wasch was awarded the Computer Law Leadership Award for significant contributions to the international legal and regulatory systems regarding the computer industry. He is a contributing columnist for Computer Reseller News and has been named for three consecutive years to The MicroTimes' 100 outstanding leaders in the industry. A popular speaker, Wasch appears regularly at Japanese, American and European gatherings of software executives. He speaks on a broad range of topics related to the protection of intellectual property, piracy and trends in the computer software industry.

DISCLOSURE OF FEDERAL GRANTS, CONTRACTS, OR SUBCONTRACTS

In the current and preceding two fiscal years, the Software Publishers Association has received the following federal grants, contracts, or subcontracts:

- Department of Commerce, International Trade Administration, Award No. 95-3141, Oct. 1, 1995 – Dec. 31., 1996 (as extended). SPA received $53,489 to present CSM software asset management training throughout Latin America.

- Department of Commerce, International Trade Administration, Award No. 94-3185, Oct. 1, 194 through Sept. 30, 1998 (as extended). SPA and its joint venture partners – the American Electronics Association and the Telecommunications Industry Association – received $440,000 (as amended) in matching funds to establish and operate the U.S. Information Technology Office, a trade development organization based in Beijing.

During this period, Mr. Wasch has personally received honoraria and reimbursement for travel expenses from the U.S. Information Agency in connection with educational seminars outside the United States on intellectual property rights and the computer software industry.

Mr. Chairman and Members of the Subcommittee:

I am Ken Wasch, president of the Software Publishers Association (SPA). On behalf of SPA, I appreciate the opportunity to testify before this subcommittee and thank you for holding a hearing on the copyright law implications of network based-distribution of works.

Mr. Chairman, we understand that you introduced the Online Copyright Liability Limitation Act, H.R. 2180, to determine what changes or clarifications, if any, are needed in current copyright law to ensure the rapid development of network delivery of computer software and other copyrighted works. We look forward to working with you, Mr. Goodlatte, and other members of the Committee in this inquiry.

SPA and its member companies approach this matter from the context of now evolving electronic commerce opportunities. In that context, we see that Internet service providers and software companies have shared interests and responsibilities, namely:

- Their common interest in the rapid establishment and acceptance by consumers of electronic networks as a reliable, efficient, effective and robust means to conduct their business.

- Their common responsibility in ensuring that these networks are not abused, including making them a haven for those who would steal others' software.

Each of the SPA's members is in the business of making the software and computer tools that will enable electronic commerce. The industry sees great potential for consumers, businesses and governments in the rapid growth and widespread use of the Internet and other network technologies.

We are now entering a new era in which software enables seamless interactions between computers, which in turn enable consumers and businesses to exchange information almost instantaneously and without regard to geography. This networking capability is the key to electronic commerce. Enabling it is a promising growth opportunity for the software industry and the U.S. economy in general.

The Internet and other network technologies "ride on" communications networks. Such communications technologies have enabled simple point-to-point communication for years, but it is software that empowers users to manipulate information, customize products and analyze data, and then interact with others to use the information productively: These are the essential elements which differentiate "communications" from "electronic commerce". Examples are as simple as ordering clothes from on-line mail order catalogs, with which consumers can specify exact measurements and receive customized items, to complicated inventory-management programs that enable businesses to predict their needs in advance and order from suppliers only what they need and when they need it.

Electronic commerce is here today, but not yet on the mass scale we hope it will be in the near future. The software products that enable electronic commerce - web browsers, remote access software, database management programs, collaborative project systems - are impressive, but in their infancy. The best is yet to come.

The biggest winners, aside from consumers, are likely to be small and mid-size businesses. Simply put, network technologies enable all businesses to compete in national and international markets by dramatically reducing their barriers to entry. Until recently, only large companies could afford the costs involved in far-flung business operations. The Internet has already changed this scenario. Benefits to businesses and individuals include:

- Reduced marketing and advertising costs,
- Reduced warehousing costs,
- Reduced retail space costs,
- Increased international opportunities, and
- Increased U.S. competitiveness.

As we see it, these are the near term benefits we can attain through the rapid development of robust and secure network-based commerce, including the sale and distribution of copyrighted software for business, education, and entertainment.

Electronic commerce is already taking hold. Last year, nearly 1000 software companies surveyed report that they use the Internet – including the World Wide Web – in conducting business, and 48 percent expected to distribute software electronically. Also, in a recent Price Waterhouse survey, over 800 CEOs and senior executives identified their top concerns for the software industry, and among them were the effect of the Internet, intellectual property protection, and software piracy.

Threats of piracy on the Internet are indeed quite real for the software industry. Networking environments pose clear and present dangers of increased theft and misuse of works. By design, works in digital form are easy to copy and redistribute. With the aid of networks, thousands of copies of a single work can be distributed in seconds. The commercial harm of such mass piracy is self evident.

Every company in the software business is harmed daily by piracy. We estimate that today there are thousands of sites on the Internet where pirate software is available for download. This ranges from sites where counterfeit CD-ROMs from China are made available by mail order, to file-transfer sites where hackers make products available to millions of Internet users for download, to Web sites that publish illegal passwords to our members' software. Overall, the industry loses $12 billion per year to piracy.

At the same time, we see the dangerous chilling effect it would have on network-based commercial activity to hold liable for copyright infringement every single person - for example, developers of multi-purpose search engines, web browsers, or communications protocols - who had a role, however tenuous, in making such piracy possible.

Our fundamental principle is that copyright should protect computer software on the Internet no less than software on the street. As a general matter, we approach legislating on copyright liability in the Internet with great caution because network based distribution of works, such as software, as well as electronic commerce generally, are now in the early stages of development. To illustrate this point, just two years ago, the common wisdom was that the future of on-line activity would be driven by multi-faceted on-line service providers such as Prodigy, CompuServe and America Online. Today, the focal point is no-frills Internet access. Rapid enhancements and improved ease of use of the Internet and World Wide Web are making the services offered directly by the access provider far less critical. Two years from now, with further technological change, the market is certain to shift again.

With this in mind, while we can identify a number of areas where changes in current law would enhance the ability of software companies fight piracy, it is very hard to identify specific aspects of the law which are today having an actual chilling effect on the development of network based businesses. To date, we have had but a handful of cases where liability of network operators was at issue in a copyright dispute. We are not aware of any major cases having been filed over the past 12 months, nor are we aware of any instance where AOL, Bell Atlantic, Sprint, or MCI, among others, have been sued for copyright infringement. To date, the courts have demonstrated their ability to interpret the copyright law flexibly, and in a manner which has produced fair results.

Moreover, we are not aware of evidence showing that the absence of a firm rule on the copyright liability of network operators is in any way chilling the development of the Internet, investment in network-based business, or new entrants into these markets. In fact, competition is thriving. Today, there are literally hundreds of companies, some large, and most very small, offering Internet access. From a consumer's perspective, not only is there lots of choice, but the cost of service is declining. Internet access is now widely available for $10, or less, per month.

This is not to say that we do not see the possibility of some court, in a future case, interpreting the copyright law in a way that would have a chilling effect. But until such a case is a reality, we believe that legislating based on hypothetical "chilling effects" may result in a remedy that is far worse than the ill it aims to cure. Given the rapidly changing nature of network based businesses, and our general inability to predict with certainty how these businesses will evolve, it is our judgment that the copyright law should not be changed to create general immunities for providers of network services.

It is our view that current law provides a sound balance. We have had good experiences in obtaining the help and collaboration of service providers in removing and/or blocking access to infringing material. For example, last year ABWAM, a Colorado-based Internet access provider, found the telltale signs of software piracy during routine maintenance of their server computers. On closer inspection, they discovered that an unauthorized user had hacked into their computers and created an FTP site crammed with dozens of pirate software titles.

ABWAM reported their suspicions to SPA, and with their help we stopped the pirate.

It is impossible to know how many illegal copies were downloaded from that pirate FTP site before ABWAM contacted us, but we were grateful they did. Since then, other service providers have followed ABWAM's example, using guidelines to recognize some warning signs of software piracy, which have been endorsed by the Association of Online Professionals.

In part, we believe such collaboration is due to the incentives now provided by the copyright law for online services and other intermediaries to cooperate with software companies. Based on SPA's experience in software piracy on the Internet, the ephemeral character of many pirate software sites makes it extremely difficult to take action against pirates without help from service providers.

Critics of current U.S. law most often observe that temporary copies of works constitute copies within the meaning of the Copyright Act. Thus, any copy of an infringing work, the argument is made, no matter how transient, would form the basis for liability. For example, a provider of network services, such as a phone company, because its routers and switches make temporary copies of a infringing copy of work in the course of its delivery between two points, would be liable for contributing to the infringing act.

While this is a misleading over-simplification of current U.S. law, some nonetheless argue that the solution is to declare temporary copies, such as copies in a router or a switch, as well as in a computer's random access memory (RAM), to be outside the scope of the copyright law. Such a solution is conceptually flawed, and would pose an extreme and immediate threat to the software industry. It is conceptually wrong because the life-span of the copy (its mere duration) has never been the factor that has determined whether a copy has been made. Whether a book is printed on fine bond paper and bound in leather, or whether it is printed on flash paper, is not what determines whether it is within the bounds of the copyright law, but rather whether the author of the work has authorized the making of that copy.

For the software industry, an overwhelming proportion of the copies of our works are "temporary." Today, the common way to make software available is through site licenses. Typically, a business will be given a single copy of a work, which will be copied onto a server (a central computer) and a defined number of people, for example 25, will be authorized by the terms of the license to use that work. These people, in the course of their using the software, will make temporary copies in RAM at their respective work stations of the software. If these temporary copies were outside the scope of the Copyright Act, the software vendor would be precluded from litigating if the business were permitting 100 or more persons to use the work, instead of the 25 which had been authorized under the license.

The problem would become more acute if this rule of excluding temporary copies were adopted internationally. If the server in the example above were located outside the United States, perhaps in a country with no copyright protection or on a ship on the high seas, and the only copies made in the United

States were temporary copies in RAM in the course of using the work, the software developer would be left without any remedy for these acts of infringement.

We recognize, however, that not all temporary copies should lead to copyright liability. For example, when a person accesses a page on the World Wide Web, that person's computer makes a temporary copy in RAM of that page – an act called caching. While no explicit permission may have been given to make that copy, because the Web page could not be accessed without it, and the person making the Web site available knew this, it is our view that caching by end-users should not create liability, because, in effect, such copies are implicitly licensed.

There are situations in which the service provider is passively enabling distribution of a work, and copyright liability should not result. For example, when works are delivered from one point to another, certain copies are made because of the way the technology works, and they do not involve a volitional act on the part of the entity transmitting the work. For example, the switches of a telephone system make copies of packets of data as they are routed across the country, while the system determines the most efficient way to route the data. Such copies, while technically copies, should not create liability.

Similarly, when providing e-mail services, the provider of the service may have to store the work, pending the user signing onto the system. Such stored copies, even if the material is infringing, should not lead to liability, so long as the only service provided by the operator of the system is to store the work pending retrieval.

These are but a few examples in a universe of situations where a network operator should not face liability. As a general matter, they have at least three features in common. First, the copy is made because the engineering design of the network's systems dictates the act, i.e., it is made automatically and solely as a matter of engineering necessity and not as a matter of simple convenience. Second, in making the copy, the content is neither altered nor examined, it is simply passed through. Finally, the operator of the network system exercises no control over the content, its source, or its eventual destination.

It is for all these reasons that SPA and its members have concerns that H.R. 2180 would make it more difficult to protect software developers and other copyright owners from piracy on the Internet. Because H.R. 2180 would exempt direct infringers as well as indirect infringers, it would require software companies to prove not only infringement but active wrongdoing to fight software piracy on the Internet – a higher burden than that needed to fight software piracy on the street. Moreover, by limiting the remedies for contributory infringement to injunctions, the bill reduces the incentive for service providers to cooperate with software companies when they discover piracy on their systems.

We are pleased, however, that H.R. 2180 would not require "notice and take-down" – that is, actual notice of infringement as a prerequisite to bringing a lawsuit, which in our opinion would reduce the incentive for cooperation even more. Under this approach, operators of networking systems would be subject to liability only if they were first given notice of the fact that infringing material was on their system.

Thus, a precondition for suit would be notice to the operator; the operator would then have to ignore such notice, and fail to "take down" the infringing copy, and only then would be liable.

"Notice and take-down" is simply an unworkable model because it reduces the incentive for service providers to take action when they discover obvious infringements, and imposes the full burden for protecting copyright on software companies. Moreover, when conducting anti-piracy work, and given nature of works in electronic form, making notice a precondition for suit would simply constitute a invitation for the pirate to destroy the evidence of his infringement. That is not to say that copyright owners should not be encouraged to work with network operators to stop infringement and, as discussed earlier, some network operators are already working with us.

On balance, Mr. Chairman, we do not see an urgent need to legislate on the matter of liability of providers of networking services. Court cases to date have been fairly decided, and we do not see compelling evidence of a chilling effect in the marketplace from an absence of specific rules. That is not to say that such need will never arise, but we would like to have more experience with information based economic activity before we write new rules. Moreover, our efforts to cooperate with service providers in sharing responsibility for respecting copyright have been encouraging.

We do see areas in urgent need of Congressional action to aid our fight against piracy, in particular rapid ratification of the WIPO Copyright Treaty and new rules making it illicit to defeat effective technological protections. We also have concerns that linking on-line copyright exemptions to implementation of the WIPO Copyright Treaties is neither substantively justified nor helpful to resolving the issue at hand. Copyright liability for on-line service providers is complex and challenging, and could take some time to resolve fairly. That could delay implementing a treaty that many believe is important to protecting U.S. industry on the Internet and around the world.

In closing, we look forward to working with you, Mr. Goodlatte, and other members of the Committee to address these issues and to achieve the goal of rapid deployment and acceptance of electronic networks as a reliable means to conduct business and share information.

Thank you.

Testimony of

Robert W. Holleyman II

President
The Business Software Alliance

"Implementation of the World Intellectual Property Organization Copyright Treaty and the Balance of Responsibilities on the Internet"

Before the

House Judiciary Committee
Subcommittee on Courts and Intellectual Property

September 16, 1997

SUMMARY
Robert Holleyman's Testimony
Subcommittee on Courts and Intellectual Property
September 16, 1997

H.R. 2281, "The WIPO Treaties Implementation Act."

The BSA supports H.R. 2281 because it is a comprehensive and balanced implementation of the obligations established by the WIPO Copyright Treaty.

We believe that the WIPO Copyright Treaty is an important development for American software developers because it:

- marks a positive step in bringing copyright into the digital age;
- is a "win-win" treaty for both copyright holders and users;
- ensures that copyright holders have the right to determine whether and how their works are made available on interactive networks like the Internet;
- provides a crucial tool in fighting piracy; and,
- harmonizes the application of copyright rules in the digital environment worldwide.

Every member of the BSA is a copyright holder. Every member of the BSA is also in the business of building the Internet, and making and selling communications tools, search engines, routers and other basic building blocks. Thus, we have a pervasive interests in the success of the WIPO Treaty, as well as the Internet.

The U.S copyright law, in most respects, already meets the WIPO Copyright Treaty's obligations. As specifically address by H.R. 2281, only three sets of substantive changes to U.S. law are needed for full compliance.

The BSA supports H.R. 2281's provisions on anti-circumvention and copyright management information because they meet four necessary elements:

- circumvention of effective technological measures, and stripping copyright management information, are made expressly illegal;
- H.R. 2281 provides both civil and criminal remedies sufficient to deter infringement;
- the rules apply only when technology is being used to protect rights specifically granted to authors under the Copyright Act; and,
- H.R. 2281 correctly recognizes that certain technologies may be used for illicit purposes, even when they are not designed and sold for that reason, establishing safeguards delineating the class of devices which are to be rendered illegal.

H.R. 2281 should make clear that the provisions on anti-circumvention are not intended to impede or prohibit research, scholarly work, or other similar activity which is permitted under the copyright law. Under Title 17, these interests are protected by the "fair use" provisions of section 107. In addition, we believe that H.R. 2281 should make clear that "effective" technological measures are those technologies which cause a device used in conjunction with a copy of the work to render the work in a form unacceptable to consumers. Technologies which can be easily, or even inadvertently, bypassed should not be within the scope of H.R. 2281.

H.R. 2180, the "On-Line Copyright Limitations Act."

The Internet and Internet-based businesses are still in their early stages of development. While we agree with the considerations identified by H.R. 2180, it is unclear whether they constitute the full panoply of issues that will emerge as network-based distribution of works evolve as a business. For that reason, we encourage the Committee to make the least changes to the law possible, consistent with the goal of proceeding with legislation on the full range of copyright issues. It is our view that current copyright law provides a fair balance. Overall, we find the approach taken in H.R. 2180 to be a good starting point because its direction is consistent with results which would attain under current law, although the bill as introduced needs some further clarification.

Mr. Chairman and Members of the Sub-Committee:

My name is Robert Holleyman, I am the President of the Business Software Alliance, and I appear before you today on behalf of the member companies of the Business Software Alliance in support of H.R. 2281, "The WIPO Treaties Implementation Act." I would also like to provide the BSA's views on H.R. 2180, the "On-Line Copyright Limitations Act."

The BSA supports H.R. 2281 because it is a comprehensive and balanced implementation of the obligations established by the WIPO Copyright Treaty. Once enacted, the U.S. implementation will provide the right model for other countries to follow.

Piracy of software continues to be a major and on-going problem for American developers of computer programs. This Treaty would close certain loopholes in the laws of many of the countries where we have our most serious piracy threats. These countries are closely watching how the United States proceeds with implementation. The course and means of implementation chosen by the United States Congress are certain to be followed by many other countries as they proceed with the national implementation of the Treaty's obligations. Comprehensive and sound implementation in the United States will be a great help to our industry in fighting piracy. Conversely, incomplete implementation in the United States will have serious consequences for our industry in many other countries.

The BSA Supports the WIPO Copyright Treaty

We believe that the WIPO Copyright Treaty is an important development for American software developers because it:

- marks a positive step in bringing copyright into the digital age;
- is a "win-win" treaty for both copyright holders and users;
- ensures that copyright holders have the right to determine whether and how their works are made available on interactive networks like the Internet;
- provides a crucial tool in fighting piracy both here and abroad; and,
- harmonizes the application of copyright rules in the digital environment worldwide.

Once fully implemented in United States and around the world, the WIPO Copyright Treaty gives software companies the ability to fight pirates and to protect computer programs against theft by clarifying that copyright protection continues to applies fully in the digital environment. We estimate that piracy now costs our industry more $11.2 billion in sales every year. This an acute problem, and, I am sad to report, it is getting worse.

The United States has long taken a leadership role in the fight against piracy. More than 25 years ago, the 1974 Trade Act established improving international rules on intellectual property as a key goal for American commercial policy. In 1988, the Congress enacted changes in the Copyright Act enabling the United States to become a party to the Berne Convention, the leading international treaty on copyright. The Congress acted again in 1994 by implementing the results of the most recent round of trade negotiations, which explicitly included for the first time enforceable rules protecting copyrights and other intellectual property. The World Trade Organization's agreement on Trade Related Aspects of Intellectual Property, marked a major step forward.

We see the WIPO Copyright Treaty as a further major step in the right direction along the same path. For over ten years the United States has worked with over 100 other countries to modernized the Berne Convention, the principal international copyright treaty. The WIPO Treaty is the culmination of those efforts.

Seen in this context, the treaty that H.R. 2281 will enable the United States to join is hardly a radical departure from copyright law or doctrine. It is rather a modernization of the copyright law, in the sense that it explicitly recognizes that works are increasingly fixed in digital form and distributed over networks, and that these developments present certain additional challenges to authors', including their on-going fight against piracy.

Digital copyright issues are not new to the Congress. The U.S. copyright law has long recognized that works fixed and sold in digital form deserve the same protection under the Copyright Act as works fixed on paper or vinyl. In 1980, the Congress amended the Copyright Act to protect computer programs, works which are created, sold and used virtually exclusively in digital form. In doing so, the Congress did not find it necessary to enact special limitations on the right of authors in software; recognizing that copyright law does not parse protection based on the mode of fixation or of distribution, but rather on whether the work is original in the sense that it is the authors own intellectual creation.

Thus, the WIPO Copyright Treaty affirms at international law principles long established in U.S. law: that copyright law applies in digital environments in the same way as in more traditional circumstances.

Importance of Prompt Ratification

Digital environments, as the software industry is well aware, also pose an increased threat of piracy. Works in digital form can be duplicated virtually without effort or cost. The resulting copy is perfect — indistinguishable from the original. Works in digital form are also easy to transmit from one location to another across electronic communications networks.

The Internet's popularity is in large measure due to the ease with which one can send mail or retrieve a newspaper article. Internet "servers," which perform many valuable functions in legitimate on-line activities, can easily be turned into pirate sites from which anyone in the world can access and download a copyrighted work without paying any compensation to the rightholder. Moreover, protected works can be transmitted and used across borders without leaving any trace. It is equally easy to use the Intent to "post" on a bulletin board an entire copy of a popular computer program, which then becomes available for anyone to download, or to "post" a password or serial number which would then give anyone access to that software — although the developer has never authorized the posting of either the software or the password.

Copyright forms much of the foundation of the Internet and now evolving electronic commerce opportunities. Copyright provides essential incentives for authors and artists to develop creative new works by ensuring their rights will be respected as they make their works available on-line. Without sound copyright law, this new medium will remain a digital curiosity.

Copyright also spurs development of the building blocks of the Internet: products such as software and computers, which are indispensable to the operation and navigation of the information infrastructure. Every member of the BSA is in the business of building the Internet, making and selling communications tools, search engines, routers and other basic building block. Thus, we have a pervasive interests in the success of the Internet.

But as copyright owners subject to rampant piracy, we are also aware of the need to preserve the applicability of the copyright law in this environment. While many countries' copyright laws already protect against a variety of unlawful acts, the WIPO Copyright Treaty provides a uniform standard against which to measure copyright protection in a digital environment. Through its provisions clarifying the international law on reproduction and distribution rights and on making works available over interactive networks, the Treaty ensures that authors' rights will be respected in cyberspace.

Given the global reach of the Internet and similar networked environments, it is vitally important that the community of nations provides a "level playing field" worldwide for the protection and use of copyrighted products in the digital realm. The WIPO Copyright Treaty is the foundation for such international consensus: it sets out clear copyright rules for giving adequate safeguards for authors, providing flexibility and permitting carefully tailored exceptions that do not interfere with the legitimate interests protected under the Treaty.

Significant Provisions Of The Treaty Which Do Not Require Changes In US Law

The Treaty clarifies international law in a number of respects that are long established features of U.S. copyright. The BSA supports these aspects of the Treaty.

1. Computer programs, databases

The Treaty confirms that copyright protection fully extends to computer programs "*whatever may be the mode or form of their expression,*" and to original databases. The Treaty does not protect "ideas, procedures, methods of operation or mathematical concepts" as such. This is fully consistent with current U.S. law. But the provision is important because its explicit recognition of this right should prevent situations, such as the recent *Benito Roggio* case in Argentina, where courts have held that software is not entitled to protection under the copyright laws.

2. Reproduction right

Although the text of the Treaty does not contain a separate right of reproduction, an Agreed Statement adopted by the delegates confirms that the reproduction right set out in Article 9 of the Berne Convention "fully appl[ies] in the digital environment, in particular to the use of works in digital form." The Statement also provides that the "storage" of a protected work in digital form and in an electronic medium falls within the author's exclusive rights.

This confirms the prevailing view -- recognized in the laws of the U.S., the EU and other countries -- that temporary reproductions, including those that take place in a computer's random-access memory (RAM), are covered by copyright. Recognition of this right is particularly important for software to protect against unlicensed uses of software and other digital works over electronic networks, where often the only unauthorized copies made are "temporary" copies in the RAM of the user's computer.

3. "Making available" /Communication right

By combining a number of well-established principles, the WIPO Copyright Treaty confirms that the rightholder has the right to determine whether, and under what terms, a copyrighted product is communicated or "made available" to members of the public on interactive networks. Again, U.S. law already meets this obligation, but the laws of some other countries do not.

4. Distribution right

The U.S. already has a distribution right of the sort provided in the Treaty. But implementation in other countries of this rule in conjunction with an importation right, will enable authors to develop national or regional markets more effectively by matching local revenues with local costs of distribution and service. This is particularly important for software developers whose local maintenance and technical support costs in some countries may greatly exceed the revenue derived even indirectly from copies imported without authorization from another country.

Treaty Provisions Which Require Changes in U.S. Law.

As noted already, this Treaty is not in any sense "radical". The U.S copyright law, in most respects, already meets the Treaty's obligations. As specifically address by H.R. 2281, only three sets of changes to U.S. law are needed for full compliance:

- technical amendments clarifying the status of foreign nationals under U.S. law in respect of the Treaty's obligations;
- provisions making it illegal to defeat effective technological measures implemented to prevent acts unlawful under the copyright law in respect of works; and,
- provisions making it illegal to strip or alter information identifying the works' authors, the licensing terms, and other similar information.

Technical Amendments

The BSA supports fully H.R. 2281's provisions on technical changes to the Copyright Act, and we have no comments to offer at this time on these sections of the bill.

Obligations On Anti-Circumvention Of Effective Technological Protection Measures

A critically important new feature of the WIPO Copyright Treaty is its obligation in respect of technological means to protect works. This provision recognizes two facts:

- that software and other works made available in electronically fixed digital form are extremely vulnerable to unauthorized acts, such as reproduction and distribution; and,
- that authors will increasingly use technological means such as encryption, scrambling and passwords, to control misuse of their works.

The obligation established by the Treaty is by design general. It recognizes that technology changes over time, and thus authors will employ a variety of means to protect themselves against piracy. In addition, it recognizes that the obligation should not reach any and every means used to protect a work, but only those means that are "effective", in the sense that by applying such a technological protection measure to a copy of a work, the author has rendered that copy unusable by the consumer, unless the consumer also has an authorized decryption, descrambling or other such means, the application of which to that copy is necessary to render the work in an acceptable and usable form.

Technological Protection Measures in Context

By design, the Copyright Act creates a property interests for authors in their works, such as software, books, movies and music. Property owners generally — including software companies holding copyrights — have long used locks and keys, and other devices to deter thieves from breaking into their homes or stealing their cars, or pirating their software. In the context of cars and homes, since those acts are governed by state law, state lawmakers have seen fit to make it illegal to sell and use "skeleton" keys, and other lock picking devices, as well as certain electronic devices such as those that defeat or by-pass a car alarms.

The anticircumvention provision of the WIPO Copyright Treaty, as well H.R. 2281 proceed from these same considerations:

- works (software, books, music, etc.) in digital form are more susceptible to unauthorized copying than works fixed in traditional forms (for example, printed on paper);
- technological means, such as passwords for software, or scrambling of satellite delivered motion pictures, are already widely used to prevent theft;
- over the near term, technological progress will provide additional means for authors to protect themselves against piracy; and,
- current U.S. law — except in the area of encrypted satellite signals — and international law generally, does not provide a basis for legal action against persons who deliberately defeat such technological protections, nor with respect to those who make and sell tools and devices designed to circumvent.

Given this situation, without a specific provision prohibiting circumvention of technological means used to prevent unauthorized acts, authors will be increasingly weary of making their works available through electronic networks.

The Scope Of H.R. 2281's Anti-Circumvention Provisions

The obligations of H.R. 2281 meets three necessary elements:

- circumvention of effective technological measures are made illegal;
- it provides both civil and criminal remedies sufficient to deter infringement;
- the rules apply only when technology is being used to protect rights specifically granted to authors under the Copyright Act.

We support the approach of H.R. 2281 because it specifically takes into account how authors are most likely to use such technological measures.

a. To Limiting Access To The Work Users of a computer program, or any other work protected under the Copyright Act, do not have a right to acquire or use such software **unless** they acquire the copy and gain access to the work by legal means. To control unauthorized access, software publishers have long used passwords, serial codes and other similar systems, which must be correctly applied to a particular copy of a computer program before it can used.

Today, software developers authors and publishers are increasingly relying on encryption, scrambling, passwords, and other similar means to control access to copies of works.

These systems render the software un-usable until the correct password or process is used to render it operative.

It is not today illegal to distribute such passwords and codes without permission. Increasingly, the Internet is being used to make such passwords and codes available without permission, resulting in substantial harm to the software industry.

b. To Prevent Unauthorized Copying Software developers and other authors have also used a number of technological systems to prevent unauthorized copying of their works. Some software companies distribute specially designed devices, which must be attached to a computer, for the software to work correctly. Motion picture companies have used a design feature of video cassette recorders (VCR) to develop a systems which effectively renders unusable copies of a movie made from one VCR to another.

H.R. 2281 Correctly Addresses The Way Technology Will Be Used To Prevent Unauthorized Acts

We support the approach and conception of H.R. 2281 because it addressed both of the purposes for which software companies rely on technological measures to protect their works against piracy.

H.R 2281 makes illegal the act of circumvention — for example, defeating the technological protection system to gain access to the work — in the same way that criminal laws make illegal the act of breaking and entering into a home or warehouse.

H.R 2281 also correctly recognizes that given the nature of these technologies, it is likely that persons determined to circumvent technological protection measures will have to obtain the right tools — much as the burglar must use tools — to defeat the protection system. Such "tools" can consist of "cracker" utilities, illegally obtained passwords or decryption algorithms, or specially made devices. Thus, H.R. 2281 makes illegal devices designed for the purpose of circumvention, much as laws make burglar tools illegal.

This does not mean that the law should control sales of any device which may be used for such illicit circumventing purposes, and H.R. 2281 avoids this pitfall. For example, a multi-purpose computer or computer program has thousands of perfectly legal uses, and the mere fact that it may be used by scoundrels and ruffians for illegal purposes, for example to develop a decryption algorithm, should not make such devices or software illegal.

H.R. 2281 correctly recognizes that certain technologies may be used for illicit purposes, even when they are not designed and sold for that reason. Thus, it establishes safeguards making clear the class of devices which are to be rendered illegal. For a device to be illegal under the terms of H.R. 2281 it must:

(A) be primarily designed or produced for the purpose of circumventing;
(B) have only limited commercially significant purpose or use other than to circumvent; or
(C) be marketed by the person who manufactures it, imports it, offers it to the public, provides it, or otherwise traffics in it, or by another person acting in concert with that person, for use in circumventing.

We believe these criteria are correct.

A Balanced Approach

We recognize, however, that copyright law is designed to promote interests of authors, balanced by the needs of their users and customers. Thus, in implementing these provisions both must be considered.

A potential danger in establishing rules on anti-circumvention is that unscrupulous persons may seek to use these rules to deprive consumers of safeguards for their interests that have been established in the law and through jurisprudence. In addition, its possible that unscrupulous persons may want to use the law on anti-circumvention as a way to limit access to material that is not protected by copyright law.

Thus, the implementation of the Treaty obligation through H.R. 2281 must take these considerations clearly into account, and state expressly that the anti-circumvention provisions apply only with respect to material that is copyrighted.

In addition, H.R. 2281 should make it clear that the provisions on anti-circumvention are not intended to impede or prohibit research, scholarly work, or other similar activity which is permitted under the copyright law. Under Tile 17, these interests are protected by the "fair use" provisions of section 107. In implementing the Treaty obligations on anti-circumvention, Congress must neither enlarge nor diminish the scope of fair use, maintaining the balance of authors' and users' interests as established by the Copyright Act, and court interpretations of those rules.

In addition, the Treaty makes clear that only certain kinds of technological measures are subject to protection. The Treaty speaks of "**effective**" measures. This is a key factor: if software and computer companies were obligated to respect any and all measures that are "self-declared" to be effective, enormous confusion would result in the marketplace, as makers of all devices which can run a computer program would have to design their products to comply with a myriad such systems. Such confusion in the marketplace must be avoided.

Thus, we believe that H.R. 2281 should make clear that "effective" technological measures are those technologies which cause a device used in conjunction with a copy of the work to render the work in a form unacceptable to consumers. In order for that copy of the work to be rendered in an acceptable form, an authorized access code or process must be applied to that copy of the work, such as a password, or by decrypting, de-scrambling, or otherwise transforming the work through an authorized means. Finally, "effective" technologies should have the characteristic that they can only with difficulty be defeated or circumvented using professional equipment or skills. Technologies which can be easily or even inadvertently bypassed, should not be within the scope of H.R. 2281.

Copyright Management Information

As a general matter, our comments and observations expressed in respect of H.R. 2281's provisions on anti-circumvention also apply in respect of the provisions of the bill on copyright management information. We believe these provisions to be valuable, as software companies, over time, make increasing use of such embedded data to prevent piracy. We support the approach of H.R. 2281 in that it does not mandate the use of such identifiers, nor does it compel computer and software companies to design their machines to comply with any specific implementation of such systems, but rather focuses correctly on making it illegal to alter or remove such information.

Enforcement.

Finally, to meet the "deterrence" requirement of the Treaty, national implementation must provide for remedies sufficient to act as such a deterrent. We believe that H.R. 2281 accomplishes this goal, in that it makes violations of the anticircumvention and copyright management information provisions subject to both civil and criminal sanctions, and includes the availability of monetary damages and criminal penalties, as well as temporary and permanent injunctions.

We point out in passing that H.R. 2281 follows current law in respect of criminal violations. A bill now pending in committee, which the BSA strongly supports, would close a loop hole in those provisions in respect of financial gain. We would urge the Committee to enact H.R. 2265, the 'No Electronic Theft Act", and to make the conforming changes in H.R. 2281's criminal provisions.

Liability of Service Providers (H.R. 2180)

Mr. Chairman, as matter of meeting our international obligations, enactment of H.R. 2180, the "On-Line Copyright Limitation Act", is not necessary for the United States to be in compliance with the WIPO Treaty. The Treaty does not address issues of liability for infringement, including the liability of providers of on-line and internet access services.

We also fully recognize that for network delivered information and electronic commerce to flourish, two elements are necessary: rich and diverse content; as well as high speed, reliable and affordable access to networking services. The members of the BSA are especially sensitive to this matter because several of our members provide networking services, all of them develop the software, computers and other key architectures of networks, and everyone of them is a copyright owner subject to piracy of their works.

While piracy remain the focal point of our concerns, we are sensitive to the chilling effect it could have on network-based commercial activity to hold liable for copyright infringement every single person — for example, developers of multi-purpose search engines, web browsers, or communications protocols — who had a role, however tenuous, in making such piracy possible.

We approach legislating on copyright liability in the Internet with great caution because network based distribution of works, such as software, as well as electronic commerce generally, are now in the early stages of development.

With this in mind, while we can identify a number of areas where changes in current copyright law would enhance the ability of software companies to fight piracy, it is very hard to identify specific aspects of the Copyright Act which are today having an actual chilling effect on the development of the Internet, investment in network-based business, or new entrants into these markets. In fact, competition is thriving. Today, there are literally hundreds of companies, some large, and most very small, offering Internet access. From a consumer's perspective, not only is there lots of choice, but the cost of service is declining. Internet access is now widely available for $10, or less, per month.

To date, we have had but a handful of cases where liability of network operators was at issue in a copyright dispute. In those cases, the courts have demonstrated their ability to interpret the copyright law flexibly, and in a manner which has produced fair results.

It is our view that current law provides a sound balance. We have had good experiences in obtaining the help and collaboration of network operators in removing and/or blocking access to infringing material. In part, we believe such collaboration is due to the incentives now provided by the copyright law for on-line services and other intermediaries to cooperate with software companies. Based on our members' experience in software piracy on the Internet, the ephemeral character of many pirate software sites makes it extremely difficult to take action against pirates without help from service providers. Therefore, our overriding considerations in this area is that whatever changes are made to the law, the copyright should continue to motivate service providers to cooperate in the fight against piracy.

We recognize that the Internet presents some special situations, and that some of these should not create copyright liability, when the party is acting innocently, that is without knowledge. One such instance is when a person accesses a page on the World Wide Web. In doing so, that person's computer makes a temporary copy in RAM of that page - an act called caching. While no explicit permission may have been given to make that copy, because the web page could not be accessed without it, and the person making the web site available knows this, it is our view that caching by end-users should not create liability, because, in effect, such copies are implicitly licensed.

Second, in accessing a web page, a person will use a variety of software, including search engines, browsers and other tools which facilitate the communication, including software running the various servers (computers) associated with the communication. The use of such multipurpose software tools should not cause liability for the persons making the software, since they are neither designed nor marketed to enable infringing activity.

A third situation in which copyright liability should not result is when a service provider is passively and innocently enabling distribution of a work. For example, when works are delivered from one point to another, certain copies are made because of the way the technology works, and they do not involve a volitional act on the part of the entity transmitting the work. For example, the switches of a telephone system make copies of packets of data as they are routed across the country, while the system determines the most efficient way to route the data. Such copies while technically a "copy", should not create liability.

Similarly, when providing e-mail services, the provider of the service may have to store the work, pending the user signing onto the system. Such stored copies, even if the material is infringing, should not lead to liability, so long as the only service provided by the operator of the system is to store the work pending retrieval.

These are examples of an evolving universe of situations where a network operator should not face liability. As a general matter, they have at least three features in common.

- First, the copy is made because the engineering design of the network's systems dictates the act, i.e., it is made automatically and solely as a matter of engineering necessity and not as a matter of simple convenience.
- Second, in making the copy, the content is neither altered nor examined, it is simply passed through.
- Finally, the operator of the system exercises no control over the content, its source, or its eventual destination.

With these general comments in mind, I would like to make some specific point with respect to H.R. 2180. When Chairman Coble introduced this bill he said that his goal was to establish a "starting point for discussion among the groups affected" by the on-line copyright liability issue. The members of the BSA approach this bill in that spirit: our goal is to find rational solutions consistent with sound copyright policy, and our mix of interests as Internet builders, service providers and copyright owners.

It is our reading of the bill that H.R. 2180 would limit the liability of defendants for any copyright infringement that takes place "solely" as a result of "transmitting or otherwise providing access to material on-line." The accompanying section-by-section analysis suggests that this covers "the carriage and routing of telecommunications signals; the services of on-line service providers or Internet access providers; the operation of bulletin boards; and the sending of private electronic or real-time communications." To the extent the entities providing these services act in an innocent and passive manner, that is by providing only the means for communication, we support this approach.

The bill also sets out six criteria which must be satisfied in order for a service provider to enjoy immunity from liability for direct or vicarious infringement. It is our understanding that all six of the criteria must be met in order the be eligible for the benefits of limited liability. We are concerned that many of the terms used in describing these criteria are not defined in the bill, and that they may be defined so broadly in practice so as to create a very large exemption from liability.

The heart of the bill are these eligibility criteria. By far the most critical for our members is the knowledge standard. As we read the bill, a service provider would not be eligible for the immunity offered by the bill if it "knows" or "is aware by notice or other information indicating" that the material in question is infringing. Based on the limited experience that have had thus far in litigating Internet piracy cases, we believe this formulation to be constructive. Much depends however, on the criteria which courts will interpret as having created an "awareness". We believe this matter should be left to court interpretation based on the facts of a specific matter before the court, and our evolving experience in this area. Despite the fact this is a difficult standard to apply, we believe it is imperative that liability extend beyond only those circumstances of "actual knowledge". If that were the only standard, service provider would in fact have an incentive to ignore suspicious sites, rather than look into the sites' legitimacy.

The bill has one further provision which we consider to be critical. In conducting our anti-piracy work, we have generally received good cooperation from service providers. On occasion, however, they have been reluctant to remove infringing material without a court order, for fear that they may be sued by the poster of that material for wrongful interference with their business. The bill addresses this issue by creating a safe harbor for persons removing "in good faith" material which is allegedly infringing. Conversely, removing material in "bad" faith, or causing in "bad" faith material to be removed, should be proscribed.

A matter not now addressed by the bill is disclosure of the names and addresses of infringer by the service provider. Often in conducting internet anti-piracy cases, we can locate the source of the material as a particular site on a service provider's system, but because the Internet is essentially an environment replete with "aliases", we cannot determine the identity of the person. This makes it quite hard to proceed with prosecution, and it would be a valuable addition to the approach taken by the bill for it to also provide incentives for service providers to share information, under appropriate circumstances, about the infringer's identity.

Having said this, the Internet and Internet based businesses are still in their early stages of development. While we agree with the considerations identified by H.R. 2180, it is unclear whether they constitute the full panoply of issues that will emerge as network based distribution of works evolves as a business. For that reason, we encourage the Committee to make the least changes to the law possible, consistent with the goal of proceeding with legislation on the full range of copyright issues including WIPO Copyright Treaty implementation, and enactment of the "No Electronic Theft Act", H.R. 2265.

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In conclusion, the members of the Business Software Alliance support H.R. 2281, and commend you Mr. Chairman and the co-sponsors of the bill. We also find the approach taken in 2180 to be a good starting point because its direction is consistent with results which would attain under current law.

We stand ready to work with you as you proceed.