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Inside U.S. Trade

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HOUSE, SENATE COMMITTEES PREPARE FOR QUICK ACTION ON FAST-TRACK BILLS

The House and Senate this week moved toward legislative action on bills renewing fast-track negotiating authority that are likely to give U.S. negotiators less flexibility than a bill proposed by the Administration earlier this month. Republicans in both chambers seem united in their goal of limiting the scope of labor and environmental issues that can be covered by fast-track rules.

U.S. Trade Representative Charlene Barshefsky told reporters yesterday (Sept. 25) that the Senate Finance Committee has tentatively scheduled a markup for Oct. 1. A committee source said this date was "likely." On the House side, Ways & Means Committee Chairman Bill Archer (R-TX) this week announced that the full committee will mark up fast-track legislation on Oct. 8 based on a chairman's mark now being prepared by staff.

Barshefsky told reporters yesterday (Sept. 25) that the Administration is "in discussion" with members on the

continued on page 25

BARSHEFSKY CRITICIZES GROWING JAPAN DEFICIT, CALLS FOR NEW ACTIONS

U.S. Trade Representative Charlene Barshefsky yesterday (Sept. 24) expressed increasing alarm over a deteriorating trade balance with Japan characterized by a sharp increase in Japanese exports to the U.S. and a "significant slowing" of U.S. exports to that market. She said Japan could demonstrate its commitment to deregulation and market opening by concluding a new telecommunications agreement, and better implementing two bilateral deals in the flat glass and automotive sectors.

"We have a growing concern," she told the Advisory Committee on Trade Policy and Negotiations (ACTPN). "Our concerns, rather than subsiding over time, have increased over time, and that is not a tolerable situation."

She emphasized that the U.S. is demanding what Japanese leaders have publicly said they want to achieve, but that Japan has failed to act on its pronouncements. "We do not see Japan moving thus far toward meaningful

continued on page 25

CONGRESSMEN REJECT BRITTAN APPEAL TO SOFTEN STANCE ON HELMS-BURTON

Members of Congress this week rejected a plea from European Union External Relations Commissioner Leon Brittan to relax their position in the ongoing bilateral efforts to settle a dispute over the Helms-Burton law, according to congressional sources. Brittan met Sept. 23 in Washington with members of Congress who support the law, including House International Relations Committee Chairman Ben Gilman (R-NY) and Rep. Robert Menendez (D-NJ).

"The message that I sought to give is that in order to reach an agreement there has to be give and take," Brittan told reporters Sept. 24. "There has to be an understanding of the European resentment of extraterritorial legislation, there has to be understanding on the part of Europe of the deep feelings of the American people."

Helms-Burton is aimed at punishing foreign companies that invest in expropriated U.S. property in Cuba.

continued on page 23

FISCHLER SAYS U.S. WILL NOT WIN BSE-FREE DESIGNATION FROM EU

European Union Commissioner for Agriculture Franz Fischler this week dealt a serious blow to U.S. efforts to ensure the continued export of billions of dollars worth of animal products to the EU by announcing that Europe will not designate the U.S. as free of Bovine Spongiform Encephalopathy (BSE), according to EU officials.

The U.S. has pressed for BSE-free status as a way to circumvent a pending ban on products made with animal parts the EU fears could carry BSE. As the U.S. does not take steps to remove these so-called specified risk materials (SRMs) from the rendering process, the ban would affect U.S. tallow and tallow-containing products such as cosmetics, as well as U.S. gelatin and items made with gelatin, such as pharmaceuticals.

Fischler said his analysis was based on a Sept. 17 opinion by the European Commission's Scientific Veterinary Committee, which could not recommend that the U.S. be granted BSE-free status even though no evidence of

continued on next page

BSE has been found in the U.S. Sources said last week that this opinion was a significant setback in its push for BSE-free status (*Inside U.S. Trade*, Sept. 19, p. 6).

At the same time, Fischler added that he "could see a situation" in which New Zealand and Australia are both granted BSE-free status, according to an EU official. But the official said the details of a general derogation for these countries are still unclear.

The U.S. is assuming that Fischler's assessment on its BSE status is not the final judgment of the EU Commission, and that a further analysis by the entire Commission and its Scientific Steering Committee in October might still allow room for a different opinion.

The U.S. needs BSE-free status to combat a July 30 EU Decision that would ban products that could contain SRMs, such as brains and spinal cords, which could be carrying BSE. Sources have said once it takes effect Jan. 1, 1998, this Decision could block the sale of billions of dollars worth of U.S. pharmaceuticals made with gelatin and tallow, as well as exports of raw tallow and cosmetics.

The U.S. is also seeking an exemption for tallow derivatives, since they are produced under heat and pressure conditions that kill BSE. This exemption should negate a narrower measure known as the cosmetics directive, which has already taken effect and focuses only on the sale of tallow and cosmetics.

EU External Relations Commissioner Leon Brittan this week told U.S. Trade Representative Charlene Barshefsky that while he hoped the tallow and gelatin dispute is resolved quickly, he could not assure her that it would be.

"The concern over the tallow issue was certainly raised, and I made clear that I hope, I cannot promise, but I hope that it will be possible to find a way to deal with at least the tallow derivatives issue over the coming months," Brittan told reporters one day after his Sept. 23 meeting in Washington. In response, Barshefsky warned that the issue is "extremely serious," and needs to be resolved before the SRM Decision takes effect next year.

Meanwhile, a Sept. 17 opinion of senior public health experts from all 15 EU member states known as the Pharmaceutical Committee blasted the so-called SRM ban for not considering relevant scientific opinions and for its potential to seriously disrupt the EU pharmaceuticals market.

"The Committee regrets that the decision did not take account of scientific opinions in regard to tallow and tallow derivatives, whereby established manufacturing processes have been demonstrated not to present a real hazard," the Committee said in its conclusions. This complaint is in reference to a June 24 opinion by the Scientific Committee on Cosmetology, which agreed with the U.S. argument that tallow derivatives should not be blocked by the ban because they were processed in a way that kills BSE.

Despite finding that it is "sensible" to remove SRMs from the rendering process, it found that "the Commission has to have regard to Community international trade obligations and can only ban imports that do not have the necessary SRM free certification if there are compelling public health reasons."

In addition, the Committee said a prohibition on U.S. pharmaceuticals would "result in a shortage of supply of medicines in the marketplace." The conclusions added that even if derogations can be found for suppliers in the long term, the short-term supply would not be able to be compensated just from production in the EU.

As a result, the Committee appealed to the European Commission to exempt from the SRM ban stocks of finished pharmaceuticals in the EU made before Jan. 1, 1998.

"Should an alternative interpretation be proposed the consequences for public health in terms of availability of medicinal products (up to 80% of which incorporate gelatin and tallow derivatives) could be serious for patients and would undermine confidence in medicines," the conclusions said. "In these circumstances, the Decision would have to be amended immediately."

In the least, the Committee suggested a derogation for a small group of products for which there are no likely substitutes.

A Sept. 23 meeting of Agricultural Ministers from the EU member states noted that the Commission's legal service is examining how to deal with stocks of pharmaceuticals that could have been made with SRMs before the ban takes effect next year. The Pharmaceutical Research and Manufacturers of America (PhRMA) similarly noted that the ban could have serious health effects for EU citizens in a letter to Barshefsky earlier this month (*Inside U.S. Trade*, Sept. 5, p. 14).

In a related development, sources this week said U.S. Food and Drug Administration officials are expected to meet with European officials in Brussels during the second week of October to stress the U.S. position that the SRM ban could have devastating effects on the EU pharmaceuticals market, as well as EU patients.

In addition, FDA officials will explore issues related to how the U.S. could comply with the ban in the event it does take effect next year. Problems related to this issue include which body or bodies would be responsible for ensuring that products going to the EU are certified free of SRMs, what programs are needed to put this monitoring program in place, and what its cost would be, informed sources said.

BARSHEFSKY, BRITTAN FOCUS ON CHINA WTO, FINANCIAL SERVICES

U.S. Trade Representative Charlene Barshefsky and European Union External Relations Commissioner Leon Brittan used their Sept. 23 meeting mostly to focus on China's accession to the World Trade Organization and the negotiations to reach a financial services agreement in the WTO, according to informed sources.

Barshefsky and Brittan reaffirmed their commitment not to lower their demands for commercially viable concessions from China for its WTO entry even though Japan seems to have settled for less in a bilateral market access package for goods struck earlier this month. That deal, as now understood, is completely unacceptable to the U.S. and EU, an EU official said.

Brittan told reporters Sept. 24 that the two sides do not expect China to refuse their demands because of the agreement with Japan.

"I do not think that that is a realistic fear because the Chinese are very knowledgeable and very experienced in these matters," Brittan said. "And they know very well that they have to deal with negotiations with Europe and with the United States, and that we have objectives which are separate but parallel, and that those objectives have not yet been met."

At the same time, Brittan said it would be "useful" to see what Japan and China agreed to, since the details of their agreement have not been disclosed. For that reason, Brittan said he would travel to Japan today (Sept. 26) to meet with Japanese officials on the results of their talks with China. In addition, informed sources said that the true impact of the Japan-China agreement on China's negotiating stance will only be known after the EU reengages with China and Assistant U.S. Trade Representative for China Robert Cassidy concludes his talks with China this month.

At this point, it appears likely that the next meeting of the WTO working party will be held in November, not in October as tentatively planned, officials said. On going negotiations and U.S. preparations for the summit of President Jiang Zemin and President Clinton in October make that a better date, they said.

At the summit, there may be some mention of progress the two sides have achieved in the WTO negotiations. After meeting with her Chinese counterpart on the Jiang-Clinton summit, Secretary of State Madeleine Albright said this week the U.S. has "no illusions about the difficulty" of achieving China WTO accession.

The EU understands that the Japan-China deal would reduce tariffs on over 3,600 items and agricultural products from 47 percent to about 18 percent, and that the deal would not require China to sign onto the Information Technology Agreement (ITA), which would eliminate tariffs on information products by 2000. The deal also phases out non-tariff barriers over a period of two to eight years (*Inside U.S. Trade*, Sept. 10, p. 10).

Brittan said he and Barshefsky are both of the view that some progress has been made in China's bid to join the WTO, but that there is still "some way to go," and that the U.S. and EU will be united in pressing for more liberalization than that found in the Japan-China agreement.

On WTO financial services talks, Brittan said the EU is working with the U.S. to get WTO members to table good offers and to complete the negotiations by the December deadline. Brittan said the two sides are stressing that the agreement will not exacerbate financial crises in Asian and Latin American countries. Instead, a deal to open their markets would strengthen their position in the long term, he said.

Barshefsky conveyed to Brittan a pessimistic assessment for the financial services talks, officials said. Based on information received by Treasury Dept. officials at the World Bank and International Monetary Fund meeting in Hong Kong, the U.S. believes that Asian countries are unlikely to make improved offers in the near future, they said.

This assessment differs from that of the EU, which is under the impression that Asian countries will table improved offers in the near future. The EU opinion is shared by WTO Director General Renato Ruggiero, an EU official said.

On other trade issues, Brittan said the EU is not intervening in the current U.S. debate over whether to grant President Clinton fast-track trade negotiating authority. But he said he did get an update on the situation from Barshefsky.

In addition, the two discussed the long-standing disputes over the Helms-Burton law and recent EU measures that the U.S. says would effectively block billions of dollars worth of U.S. animal products (see separate stories).

On the recent WTO Appellate Body ruling that upheld the U.S. complaint over the EU banana import regime, Brittan said in his Sept. 24 press conference that the EU "will comply" with its WTO obligations. The two officials did not discuss bananas in detail, partially because Barshefsky proposed new staff-level negotiations to Brittan in a Sept. 22 letter (see separate story).

A U.S. trade official added that other trade issues were raised briefly, such as EU policy on labeling agricultural products containing or derived from genetically modified organisms (GMOs) and efforts to reach a bilateral agreement on fur trapping standards. Sources said disputes over U.S. imports of wheat gluten from the EU and an EU request for WTO consultations on a U.S. ban on $1 million worth of European poultry were not brought up by Barshefsky and Brittan.

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Finally, Brittan this week reiterated his support for a new trade round, and said the idea is gaining support around the world. But he said he did not ask Barshefsky to support this idea because "the time is not ripe." Sources said Barshefsky and other officials rejected this idea when Brittan presented it during a meeting of Quad countries in Toronto (*Inside U.S. Trade*, May 9, p. 21).

Despite this resistance, Brittan said future trade liberalization will depend on the ability to package several sectors together, and that therefore a new all-encompassing round is needed.

"There are more and more new issues that are accumulating on the world trade agenda, some of which may well be ripe for negotiations at the time a new round may start," Brittan said. "All our experience has shown that for anyone to make progress in a situation of that kind, it is necessary to have enough subjects on the table for there to be room for tradeoffs." He also said that the recent agreement to reduce tariffs in the ITA was a "special situation," and that another such negotiation covering only one sector is "not likely to be repeated."

In May, Barshefsky argued that planning a new round would effectively stop all trade liberalization until the conclusion of the round. But Brittan rejected that analysis, and said there is "not much left to be delayed" by calling for a new trade round.

In addition to these comments, Brittan also defended the WTO dispute settlement system even though the EU lost two recent panel decisions dealing with the EU ban on hormone-raised beef and the EU banana licensing regime. Brittan noted that the system is better than "the law of the jungle," and added that the system is helpful beyond the cases it hears because its binding nature encourages the settlement of disputes through consultation.

ADMINISTRATION TO SEEK APPROVAL OF OECD INVESTMENT PACT AS TREATY

A senior Clinton Administration this week confirmed that the Administration proposal for the renewal of fast-track negotiating authority would not cover the Multilateral Agreement on Investment. Instead, Assistant Secretary of State for Economic and Business Affairs Alan Larson said that the Administration believes it can secure ratification of the agreement in the Senate as a treaty.

Larson said during Sept. 15-19 MAI meetings at the Organization for Economic Cooperation & Development in Paris that there are good prospects for Senate ratification of the MAI if it includes solid provisions addressing the use of expropriated property and conflicting jurisdictions, informed sources said. The U.S.-European Union are trying to agree on such rules in order to settle a dispute over the Helms-Burton Act.

Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) has previously called on the Administration to bring the MAI to the Senate for approval as a treaty, rather than to both houses of Congress as a trade agreement. U.S. officials said that rules on expropriation and conflicting rules could help make Helms an MAI supporter, and pointed out that the senator has previously supported bilateral investment treaties, informed sources said.

U.S. Trade Representative Charlene Barshefsky said at the Brookings Institution on Sept. 23 that the Administration has consulted with the Senate on the MAI. "Many congressmen take the view that as an investment agreement it should be subject to treaty ratification as our bilateral investment treaties are," she said.

Larson sought to use the opportunity last week to reassure OECD members that the U.S. commitment to the MAI has not waned, even though the Administration proposal for fast-track negotiating authority would not cover the MAI, informed sources said. Larson said that including the MAI would "overload" the fast-track debate, and said that approving the deal as a trade agreement would make issues such as labor and environment the focus of the MAI debate, one source said.

But the question of whether the Administration would seek implementing legislation to complement the ratification of the MAI as a treaty remains open, a U.S. official said. The Constitution makes treaties the supreme law of the land, ensuring that U.S. states would be bound under an MAI ratified by the Senate, the official said.

But the states have called for a provision in U.S. law analogous to Section 102 of the Uruguay Round implementing bill which would spell out the relationship between the federal and state governments, and especially how disputes under the MAI would be handled, informed sources said. "It almost all comes down to dispute resolution issues," one source said.

Such a provision would have to be passed by both houses of Congress, raising the possibility that members could attach provisions to it which conflict with the MAI, informed sources noted.

States are also likely to raise with the Administration their concerns about investment policy issues peculiar to state jurisdiction, one informed source said. Language in international agreements is often "quite loose" compared to laws already on the books, so states would want to be clear on how MAI rules would apply, the source said.

At last week's negotiating session, OECD members failed to make any substantive progress on the outstanding issues in the area of MAI dispute settlement, which several officials said would ultimately become a political decision made near the end of the negotiations in May 1998. The key issues include the role of the European Commission and EU member states in MAI disputes, the scope of state-state dispute settlement, the consultations which must take place prior to binding arbitration, and the countermeasures a country can invoke if another MAI signatory does not comply with a ruling.

The U.S. is strongly pressing to ensure that both the Commission and the member states are liable for dispute settlement rulings against EU-level measures, informed sources said. In addition, Canada has sought language on state-state dispute settlement which would allow an MAI signatory to challenge a measure which is on its face inconsistent with the agreement, but has not been enforced.

Other countries, including the U.S., have said that state-state dispute settlement should cover only "acts inconsistent with the agreement," informed sources said.

Another key issue relates to the nature of consultations which take place prior to the beginning of the binding arbitration process that constitutes MAI dispute settlement, informed sources said. France has called for a process which would allow one party to a dispute to request multilateral consultations involving all MAI signatories.

The U.S. has argued that multilateral consultations should come only if both parties to a dispute agree, informed sources said. The U.S. feels that multilateral consultations could "politicize" disputes even before they reach the arbitration phase, one source said.

The final, and most contentious issue on dispute settlement, concerns whether a country can do more than withdraw benefits under the MAI in retaliation for non-compliance with a dispute ruling, informed sources said. The U.S. has led a group of countries who have argued that MAI signatories should be allowed to go beyond the agreement itself into other areas of international economic activity, a position which has been opposed by countries including Canada, these sources said.

The U.S. has argued that the existence of other international rules, such as those in the World Trade Organization agreements, would adequately limit what could be seen as broad authority to retaliate, informed sources said.

OECD members also finalized a previously informal agreement that will effectively exempt tax measures from all but a few MAI rules, informed sources said. But the text will specify that taxes cannot be used to circumvent MAI rules on expropriation, and that they must be applied in a transparent manner, these sources said.

In addition, the preamble to the section of the MAI on taxation will call for adherence to the general principle of non-discrimination in levying taxes, compliance with bilateral tax treaties, and the negotiation of such treaties with non-OECD members who join the MAI, informed sources said.

A "very few" of the 29 OECD members negotiating the MAI sought a broader inclusion of taxes in the agreement, while 21 opposed such a solution. "This was a reasonable compromise," one official said.

Negotiators also had an inconclusive discussion about the specific reservations from MAI disciplines which individual countries will include in annexes to the agreement, informed sources said. The annexes will include both "List A" and "List B" reservations. List A reservations specify a particular measure exempt from challenge under the MAI, while the "precautionary" reservations in List B would allow additional but unspecified measures inconsistent with the MAI.

The U.S. has said that the more open-ended List B reservations are necessary for measures such as minority set-asides, and has been supported by Canada, informed sources said.

Canada and France have also called for a general exception in the text of the MAI itself for measures related to the protection of culture and national heritage, these sources pointed out. The U.S. has argued against general exceptions in the MAI text in favor of the List B approach by arguing that these reservations can be narrowly tailored to specify that a particular measure is only exempt from some MAI rules, these sources said.

Some European countries have opposed the inclusion of List B reservations, while other OECD members have opposed both List B and proposed general exceptions.

Because both the reservations and the general exceptions will be provisions of the MAI which "poke holes" in its rules, the chairman of the talks scheduled a discussion of both for the next session, one source said. Officials said seemingly entrenched positions in this area mask a general political necessity of finding agreement on what exemptions countries will be allowed from the MAI.

"Positions are far apart, but the dynamics definitely suggest the possibility of compromise," one official said.

At the next negotiating session on Oct. 29-30, OECD members will take up the reservation/exception issue again, as well as what labor and environmental provisions the MAI will include. They will also discuss expropriations and conflicting requirements, an issue one official said would likely be largely devoted to a status report on U.S.-EU progress in the Helms-Burton talks.

EU ACCEPTS BANANA RULING BUT REVEALS LITTLE ABOUT FUTURE RESPONSE

The European Union yesterday (Sept. 25) did little to reveal its plans for dealing with a World Trade Organization ruling that its import system for bananas violates international rules and should be changed. In a meeting of the Dispute Settlement Body, which approved the report, an EU official said only that the panel and Appellate Body report on bananas were "complex and rich in interpretation," and that the EU would have to examine them before deciding how to implement them.

The EU pledged to report on its plans to implement the ruling at the next DSB meeting on Oct. 16, but informed sources said that session may not reveal much. If the EU announces it will comply with the ruling, it would not reveal how and when, informed sources said. This strategy of revealing as little as possible is consistent with that taken by the U.S. in similar cases, sources said.

Following the appellate body report, senior EU officials said they can comply with the ruling by making the regime conform to WTO rules or by compensating trading partners for losses they have suffered under the regime. In contrast, the U.S. government acknowledges that WTO rules allow for compensation of trading partners in a dispute, but insists that this is a separate option from compliance.

U.S. Trade Representative Charlene Barshefsky this week reiterated the U.S. demand for EU compliance in a reasonable time period with the ruling in a letter transmitted to EU Commissioner Leon Brittan on Sept. 22. Barshefsky asked that staff-level officials meet to discuss each sides' views on possible solutions, they said. She praised Brittan for his recent public comments defending the WTO's dispute settlement process, these sources said.

If the EU opts for compliance, it may make changes that would not benefit the complainants in Latin America or Chiquita International Brands very much, informed sources said. The requirement that the regime comply with the WTO may well lead to a solution that would not leave USTR or Chiquita very happy, they said.

For example, the EU could opt to keep a quota and licensing system, which in themselves are not violations of the WTO, according to these sources. Another way to make the regime conform but bestow few benefits on the complainants would be to allocate the overall quota for Latin American bananas in different shares for various Latin American countries based on their representative market share, sources said.

The least favorable option for Chiquita would be if the EU kept in place a modified arrangement for Latin American bananas that regulated the trade of bananas with import licenses and export certificates, one source speculated. This would prevent Chiquita from easily shifting its exports of bananas to the lowest cost Latin American country.

Such a strategy would give the EU more leverage in negotiating a final deal with the U.S., which now feels it has painted the EU into a corner based on the appellate body report, sources said.

The WTO ruling on bananas was welcomed at the DSB meeting by the U.S., Guatemala, Ecuador, Mexico and Honduras. But the results were criticized by Jamaica and Cote d'Ivoire, which said the ruling would eliminate ten percent of the 300,000 jobs that the banana industry supports there.

Also at the DSB, the EU requested an appeal of a World Trade Organization dispute panel ruling which found that an EU ban on beef raised with growth hormones violates WTO rules. The Sept. 24 request effectively postponed the scheduled Sept. 25 adoption by the DSB of the hormone, sources said.

While the details of the EU appeal had not been circulated at press time, an EU source said it will mostly focus on the "four or five" instances in which the panel interpreted WTO rules to limit the ability of members to set safety standards higher than those in the Codex Alimentarius, an international food standards body. The EU will likely argue that higher standards are allowed if they can be scientifically shown to be necessary, he said.

Regarding other disputes, Venezuela and Brazil said they would request a new update at the Oct. 16 DSB on the implementation of the WTO ruling that U.S. air quality rules unfairly discriminated against imports of foreign gasoline. U.S. officials said they consider their obligations under the ruling to be implemented since they issued regulations in August, but said they would not be opposed to giving an update in October.

Japan also informed the DSB that it had passed a law to change its tax system for distilled spirits in the wake of a finding that its existing system discriminated against imports. But the Japanese representative said the law would implement the ruling over a period of five years. This announcement could reopen a dispute between Japan and the U.S., which had pressed for Japan to implement the ruling within 15 months (*Inside U.S. Trade*, Feb. 21, p. 8).

Korea also blocked two panel requests from the U.S. and EU to examine whether its liquor tax regime discriminates against imports. Sources noted that second requests by the U.S. and EU at the Oct. 16 DSB could not be blocked by Korea.

Finally, the EU requested a panel to examine whether India's patent protection regime complies with the Agreement on Trade Related Aspects of Intellectual Property Rights in the WTO. While a panel requested by the U.S. has already ruled on this matter, the EU argued that it needs its own panel in order to be compensated by India in the event it cannot comply with the ruling immediately (*Inside U.S. Trade*, Sept. 19, p. 24).

India said at the DSB that the idea that separate panels should be formed for this reason should be examined further by the WTO.

U.S. MAY HIGHLIGHT FLAT GLASS DISPUTE WITH JAPAN UNDER SUPER 301

The Clinton Administration may highlight lack of market access for U.S. flat glass under a bilateral agreement with Japan in its upcoming announcement under the Super 301 of U.S. trade law, according to private-sector sources. The U.S. may cite what it terms Japan's failure to live up to the 1995 flat-glass agreement in a so-called watch list established under the Super 301 process by Sept. 30, they said.

"The agreement is totally unsatisfactory," one industry source said. "Some steps have to be taken to raise this agreement on the Japanese radar screen."

The U.S. sales of flat glass from companies not affiliated with Japanese producers have been hovering around one percent of the total Japanese market, industry sources said.

Efforts by the two major U.S. flat glass producers and their congressional supporters to pressure Japan through extraordinary consultations under the bilateral agreement have not yet produced the desired results, according to government and industry sources. The U.S. asked for the consultations last month, and is now proposing a mid-October date for talks.

The agreement stipulates that consultations can be held when one side requests them, but Japan has been unwilling to agree to a specific date until the U.S. has justified its request by presenting a substantive agenda, informed sources said. "Japan has no intention of having a political meeting," one official said. The annual review of the bilateral agreement in May 1997 discussed the official data and import statistics, which raises questions about what substantive issues the U.S. wants to discuss in the new meeting, the official said.

U.S. Ambassador to Japan-designate Thomas Foley raised the flat glass issue in his Sept. 24 confirmation hearing before the Senate Foreign Relations Committee. Foley emphasized that the U.S. firms faced problems with the distribution of flat glass, and that these problems have been documented by the Japan Fair Trade Commission.

"I think we have to have further discussions with the Japanese government on how to improve the opportunities for flat glass manufacturers in the United States to have a better opportunity in the Japanese market," he said. "And I hope we can be successful in improving it."

Foley also said he would press Japan to curb its surplus with the U.S. by promoting domestic growth and by deregulating its economy.

Japan has noted that the ratio of U.S. flat-glass sales to total domestic demand has been increasing from 1994 when it was at 1.7 percent to 3.98 percent in 1996, and to 5.15 for the first six months of 1997. U.S. imports in the first six months of this year have increased by 59 percent compared to the first half of 1996, according to Japan. Imports of flat glass overall have increased 35 percent in the first half of 1997 compared to the same time last year, according to Japan.

U.S. sources concede that foreign market share overall is increasing, but that is largely due to more shipments from off-shore Japanese plants to the Japanese market, one U.S. source charged. For example, data compiled by the Ministry of International Industry and Trade show that imports of flat glass in 1994 were 11.1 million square meters, of which Japanese firms shipped 1.4 million square meters or 12.8 percent from offshore, he said.

In 1995, the imports increased to 16.3 million square meters, of which Japanese firms shipped 4.6 million or 28.3 percent from offshore sources, he said.

The non-Japanese share of the imports has remained "basically flat" under the agreement, hovering around one percent of the market. Japanese companies have been consolidating their hold over large distributors, who then fail to handle foreign glass for fear of offending major Japanese producers. These producers may then not supply them quickly and at a competitive price for products foreign companies do not sell.

In addition, a March 1997 MITI survey showed that the vast majority of distributors either plan to maintain the status quo in terms of imports or decrease their handling, he said.

The Administration is "extremely concerned" with the current situation, which shows U.S. flat glass imports essentially unchanged after an initial period of encouraging results under the 1995 deal, a U.S. official said. Major distributors are no more inclined to handle substantial quantities of foreign glass than they were in 1995 for fear of damaging their relationship with Japanese producers, the official charged.

The delay in the meeting comes at a time when the two major U.S. manufacturers are pressing for quick action. Guardian International Corp. and PPG Industries Inc. asked USTR in a Sept. 10 letter to seek a quick meeting under the bilateral agreement, arguing that time for fixing the problem is "quickly running out."

The agreement is at the mid-point of its five year term, and failure to achieve additional results would allow Japan to dismiss the deal entirely, the companies said. "Delayed action is Japan's ally," the letter said. "An early meeting [under the bilateral agreement] presents a real opportunity for correcting Japan's poor implementation of this bilateral trade agreement."

A delayed or unproductive meeting would run the risk that Japan dismisses the agreement for the remaining two years of its existence, the companies said. "In the event that the upcoming discussions prove unsuccessful, we ask that the President be prepared to escalate the means employed to obtain Japanese compliance, using all appropriate authority." The Sept. 10 letter does not specify what action this would entail, and company officials would not say whether this is a request to cite Japan under the Super 301 provision.

USTR has focused its efforts on implementation of existing trade agreements this fall on the flat glass and auto agreements, although this is not an exhaustive list, according to an Administration official. Before the end of the year, the U.S. wants to consult with Japan over the telecommunications, computer, supercomputer and insurance agreements (*Inside U.S. Trade*, Sept. 12, p. 1).

Members of Congress see the flat-glass agreement as one that will affect the broader U.S. effort to overcome Japanese market access barriers. In a July 31 letter, 26 senators said they believe Japan's "poor performance" under the flat glass agreement must be addressed not only for the benefit of the industry but for the sake of the broader trade policy (*Inside U.S. Trade*, Aug. 15, p. 6).

The same message was delivered by 53 House members in an Aug. 1 letter.

Industry Letter on Flat Glass

September 10, 1997

The Honorable Charlene Barshefsky
United States Trade Representative
Winder Building
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Barshefsky:

As major manufacturers of flat glass in the United States, we write to thank you for your continuing efforts to insist that Japan faithfully implement the U.S.-Japan agreement on flat glass. Upcoming consultations with the Government of Japan will, we hope, achieve some progress which is now lacking.

We are encouraged by the overwhelming show of Congressional support for opening Japan's glass market to U.S. manufacturers. The 26 Senators and 53 Representatives who recently signed the attached letters clearly understand the continuation of anticompetitive practices in Japan's flat glass sector and the need for greatly improved Japanese compliance with the 1995 bilateral agreement.

Guardian Industries Corp. and PPG Industries, Inc. support the message you have received from Congress, but we are concerned that the time for fixing this problem is quickly running out. The flat glass agreement covers a five-year term. We now have passed the agreement's midpoint. With last May's meeting between your staff and Japanese officials establishing a clear record of major concern and with ample Congressional support for action, it is important that the upcoming meeting be held as soon as possible. Delayed action is Japan's ally. An early meeting presents a real opportunity for correcting Japan's poor implementation of this bilateral trade agreement. A delayed or unproductive meeting would run the risk that Japan will dismiss the agreement for the remaining two years of its existence.

In the event that the upcoming discussions prove unsuccessful, we ask that the President be prepared to escalate the means employed to obtain Japanese compliance, using all appropriate authorities.

Thank you again for your strong efforts on behalf of our industry. If we can be of any assistance to you in this or any other matter, please do not hesitate to contact us.

Sincerely,

Ralph J. Gerson
President and CEO
Guardian International Corp.

Frank A. Archinaco
Executive Vice President
PPG Industries, Inc.

U.S., KOREA SEEK DEAL ON AUTOS AS SUPER 301 DETERMINATION LOOMS

The U.S. and Korean officials met yesterday and today (Sept. 25-26) in an attempt to head off a potential conflict when the Clinton Administration makes its annual determinations under the Super 301 provision of U.S. trade law. The two sides made little progress during consultations earlier this month, and members of Congress and the Big Three U.S. automakers have stepped up the pressure to target Korea for action under 301.

"Intensive discussions" on Sept. 10-12 reviewed auto issues "not limited" to the 1995 U.S.-Korea Memorandum of Understanding, a U.S. official said. The consultations netted "some progress" but "much more" needs to be done to address U.S. concerns, the official said.

Korea is "showing some flexibility" on all the key issues in an effort to narrow the gaps between both sides, a Korean official said.

The U.S. auto industry renewed its calls for a Super 301 designation this week with a strong attack on Korean policies. American Automobile Manufacturers Assn. President Andrew Card said in a Sept. 22 press conference in Washington that "all of the burden of responsibility rests on the Koreans" to come to the table with suggestions of how it can improve market access.

In addition, Card and the heads of the Big Three all reiterated their July call for Korea to be targeted under 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 U.S. automobiles in that market and will encourage Korea to continue a pattern of irresponsible trade practices," they wrote President Clinton in a Sept. 9 letter.

In the Sept. 10-12 consultations, Korea explained to the U.S. the scope of a financial reform package passed by the Korean National Assembly in July. Now dealers, in addition to banks, can provide financing of new vehicle sales, a Korean official said.

But a U.S. industry source said that the financial reform package does not address the "one big issue" which the Big Three have with the financial system in Korea, namely that Korean law does not allow a bank to hold the title of a car as collateral for the loan, which in turn requires banks to offer personal loans. As a result, many owners have sold their cars with the titles and defaulted on their personal loans, which makes many banks reluctant to offer these loans in the first place. The Big Three believe that moving away from this limitation would allow more U.S. autos to be financed in Korea.

The U.S. complaints about the Korean auto market have been largely consistent over the past six months. The U.S. has charged that the tax imposed on sport utility vehicles violates the MOU's standstill provisions, that the so-called "frugality campaign" has impeded import sales, and that Korean tax officials have harassed citizens who buy or lease foreign cars (*Inside U.S. Trade*, Aug. 29, p. 1).

Korea offered "nothing of substance" in the Sept. 10-12 consultations, an informed source said.

Members from both houses of Congress also urged the Administration to cite Korea on its auto regime under the Super 301 process at the end of the month. In a Sept. 22 letter to Clinton, 13 senators called for a "priority foreign country" designation because of Korea's alleged failure to open its market. They specifically cited tax and tariff policies, as well as "harassment" of Koreans who buy or lease imported cars.

"The 1995 MOU was a minimal first step toward opening Korea's automotive market, but the government has also shown little willingness to negotiate further market opening initiatives or even abide by its 1995 commitments," the senators wrote in the letter, reprinted below.

In a Sept. 23 letter, House members acknowledged that the Korean government implemented "some of the provisions" of the auto agreement, but charged that "most of its actions" have served to restrict imports even further. They also cited tax and tariff issues in calling for a 301 determination.

"Even without a trade agreement, these actions would merit serious consideration under Super 301, the House members wrote. "But because we have already negotiated an agreement with these actions clearly violate, we believe designation under Super 301 is unavoidable."

The Administration also came under pressure from the organization representing dealers of imported automobiles not to target Korea under Super 301. The American International Automobile Dealers Assn. (AIADA) told Clinton that naming Korea "will do more harm than good in successfully resolving outstanding trade issue."

"As we have seen in the past, the threat of trade sanctions hardens each country's position and makes it more difficult to achieve further progress," AIADA wrote.

House Letter on Korea Autos

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to urge you to designate the Republic of Korea's automotive trade policies as "priority practices" under the Super 301 provision of U.S. trade law.

Korea's market for automobiles is one of the fastest growing in the world and could be an important destination for U.S. exports. Despite the efforts of the U.S. government and the world's automakers, however, the Korean market remains closed to non-Korean cars and trucks.

Two years ago, your Administration negotiated an agreement with the Korean government to provide new access to that country's automotive market. While the Korean government implemented some of the provisions of the agreement, such as a small reduction in the enormous tax/tariff burden on imported autos, most of its actions actually have served to restrict the market yet further. The government repeatedly has taken steps, such as the threat of special tax audits, to officially discourage the purchase of imports. Moreover, Korea continues to levy an array of nine separate taxes, in addition to an import tariff, that disadvantage imports.

The express purpose of the 1995 agreement was to "substantially increase market access for foreign passenger vehicles" in Korea. However, the Korean government's unwillingness to change its policies has undermined this goal.

Even without a trade agreement, these actions would merit serious consideration under Super 301. But because we have already negotiated an agreement which these actions clearly violate, we believe that designation under Super 301 is unavoidable. It is our understanding that the Korean government has been less than willing to negotiate further market-opening initiatives, despite the continued low level of auto imports in Korea. We urge you to take strong action under U.S. law to gain Korea's cooperation in opening its market to U.S. auto exports.

Sincerely,

Sander Levin (D-MI)
Amo Houghton (R-NY)
John Dingell (D-MI)
Dale Kildee (D-MI)
Martin Frost (D-TX)
John Conyers (D-MI)
Sue Kelly (R-NY)
John Lewis (D-GA)
Jim Barcia (D-MI)
Richard Neal (D-MA)
Ron Klink (D-PA)
Dick Lipinski (D-IL)
Donald Payne (D-NJ)
James Walsh (R-NY)
Sidney Yates (D-IL)
J.C. Watts, Jr. (R-OK)
Lynn Rivers (D-MI)
John LaFalce (D-NY)
Peter DeFazio (D-OR)
Jim Maloney (D-CT)
Nancy Johnson (R-CT)
Frank Pallone, Jr. (D-NJ)
Fred Upton (R-MI)
David Bonior (D-MI)
Lane Evans (D-IL)
Ron Dellums (D-CA)
Phil English (R-PA)
Jim McGovern (D-MA)
Howard Berman (D-CA)
Louise Slaughter (D-NY)
John Peterson (R-PA)
David McIntosh (R-IN)
Debbie Stabenow (D-MI)
Sherry Boehlert (R-NY)
Marcy Kaptur (D-OH)
Dick Gephardt (D-MO)
Joe Knollenberg (R-MI)
Dave Camp (R-MI)
Ralph Regula (R-OH)
Jerry Soloman (R-NY)
Tom Sawyer (D-OH)
Jack Quinn (R-NY)
Steve LaTourette (R-OH)

Senate Letter on Korea Autos

September 22, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President,

In 1995, the United States and the Republic of Korea signed a Memorandum of Understanding (MOU) to provide U.S. automobile manufacturers access to one of the largest markets in the world and one of the fastest-growing markets in Asia. We have been monitoring Korea's implementation of the 1995 MOU, and it concerns us greatly that automotive imports in Korea remain at lesss than one percent adn that the Korean government has violated the 1995 agreement.

Trade barriers premised on Korean laws and policies designed to undermine trade concessions deny U.S. automobile manufacturers and Korean consumers the benefits they had expected under the 1995 MOU and the WTO agreements. Furthermore, these barriers allow Korea to enjoy a "free ride" on U.S. concessions.

Since the 1995 Agreement, government-sanctioned policies, including harassment of citizens who buy or lease imported cars, have escalated. Korea has reclassified minivans and sport utility vehicles, effectively boosting import taxes on these vehicles by as much as $1,500. Also, Korea's discriminatory automotive taxation regime has not improved overall and still may effectively double the price consumers pay for an imported vehicle.

Of equal concern is the uncertainty Korea's restrictive policies create for future U.S. negotiations with Korea. We question whether American companies can rely on agreements to be productive and long-lasting if U.S. automobiles cannot enter the Korean market on fair terms as already negotiated.

The 1995 MOU was a minimal first step toward opening Korea's automotive market, but the government has shown little willingness to negotiate further market opening initiatives or even abide by its 1995 commitments. While Korea is ultimately accountable for remedying the market barriers it has erected unilaterally, the United States must atke an active role in requiring Korea to implement market remedies to which is has agreed. Therefore, we urge you to name Korea's automotive trade policies as "priority practices" under the Super 301 unfair trade provision and to seek further commitments from Korea to provide real market access.

Sincerely,

Carl Levin (D-MI)
Sam Brownback (R-KS)
Mike DeWine (R-OH)
Joseph Lieberman (D-CT)
Jack Reed (D-RI)
John Ashcroft (R-MO)
Jay Rockefeller (D-WV)
Richard Bryan (D-NV)
Byron Dorgan D-ND)
Richard Lugar (R-IN)
Rick Santorum (R-PA)

September 9, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The American Automobile Manufacturers Association (AAMA) and its member companies — Chrysler Corporation, Ford Motor Company, and General Motors Corporation — wish to express our growing frustration with the Republic of Korea's failure to honor its market opening commitments under Korea's 1995 automotive trade agreement with the United States. 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. We urge the Administration to respond to Korea's trade distorting practices with serious and meaningful action.

In 1995, after almost two years of negotiations, the Administration achieved the U.S. Korea Automotive Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in the Republic of Korea (MOU). We 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 that 1995 agreement, AAMA's member companies substantially expanded their investments in Korea with a view to increasing U.S. exports to that country.

However, despite a promising beginning under this new trade agreement, 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.

AAMA believes that the Korean government's maintenance of a sanctuary automobile market is directly fueling the Korean auto industry's aggressive international expansion. In the face of mounting global overcapacity in automotive production and despite the precarious financial position of the Korean manufacturers, Korean producers have continued to add capacity — reaching over 3.6 million units in 1996 — and have announced plans to increase production to over 6 million units annually by 2000. Allowing Korea to maintain a closed market while building huge auto assembly capacity potentially will result in the permanent loss of billions of dollars in U.S. automotive exports.

This irrational buildup of excess capacity has led to Korean companies engaging in business arrangements which violate international trade rules. The United States government has now joined the European Community and Japan at the World Trade Organization in objecting to a discriminatory national car program in Indonesia that benefits a single Korean auto company.

Chrysler, Ford and General Motors are not alone in expressing growing exasperation with Korea's behavior as a trading partner. Korea's unfair auto trade practices have also been widely criticized by other nations at recent meetings of the Organization for Economic Cooperation and Development and in a joint visit to Seoul in July with representatives of the European Automobile Manufacturers Association. All efforts to have the Korean government honor its commitments to fair, open trade practices — not only with the U.S. but with other trading partners as well — have been met with complete intransigence.

We believe that the Korean government's actions unquestionably deserve to be identified as priority practices that unfairly limit U.S. 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 U.S. automobiles in that market and will encourage Korea to continue a pattern of irresponsible trade practices.

We look forward to working with the Administration to increase market opportunities for auto exports to Korea and to other markets around the world.

Sincerely,

Robert J. Eaton
Chairman & CEO
Chrysler Corporation

Alex Trotman
Chairman & CEO
Ford Motor Company

John F. Smith, Jr.
Chairman, President, & CEO
General Motors Corporation

Andrew H. Card, Jr.
President & CEO
American Automobile Manufacturers Association

COMMERCE STRIKES STEEL SUSPENSION DEALS WITH RUSSIA, UKRAINE, CHINA

The Commerce Dept. this week struck a deal suspending an antidumping case on carbon cut-to-length steel plate imports from Russia, Ukraine and China by restricting their access and setting different floor prices tagged to U.S. prices. The deal as initialled on Sept. 24 would cut Ukraine's shipments in 1996 by almost three-quarters, and cut Russia's access to less than one-half of its 1995 shipments.

China would be limited to 150,000 tons which would have to be sold at a minimum price of $365 per metric ton for the most basic cut-to-length plate classified as A-36. That level is down from its peak shipments of 300,000 tons in 1996 and from 177,000 tons in 1995, informed sources said.

But the Chinese government is signalling that it may still withdraw from the initialled agreement if it does not receive an allocation of 250,000 tons at a floor price of $345 for A-36 steel. Russia would be permitted to ship 100,000 tons of steel with a floor price of $300 per ton of A-36 steel and a $325 floor price per ton of steel classified as A-572.

South Africa also initialled a suspension agreement with the U.S. this week that sets a floor price for its plate, but does not set a quota since it is considered a market economy.

The deal would suspend a case against Russia, Ukraine, China and South Africa that would have imposed dumping margins on these countries, and could have shut off any cut-to-length plate steel shipments to the U.S. from Russia and Ukraine. Commerce cleared the deal with the officials from U.S. steel companies, who informed sources said would be unlikely to file suit against the suspension agreement notwithstanding any public criticism they may express publicly. The deal is within the parameters U.S. producers had presented to the Commerce Dept., informed sources said.

Under the agreement as initialled, Ukraine, the biggest shipper of the four suppliers named in the case, will be permitted to ship 158,000 tons at specified prices to be adjusted quarterly according to the Bureau of Labor Statistics Producer Price Index. If the index goes up one percent, the floor price would go up by that percentage.

For Ukraine, the initial price for ordinary plate specified as A-36 would be $367 per metric ton, not including freight, handling and duties, according to a Sept. 25 announcement by the Commerce Dept. But lawyers close to the case insist the final suspension agreement sets the price two dollars lower at $365 per ton.

The deal foresees the possibility of a five percent increase in shipments of A-36 steel, which is thicker than 0.375 inches if the weighted average price for A-36 steel exceeds the floor price by more than five percent. The deal also limits the sale of plate thinner than 0.375 inches to 20,000 tons within the overall 158,000 tons.

Also for Ukraine, the final floor price for A-572, a higher grade of steel, is $387. For A-516 the floor price is $390 per ton. The price for steel used for building oil drilling platforms classified as API-2H is $530, while the price of steel classified as API-2Y will be determined later.

The floor prices were calculated by deducting duties as well as freight and insurance cost from U.S. prices on relevant steel categories, sources said. In addition, the calculation included a safety margin of about $10-20. The final prices for imports would be marginally below the U.S. prices, these sources said.

The deal presumes that favorable market conditions for sellers will prevail in the U.S. market, informed sources said. One source said that the prices which Ukrainian producers can charge are "on the edge" of what would allow them to sell their products in the U.S.

The final arrangement with Russia was a hard-fought arrangement whose terms shifted repeatedly on Sept. 24 from having Russia ship 100,000 tons of cut-to-length plate without any price restraints to having a 150,000 ton quota tied to price restraints similar to those established for Ukraine. At the beginning of the negotiations in June, Russia demanded an agreement based only on quotas (*Inside U.S. Trade*, June 6, p. 26).

Commerce initially offered both Russia and Ukraine 135,000 tons, but later increased that to 150,000.

The agreement would end a case brought by Geneva Steel and Gulf States Steel Inc., which had initially opposed any suspension agreement and sought congressional support for their position. The opposition also included Bethlehem Steel, whose lawyers fought hard against the suspension deal, sources said.

Five senators on Sept. 8 urged President Clinton to reject any suspension agreement on cut-to-length steel plate because it would allow considerable importation below the prevailing U.S. price. The imports would hurt U.S. mills making plate in Alabama, Indiana, Iowa, Oregon and Utah, which have invested in new or modernized plants, the letter said.

It was signed by Sens. Chuck Grassley (R-IA), Orrin Hatch (R-UT), Robert Bennett (R-UT), Dan Coats (R-IN) and Richard Shelby (R-AL).

Under U.S. law, Commerce can strike a suspension agreement if it is in the national interest, allows for effective monitoring by the U.S. government, and will prevent the suppression or undercutting of price levels in the domestic U.S. market.

Antidumping rules for non-market economies such as Russia and Ukraine stipulate that suspension agreements could be based on quotas alone, but Commerce has insisted on coupling it with a floor price. This link is thought to make the deal more acceptable to domestic producers, who would have a harder time arguing that the suspension agreement undercut or suppressed U.S. prices.

The price arrangement proposed for cut-to-length plate differs from one Commerce struck several years ago in a uranium suspension agreement, which allowed Russian exports only if the price in the U.S. market reached a specified level. Since the market price stipulated in the agreement was never reached, Russia could not sell any uranium in the U.S. until the agreement was renegotiated.

The suspension agreement cuts Russia's steel shipments from 225,000 tons in 1996 and Ukraine's shipments from 563,000 tons in the same year, industry sources said. The average unit price in 1996 for basic cut to length plate from Ukraine was $330 with freight and insurance, $298 from Russia and $339 from China, industry sources said.

Preliminary dumping margins had been set between 61.23 percent and 185 percent for Russian producers. Preliminary dumping margins for Ukraine had been set between 99.59 percent and 237.91 percent. U.S. producers were allowed to proceed with the case on a "threat of injury" finding from the International Trade Commission, and were not assured of a final injury finding, sources said.

The agreement would not restrain exports of plate in coil, which lawyers for U.S. steel producers say would make Russia and Ukraine vulnerable to future antidumping cases. In 1994, Russia shipped 155,000 tons of plate in coil compared to 418,000 tons in the first six months of 1997, according to U.S. industry sources. Ukraine has emerged as the biggest single foreign source of plate in coil in the first six months of 1997.

Such a case would most likely be brought as part of a large series of cases on hot-rolled steel, industry sources said.

Senate Letter on Steel Negotiations

September 8, 1997

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. President:

The Department of Commerce is currently engaged in suspension agreement negotiations with the Governments of Russia and Ukraine. We find these negotiations to be inherently contrary to the public interest. Further, a suspension agreement risks nullifying a December 1996 unanimous, preliminary decision by the U.S. International Trade Commission. ITC found that the U.S. plate steel sector had suffered injury from dumped imports originating in these countries as well as China and South Africa.

In June of this year, the Commerce Department issued preliminary determinations that Russian and Ukrainian steel plate was dumped in the U.S. at margins of 61-185 and 100-238 percent, respectively. Plate imports from China, Russia and Ukraine alone controlled 25 percent of the U.S. market by the first quarter of 1997. This is up from a near-zero import level in 1993.

U.S. plate mills in Alabama, Indiana, Iowa, Oregon and Utah have invested heavily in new or modernized plants to meet expanded market demand with better quality products at lower cost. The surge of dumped imports has placed these investments at substantial risk.

As we draw closer to the October 24, 1997, deadline for the final Commerce injury determinations, the Russian and Ukrainian governments will undoubtedly push vigorously for suspension agreements. We now understand that Commerce is seriously considering awards of several hundred thousand tons of plate imports to Russian and Ukrainian industries which would inevitably sell their plate below U.S. market prices.

We join with the steel producers and the United Steelworkers in urging you to reject any suspension agreement opposed by the plate steel sector.

Sincerely,

Chuck Grassley (R-IA)
Orrin Hatch (R-UT)
Robert F. Bennett (R-UT)
Dan Coats (R-IN)
Richard Shelby (R-AL)

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COURT STRENGTHENS EU IN FIGHT WITH U.S. OVER 1916 DUMPING LAW

A federal court last week strengthened the European Union's position in a fight with the U.S. government over a 1916 law that the EU says violates U.S. obligations under World Trade Organization dumping rules. The law allows private suits for damages against importers of products sold below market value with the intent to injure a U.S. industry.

The EU has argued that the law acts as a remedy for dumping and must therefore comply with WTO antidumping rules. In contrast, the U.S. has said the law is not in conflict with these rules because it is only used to fight anticompetitive behavior, such as when an importer intends to drive competitors out of business by undercutting their price.

But the court sided with the EU argument when it found that the 1916 law can in fact be used to offset damages from dumping. The Sept. 19 court ruling said the law can be used as a "protectionist statute" that prohibits price undercutting by importers designed to injure the domestic steel industry even without predatory intent.

Proving predatory intent is required for action under U.S. antitrust law, which also asks that plaintiffs demonstrate that an offender was in the position to recoup his losses after becoming a dominant supplier.

The court ruling undermines the argument by U.S. Trade Representative Charlene Barshefsky that the 1916 law has been interpreted by U.S. courts consistent solely with antitrust statutes. She told the EU in a Sept. 5 response that no U.S. court has ever interpreted the 1916 act in a way inconsistent with the WTO, sources said. Barshefsky said there is no statutory linkage between the 1916 law and antidumping rules, informed sources said.

Her argument was laid out in response to an EU questionnaire sent to the U.S. as part of the Commission's investigation of the 1916 Act under its Trade Barrier Regulation. The EU is likely to decide to pursue formal WTO consultations on the 1916 law next month as a result of the Sept. 19 court ruling, informed sources said.

The investigation was initiated at the request of EU steel producers represented by Eurofer. Eurofer charged that the law falls short of the "substantive and procedural" requirements of the antidumping agreement and at least seven counts, and violates the fundamental WTO obligations of non-discrimination and most-favored nation treatment (*Inside U.S. Trade*, Jan. 24, p. 7).

The U.S. case decided by the U.S. District Court in Utah was brought by Geneva Steel and Gulf States Steel under the 1916 law against Thyssen Steel and Ranger Steel Supply Corp. for allegedly dumping steel from Russia, Ukraine and China. The companies are seeking $180 million in damages. The companies subsequently filed antidumping cases on cut to length plate from these countries and South Africa, which this week ended in a suspension agreements (see related story).

The Utah court rejected a motion for dismissal by the defendants, who had argued that the lawsuit did not meet the threshold for action under the 1916 law. The defendants said the Geneva-Gulf petition should be dismissed because the plaintiffs had not alleged a predatory pricing scheme.

The judge said the plaintiffs did not need to allege such behavior to invoke the law, which he said is not limited to antitrust injury or predatory price discrimination. Based on the express language of the law, it is also meant to protect U.S. industry as Geneva had claimed, the court said. The statutory language indicates that the law is meant to fight sales substantially below the actual market value or wholesale price in the country where they were produced with the intent to injure the U.S. steel industry. The language does not state that the intent has to be "predatory."

"In addition to its antitrust prohibitions, the Act has a protectionist component that prohibits dumping designed to injure the domestic steel industry," the court said. "If Geneva can prove that these Defendants acted as importers for the systematic dumping of Chinese, Ukrainian and Russian steel in this country, with the intent of injuring, by any means, the domestic steel industry, Geneva will be entitled to the damages allowed by the act."

APPAREL, TEXTILE & RETAILER GROUPS NEAR CBI PARITY CONSENSUS

U.S. textile, apparel and retailer interests are nearing final agreement on a new set of "essential provisions" which they will recommend be reflected in any Caribbean Basin Initiative parity bill that Congress might consider, informed industry sources said.

According to a Sept. 19 draft of the provisions, reprinted below, the principal remaining issue to be resolved is the extent to which textiles and apparel made from fabrics produced in the CBI can benefit from treatment similar to that enjoyed by apparel made in Mexico without the use of U.S. fabric under the North American Free Trade Agreement.

The American Textile Manufacturers Institute wants to limit NAFTA-like treatment for so-called regional apparel not made of U.S. fabric to 1996 levels, plus a 10 percent growth factor. In contrast, the American Apparel Manufacturers Assn. does not favor such a limit, according to an informed industry source.

Among the other groups which have been participating in the intra-industry association talks have been the U.S. Assn. of Textile & Apparel Importers and the National Retail Federation.

The emerging industry consensus paper was delivered to Senate Finance Committee staff late last week as the staff was crafting a version of the bill, which is scheduled to be considered with fast-track negotiating authority. Chairman Bill Roth (R-DE) this week said he intends to mark up both bills, but that he has not decided on whether they will be packaged together. The Senate Finance Committee is tentatively scheduled to mark up both bills on Sept. 30.

At press time, industry sources said they were expecting the Senate Finance Committee bill to release a draft of its CBI parity bill on Sept. 25 to allow a short period for public comment prior to the markup.

The draft industry consensus marks a continuation of intra-industry negotiations which produced an earlier consensus during July's House-Senate conference committee of the budget reconciliation tax bill (*Inside U.S. Trade*, July 25, p. 29).

Draft Industry Consensus on CBI Trade Package

ESSENTIAL PROVISIONS OF THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

(September 19, 1997 — 5:00 PM)

Rule of Origin: Based on the NAFTA yarn-forward rule of origin with exceptions as in NAFTA plus yarn and thread requirements as noted below.

Tariff Treatment: The tariff treatment accorded to an article that originates in a partnership country shall be identical to the tariff treatment that is accorded to the same article at the same time as an article that is an originating good of Mexico and is imported into the U.S.

Duty-Free Treatment: Duty-free treatment shall apply to apparel articles imported into the United States from a partnership country that are:

(a) Wholly assembled in a partnership country wholly of fabrics formed and cut in the United States from yarns formed in the United States (with exceptions as noted in the NAFTA); (807A)

(b) Cut in a partnership country wholly of fabric formed in the United States and assembled in a partnership country wholly with sewing thread formed in the United States; (809)

(c) Knit-to-shape and wholly of fabric formed in the United States from yarns formed in the United States (e.g. hosiery, full-fashion sweaters). (Knit-to-shape)

(d) Made from fabric knit in a partnership country wholly of yarns formed in the United States. (Local Knit Fabric)

Special Processing: Apparel entered under 9802.00.80.15 (807A) that undergoes bleaching, dyeing, stone-washing, oven-baking, perma-pressing, acid-washing, enzyme-washing and other similar processes and embroidery qualify for duty-free treatment.

[**NAFTA Duties on Regional Textiles and Apparel:** NAFTA duties would apply to 1996 levels of U.S. imports by country, plus 10% annual growth, of regional yarns, fabrics and other non-apparel textile products and apparel, if the NAFTA rule of origin is followed.]

Quantitative Restrictions: No quantitative restrictions may be applied to the importation of apparel that:

(a) originates in a partnership country; or

(b) qualifies for duty-free treatment

Existing quotas shall not be reduced because of apparel that may become eligible for duty-free/quota-free treatment.

Tariff Preference Levels (TPLs): Tariff Preference Levels permitting the use of non-qualifying fabric will be established and will be equivalent to those granted to Mexico in NAFTA - 71.5 million square meters equivalent (SME) annually:

(a) 25 million SME for cotton and man-made fiber apparel imported under 9802.00.80;

(b) 45 million for all other cotton and man-made fiber apparel; and

(c) 1.5 million SME for wool apparel.

The above amounts will be allocated by country and category. Ninety-five percent (95%) will be allocated proportionately among the seven largest exporting countries, the balance going to the remaining countries. Imports under the 25 million SME TPL for cotton and man-made fiber would be subject to a safeguard action if found to be damaging or threatening damage.

Safeguard Provisions: The President may take bilateral emergency tariff or quantitative restriction actions described in Sections 4 and 5 of the Annex with respect to apparel imported from a partnership country. The requirement in paragraph 5 of Section 4 of the Annex relating to compensation shall not apply to a bilateral emergency action taken under this legislation. The requirement and timetable for consultations contained in Sections 4 and 5 shall apply. Because of the lack of accurate data during the first 8 months after a country is designated a partnership country, the U.S. shall not impose emergency quantitative restrictions. After the first 8 months, emergency quantitative restrictions may be imposed in accordance with Section 5 of Annex. If the U.S. initiates an emergency action, the quantity of apparel articles subject to the quantitative restriction shall be determined by using and extrapolating data for the first 6 months after implementation of the Act to a full 12 month period. After the first 14 months this Act is in effect, any apparel subject to quantitative restrictions shall be determined under Paragraph 7 of Section 5 of the Annex.

Customs Procedures: Partnership countries are subject to the obligations contained in Chapter 5 of NAFTA regarding customs procedures.

Transshipment Penalties: Exporters found to be engaging in willful illegal transshipments or willful customs fraud would be denied program benefits for two years.

Customs Entries: Preferential tariff treatment will apply to articles entered or withdrawn from warehouse for consumption on or after January 1, 1998.

Commercially Unavailable Yarns and Fabrics Eligible to Receive Duty-Free, Quota-Free Treatment: In addition to the list of fabrics and bras exempted in NAFTA, additional yarns and fabrics not commercially available in the U.S. will be developed in consultation with, and mutually agreed upon by, domestic textile and apparel manufacturers, retailers and importers. Apparel made from yarns and fabrics on this list shall receive immediate duty-free treatment and are exempt from any limitations imposed by this act. Apparel formed from such yarn and fabric will not be subject to quantitative restrictions.

AAMA HINTS AT MORE ACTION AGAINST JAPAN IF NO SUPER 301 DESIGNATION

The top lobbyist for the Big Three automobile manufacturers this week hinted that the U.S. auto industry would push for further action under U.S. trade law if, in its judgment, Japan does not improve conditions for imported vehicles. American Automobile Manufacturers Assn. President Andrew Card said that the Big Three could move beyond this year's request to place Japan on the Super 301 "watch list."

"The watch list implies that if we do not see sufficient progress we will come back next year," Card said in a Sept. 22 speech in Washington.

AAMA asked the Clinton Administration to name Japan to the Super 301 watch list to "remind Japan of its commitment under the 1995 agreement to a five-year process of market opening," Card said. The Big Three requested watch list status in late July (*Inside U.S. Trade*, July 18, p. 1).

Card also said that the auto industry would "certainly consider" filing a Section 301 petition if the Administration did not adequately respond to its concerns under Super 301. Filing a 301 case would force the Administration to explicitly accept or reject the petition.

In a related development, a Japanese official this week denied published reports that the Minister of International Trade and Industry Mitsuo Horiuchi suggested he would ask Japanese companies to limit their exports to the U.S. Horiuchi said that auto firms should "closely monitor" their exports, and that he expects the situation on imports to improve, the official said.

At the same time, the minister knows that export restraints violate the General Agreement on Tariffs & Trade, the official said. Horiuchi has also noted that Japan's imports of vehicles has declined, and that the auto agreement states that the U.S. and Japan should cooperate to increase imports, the Japanese official said.

Card emphasized that AAMA "does not believe that the [1995] agreement should be torn up," and did not charge that Japan is violating its explicit obligations under the agreement. But he also admitted that AAMA is seeking Japanese measures which go beyond the auto deal.

"We need positive leadership within the Japanese government," Card said. "We are asking Japan to take responsibility for opening its market."

Card made the comments during a press conference in which he renewed AAMA's well-known complaints about the openness of the Japanese market. Foreign market share in Japan was six percent in 1996, but has averaged just over five percent this year, Card said. In addition, the dollar-yen relationship has hit U.S. auto exports, he said. "By nearly every measure, the evidence of progress has disappeared," Card said.

The Japan Automobile Manufacturers Assn. this week fought back with its equally well-known arguments that the Big Three have not been as successful as Japanese firms because they do not offer vehicles with the qualities that Japanese buyers value. JAMA also pointed out that European companies have had greater success in Japan by offering smaller, fuel-efficient autos.

Card also reiterated that the auto agreement has not lived up to the U.S. expectations that 400 new dealerships agree to sell U.S.-made vehicles by the end of 1997. In response to a question that this target is accepted only by the U.S. side, Card said that if one reads the "legislative history" of the auto negotiations, there is "no doubt" that these expectations exist, Card said.

"We knew it, the Japanese knew it," he said.

Card also argued that the letters which Japanese car companies wrote to dealers in Japan saying that dealers were free to carry foreign-made vehicles have been ineffective in addressing U.S. concerns. The Japanese government has not shown the "level of commitment" in the Japanese market shown by the U.S. Justice Dept. in the U.S. market to ensure that imported vehicles can be sold.

He pointed out that Justice once sent a letter to the Big Three and dealerships telling them that they risked antitrust action if they sought to prevent imported autos from getting into U.S. showrooms.

Card also repeated previous charges that alleged intervention by the Bank of Japan in currency markets beginning two-and-a-half years ago has had a lasting effect on the yen-dollar relationship. Card said his "personal view" is that the two currencies should trade at the 100 yen per dollar range.

U.S., JAPAN SEEKING LAST MINUTE DEAL OVER NTT PROCUREMENT AGREEMENT

U.S. and Japanese negotiators were meeting this week in an effort to hammer out details of an agreement to improve the possibilities for foreign companies to sell telecommunications equipment to NTT, Japan's largest telecommunications company. Ongoing talks this week followed negotiations the week of Sept. 15 in which the U.S. made an initial proposal for renewal, informed sources said.

The U.S. team headed by the Office of the U.S. Trade Representative, along with the Depts. of State and Commerce, met in Washington with a Japanese delegation chaired by the Ministry of Foreign Affairs and including the Ministry of Post and Telecommunications and NTT, a U.S. official said. A Japanese official said the two sides could wrap up negotiations as early as today (Sept. 26).

U.S. Trade Representative Charlene Barshefsky said yesterday (Sept. 25) that negotiators had made progress this week but that it was not sufficient to strike a deal.

The principal area in which the U.S. is seeking improvements is the transparency of NTT procurement practices, according to a U.S. official. In particular, the agreement needs to ensure that foreign suppliers have timely and complete information about procurement opportunities in order to build and design products for NTT, the official said.

Japan has said it is willing to consider U.S. proposals but that ideas for improving transparency should be "practical" and lead to the procurement of the best products, a Japanese official said. NTT has previously been "disappointed" at the extent to which foreign companies have taken advantage of procurement "seminars" to help their sales, the official said.

Beyond transparency both in the announcement of procurement opportunities and in the awarding of contracts, the U.S. also wants a larger role for U.S. firms in developing technical standards, the U.S. official said. In particular, there needs to be a move away from NTT-specific standards which make it difficult for U.S. firms to sell products in which the U.S. is most competitive, such as fiber optics and software.

The use of technical standards similar to those used in the U.S. or other countries would allow U.S. firms to sell "off-the-shelf" equipment, instead of having to design new equipment, one official said. The official emphasized that NTT uses appropriate international technical standards for consumer-to-network connections and between the Japanese and other networks, but that the company uses its own standards within the NTT network itself.

The standardization of interfaces between telecommunications companies is another point which the U.S. wants to address in the renewal of the procurement deal, a U.S. official said. Japan, however, has argued that interconnection issues between telecom carriers are not proper in an agreement about procurement practices, a Japanese official said.

The U.S. is not asking for a particular market share "target," but is looking for procedures which lead to an increase in market share, a U.S. official said. Existing market shares "still do not adequately reflect the competitiveness of U.S. and other foreign firms," the official said.

The U.S. is seeking a three-year renewal, as it has in past renewals since 1980, a U.S. official said. The U.S. has rejected the notion that the agreement should simply be extended until 1999 because NTT is being restructured, the official said. In addition, Japan has not made the case that restructuring would fundamentally alter NTT's status as a major government-owned company a monopoly power, he said.

The extent to which subsidiaries of NTT would be covered by the agreement has not yet been resolved, the U.S. official said. Three subsidiaries have denied that they are covered by the current agreement, but have voluntarily abided by it, while a fourth has not done so (*Inside U.S. Trade*, March 14, p. 3).

Japan had refused to talk about renewing the agreement, but the two sides earlier this month reached an understanding that allowed the negotiations to go forward (*Inside U.S. Trade*, Sept. 12, p. 16).

FISCHLER ASKS INDUSTRY TO MAKE CASE FOR GENETICALLY ALTERED GOODS

European Union Agriculture Commissioner Franz Fischler last week called on the agriculture industry to better present its case that foods containing or derived from genetically modified organisms (GMOs) are safe. Even as he praised the many important uses of genetically modified agricultural products, Fischler warned in a Sept. 19 address that failure to provide consumers with more information on these products could threaten future progress in the development of bioengineered crops.

"[T]o make an informed judgment [consumers] must be aware of the possible risks and benefits of such a technology," Fischler said in his prepared remarks. "If industry and the media do not explain the subject of biotechnology in a comprehensive way, if a certain lack of knowledge continues to contribute to fears and concerns which are not justified by any real threat, then progress in this area will soon be jeopardized."

At the same time, Fischler warned that it should be a "top priority" of the industry, producers and exporters to ensure the safety of GMO products. This is required because confidence in food safety was "profoundly shaken" in the wake of evidence that beef from the United Kingdom was contaminated with Bovine Spongiform Encephalopathy (BSE).

"It has not been easy to win back confidence and to convince the consumers that all necessary actions are taken in order to guarantee safe food," Fischler said in his remarks. "It is up to scientists, the biotechnological industry and public authorities to fully take into account the rightful concerns of consumers."

Fischler said EU actions have been and will be taken in response to this "urgent demand" for information on bioengineered agricultural products. For example, he pointed out that the Commission will be discussing how to amend EU Directive 90/220, which regulates the admission of products into the environment. The EU wants to address problems companies have raised regarding the speed at which GMO products can be approved for sale in the EU.

"Companies complain that authorization procedures take too long, and perhaps even more important, tend to become unpredictable because of political considerations inserted into the decision taking process by a growing number of [EU] member states," Fischler said in his prepared statement. "On the other hand, European citizens demand authorization procedures which guarantee the highest safety standards in a broad sense are transparent and provide useful information."

So far, genetically modified corn and oilseeds produced in the U.S. has been allowed entry into the EU under 90/220.

In addition to examining that issue, the directive will also likely be amended in several broad ways, among them ensuring that it is consistent with recently developed guidelines on how to label products made from or containing GMOs (*Inside U.S. Trade*, Aug. 1, p. 5). The directive 90/220 was amended earlier this year to require that GMO products are specified as such on their labels (*Inside U.S. Trade*, April 4, p. 13).

Fischler again reiterated the EU position that the GMO labeling guidelines of July should be used to label all products consisting of, containing or derived from GMOs, as well as to limit the possibility of fraudulently claiming the presence or absence of GMOs.

"The approach will be based on scientific knowledge," he said in his remarks. "Whenever a GMO origin can be scientifically proven, labeling should be obligatory." He also added that these guidelines will be in accordance with the EU's international obligations. The guidelines will eventually be reflected in directives such as 90/220 and the Novel Foods rule, which covers products ready for human consumption.

At the same time, he said the guidelines "should not stigmatize modern biotechnology or raise unjustified doubts about the safety of the products." And while he said the regime should not impose undue costs on producers, Fischler also warned that the legislation resulting from the guidelines will have to be respected in order to sell in the EU.

"Producers of novel foods and other genetically modified products will have to adapt to consumer concerns which have been expressed in the EU legislation," he said. "This holds not only for European products, it also holds for products imported from other countries."

Finally, Fischler noted that the European Commission has recently approved a proposal for a directive that would guarantee patent protection for biotechnological developments. Fischler said this proposal is important because it will result in decisions by companies to build plants in Europe, where their intellectual property rights in this area can be protected.

"Harmonization of patent protection has been identified as one of the most important factors influencing investment decisions in biotechnology," he said. "The European Commission will continue to consolidate Europe as an attractive location for research and development, and for knowledge based industries such as biotechnology."

Sources said this proposal is slated to be taken up by the member states, although it is unclear when this might happen.

EX-IM RECHARTERING PASSES SENATE, WAITS FOR HOUSE AS DEADLINE NEARS

The Senate last week unanimously approved the reauthorization of the Export-Import Bank with minor changes to its charter only two weeks before its current charter expires. Ex-Im's reauthorization is now awaiting action in the House, where sources said the bill will have to be squeezed into the floor schedule.

Ex-Im will be forced to shut its doors if its charter is not renewed before it expires on September 30. However, an informed source said it is possible that a short-term extension of the current charter could be granted in the event a reauthorization bill is not passed by the end of the month.

According to an informed source, placing the reauthorization bill on the House floor calendar has been discussed and recommended by the leadership, but it has not been scheduled yet. "Everyone professes to be supportive of getting it done soon, [however]," an informed source said.

However, a noted critic of the Bank, House Majority Leader Richard Armey (R-TX), is in charge of scheduling bills for floor action. One source said Armey could be holding the bill up as leverage to gain only a one-year reauthorization for Ex-Im, the source said.

Both Senate and House bills would recharter the Bank for four years and introduce a requirement that the Bank promote the use of its services by small and medium-size businesses. The full Senate did not amend the version of the bill which cleared the Banking Committee just before the August recess (*Inside U.S. Trade*, Aug. 8, p. 12).

In a September 17 floor statement, Rep. Robert Menendez (D-NJ) called for the rechartering bill to be placed on the calendar. "I am here today with..., the chief deputy Republican whip [Dennis Hastert (IL)], because this is not a partisan issue, it is an American issue, it is a jobs issue," Menendez said. "For these reasons, it is an issue that should move to the top of the agenda and on to the House floor."

On the issue of Ex-Im appropriations, Armey said earlier this month that a continuing resolution may be required to give the House a few more days after October 1 to wrap up the remaining appropriations bills. These currently include the Foreign Operations and Export Financing bill.

According to congressional and private sector sources, House conferees appeared likely to accept funding for Ex-Im and the Overseas Private Investment Corporation (OPIC) at levels close to those approved by the Senate. House conferees also appeared ready to accept a provision of the Senate bill added during floor consideration that would reauthorize OPIC for two years, the sources said.

In July, the Senate authorized $700 million for Ex-Im's FY-98 program budget, while the House allocated the Administration's request of $632 million. The Senate approved the Administration's request for $60 million for OPIC's programs, while the House, in a legislative maneuver, did not specify funds for the agency.

The conference to reconcile the House and Senate versions of the Foreign Operations and Export Financing bill was scheduled to begin yesterday (September 25). The full Appropriations subcommittees on foreign operations and export financing of both Houses have been appointed conferees. Two additional Senate members of the conference are Thad Cochran (R-MS) and Robert Byrd (D-WV).

Separately this week, as the House began floor consideration of the Commerce, State, Justice Appropriations bill for FY-98, Rep. Bernard Sanders (I-VT) was planning to offer an amendment that would transfer $1 million for the Commerce Dept.'s discretionary funds allocation to the Office of the United States Trade Representative.

According to a Sanders staffer, the amendment was intended as a way to "open up and add to the debate between national sovereignty and fast track trade agreements [and] about the undemocratic way in which trade policy is set."

The staffer said Sanders intends to use the legislative history of the amendment to send a message to USTR that it needs to keep Congress better informed about trade negotiations and do a better job of defending U.S. laws at the World Trade Organization. The transfer of $1 million would provide USTR additional resources to meet this goal, he said, although he acknowledged that the legislative history is more important.

"No one is under the delusion that the $1 million will be more than a wake up call to USTR," he said.

Cosponsors of the Sanders amendment included: Dana Rohrabacher (R-CA), Peter DeFazio (D-OR), Cliff Stearns (R-FL), Sherrod Brown (D-OH), Ronald Dellums (D-CA), Robert Ney (R-OH), James McGovern (D-MA), Karen Thurman (D-FL).

In a related development, Budget Committee Chairman John Kasich (R-OH) this week renewed his call for the elimination of Commerce According to a Sept. 24 Budget Committee press release, Rep. Ed Royce (R-CA) was set to introduce the Commerce Dismantling Act as early as this week.

Kasich attacked Commerce's utility for promoting trade and said that the bill would streamline the department and eliminate waste.

"You couldn't design a cabinet level agency with more wasteful programs, more unrelated functions and more overlap with other government agencies if you tried," Kasich said in the release. "While proponents constantly tout its importance in promoting trade, estimates are that as little as five percent of the Commerce Department's budget actually goes to trade-related functions."

HOUSE PANEL CALLS FOR WORK ON FARM DISPUTES TO SUPPORT FAST TRACK

Members of the House Agriculture Committee told senior Clinton Administration officials this week that they want assurances that the U.S. will address outstanding agricultural disputes before they support the renewal of fast-track negotiating authority. During a Sept. 23 hearing of the General Farm Commodities subcommittee, members raised individual trade disputes, but also called for strong language in fast-track legislation which would establish agriculture as a priority for U.S. negotiators.

"Serious attention to this language will go a long way to reassure our farmers that this Administration means business when it comes to dispute resolution, state trading enterprises, restrictions affecting biotechnology and phytosanitary restrictions," Subcommittee Chairman Bill Barrett (R-NE) said.

Full committee Chairman Bob Smith (R-OR) argued that the U.S. needs fast track so that it can take part in agricultural negotiations in the World Trade Organization in the year 2000. He noted that the Administration's fast-track proposal contains broad consultative procedures with Congress.

The bill also includes a "comprehensive list of agricultural issues related to trade and should go a long way in beginning to address the issues raised by United States farmers and ranchers," Smith said.

But Smith also said that he has "reservations" about the provisions in the Administration bill on labor, environmental and "sustainable development" issues and their effects on agricultural trade issues. Smith said he would "seek clarification" on these and other issues during the fast-track debate.

Full committee Ranking Member Charlie Stenholm (D-TX) said at the hearing that he shares Smith's views about the need for fast track.

Republican Conference Chairman John Boehner (R-OH) emphasized at the hearing that the White House would need to demonstrate "presidential leadership" in order to pass fast track. He also predicted that the fast-track debate would focus on "the inadequacies and softer spots" in the North American Free Trade Agreement and Uruguay Round.

Smith raised the issues of Canadian grain imports and high-fructose corn syrup exports to Mexico as two issues which, despite the importance of fast track, need to be addressed. Smith charged that Canadian officials are violating a promise made to him and other members to limit wheat imports to 1.5 million metric tons.

But a Canadian official said this week that Smith never received such a promise, and that Canada has had "no intention to even entertain" the possibility of new export curbs on wheat since the U.S.-Canada memorandum of understanding on this issue expired.

The official also questioned statistics cited by Undersecretary of Agriculture for Farm and Foreign Agricultural Services August Shumacher at the hearing. Shumacher stated that Canada agreed in the MOU to limit exports to 1.05 million tons of spring wheat and 0.3 million of durum wheat. Current shipments are 350,000 and 60,000 tons over these levels, respectively.

The Canadian official said that U.S. imports of Canadian wheat for Sept. 1996-97 are 1.56 million tons, though the discrepency between these and Shumacher's figures could be accounted for by the shipment of Canadian wheat through the U.S. to third markets.

The official added that while the MOU allowed exports of 1.05 million tons of spring wheat, it provided for exports of 450,000 tons of durum wheat in two separate tranches.

Deputy U.S. Trade Representative Jeff Lang acknowledged at the hearing that Canada has no "obligation" under its trade agreements with the U.S. to limit its exports. Rep. Earl Pomeroy (D-ND) also raised the Canadian grain imports issue.

Smith also commended USTR for initiating consultations in the World Trade Organization on plans by Mexico to impose antidumping duties on HFCS. "It is my hope that the Administration continues to keep pressure on our NAFTA partners regarding both of these concerns," he said.

But Smith also cautioned that the U.S. has yet to definitively win trade disputes with the European Union over bananas and hormone-treated beef, even though WTO panels have found in favor of the U.S.

In response to a question from Barrett, Lang said that the U.S. would seek "more specific rules" on state trading enterprises (STEs) when WTO agriculture talks resume. But before then, other countries need to comply with Article XVII of the General Agreement on Tariffs & Trade, which requires STEs to operate according to commercial considerations.

Rep. Larry Combest (R-TX) said that it is difficult to oppose fast track in light of the dependence of U.S. agriculture on international trade. At the same time, Combest said that the congressional role in fast track of having a single up-or-down vote is "not very satisfying."

Rep. Saxby Chambliss (R-GA) said that he wants to expand agricultural trade but is also concerned about a number of issues. U.S. exporters of pecans and peaches are having difficulties in getting their products into Mexico due to phytosanitary restrictions there. Rep. Sanford Bishop (D-GA) added that he has "serious reservations" about voting for fast track before these issues are settled.

Near the end of the hearing, Rep. Cal Dooley (D-CA) argued that members should recognize that fast track allowed the negotiation of agreements which made addressing their particular problems easier. "Some people have lost sight of what the world was prior to the Uruguay Round of the GATT," he said.

WTO PRAISES CHILE'S TRADE REGIME, SEES PROBLEMS WITH REGIONAL DEALS

A new World Trade Organization report praises Chile for its generally open trade and investment regime, but warns that its multilateral tariff concessions are diminished by various bilateral and regional trade agreements and by policies aimed at protecting selected industries. These agreements have led to differential treatment of Chile's trading partners and to discrimination between various sectors of its economy.

"The negotiation of the various bilateral agreements has led to growing differences in treatment of domestic industries, since tariffs are being phased out over varying period for different goods, and under different time-frames overall, under each agreement," the WTO said in a Trade Policy Review released this week. "The resulting complexity is reinforced by the fact that rules of origin also differ among agreements and by sector."

Chile maintains bilateral trade agreements with Canada, Mexico, Colombia, Ecuador and Venezuela, as well as an associate membership with the Southern Cone Common Market (Mercosur). It is also a member of the Asia-Pacific Economic Cooperation forum (APEC), and is negotiating a framework with the European Union. In addition, it hopes to join the North American Free Trade Agreement (NAFTA).

The benefits of Chile's uniform tariff are eroded by policies meant to protect certain sectors ranging from automobiles to agriculture, according to the WTO.

Chile shows a "limited degree of liberalization" in the textile and clothing sector, and extends production subsidies to the forestry industry for deforested areas, according to the report. It also requires the use of local parts in the production of autos, and sets export performance requirements, according to the WTO. The auto program is a remnant of the old import substitution regime and is due to be phased out in a matter of years, but there is some confusion over exactly when. The WTO report says the program is to be phased out in 1998, but the Chilean ambassador told a WTO meeting this week that it would be phased out Jan. 1, 2000.

The report highlighted Chile's use of a variable levy for imports of wheat, wheat flour, edible oils and sugar, which is applied within a price band that does not exceed its applicable WTO tariff binding of 31.5 percent.

Trading partners questioned Chile closely regarding its price band mechanism on agricultural goods. In defense of this policy, the Ambassador responded that the price band mechanism "was established to buffer domestic prices against international price fluctuations."

With the exception of wheat, wheat flour, edible oils and sugar, agricultural commodity imports face a WTO bound ceiling tariff of 25 percent, as do industrial goods. But Chile has unilaterally lowered its applied tariff to a uniform 11 percent, and is considering a further decrease to 8 percent, according to the WTO.

Its criticisms notwithstanding, the WTO report was largely positive in its assessment of Chile's trade regime. "Chile has now maintained a liberal, transparent trade regime for almost two decades, coupled with sound macroeconomic policies and structural reforms," the review stated. "The benefits, in terms of strong economic growth and reduced inflation, have become increasingly evident."

The WTO report emphasizes that Chile's focus has been on "open regionalism" that seeks to avoid creation of new obstacles to trading partners outside the regional and bilateral trade agreements.

"The authorities [of Chile] stated that a fundamental element of this policy is that regional and/or bilateral agreements should become a stepping stone towards a more open and transparent trade system; they consider trade liberalization within the multilateral trading system as their first priority," the WTO said.

While Chile seeks out free-trade agreements that do not curb its ability to enact further unilateral reforms, locking in these reforms on a Most Favored Nation (MFN) basis depends on the willingness of other WTO members to engage in a new round of trade negotiations, the WTO said.

During the meeting of the Trade Policy Review Body on Sept. 23 & 24, Chilean Ambassador Alejandro Jara stated that multilateralism remains his country's top priority. But he pointed out that the bilateral and regional agreements Chile has entered are essential to opening new markets, as well as its own economy. He also stressed the political impact of these agreements on Latin America, particularly the relationship between open economies and the development of democracy.

The WTO said that Chile has weak discipline for implementing antidumping measures because its national legislation differs from WTO rules in three major aspects. Chile lacks a judicial review for administrative decisions, a system for prompt refunds of duties paid in excess of antidumping margins and accelerated investigations for new exporters that need to find out how they would be covered by an existing antidumping order, the WTO said. But the report emphasized that the Chilean Congress is now discussing a draft law that would institute such measures.

The report also highlights five inconsistencies between Chilean intellectual property legislation and the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS). These include the fact that the duration of a patent is 15 years from the granting date and not 20 from the filing date as stipulated in the TRIPS rules.

However, the full implementation of the TRIPS agreement will require more than amending existing Chilean laws and the enactment of new laws, the WTO said. It must involve a strengthening of enforcement and the training of additional personnel, which will be "a major undertaking" for Chile, according to the report.

But the report notes that Chile's IPR regime has been strengthened over the past 10 years because of the country's interest in joining the North American Free Trade Agreement and in entering a free-trade agreement with the European Union.

This week's debate in the Trade Policy Review Body focused primarily on three issues: Chile's balancing of multilateral, regional and bilateral approaches; discussion of specific trade-related measures; and sectoral components of trade policies.

The U.S. pressed Chile on its stated plan to cut its uniform applied tariff rate, asking whether these tariffs would be bound in the WTO. Ambassador Jara responded that his country would not consider such a move unilaterally, but only in the context of a new round of multilateral trade negotiations.

The U.S. also took issue with Chile's sanitary and phytosanitary regulations for poultry regarding salmonella contamination, questioning whether domestic products had to meet the same standards as imports. But Ambassador Jara insisted that the imports of these products were treated no less favorably than domestic ones.

On wheat, the U.S. accused Chile of being too restrictive in its health requirements guarding against wheat infected with the fungus Karnal bunt. The U.S. said that Chile is refusing to import U.S. wheat even when accompanied by certification that such shipments are free of the fungus Karnal bunt.

BARSHEFSKY WARNS OF FALLOUT FROM FAILURE TO PASS FAST TRACK

The top U.S. trade official this week warned of "serious and immediate consequences" if the Clinton Administration is denied fast-track trade negotiating authority. Lack of fast track has already led to lost commercial opportunities for U.S. firms, and its renewal is crucial to planned multilateral, sectoral and bilateral trade talks as well as to continued U.S. global leadership, U.S. Trade Representative Charlene Barshefsky told a Brookings Institution forum on Sept. 23.

"In every region of the world, but particularly Latin America and Asia, the two fastest growing regions, governments are pursuing strategic trade policies and, in some cases, preferential trade arrangements, forming relationships around us, rather than with us, creating new exclusive trade alliances to the detriment of U.S. interests," she said.

In the last four years, 20 trade pacts have been negotiated in the Western Hemisphere without U.S. participation, Barshefsky said. Of the 30 trade accords operating in the hemisphere, she noted, the U.S. is signatory to only one -- the North American Free Trade Agreement. She noted threats to U.S. interests from the continued expansion of trade pacts involving the Brazil-led Southern Cone Common Market (Mercosur), Chile and Canada, as well as active negotiations and other commercial efforts by the European Union, China and Japan with Latin American nations.

According to Barshefsky, China has "highlighted" Brazil, Argentina, Venezuela, Chile and Colombia as "strategic priorities."

Barshefsky also cited five examples in which U.S. producers are currently disadvantaged vis-a-vis others in regional trade because of "agreements being reached without us."

In one instance, a U.S. fabric maker lost a $1.8 million per year sale in Chile to a Mexican company because of an 11 percent tariff preference given to Mexican firms. In other cases, she noted existing tariff disadvantages to U.S. apple and fresh-fruit producers vis-a-vis Chilean growers, and to U.S. corn and wheat producers compared to Argentinean farmers as a result of recent trade pacts.

The Administration intends to use fast track in three ways, Barshefsky said. Multilaterally, the Administration needs it to pursue the World Trade Organization's so-called "built-in" agenda, she said. That includes the resumption of government procurement market access negotiations this year, renewed intellectual property rights talks next year, agriculture market access discussions slated to begin in 1999, and additional services talks thereafter, she noted.

Fast track also is essential to the Administration's desire to undertake sector-specific market-opening initiatives, according to the USTR. Future sectoral accords would seek to target sectors where U.S. industry is competitive and where global trade barriers are high and U.S. barriers are low, she said.

These sectoral initiatives would likely be patterned after this year's Information Technology Agreement to eliminate duties on computers, semiconductors and telecom equipment by the year 2000. They include the negotiation of an ITA-II beginning next month, which would "expand product coverage, address non-tariff barriers and steer Internet commerce toward free and open trade," she added.

Other "promising" sectors which could be targeted because "global barriers to U.S. exports are high" are chemicals, environmental equipment and services, and medical equipment and services, she said.

The third part of the Administration's trade agenda that requires fast track is its effort to negotiate "more comprehensive market access agreements with individual countries," the USTR noted. Chile is the one country which "appears in all respects" to be ready to enter into accords that meet U.S. economic, labor and environmental objectives, she said. Before identifying other countries, the Administration would consult with Congress and all interested parties in order to clearly define U.S. negotiating objectives, she pledged.

The fast-track bill which the Administration presented to Congress this month provides a "sensible approach" for pursuing the objectives of expanded market access, advancing worker rights and core labor standards, and promoting environmental protection and sustainable development, Barshefsky said (see separate story).

"We are committed to a strong strategy of pursuing our goals, but maintaining flexibility rather than pretending that one prescription would fit all countries or all cases," she said.

DOLE TO HELP CHILE FIGHT SALMON AD ORDER; CHEMTOB TO LEAVE JUSTICE

Verner, Liipfert, Bernhard, MacPherson and Hand said this week it has been retained by the government of Chile to help it fight a preliminary U.S. antidumping determination against imports of its salmon. Former Senate Majority Leader Robert Dole (R-KS) is a member of the firm and will travel to Chile within a matter of weeks, according to a spokesman for the law firm.

Chile notified the World Trade Organization last month of its intention to request consultations with the U.S. on the salmon case after the U.S. International Trade Commission made a preliminary determination of injury (*Inside U.S. Trade*, Aug. 8. p.21).

The Verner, Liipfert spokesman denied charges from a member of Congress that the firm will also provide political and strategic advice for Chile in the upcoming debate on fast-track negotiating authority. Rep. Sherrod Brown (D-OH) charged this week that the Chilean Embassy in Washington had confirmed its "hope and expectation" that Dole would advise the Chilean government on its political strategy for fast track.

Brown urged Dole to reconsider the decision in a speech on the House floor. "This is business as usual, and it underscores how bad trade agreements get through the Congress," he said. "This is a perfect example of how things like fast track get approved, even when the American people are against them."

Separately, Justice Dept. Special Trade Counsel Stuart Chemtob will leave his position at the end of this month to begin a two-year Mike Mansfield Fellowship. In the first year, Chemtob will study Japanese and in the second, he will work in various Japanese government ministries such as the Ministry of International Trade & Industry or the Japan Fair Trade Commission.

Chemtob has been with the Justice Dept. for 17 years and will be replaced by attorney David Boling.

CONGRESS REBUFFS BRITTAN ON HELMS-BURTON . . . begins page one

Brittan added that his meetings with Gilman and Menendez were "useful," and that "it would be wrong" to say their views were changed.

However, congressional sources said the meetings were very confrontational.

"Brittan came out firing, and Gilman and Menendez fired right back," one congressional source said. In the end, these members stressed to Brittan the importance of negotiating a settlement to Helms-Burton that Congress can accept, the source said. The ultimate aim of the EU in the talks is to convince Congress to amend Helms-Burton so that one of its primary sanctions can be waived.

Sources said last week that these two members, in addition to Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) and Rep. Dan Burton (R-IN), are among a handful of members that must be satisfied with the final result before Congress as a whole decides on the issue.

The U.S. and EU have still not found a way to develop disciplines on investment in expropriated property, the use of secondary boycotts, and disputes over conflicting jurisdiction of law. The two sides are hoping a deal will allow the EU to drop its World Trade Organization challenge of Helms-Burton, and allow Congress to amend Title IV of Helms-Burton so it can be waived. Title IV requires the U.S. to deny foreign executives that traffic in expropriated U.S. property in Cuba entry to the U.S.

Brittan this week also noted that the April 11 joint understanding, under which the current U.S.-EU negotiations are taking place, also calls on the U.S. to work toward waiving European companies from elements of the Iran-Libya Sanctions Act (ILSA). The so-called D'Amato law seeks to punish foreign companies that invest in Iran and Libya in a way that enhances the ability of those countries to produce oil and gas.

One congressional source said Brittan this week seemed as concerned with a waiver of ILSA as he was with resolving the Helms-Burton dispute, since ILSA threatens to restrict a much higher value of EU investment than

Helms-Burton. This source added that after Brittan's visit, it seems more unlikely that either side will move significantly from its position in the Helms-Burton talks.

Brittan also noted that he met with Undersecretary of State for Economics, Business and Agricultural Affairs Stuart Eizenstat on Sept. 23 to discuss the status of the Helms-Burton negotiations.

Some sources have speculated that it will not be possible to reach an agreement by the October 15 deadline, but Brittan and others said the U.S. and EU have not begun to openly discuss the possibility of extending the talks.

"We haven't talked about extending the talks," Brittan said this week. "I can't think of anything that is less likely to lead to a conclusion...than talking about extending the period." Brittan added that he has not talked about the possibility of extending the talks with EU member states, but acknowledged that reaching a final agreement will not be easy.

"It is important to put this dispute behind us," he said. "But it is not going to be easy. I am not saying that an agreement on Helms-Burton and D'Amato is even within sight as yet."

Brittan added that if no deal is reached by Oct. 15, the EU could be left with no choice but to abide by the terms of the April understanding, under which the EU could resume their WTO challenge.

"If we don't make it, all I can say is repeat what is in the words of the understanding which is that we reserve the right to go back to the WTO," Brittan said. "I say that not in any contentious way, but just to repeat what is on a piece of paper that you already have."

Another informed source agreed that extending the talks is not openly being considered, but said an extension is a definite possibility. "It is entirely possible that if we get a deal in principle and we can identify avenues that are fruitful that we could somehow register the progress made by the fifteenth and continue," he said.

However, he added that a handful of EU member states led by France would be likely to strongly oppose an extension and would press for a renewed WTO challenge of Helms-Burton. Sources added that it is unclear where Congress stands on extending the deadline.

Specifically, Brittan's request for more "give and take" is a reflection of the fact that the two sides are still far from agreeing to disciplines on the use of secondary boycotts and rules that provide guidance when the laws of two nations make conflicting demands of companies.

In last week's talks in Paris, according to informed sources, the EU proposed that language restricting the use of secondary boycotts be included under the Multilateral Agreement on Investment (MAI), which is now being negotiated in the Organization for Economic Cooperation & Development. In addition, the EU has proposed that in disputes over conflicting jurisdiction, companies be guided solely by the laws of their home country.

But the U.S. last week said it could not accept the idea of binding restrictions that would inhibit its ability to enact laws to sanction foreign companies that invest in third countries. Instead, the U.S. proposed only that officials meet in the context of the MAI and in other forums to consult on these matters when they arise. In addition, congressional sources have said Congress is also highly unlikely to agree to language in the MAI that restricts the use of secondary boycotts, and that such language would undermine U.S. support for the MAI.

Sources said this week that this is the most difficult issue facing the two sides as they continue to try to reach an agreement by their Oct. 15 deadline. "This is the main issue for Europe, and there is quite a lot of distance" to go before the two sides can agree on it, one international trade source said.

In addition, sources said it is clear after Brittan's visit that the two sides are still split in their effort to agree upon negotiated disciplines that deter investment in expropriated property. Congressional sources said Brittan told members of Congress this week that the EU is unwilling to agree to negotiated disciplines unless they apply only to future investment in these properties. Brittan also told reporters this week that the EU wants the disciplines to apply only to "future acquisitions."

However, Congress is unlikely to accept this demand because it would ignore the possibility of sanctioning foreign companies that have already invested in expropriated property in Cuba, which is the point of the Helms-Burton law. The EU proposal "doesn't address what we're negotiating for," one congressional source said.

This source said Congress would likely accept disciplines that, for example, require foreign companies to divest in property in Cuba or settle with the previous U.S. owner. Other sources have said the disciplines could, at a minimum, deter the resale or significant improvement of expropriated property in Cuba that is now owned by a foreign company.

An informed source this week agreed that the U.S. needs to be able to somehow target investment in property in Cuba that is now owned by foreign companies, but acknowledged that this is a very sensitive issue in the talks.

"It is very important [for the U.S.] to ensure that disciplines developed in the talks have a real impact on U.S. claims in Cuba," this source said. He added that while dealing with expropriated property in Cuba already owned by foreign companies may require special treatment, the U.S. cannot accept an agreement in which no disciplines apply to these property claims.

In the Paris talks, the U.S. tackled the issue by proposing that countries exhibiting a pattern of expropriating property, which the U.S. proposes should include Cuba, be designated as "problem states." The U.S. would want to ban all future investment in these countries. The U.S. also proposed that countries register expropriated property, and that countries choosing to invest in those properties would be denied government financing and other support (*Inside U.S. Trade*, Sept. 19, p. 1).

BARSHEFSKY HIGHLIGHTS TRADE DEFICIT WITH JAPAN . . . begins page one

deregulation that promotes market access and we are concerned with respect also to our aggregate export performance to Japan," she said.

"They must proceed on a course commensurate with their own public pronouncements, which is to say, opening their market through deregulation and other means."

Barshefsky said Japan faces several early tests of its commitment to market access. These include "renegotiation and improvement" of the NTT telecommunications procurement agreement, a review of the 1995 U.S.-Japan Auto Agreement to be held next month, and movement by Japan under the new deregulation initiative agreed upon by President Clinton and Prime Minister Hashimoto at the Denver Summit of the Eight.

Barshefsky also cited an agreement on flat glass as one of several bilateral agreements whose implementation is problematic. "We have a very substantial agenda that we are looking at," she said.

She said progress had been made in the meetings held this week on the NTT agreement, but added that it was not enough.

She said enforcement of agreements is a top priority for the U.S. and that the U.S. public cannot be expected to have confidence in trade agreements if countries will not fulfill their obligations under them. "If they're not going to be enforced, we might as well not negotiate them to begin with," she said.

Separately, Jane Bradley, head of USTR's enforcement unit, told the ACTPN that USTR "expects to have a few more [WTO] cases coming up before Christmas."

ACTPN members asked Bradley and the other USTR officials at the meeting to inform them if the agency finds it has insufficient resources to accomplish its stated goals, such as new WTO cases. One member of the committee said private-sector representatives are prepared to do what they can to ensure that USTR gets more resources if needed.

Committee members mentioned the proliferation of unilateral sanctions measures to the state and local level and the issue of global climate change as likely topics for discussion at the next meeting set for December 12.

CONGRESS POISED FOR ACTION ON FAST TRACK . . . begins page one

fast-track issue but has not discussed "specific language" yet.

Archer decided on the markup date after a Sept. 24 meeting with Barshefsky, also attended by Reps. Phil Crane (R-IL) and David Dreier (R-CA). Archer emphasized to Barshefsky that the House Republican leadership has told him that the votes to pass fast track are not there, a congressional source said. He also told her that President Clinton must become personally engaged in the fast-track debate.

The Ways & Means trade subcommittee will hold a hearing on Sept. 30 on the general topic of fast track, but a congressional source predicted that it would focus on the Administration's own proposal.

Finance Committee Chairman William Roth (R-DE) said on Sept. 23 that he would seek to mark up both a fast-track bill and a bill to extend the benefits of the North American Free Trade Agreement to Caribbean basin countries. But he said he had not decided whether the two bills would be packaged together.

Senate Majority Leader Trent Lott (R-MS) said this week that fast track will be the last matter which the Senate takes up before it recesses this year, congressional sources said.

Senate Republican criticism of the Administration bill has centered on the extent to which labor and environmental provisions which change U.S. law could be included in legislation covered by fast track, congressional sources said. Republicans want to draft a bill which more firmly links the negotiating objectives to what can be included in implementing legislation and by narrowing labor- and environment-related objectives, especially those related to the International Labor Organization.

In particular, Republicans have "real concerns" about including references to the ILO in fast-track legislation, one source said. The provision in the Administration bill on the ILO was included as a result of discussions with Finance Committee Ranking Member Pat Moynihan (D-NY).

The criticism of Sen. Phil Gramm (R-TX) last week that the Administration's bill could allow ILO agreements to be covered under fast track is shared by other members, congressional sources said. One source said that "not a single Republican" supports mentioning the ILO in the fast track bill.

On environmental issues, Senate Republicans object to a provision in the Administration bill which requires U.S. negotiators to "take into account United States domestic objectives including, but not limited to" health and safety, environmental, consumer and employment opportunities issues. They think this language could compel the President to seek trade agreements which require countries to adopt U.S. standards, one source said.

Related to the labor issue in particular is Senate Republican concern over what provisions can be included in agreements covered by fast track, congressional sources said. Many Republicans believe the negotiating objectives must be tied directly in the bill to what can be including in implementing legislation.

Most Senate Republicans also support language which would restrict the contents of implementing bills more than the "necessary or appropriate" language of the 1998 trade act, congressional sources said. The Administration proposal adopted the "necessary or appropriate" language of the 1988 fast-track authority, though it did add language to qualify this apparently broad provision.

One source said that most Republicans would prefer using simply the term "necessary." But another source cautioned that, regardless of the specific phrase in the bill, the key issue would be how Congress defines the phrase.

The source added that there is also a recognition among senators of the need for "some elements of flexibility" in this respect in order to get trade legislation passed.

The Administration request for fast-track authority through 2005 has attracted little opposition in the Senate, congressional sources said. One source said senators would be "happy" to deal with the issue definitively for the next eight years. Another added that the request for a three-year extension followed by an additional four if Congress does not object is "a well-known and familiar formula" for legislators.

Senate Minority Leader Tom Daschle (D-SD) said on Sept. 23 that his negotiations with the Administration for a Statement of Administrative Action (SAA) are proceeding "productively." Daschle said he is seeking both better implementation of North American Free Trade Agreement rules on labor and environment and new steps that the President could take in those areas.

"We want to make sure that the priorities expressed with regard to labor, the environment and agriculture [in the proposed bill] are not just rhetoric but true intentions of this government with regard to making substantive change," Daschle said. "But we have not seen that yet."

An SAA constitutes a stronger political commitment than report language that accompanies regular bills because Congress votes on it along with the legislation, according to private-sector lawyers.

Daschle and Moynihan last week outlined initiatives on labor and environment which Senate Democrats want from the Administration in order to support fast track (*Inside U.S. Trade*, Special Report, Sept. 17, p. S-15).

Late last week, House Democrats met with senior Administration officials and briefly discussed the idea of having House Democrats introduce their own fast-track bill, congressional sources said. The Administration offered to work with them on such a bill during the Sept. 18 meeting when Democrats raised the possibility of developing alternative legislation, these sources said.

But congressional sources said a "more Democratic bill" than the Administration proposal would do little to push the content of legislation in a Democratic direction. The Administration bill has effectively placed a "ceiling" on how much the eventual bill can reflect Democratic priorities, one source said.

In a related development, the America Leads on Trade coalition this week distributed to its members another round of target lists of House members to lobby on fast track. The list, which is reprinted below, includes 86 Democrats and 66 Republicans.

Industry sources said this week that as lobbying has geared up following the introduction of the Administration's fast-track proposal, many companies have found that labor groups have already contacted many members.

President Clinton this week took the case for fast track before the annual convention of the AFL-CIO, a group which has launched a media campaign to defeat fast track. In a Sept. 24 speech, he emphasized the need for fast-track authority to sustain economic expansion and the creation of high-paying jobs.

White House Spokesman Mike McCurry said the same day that Clinton's speech served to remind labor of "what the potential consequences" are of targeting Democrats that cast a vote for fast track. Such a strategy may open the door to more Republican members in the House, he said.

Vice-President Gore, Daschle and House Minority Leader Richard Gephardt (D-MO) also spoke to the convention. Gore did not mention fast track, while Daschle said he would fight to ensure that labor and environmental issues can be a part of trade negotiations. Gephardt reiterated his argument that fast track should include core labor and environmental provisions.

ALOT Target Lists

Democratic Fast Track Target List

Ackerman (NY)
Allen (ME)
Baesler (KY)
Baldacci (ME)
Barrett (WI)
Becerra (CA)
Bishop (GA)
Boswell (IA)
Boucher (VA)
Brown (FL)
Cardin (MD)
Clay (MO)
Clement (TN)
Costello (IL)
Cramer (AL)
DeGette (CO)
Deutsch (FL)
Dingell (MI)
Doggett (TX)
Doyle (PA)
Edwards (TX)
Eshoo (CA)
Etheridge (NC)
Farr (CA)
Fattah (PA)
Filner (CA)
Flake (NY)
Foglietta (PA)
Ford (TN)
Goode (VA)
Gordon (TN)
Green (TX)
Hall (TX)
Harman (CA)
Hefner (NC)
Hinojosa (TX)
Holden (PA)
Hooley (OR)
Hoyer (MD)
Jackson-Lee (TX)
Jefferson (LA)
John (LA)
Johnson, E. (TX)
Kanjorski (PA)
Kennelly (CT)
Kind (WI)
LaFalce (NY)
Levin (MI)
Lofgren (CA)
Lowey (NY)
Luther (MN)
Maloney (NY)
Manton (NY)
Markey (MA)
Mascara (PA)
McCarthy (MO)
McDermott (WA)
McHale (PA)
McNulty (NY)
Meehan (MA)
Meek (FL)
Menendez (NJ)
Millender-McD. (CA)
Ortiz (TX)
Pastor (AZ)
Pelosi (CA)
Pickett (VA)
Pomeroy (ND)
Poshard (IL)
Price (NC)
Reyes (TX)
Rodriguez (TX)
Sandlin (TX)
Sawyer (OH)
Schumer (NY)
Scott (VA)
Sherman (CA)
Sisisky (VA)
Skelton (MO)
Slaughter (NY)
Smith (WA)
Snyder (AR)
Towns (NY)
Turner (TX)
Wexler (FL)
Weygand (RI)

*Freshman in Italics

Republican Fast Track Target List

Bob Riley (AL)
Robert Aderholt (AL)
Spencer Bachus (AL)
J.D. Hayworth (AZ)
Jay Dickey (AR)
George Radanovich (CA)
Christopher Cox (CA)
Brian Bilbray (CA)
Scott McInnis (CO)
Joel Hefley (CO)
Tillie Fowler (FL)
Bill McCollum (FL)
Charles Canady (FL)
Dan Miller (FL)
Dave Weldon (FL)
Newt Gingrich (GA)
Nathan Deal (GA)
John Shimkus (IL)
Steve Buyer (IN)
Edward Pease (IN)
John Hostettler (IN)
Jim Ryun (KS)
Vince Snowbarger (KS)
Todd Tiahrt (KS)
Edward Whitfield (KY)
Jim Bunning (KY)
Roscoe Bartlett (MD)
Gil Gutknecht (MN)
Charles Pickering (MS)
James M. Talent (MO)
Roy Blunt (MO)
JoAnn Emerson (MO)
Kenny Hulshof (MO)
Rick Hill (MT)
Jon Christensen (NE)
Jim Gibbons (NV)
John E. Sununu (NH)
Charles Bass (NH)
Jim Saxton (NJ)
Joe Skeen (NM)
Bill Redmond (NM)
Sue Kelly (NY)
James T. Walsh (NY)
Howard Coble (NC)
Steve Chabot (OH)
John Boehner (OH)
Deborah Pryce (OH)
Ralph Regula (OH)
Bob Ney (OH)
J.C. Watts (OK)
Ernest Istook (OK)
Curt Weldon (PA)
Jon Fox (PA)
Phil English (PA)
John Duncan (TN)
Van Hilleary (TN)
Ed Bryant (TN)
Tom D. DeLay (TX)
Dick Armey (TX)
Chris Cannon (UT)
Jack Metcalf (WA)
Doc Hastings (WA)
Jennifer Dunn (WA)
Mark Neumann (WI)
Jim Sensenbrenner (WI)
Barbara Cubin (WY)

In This Issue

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HOUSE REPUBLICANS PREPARING NEW VERSION OF FAST-TRACK LEGISLATION

House Ways & Means Committee staff late this week was preparing a chairman's mark of legislation to renew fast-track negotiating authority that is likely to significantly change the Clinton Administration proposal floated on Sept. 16, according to congressional sources. House Republicans believe that the Administration draft gives the President too much flexibility to decide what to include in trade agreements and their implementing legislation, these sources said.

Leaving intact the Administration's proposal could give the President the ability to negotiate trade agreements with provisions unacceptable to Republicans, such as labor and environment rules. "The Administration bill could never even be brought to a vote in the House," one congressional source said.

The source argued that Republican efforts to develop another bill should be expected because the Administra-

continued on page 27

U.S. EXPECTED TO PROPOSE SPECIFIC SOLUTION TO HELMS-BURTON FIGHT

U.S. negotiators this week were expected to unveil a proposal for ending a contentious dispute with the European Union over the Helms-Burton law that is likely to garner the support of key members of Congress, according to informed sources. The proposal hinges on the creation of a list of "problem states," which the U.S. says should include Cuba, in which signatories to the deal would ban all future investment, these sources said.

The U.S. proposal would also create a system in which companies are discouraged from investing in expropriated properties that are registered internationally, they said.

"The Administration has laid out a fairly reasonable approach for cracking down on dealings with stolen property around the world," one congressional source said this week. "[The U.S. has] an ambitious opening position."

continued on page 25

U.S. INDUSTRY TO FILE 201 PETITION TODAY AGAINST WHEAT GLUTEN IMPORTS

The U.S. wheat gluten industry is expected today (Sept. 19) to file a Section 201 petition in an effort to reduce wheat gluten imports to the U.S., which they charge are injuring the industry. These sources said a decision to file the petition was made Sept. 18 because the industry has been left with "no other alternative," since recent efforts to curb imports of wheat gluten through a Section 301 petition and government consultations have failed to yield any results.

Section 201 is aimed at providing relief from imports that are not necessarily dumped or subsidized in order to allow the industry time to adapt to changing trade conditions. These cases have been historically difficult to win, since the President has the option of not granting import relief even if the industry has met all the statutory requirements of demonstrating injury.

continued on page 27

U.S. OFFICIALS PRESSING FOR CONCRETE DEREGULATION RESULTS BY MAY

The Clinton Administration last week told the Japanese government that it wants to achieve "concrete solutions" in bilateral deregulation talks by the next meeting of the world's seven most industrialized nations in May 1998, according to U.S. officials. To this end, the U.S. wants to hold a meeting of subcabinet-level officials under the Enhanced Deregulation Initiative this year, and a second one before the G-7 summit, they said.

Japanese efforts on deregulation over the past three years have had only modest results, and have fallen "far short" of the Government of Japan's stated objectives to remove all unnecessary regulations in Japan, the U.S. embassy in Tokyo said in a Sept. 10 statement. The statement was issued as U.S. and Japanese officials began their meetings in the Working Group on Deregulation and Competition and its subgroup on structural issues.

The meeting followed a high-level Administration decision to pressure Japan for more actions that would curb

continued on next page

Inside U.S. Trade published a Special Report dated Sept. 17 on the Administration's fast-track proposal

its burgeoning trade deficit (*Inside U.S. Trade*, Sept. 12, p. 1).

Following the meeting with the U.S., a senior Japanese official said the call for concrete results was a "private message" rather than one officially presented on behalf of the U.S. government. Japan is waiting for the U.S. to clarify what it considers "concrete results," he said. It is unclear whether this means recommendations by the Administrative Reform Council to the Japanese cabinet or action by the cabinet on a deregulation issue, according to the official.

In addition, Japan is likely to insist in ongoing discussions with the U.S. that the results of deregulation are not felt immediately, but that business and consumer reaction to an issue are contingent on the state of the Japanese economy, he said.

The senior-level meeting under the Enhanced Initiative will likely occur in mid-November before President Clinton and Prime Minister Hashimoto meet at the summit of the Asia Pacific Economic Cooperation forum, sources said. Both sides anticipate that the experts groups on telecommunications and financial services will meet before that summit, so that all five groups covered by the Enhanced Initiative, which includes the Deregulation and Competition group, will have held initial meetings.

The group on housing and structural issues met last week, and the group on medical equipment and pharmaceuticals is meeting this week in Tokyo, a Japanese official said.

Last week's meeting of the subgroup on structural issues under the Deregulation and Competition group was focused on laying out an agenda rather than on negotiating specific issues, according to U.S. and Japanese officials. The U.S. is expecting to make more specific proposals for deregulation at the next meeting, according to a U.S. official.

Japan last week rejected U.S. demands that the structural issues group address autos and auto parts because it is already being discussed in the context of reviewing the implementation of a bilateral agreement on that sector, officials said. Not raising it in the structural issues subgroup would avoid duplication of discussion, Japanese officials said.

Japan also questioned the U.S. demand to consider its current rules for trucking and warehousing, according to U.S. and Japanese officials. The U.S. has charged that these rules restrict entry of new firms and curb pricing competition, but Japanese officials said they were puzzled by these charges, and asked for additional information from the U.S.

The U.S. in turn rejected a Japanese demand that the two sides discuss the transparency of U.S. procedures applied in antidumping cases, particularly the one involving supercomputers made by NEC Corp. of Japan, according to officials. Japan wanted to explore the administrative procedures used in handling the case, in which the Commerce Dept. warned a U.S. government-funded agency that a Japanese supercomputer it was considering leasing was unfairly priced before an antidumping petition had been filed, they said.

Japan does not contest the principle of antidumping cases, but wants to ensure that procedures applied are "fully transparent and absolutely fair," a Japanese official said.

The U.S. argued that the particular case was still pending and should therefore not be discussed in the deregulation context, officials said.

Japan also raised the U.S. measure that allows only U.S. ships to transport Alaska crude oil exports, which Japan considers a violation of U.S. obligations under the World Trade Organization and a bilateral treaty on friendship, commerce and navigation. Similarly, the U.S. maintains a continued reservation on the use of U.S. built ships for coastal trade in the U.S., a Japanese official said.

Japan also pointed to state and federal Buy America provisions that discriminate against imports, as well as the visa problems posed by new U.S. immigration laws for Japanese business people.

On structural issues, the U.S. identified several Japanese policies and practices it wants to raise. These include structural problems and business practices that pose problems for wholesale distribution. These barriers affect imports of glass, paper, film and construction materials, but the U.S. is seeking to address them without a particular sectoral emphasis, a U.S. official said. The barriers in question are the subject of the "most often heard" complaints about doing business in Japan, the official said.

The U.S. also asked for the phaseout of the Large Scale Retail Store law, which is a repeat of its November 1996 demand that the law be eliminated by the year 2000. The Japanese law conditions the ability of large stores to open on whether surrounding businesses accept it.

The U.S. also sought the elimination of a separate law called *Bunyaho* that deals with the adjustment of retail outlets, U.S. officials said. This law has recently been invoked to curb the ability of U.S. firms to set up multiplex movie theaters, they said. The law affects both the establishment and operation of these theaters as new entrants have to adjust their plans to demands from existing theater owners, a U.S. official said.

The third issue the U.S. raised was a "fairly new one" regarding customs procedures for the processing of bulk mail and catalogue sales. These procedures pose a lot of holdups for bulk shippers, whether they are private firms or the U.S. postal service, a U.S. official said.

There are now about $5 billion in sales through catalogues to Japan, and the market is growing in Japan, he said.

The U.S. also wants to discuss the Business Reform Law, which extends subsidies to firms seeking to adjust to competition, a U.S. official said. Japanese firms can prepare an adjustment plan that is then approved by the Ministry for International Trade and Industry, he said. If a group of firms file a joint adjustment plan, MITI could consult the Japan Fair Trade Commission but seldom does so, he said. In fourteen cases of joint adjustment plans approved by Japanese ministries, JFTC was not consulted, the official said.

Under the rubric of competition issues, the U.S. raised four problems last week, according to a U.S. official. These include the elimination of antitrust exemptions, which allow firms to form cartels that restrict supply and set prices in times of recession, he said. The U.S. asked Japan to review all exemptions with the goal to eliminate them as much as possible.

The second issue the U.S. pressed is related to the ability of Japanese individuals to seek an injunction against anticompetitive behavior, an official said. Individuals in Japan do not now have the ability to sue for an injunction, and can only sue for damages that arise from antitrust violations, he said. But MITI is now considering a proposal to allow injunction suits, and may make a proposal for a bill in the spring, sources said.

The U.S. also asked Japan to step up its fight against rigging procurement bids by taking more action against public corporations and their officials that facilitate the practice by providing information to specific companies. In these cases, the JFTC acts against the bidding companies, but not the officials who helped them, the U.S. charged. In addition, the JFTC has imposed light penalties such as a 15-day suspension on bidding on contracts against offending firms, a U.S. official said. There need to be stronger administrative penalties such as debarring bidders, he said.

The fourth issue the U.S. raised was the need for more staff and money for the JFTC. Separately, the U.S. Justice Dept. also raised the need for sufficient JFTC resources and personnel in its Sept. 4 submission on JFTC guidelines on holding companies. In light of its increasing responsibilities, the agency should have at least 700 staff people, Justice said.

In its submission, Justice criticized a Japanese proposal that would allow financial holding companies to control other firms via their subsidiaries. Under existing Japanese regulations, financial holding companies can have no more than five percent ownership of other companies, a U.S. official said. Under the proposed regulations, each subsidiary of a financial holding company could also own such a share. In light of previous bank-centered Keiretsu ties, the U.S. opposes the proposal, he said.

ALBRIGHT SAYS FAST TRACK VITAL TO BROAD U.S. FOREIGN POLICY GOALS

Secretary of State Madeleine Albright yesterday (Sept. 18) said that approval of fast-track negotiating authority is vital the ability of the United States to exert leadership in the trade and economic sphere, which in turn is critical to U.S. global leadership on broader foreign policy and security issues. U.S. efforts to raise global living standards and keep the peace are inseparable from presidential authority to submit trade agreements to Congress for an up-or-down vote, Albright said.

"[F]ast track is about more than dollars and cents, it's a foreign policy imperative," Albright told the Institute for International Economics and the American Business Conference. "It is indispensable to U.S. economic leadership and that leadership is indispensable to U.S. influence around the globe."

Albright argued that encouraging prosperity through the negotiation of new trade agreements will serve U.S. goals of reducing conflict and promoting democracy. "A world that is busy growing will be less prone to conflict and more likely to cooperate," Albright said. "Nations that have embraced economic reform are more likely to move ahead with political reform."

Albright also called on the business community to join her and the Administration in fighting for fast-track authority, and made a personal commitment to work for congressional approval. "[A]s Secretary of State, I will do everything I possibly can to persuade members of Congress to be true to America's philosophy, to say 'yes' to restoring the President's traditional trade negotiating authority and 'yes' to continuing America's prosperity at home and leadership abroad," she said.

Albright said that the Administration's fast-track proposal submitted this week reflects President Clinton's commitment to promote worker rights and responsible environmental protection. However, she noted that labor and environment concerns can be addressed in spheres other than trade agreements.

"It is vital to bear in mind...that trade is but one very limited instrument for promoting higher environmental and labor standards," she said. "The Administration can and is pursuing these goals through other avenues such as the International Labor Organization, the WTO, the international banks, the Commission on Sustainable Development and the Montreal Protocol."

In the broader context, Albright stressed that continued absence of fast-track authority could hamper overall

U.S. diplomacy. "In many capitals, if we have nothing to say on trade, we will find it harder to have productive discussions on other issues of direct importance to American interests," she said. "In contrast, strong economic ties can be a foundation for cooperation across the board."

The U.S. cannot sit on the sidelines and let other countries set the trade and investment trends for the next century, she said. If Congress does not grant the President fast-track negotiating authority, other countries will move forward and push the U.S. further away from its goals, according to Albright.

"[I]f we choose to hide behind walls rather than tear them down, our products will face higher tariffs, our services will be harder to sell, our businesses will find it more difficult to win contracts, our economy will create fewer jobs, and -- because we are absent from the bargaining table -- we will have no success at all in promoting higher environmental and labor standards," she said.

Asked to reconcile U.S. use of unilateral sanctions with the open world view she had presented in her speech, Albright replied that the U.S. has global responsibilities, which include taking action to ensure that the people of the world are able to prosper. "This means that we need some kind of a tool to deal with rogue states," she said. "I think that, while sanctions may be an imperfect tool in many ways, it is a useful tool and what we try to do, when we have sanctions imposed,...is to deal in some way with the problems caused for the people [by the sanctions]."

Albright highlighted specific areas in which trade ties could be strengthened and for which the Administration needs fast track authority. These include lowering tariff and non-tariff barriers to U.S. agricultural exports, opening government procurement markets, protecting intellectual property rights, achieving tariff-lowering agreements in Latin America, and striking more sectoral deals like the Information Technology Agreement, which will amount to a $5 billion reduction in tariffs.

"[In Washington] we could call that five billion good reasons why restoring traditional negotiating authority deserves bipartisan support," she said.

Albright added that the U.S. should do all it can to build the solidarity of the Americas. However, the U.S. must work to ensure that this solidarity translates into interaction with other parts of the world. "What I think would be difficult to live with at the moment, is if in fact we do create various regional economic partnerships and that those then turn inward rather than turning outward," she said.

The U.S. needs to develop its regional partnerships into building blocks for a secure global economic system, just as it built a security partnerships after World War II, she concluded.

ROTH SEES SCANT SENATE SUPPORT FOR ADMINISTRATION FAST-TRACK BILL

Republican members of the Senate Finance Committee this week strongly criticized the Clinton Administration's proposal for the renewal of fast-track negotiating authority as being both unacceptably vague and too expansive in its treatment of labor and environmental issues. Following criticism from five Republican senators of the proposal, Chairman William Roth (R-DE) warned that the Administration bill will not garner adequate support in the Senate in its current form.

"It has to be very clear [from the hearing] that the President's legislation is in deep trouble," Roth said during a Sept. 17 hearing. "What we have before us will not develop the kind of coalition we need to enact legislation."

Roth said following the hearing that "the ball is very much in [the Administration's] court" to improve its proposal as soon as possible.

Senate Majority Leader Trent Lott (R-MS) said that the proposal is "disturbing" because it "clearly introduces brand new environmental and labor elements into the fast track process." The proposal also "seems to lack sufficient regard, in my opinion, for existing trade laws" which guard against "unscrupulous and unfair trade practices," Lott said. "These laws need to be strengthened and utilized, and not ignored."

Lott stressed that the Administration proposal is "only the kickoff" and noted that he has cited fast track as one of his "must-do" items before the end of the year, along with transportation reform and appropriations issues. The fact that it is a must-do issue does not mean that Republicans will agree to do it at all costs, he said.

Following the hearing, U.S. Trade Representative Charlene Barshefsky dismissed suggestions that the senators' comments indicated a lack of support for fast track. "This is exactly as we would have expected the hearing to go," Barshefsky said. "All the members evidenced a desire to work with the Administration, they all evidenced a desire to ensure that the Administration has fast track authority, they all indicated the importance of fast track."

"This hearing is indicative of the fact that members on both sides of the aisle will have issues," she said. "We have started the process and we are exactly where we thought we would be."

Barshefsky added that "step one" of the process will be to build a consensus that the President should have fast track, a consensus which did not exist in 1995. "Step two will be to work out the bounds of the bill in an appropriate manner," she said.

She declined to specify on which provisions the Administration can be flexible, except to say that it is "on the table" for discussion.

Republican senators criticized the Administration proposal on a number of counts, but generally expressed either opposition to the labor and environment provisions or said they did not understand the implications of the Administration language for future negotiations. Roth opened the questioning by asking Barshefsky whether the basic purpose of fast track is to help remove trade barriers, a point she never directly answered.

"There are limits to the notion that all a trade agreement can do is reduce trade barriers," Barshefsky said. Previous agreements have addressed health and safety issues, environmental standards, two areas of policy which speak to the viability of the rule of law and a country's ability to enforce it, she said.

Barshefsky also emphasized that the Administration "does not intend to use fast track to amend U.S. labor and environmental law." She noted that the 1984 and 1988 trade acts contained language on these areas, but Roth cautioned that "the mere fact" that it was in earlier legislation does not guarantee it a place in new fast-track legislation.

Roth also said that the mention of "sustainable development" in the bill "seems to open the door very wide" to changes in U.S. law. Barshefsky countered that there are existing mechanisms to which the U.S. has committed itself in this area, such as the World Trade Organization Committee on Trade and Environment.

Despite Barshefsky's answers, Roth stressed that it is "absolutely essential" that there are "no misinterpretations" that trade agreements affect U.S. domestic labor and environmental laws. "We have to take a careful look at the language to ensure that it does not allow other interpretations you and I might not intend," he said.

Sen. Charles Grassley (R-IA), who chairs the trade subcommittee, raised three specific issues regarding the bill: how it handles non-trade issues, the role of Congress in negotiating new agreements and the priority accorded agriculture. He directed his strongest remarks toward the alleged vagueness of the provision in the Administration bill outlining what can go into legislation which implements future trade agreements.

The Administration bill would allow provisions which are "necessary or appropriate to implement such trade agreements...and which are related to trade." Grassley questioned why the proposal does not use the phrase "directly related to trade" in this part of the bill since it is used in other sections related to labor and environment. He also called for a specific definition of whatever phrase is used.

Barshefsky responded that the Administration would consider Grassley's suggestion of using the word "directly" in the phrase decribing the contents of an implementing bill and defining the phrase.

Grassley also noted that the Administration bill does not provide for disapproval by the committees of jurisdiction of specific trade agreements being covered under fast track, a power included in the 1988 act. The Administration proposed that Congress as a whole has this power.

The harshest criticism of the Administration proposal came from Sen. Phil Gramm (R-TX), who called the bill "totally and absolutely unacceptable" and said it represents "a very bad start." He emphasized that he would "never vote" to limit congressional power to consider labor and environmental issues.

"As I read your proposal, it is totally and absolutely unacceptable," Gramm said. "It will never be approved by the United States Senate as written."

In particular, he criticized Section 5 of the overall negotiating objectives, which covers "practices regarding labor, environment, and other matters that are directly related to trade and decrease market opportunities." Gramm expressed the general fear that this language could be used to change U.S. labor and environmental law, and questioned its general clarity.

"I don't know what this means and I don't think you do either," he said. Throughout the hearing, Barshefsky did not explicitly define what issues the Administration considers "directly related to trade."

Gramm also derided the provisions of the bill calling for work in the International Labor Organization, saying the group "has never been taken very seriously."

Gramm raised two examples to question whether the Administration bill would allow fast-track treatment for labor and environmental issues. First, he outlined a scenario in which the President signs an agreement which commits countries to implement provisions on labor standards, and questioned whether fast track could then be used to repeal right-to-work laws passed by 21 states. Second, he asked whether the fast track could be used to pass a tax on polluting industries in order to implement an international sustainable development agreement.

Barshefsky countered by stressing that the U.S. already has high labor and environmental standards, and emphasized that other countries standards are the subject of U.S. efforts.

Gramm asked Barshefsky and her staff for an analysis of what "technical changes" would need to be made to the 1988 fast track authority to form the basis for renewal this year. A congressional source said this idea is "counterintuitive" because the 1988 fast track imposed minimal restrictions on what could be in a trade agreement and Republicans want to constrain the use of fast track.

Sen. Connie Mack (R-FL) emphasized in his opening statement that Republicans are only willing to support fast track if it is "narrowly defined to trade issues." He also said that the "necessary or appropriate" provision of the Administration bill is unclear, and said that Gramm's idea of basing fast track renewal on the 1988 act is "a pretty good point."

Sen. Alfonse D'Amato (R-NY) also said he has not decided whether he can support fast track because of persistent trade deficits with countries which he declined to name.

Democrats on the committee did not offer a concerted defense of the Administration proposal, but instead addressed narrower issues covered by the bill. Ranking Member Pat Moynihan (D-NY) noted that the Senate voted overwhelmingly in the 1980s to approve successive ILO conventions. He called on members to support the organization's activities, and said that the ILO could help "open up a little room in what has been an unrewarding debate."

Sen. Jay Rockefeller (D-WV) noted that labor and environment remains the key to the fast track debate, and said that some Democrats may oppose fast track "based on this single issue." Rockefeller also emphasized his support for including the "necessary or appropriate" phrase in the fast track bill.

Barshefsky noted that the Administration added a limitation to this language in its proposal, and noted that some members have felt the provision was abused in previous years. But she said flexibility on this issue is required in order to ensure that implementing bills have the broadest possible support.

Sen. Bob Kerrey (D-NE) called on the Administration to incorporate provisions into the bill which would provide for reports on trade agreements, just as the North American Free Trade Agreement implementing legislation did. He added that these reports should be more "objective" than the NAFTA report.

NEW EU SCIENCE OPINION OFFERS LITTLE HOPE FOR U.S. BSE-FREE STATUS

U.S. efforts to be declared free of Bovine Spongiform Encephalopathy (BSE) this week suffered a setback in a new opinion from a European Union scientific body. The U.S. has been pressing for this designation so that it can avoid a pending EU ban on U.S. products made with animal parts that the EU fears could carry BSE, a ban which could threaten billions of dollars in trade.

In its Sept. 17 opinion, the Scientific Veterinary Committee agreed that BSE has never been found in the U.S. and that the U.S. has a BSE monitoring program in place that exceeds international standards, but added that it could still not recommend that the U.S. be designated as BSE-free. The SVC is a body under the European Commission's Scientific Steering Committee (SSC).

"Whereas [the U.S. monitoring system] has probably been effective in detecting BSE should it have occurred, it is indicative of a historical absence of BSE and is not an absolute guarantee for the present situation," the SVC opinion said in its conclusion. "This is because several endemic risk factors have existed, in particular those resulting from feeding of cattle with meat and bone meal, deliberately or accidentally, until 4 August 1997 when a Federal Rule came into force."

This reference is to a Food and Drug Administration rule that took effect last month, which bans meat and bone meal products derived from mammalians, excluding pigs and horses, to be fed to cattle. While the SVC welcomed this rule, it said the FDA rule has not been in effect long enough to ensure that BSE does not develop in U.S. cattle.

"Whether or not the risk will result in BSE will not be known until the incubation period (mean 60 months) resulting from any effective exposure is complete and brains have been examined," the opinion said. "Thus at present the committee cannot guarantee that cattle from the US have not been exposed to and thus do not carry BSE infectivity, though there is not positive evidence that they do so."

Despite this opinion, EU sources this week pointed out that it is not binding, and that the Commission will have the final say over whether to grant the U.S. BSE-free status. One source said it is unclear when the Commission might discuss the opinion, but that it will do so in the "next few days or weeks."

At issue is an EU ban on animal products that could contain specified risk materials (SRMs) that the EU fears are susceptible to carrying BSE. The so-called SRM ban, scheduled to take effect Jan. 1, 1998, would effectively ban U.S. tallow and gelatin, as well as products made of these items such as cosmetics and pharmaceuticals, because the U.S. could not certify that these products are free of SRMs.

The U.S. is seeking BSE-free status because gelatin is not produced in a way that would kill any BSE element present. The U.S. is also pressing the EU to exempt U.S. tallow from the SRM ban because tallow is processed into products under heat and pressure conditions that kill BSE. The U.S. is hoping an exemption for tallow would also resolve a dispute over the EU cosmetics directive, a separate but similar EU ban on tallow and tallow-containing products that is already in effect.

Meanwhile, senior U.S. Department of Agriculture officials last week were in Brussels to press the EU to treat the U.S. as a BSE-free area. One informed source said the EU seems "reluctant" to do this because it cannot grant EU member states BSE-free status, and does not want to treat the U.S. better than its own member states.

Other sources said the U.S. is also exploring the possibility of at least having the U.S. designated as a "low risk" area for BSE, but said the details of this option are still unclear. Despite this possibility, U.S. Trade Representative Charlene Barshefsky last week urged EU External Relations Commissioner Leon Brittan to ensure that the Commission give the U.S. BSE-free status.

"Of course, our concerns over the SRM Directive will not be fully resolved until the Commission recognizes our BSE-free status," Barshefsky told Brittan in the letter, reprinted below. "We hope the Commission will be able to render a decision acknowledging our BSE-free status as quickly as possible."

In addition, Undersecretary of State for Economic, Business and Agricultural Affairs Stuart Eizenstat said during a trip to Brussels last week that the SRM ban is one of the most serious trade issues facing the U.S. and EU. Eizenstat discussed the matter with Brittan and EU Agriculture Commissioner Franz Fischler last week, according to informed sources.

"We are very troubled by the proposed SRM ban, for example, which has no scientific foundation and could affect billions of dollars of U.S. exports to Europe," Eizenstat said in a Sept. 11 speech in Brussels. "Once we turn our back on this fundamental principle, we open the door not only to all sorts of trade protection measures on both sides of the Atlantic, but we also run the risk of scientific improvements that can improve our health, reduce costs, and generally benefit the quality of our lives."

Barshefsky also said in her letter that U.S. officials have been told that a scientific opinion given by the SSC last week is being interpreted to mean that tallow derivatives could be exempted from the two EU measures if they are processed a certain way. "We would be pleased with this interpretation, especially as it would address all products of concern which contain tallow derivatives," she wrote.

However, sources said last week that the SSC's opinion is unclear, and that it is not known how the Commission might interpret it (*Inside U.S. Trade*, Sept. 12, p. 1).

Barshefsky Letter on SRM Ban

The Honorable Sir Leon Brittan
Vice-President of the European Commission
Rue de la Loi 200
1049 Brussels, Belgium

Dear Leon:

On July 30, the Commission passed a decision prohibiting the use of material presenting risks as regards transmissible spongiform encephalopathies (TSEs), the so called "SRM Directive." We share your concerns regarding the transmission of TSEs, and understand the necessity of adopting measures to protect public health. However, it is just as important to adopt measures that are science based. For this reason, we have been actively seeking a derogation from both the earlier Cosmetics Directive and the SRM Directive for U.S. tallow used in tallow derivatives on the basis of the June 24 opinion of the EC Scientific Committee on Cosmetology (SCC) which found that tallow derivatives when obtained by certain processes are regarded as safe.

We have received a copy of the opinion of the Multidisciplinary Scientific Committee/Scientific Steering Committee (SSC) issued on September 8. During conversations between officials of DG XXIV and our USEU Mission we were advised that this is likely to be interpreted to mean that tallow used to produce tallow derivatives will not need to be subjected to any of the sourcing parameters mentioned in this opinion as long as the derivatives are obtained using one of the specified processes. We would be pleased with this interpretation, especially as it would address all products of concern which contain tallow derivatives. We would view this as a positive development which would permit the Commission to accept the findings of the SCC and produce regulations that will allow our tallow exports to continue. It is critical that the Commission produce a new regulatory decision as quickly as possible in order to remove the uncertainty that now threatens our tallow exports.

The trade and health problems associated with the SRM Directive, however, are not limited to tallow derivatives. For example, many medicines contain other bovine materials:

• **Gelatin** (all hard and soft gelatin capsules, gelatin coatings for caplets/tablets, gelatin used in tablet formulation).

• **Some biotechnology fermentation products** (Many products rely on the use of protein hydrolysates in the culture medium to enhance growth.)

Consequently, the United States remains deeply concerned about the effects of the SRM Directive and urges the EC to take further steps, in accordance with WTO obligations, to ensure that any measures taken with respect to the Directive are scientifically justified. This will be crucial to maintaining trade in medicinal products, food (including petfood) and many other consumer products after January 1, 1998. Of course, our concerns over the SRM Directive will not be fully resolved until the Commission recognizes our BSE-free status. We have recently provided extensive material to the EC Scientific Veterinary Committee which documents that our surveillance and monitoring system exceeds the guidelines of the International Office of Epizootics for freedom from BSE. We hope the Commission will be able to render a decision acknowledging our BSE-free status as quickly as possible.

Sincerely,

Charlene Barshefsky

cc: The Honorable Jacques Santer
The Honorable Martin Bangemann
The Honorable Emma Bonino
The Honorable Franz Fischler

KEY DEVELOPING COUNTRIES FAIL TO TABLE WTO FINANCIAL SERVICES OFFERS

Key developing countries this week failed to table new offers in World Trade Organization negotiations on the liberalization of financial services markets. During talks this week in Geneva, major Asian and Latin American countries did not present new offers, as the U.S. and other WTO members warned that there are only three months left to conclude the negotiation.

At a Sept. 18 meeting of the formal negotiating group, WTO members said that the 33 offers currently on the table represent improvements over concessions covered by the agreement reached in December 1995, but that more progress is needed. At the meeting, the U.S. and the European Union repeated previous statements that they would consider proposals to phase-in liberalization.

A U.S. official said that many countries explained during bilateral consultations that they would not be able to make offers at this time, but that the U.S. did get a sense of what some countries might offer in the future. "[T]hey were able to at least give us a preliminary indication of what may be in their offers and what may not be in their offers," the official said.

"We are encouraged that countries appear to be working hard on their offers -- even those countries that are experiencing financial difficulties," the official said. The official added that there was a "large turnout" this week in Geneva of finance, central bank, securities and insurance officials.

Thailand said in the formal financial services WTO meeting that it remains concerned about its ongoing financial crisis and the implementation of an International Monetary Fund rescue package. Thailand said that it still wants to liberalize its financial services regime, but gave no indication as to when it would table an offer.

A number of key countries also raised their domestic financial situations as one reason why they have not been able to make offers, a U.S. official said.

The U.S. official admitted that the U.S. "would have hoped to be in a more intensive negotiating phase at this time," but argued that other negotiations have faced such "challenges."

Korea this week offered to bind on a most-favored nation basis significant improvements over its 1995 offer. The new offer, which reflects domestic reform and liberalization since then, would undertake a standstill commitment for market access limitations as of Aug. 31, 1997.

Specifically, it would relax foreign portfolio investment restrictions in particular stocks as well as limitations on certain bonds. It would allow banks to issue stocks and bonds and loosen rules on the issuance of certificates of deposit. Companies could also establish subsidiaries to offer credit card services, and could use a wide variety of types of commercial presence to offer leasing services.

The new offer also eliminates ceilings on foreign investment in existing securities companies, trust companies and investment advisory companies. It would also allow the establishment of branches and joint ventures in this area.

In addition, foreign securities, trust and investment advisory firms would no longer have to obtain official approval to establish representative offices.

The offer also eliminates a number of restrictions in the provision of insurance services, and relaxes rules on credit rating services.

The Czech Republic also tabled an offer reflecting substantial improvement over commitments made in 1995. Macau, New Zealand and Ecuador also submitted offers which improved upon already very liberal commitments made in the Uruguay Round. Hong Kong (China) tabled revisions to its offer made in July.

FINANCE MOVES ON OECD SHIPBUILDING BILL DESPITE LOTT OPPOSITION

The Senate Finance Committee late last week approved the outline of a bill that would implement an international agreement to reduce shipbuilding subsidies, despite criticism by Senate Majority Leader Trent Lott (R-MS). But the committee has not reported the legislative language of its bill, which is expected to include some of the controversial changes demanded by members of the House.

In a statement released on Sept. 11, Lott labeled the Senate Finance markup as "premature," since no final consensus on the bill has been reached between the House and Senate. The U.S. is the only signatory that has not ratified the deal, which was struck in the Organization for Economic Cooperation & Development.

"Let me start out by saying that it is clearly premature for the Finance Committee to mark up the OECD Shipbuilding Agreement bill today," Lott's statement said. "First, we need to recognize that in order to avoid another protracted and unproductive struggle with the House of Representatives over this implementing legislation, we need to do a better job of consulting with key House members before we can assume that we have adequately addressed the House's concerns."

Lott said the committee moved ahead before it was ready to do so to demonstrate progress on implementing the agreement, but warned that the move may do more to demonstrate that more work is needed.

"I understand that the Administration and several Senators are concerned that if we do not demonstrate some progress on enacting implementing legislation soon, other signatories of the OECD Shipbuilding Agreement may walk away from the agreement," Lott said. "I say to them that demonstrating that the House and Senate are still at odds on this legislation is not a sign of progress."

The House, led by Rep. Herbert Bateman (R-VA), has generally pressed for changes from the negotiated agreement in areas such as military subsidies, termination of loan programs, and the ability to withdraw if the deal threatens certain U.S. laws. However, Lott added that the final bill is unlikely to be changed exactly the way the House wants.

"Now, I recognize that we are not going to be able to address all of the difficult issues in this bill exactly as Representative Bateman requested," he said. "I believe Representative Bateman understands this as well."

Despite these problems, ensuring agreement between the relevant House and Senate committees first would avoid the appearance that Congress is still divided about the bill. But with the Finance markup, any further negotiations on how to amend the Finance bill to address House concerns will likely have to be done in the open either when the Senate Commerce Committee takes up the legislation or when the bill makes it to the Senate floor, congressional sources said this week.

Aside from those complaints, Lott said he does not want the legislation to "become embroiled in a jurisdictional dispute" between the Finance and Commerce committees. One congressional source said this could be a reference to a dispute over how the U.S. could decide to walk away from the OECD agreement in the future. While the Finance bill is likely to contain a provision allowing that Committee to draw up a resolution to withdraw from the deal in certain circumstances, the Commerce Committee has said it also wants the ability to introduce such a resolution.

Other sources added that part of Lott's statement was a reaction to his desire to not move ahead with the shipbuilding agreement until he was garnered support on another unrelated shipping bill and a bill that would reform Amtrak.

Meanwhile, supporters and opponents of the OECD agreement this week were still waiting for the legislation Finance marked up last week. Finance approved a chairman's mark on Sept. 11, but had still not reported or released the legislative language at press time, according to congressional and industry sources. These sources added that Finance was expected to release the legislation by the end of this week or early next week.

But while congressional sources said the Finance bill would address the longstanding concerns by congressional and industry opponents of the deal, others said it is unlikely that the bill will satisfy them.

"I'm sure the main issues have not been addressed by the Finance Committee," one industry source said.

Specifically, informed sources said the Finance bill will address demands by members of the House National Security Committee, led by Bateman, that the deal allow U.S. Title XI loan guarantees to be extended in their current form for three years after the agreement goes into effect.

Additionally, sources said the Finance bill will make changes toward requiring the U.S. to withdraw from the agreement after a Presidential determination that the agreement undermines the Jones Act, a U.S. law that requires ships used between U.S. ports be built in the U.S. But opponents have pressed for a requirement that the U.S. automatically withdraw from the agreement if another OECD signatory challenges the Jones Act.

The Finance bill is also expected to explicitly allow the continuation of certain subsidies to commercial ships built with defense features. Finally, it is said to require the U.S. to request that other signatories to the deal begin injurious pricing investigations under the guidelines in the agreement if the U.S. believes a third country has sold ships at less than fair value in those countries. Other signatories to the deal include Japan, Korea, Norway and the European Union.

Bateman reiterated these demands to Lott in a July 10 letter, in which he said he was encouraged by Lott's verbal commitment to seek these changes (*Inside U.S. Trade*, Aug. 8, p. 10).

Congressional sources this week said that once the legislation is released by Finance, the Commerce Committee will probably have about two weeks in which to consider the bill. If House members continue to demand changes to the bill, they could be made there or on the Senate floor, they said. Once the Senate has passed it, it will go to the House, where it will have to be attached to a revenue measure.

Meanwhile, these sources said it is still possible to pass the bill this year, although time is becoming scarce in Congress given the current debate on fast-track trade negotiating authority, various appropriations bills, and the fact that Congress is seeking to adjourn as early as possible this year.

CLINTON ADMINISTRATION PROVIDES AID TO CARIBBEAN BANANA PRODUCERS

The Clinton Administration has agreed to provide $3 million to help accelerate the diversification of small Windward Island countries' economies away from dependency on banana exports and to help prepare all members of the Caribbean Community (Caricom) for participation in a Free Trade Area of the Americas, according to a draft memorandum of understanding signed earlier this month.

The agreement would create a Caribbean Economic Diversification program financed with $1.5 million in U.S. Agency for International Development assistance and $1.5 million in Economic Support Fund (ESF) monies over fiscal years 1997-1999, the draft MOU says. It would fulfill several commitments made by President Clinton during his visit with Caribbean leaders last May in Barbados.

The ESF funds would be targeted at the four banana-dependent Windward Island countries of Dominica, Grenada, St. Lucia and St. Vincent and the Grenadines to help wean them off their over-reliance on banana exports, Caribbean officials said.

The program is designed to offset the impact of the likely decline of the EU's banana regime in the wake of an unfavorable World Trade Organization decision this month. The EU is under pressure from the U.S. to change its system, which gives preferential access to banana producers from member states' former colonies in Africa, the Caribbean and the Pacific.

Under the U.S. plan, the Windward Islands would also receive $500,000 from the USAID funds, which are designed to finance loans to "deserving entrepreneurs" in an effort to spur the development of microenterprises other than banana production, according to Caribbean officials and a U.S. non-paper describing the Windward Islands portion of the assistance.

Copies of the U.S. non-paper, which was circulated to the Dominican government for wider distribution throughout Caricom by the U.S. embassy in Dominica, and of the draft MOU outlining the new program are reprinted below.

But the small nations in Caricom continue to believe that the U.S. package being offered is too small to compensate for the damage that will occur to their economies if they lose the preferential access to the EU market, an informed Caricom official said. Moreover, there is dissatisfaction over the way some of the proposed funding would apparently be channeled back into the pockets of U.S. consulting firms who would provide advice on how to diversify the economies, one Caricom official said.

Caricom is prepared to press the U.S. not to insist on full implementation by the EU of the WTO decision at a Sept. 22 Caricom-U.S. Trade and Investment Council (TIC) meeting in Miami, officials said. Caricom officials agreed to that tact at a Sept. 15-16 Caricom preparatory meeting in Trinidad & Tobago, they said.

"The EU will be forced to implement immediately the recommendations or pay compensation" as a result of the WTO decision, according to an internal Caricom document prepared for the Sept. 15-16 meeting. "Increased room for maneuvering can only be made available by political determination by the victors led by the USA."

It said Caricom plans to press the U.S. on how it plans to fulfill the joint pledge made by Clinton and the Caribbean leaders last May in Barbados "to continue to work with all concerned parties to achieve mutually satisfactory marketing arrangements for Caribbean bananas, recognizing the critical importance to Caribbean countries of the continued access of Caribbean bananas to the traditional markets of the European Union."

In particular, Caricom will seek information from the U.S. on any proposals it intends to make to the EU for a possible settlement of the case.

The U.S. had been pressing for a Sept. 19 meeting with Caricom on the bananas issue at the technical level, but Caricom responded that it would prefer to address the issue at the political level at the TIC session, they noted.

Caricom's TIC delegation will be led by Jamaican Ambassador to the U.S. Richard Bernal, while the U.S. team will be headed by Associate U.S. Trade Representative for the Western Hemisphere Peter Allgeier.

Draft MOU on Bananas

MEMORANDUM OF UNDERSTANDING BETWEEN THE CARIBBEAN COMMUNITY AND THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID) REGARDING COOPERATION FOR CARIBBEAN ECONOMIC DIVERSIFICATION

The United States Agency for International Development ("USAID"), and its predecessors, has over the years provided a broad program of economic and development assistance to the countries located in the Caribbean. With the pending creation of the Free Trade Area of the Americas (FTAA) by the year 2005, the Caribbean is given the opportunity to achieve sustainable, broad based economic growth through trade-led economic diversification, growth, and integration with the other economies in the Western Hemisphere.

Accordingly, under the terms of this Memorandum of Understanding (MOU), USAID and the Caribbean Community (CARICOM) agree to undertake a three-year (FY97-FY99) program to assist in accelerating Caribbean economic diversification. This program will be jointly supported by the USG and CARICOM, with the understanding that the contributions of USAID are subject to the availability of funds to USAID for this purpose, and to the mutual agreement of USAID and CARICOM to proceed with any activity to be implemented under the funding to be provided for this program.

USAID plans to support this Caribbean Economic Diversification program with a total of $3 million over the period FY97-FY99, with $1.5 Million from Development Assistance (DA) funding under USAID's Hemispheric Free Trade Expansion project to be jointly programmed by USAID and CARICOM for Caribbean-wide impact, and with $1.5 million from Economic Support Funds (ESF) funding to be jointly programmed by USAID and CARICOM to support Eastern Caribbean economic diversification in the four Windward Island countries (i.e., Dominica, Grenada, St. Lucia, and St. Vincent and the Grenadines) that are also members of the Organization of Eastern Caribbean States (OECS). CARICOM will coordinate with the OECS on programming the $1.5 million of ESF funds for economic diversification in the four Windward Island countries of the OECS.

The program will support or assist a variety of activities aimed at economic diversification or preparation for participation in the FTAA. These potential activities include: (1) provision of technical assistance from U.S. Government agencies and other appropriate sources to assist Caribbean national governments in making FTAA-consistent trade reforms to comply with the obligations that all countries are required to meet as members of the World Trade Organization; and (2) implementing such other economic diversification activities as may be agreed to by the USAID and CARICOM within the limitations of the available funding.

The implementation of the various activities to be funded under this package of DA and ESF support for Caribbean Economic Diversification will be coordinated by USAID through the Office of Regional Sustainable Development of the Bureau for Latin America and the Caribbean (LAC/RSD) in close coordination with the Department of State and the Office of the United States Trade Representative, working closely with the CARICOM Secretariat and other appropriate partners in the Caribbean. The specific details for implementing Caribbean Economic Diversification activities to be funded under this program will be worked out by USAID (LAC/RSD) and CARICOM on an activity-by-activity basis. USAID funds for the agreed activities will be obligated by subsequent agreements.

This document reflects the commitment of the USAID and CARICOM to work collaboratively to facilitate a successful Caribbean Economic Diversification program that will benefit all Caribbean citizens.

Signed this second day of September 1997 in Bridgetown, Barbados by the undersigned representatives of CARICOM and the United States of America.

FOR CARICOM:

FOR THE UNITED STATES OF AMERICA:

Jeanette W. Hyde
Ambassador

Sally A. Shelton-Colby
Assistant Administrator
Bureau for Global Programs, Field Support and Research

U.S. Non-Paper on Bananas

USAID Grants $2 Million to Assist Windward Islands in U.S.-Caribbean Summit Follow-Up.

With the signing September 2, 1997 of two agreements the Government of the United States has made good on a number of commitments pledged by President Clinton during his May Summit in Bridgetown with Caribbean leaders. The U.S. government pledged US$2 million in grants to the Windward Islands Diversification Project (WIDP), the goals of which are to improve the economic and social conditions on the Windward Islands of the Eastern Caribbean by creating employment opportunities and alleviating poverty. The grants awarded cover microenterprise, small infrastructure and training, technical assistance, and trade liberalization activities which will be signed in the next three weeks. The funds from these grants are targeted to the Windward Islands of Dominica, St. Vincent, St. Lucia and Grenada.

Caribbean Development Bank (CDB) Grants: $1,100,000

As part of the CDB Grant, USAID has awarded $500,000 to the four nations of the Windward Islands, for microenterprise development assistance. This grant will provide technical assistance and training as well as lending to the National Development Foundations in each country. The foundations, in turn, will make loans to deserving entrepreneurs.

The U.S. Agency for International Development has been the lead donor for microenterprise programs since the early 1980s. The funding currently provides support for more than 150 institutions in 40 countries. Between 1986 and 1995, USAID microenterprise projects funded about $22 million in the Eastern

Caribbean, which helped establish and strengthen the National Development Foundations. In all, the projects assisted with the start-up and strengthening of more than 5,400 micro and small enterprises and provided training to more than 4,700 entrepreneurs.

In order to provide additional support for economic and social programs while the Windward Islands undergo economic change, USAID will contribute $350,000 to the Basic Human Needs Trust Fund of the Caribbean Development Bank to augment contributions already being made by the Eastern Caribbean member states. These funds will be used to support community-based projects such as basic community health clinics, schools, maintenance of social infrastructure, rural water systems, roads, drainage and footpaths in poor rural communities.

An additional $250,000 in funding will be provided in technical assistance which will help strengthen the ability of Eastern Caribbean countries to access multilateral development bank resources and other bilateral financing.

Caribbean Scholars Program: $400,000

Education is the key to succeeding in economic diversification in the Eastern Caribbean. To this end, USAID has awarded $200,000 to the University of the West Indies in an agreement to promote academic and technical training programs. The grant will support short-term, in- country training and one year certificate level training through local and regional training institutions.

An additional $200,000 will create a competitive and needs-based program to assist young scholars from the Caribbean to attend America's finest educational institutions and to receive technical training in the United States.

The agreement continues twenty years of successful education programs provided by USAID and other donors to the Windward Island countries, programs, which have trained well over 12,000 teachers, principals, primary and secondary students, and public and private sector officials. Subjects included education, non-formal skills training, business and management.

Trade Liberalization (CARICOM) Grant: $500,000

As the Hemisphere moves toward free trade under the Free Trade Area of the Americas (FTAA) by 2005, the small Caribbean nations of the Windward Islands have expressed concerns that they will not be fully prepared to meet conditions for membership. In order to help these nations take full advantage of the opportunities that will be available to members of FTAA, USAID will [send] in the coming weeks $500,000 in assistance to facilitate trade liberalization. The agreement will assist the Windward Islands states to continue the diversification of their economies and become more competitive in the regional and global markets. The $500,000 [unintelligible] will be provided to the Caribbean Common Markets (CARICOM) to enhance international trade and commerce.

BARSHEFSKY, BRITTAN TO FOCUS ON AGRICULTURE, CHINA NEXT WEEK

The U.S. and European Union are expected to focus on issues ranging from bilateral trade in agriculture products to China's bid to join the World Trade Organization at a meeting between EU External Relations Commissioner Leon Brittan and U.S. Trade Representative Charlene Barshefsky in Washington next week, according to informed sources.

China's WTO accession process will be discussed "very prominently" in their meeting next week, according to an EU official. The official said the two sides are "both concerned" at a recent announcement that China and Japan have made significant steps toward completing talks on a bilateral market access package on goods. Both sides want to ensure that China understands that the U.S. and EU may seek more liberalization from China.

A U.S. trade official added that next week's meeting will likely be "dominated" by trade in agriculture products. The two officials will most likely discuss the U.S. request that it be recognized as free of Bovine Spongiform Encephalopathy (BSE), which would allow certain U.S. animal products to be exempted from EU certification requirements. These requirements would effectively ban these U.S. products and are aimed at preventing the spread of the disease.

The U.S. also wants its exports of tallow and tallow-containing products to be exempted from an EU ban on these products that are not certified as being free of specified risk materials (see separate story).

An EU source said Barshefsky will almost certainly raise the BSE issue, but that Brittan "may not have much to say" since the issue is mostly being handled by EU Agriculture Commissioner Franz Fischler.

Other agriculture disputes that Brittan and Barshefsky could discuss include U.S. efforts to curb imports of EU wheat gluten (see separate story), and efforts to settle their dispute over the EU banana import regime, which the WTO has ruled is a violation of international trade rules (*Inside U.S. Trade*, Sept. 12, p. 4).

State Dept. Undersecretary Stuart Eizenstat emphasized to Brittan last week that the U.S. wants the EU to comply with the ruling, not offer compensation.

Brittan and Barshefsky might also discuss the development of an EU system for labeling genetically modified crops, as well as a recent EU request for WTO consultations over a U.S. ban on $1 million worth of EU poultry exports (*Inside U.S. Trade*, Aug. 29, p. 5).

In addition to these issues, sources said the two could also discuss the ongoing dispute over the U.S. Helms-Burton law (see separate story), and efforts in the WTO to reach a multilateral agreement on financial services.

During his Sept. 22-24 visit to Washington, Brittan is also scheduled to meet with a number of congressmen, including several that are interested in the negotiations to resolve the Helms-Burton dispute, sources said. He will have a Sept. 23 breakfast meeting with Chairman of the House International Relations Committee Ben Gilman (R-NY), and will have meetings later that day with Sens. Sam Brownback (R-KS), Richard Lugar (R-IN), and Rep. Robert Menendez (D-NJ), sources said.

HOUSE INTELLIGENCE PANEL APPROVES BROAD CHANGES TO ENCRYPTION BILL

The House Permanent Select Committee on Intelligence late last week approved broad changes to a bill that would have effectively removed all export controls on encryption technology. In a Sept. 11 markup, the committee replaced the bill sponsored by Rep. Bob Goodlatte (R-VA) with a substitute which explicitly confirms the ability of the President to regulate encryption exports.

The substitute, sponsored by Chairman Porter Goss (R-FL) and Ranking Member Norman Dicks (D-WA), would allow the Secretary of Commerce to regulate encryption exports "in close coordination with the Secretary of Defense" and other agencies which protect U.S. national security.

The move appears to further complicate efforts by the high-technology industry to secure a relaxation of export controls on encryption technology. Last week, the House leadership directed the five committees with jurisdiction over the Goodlatte bill to spend an additional two weeks to hammer out a compromise version (*Inside U.S. Trade*, Sept. 12, p. 1).

Commerce is now planning to mark up the Goodlatte bill next week, and Reps. Michael Oxley (R-OH) and Thomas Manton (D-NY) will likely offer an amendment which provides for domestic restrictions on what types of encryption products can be sold. The amendment would require companies to produce after Jan. 1, 1999 only encryption products which include features that allow the unscrambling of encrypted data "without the knowledge or cooperation of the person using such product or service," according to the amendment.

The Business Software Alliance this week signalled that this provision would represent an unacceptable change to the Goodlatte bill for the high-technology industry. "The amendment is so bad that supporters of the [Goodlatte bill] across the political spectrum would rather have no legislation than a bill which includes the amendment," BSA said in a Sept. 18 statement.

The House International Relations and Judiciary Committees passed the Goodlatte bill without changes, while the Intelligence and National Security panels made sweeping changes to it. House Commerce Committee Chairman Thomas Bliley (R-VA) has said that he would like to find some common ground between the two positions (*Inside U.S. Trade*, Sept. 5, p. 10).

Although the Intelligence panel bill establishes a statutory presumption in favor of encryption exports, it also clearly gives the Executive Branch the power to regulate those exports. The bill would only allow the export of products of any strength of encryption after Jan. 31, 2000, following a one-time review by Commerce, provided the product does not include features that would otherwise require export licenses.

Encryption exports would also have to include functions that would allow "immediate access" to information in decrypted form. This feature would be designed to allow a "lawful authority" to obtain the encryption key, which is necessary to decode information encrypted by the product.

The bill would also allow Commerce, after consulting with other agencies, to allow the export of voice encryption products which do not include key recovery features after a one-time review. But the Secretary would first have to determine that not allowing exports of these products would disadvantage U.S. exporters and that these exports would not "create a risk to the foreign policy, non-proliferation, or national security" interests, according to the bill.

The bill also provides for a measure of domestic control on the use of encryption. It would require that encryption products sold in the U.S. after Jan. 31, 2000 to include key recovery features that would allow law enforcement authorities to obtain the key with a court order. But products in use before that date that do not have key recovery features could still be used afterward.

BUSINESS REJECTS RELIGIOUS PERSECUTION BILL, AWAITS SENATE ACTION

Business groups opposing a bill that would impose sanctions on countries that conduct or tolerate religious persecution are holding back on negotiations for a more acceptable version of the bill until it passes the House. At that point, the business groups are likely to insist that the bill exclude its sanctions provisions, which now would deny these countries certain financing by the Export-Import Bank or activities by the Overseas Private Investment Corp., private-sector sources said.

In addition, the groups are likely to press for the elimination of the proposed White House Office of Religious Persecution, these sources said.

The bill, H.R. 2431, is sponsored by Rep. Frank Wolf (R-VA) and would target China, Saudi Arabia and a range of other countries in South Asia. The measure is pending before the House International Relations Committee, where it faced considerable controversy over its impact on U.S. asylum and refugee policy. Opponents charged that the bill would give members of persecuted religious groups preferential access to the U.S. compared to persons persecuted for political reasons.

The bill's implications for U.S. refugee and asylum policy is one of the reasons that a coalition of human rights groups is expressing opposition. The groups also said in a Sept. 9 letter to Congress that the sanctions provisions are not strong enough to have a "serious impact" on abusive governments.

The letter was signed by Human Rights Watch, Physicians for Human Rights, Minnesota Advocates for Human Rights, Amnesty International, the Robert F. Kennedy Center, and the Jacob Blaustein Institute for the Advancement of Human Rights.

H.R. 2431 would deny countries that engage in religious persecution U.S. assistance, which is defined as activities of the Overseas Private Investment Corporation, and financing under the Ex-Im Bank Act. The prohibition to extend Ex-Im financing "to the government of any country" would most likely impair the bank's ability to do public sector financing, according to a government official.

In addition, the bill would urge the U.S. to oppose financing to the identified countries from multilateral development banks, and would prohibit U.S. exports facilitating persecution to such countries. One private-sector source insisted that could lead to a prohibition of computer exports to police agencies in an offending country.

The bill does contain stricter sanctions on Sudan.

The Clinton Administration opposes the measure as undermining its goal of promoting religious freedom, but Assistant Secretary of State for Democracy, Human Rights and Labor John Shattuck earlier this month stated a willingness to work with the House in reinforcing existing structures and policies. The White House has signalled a willingness to cut a deal, but business representatives have warned it not to do that too early in the process, one informed source said.

The controversy over the asylum provisions held up a markup scheduled for last week before International Relations, even though Wolf had already revised his original version of the bill, H.R. 1685, to address some of the problems. The modified version was also meant to address some of the problems flagged by the House Judiciary Committee, which has primary jurisdiction over U.S. immigration policy, a congressional source said.

That effort failed, and at press time, the bill was scheduled for a markup yesterday (Sept. 18) in the International Operations and Human Rights subcommittee of International Relations. Opponents of the bill are likely to propose a number of amendments in the upcoming full committee markup, a private-sector source said.

The revised version also dropped a provision related to China's entry into the World Trade Organization in the hope of getting the Ways & Means Committee to waive its jurisdiction over the matter. The original bill stated that the President should consider a country's record on religious persecution a "significant factor" for its entry into the WTO. But the committee may still want to consider the bill because of other provisions, private-sector sources said.

International Relations Chairman Ben Gilman (R-NY) said in a Sept. 9 hearing that he would ask other committees to waive their jurisdiction, after his panel has acted on it. Fighting religious persecution has the backing of the House and Senate Leadership, which seems to favor the Wolf bill over other bills targeting China specifically for its human rights violations.

A number of business groups have expressed their opposition to the Wolf bill as imposing unilateral economic sanctions without regard to their cost to U.S. national strategic interests, the loss of energy security and the consequences for U.S. trade, ten business groups said in a Sept. 9 letter to Gilman.

In addition, the European-American Business Council urged Gilman in a Sept. 11 letter to oppose the bill. "Although the legislation has admirable objectives, unilateral attempts to influence the actions of foreign governments through economic sanctions have been consistently ineffective," the council said.

Business Letter on H.R. 1685

September 9, 1997

Dear ________

HR 1685, "The Freedom From Religious Persecution Act" has been referred to the International Relations, Judiciary, Rules, and Ways and Means committees for consideration. While the legislation's goal is one that all Americans can strongly support, we are concerned that HR 1685 will not accomplish its intended purpose. Instead, the bill will increase conflicts among religions, and worsen relations between the US and its strategic and trading partners.

Our principal concern is that the imposition of unilateral economic sanctions against certain countries for religious persecution reasons could easily lead to more, not less, persecution of religious believers. According to some missionaries who have been present overseas in countries where religious persecution is being carried out, this sort of activity will trigger a dangerous backlash against public and private American efforts to promote religious freedom and undermine their work.

Another troubling aspect of this legislation is that unilateral sanctions could be put in place without regard for the cost to US national strategic interests, the loss of energy security, the consequences to US trade or even the negative impact these sanctions might have on human rights. Section 5 of HR 1685 gives an unelected official the authority to trigger unilateral sanctions against countries where he or she determines that religious persecution is being practiced. The bill's definition of "religious persecution" is broad enough to bring about sanctions on long-standing US allies and trading partners such as Israel, Saudi Arabia, Turkey, Mexico and Germany. In essence, this bill offers a "one size fits all" solution to very complex world problems.

The religious persecution targeted by HR 1685 will not be solved by the withdrawal of Americans and American business from other countries. Time and again studies show that the best tool for advancing American values has been our continued engagement with other countries. Just as missionaries cannot accomplish their goals by withdrawing from the mission field, America cannot expect to be an influence for religious freedom and human rights by removing itself from a country. International ties are growing, more countries are interacting with each other, and communications between countries is improving every day. Our stepping out of this increasingly interconnected world and erecting sanctions will have little or no impact on those who wish to persecute others. It will, however, have a significantly negative impact on the United States.

Howard K. Lewis III
Vice President, Trade and Technology Policy
National Association of Manufacturers

Abraham Katz
President
United States Council for International Business

Willard A. Workman
Vice President, International
U.S. Chamber of Commerce

Willard M. Berry
President
European American Business Council

Frank D. Kittridge
President
National Foreign Trade Council

Charles J. DiBona
President
American Petroleum Institute

Edward J. Black
President and CEO
Computer and Communications Industry Association

Eugene J. Milosh
President
American Association of Exporters and Importers

Calman J. Cohen
President
Emergency Committee for American Trade

Robert M. Kapp
President
U.S.-China Business Council

LANG OUTLINES CONDITIONS FOR GRANTING NAFTA PARITY BENEFITS

Deputy U.S. Trade Representative Jeff Lang this week insisted that expanded trade benefits to Caribbean Basin Initiative countries should be tied to a series of conditions related to compliance with key Clinton Administration trade goals, including investment, intellectual property rights, labor and environmental rules. Lang outlined these conditions in Sept. 17 testimony before the Senate Finance Committee.

"These criteria were carefully constructed to ensure they were consistent with U.S. trade policy, that they encourage fair treatment of U.S. exports and investment, and that they would expand economic development to encourage citizens in beneficiary countries to direct their energies toward opportunities available in a growing formal economy," Lang said.

Finance Committee Chairman Bill Roth (R-DE) said last week that he wants to mark up a NAFTA parity proposal along with the anticipated renewal of fast-track negotiating authority (*Inside U.S. Trade*, Sept. 12, p. 3).

During the House-Senate budget reconciliation tax bill conference earlier this year, Senate staff negotiated a CBI parity bill with the Administration that would have imposed conditions similar to those described by Lang. In contrast, the parity proposal included in the House version of the tax bill would have simply extended to CBI countries benefits in the textile and apparel sector comparable to those Mexico receives under NAFTA.

Lang told the committee that the Administration regrets that a NAFTA parity bill could not be included in the tax bill which implemented the budget agreement, but said it "stand[s] ready to work with you again on a compromise."

Countries would be judged on their compliance with the rules of the World Trade Organization when being considered for a NAFTA parity program, Lang said. WTO compliance would allow western hemisphere countries to move forward to a higher level of liberalization in the Free Trade Area of the Americas process, he said.

CBI countries would also need to provide adequate protection for intellectual property rights, Lang said. In particular they would need to comply with the Uruguay Round Trade-Related Aspects of Intellectual Property agreement, and NAFTA IPR rules. They would also need to implement protections against the importation of goods which infringe on established rights, he said.

Eligibility would also be based on a country's compliance with the "substantive provisions" of NAFTA investment rules, Lang said. These include nondiscrimination and arbitration for investor-state disputes. Countries would also have to provide "equitable and reasonable market access" in areas for which they are receiving new benefits.

The President would also take into consideration the level of preferential access which CBI nations grant other countries, and whether they are prepared to give the U.S. similar access for "commercially important products," Lang said.

The Administration's bill would also draw from the Generalized System of Preferences program a requirement that countries protect internationally recognized worker rights. It would also draw on NAFTA to review the extent to which countries have adopted and enforce environmental protection laws and regulations.

The granting of NAFTA parity benefits would also be based on whether a country has met U.S. statutory requirements for cooperation to fight narcotics trafficking. And the President would also consider whether a country has ratified and is enforcing the Inter-American Convention Against Corruption in designating new beneficiaries.

In the area of government procurement, the bill would take into account a CBI country's support for U.S. efforts in the WTO and in the FTAA process. It will also assess a country's own procurement rules on the basis of the principles in the plurilateral WTO Government Procurement Agreement.

The bill would encourage countries which have not already done so to conclude agreements with the U.S. for the exchange of tax information. CBI countries will also be judged on the basis of how scrupulously they adhere to the WTO customs valuation agreement.

U.S. SEEKS INCREASED OPENNESS IN JAPANESE GOVERNMENT PRACTICES

U.S. officials last week raised four areas where they want to increase the transparency of Japanese government practices as part of a bilateral Enhanced Deregulation Initiative, according to U.S. and Japanese officials. The discussion took place in the Working Group on Deregulation and Competition, which met in a special session on transparency.

In the transparency area the U.S. does not expect a negotiation, but rather a discussion of the issues, according to a U.S. official.

The U.S. first raised the need for an effective information disclosure law, which would allow citizens to obtain information about government rules and actions, according to the official. In addition, the U.S. asked Japan to adopt more transparency in the rulemaking process, greater transparency in the work of the advisory councils, and administrative practices relating to the application of licenses, the official said.

Regarding the information disclosure law, the U.S. urged Japan to adopt an "effective and comprehensive law" that does not leave a lot of discretion to decide which documents can be released to the Japanese bureaucracy, the official said. The Japanese government is now studying such a law, and is expected to prepare a draft by March 1998, the official said.

On the rulemaking process, the U.S. wants to ensure that Japanese regulations are not developed in a "black box" with input from only a few selected parties, the official said. Instead, Japan should allow the public to participate in the process through advance notice and public comments.

Regarding advisory councils, the U.S. wants to ensure that Japan offers an "objective and independent" review of proposed ministry rules instead of largely rubber stamping them as they appear to be doing now, the official said. The Japanese government is now reviewing a proposal to substantial revise the advisory council structure, the official said. In the interim, Japan should make their work more transparent, according to the official.

Finally, on administrative practices, the U.S. raised prior consultation requirements, which companies have to follow before Japanese ministries will accept an application for a license, the U.S. official said. These consultations can take between six months and a year, and add an element of unpredictability to the licensing process, the official said.

The U.S. also touched on the issue of how Japan delegates public policy functions, such as standards development, to private sector groups, and hopes to address administrative guidance in the future, the official said.

Separately, the U.S. also asked Japan to establish an independent body to promote and monitor deregulation as a replacement for the Administrative Reform Council, whose term expires in December, according to a Sept. 10 announcement by the U.S. embassy in Tokyo. The new body should generate new deregulation commitments with the participation of all interested parties, and ensure the implementation of the commitments, the announcement said.

ATMI CALLS FOR ADDITIONAL WTO CONCESSIONS FROM CHINA ON TEXTILES

The American Textile Manufacturers Institute has called on the U.S. government to tighten the rules it negotiated earlier this year to govern textile and apparel trade once China enters the World Trade Organization, and to demand more market access as a condition of joining. In a joint statement with Canadian and Mexican textile producers, ATMI called for a 10-year phaseout of textile and apparel quotas beginning after China enters the WTO.

"It is imperative that there be a 10-year phaseout of China's textile and apparel quotas as a condition of WTO membership," the three industry groups said in a Sept. 17 statement. "We urge our respective governments to make this an essential part of the WTO accession protocol that is currently being negotiated."

The statement was issued by the North American Textile Council (NATC) which approved it at a Sept. 9 meeting held in Canada. NATC consists of ATMI, the Canadian Textiles Institute (CTI) and the Mexican textile chamber (CANAINTEX). The policy statement was issued after ATMI pressed the issue at the meeting, according to a Canadian industry source.

In July, ATMI and the European Textile and Apparel Organization issued a statement calling for a 10-year phaseout, and special safeguards against Chinese exports.

NATC members also called on their respective governments to demand that China provide effective market access for textile and apparel products as part of its WTO deal. "We cannot rely on promises that China will make these changes in the future," the statement said. "China must implement them as a condition of joining the WTO."

The industry groups plan to lobby this issue with their respective governments, and ATMI has already raised the issue with Assistant U.S. Trade Representative Robert Cassidy, according to one informed source. Cassidy is in China this week to hold talks on services and other WTO accession issues.

On the eve of the talks, China announced it would cut more than 4000 tariffs effective Oct. 1 from a simple average of 23 percent tariffs to 17 percent. Business sources said this week they had not assessed the trade value of these concessions, which do not offer a trade-weighted average. In addition, they did not know at what level China had set "peak" tariffs under the offer, they said.

A Chinese tariff offer to Japan, for example, retained tariffs for cars at 50 percent in a bilateral market access package on goods that is to pave the way for China's WTO accession. This would be unacceptable to U.S. producers, according to U.S. sources.

The U.S. and the European Union have been critical of Japan's decision to strike a preliminary deal with China as weakening their hand. "Clearly, all of us had a stronger position when we all said the same thing," one senior negotiator said.

But at the same time, he insisted that the new development would not materially undercut U.S. and EU demands on China, particularly in the services sector. "We are quite big enough to look after ourselves," he said.

Pursuing the new ATMI demands would mean changes to a 1997 textile deal struck by U.S. Chief Textile Negotiator Rita Hayes. That deal agreed to give China the benefits of the Uruguay Round textile liberalization upon its entry into the WTO, so that China would benefit immediately from the restrictions that have already been lifted since the phaseout began in 1995 for other WTO members. If China had to follow a ten-year phaseout, it would begin in the first year of the liberalization schedule upon WTO entry.

U.S. retailers sought a shorter phase-in for China as one of their primary goals in the negotiations.

The deal also allows the U.S. to impose special bilateral trade restraints four years after the scheduled phaseout of all quotas in 2005 (*Inside U.S. Trade*, Feb. 7, p. 7).

In February, Hayes also negotiated a market access deal effective Jan. 1, 1998 under which China would reduce tariffs for selected priority textile and apparel products over three years. At the time, Hayes refused to say whether China's concessions constituted its market access commitments to the U.S. for WTO entry. Instead, she said nothing "prohibited" the U.S. from demanding more in the context of the WTO negotiations (*Inside U.S. Trade*, Feb. 7, p. 9).

In the wake of the agreement, Hayes has denied press reports that she negotiated China's WTO accession as part of the bilateral talks without the knowledge of the U.S. textile industry.

An ATMI source insisted that the new demands do not signal that the U.S. industry is dissatisfied with the deal that Hayes negotiated. He insisted that the industry is "extremely satisfied" with the agreement, which he said was negotiated as a bilateral deal.

"We appreciate and accept the agreement she reached, but within the context of the WTO negotiations, we can take a second bite of the apple," the source said.

The source pointed out that China is the country that wants to join and must meet conditions set out by WTO members. He also pointed out that the market access deal is a bilateral one that covers only priority items for the U.S. industry, and that the WTO talks offer an additional opportunity for market access concessions and agreeing to rules on state trading.

continued on next page

U.S. negotiators are pressing for as much progress as possible on the trade front and other bilateral issues in time for the fall summit of President Clinton and Chinese President Jiang Zemin, according to Assistant Secretary of State for East Asia and the Pacific Stanley Roth.

Announcing progress in the trade negotiations at the summit would create momentum for the WTO negotiations and could pave the way for concluding the deal next year when Clinton visits Beijing, private-sector sources said.

Beijing is expecting to address trade issues at the summit along with human rights, weapons proliferation, and Taiwan, according to a Sept. 12 memo prepared by the Congressional Research Service. The memo emphasizes that China wants to improve relations with the U.S. as one of three priorities for 1997. China seeks a "strategic partnership," with the U.S., which would minimize differences between the two powers in the years ahead, according to the memo.

The memo says that Chinese officials believe the U.S. is too focused on bilateral issues to pursue the strategic relationship, according to a copy reprinted below. But Roth said in a Sept. 13 press conference in Tokyo that the U.S. wants to achieve a "strategic partnership."

Such a partnership would mean that the relationship has a "broader framework to it, one in which we identify areas where we can work and cooperate together," he said.

CRS Memo on China

Memorandum

September 12, 1997

To: Congressional China Watchers

From: Bob Sutter (tel 7-4257)
Senior Specialist
Foreign Affairs and National Defense Division

Subject: Sino-U.S. Summit Watch: Chinese Specialists' Perceptions of Issues and Trends in the Lead-up to the U.S.-China Summit

Lengthy interviews with 10 Chinese government specialists[1] on relations with the United States over the last three weeks provide the following perceptions regarding China's approach to the Sino-U.S. summit meeting scheduled for late October 1997 in Washington, D.C..

Importance of U.S.-China Relations

The Chinese specialists acknowledge that President Clinton and senior Administration officials are working hard to find ways to improve U.S.-China relations at the October summit. They advise, however, that Chinese leaders place more importance on improving bilateral relations than do U.S. officials. According to the specialists, People's Republic of China (PRC) leaders headed by President Jiang Zemin seek to establish a long lasting, stable relationship with the United States--a "strategic partnership" that would emphasize common ground and minimize differences between the two powers in the years ahead.

Improving relations with the United States at the October summit is the third of three major Chinese government priorities for 1997. The others are the transition of Hong Kong to Chinese rule, begun in July 1997, and the 15th congress of the Chinese Communist Party (CCP), begun in September 1997. Beijing officials judge that the first two goals have been achieved or are within reach, and they are now focused on relations with the United States.

Importance of the CCP's 15th Congress

Chinese leaders have been working for months to insure that a smooth transition of power occurs at the 15th Congress now underway in Beijing. The results of the Congress are seen as particularly important in increasing the likelihood of a successful Sino-U.S. summit in October. Thus, the Congress will strengthen Jiang Zemin's political position as the "core" of the collective leadership governing China after the passing of senior leader Deng Xiaoping in February 1997. This presumably will improve his ability to interact effectively and make needed compromises with President Clinton. The Congress will solidify the leadership's commitment to continue and expand the reforms of recent years. Notably, Beijing is determined to carry out over the next several years the de facto privatization of most of the tens of thousands money-losing State Owned Enterprises (SOEs). They still dominate China's industrial production and severely complicate China's trade and other economic relations with major market economies. According to the officials interviewed, Beijing is expected to signal at the Congress renewed emphasis on the "rule of law," particularly greater efforts to curb Communist party control of day-to-day administrative operations. And they say that Beijing is actively considering broadening the use of local level elections prevalent in some parts of China in recent years. The Chinese specialists judge that these changes are likely to be well received in the United States and will improve the atmosphere surrounding President Jiang's visit to Washington.

Goals for the Summit

The Chinese specialists duly acknowledge that PRC leaders have taken account of the goals for the October summit set forth by such U.S. leaders as National Security Adviser Sandy Berger during a visit to Beijing last month. They state the view that U.S. leaders are too focused on efforts to resolve the differences between China and the United States over human rights, weapons proliferation, trade and other issues, and are not giving enough attention to the Chinese emphasis on achieving a longer lasting cooperative relationship based on common interests and minimizing attention to bilateral disputes. They complain that the U.S. approach seems to emphasize how China must compromise in order to meet U.S. concerns on these subjects. They counter that success will be reached only when the negotiations take place on an "equal footing" where compromises are made equally by both sides. One Chinese specialist did note approvingly that President Clinton in recent communications with Chinese leaders allegedly declared his interest in reaching a "strategic partnership" with China.

In general, Chinese specialists say that Beijing sees four sets of specific issues to be dealt with at the summit and they note possible Chinese approaches toward those issues:

• **Human Rights.** Some Chinese specialists advise that Beijing is considering only relatively small steps such as announcing its decision to sign the UN covenant on economic and social rights, the opening of a dialogue with U.S. officials and non-government advocates on human rights, and moving toward allowing the Red Cross to inspect some Chinese prisons. Other Chinese specialists say that Beijing might go further and release a prominent dissident like Wang Dan, provided the dissident would agree to leave China.

• **Weapons Proliferation.** Some Chinese specialists believe that Beijing has provided recently or is close to providing sufficient assurances to the United States to allow the Clinton Administration to give the certification necessary to allow the United States to sell nuclear equipment and technology to China. They say this would open up a market for big U.S. sales in China and would have a significant positive effect on the U.S. trade deficit with China. They play down the significance of the longstanding Chinese involvement with questionable or illicit nuclear activities in Pakistan and Iran, saying that China is in conformity with international norms.

• **Trade.** Chinese specialists do not anticipate a formal U.S.-PRC agreement on China's entry into the World Trade Organization (WTO) at the October summit, but they are hopeful for compromises on an agenda that would allow for a formal agreement by the time President Clinton reciprocates President Jiang's visit with travel to Beijing in the first half of 1998. They anticipate that such an accord would pave the way for the Clinton Administration to support legislation in 1998 allowing China to receive permanent most-favored-nation (MFN) tariff treatment from the United States.

• **Taiwan.** Chinese specialists say that President Jiang Zemin will seek assurances from President Clinton that the United States will continue to abide by past U.S. understandings with Beijing over Taiwan. The Chinese government specifically will be looking for assurances that the United States will not take actions that will upgrade U.S. arms transfers to Taiwan; allow senior Taiwan leaders to carry out activities during private visits to the United States that can be seen as boosting Taiwan's international profile; or support efforts to allow Taiwan to gain entry into international organizations like the International Monetary Fund or the World Bank.

Some of the Chinese specialists have taken note of the more conciliatory statements on relations with the mainland coming from senior Taiwan leaders, notably the new Prime Minister Vincent Siew.[2] They are aware of Siew's background as one of the most flexible senior officials in Taiwan in regard to policy toward mainland China, and they speculate that Chinese leaders are now carefully deliberating as to what response to make to his recent initiatives from Taiwan. They also wonder if this week's visit to Washington D.C. of a senior Taiwan official in charge of mainland affairs is designed to encourage U.S. administration and congressional officials to support Taiwan's current approach to the mainland, and to use meetings with Jiang Zemin in October to encourage the mainland to respond positively to Taiwan's apparent flexibility.

[1] The specialists included Chinese officials visiting from Beijing and Chinese representatives in the United States. The meetings took place at the Library of Congress during late August and the first two weeks of September, 1997.

[2] For background on the recent statements by Taiwan leaders showing greater flexibility in policy toward mainland China, see speeches of President Lee Teng-hui and Prime Minister Siew carried by Taiwan's *Central News Agency*, September 1, 1997.

BUSINESS GROUP, LABOR UNIONS LAUNCH CAMPAIGNS IN FAST-TRACK DEBATE

The largest U.S. labor group and a major business coalition this week both launched their campaigns on the renewal of fast-track negotiating authority. The AFL-CIO open its effort with a $1 million advertising campaign aimed at defeating fast track, while the American Leads on Trade coalition began a similar push in support of fast-track renewal.

"We are committed to waging this campaign [against fast track] for as long as it takes with as many resources as we have," AFL-CIO President John Sweeney said on Sept. 16. Members of Congress "can expect an angry group of constituents if they vote the wrong way," he said.

An initial $1 million worth of television and radio advertisements by the AFL-CIO will target the entire California congressional delegation and 13 other House members: David Skaggs (D-CO), Nancy Johnson (R-CT), Karen Thurman (D-FL), Peter Deutsch (D-FL), John Shimkus (R-IL), Bill Luther (D-MN), Michael Pappas (R-NJ), Rick Lazio (R-NY), Nita Lowey (D-NY), Thomas Sawyer (D-OH), Jon Fox (R-PA), Phil English (R-PA) and Virgil Goode (D-VA).

The AFL-CIO currently has an "unlimited budget" that it is prepared to commit to the fast-track fight, Sweeney said. The initial purchase of advertising represents the first round of its campaign and will continue as the fast-track bill moves through Congress, he said.

Sweeney said the choice of these congressional districts reflects the AFL-CIO's perception that these members are either uncommitted in the fast-track debate or could be persuaded to support its position. He emphasized that the organization would not be limiting its efforts to members of only one party.

The America Leads on Trade (ALOT) coalition also unveiled a new advertising offensive that will target 13 metropolitan areas: Los Angeles, Denver, Little Rock, Tulsa, Seattle, Phoenix, Dallas, Indianapolis, Tampa, Columbus, OH, Mississippi and the Washington, DC area. ALOT Chairman Jim Christy of TRW, Inc. said on Sept.

17 that these areas were selected because they would reach voters in at least two congressional districts each, or include junior members who have never cast a major trade vote.

ALOT is current "75 percent toward its goal" of raising funds to fight for fast track, Christy said. In a July solicitation to its members, ALOT asked for contributions totaling $3 million (*Inside U.S. Trade*, Aug. 8, p. 3).

ALOT plans to stay out of the fight between the Administration and Congress on fast track, and will not "interpose ourselves between the President and Congress" during the effort to hammer out legislation with broad support, Christy said. ALOT will step up its lobbying efforts once the Administration and the congressional leadership decide it wants to move forward with a particular bill, he added.

Christy declined to specify what labor and environment-related provisions ALOT members could support in the fast track bill, or whether they supported the proposal submitted by the Clinton Administration this week. He noted that Ways & Means Committee Chairman Bill Archer (R-TX) has said the proposal is a good first step, but needs changes (see related story).

The group supports the "basic concepts" in the Administration bill but recognizes that it is an "opening salvo," Christy said. He did argue that the International Labor Organization is the appropriate forum for labor issues, but said that the ILO could be treated in "acceptable and unacceptable" ways in a fast-track bill.

A congressional source strongly criticized this approach as a way to ensure that "the game will be lost" before business lobbying has an impact on the fast track debate. The source argued that the business community, by appearing to hold out for a bill devoid of any labor and environment provisions, will doom the initiative.

The source compared the business attitude to the position of House Minority Leader Richard Gephardt (D-MO), who has said that he supports fast track only if labor and environment issues are included in the core of trade agreements. "The business community is not committed to fast track, they are committed to their version of fast track," the source said.

One member of ALOT, the U.S. Council for International Business yesterday (Sept. 18) strongly criticized the labor provisions of the Administration bill, and called for clarification to ensure that fast track cannot be used to "establish labor and environmental standards and the use of trade sanctions to enforce those standards."

It also criticized the inclusion of worker rights as a negotiating objectives in the WTO, and called for focusing labor issues on the ILO. At the same time, USCIB criticized the inclusion of a provision on the ILO in the Administration fast track bill because it is "unrelated to trade" and "extraneous and unnecessary."

"If it remains in the bill, it should not be subject to fast track procedures," USCIB wrote.

Because the business community places such a high priority on fast track, it will judge whether a bill is acceptable bill on the basis of both its substantive provisions, as well as its support in Congress, Christy said. "A good bill will get 218 votes in the House and 60 plus in the Senate," he said.

JAPANESE MINISTER REJECTS U.S. DEMANDS ON AUTO PARTS DEREGULATION

Japanese Minister of Transport Makota Koga has told the Clinton Administration that it is up to the U.S. auto parts industry, not the Japanese government, to increase exports to Japan. The Japanese government has implemented its obligations under a bilateral trade agreement on automobiles and auto parts, Koga said in a Sept. 8 letter, reprinted below.

"The most important factor in expanding the sales of U.S. auto parts are the efforts of the U.S. auto parts suppliers," Koga said his letter to Commerce Secretary Bill Daley. "MOT is prepared to cooperate actively with their efforts."

For example, Koga said MOT is cooperating to provide data on vehicle models sold in Japan to the U.S. industry. In addition, the Japan Automobile Service Promotion Assn. is working to provide data on foreign-made automobile parts that may be used in Japan, he said. Insufficient information regarding the types of foreign-made parts used in Japan is "one of the main reasons" why foreign parts are not sold in Japan, according to Koga.

Koga also rejected U.S. demands made by Daley and U.S. Trade Representative Charlene Barshefsky to further deregulate the auto parts sector in Japan (*Inside U.S. Trade*, Sept. 12, p. 1). Daley and Barshefsky had asked that brakes be removed from the critical parts list and that requirements be eased for the certification of Japanese mechanics (*Inside U.S. Trade*, Aug. 29, p. 12).

"[Y]our request to remove brakes from the critical parts list, covered under the definition of disassembling repair was found to be unacceptable, as has already been explained in the letters sent to you in February and March of this year," the letter said.

Koga also said he did not recognize the need for easing certification requirements on mechanics. This would complicate the qualifications system, and make life more difficult for examiners, he said.

Japanese Letter on Auto Parts

Tentative Translation
September 8, 1997

The Honorable William M. Daley
U.S. Secretary of Commerce

Dear Mr. Secretary:

I received your letter dated August 15 on August 25.

The Ministry of Transport (MOT) has been strictly implementing all the measures contained in the document, "U.S./ Japan Trade Talks on Automobiles and Auto Parts".

More specifically, MOT created a Specialized Certified Garage System in February. Under this system, retail auto stores and gas stations can easily obtain the certification to carry out, for example, repairs exclusively of brakes. A certain number of retail auto stores and gas stations which have expressed interest in carrying out brake and other repairs, announced their intention of obtaining certification, which you see as a welcoming trend.

In addition, I have received two letters from you concerning the petition submitted by the U.S. auto parts industry to MOT in January 1997. I have replied to each of these letters. Concerning the measures mentioned in my letters, I have been implementing all measures with sincerity. For example, it has been decided, in keeping with the report of the Transport Technology Council, to repeal the disassembling repair inspection. This measure will bring the system in Japan in line with the systems in Europe and the United States.

By the way, your request to remove brakes from the critical parts list, covered under the definition of disassembling repair was found to be unacceptable, as has already been explained in the letters sent to you in February and March of this year. Your request would render a situation in which unqualified mechanics without proper facilities, would be able to attempt the business of brake maintenance and repair services. In addition, as I mention above, Specialized Certified Garage System enables retail auto stores or gas stations to obtain certification easily and repair brake systems under the certification. Of course, Certified Garage Systems do not discriminate in their choice of auto-parts, whether the parts be foreign or made in Japan.

A new proposal has been made regarding the system of qualifications of repair mechanics, which covers a limited number of specialized areas. I myself will learn more about the back ground of the new proposal. I do not recognize a need for specialized certified mechanics at the moment. The examinations in certain specialized areas make the qualification system complicated, and there is a possibility that the examination will be difficult for the examinees. Presently, we believe there is no shortage in the employment of mechanics, about 30,000 mechanics become newly qualified annually.

The repair service industry in Japan has expressed to the U.S. auto parts industry its position for the procurement of auto-parts that are competitive in terms of quality, price, and supply; regardless of whether the parts are domestic or foreign-made, or whether they are genuine or non-genuine. I believe that the members of the mission from the U.S. auto parts industry associations in June have come to a thorough understanding regarding this point and all 10 company members of this mission member have returned to the U.S. with the hope of increasing their business chances in Japan because of their business talks.

I believe that it will be essential to continue efforts, such as that of the U.S. replacement parts mission, which gained this particular success.

The most important factor in expanding the sales of U.S. auto parts are the efforts of the U.S. auto parts suppliers. MOT is prepared to cooperate actively with their efforts.

For example, the provision of vehicle model data on motor vehicle registration in Japan will be useful to the U.S. auto parts industry. MOT recognizes the importance of this information, and is actively cooperating to facilitate the availability of the information.

In addition, there is insufficient information in Japan regarding the types of foreign-made parts that may be used, and this is one of the main reasons why foreign-made parts are not purchased. To improve this situation, the Japan Automobile Service Promotion Association (JASPA) is building an information network system to provide data on foreign-made automobile parts. If U.S. auto parts industries utilize this system, business chances will expand for your industries. I would like you to encourage your industries to participate in this system.

Finally, our annual talks are the discussion of matters within the scope of the final document "U.S./Japan Trade Talks on Automobiles and Auto Parts". I do not believe that it is appropriate to discuss other matters at these talks.

Sincerely yours,

Makoto Koga
Minister of Transport

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GINGRICH, GEPHARDT EXPRESS SUPPORT FOR U.S. FILM CASE AGAINST JAPAN

The Speaker of the House and the House Minority Leader late last week expressed strong support for the U.S. case in the World Trade Organization alleging that Japan has effectively closed its film and photographic paper sector to foreign competition. Reps. Newt Gingrich (R-GA) and Richard Gephardt (D-MO) called on the Clinton Administration to use "all appropriate means" to improve market access for U.S. firms in Japan, and emphasized that the case is important for many U.S. industries.

"[T]he WTO's decision will have far-reaching implications, since many other U.S. industries face the same subtle yet powerful barriers being considered in the film case," they wrote in a Sept. 11 letter. "To that end, we trust that you will insist on meaningful remedies that will eradicate barriers in the Japanese distribution system, that will open up Japan's large scale retail sector, and that will permit promotions and truly competitive market pricing by U.S. firms."

The Gingrich-Gephardt letter comes on the heels of a similar letter by eight senators who warned that the Administration must be prepared to go beyond WTO dispute settlement procedures (*Inside U.S. Trade*, Aug. 29, p. 12).

The Eastman Kodak Co. has spent considerable time lobbying Congress in order to build support for the WTO case, according to an informed source. In particular, the company has made a "strategic choice" to emphasize that the case, though important to Kodak, has broad implications for other industries which feel they are shut out of the Japanese market, the source said.

Kodak also felt that the case has been portrayed too long as a dispute between itself and Fujifilm, rather than a issue of Japanese government measures which the U.S. is fighting, an informed source said.

"All the indications" so far are that the Administration remains strongly supportive of the case, which originated as a Section 301 petition by Kodak, one source said. President Clinton, in an Aug. 15 letter to Rep. Dan Schaefer (R-CO), emphasized his backing for the case and noted that it has the potential to address "structural barriers confronting other U.S. industries," according to a copy of the letter.

In addition, Kodak has begun discussing with the Administration a "detailed package" of remedies which would be necessary to dismantle what the U.S. has charged is a pernicious system of formal and informal trade barriers, one source said. Remedies would be focused on breaking down specific Japanese government measures which have been the focus of the U.S. complaint, the source said.

The WTO panel considering the U.S. challenge is scheduled to deliver its interim report in mid-October. A final decision is expected by the end of the year.

Gingrich, Gephardt Letter on Film

September 11, 1997

President Bill Clinton
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President,

Very shortly, the World Trade Organization will issue an important and precedent-setting decision with regard to Japan, when it issues a ruling in the photographic film case filed by the United States last year against Japanese government measures. In one of the best-documented market access cases ever brought against Japanese trade barriers, the U.S. presented compelling evidence of how Japan undermined its international commitments by erecting new, more subtle barriers to imported goods. This evidence helps to explain why the United States has such a large trade deficit with Japan, despite Japanese tariffs that are among the lowest in the world.

We view this case as an important test of the ability of the WTO to address systemic Japanese protectionism. Moreover, we believe the WTO's decision will have far-reaching implications, since many other U.S. industries face the same subtle yet powerful barriers being considered in the film case. To that end, we trust that you will insist on meaningful remedies that will eradicate barriers in the Japanese distribution system, that will open up Japan's large scale retail sector, and that will permit promotions and truly competitive market pricing by U.S. firms in Japan.

It is important that the WTO dispute settlement system deal effectively with these Japanese government measures that are more complex - and often more damaging - than tariffs or quotas. While we believe that the United States should maintain the ability to safeguard its own economic interests, we call on you to use all appropriate means to bring about full access to the Japanese market for U.S. products, and urge you to give this matter your very close attention.

Sincerely,

Rep. Newt Gingrich (R-GA)
Speaker

Rep. Richard A. Gephardt (D-MO)
Democrat Leader

OUTLINE OF PROPOSED SANCTIONS BILL STRESSES REPORTING, TRANSPARENCY

A draft concept paper reveals that new legislation on unilateral sanctions, which will ultimately be based on this paper, will likely focus on requiring the Executive Branch to comment on whether it thinks proposed unilateral sanctions will work properly, as well as on the sanction's likely impact on U.S. companies. In addition, the paper calls for all unilateral sanctions to allow the continuation of existing contracts, provide the President a national interest waiver option, and expire after two years unless reauthorized by Congress or the President.

These requirements would apply to sanctions policies regardless of whether they originate in the Executive Branch or the Congress, according to an August 11 draft of the paper. Congressional sources said the most recent version of the paper is very similar to this version, and has undergone only some small changes.

Legislation based on this paper, which congressional sources said Sen. Richard Lugar (R-IN) and Rep. Lee Hamilton (D-IN) hope to introduce by the end of September, has been pushed by members of USA Engage. This group was formed earlier this year to protest the use of unilateral U.S. trade sanctions, and has argued that unilateral sanctions cost U.S. jobs and are rarely effective in achieving their foreign policy goals.

For sanctions bills or joint resolutions originating in Congress, a bill based on the August draft would, except in the case of a national emergency, require the relevant congressional committee to request reports from the President and from the International Trade Commission, which would be included in the report accompanying the measure. The ITC report would have to detail the short- and long-term costs of the sanctions measure, including harm to U.S. companies' export performance, competitive position, reputation as a reliable supplier of goods and services, and overall economic well-being.

Presidential reports accompanying congressional sanctions measures would have to be made up of several parts. First, the President would have to assess the likelihood that the measure would achieve its stated objective, which must be clearly identified. Second, the report would have to judge the impact of the sanction on humanitarian interests in the target country, relations with third countries, and other U.S. foreign policy interests.

The President's report would then have to describe and assess steps taken to try to accomplish the sanction's objectives in other ways, including through diplomacy, multilateral cooperation, measures taken by other countries, and other alternative measures. Finally, the report would have to assess the extent to which the sanctions proposal would conflict with existing U.S. obligations, and, similar to the ITC report, would have to give a detailed assessment on likely costs and benefits of the measure, including whether the benefits of the sanction outweigh the likely costs to U.S. companies.

In addition to these requirements, if the sanctions measure does not provide contract sanctity or does not expire two years after its effective date, the congressional report on the measure would have to explain why it does not.

For Executive Branch actions, a Presidential announcement of an intent to implement a sanctions measure would start a 60 day period in which he must consult with the relevant congressional committees. Intent to implement the proposed sanction must also be notified in the *Federal Register* for the purpose of providing interested parties an opportunity to comment on the measure. These requirements would be waived in the case of a national emergency, the draft paper said.

Under the draft paper, intent to implement a sanctions bill would lead to the creation of a Sanctions Review Committee, which would advise the President prior to implementing the sanction. This committee would be made up of the U.S. Trade Representative, the secretaries of State, Treasury, Defense, Agriculture, Commerce and Energy, the Director of the Office of Management of Budget, the Chairman of the Council of Economic Advisors, the Assistant to the President for National Security Affairs, and the Director of the National Economic Council, the paper said.

Sanctions proposals from the President would also have to include a clear finding that the sanction is likely to achieve a specified U.S. goal and that the benefits of the sanction outweigh its costs. The President would also have to provide for contract sanctity and ensure the expiration of the sanction after two years unless explicitly extended by the President.

The draft paper also proposes detailed reporting requirements for the President and the ITC similar to those listed above, and notes that each of the above requirements could be waived for 60 days in the case of a national emergency.

Finally, the draft paper would require reports from the President and the ITC on the effectiveness of sanctions policies six months after they are enacted and annually after that. These reports would discuss the extent to which U.S. policy objectives have been achieved, U.S. companies have been hurt, and U.S. relations have been affected by the policy.

In addition to these measures, supporters of the pending bill are considering whether to include special reporting requirements if a sanctions measure affects U.S. agricultural exports, according to the August draft paper. These requirements could include a report from the Agriculture Secretary which discusses the likely negative effects of the sanction on exports and possible contingency plans to alleviate these effects. The bill could also require that the Secretary work to expand agricultural exports under the Export Enhancement Program to offset lost sales to sanctioned countries.

STATE DEPT. OFFICIAL WARNS OF FALLOUT FROM GROWING JAPAN TRADE DEFICIT

Assistant Secretary of State for East Asian and Pacific Affairs Stanley Roth late last week warned that Japan's rising trade deficit with the U.S. could lead to congressional calls for dramatic action comparable to those heard in the 1980s. He pointed out that the trade deficit has increased dramatically in recent months.

"And this does have the potential to get us back to where we were before, which is making this [the bilateral trade deficit] a major political issue in the United States as well as an economic issue," he said during a Sept. 13 press conference in Tokyo. "In that context, it will lead to calls once again for dramatic steps, will make it an issue with the Congress and the media, and we could see a return to Japan bashing, which was not so uncommon not all that long ago."

To avoid such a problem, the two sides have to work together to achieve progress in several different ways, Roth said. One of these is for Japan to pursue "vigorously" the things that it has promised to do on deregulation. This is "over the long term, probably the most promising means of reducing their surplus and our deficit," he said.

In the short-term, Japan must vigorously implement existing agreements, like the auto agreement, he said. It also must extend agreements when they expire, such as the Nippon Telegraph and Telephone procurement agreement, according to Roth. He said the two sides hope to reach an agreement before the existing NTT procurement deal expires at the end of the month.

In addition, solving the problem means a willingness on Japan's part to negotiate sectoral disputes, he said. Recently, there have been difficulties in tackling these issues, according to Roth.

He also raised the issue of macroeconomic problems, on which Treasury Secretary Robert Rubin and Deputy Treasury Secretary Larry Summers have spoken out in recent weeks.

Roth's comments echo those of Administration officials following an internal decision to step up pressure on Japan in light of the burgeoning trade deficit and the increased scrutiny trade issues may receive as part of the fast-track debate (*Inside U.S. Trade*, Sept. 12, p. 1).

In a related development, the Commerce Dept. announced on Sept. 18 that the trade deficit with Japan rose to $5.2 billion in July, up from $4.1 billion.

WTO DISPUTE BODY EXPECTED TO TAKE UP EU APPEAL ON HORMONES

The European Union is expected next week to request a formal appeal of a World Trade Organization ruling that its ban on beef raised with growth hormones violates international trade rules. The request is expected to be made at a Sept. 25 Dispute Settlement Body meeting in Geneva, sources said.

The EU said in early July that it would appeal the WTO ruling because it said the EU failed to take science into account before implementing the ban. The U.S. and Canada both challenged the ban, and the panels made the exact same findings in the case (*Inside U.S. Trade*, July 4, p. 20).

Also on the agenda for next week's DSB meeting is the adoption of the Appellate Body report which found the EU system for regulating banana imports violates the WTO. The Appellate Body report issued last week largely upheld the initial panel report (*Inside U.S. Trade*, Sept. 12, p. 4).

The DSB will also hear an update from the U.S. on its implementation of a WTO finding that U.S. rules regarding pollutants in gasoline violate the WTO (*Inside U.S. Trade*, Aug. 22, p. 3). And it will hear a report on Japan's implementation of a finding earlier this year that Japanese taxes levied on imported distilled spirits also violate WTO rules.

The DSB is also scheduled to hear three new requests for dispute panels. First, the U.S. and EU will each request a panel on Korea's tax regime on alcoholic beverages. Sources said these requests mirror the case the Appellate Body decided against Japan earlier this year.

Second, the EU will request a panel against India over that country's failure to provide a means of filing patent applications for pharmaceuticals and agricultural chemicals. While a WTO panel found in favor of the U.S. earlier this month on the exact same issue with India, sources said the EU is requesting its own panel over fears that India may not be able to adhere to that ruling, and may instead have to offer compensation. But India was not a party to that panel, and under Art. 22 of the WTO's Understanding on the Rules and Procedures Governing the Settlement of Disputes, only members that are party to a panel can be offered compensation.

Several WTO members have requested their own panels to hear cases similar to those that have already been decided to ensure that they can also benefit from compensation, according to an international trade source.

Like the EU request for a panel, the U.S. argued that India's informal mechanism for receiving patent applications is not in conformity with its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (*Inside U.S. Trade*, Sept. 12, p. 17).

In the third request scheduled for next week, the EU will ask that a panel be established to hear its arguments over Argentina's textiles, clothing and footwear regime, according to informed sources.

U.S. TO UNVEIL HELMS-BURTON PROPOSAL . . . begins page one

This possible congressional support for the U.S. proposal is the first sign that the U.S. and EU could be closer to resolving their dispute over the Helms-Burton law, as Congress has previously indicated its opposition to anything other than a hardline position in the talks. However, the source also added that the U.S. proposal "won't fly" in Congress unless it specifically targets Cuba, and warned that the U.S. would "have to get everything" it is proposing in order for Congress to eventually sign on to the deal.

This could present a problem for negotiators because the EU has signalled in previous negotiating sessions that it will agree to investment disciplines only if Cuba is not explicitly mentioned. Another big problem facing negotiators is whether the EU will "ever agree to anything at all" in the Helms-Burton negotiations, the congressional source said.

The U.S. and EU met again this week in an effort to agree on disciplines that deter investment in expropriated property, as well as guidelines that can be used to resolve future disputes that arise when the laws of two different countries conflict. The two sides met in Paris Sept. 16-17, on the fringes of negotiations on the Multilateral Agreement on Investment (MAI) in the Organization for Economic Cooperation & Development.

The U.S. and EU are hoping an agreement in these areas would allow the U.S. to amend Helms-Burton so that one of its key provisions, Title IV, could be waived by the President. Title IV requires the U.S. to ban foreign executives of companies that traffic in expropriated property in Cuba.

An agreement would also allow the EU to withdraw its suspended World Trade Organization challenge of Helms-Burton. Under an April understanding, the two sides have until Oct. 15 to reach a settlement, after which EU member states have said they would resume their WTO challenge.

Specifically, the U.S. was expected this week to propose that certain countries be designated as "problem states." The U.S. is suggesting that a country should be named on this list if property there is subject to a "pattern of discriminatory expropriation," one informed source said.

Under the U.S. proposal, signatories to the investment disciplines would discourage their nationals from investing in any property in a "problem state." Further, the U.S. is suggesting that governments should refuse to provide government financing programs and other support anywhere in the world to companies that ignore that advice.

The U.S. also was expected to suggest that Cuba be placed on this list. Congressional sources reiterated that Cuba must be targeted this way in order to win congressional support for the proposed disciplines. "Cuba is the poster child of problem states," one congressional source said.

In addition, the U.S. was expected to propose that expropriated properties be registered in the MAI, sources said. Once this list is activated, a company investing in property abroad would have to certify that the property in question is not on the list, and barring that, would have to show that no other viable alternatives were available. If these criteria were not met, the company might not be eligible for government support in financing the purchase of the property.

These disciplines would be triggered if any "dealings" in properties on this list occurs, according to the U.S. proposal. But sources said this term still has to be defined. The U.S. was expected to propose that existing investments in any expropriated property would be untouched by the disciplines, but that any move to improve or resell these properties would trigger the disciplines.

In contrast to this proposal, the EU has previously argued that only investment in property expropriated after the disciplines take effect should trigger the disciplines.

On conflicting jurisdiction, the U.S. was expected to propose that countries whose laws impose different requirements on companies meet in the context of the MAI for consultations. In contrast, the EU has argued previously that companies should follow the laws of their home country only (*Inside U.S. Trade*, Aug. 1, p. 1).

Sources noted that the goal of the U.S. and EU is to multilateralize any agreed-upon disciplines by having other countries sign on to them under the MAI.

The U.S. proposal must be agreed to by the EU without major changes in order for Congress to accept the deal, congressional sources stressed this week. By doing so, the Administration can "raise the comfort level" of certain members of Congress, whose support is critical to getting the deal passed in Congress.

These members include Senate Foreign Relations Jesse Helms (R-NC), House International Relations Committee Chairman Ben Gilman (R-NY), committee member Dan Burton (R-IN), and Reps. Ileana Ros-Lehtinen (R-FL), Lincoln Diaz-Balart (R-FL), Robert Menendez (D-NJ), and Sen. Robert Torricelli (D-NJ). Ros-Lehtinen, Diaz-Balart and Menendez in particular must be satisfied with the agreement before Congress can consider amending Helms-Burton so that Title IV can be waived, one congressional source said.

"They have the right to be the most skeptical and the most satisfied," he said. "It is the Cuba issue that got us here, and it would be a betrayal to let Cuba slide." He said Gilman "in particular" will not support the deal unless all of these members accept it together.

He also noted that these members recognize that the fight is about U.S. Cuba policy and Helms-Burton, and that the disciplines are not being negotiated in a vacuum. "It's not just something for international law pinheads," he said.

The source also noted that the initial U.S. proposal "meets that test." One specific concern is that Cuba must be designated a "problem state," which would prevent foreign investment in property claimed by Cuban-Americans. If this can be agreed to, the U.S. is "in the ballpark," he said.

If this cannot be agreed to, he said Congress could assess the possibility of simply registering most Cuban-American property claims in the MAI. But he said it would be "much stronger" to simply include Cuba on the list of "problem states."

Despite the fact that Congress could accept the U.S. proposal as it currently stands, sources said Congress has not begun drafting a Title IV waiver yet. He added that this will be done when the two sides are much closer to reaching an agreement, he said. At press time, officials in Paris could not be reached for comment on how the talks were proceeding this week.

Informed sources added that the U.S. and EU are tentatively scheduled to meet again at the end of September in Washington to continue the negotiations.

COMMERCE OFFICIAL SEES BIOTECH, FOOD SAFETY AS NEW PROBLEMS FOR U.S., EU

A Commerce Dept. official said last week that the U.S. and EU face new trade problems in an otherwise stable relationship from their different regulatory approaches to genetically modified products and issues of food safety. Acting Assistant Secretary of Commerce for Market Access and Compliance Franklin Vargo charged that the EU has an unnecessarily cumbersome process for approving GMO products for sale in its market, and is imposing rules to prevent the spread of Bovine Spongiform Encephalopathy (BSE) for U.S. exports even though the U.S. considers itself BSE free.

"We have a whole new area that is very, very difficult [in] genetically engineered crops, where the Europeans have a very cumbersome process for approval in which there is something verging on hysteria."

He also professed to understand the EU's desire to prevent the spread of BSE. "We certainly understand the need to protect health and safety and ensure safety from BSE in Europe," Vargo said. "But the United States is BSE free."

The EU has insisted that the U.S. must provide scientific proof of being BSE free, and plans to ban all products that have not been scientifically proven safe from BSE.

Vargo emphasized that the EU measures, which have the effect of restricting trade, are not driven by a desire to shield its markets.

"These differences stem not from a desire to build protective devices against imports, but from genuine differences in approaches to health and safety and other questions of public interest," he said.

In a Sept. 10 hearing before a House International Relations subcommittee, Vargo cited EU measures aimed at banning imports of products which contain parts of a cow that could carry BSE as a significant problem. The ban could effectively block $20 billion in U.S. cosmetic and pharmaceutical exports, Vargo told the subcommittee on International Economic Policy and Trade.

Vargo urged committee members to relate U.S. alarm over the EU BSE-related measures in meetings with members of the European Parliament scheduled for the week of September 22.

"When you get together I do hope that you will raise the EU Cosmetics Directive and the so-called SRM, the Specified Restricted [sic] Materials Directive, with them," he said. "I think you could be very helpful."

On GMOs, Vargo added that the Transatlantic Business Dialogue has begun to address biotechnology issues and that they will also be raised by the U.S. in multilateral negotiations on agriculture trade set to begin in 2000.

Other food safety issues which divide the U.S. and EU include mutual acceptance of methods for processing poultry and the EU's ban on hormone-treated beef, Vargo noted.

The U.S. and EU face many other challenges, according to Vargo, including reaching a WTO agreement on financial services, implementing the Mutual Recognition Agreements (MRAs) reached this summer, expanding the MRAs to other sectors, reducing tariffs in sectors such as paper, and promoting electronic commerce.

Europe is by far the most important partner for the U.S. in opening world markets, Vargo said. "Europe comes closest in the world to sharing our ideals to want to open markets, and if we can't agree with the Europeans in the WTO, nothing's going to happen," he said.

WHEAT GLUTEN INDUSTRY TO FILE 201 PETITION . . . begins page one

But U.S. industry sources this week were optimistic that a 201 petition could be successful, and said U.S. officials in the U.S. Trade Representative's office and the Agriculture Department told the industry that a 201 petition is its "best alternative" for combatting imports of wheat gluten.

"We clearly have solid factual evidence" with which they could prove injury, one industry source said, who added that the Clinton Administration has said the industry has "an excellent shot of succeeding." However, he did acknowledge that the Presidential decision in a Section 201 case means a higher hurdle to obtain relief than that posed by other trade actions.

Industry sources also said that an antidumping or countervailing duty petition may not be as effective as a Section 201 case because what they term the EU's subsidies and dumping practices are used intermittently. Therefore, an AD or CVD remedy would be unlikely to result in a large enough margin to effectively block EU imports, they said.

The industry failed in its effort to pursue a Section 301 case when the Office of the U.S. Trade Representative rejected the petition to pursue alleged increased imports of EU wheat gluten to the U.S. under a bilateral grains agreement. USTR suggested the industry use measures other than Section 301 to pursue its complaint (*Inside U.S. Trade*, June 13, p. 3 & March 14, p. 1).

These sources said the lack of progress in government consultations on EU wheat gluten imports is another reason why a Section 201 petition might be filed. The U.S. and EU met under the grains agreement in August, when the EU presented a paper detailing the wheat gluten and corn gluten feed markets in both countries.

Industry sources said the last round was "unsatisfactory" for the U.S. because the EU paper acknowledges that its share of the U.S. market has grown in the last few years, and that U.S. producer's share has been reduced. But the paper fails to say that EU imports have directly led to reduced U.S. production.

"The EU is denying a causal link," one source said. "But I think we could prove a causal link." He also added that the EU simply wants to monitor the situation "until we're out of business."

EU sources this week declined to comment on the contents of the paper that was submitted to the U.S. last month. Sources also said another round of talks under the agreement has not been scheduled.

The U.S. is pursuing talks with the EU under a bilateral grains agreement, which calls for formal consultations in which both sides must try to arrive at a solution when EU share of the U.S. wheat gluten market exceeds 17 percent.

REPUBLICANS TO ALTER ADMINISTRATION FAST-TRACK BILL . . . begins page one

tion effectively excluded Republicans from the process of developing the specifics of its proposal.

Republican criticism of the bill stems from the fact that the Administration's bill does not obligate the President to bring back trade agreements and implementing bills which reflect only the negotiating objectives stated in the fast-track authority, according to congressional sources. Such an obligation would be established if the bill explicitly linked negotiating objectives to fast-track treatment.

In addition, Republicans have criticized what they term the undue vagueness of the proposed bill's labor and environment provisions, according to congressional sources. They have charged that the bill could allow the application of fast-track procedures to agreements reached in the International Labor Organization, they said.

Some sources also suggested that the Administration proposal for fast track through 2005 could come under attack, because it could be politically impossible to convince enough members to vote for authority this far out. But one source argued that while the duration is likely to be shortened, it is "not an emotional issue."

Ranking Member Charles Rangel (D-NY) has called for a hearing on fast track in general, which is likely to include Administration, congressional and private-sector witnesses, a congressional source said. House Republicans have generally agreed to such requests, the source said. The House requires a 10-day notice for hearings, although this rule can be waived, the source said.

"A hearing will definitely slow the process," the source added.

The overriding problem for Republicans with the Administration proposal is what they view as the unacceptably loose relationship between the specific negotiating objectives to the use of fast-track authority, numerous congressional sources said. This problem, though related to the labor and environment controversy, also touches on the question of how much authority Congress delegates to the President, one congressional source said. To the extent that the negotiating objectives and the content of implementing bills are not closely linked, Congress could end up delegating more authority than it had anticipated, the source said.

"This is probably the single most important issue," one source said. "It's the only thing that puts limits on the President."

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A bill introduced by Ways & Means Chairman Bill Archer (R-TX) in 1995 specified that fast-track procedures would apply to parts of the trade agreement, as well as implementing legislation, which were linked to the specific negotiating objectives outlined in the bill. "The tie-in flows from the negotiating objectives through to the implementing bill," one source said.

However, the Administration bill includes sections on "overall" and "principal" negotiating objectives which the Administration's own analysis of the bill describes as "guidance," congressional sources noted. The bill is not structured so that these objectives are directly linked to the section of the bill which identifies what can be covered under fast-track procedures, these sources pointed out.

Consequently, the bill appears to give the President relatively unrestrained authority to determine the content of trade agreements, even though the Administration bill states that future trade deals contain provisions "directly related to trade," congressional sources argued. This phrase was proposed by House Republicans in an effort to limit the consideration of labor and environmental issues.

Republicans insist on establishing a direct and explicit linkage between negotiating objectives, and the content of both trade agreements and implementing legislation which has the force of U.S. law. This demand stems from their general mistrust of how the Clinton Administration has conducted trade negotiations.

Previous fast-track legislation included negotiating objectives as "hortatory objectives of policy" that were not legally linked to the legislation to be covered by fast track, one congressional source said.

In addition, the Administration proposal also faces opposition in its use of the phrase "necessary or appropriate" to describe what can go into implementing legislation, congressional sources said. The Archer bill would allow only provisions "necessary" to implement the agreement, while the Administration bill still includes a qualified version of "necessary or appropriate."

The Administration bill is clearly designed to ensure a degree of flexibility on what can be in implementing legislation, and one congressional source argued that any Administration would seek such flexibility. The phrase "necessary or appropriate" has allowed the inclusion of "sweeteners" which solidify support for implementing bills, the source pointed out.

Finally, the Administration proposal also contains specific language naming labor and environment as principal negotiating objectives, including provisions on "sustainable development" and internationally-recognized labor rights. The "vagueness" of the phrase "sustainable development" is particularly difficult for many Republicans as well, one source said.

The inclusion of a provision on the International Labor Organization has also raised questions among many members as to whether ILO conventions would be covered by fast track, a congressional source said. The source argued that this section of the bill "largely just needs some tightening," and agreement on it between the Administration and Republicans is "not out of the ballpark."

The Administration proposal immediately drew a highly negative reaction from a number of House Democrats. Minority Leader Richard Gephardt (D-MO) said that "this fast track would put us on the wrong track," and criticized in particular the marginal treatment of labor and environment issues.

"What I and others are arguing for is that U.S. workers and the environment be treated and enforced the same as copyrights and investment," he said. The Administration's bill would cover intellectual property and investment rules as part of future trade agreements.

An analysis of the bill issued by Gephardt called the bill "worse than the fast track authority President Bush received" because it does not include labor and environment as negotiating objectives which could be included in the core of a trade agreement. Gephardt charged that the Administration proposal would not even permit side accords such as those negotiated to the North American Free Trade Agreement to be covered by fast-track.

In addition, Gephardt criticized the Administration proposal to move consideration of these issues into the WTO. "[N]o real action has occurred on these issues at the WTO despite preexisting authority for the U.S. to proceed," the analysis stated.

The Gephardt analysis also criticized the Administration proposal for not mentioning food safety, drugs and worker retraining. It also noted the exclusion of "trade and monetary coordination" and addressing unfair trade practices as negotiating objectives.

In addition to Gephardt, four members of the Hispanic Caucus also expressed their "disappointment" with the Administration proposal in a Sept. 16 proposal. Rep. Esteban Torres (D-CA) said that the legislation did not heed recommendations that the Administration commit to improving the implementation of NAFTA, nor did it include enforceable labor and environment provisions.

Reps. Nydia Velasquez (D-NY), Ciro Rodriguez (D-TX) and Loretta Sanchez (D-CA) offered similar criticisms of the bill. Sanchez added that the bill would do nothing to mitigate the negative impact of NAFTA on working women and families.

Rep. Sander Levin (D-MI), who serves on Ways & Means, announced on Sept. 17 that he would oppose the fast-track as proposed by President Clinton. *By Carter Dougherty*

In This Issue

...Washington Trade Daily...

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Trade Reports International Group

GSP In, CBI Parity Out of Budget Bill

House and Senate conferees working on a big tax and spending bill (HR 2014), in close contact with the White House, agreed to extend the US Generalized System of Preferences program for two years – retroactive to May 31 – but did not go along with inclusion of a new Caribbean Basin Initative parity provision (WTD, 7/24/97).

Details of the tax and spending package were announced yesterday after Congressional Republicans and the White House reached an agreement Tuesday night.

White House officials who briefed the press yesterday morning said the President attempted in the final hours to maintain a version of the House-passed CBI Parity provision. But Republican staffers told WTD yesterday that the White House was partially to blame for its demise.

The CBI parity provision would have increased duty-free access to the US market for a range of apparel products manufactured in the Caribbean region, giving them the same benefits as Mexico enjoys under the North American Free Trade Agreement.

Alone at the Altar – Again

Sen. Bob Graham (D-Fla) – a long-time backer of the CBI – said it was the "fourth or fifth time that the Caribbean was left standing alone at the altar by the United States." He agreed with House Ways and Means trade subcommittee Chairman Rep. Philip M. Crane (R-Ill) that the reconciliation bill was the most appropriate vehicle for the preferential trade bill. Trying to move it later in the session, both told WTD yesterday in separate interviews, would be complicated by the fact that Congress would have to find offsetting revenue to justify it under current budget procedures. The Congressional Budget Office scored the cost of the CBI parity bill at some $217 million, for a single year of operation.

Although President Clinton promised Caribbean leaders during a recent trip there that he would fight for the measure, Congressional staff involved in the negotiating process suggested yesterday that the word never filtered down to his staff.

Sen. Graham said its defeat was a combintation of strong opposition by a hardcore of CBI opponents and only luke-warn support from senators who generally back free trade initiatives. The debate was complicated by the fact that the CBI provision contained in the reconciliation bill was drafted by Ways and Means' Mr. Crane and differ significantly from those proposed by the Clinton Administration and a temporary coalition of textile, apparel, import and retail groups.

Others suggested that time simply ran out to finish the complicated task of finding a resolution.

The GSP program was extended until June 30, 1999, rather than the May 31, 1999, date recommended by the House.

Also dropped from the measure was a provision exempting import duties for repairs done abroad on US ships.

Fast Track Offer Still Unanswered Says Rep. Crane

The inclusion of broad environmental and labor language in legislation extending the President's trade negotiating authority will simply not be accepted by House Republicans (WTD, 7/25/97), House Ways and Means trade subcommittee chairman Rep. Philip M. Crane (R-Ill) told a

TRIG

gathering at the Cato Institute yesterday.

There is an offer to the White House to which the Administration has yet to respond, Mr. Crane went on. It would allow environmental and labor language in fast track only to the extent either are "immediately and directly related to trade." Giving the President broader authority would set the precedent for extending trade deals well beyond trade matters. Why stop at labor and the environment, he quipped. Why should not the Administration also include human rights, equal opportunities for women, freedom of the press and the right to assemble as well. Those objectives are admirable, he said, but do not belong in trade agreements.

Mr. Crane predicted a heated debate on fast track in September after Congress returns from a month-long summer recess.

The trade panel chairman said he wants the President to have broad negotiating authority at least for a period of five years. He also suggested yesterday that he would like to attach an Africa Economic Growth bill (HR 1432) to the fast track package in hopes of moving it through Congress this year (WTD, 7/16/97).

Business Hits Latest Financial Encryption Plan

Commerce Department officials heard yesterday from business that it is backpedaling from a promise made in May to allow unfettered exports of strong encryption to US financial institutions abroad (WTD, 7/22/97).

According to a Commerce official involved in writing perfecting regulations, a no-license policy will apply only to strict encrypted financial software. US firms selling software that also allows the interchange of messages to banks and other financial institutions will have to follow current US policy – allowing an export license only after the manufacturer submits a plan to develop a similar recoverable product in two years time. One difference, the official pointed out to an export controls advisory committee yesterday, is that the department will allow the export of 128-bit software; current provisions apply generally to 56-bit products.

Draft regulations are getting ready to go interagency, with comments expected back to Commerce by August 11. After that the regulations will be circulated for business and public comment.

No Conditions

Business officials at the advisory meeting said that when the original announcement was made on May 8 to the American Bankers Association by White House special advisor Ira Magaziner there were no conditions put on the overseas sale of encrypted software to US financial institutions.

The new regulations also define what is meant by "financial institution" and will address the temporary export of encryption software for personal use.

Commerce, the official said, has reviewed 1,050 export license applications for encryption products, approved 725 and denied only 30.

Commerce Undersecretary for Export Administration William Reinsch today will face a generally friendly House National Security Committee hearing on the topic. Two committees – the House Judiciary Committee and the House International Relations Committee – have approved legislation (HR 695) that would overturn the Administration policy of controlling encryption product exports.

Around the Globe

- STET, the Italian telecommunications group which last week struck a deal to continue doing business in Cuba but avoid US sanctions, may have breached a European blocking law (WTD, 7/24/97), the European Union Commission acknowledged yesterday according to an Agence France-Presse report from Brussels. Several EU states have questioned whether Stet's

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BARSHEFSKY HINTS AT SOLUTION TO FAST TRACK LABOR-ENVIRONMENT FIGHT

U.S. Trade Representative Charlene Barshefsky this week hinted at a possible solution to the question of how to treat labor and environment issues in the context of a bill to extend fast-track negotiating authority. Barshefsky said that language proposed by House Ways & Means trade subcommittee chairman Phil Crane (R-IL), which would allow only "directly trade-related" environment and labor provisions, is similar to language advocated by the Clinton Administration in 1995.

During the 1995 fast track debate, Barshefsky and then-U.S. Trade Representative Mickey Kantor were pressing for similar language, she said during an Aug. 6 press conference. Though congressional sources speculated that this formulation offers a possible basis for compromise between the Administration and House Republicans, Barshefsky cautioned that the Administration is also considering other options.

continued on page 23

CHINA WTO NEGOTIATIONS MAINTAIN MINIMAL MOMENTUM TOWARD AGREEMENT

Negotiations on China's accession to the World Trade Organization last week fell short of expectations that China would make new offers to reduce tariffs and improve market access, but maintained enough momentum to avoid a new deadlock in the talks, trade officials said this week. Additional progress now hinges on offers in these areas, which China has promised to make this month or next, these officials said.

"The momentum has been maintained, though it was never great to begin with," one negotiator said.

Pierre-Louis Girard, chairman of the WTO working party on China's accession, said at the formal meeting on Aug. 1 that "some good progress was reported -- albeit uneven as to sectors and countries." Girard added that WTO members reiterated the need for "substantial progress" in the area of market access before the negotiation can be completed.

continued on page 27

U.S., JAPANESE OPENING POSITIONS IN AVIATION TALKS REVEAL WIDE GAPS

The opening proposals from the U.S. and Japan in the first set of formal negotiations aimed at liberalizing the civil aviation sector reveal that the two sides are still far from reaching an agreement. During the Aug. 4-6 meeting in Tokyo. Japan tabled a proposal that rejected the possibility of a fully liberalized "open skies" regime even after the expiration of an interim arrangement, while the U.S. tabled a proposal calling for open skies after a three year transition period.

In addition, Japan's initial proposal, reprinted below, did not specify how long an interim agreement should last, and was unclear what should happen after it expires, except to say that it should not lead to an open skies arrangement.

"The [transitional] agreement shall be effective for certain years," Japan's proposal said. "The aeronautical

continued on page 28

U.S., EUROPEAN UNION STILL FAR APART IN HELMS-BURTON NEGOTIATIONS

After their fifth formal meeting last week, U.S. and European Union negotiators are still far from resolving their dispute over the Helms-Burton law, which seeks to punish foreign companies that traffic in former U.S. property in Cuba. Despite the approaching October 15 deadline for an agreement, the two sides remain split in efforts to negotiate disciplines governing investment in expropriated property and conflicting national laws.

"It is still too early to tell what the basic outlines of a solution might be," one source close to the negotiation said this week.

In their July 31 meeting in Washington, the U.S. and EU each tabled proposals on how the dispute might be settled. But informed sources said those proposals mostly reiterated their previous opposing views. "Some progress

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was made, but the same issues still persist," one source said.

For example, the two sides last week exchanged proposals on language aimed at discouraging investment in expropriated property, informed sources said. The U.S. proposal was more of a "concept" paper, while the EU proposal was closer to draft language on investment disciplines, these sources said.

But in order for the U.S. and EU to make some progress on investment discipline language, negotiators have decided for the time being not to discuss the key issue of how retroactive these disciplines should be, an area in which there is no agreement.

The U.S. has insisted that the disciplines should apply to properties expropriated in the past, so that they can in effect apply to properties in Cuba. But the EU has so far argued that the disciplines should only apply to properties expropriated after the disciplines take effect, and has rejected language that would specifically reference properties in Cuba.

One source said the strategy of not discussing retroactivity does not mean that either side has agreed to the other side's view on the matter, and that the decision to postpone this fight has allowed the two sides to make some progress on the disciplines themselves.

"You can talk about these issues without running afoul of problems related to when [the disciplines] take effect," an informed source said this week. "We're taking the practical approach of looking at the concrete issues first."

Another issue that has yet to be resolved is how companies should respond when facing conflicting laws from two different countries, as they do under Helms-Burton. The law requires foreign companies to comply with U.S. investigations into allegations of trafficking, but the EU and Canada have passed legislation barring their domestic companies from complying with Helms-Burton.

The U.S. last week tabled a "concept" paper on conflicting jurisdiction, but it only reiterated the U.S. position that countries should consult with each other when their laws make opposing demands of companies. The EU did not table a paper on this issue last week, but has previously proposed strict rules under which the law in a company's home country would automatically prevail over another nation's laws when the two conflict with each other (*Inside U.S. Trade*, Aug. 1, p. 1).

The two sides agreed last week to meet again the week of September 15 in Paris, on the fringes of negotiations on the Multilateral Agreement on Investment (MAI) in the Organization for Economic Cooperation & Development. The U.S. and EU have agreed to try to fold their bilateral disciplines into the MAI once they are completed.

Next month's meeting will give the two sides less than one month to finalize these disciplines by the October 15 deadline. The U.S. and EU are hoping an agreement by then will allow the EU to permanently withdraw its World Trade Organization challenge of the law, and convince Congress to let Title IV of the law to be waived by the President. Title IV requires the U.S. to deny visas to foreign executives that traffic in expropriated U.S. property in Cuba.

BUSINESS GROUP PREPARES BROAD $3 MILLION CAMPAIGN TO WIN FAST TRACK

The business coalition that will support the Clinton Administration's upcoming fall push for fast-track negotiating authority called on its members late last month to contribute "a minimum of $3 million" to support a broad lobbying campaign that will include paid media, grassroots organizing and Washington-based lobbying. The Business Roundtable warned that gaining approval of fast track will be an uphill battle because many members of Congress are not solid fast-track backers because the bill will come under heavy criticism from a wide range of other groups.

"Reports from Capitol Hill by congressional allies indicate that prospects for enactment of fast-track authority this year are uncertain," the BRT wrote in a July 24 letter to corporate members of its international trade and investment task force. "With the substantial turnover in the U.S. House of Representatives in the last two elections, many members of Congress will be facing this issue for the first time."

The BRT letter, reprinted below, also warned that criticism on various fronts has weakened the coalition supporting new trade agreements. "In addition, opposition by organized labor, human rights groups, protectionists, isolationists and environmental groups has taken its toll," it said. "Many members view fast-track as a referendum on NAFTA, which is remembered on Capitol Hill for the strong views expressed by proponents and opponents, leading to a difficult vote for members of Congress."

The group warned that without the "active participation" of U.S. exporters, the Administration will lose its battle for fast track. "Our goal will be to help persuade undecided members of Congress or those new to this issue about the critical importance of fast-track to our nation's future," the BRT said.

Private-sector sources noted that the letter was slightly negative about the prospects for getting fast track, though they cautioned that it is primarily a letter designed to convince members to contribute money to the effort.

The letter outlined a lobbying effort on several fronts. One element will be paid advertising in selected congressional districts, "especially where an incumbent member of Congress is undecided," it noted. The publicity campaign will also seek to build on Administration activities and use mailings to news media, "periodic news conferences as required," visits to local editorial boards and op-ed pieces "in key states and districts throughout the country," according to the letter.

As part of efforts to create a grassroots campaign, the business groups will make "[a]ggressive use of [a] 1-800 number to generate Congressional communications from company employees, suppliers and constituents," according to the letter. The group will also recruit "opinion leaders in select Congressional districts" to support business lobbying and distribute "lobbying kits" to companies and trade associations involved in the effort.

The group will mount an "[a]ggressive Washington campaign relying on the use of corporate offices of Roundtable companies and CEO communications with legislators," according to the letter.

The BRT letter was signed by the heads of Caterpillar Inc., TRW Inc., The Boeing Company, Chrysler Corporation, The Proctor & Gamble Company, and General Motors Corporation. Each of these companies have pledged $100,000 for the effort, according to the letter.

In a related development, the America Leads on Trade Alliance this week circulated to its members an initial list of House members to contact on the fast-track issue. On the list, which is reprinted below, members who have been assigned to a specific coalition member are indicated with a pound sign.

The BRT earlier this year helped found America Leads on Trade, which is a coalition of trade associations and companies dedicated to gaining the passage of fast track. An informed industry source said last month that the BRT has taken the "financial lead" itself while expecting other groups to gain funds or involvement from their member companies as they see fit.

Fast Track Coalition Funding Letter

July 24, 1997

Dear: ___________

As you know, the Business Roundtable has lead the business community for many years in promoting the growth of the U.S. economy through trade agreements. The Roundtable's leadership on NAFTA in 1993 was absolutely critical to passage of that landmark free trade agreement. Similarly, the Roundtable took the lead in organizing the Alliance for GATT NOW in 1994-1995 when Congress enacted the Uruguay Round implementing legislation.

Today, we are faced with a similar challenge. The president has announced his intention to send to Congress this autumn a proposal that reinstates his authority to negotiate new market-opening trade and investment agreements under "fast-track" authority. Without this other Congressionally-granted authority, there can be no expansion of NAFTA to include Chile or other Central and South American countries. There can be no Free Trade Agreement of the Americas. There can be no new sectoral trade agreements such as the recently concluded information technology and telecommunications agreements. There can be no new multilateral agreements to cover, for example, agriculture, or to expand intellectual property protection under the auspices of the WTO. In short, without new fast-track authority, America's global trade leadership will be irreparably harmed.

Perhaps more unsettling is the political backdrop we face on Capitol Hill. Despite current economic growth, historically low unemployment, growing exports and the increasing percentage of our nation's GDP that is attributable to international trade, the political climate for new trade agreements is not good. Organized labor, human-rights groups, protectionists, isolationists and some environmental organizations are questioning the benefits of trade and investment to the United States. This is why the Roundtable has undertaken its trade communications initiative, seeking to inform our stakeholders about the importance of trade and investment to the growth of our own companies and to our nation's future.

With the Congress scheduled to debate and vote on fast-track authority this fall, it is imperative that the Roundtable's member companies step forward to make our collective voices heard. Without our active participation, fast-track authority for the president will not be enacted.

We have pledged to work with the President and with the Congressional leadership to achieve passage. Our goal will be to help persuade undecided members of Congress or those new to this issue about the critical importance of fast-track to our nation's economic future.

With our participation and support, we will be fighting this campaign on three fronts: direct lobbying in Washington, a fifty-state grassroots campaign, and a media program of advertising and public relations directed at key, targeted Congressional districts. All of these communications will be designed to demonstrate the importance of fast-track to our nation's economic future and to correct misleading and inaccurate objections raised by its opponents.

In order to conduct this critical campaign, we need your immediate financial assistance. Each of us has pledged $100,000 to this effort. We believe we need to raise a minimum of $3 million in order to insure that the voice of the business community is heard. Of course, each of us is called on frequently to make pledges of corporate resources for a variety of worthwhile causes. This cause, however, is tied directly to our business future, the economic growth of our country, the opportunities and job security of our employees, and a growing standard of living for the United States.

Maintaining U.S. global leadership on trade is at stake in this battle. If fast-track is not passed by Congress, U.S. global leadership on trade will surely be a thing of the past. While the United States remains on the sidelines, new trade agreements are already being forged by our trading partners with the economically growing countries of South America and Southeast Asia.

With or without U.S. participation, such agreements will continue to be forged. In possession of fast-track authority, U.S. negotiators have the power to lead negotiations and shape these agreements to better suit the trade and investment liberalization needs of U.S. firms and workers. Without fast-track, the U.S. merely watches from the sidelines while other nations craft rules to the detriment of U.S. interests. We simply must do our part to get fast-track approved.

As a member of the International Trade and Investment Task Force, we are asking you to make a special commitment. We hope that you will contribute at the $100,000 level. If you are unable to do so, we hope that you will contribute $50,000, $25,000 or some other appropriate sum. In any event, your participation is important. Enclosed is a fax-back pledge sheet. Please respond as quickly as you can. With resources in hand, we will gear up for our efforts to counter the ads already being run by opponents of trade in key Congressional Districts around the country. Your checks can be made payable to The Business Roundtable and sent to the Roundtable at 1615 L Street, NW, Suite 1100, Washington, DC 20036.

Thank you in advance for your support of this critical initiative.

Sincerely,

Donald V. Fites
Chairman & CEO, Caterpillar Inc.
Chairman, The Business Roundtable

Joseph T. Gorman
Chairman & CEO, TRW Inc.
Chairman, The Business Roundtable
International Trade and Investment Task Force

Philip M. Condit
Chairman, President & CEO
The Boeing Company

Robert J. Eaton
President, Chairman & CEO
Chrysler Corporation

John E. Pepper, Jr.
Chairman & CEO
The Procter & Gamble Company

John F. Smith, Jr.
Chairman, CEO & President
General Motors Corporation

cc: Washington Representatives

Enclosures

Proposed Strategy

Reports from Capitol Hill by Congressional allies indicate that the prospects for enactment of fast-track authority this year are uncertain. With the substantial turnover in the U.S. House of Representatives in the last two elections, many members of Congress will be facing this issue for the first time. In addition, opposition by organized labor, human rights groups, protectionists, isolationists and environmental groups has taken its toll. many members view fast-track as a referendum on NAFTA, which is remembered on Capitol Hill for the strong views expressed by proponents and opponents, leading to a difficult vote for members of Congress.

The Business Roundtable proposes a multi-pronged strategy to secure support for enactment of new trade negotiating authority for the President, leading to continued U.S. leadership on global trade.

continued on next page

Media

* Selective advertising in targeted Congressional districts and, as appropriate, in Washington in support of fast-track.

* Radio and television advertising in selected Congressional districts, especially where an incumbent member of Congress is undecided.

* Aggressive use of earned media, leveraging Administration activity as much as possible. Conduct mailings to news media, periodic news conferences as required, editorial board visits, and production and placement of op-eds in key states and districts throughout the country.

Grassroots

* Aggressive use of 1-800 number to generate Congressional communications from company employees, suppliers and constituents.

* Recruiting opinion leaders in select Congressional districts to support the fast-track effort.

* Distribution of fast-track lobbying kits to companies for use in Congressional visits.

* Grassroots lobbying by BRT-member companies and other business trade associations.

* Expand breadth of support through interaction with other business organizations.

Washington Lobbying

* Aggressive Washington campaign relying on use of corporate offices of Roundtable companies and CEO communications with legislators.

Other

* Development and distribution of other promotional materials on fast-track.

Business Contact List on Fast Track

Representatives To Contact

Bob Riley (R-AL)
Robert Aderholt (R-AL)#
Robert "Bub" Cramer (D-AL)
Spencer Bachus (R-AL)

Don Young (R-AK)

Matt Salmon (R-AZ)#
Bob Stump (R-AZ)
John Shadegg (R-AZ)
J.D. Hayworth (R-AZ)#

Marion Berry (D-AR)#
Vic Snyder (D-AR)#
Asa Hutchinson (R-AR)#
Jay Dickey (R-AR)#

Frank Riggs (R-CA)#
Vic Fazio (D-CA)#
John Doolittle (R-CA)
Nancy Pelosi (D-CA)#
Ellen Tauscher (D-CA)#
Anna Eshoo (D-CA)#
Tom Campbell (R-CA)
Zoe Lofgren (D-CA)#
Sam Farr (D-CA)
Gary Condit (D-CA)#
George Radanovich (R-CA)
Walter Capps (D-CA)#
Elton Gallegly (R-CA)
Brad Sherman (D-CA)#
Howard Berman (D-CA)#
James Rogan (R-CA)#
Xavier Becerra (D-CA)#
Mathew Martinez (D-CA)#
Julian Dixon (D-CA)#
Esteban Torres (D-CA)#
Maxine Waters (D-CA)
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Edward Royce (R-CA)#
George Brown (D-CA)
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Dana Rohrabacher (R-CA)#
Loretta Sanchez (D-CA)#
Christopher Cox (R-CA)#
Brian Bilbray (R-CA)#
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Randy "Duke" Cunningham (R-CA)#

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Michael Bilirakis (R-FL)
Jim Davis (D-FL)
Charles Canady (R-FL)
Dave Weldon (R-FL)
Mark Foley (R-FL)
Ileana Ros-Lehtinen (R-FL)
Robert Wexler (D-FL)
Peter Deutsch (D-FL)
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COMMERCE AGREES TO EXAMINE WHETHER CANADA IS DUMPING WHEAT

The Commerce Dept. last week agreed to examine whether Canadian wheat is being dumped into the U.S. market, U.S. officials said this week. But despite public statements from representatives from wheat-growing states, Commerce has only agreed to "review information" submitted by U.S. wheat growers, and that it has made no commitment to self-initiate a dumping case, sources cautioned.

"It is absolutely premature to say we'll be initiating a case, and it is extremely premature to be talking about options, including self-initiation," a Commerce spokesman said.

In addition, Commerce Secretary William Daley said in an Aug. 7 interview that Commerce has "a lot of information gathering to do," and that no decision has been made on whether to self-initiate a case. He also warned that self-initiated cases have "only been done on rare occasions."

"There has to be information gathered before you'd make a determination to begin an investigation which could lead to a self-initiated case," Daley said. "Now, I remind you that there's only been three self-initiated cases, so these are very serious steps when they're taken.
So we don't approach either the information gathering or obviously the investigatory process lightly."

U.S. Trade Representative Charlene Barshefsky this week also indicated that while Commerce would examine the industry's dumping claim, the U.S. has made no decisions so far. Instead, Barshefsky reiterated the U.S. position that USTR is continuing to focus on ways to increase market access for U.S. wheat in Canada.

"There is great concern certainly on our part with respect to the volumes [of Canadian wheat] coming in, which are really at quite extraordinarily high levels," Barshefsky said in an August 6 press conference. "Two questions to be asked are: one, are those imports fairly traded, and second, do we have comparable market access going into Canada. The answer to the first, that's something the Commerce Department is looking at."

And despite U.S. concern over increasing imports of Canadian wheat, Barshefsky said the U.S. would not try to block those imports simply because they are increasing. "Our goal is to ensure that trade is fair," she told reporters. "The goal of the U.S. government is not to stop imports simply because they are imports."

Barshefsky's comments came the week after she, U.S. Agriculture Secretary Dan Glickman, and Assistant Secretary of Commerce for Import Administration Robert LaRussa met with North Dakota's congressional delegation on what to do about increased imports of Canadian wheat. In that July 31 meeting, LaRussa pledged to examine the industry's dumping complaint, but did not commit to initiate a full-scale investigation, sources said.

After the meeting, Sens. Byron Dorgan (D-ND), Kent Conrad (D-ND) and Rep. Earl Pomeroy (D-ND) released a statement the same day in which they indicated that a self-initiation decision might come soon. The statement said they had won a commitment from Commerce to meet with North Dakota farmers, which is the "first step in beginning a 'self-initiated' antidumping investigation."

"In our lengthy discussions today, I was told that the Administration would work with North Dakota farmers to develop an anti-dumping case against the Canadians," Conrad said in the statement. "If the Canadian government refuses to step up to the plate and do the right thing, then our government must take action. It is simply the right thing to do."

One congressional source said the North Dakota delegation is "confident Canada wouldn't be selling so much wheat in the U.S. if it weren't underselling." But the source added that it is too early to determine how U.S. wheat growers might demonstrate that Canada is dumping wheat in the U.S.

Sources pointed out this week that in order to succeed, the industry will have to show that Canada is either selling wheat in the U.S. at below its cost of production, or that it is selling wheat in the U.S. at a price less than what wheat fetches in Canada.

But these sources, as well as a Canadian embassy spokesman, argued that an investigation will show that neither of these conditions can be met. Instead, the investigation will show that U.S. processors need Canadian wheat due to a relative U.S. shortage, they said. The Canadian spokesman added that all prior U.S. attempts to show that Canada dumps wheat in the U.S. have failed.

Congressional sources said at press time that U.S. wheat growers have not yet been consulted on how to attempt to show that Canada is dumping.

Also in the meeting, Dorgan urged the Administration to impose a "moratorium" on Canadian wheat imports, and asked about the "prospects for renewal" of the now expired tariff-rate quota on Canadian wheat, congressional sources said. But a U.S. official said Administration officials all but rejected that proposal, as indicated by Barshefsky's Aug. 6 comments.

"We expressed our reservations [about Dorgan's proposal], and pointed out that it would be a potential problem," the U.S. official said. "We can't afford to engage in any bilateral or multilateral trade friction."

Dorgan also suggested that the U.S. use the Export Enhancement Program (EEP) to help get U.S. wheat exports to third countries in which Canada is competitive in, congressional sources said. In addition, the North Dakota delegation requested to meet with President Clinton after the meeting, although no meeting has been scheduled.

The North Dakota delegation pointed out last week that the import levels under the expired 1994-1995 TRQ were exceeded in the 1996-1997 year. While the TRQ limited Canadian wheat to 49.6 million bushels per year, Canada has exported 62.6 million bushels over the last year.

But while the delegation insisted that Canada voluntarily agreed to abide by the TRQ limits, a Canadian official pointed out that Canada made no such commitment, and that the U.S. has simply been using those figures as a basis to monitor imports. And despite recent U.S. efforts to engage Canada on the issue, Canada has steadfastly refused to entertain the idea of setting up another TRQ.

Given that hurdle, USTR's recent strategy has been to focus on ways to get U.S. wheat into Canada.

"[W]e plainly do not have comparable access for our grain shipments into Canada, and the Canadians don't dispute that," Barshefsky said Aug. 6. "So we are working with Canada with respect to market access issues on grains, wheat and barley for example, in the hope to see improvements of a significant type."

Specifically, the U.S. has begun to examine whether Canada's end-use certificate requirements are an obstacle to U.S. wheat in Canada, and whether U.S. growers have access to the same, low-cost pesticides as Canadian farmers (*Inside U.S. Trade*, May 9, p. 18).

EU HINTS AT WTO CHALLENGE OF U.S. USE OF SEMI-GENERIC NAMES FOR WINE

The European Union this week hinted that it could launch a World Trade Organization challenge against a new U.S. law that codifies the ability of U.S. winemakers to label their wine using names which the EU believes should be reserved for specific geographical regions. In a July 29 letter to U.S. Trade Representative Charlene Barshefsky, EU Agriculture Commissioner Franz Fischler also warned that the law could complicate efforts to address this issue in ongoing bilateral discussions.

Fischler strongly criticized the amendment sponsored by Senate Banking Committee Chairman Alfonse D'Amato (R-NY), which was subsequently included in the budget agreement which President Clinton signed into law on Aug. 5. Fischler warned that the new law could violate two separate provisions of the Uruguay Round Trade-Related Aspects of Intellectual Property agreement.

"The EC considers that the adoption of the d'Amato amendment would significantly hinder our bilateral wine relationship, and would have a very negative influence on the ongoing bilateral wine talks," Fischler wrote in the letter, reprinted below. "Such an amendment would have serious implications in terms of the United States' existing obligations under the EC/U.S. wine agreement, and would create a new legal situation which appears inconsistent with U.S. obligations under TRIPS articles 24.1 and 24.3."

TRIPs Article 24.1 obligates signatories to enter into negotiations to increase the protection of geographical indications for wines and spirits. And under Article 24.3, members agreed to "not diminish the protection of geographical indications" that existed prior to the date the WTO agreement took effect.

The new law allows U.S. wines to employ so-called "semi-generic" names, such as Burgundy and Chablis, as long as the label also indicates the true place of origin of the wine. The law also gives the Secretary of the Treasury the authority to determine what wine names are semi-generic. Until the D'Amato amendment, a U.S. regulation had allowed U.S. wine-makers to use these names, and was monitored and enforced by the Bureau of Alcohol, Tobacco and Firearms (ATF).

The law lists over a dozen names that are immediately to be treated as semi-generic: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, and Tokay. U.S. wine-makers have used all of these semi-generic names before, and none of them are new, informed sources said.

Clinton has until August 11 to use the line item veto on the budget deal he signed, and that the tool could be used to strike D'Amato's language, sources noted. While the European Commission and EU member states including France, Italy, Spain and Portugal were lobbying the White House to do so, sources said at press time that there were no indications that Clinton was considering this step.

Fischler's letter said the EU is trusting that the U.S. will do "all possible" to avoid allowing the language to become law.

U.S. importers and industry sources said this week that the EU thinks the law will disrupt the bilateral wine relationship because the EU has been pressing the U.S. for years in talks under a 1983 bilateral wine agreement to stop the use of semi-generic names altogether.

As part of the 1983 deal, the U.S. wine industry gave up the use of some semi-generic names in return for what it thought would be permanent EU acceptance of certain winemaking processes that the U.S. industry uses but the EU industry does not. Instead, the EU has accepted U.S. processes for one-year periods under a derogation from EU regulations, and has pressed the U.S. each year to stop using semi-generic names in exchange for a permanent acceptance of U.S. practices, a U.S. industry source said.

The D'Amato language will likely make it much more difficult for U.S. negotiators to strike such an agreement, because U.S. law would have to be changed by Congress in order to ban the use of any semi-generic names, the source said. In contrast, the U.S. had more flexibility to negotiate when the use of these names was only covered under a U.S. regulation.

"I think the bilateral talks are done now," a U.S. importer said. "I suspect they will not be a hospitable environment anymore." The two sides are expected to meet before the current one-year extension for U.S. wine expires this December, sources added.

U.S. importers, which would derive a greater commercial benefit if U.S. winemakers stopped using semi-generic names, have criticized the D'Amato provision because they .

However, a U.S. industry source said the U.S.-EU wine talks have generally "gone nowhere" over the last several years, and that the law would therefore make little difference. The U.S. has generally rejected EU pressure to cease the use of semi-generic names, and the EU has continued to accept U.S. wine each year under derogations of its regulation. The regulation generally requires non-EU wine to be produced only by practices that are authorized for the production of EU wine before it can be imported.

Despite the EU threat not to admit exports of U.S. wine, the EU has not followed up on that warning because the U.S. has threatened to take the EU to the WTO, and because the EU likely fears that the U.S. would cut off EU wine exports to the U.S.

Meanwhile, the U.S. has used the bilateral talks to try to secure a "mutual recognition" agreement in which the EU would accept as equivalent and allow the importation of U.S. wine made in certain ways. For example, some U.S. wineries put their wines through an ion exchange process, which the industry claims improves the taste of the wine but otherwise poses no health risks. But the EU has thus far refused to permanently accept this process and others until a deal on semi-generic names can be reached.

Sources said the Gallo Winery of California and the Canandaigua Wine Company of New York, the largest and second largest U.S. wineries, respectively, urged D'Amato to introduce the language on semi-generic names.

Fischler Letter on Wine

July 29, 1997

Ms. Charlene Barshefsky
United States Trade Representative
Office of the United States Trade Representative
Washington, D.C.

Dear Charlene,

We understand that an amendment proposed by Senator d'Amato to codify the semi-generic uses of geographical indications for wine into U.S. law has been introduced into the Revenue Reconciliation Act of 1997.

The use and protection of geographical indications for wine have been discussed by the EC and the U.S. on many occasions. The U.S. took obligations under the bilateral EC/U.S. wine agreement of 1983 to prevent further erosion of geographical indications for wines into semi-generic names, an obligation which was confirmed and clarified in a letter from the Director of the Bureau of Alcohol, Tobacco and Firearms in 1991. Currently, talks are proceeding between our officials to explore the scope for an overall wine agreement of mutual benefit.

The EC considers that the adoption of the d'Amato amendment would significantly hinder our bilateral wine relationship, and would have a very negative influence on the ongoing bilateral wine talks. Such an amendment would have serious implications in terms of the United States' existing obligations under the EC/U.S. wine agreement, and would create a new legal situation which appears inconsistent with U.S. obligations under TRIPS articles 24.1 and 24.3.

We trust you will do all possible to avoid such an unfortunate situation developing.

Yours sincerely,
F. Fischler.

ROTH URGES OECD SHIPBUILDING SIGNATORIES TO WAIT FOR U.S. RATIFICATION

Senate Finance Committee Chairman William Roth (R-DE) last week urged foreign signatories to an agreement that would reduce shipbuilding subsidies to give the U.S. additional time to ratify the agreement. Roth said in a July 30 statement on the Senate floor that the U.S. is "close" to approving the deal, and warned signatories against taking steps that might shift the momentum away from ratification.

"I strongly urge other signatory countries not to take any action that might forever compromise our long-held goal of achieving free and fair trade in the global shipbuilding sector," Roth said. "It is my view that the United States is very close -- closer than it has ever been -- to enacting the legislation necessary for completion of U.S. ratification of the agreement."

Roth said he hoped that other signatories to the agreement, which was negotiated among some members of the Organization for Economic Cooperation & Development, understand that the delay in Congress on passing the required legislation was "unavoidable" due to the need to pass the budget bill. The U.S. is the only signatory that has not ratified the agreement.

"This delay should in no way be interpreted as a lack of resolve to bring the OECD Shipbuilding Agreement implementing legislation to closure," Roth said. "It would be terribly counterproductive and inappropriate for other signatory countries to abandon this important agreement at this juncture in reaction to this relatively minor and unavoidable delay."

Congressional supporters of the OECD agreement have worried that the long U.S. delay in ratifying the deal may prompt other signatories to begin considering increasing subsidies to their shipbuilding industries. As this move would violate a standstill provision that signatories agreed to while the deal was being ratified, supporters fear it could lead to a breakdown in the agreement. Other signatories include Japan, Korea, Norway, and the European Union.

Roth said he expects that Congress will be able to pass the implementing legislation soon after it returns from August recess due to the progress made by Senate Majority Leader and Finance Committee member Trent Lott (R-MS) and John Breaux (D-LA), who is also a member of the committee.

"I expect that their work on the implementing legislation and the resolution of certain procedural issues will be concluded shortly to that we can complete committee consideration and congressional passage of this bill as soon as possible after we return in September," Roth said.

U.S. Trade Representative Charlene Barshefsky also was pleased with recent progress, and urged Congress in an August 1 statement to pass the legislation "as soon as possible to avoid an unraveling of the agreement."

But Congress has not yet drafted specific language that reflects the spoken compromise between supporters of the current bill and those who want to ensure that it does not in any way jeopardize U.S. national security. Also, scheduled markups of the current legislation, S. 629, have been postponed.

Instead, members and staff from Finance, the Senate Commerce Committee, and the House National Security Committee have continued to negotiate changes to the bill, according to U.S. industry sources. These sources said the goal is to agree on language before a markup is scheduled so that the markup can be completed quickly.

Sources said one reason why the implementing language has been postponed is because Lott has linked the bill to the passage of another maritime bill, S. 414. This bill would amend the Shipping Act of 1984 by eliminating the Federal Maritime Commission and by deregulating the industry in other ways in order to reduce costs and requirements for U.S. shippers.

As Breaux has sided with union representatives who oppose S. 414, Lott has warned that the bill must be passed before the OECD implementing language can be considered, industry sources said.

Rep. Herbert Bateman (R-VA), chairman of the House National Security subcommittee on military readiness, told Lott last month that certain specific changes must be made in order to win the support of those who want to toughen the bill.

These members have repeatedly warned that the implementing bill must not prevent the U.S. government from awarding subsidies to makers of commercial vessels with defense features. Failing to meet this criteria would threaten U.S. national security by allowing other countries to challenge these subsidies once the agreement takes effect, Bateman argued in his July 10 letter to Lott, reprinted below.

"No trade organization should be granted the right to challenge what is in our national security interests or to order changes in U.S. naval construction programs," Bateman said.

Bateman also recalled that the World Trade Organization has ruled that U.S. regulations on imported gasoline are a "disguised restriction on international trade," and that the shipbuilding agreement should not leave the U.S. open to a similar attack in the area of subsidies to these military-capability vessels. While the letter warns that weak language could lead signatories to challenge these U.S. programs in the WTO, U.S. industry sources pointed out that signatories could only raise disputes to the OECD dispute settlement body that would be created by the agreement.

Bateman also warned that S. 629 needs to explicitly state that the U.S. will withdraw from the agreement if it threatens the Jones Act. The Jones Act requires ships used between U.S. ports to be built by U.S. shipyards.

Bateman said he was "encouraged" by verbal commitments to change the bill to ensure that the Title XI loan guarantee program to U.S. shipbuilders is extended for three years after the deal is enacted, and that it continue to be made available for Jones Act ships. And he reiterated the importance of requiring the U.S. government to take steps against ships dumped into third countries by pursuing complaints under the injurious pricing provisions under the agreement, as opposed to the provisions in the country in question.

Similar letters were also sent to Lott on June 17 by Sens. Olympia Snowe (R-ME) and Susan Collins (R-ME), as well as by Sen. John Warner (R-VA) on July 22.

Bateman also warned that even though these changes are "clearly steps in the right direction," substantial additional changes are "clearly warranted" in order to address the concerns of members who last year voted for a series of similar amendments to the bill that were sponsored by Bateman.

While the letter did not explain what other changes might be required, Bateman warned that "[t]he House spoke very clearly on this agreement when it voted 278 to 149 to adopt my national security amendments." Industry supporters of the OECD agreement have complained that opponents have continued to request additional changes to the bill as soon as other changes have been made.

Meanwhile, industry representatives who have opposed the OECD agreement have said they would support the deal if the changes that Bateman outlined and that Lott and Breaux have agreed to were made. But they have warned that they would need to examine the compromise language before making a final commitment (*Inside U.S. Trade*, June 13, p. 1).

Bateman Letter on Shipbuilding

July 10, 1997

The Honorable Trent Lott
Senate Majority Leader
United States Senate
Washington D.C. 20510

Dear Trent:

It is my understanding that the Senate Commerce, Science, and Transportation Committee as well as the Senate Finance Committee will shortly markup S.629, legislation to implement the OECD Shipbuilding Agreement. While this legislation attempts to address a number of deficiencies in previous versions, I would like to urge you to consider and push for adoption of several provisions which I believe are necessary to ensure the future viability of the U.S. shipbuilding industrial base and our national security.

Consistent with representations made by USTR, I strongly believe that S.629 must be amended to ensure the complete exemption of the Jones Act from the application of the Agreement's terms. As currently drafted, S.629 provides that the President shall give notice of intent to withdraw from the agreement if it is determined "that the implementation of the Agreement is significantly undermining the administration or operation of the statutes or significantly impeding them from achieving their objectives." Although I personally believe that the House passed language on this same subject is clearer and more precise, I would respectfully suggest that the application section, section 118 in S.629 should be amended to include a mandatory withdrawal mechanism should trade countermeasures be authorized against U.S. shipbuilders who continue to build for the domestic market. To make it clear that the Jones Act is not affected by this agreement, S.629 should further be amended to clarify that the favorable terms of the current title XI loan guarantee program will continue to be available to vessels constructed for the Jones Act after the enactment of implementing legislation. Such provisions are essential to preserving the integrity of the Jones Act, and should in no way threaten implementation of this agreement or approval by the foreign signatories.

The House also included a provision to clarify that nothing in the Agreement should be construed as preventing the United States from taking any action which it considers necessary for the protection of its essential security interests. This House-passed provision would ensure that the Department of Defense could not be challenged before the World Trade Organization, made up of foreign judges, by giving the Secretary of Defense the authority to invoke national sovereign authority to define for purposes of exclusion from the agreement the terms "military vessel", "military reserve vessel", or "essential security interest." No trade organization should be granted the right to challenge what is in our national security interests or to order changes in U.S.naval construction programs.

We have been down this road before. Last year, the World Trade Organization declared a regulation of the Environmental Protection Agency on reformulated gasoline imports and Clean Air Act standards to be a "disguised restriction on international trade." Though the WTO accepted the goals being pursued by U.S. environmental policy and regulations were legitimate, it still ruled that the U.S. had used "a disguised restriction on international trade" to carry out a policy against the interests of refiners in Venezuela and Brazil. One can only imagine the same kind of ruling, substituting "security interests" for "environmental objectives." I do not believe that we should leave the door open for foreign challenges to DOD's acquisition of non-combatant reserve and auxiliary vessels or support for commercial designs with national defense futures. It is my understanding that the Navy fully supports the House passed definitions on this subject and, that while the USTR has attempted to resolve this issue, it is clear to me that the several versions being discussed are still inadequate.

Finally, I am encouraged by representations made on the floor of the Senate that you will seek to have S.629 allow for the continuation of the title XI Loan Guarantee program under the current favorable terms and conditions for three years for export vessels and to allow for incorporation of the House passed "Third Country" antidumping provision S.629. I note that S.629 also incorporates a number of the other changes which were adopted by the House last year.

These changes are clearly steps in the right direction, however I believe that substantial additional changes are clearly warranted to address the concerns of the House of Representatives last year. The House spoke very clearly on this agreement when it voted 278 to 149 to adopt my national security amendments. Thank you for your consideration of these national security concerns with the agreement and the underlying concerns that I have with S.629. I look forward to speaking with you further on these issues of vital interest to our nation and its shipbuilders.

Sincerely,

Herbert H. Bateman (R-VA)
Chairman
Special Oversight Panel on the Merchant Marine

EX-IM BANK SURVIVES FUNDING ELIMINATION VOTE, AWAITS FINAL HOUSE VOTE

The Export-Import Bank last week survived a House vote on an amendment that would have eliminated its funding, along with funding for other export promotion programs such as the Overseas Private Investment Corporation (OPIC). During House debate last week on Title I of the foreign operations appropriations bill, which deals with export promotion, House Banking and Financial Services committee member Ron Paul (R-TX) introduced the amendment, which was ultimately voted down 387-40.

Among the 37 Republicans who voted for the measure were Majority Whip Tom DeLay (R-TX) and Government Reform and Oversight Committee Chairman Dan Burton (R-IN). Democrats supporting the measure were Edward Markey (D-MA), Gene Taylor (D-MS) and James Traficant (D-OH).

As the House was unable to finish debate on the entire bill, the House was not able to vote on the appropriations bill in July, and will now do so after the August recess.

Earlier in July, the House Appropriations Committee approved an Ex-Im appropriation of $632 million for its program budget. That amount is $94 million less than last year's level, but matches the Administration's request for FY-98.

Meanwhile, the full Senate on July 17 authorized $700 million for Ex-Im's program budget and $46.6 million for administrative expenses.

On Ex-Im's reauthorization, the Senate Banking committee last week marked up a bill that would keep Ex-Im running until 2001. The Senate bill was amended in committee to include a provision that would require the bank to promote use of its services by small and medium-size businesses. Following the July 31 markup, Committee Chairman Alfonse D'Amato (R-NY) said he would seek floor time for the Ex-Im reauthorization as soon as the Senate returns, sources said.

On July 9, the House Banking Committee marked up its Ex-Im reauthorization bill, which includes a similar provision on small and medium-sized businesses and also would reauthorize Ex-Im until 2001. The House bill was reported with other amendments: one that would require Ex-Im to include two labor representatives to be appointed to its Advisory Committee and one that would ensure that a preference be shown by the Bank to U.S. companies that are committed to the creation of jobs in the U.S.

Congressional supporters of OPIC also had to fend off efforts last week to cut funding for the agency, which provides loans, loan guarantees, political risk insurance and project finance to U.S. companies hoping to invest overseas.

Specifically, OPIC survived an attempt by Budget Committee Chairman John Kasich (R-OH) and Rep. Edward Royce (R-CA) to cut its administrative allotment by 35%, from $32 million to $20.8 million. The amendment was rejected July 30 by a vote of 272 to 156.

A similar amendment was defeated in the Senate July 16. The Senate last month granted OPIC $60 million for its program account and $32 million for administrative expenses.

Regarding reauthorization of OPIC, two legislative options are available, according to informed sources. In the Senate, a rider attached to the foreign operations and export promotion appropriations bill last month by Sen. Mitch McConnell (R-KY) would reauthorize the agency for two years. However, if the amendment does not become part of the conference agreement, the agency could still be reauthorized by a free-standing bill.

A free-standing bill has begun to move in the House, where it was reported amended to the full House International Relations Committee last month. In the International Economic Policy and Trade subcommittee markup, the bill was amended to include a provision that would prohibit OPIC from providing support for any projects in countries that do not meet certain standards for human rights practices and political development.

But a congressional source, said this amendment would cripple OPIC's activities, which by their nature are primarily involved in developing countries, few of which meet all of the amendment's criteria for democratic freedoms and economic liberalization.

In a related development, the Senate late last week confirmed George Munoz to be the new President and CEO of OPIC. Munoz previously served as the Chief Financial Officer and Assistant Secretary for Management for the Treasury Dept.

REPUBLICAN FAST TRACK STAND MAY BE POLITICAL HANDICAP, DUNN SAYS

A Republican member of the House Ways & Means trade subcommittee late last week acknowledged that her party's stance in favor of largely excluding labor and environmental provisions from future trade agreements could backfire electorally. Rep. Jennifer Dunn (R-WA) defended the position that such provisions should only be directed related to trade, but noted that this stance could leave Republicans vulnerable to being portrayed by Democrats in the upcoming mid-term congressional elections as anti-environment and anti-labor.

"We don't want ever to be put in that position, so there's a little paranoia attached," Dunn told the Washington International Trade Association July 31. "We are at this time willing to take few chances even though we appreciate how important fast track is."

The current Republican stance is that labor and environmental measures must be directly related to trade in order to be included under the expedited approval procedures provided for trade agreements under fast track. Dunn said Republicans hoped Democrats would not use labor and environmental issues against them in the 1998 elections in the same way the issue of Medicare was used in the 1994 congressional races.

"Republicans continue to be a bit fearful that, if we do go along with the Administration and are where we are now on labor and environment, that we will be portrayed by Democrats in various elections next year as anti-environment, anti-union," Dunn said.

In addition to partisan differences, efforts to renew fast track authority must overcome divisions within both parties, according to Dunn. For example, fast track faces opposition within the Republican party from the supporters of former presidential candidates Ross Perot and commentator Patrick Buchanan, she said.

"Folks from the Perot side are very strong with certain members of Congress, as are the folks from the Buchanan point of view," Dunn said.

On the Democratic side, labor union opposition and the rivalry over the party's presidential nomination present problems for the Administration in its fight for fast track, according to Dunn.

"You have two obvious nominees, [House Minority Leader Richard] Gephardt [(D-MO)] and [Vice President Albert] Gore, who are battling each other over trade, among many, many other issues," Dunn said. "There is some sense, certainly on the part of Gephardt, that fast track is not as important. Presidential politics does play a role."

Dunn added that she was heartened to see the President getting involved in the fast track campaign. "I'm very pleased to see the President finally putting his weight and the weight of the Administration...behind this effort," Dunn said.

She emphasized, however, that Republicans have done all they can to strike a compromise with the Administration on how to include labor and environment concerns in a fast track bill.

"You get to a point where it is not worth moving any farther," Dunn said. "We want fast track, but we believe we have negotiated, and been negotiated with, as far as you can go, and so we are pretty much at the point of no more movement."

But Dunn said fast track supporters must take advantage of timing, and that their greatest opportunity will come in September, when the Administration has promised to present its legislative proposal.

"[T]he bottom line is for the President to come to Congress, demonstrate his good faith [and] ask for our help," she said. "So we are very interested in moving ahead with this, if we can come to a satisfactory conclusion."

U.S. GUN MAKER FILES SECTION 301 PETITION TO BOOST EXPORTS TO BRAZIL

A major U.S. gun manufacturer has called on the Clinton Administration in a Section 301 petition to help open the Brazilian market for the import of small firearms and their parts by pursuing, if necessary, a dispute settlement case in the World Trade Organization. In its petition, Smith & Wesson charged that the Brazilian government is maintaining discriminatory taxation and distribution requirements, as well as licensing procedures, which insulate the domestic industry from foreign competition.

The "cumulative effect" of these policies is driving up the cost of U.S. firearms in Brazil to a level "substantially higher" than domestic equipment, a private-sector source said. In addition, imports are further blocked by a partial embargo on certain firearms enforced by the Brazilian government, the petition said.

"Smith & Wesson urges the United States to investigate this matter, consult with the Government of Brazil, and proceed with dispute settlement as necessary under the GATT [General Agreement on Tariffs & Trade]...," the July 17 petition said. "Above all, Smith & Wesson's goal is that the government of Brazil accord national treatment to all imports into Brazil of small firearms and parts thereof from the United States in every regard."

The company filed the complaint after trying for several years to work with the Brazilian government to improve access to the Brazilian market, which was the second-largest worldwide last year behind the U.S., according to a U.S. industry source. But he held out the possibility that the problem could be settled without a formal dispute settlement proceeding. "If there is another way to approach this to open the market, we would consider it," he said. But given that all previous efforts have been fruitless, the Section 301 route is the "best approach" now, he said.

The source dismissed the notion that USTR may shy away from pressing a case for increased exports of firearms. "This is a legal product in the U.S. and in Brazil," he said. There has not been "any reaction" from the U.S. government regarding the nature of the product, he said.

The source pointed out that the facts of the petition have been prepared in close consultations with the U.S. government. "There has been a good deal of back and forth with USTR and other agencies" in the preparation, he said. "It is my impression that there is not great disagreement" on the substantive issues raised.

Under Section 301 of U.S. trade law, the Office of the U.S. Trade Representative is required to act in this case because the Brazilian policies in question violate the rights of the United States under existing trade agreements, the petition pointed out. But even without this breach, Brazil's barriers to imports are actionable under Section 301 as "unreasonable acts, policies, or practices" that burden or restrict U.S. commerce, the petition said.

Smith & Wesson wants Brazil to terminate the embargo and amend its discriminatory application of taxation rules and regulations, which drive up the cost of Smith & Wesson guns in Brazil, according to the petition. It wants U.S. imports of the specified guns to be treated equally with those made in Brazil, the petition said. If Brazil agrees to do so, the U.S. government should closely monitor the country's compliance with its commitments, the petition said.

None of the Brazilian policies identified can be justified by the exemptions that the GATT allows for countries that need to safeguard their balance of payments, bolster an infant industry or protect their essential security interests, according to the petition.

For example, Brazil cannot claim it needs the restrictions for balance of payments reasons because it is not in the early stages of development. Based on its per capita gross national product, Brazil has been classified as an "upper middle income" country by the World Bank, according to the petition. In addition, the country ran a $13 billion balance-of-payments surplus in 1995, the last year for which official data are available, the petition said.

Brazil maintains a partial embargo on certain small firearms and imposes restrictions on the financing of such imports in violation of Article XI, which prohibits trading partners from imposing prohibitions or restrictions other than duties, taxes or other charges, according to the petitioners. A U.S. private sector source said that he knew of no public defense of the embargo and other restrictions ever made by Brazil.

The petition also says Brazil's certification and licensing for imports of small firearms is a restriction impermissible under the same article. The import licensing and administrative procedures applied to the guns in question are also a violation of Article 3 of the licensing agreement because they restrict and distort trade, the petition said. They also violate Article 5 and 6 of the agreement because they are not as simple as they could be, it said.

In addition, Brazil's system of taxation and the requirement that imported small firearms for the civilian market cannot be sold directly from the importer to the retailer violates Article III of the GATT, according to the petition. Under this national treatment provision, Brazil must treat imports no less favorable than domestic products. This additional level of distribution increases the cost of guns early in the process, a difference which is then compounded by the subsequent application of tax rules, the petition charged.

Brazil has also required since March that importers provide immediate payment for goods, including firearms, by depositing Brazilian currency in specified banks, the petition said. This means importers must transfer their payments "far ahead" of the time specified in regular commercial contracts, thereby making products more expensive for importers, the petition said. This obligation violates Article XI and the national treatment provision of GATT Article III.

Brazil also implements the provision in a way that favors its trading partners in Latin America by setting a higher value of imports at which it is triggered, the petition charged. This violates Article I of the GATT, which obligates Brazil to extend the same treatment to all its trading partners, according to the petition.

The petition defines small firearms as pistols and revolvers ranging in caliber from .22 to .45 inches.

While Brazil's volume of exports of small firearms to the U.S. has risen dramatically to about 250,000 units yearly since 1997, total U.S. exports to Brazil have been 5,766 units during that same time period, according to petition. Last year, 180,000 small firearms were purchased in Brazil, it said.

TUNA-DOLPHIN LAW DELAYS LABEL CHANGE UNTIL COMMERCE STUDY IS DONE

The Clinton Administration and other proponents of altering U.S. law to allow more imported tuna to be labelled "dolphin-safe" were forced last week to delay that change, and instead negotiated compromise legislation that passed the Senate. The language would immediately lift the U.S. embargo on dolphin-unsafe tuna and set in motion a process that could allow the definition of "dolphin-safe" tuna to be expanded in the future.

The Senate approved the compromise in a 99-0 vote on July 30. The House, which earlier had passed a version that would have altered the label in accordance with the Administration's wishes, is expected to adopt the Senate version upon its return from the August recess. This move would avoid the need for a House-Senate conference, which could threaten to undo the delicate compromise reached in the Senate, a Senate source said.

The compromise legislation would immediately lift the ban on imports of tuna from countries including Mexico and Colombia, but would keep in place the current definition of "dolphin-safe" tuna for labeling purposes until at least March 1999, pending the preliminary findings of a study on whether the chasing and encirclement of dolphins in the Eastern Tropical Pacific Ocean (ETP) has a "significant adverse impact" on two species of dolphins.

Current U.S. law does not allow tuna caught using purse seine nets that are set on schools of dolphins, under which mature tuna tend to congregate, to be labeled "dolphin-safe." The proposed new definition would allow tuna caught by setting nets on dolphins to be labeled "dolphin-safe" as long as no dolphins are observed killed or seriously injured during the process.

Under the compromise, which was based on proposals made by Sen. John Kerry (D-MA), the new definition would go into effect if the Secretary of Commerce makes a preliminary determination in March 1999, based on the initial findings of a National Marine Fisheries Service study, that setting nets on dolphins does not harm the northeastern offshore spotted dolphin and eastern spinner dolphin populations.

The Commerce chief would also make a final determination between July 2001 and December 2002 based on a separate, broader study that involves more dolphin species. This study also takes into account the potential role that "stress" from being chased plays on dolphins' population levels, as well as the effect that alternative ways of fishing has on the levels of bycatch, a Senate source said.

Until the positive Commerce determination, all tuna caught during an entire months-long fishing expedition could not be labeled "dolphin-safe" if dolphins are purposely encircled at any point during the trip. If, on the other hand, dolphins are observed killed or seriously injured during any particular setting of nets during a trip that does not purposely target the marine mammal, only the catch from that particular set could not be labeled "dolphin-safe."

The deal in principle was struck between senators on both sides of the issue and the Administration as the scheduled vote to end Senate debate approached on July 25, but only after a communication from National Security Advisor Sandy Berger was delivered to Sen. John McCain (R-AZ), the chairman of the Senate Commerce Committee. Berger told McCain that high-level Mexican officials had provided assurances that Mexico, the main Latin American nation affected by the tuna embargo, would not object to provisions of the Senate compromise as violating the Panama Declaration, according to informed sources.

The Panama Declaration is a 1995 agreement of intent signed between the U.S., nine Latin American fishing nations, France and Vanuatu to create a legally binding international treaty to protect all marine species in the Eastern Tropical Pacific Ocean fishery. Under the declaration, the legally binding international treaty would be negotiated once the U.S. lifts its embargo and implements the "dolphin-safe" label change, although it would now appear that the other countries have agreed to move forward to do that even though the label change has been delayed.

Upon seeing the legislative draft of the compromise, however, Mexican Undersecretary for Fishing Carlos Camacho subsequently tried to insist, in a July 29 letter to McCain, that the interim labeling standard be implemented on a per-set rather than on a per-trip basis. This would have allowed fishermen to encircle dolphins on one set and yet still label tuna caught in other sets on the same trip as "dolphin-safe," without having to exclude all tuna caught on the trip from the label.

Camacho's letter, reprinted below, threatened not to begin negotiations toward creating a legally binding instrument for the Panama Declaration if the per-set designation was not allowed for all labeling purposes. Although Camacho's eleventh-hour demand for changes was largely rebuffed, Mexico nonetheless intends to press for those talks to begin early this fall, informed sources said.

Mexico's acceptance of the deal was confirmed this week by an environment ministry official based in its embassy in Washington, DC.

"Given the circumstances, it was the best available outcome in the short term," Mario Aguilar of Mexico's ministry of environment, natural resources and fisheries said in an interview. "However, I feel very disappointed that the environmental considerations were probably the single-most absent considerations of this process, particularly among the opponents" of the label change.

"Although this result is basically a delay," he said, "I did not hear any argument as to why the ecosystem should continue suffering for another two years." In Mexico's view, harm to immature tuna, sharks, sea turtles and other forms of marine life is encouraged by the current definition of the "dolphin-safe" label used in the U.S., he said. The definition prohibits setting nets on schools of dolphins, where mature tuna often congregate, thereby promoting "predatory fishing practices," such as setting on logs, which increase the bycatch of other marine species, according to Aguilar.

Serious negotiations in the Senate on a potential delay in the labeling change ensued after a cloture motion was filed on July 23, and it became apparent that the proponents did not have a clear-cut super-majority of 60-plus votes on which to override a filibuster threat by opponent Sen. Barbara Boxer (D-CA), congressional sources said (AT, July 24, p. 1). At the same time, Boxer and her allies were forced toward a serious compromise by the fear that a breakdown in the negotiations followed by charges of bad-faith from the pro-label-change side could peel enough votes away that the cloture motion could not be defeated, a Senate source said.

Until the compromise was struck, the proponents — which included the Administration, co-sponsors of the original bill, S. 39, John Breaux (D-LA) and Ted Stevens (R-AK), the U.S. tuna fishing industry, and five U.S. environmental groups — had steadfastly refused to delay the labeling change. They had argued that such a delay would not faithfully implement the Panama Declaration.

In addition to Boxer, opponents of changing the label included Sens. Joseph Biden (D-DE) and Bob Smith (R-NH) and a range of other U.S. environmental and conservation groups.

Proponents and opponents of the labeling change this week put forward strikingly different interpretations of the implications of the compromise. The proponents emphasized that the new law shifts the burden of producing a 60-vote, filibuster-proof super-majority in the Senate to those who want to preserve the current labeling standards. The shift to the new standard will be automatic once the Commerce Secretary makes a determination that setting nets does not harm two species of dolphins, they noted. The proponents said "existing scientific studies" indicate that this determination should be made without any problem.

But opponents stressed that a previous study carried out by the National Marine Fisheries Service had signalled severe depletions of the two dolphin species at issue, and they questioned whether NMFS could legitimately produce a new study contradicting those findings in such a short time frame.

Because the new law now allows sale in the U.S. of tuna caught in "dolphin-safe" ways under the current definition, one opponent predicted that it could encourage Mexican fishers, one third of whom already fish without setting nets on dolphins, to switch to that method in order to enter the U.S. market with that label. Prices for tuna in the U.S. are higher than in alternative markets.

Opponents were also preparing to reinvigorate a consumer boycott against any dolphin-unsafe tuna which enters the U.S. market now that the embargo has been lifted. Such a boycott could easily be expanded to all tuna if the Commerce Secretary makes a determination that dolphins are not being harmed by chase and encirclement, because that action would, in their view, call into question the "dolphin-safe" label, opponents said.

Mexican Letter on Tuna-Dolphin Compromise

Washington D.C.
July 29, 1997

The Honorable John McCain
Chairman
Committee on Commerce, Science and Transportation
United State Senate
Washington D.C. 20510

Dear Mr. Chairman:

It is with particular concern that I find it necessary to write this letter on behalf of Ambassador Silva-Herzog and myself, in relation to the work that has been taking place over the past several days by Senate staff to draft legislative language for S.39 consistent with the agreement reached among interested Senators last Thursday. It is in this regard and considering the preoccupation previously expressed by Mexico and other countries parties to the Panama Declaration that I would like to share with you substantial concerns regarding the apparent results of those staff drafting meetings.

The resulting legislative draft presented to us at 5:00 p.m. yesterday (identified as the 3:20 p.m draft) includes numerous substantial changes that go well outside of what we understand was the compromise reached among yourself and the other Senators. Furthermore, and most important, the language directly implementing the compromise is significantly inconsistent with the compromise principles we agreed to on Friday morning, and is inconsistent with clarification commitments made directly to us at the time we accepted points one through four of the "compromise".

Specifically, we were assured on Friday that "dolphin safe" labeling standards would be determined on a per-set basis, not a per-trip basis during the period after regulatory implementation and before the March 1999 finding on significant adverse impact. This was the only condition the countries placed on acceptance of the compromise. Such a determination is crucial to the countries not only for effective market access reasons, but also for bycatch reduction efforts. Once tracking and verification regulations are in place, there is absolutely no logical reason why this per-set tracking should be delayed.

If, during this intervening time, the standard for dolphin safe remains on a per-trip basis, there is absolutely no motivation for the countries to seek full and prompt implementation of the Declaration of Panama until just before the March 1999 decision. This adjustment to the labeling standard would be consistent with other changes included by staff, including immediate inclusion of mortality and serious injury standards. Conversely, if the standard will be on a per-set basis, Mexico will call for a special meeting of the intergovernmental body of the end of August to begin work on prompt implementation of the Declaration including negotiation of the binding legal instrument.

I am hopeful that the transfer of the compromise agreement into legislative language can be made consistent with the agreement as it was presented to the nations last Friday.

Once again, please accept my appreciation and respect for your continued support of our effort to effectively manage all of the living marine resources of the eastern Tropical Pacific Ocean.

With warm regards.

Sincerely,

Carlos Camacho

COSTA RICA GIVEN GO-AHEAD TO PREPARE DRAFT FTAA LAUNCH DOCUMENT

Western Hemisphere trade negotiators last week authorized Costa Rica to draft by October an initial version of the ministerial declaration which will be used to launch the formal negotiations for a Free Trade Area of the Americas. In a July 29-31 meeting in San Jose, FTAA vice ministers from 28 countries agreed that Costa Rica, which is chairing this round of the FTAA process, should use an "annotated outline" of the Declaration of San Jose as a basis for its drafting effort.

The annotated outline explains on a point-by-point basis why specific topics should be included in the declaration. According to its introduction, the outline "only represents a point of reference for an ordered dialogue to aide in the drafting of the Declaration of San Jose and is entirely subject to the consideration of the Preparatory Committee," which is made up of the FTAA vice ministers.

The outline says that the document used to launch the FTAA talks should be patterned in large measure after the 1986 Punta del Este Declaration, which kicked off the Uruguay Round negotiations of the General Agreement on Tariffs and Trade. The launch document should outline the general principles which have already been agreed upon by the 34 nations participating in the process, it says. And the launch document should also state the specific issues to be negotiated in each of the 12 subject areas on which an FTAA working group has been formed, according to the outline.

In addition, the document should make clear how the formal talks would be managed and organized, and where they would be held, it says. One of the key questions to be answered in the document is whether the talks "will be conducted in stages or simultaneously," according to the annotated outline.

The final launch document will be approved by FTAA trade ministers at a ministerial in San Jose now tentatively scheduled for March 1998, sources said. Costa Rica is expected to draft the initial version of the Declaration of San Jose in time for the next meeting of the FTAA vice ministers, which is tentatively scheduled to take place Oct. 28-30 in Puntarenas, Costa Rica.

The outline calls for references to be made in a separate section to the roles to be played by the business sector, and by the labor and environmental sectors. But this way of organizing the declaration was called into question by a number of delegations at the last month's vice ministerial, and Costa Rica indicated it would rethink the proposal.

The delegations argued that the established participation of the private sector through the Americas Business Forum (ABF) is more broadly accepted, and should not be placed alongside the less-mature and more-controversial participation of labor and environmental sectors in the FTAA process. The ABF has participated in each of the three FTAA ministerials thus far, and its private-sector recommendations have been taken into consideration by the governments.

The Uruguay Round's Punta del Este Declaration is a "valid" point of reference for the FTAA launch document because both negotiating exercises have addressed complex issues and involved a large number of participants with important differences in size and development levels, the outline says.

Similar to the Uruguay Round, the FTAA will go beyond traditional tariff and non-tariff negotiations to provide disciplines in the areas of subsidies, countervailing duties and antidumping, standards and technical barriers to trade, it notes. And the hemispheric talks will also address the so-called "new issues," such as intellectual property, trade in services and investment, which were addressed in international trade talks for the first time during the Uruguay Round, it adds.

One section of the outline, which called for the inclusion of commitments on "status quo and dismantling," also known as standstill and rollback commitments, spurred significant debate at last week's vice ministerial.

The Southern Cone Common Market (Mercosur) delegation, among others, argued that such commitments were not needed because all members of the FTAA negotiation are members of the World Trade Organization, and thereby already obliged not to raise tariffs beyond their bound WTO rates or to otherwise violate WTO disciplines. But the U.S. and Canada appeared unwilling to relinquish the idea of including such commitments, which have been a standard, though oft-violated, part of most bilateral or regional trade negotiations.

EU TO INCLUDE GENETICALLY MODIFIED SOY, CORN IN NOVEL FOODS RULE

European Union member states last week unanimously approved a European Commission proposal to expand its Novel Foods regulation, which outlines labelling requirements for foods containing genetically-modified organisms (GMOs), to cover products derived from genetically altered corn and soybeans, according to EU officials.

Following the July 31 decision, the Commission now has until November 1 to make a specific proposal on how to expand Novel Foods to cover these products. The Commission will likely develop either a list of food products that will have to be labeled as genetically modified, or a set of criteria against which products will be measured to determine if they should be labeled, these officials said.

"Before November 1, we'll have another round to define the rules more clearly," one EU official said. "We've said the principle of Novel Foods applies [to products derived from GMO corn and soy], and we'll go into detail later."

While it is still unclear which corn and soy products will have to be labeled as containing GMOs and which will not, products that are highly processed are generally less likely to require labeling, the official added. Processed products are less likely to contain live genetically-altered material, he said.

The details of the decision will be worked out according to the Commission's recently announced guidelines on labeling requirements for GMO products, which were released late last month and apply to all agriculture products containing GMOs, sources said. Among other things, those guidelines do not foresee requiring trading partners to segregate GMO and non-GMO agricultural exports to the EU, and instead will call for products to be tested and labeled according to whether they "contain" or "may contain" GMO material.

The EU last year accepted the release into the environment of genetically modified corn and soybeans under directive 90/220, which covers only environmental release and does not apply to products ready for human consumption.

In a related development, European Commission President Jacques Santer assured U.S. Trade Representative Charlene Barshefsky and U.S. Agriculture Secretary Dan Glickman in a July 30 letter that the EU will not require the U.S. to segregate its GMO products under its new labeling guidelines. The U.S. had feared that requiring segregation would effectively block U.S. exports to Europe, since the U.S. does not now and has refused to segregate GMO and non-GMO products.

"The approach is non-discriminatory and fully in accordance with the EU's international obligations," Santer said in the letter, reprinted below. "It does not impose mandatory segregation, only proportionate labelling requirements, providing certainty for operators while avoiding undue costs."

Santer also noted that the guidelines only foresee actual testing for the presence of GMOs by public authorities for "control purposes" or by companies on a voluntary basis.

"It is my firm belief that such a transparent labelling strategy will help overcome concerns and apprehensions toward modern biotechnology," he wrote. Sources said last week that the letter was also meant to convey to the U.S. that the EU took U.S. reservations about mandatory segregation into account when drafting the guidelines (*Inside U.S. Trade*, Aug. 1, p. 5).

Santer Letter on GMO Rules

Brussels, 30 July 1997

Dear Ms Barshefsky, dear Mr. Glickman,

Thank you for your letter, dated 17 July 1997, concerning the labelling of genetically modified products. I am pleased to inform you that, on 23 July the European Commission agreed on a general orientation on the labelling of products containing or derived from genetically modified organisms (GMOs). In defining this labelling strategy, the Commission responds to the widespread request in Europe for more consumer information as well as calls from industry for a transparent and level playing field. With this initiative, the Commission also intends to address a major obstacle in obtaining the necessary Member State support for product approvals.

Our proposed labelling strategy aims to satisfy this concern by establishing a coherent and transparent labelling framework, giving consumers clear, honest and neutral information about the GMO origin of products in the food chain. The approach is non-discriminatory and fully in accordance with the EU's international obligations. It does not impose mandatory segregation, only proportionate labelling requirements, providing certainty for operators while avoiding undue costs. Although our approach is science-based, it only foresees actual testing for control purposes by public authorities or testing on a voluntary basis by companies.

It is my firm belief that such a transparent labelling strategy will help overcome concerns and apprehensions towards modern biotechnology. It is therefore in the interest of all those who can be expected to benefit from products that have been improved by the means of those new technologies.

With this in mind, I hope I can count on your co-operation when elaborating and implementing the relevant legislation in order to ensure a smooth functioning of this labelling strategy.

Yours sincerely,

Jacques Santer

USTR OFFICIAL SEES BROAD SUPPORT FOR LABOR-ENVIRONMENT RULES IN MAI

A senior official from the Office of the U.S. Trade Representative this week said there is broad support among members of the Organization for Economic Cooperation & Development for U.S. proposals on labor and environment rules in the Multilateral Agreement on Investment.

"We received a very favorable response" to informal U.S. proposals at the last negotiating session, Assistant U.S. Trade Representative for Environment and Natural Resources Jennifer Haverkamp told the Washington International Trade Association on Aug. 6.

Countries opposing any MAI provisions on labor and the environment are "very much in the minority," Haverkamp said. Many others have privately expressed their support for new U.S. proposals, while others have called for stronger, binding provisions, she said.

For example, Germany has said that the MAI should include a beefed-up version of the non-binding Article 1114(2) of the North American Free Trade Agreement, Haverkamp said. That provision states that signatories should not weaken environmental standards, and provides for consultations on the subject. Germany has said the provision should be binding and subject to dispute settlement.

At the July negotiating session of the MAI, the U.S. informally floated several new provisions that would complement the three already in the draft text of the agreement. The first is modelled on NAFTA Article 1114(1) and moves in the direction of creating an exception from MAI disciplines for measures taken to protect the environment. A second would be modelled on provisions of the NAFTA environment side accord, which calls for strong environmental protection laws. A third provision, based on the Rio Declaration, would call for environmental impact studies of investment and effective procedures to dispose of hazardous waste (*Inside U.S. Trade*, July 4, p. 9).

It is unclear when the U.S. will formally propose these measures, Haverkamp said. The Clinton Administration is planning to continue its consultations with environment and business groups on the substance of the proposals, she said.

Timothy Deal, senior vice president at the U.S. Council for International Business, argued at the same Aug. 6 meeting that environmental provisions in the MAI should be as limited as possible, and contended that the MAI is not detrimental to the environment. He also argued that pressure from the environmental community has "slowed the momentum [of the negotiations] somewhat."

Deal outlined what labor and environment provisions the business community could support in the MAI, and largely repeated points made by USCIB in a July letter to the Administration (*Inside U.S. Trade*, July 18, p. 13).

John Audley, program coordinator for trade and environment at the National Wildlife Federation, countered that to the extent that the MAI creates rights for multinational corporations, the MAI should extend similar rights to other entities for investment-related issues.

The MAI is aimed at banning measures detrimental to investment, and will subject these rules to dispute settlement, so it should also allow environmental groups to challenge investment-related measures that affect the environment.

Haverkamp also said that the Committee on Trade and Environment in the World Trade Organization would focus this year on studying key issues on trade-environment linkages and would not make proposals for new disciplines. "There is no expectation of deliverables in terms of changes to [WTO] rules" from the CTE, she said.

WTO members held this year's first meeting of the CTE in May, at which point countries agreed to spent this year's meeting discussing positions in greater detail (*Inside U.S. Trade*, May 30, p. 15). Haverkamp said the next meeting of the Committee in the fall will focus on subsidies and multilateral environmental agreements.

Haverkamp also pointed out that the Asia-Pacific Economic Cooperation forum is currently considering a U.S. proposal, backed by Canada, to liberalize trade in environmental goods and services. It is one of roughly 50 separate proposals for sectoral liberalization, of which the U.S. proposed eight.

APEC members agreed at a May ministerial to submit proposals for sectoral liberalization by the middle of July. The proposals will be considered by senior officials at a late August meeting with a view to launching substantive work on them by the end of November (*Inside U.S. Trade*, July 18, p. 10).

U.S.:
1. Chemicals
2. med eq
3. auto
4. oilseed
5. info tech MRA
6. energy
7. environ
8. wood/pp

EUROPEAN UNION WARNS U.S. ON IMPLEMENTATION OF WTO TELECOM DEAL

The European Union this week warned the Clinton Administration that a new regulation being considered by the Federal Communications Commission risks violating commitments the U.S. made in World Trade Organization negotiations on basic telecommunications services. In a demarche delivered on Aug. 5, the EU told the State Dept. that the regulation allows the FCC undue discretion to block license applications on vague and undefined grounds.

"The European Community and its Member States are concerned that...the FCC would maintain the right to deny access to the U.S. market for applicants from WTO Member countries, on the grounds of unclear and broad concepts," the EU wrote in the demarche.

The EU also emphasized that it reserves the right to challenge any measures which it believes are inconsistent with U.S. commitments under the General Agreement on Trade in Services.

In June, the FCC issued a Notice of Proposed Rulemaking which outlined a public interest test that would be used in determining whether to grant U.S. licenses to foreign firms. The agency also proposed a regulatory presumption in favor of granting such licenses unless petitioners can prove a "very high risk to competition" in granting the license (*Inside U.S. Trade*, June 13, p. 11).

But the EU argued that the continuation of a public interest test would contradict "the aim and spirit" of the WTO agreement by granting the agency undefined discretion to reject license applications. "Furthermore, it would not provide the legal certainty and predictability required to allow foreign telecommunications industries to define their commercial strategies for access to the U.S. market," the EU wrote.

The EU welcomed the FCC's proposed elimination of the "effective competitive opportunities" (ECO) test. This reciprocity-based test conditions the approval of licenses for foreign carriers in the U.S. on the existence of competitive conditions in a given carriers' home country, and has been criticized by WTO members as contrary to the most-favored nation principle.

But the proposed replacement for the ECO test, which would grant licenses in the absence of a proven "very high risk to competition," does not go far enough in guaranteeing access to the U.S. market, the EU argued. "Such an approach would erect additional burdens on foreign companies wishing to enter the U.S. market, which would be subject to challenges by their competitors based on unclear conditions and criteria," the EU wrote.

The EU also charged that the FCC proposal for granting licenses for aeronautical communications services directly violates U.S. commitments in the WTO. The FCC approach of granting these licenses on an ad hoc, case-by-case basis "is not compatible with the U.S. commitments on mobile data communications services."

The WTO agreement "prevent[s] the retention of discretionary powers in the granting of licenses, and instead require the guarantee of legally binding market access rights," the EU wrote.

CHILE TO TARGET U.S. TRADE REMEDY REGIME FOR WTO CONSULTATIONS

Chile last week notified the World Trade Organization that it is planning to request formal WTO consultations over charges that the U.S investigation on whether Chilean salmon has been subsidized or dumped in the U.S. is inconsistent with international trade rules.

"There is some consensus in lawyers' circles in Washington that deal in trade and WTO, that there are provisions in anti-dumping and subsidies of the U.S. that can be challenged with quite an option of success," a Chilean trade official said. The official in Santiago now spearheading the challenge is Ricardo Lagos, who directs WTO-related matters for Chile, sources said.

But a U.S. trade official disagreed with that assessment. "We are confident that we are handling this complaint in a manner completely consistent with our WTO obligations and U.S. domestic law," he said July 30. But U.S. and Chilean officials have acknowledged that Commerce's investigation into imports of Chilean salmon has prompted an unusually large outcry in Chile.

But while the U.S. trade case is an "unfortunate development," the countries continue to maintain a healthy dialogue on overall trade matters, the U.S. official said. "It's certainly not a stake through the heart," he said.

Chile's notification to the WTO was sparked by, but will not focus exclusively on, a July 28 U.S. International Trade Commission affirmative preliminary determination that there is a reasonable indication that imports of fresh Atlantic salmon from the South American nation are causing material injury or are threatening to cause material injury to U.S. salmon producers. That initial finding made evident that the probe would consider all imports of fresh, farmed Atlantic salmon to be like products competing with U.S. salmon sales, regardless of whether the import arrived as a "dressed" whole fish or was shipped as a fillet. Chile had argued to the ITC that its shipments, which are primarily fillets, should be considered distinct products from U.S. salmon, which are mainly sold as whole fish.

A negative ITC determination would have resulted in the termination of the investigation. By Aug. 4, the ITC's views were slated to be sent to Commerce, which will calculate whether subsidization or dumping has occurred.

The investigation was instituted in response to a petition filed June 12 by a group of U.S. salmon farmers, the Coalition for Fair Atlantic Salmon Trade. The case has placed under scrutiny a range of more than a dozen Chilean programs which the petitioners say provide unfair subsidies to their Chilean competitors.

Chilean Director General Juan Gabriel Valdes raised Chilean concerns about the salmon investigation in meetings with WTO Director-General Renato Ruggiero and with U.S. trade officials during a mid-July visit to Geneva.

In a related development, Sen. Richard Lugar (R-IL), in a July 24 letter to ITC Commissioner Marcia Miller, highlighted the need for the U.S. to use its trade remedy laws carefully. Lugar had met a few days earlier with a delegation of Chilean officials who had traveled to Washington to protest the U.S. salmon industry's petition to members of Congress and Clinton Administration officials.

"At a time when the U.S. is considering expansion of NAFTA to Chile, we should be sure to apply our antidumping laws in a consistent and fair manner," Lugar wrote Miller.

Among the lawmakers with whom the Chilean delegation met were Sens. Chris Dodd (D-CT), John McCain (R-AZ), Paul Coverdell (R-GA) and Bob Graham (D-FL), and Reps. Jack Metcalf (R-WA) and E. Clay Shaw (R-FL).

In addition, members of the Chilean delegation met with Counselor to the President Thomas "Mack" McLarty, National Economic Council Deputy Asst. to the President for Economic Policy Daniel Tarullo, National Security Council Special Asst. to the President and Senior Director of Inter-American Affairs James Dobbins, and Commerce Secretary Bill Daley, sources said.

FINANCE COMMITTEE MEMBERS CRITICIZE DRAFT COMMERCE CVD REGULATIONS

Twelve members of the Senate Finance Committee and eighteen other senators last week criticized draft Commerce Dept. regulations on countervailing duties, which they said would not faithfully implement congressional intent as expressed in the Uruguay Round implementing legislation.

"The draft countervailing duty (CVD) regulations published by the Commerce Department earlier this year do not appear to implement the strict and effective remedy against subsidized imports expected by Congress and promised by the Administration," the senators wrote in a July 28 letter to Secretary of Commerce William Daley. "The regulations should be a high-water mark for strict CVD enforcement, not an occasion for temporizing and retreat."

Specifically, the senators called on Commerce to exclude from regulations a methodology which could result in the calculation of lower countervailing duties. Commerce has proposed to incorporate the so-called "cost-to-government" methodology into the regulations. Under this methodology, which reflects existing practice, Commerce calculates the subsidies granted via government equity infusions as the difference between what the government puts into a company minus what it gets back for the equity.

But during the Uruguay Round, the U.S. successfully pressed for the inclusion of the so-called "cost-to-recipient" methodology, which makes the entire subsidy countervailable regardless of what the government gets back. This provision was included in the Agreement on Subsidies (Article 14) and Countervailing Measures and the U.S. implementing legislation (19 U.S.C. Section 1677(5)E).

The senators argued that incorporating the "cost-to-government" methodology in the CVD regulations would "needlessly and unwisely weaken the CVD remedy."

The senators also objected to hints in the regulations that Commerce might continue its existing practices regarding how it calculates subsidies granted before a company was privatized. Commerce currently assumes that part of the purchase price for a company which is privatized includes the repayment of subsidies, a method that lowers the overall value of a CVD duty.

Any move by Congress to go even further, and include in the regulations a provision that the privatization of a company extinguishes the value of a subsidy and eliminates the need for duties, would be "contradicting clearly expressed congressional intent," the senators wrote. While Commerce did not actually propose changes to the principle that privatization does not extinguish otherwise countervailable subsidies, it did seek public comment on the issue earlier this year (*Inside U.S. Trade*, July 11, p. 22).

Finally, the senators criticized the regulations for not codifying "key commitments from the [Uruguay Round implementing legislation] Statement of Administrative Action and recent CVD cases," according to the letter. The statement includes congressional guidance to Commerce to codify into regulations the results of a number of recent CVD cases.

Commerce has scheduled a public hearing on the proposed regulations for Sept. 9 and its likely to complete its consideration of the regulations this fall, according to informed sources.

The letter was signed by Senate Majority Leader Trent Lott (R-MS), as well as the following senators: Jay Rockefeller (D-WV), Orrin Hatch (R-UT), Bob Kerrey (D-NE) Carol Moseley Braun (D-IL), Alfonse D'Amato (R-NY), Max Baucus (D-MT), Jeff Bingaman (D-NM), Joe Lieberman (D-CT), Charles Grassley (R-IA), Arlen Specter (R-PA), John Glenn (D-OH), John Breaux (D-LA), Bob Graham (D-FL), Byron Dorgan (D-ND), Barbara Mikulski (D-MD), Connie Mack (R-FL), Carl Levin (D-MI), Ernest Hollings (D-SC), Patty Murray (D-WA), Kent Conrad (D-ND), Paul Sarbanes (D-MD), Olympia Snowe (R-ME), Rick Santorum (R-PA), Mike DeWine (R-OH), Robert Bennett (R-UT), Slade Gorton (R-WA), Robert Byrd (D-WV), Susan Collins (R-ME) and Larry Craig (R-IA).

Senate Letter on CVD Regulations

July 28, 1997

The Honorable William Daley
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

Dear Mr. Secretary:

The draft countervailing duty (CVD) regulations published by the Commerce Department earlier this year do not appear to implement the strict and effective remedy against subsidized imports expected by Congress and promised by the Administration. U.S. industries -- millions of firms and workers, in virtually every industrial and agricultural sector of the economy -- need and deserve something better.

The rulemaking process should codify current CVD practices and implement only those changes required by the Uruguay Round Agreements Act (URAA). The Administration committed itself to a stronger anti-subsidy remedy during debate over the URAA, implementing the Uruguay Round, and agreed only to lessen the effect of those (such as so-called greenlighted subsidies) which are unambiguously required by the URAA.

The current draft, however, proposes several changes to current practice that would needlessly and unwisely weaken the CVD remedy. For example, Commerce proposes to begin sharply undervaluing equity subsidies pursuant to a new and unjustifiable "cost-to-government" calculation methodology, and pre-privatization subsidies. Additionally, Commerce suggests it may begin excusing pre-privatization subsidies in many instances, contradicting clearly expressed congressional intent. Weakening changes in these areas is in no way required or even encouraged by the statute. Commerce's draft also creates a significant risk of loopholes or wasteful re-litigation by failing to codify key commitments from the URAA Statement of Administrative Action and results from recent CVD cases.

The regulations should be a high-water mark for strict CVD enforcement, not an occasion for temporizing and retreat. We therefore urge you to reconsider and delete the weakening changes proposed in the draft regulations. We stand ready to work with you to ensure that the final regulations provide the strictest possible discipline and reflect sound trade policy and congressional intent.

Sincerely,

Sen. Jay Rockerfeller (D-WV)
Sen. Orrin Hatch (R-UT)
Sen. Bob Kerrey (D-NE)
Sen. Carol Moseley Braun (D-IL)
Sen. Alfonse D'Amato (R-NY)
Sen. Max Baucus (D-MT)
Sen. Jeff Bingaman (D-NM)
Sen. Joe Lieberman (D-CT)

Sen. Charles Grassley (R-IA)
Sen. Arlen Specter (R-PA)
Sen. John Glenn (D-OH)
Sen. John Breaux (D-LA)
Sen. Bob Graham (D-FL)
Sen. Byron Dorgan (D-ND)
Sen. Barbara Mikulski (D-MD)
Sen. Connie Mack (R-FL)
Sen. Carl Levin (D-MI)
Sen. Ernest Hollings (D-SC)
Sen. Patty Murray (D-WA)
Sen. Kent Conrad (D-ND)
Sen. Paul Sarbanes (D-MD)
Sen. Olympia Snowe (R-ME)
Sen. Trent Lott (R-MS)
Sen. Rick Santorum (R-PA)
Sen. Mike DeWine (R-OH)
Sen. Robert Bennett (R-UT)
Sen. Slade Gorton (R-WA)
Sen. Robert Byrd (D-WV)
Sen. Susan Collins (R-ME)
Sen. Larry Craig (R-ID)

SENATE CONFIRMS LARUSSA, SCHUMACHER BEFORE AUGUST RECESS

As part of a mass-approval of Administration appointees late last week, the Senate unanimously confirmed Robert LaRussa as Assistant Secretary of Commerce for Import Administration. LaRussa's nomination had been approved by the Senate Finance Committee in early June, and he had held the post in an acting capacity for over a year.

The Senate also allowed Secretary of Agriculture Dan Glickman to swear in four new under secretaries this week. August Schumacher, Jr., was sworn in as Under Secretary for Farm and Foreign Agricultural Services, and will oversee the Farm Service Agency, the Risk Management Agency and the Foreign Agriculture Service, which he headed previously.

Catherine Wotecki was also sworn in as Under Secretary for Food Safety, a newly created position. Wotecki will oversee implementation of a new science-based meat and poultry inspection system, as well as the reorganization of the Food Safety and Inspection Service, according to a USDA release. She served most recently as acting undersecretary for research, education and economics at Agriculture.

Glickman's other two new under secretaries are Miley Gonzalez, under secretary for research, education and economics, and Shirley Robinson Watkins, under secretary for food, nutrition and consumer services.

BARSHEFSKY HINTS AT FAST TRACK COMPROMISE . . . begins page one

"Our formulation at that point was something rather akin to what Mr. Crane was talking about now," Barshefsky said. "But we are looking at a number of options."

Barshefsky on Aug. 6 repeatedly refused to be more specific about how the Administration bill would treat labor and environment issues, and how many Democratic votes she believes could support a compromise proposal. She stressed that the Administration wants a bill with broad support, but that the key goal is to pass a bill.

"The goal is to achieve fast track," Barshefsky said. "We want the broadest possible support."

Crane told reporters on July 29 that he had not heard back from the Administration regarding his proposed language. In May, House Republicans presented this language to the Administration as they considered moving more quickly on fast track. The Administration did not reject it outright but objected at the time to being presented with what it viewed as an "ultimatum."

At that time and since then, congressional staff have informally discussed possible formulations based on the "trade-related" phrase, but possibly including the words "specifically" or "directly" to narrow the scope of what could be included in trade agreements utilizing a fast track bill with this formulation, a congressional source said.

Committee staff have discussed internally, though not with the Administration, what would be covered under "directly trade-related" language, a congressional source said. This formulation would likely cover labor and environment matters "directly related to imports and exports and therefore our ability to trade," the source said. But, for example, this language would not allow provisions which seek to erode countries' comparative advantage from low labor costs, the source said. Other legislative tools beyond the specific language of the bill, such as committee report language, could further clarify what any language would allow in a trade agreement, congressional sources said.

Trade subcommittee Ranking Member Bob Matsui (D-CA) has warned that tighter language would make it more difficult to attract enough House Democrats to pass such a bill (*Inside U.S. Trade*, May 16, p. 1).

The comment on labor and environment was the closest Barshefsky came to characterizing the substance of how the Administration bill, which is expected to be delivered to Congress in early September, will address key contentious issues. She declined to comment on how the bill might treat the question of whether legislation can include measures "necessary" or "appropriate" to implement trade agreements.

She did say that talks on a free-trade agreement with Chile would be grandfathered into any fast track bill, since consultations began before the 1994 Miami summit. She declined to specify whether such a provision would then result in Chile formally acceding to NAFTA or whether the U.S. would seek a bilateral FTA with Chile. Canada has a NAFTA-equivalent agreement with Chile, and Mexico is updating its agreement with Chile to reflect that standard, she pointed out.

More generally, the Administration is considering the precise nature of the "procedural mechanisms" which the fast track bill will outline for consultations with Congress on other negotiations besides those with Chile. "Plainly, Congress would be involved [from the outset] with respect to countries beyond Chile," Barshefsky said. "The bill takes care of the Chile issue."

A congressional source noted that the Administration has already signalled its support for the enhanced consultation procedures in Crane's bill from 1995 (*Inside U.S. Trade*, Special Report, July 31, 1995, p. S-3). The source suggested that Barshefsky was emphasizing this point "to address the perception that fast track shuts Congress out of the process."

The Administration is still discussing whether the Multilateral Agreement on Investment, whose negotiation has already begun, would be grandfathered so that it could be implemented using fast track, Barshefsky said. She added that it is "not clear" whether the MAI would change U.S. law, and therefore it is unclear whether it would need implementing legislation.

Crane would be willing to consider grandfathering the MAI into fast-track legislation if the Administration sought such a provision, a congressional source said.

Barshefsky said that "over the course of the next two to three weeks" the Administration will consult with members of both parties in both houses of Congress. This process will also bring in business, labor and environmental groups, she said. The goal of the consultations is to allow the introduction of a bill that will be broadly supported from the outset and need not be changed substantially, she said.

White House fast track coordinator Jay Berman told business representatives on August 5 that the Administration would decide on the key issues related to the substance of legislation within the next week to ten days, according to informed sources. Berman said the bill would then be presented informally to members in the week before its formal introduction, informed sources said. Ways & Means Chairman Bill Archer (R-TX) has told the Administration that the bill would take two weeks to go through committee, and that a full House vote could come at the end of September or early October, Berman said.

Berman said this week that the President urged members not to commit to one side or another, and to give the Administration the chance to make its case on fast track. Clinton met with over 60 House members last week and the week before to make the Administration case for fast track (*Inside U.S. Trade*, Aug. 1, p. 1).

"The message was: give us a shot before you commit," one informed source said. The source added the Administration was most likely trying to prevent members from joining the anti-fast track camp during the August recess.

Clinton cited fast track as one of his key priorities for the rest of the year in an Aug. 6 press conference. The President also met with additional House Democrats yesterday (Aug. 7), a White House spokesman said.

In a related development, Senate Minority Leader Tom Daschle (D-SD) late last week called on the Administration to conduct "a more complete public airing" of issues related to the extension of fast-track authority. But Daschle also told Barshefsky in an Aug. 1 letter reprinted below that he looks forward to working with her as the Administration seeks trade negotiating authority.

Daschle first called for an explanation of how the Administration intends to use any new fast-track authority. He cautioned that "the ultimate test of success" is not how many trade agreements are reached but whether they improve U.S. living standards. "Thus, the pace of trade liberalization can influence not only its economic payoff but also its political sustainability," Daschle wrote.

He noted that the 1988 fast track bill allowed Congress to disapprove fast track treatment under certain circumstances. "I believe we should consider building similar features into a renewal of fast-track authority," Daschle wrote.

The Administration should also outline "its overall strategy for achieving upward harmonization" of food safety and environmental standards in regional and multilateral negotiations.

Daschle also requested an outline of the steps the Administration is taking to "systematically dismantle foreign agricultural trade barriers." He said one step in this direction would be enactment of a bill he introduced with Sen. Charles Grassley (R-IA) to create an annual review process for agriculture similar to the Special 301 process for intellectual property. "Reactivation of the Export Enhancement Program would serve a similar purpose," he wrote.

Assistance to U.S. workers dislocated by trade agreements is also crucial, Daschle said. "[T]rade agreements have not been accompanied by sufficient resources for domestic adjustment assistance," he wrote.

Finally, Daschle asked for an explanation of how the Administration intends to involve Congress in the development of new trade agreements. "Any new fast-track authority should carve out a meaningful role for Congressional advisers, including full and timely disclosure of all relevant documents and formal procedures for the full participation of Members and staff in negotiations," he said.

Also on fast track, Reps. Sherrod Brown (D-OH) and Bart Stupak (D-MI) last week circulated a "dear colleague" letter calling for the renegotiation of NAFTA and several other steps designed to guarantee the safety of the U.S. food supply. They also called for provisions on food safety to be included in any new fast track bill.

The letter prompted a quick reply "dear colleague" from Rep. Jim Kolbe (R-AZ), who criticized the accuracy of the case which Brown and Stupak made on the food safety issue.

Daschle Letter on Fast Track

August 1, 1997

The Honorable Charlene Barshefsky
United States Trade Representative
Winder Building
600 17th Street, NW
Washington, DC 20506

Dear Madam Ambassador:

As the Administration develops its request for a renewal of fast-track negotiating authority, I would like to bring to your attention several issues that I believe are of considerable interest to South Dakotans and the public at large. I raise them in the spirit of deepening the dialogue and strengthening the traditional partnership between Congress and the Executive Branch on international trade policy.

The President's negotiating team has accomplished much so far. It has spearheaded several successful negotiations to craft new rules for global commerce and investment, and it has worked hard to enforce the obligations of our trading partners under existing rules. These accomplishments have enhanced the level and fairness of international trade and investment, improving the world economy's capacity to promote rising living standards for developed and developing countries alike. Throughout, you and your colleagues have endeavored to consult closely with Members of Congress. I appreciate your efforts and look forward to working with you as you seek additional trade negotiating authority.

The rapid pace of economic change, the recent completion of the Uruguay Round and North American Free Trade Agreement (NAFTA) accords, and USTR's crowded negotiating agenda combine to raise important questions about how the Administration plans to utilize a renewal of fast-track authority. Above all, what would new fast-track authority mean for American consumers, farmers, and businesses? In my view, a useful first step in answering this question would be to conduct a thorough assessment of the Uruguay Round and NAFTA. We ought to make a point of knowing what is working well and where there is room for improvement before proceeding too far on additional comprehensive trade negotiations, such as regional free trade agreements. Your recently released study on the operation and effects of the NAFTA was a useful contribution to our understanding of these issues, particularly the economic effects of that agreement. However, a number of policy questions remain about NAFTA and the World Trade Organization (WTO) as well as the Administration's future negotiating agenda. These merit a more complete public airing.

<u>First, how would you use a renewed grant of fast-track authority? Which trade agreements do you expect to negotiate and when would you anticipate submitting them to Congress for approval?</u> History teaches that it is important to maintain forward momentum in the process of global trade liberalization. However, the ultimate test of success is not how rapidly new agreements are concluded but how much they lift U.S. living standards. Like other economic policy changes, trade agreements produce winners and losers in the short run. The win-win results predicted by trade theory in the long run depend upon the redeployment of people and assets to more productive pursuits -- a process which takes time. The more change that is compressed into a given period, the greater the potential for losers to outweigh winners, undermining public support for the kind of open trading system that has contributed so much to American agriculture's success. Thus, the pace of trade liberalization can influence not only its economic payoff but also its political sustainablity.

Congress has traditionally exercised oversight of the pace and content of trade liberalization by extending fast-track authority in stages, subject to Congressional votes of disapproval. For example, in 1988 Congress provided the Reagan Administration with three years of general fast-track authority with an optional two year extension subject to a vote of disapproval. Also, the 1988 legislation reserved the right for Congress to disapprove fast-track treatment later for individual negotiations under certain circumstances. I believe we should consider building similar features into a renewal of fast-track authority.

<u>Second, what is the Administration's strategy to ensure that U.S. food safety and environmental standards are not weakened by trade agreements?</u> American farmers, ranchers, and consumers all have a direct interest in ensuring that these standards are harmonized upward rather than reduced to least-common-denominator international levels over time. As you know, questions have been raised about the treatment of these issues in the World Trade Organization and NAFTA. If the public is to retain confidence in decisions by international institutions affecting their health, environmental, and commercial interests, these bodies will need to do a better job of embracing the

fundamental principles of transparency and public participation that Americans have come to expect from administrative proceedings in U.S. government agencies.

In my view, these issues lie at the heart of public concerns about global economic integration and fast-track negotiating authority. For this reason, the Administration ought to share with Congress its overall strategy for achieving upward harmonization of these standards. Among the issues that it ought to address are: 1) the extent to which procedures for setting and enforcing standards differ under the Administrative Procedures Act and relevant international organizations (e.g., Codex Alimintarius, NAFTA Free Trade Commission, NAFTA Committee on Sanitary and Phytosanitary Measures, and WTO); 2) the extent to which U.S. criteria in determining equivalence in the context of food safety and health regulations differ from those of our major trading partners; and 3) the status of efforts to harmonize food safety and environmental standards in the NAFTA Free Trade Commission. In addition, the Administration should be prepared to convey to Congress at an appropriate time its specific strategy for achieving upward harmonization of agricultural and environmental standards for each regional free trade agreement and multilateral WTO round it plans to negotiate under fast-track procedures, including the Free Trade in the Americas Agreement talks scheduled to begin next year.

<u>Third, what steps is the Administration taking to systematically dismantle foreign agricultural trade barriers?</u> As you know, these barriers constitute a large proportion of the total listed in your annual National Trade Estimates survey. A growing number involve complex and relatively untransparent regulatory issues, including sanitary and phytosanitary measures as well as the practices of state trading enterprises, such as the Canadian Wheat Board. Earlier this year, you announced the creation of an Ambassador-level post for agriculture within the Office of the United States Trade Representative. I applaud you for taking this important initiative, which will bring greater focus to U.S. negotiating efforts. As you know, I have introduced legislation with Senator Grassley designed to institutionalize procedures for setting agricultural trade priorities. The legislation, S. 219, is patterned after the successful "Special 301" legislation for intellectual property rights enacted in the Omnibus Trade and Competitiveness Act of 1988. Enactment of this bill would strengthen USTR's hand in market access negotiations with individual countries. It would also increase our leverage in the WTO follow-on agriculture negotiations that are scheduled to begin in 1999 in the same way that "Special 301" facilitated attainment of our intellectual property rights negotiated objectives in the Uruguay Round. Reactivation of the Export Enhancement Program would serve a similar purpose.

<u>Fourth, how is the Administration planning to assist U.S. workers dislocated by trade agreements and ensure that their counterparts in emerging markets have an opportunity to claim a fair share of their country's economic success and become bigger consumers of American exports by exercising internationally-recognized labor rights?</u> For trade agreements to deliver fully on their promise of higher living standards, they must be accompanied by adequate adjustment assistance for dislocated American workers and improvement in labor market standards for workers in developing countries. Previous fast-track legislation addressed these topics; however, trade agreements have not been accompanied by sufficient resources for domestic adjustment assistance. Nor have they made much progress in ensuring that core labor standards in emerging markets will improve in step with labor productivity and overall living standards, a process that is necessary for our exports to these countries to rise in line with our imports from them over the long run. As the pace of global economic integration accelerates, we downplay the importance of these issues at the peril of reducing the economic benefits from and public support for trade agreements.

<u>Finally, how does the Administration propose to involve Congress and the public in the development and execution of its negotiating agenda under fast-track?</u> In my view, Congressional support for the trade policies of this and future Administrations would be bolstered by a rejuvenation of the trade policy advisory procedures written into the first fast-track legislation twenty-three years ago. In theory, our trade laws provide for the active participation of Members of Congress in trade negotiations; Congressional trade advisors are appointed each Congress to give advice on specific negotiations and to serve as accredited official advisers to U.S. delegations. In practice, this has not worked well. Any new fast-track authority should carve out a meaningful role for Congressional advisors, including full and timely disclosure of all relevant documents and formal procedures for the full participation of Members and staff in negotiations.

Again, I raise these issues in the spirit of strengthening the partnership between the Executive Branch and Congress on international trade policy and improving the climate for consideration of fast-track legislation. I look forward to working with you after the August Congressional recess.

Sincerely,

Tom Daschle (D-SD)
United States Senate

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Several officials complained that Chinese offers of "piecemeal" tariff cuts to different countries have made it very difficult to get an overall picture of how well the negotiation is proceeding. The absence of the promised improvement in tariff offers and the lack of an initial services offer largely defined last week's session of the working party, these officials said.

Girard said he foresees a need for "a new series of broad-based and detailed market access bilaterals" in the goods and services areas. "Members are clearly anxious to enter into substantive discussions in the services sector on the basis of the expected offer," he said. "Multilaterally, we should also endeavor to make further progress on the annexes to the draft protocol."

China has promised to make an offer on market access for goods and services in late August or early September. Once this step takes place, another meeting of the working party could be scheduled for the first half of October, Girard said. Chief Chinese negotiator Long Yongtu told the working party that China would "immediately enter into serious negotiations" after its offer is tabled.

The U.S. would likely have a bilateral with China as soon as its offer is tabled, possibly in the context of a working party meeting, a U.S. official said.

Long said it was "understandable" that WTO members were disappointed that China did not table a services offer. But he argued that market access negotiations cannot be expected to make progress as quickly as talks on the draft protocol, which outlines how China will comply with WTO rules.

"[I]t is not realistic to expect any negotiation to make parallel progress in all areas at the same time, let along the negotiation on China's accession to the WTO, which involves wide-ranging subjects and complicated issues," Long said. "It is thus unfair to accuse China on such grounds."

Long also said that China's accession will not be the final opportunity to improve market access in China. "[A]fter becoming a WTO member, China will continue to participate in multilateral trade negotiations and improve the extent of its market liberalization," he said. "In this sense, the market access negotiation of China's accession talks is just the beginning of China's future participation in the multilateral trading system as well as of historical process of continued market liberalization."

The late October visit of Chinese President Jiang Zemin to Washington is not driving the timetable of the negotiation, U.S. Trade Representative Charlene Barshefsky said in an Aug. 6 press conference. "There is no race here," she said. "From my point of view, what is agreed to will have to be very, very good." She also added that China needs to demonstrate a will to make better offers in the talks.

But White House Spokesman Mike McCurry said that the Clinton Administration has not ruled out the possibility of reaching some sort of agreement with the Chinese on WTO accession by the time of the summit, and emphasized that the U.S. would continue "good-faith negotiations with the Chinese to achieve commercially viable terms."

Barshefsky held out the possibility that she would still visit Beijing in the near future to discuss China's accession if its offers improve substantially, and said the negotiation would not necessarily need to be in its final phase for her to go to China. "It is not an endgame scenario," Barshefsky said. "But there would definitely have to be more on the table than there is now."

Assistant to the President for National Security Affairs Sandy Berger will visit China on Aug. 10-13 to continue the "high-level strategic dialogue," which his predecessor initiated last year, according to an Aug. 6 press release. Berger will meet with Jiang and other senior Chinese officials and will also discuss preparations for the fall summit.

During informal working party meetings, the U.S. emphasized the importance of an offer on services, given the importance of distribution services and after sales services for exploiting improved market access in the goods area, according to a U.S. official. The U.S. also welcomed promised cuts on textiles and chemicals products, but believes the phase-in periods are too long, and that the chemical tariffs are "still too high," the official said.

For a number of countries, China offered additional tariff cuts but then extended the phase-in periods, informed sources said.

Long told the working party that the tariff cuts China offered included "over two-thousand chemical and textile products" and further cuts in the areas of autos and auto parts, paper and paper products, "some electrical home appliances," and agricultural products.

The European Union was "comparatively negative" about last week's negotiating session, and identified the lack of a services offer as a real problem, one informed source said. The EU also said that tariff cuts in key sectors were also inadequate, the source said.

Trade officials offered varying theories about why China has not tabled a services offer. One official said the absence of an offer suggests that the Ministry of Foreign Trade and Economic Cooperation cannot wrest control of this area from a number of other powerful agencies, and that it "points to MOFTEC's vain hope" that they can placate WTO members with additional goods concessions instead.

Another official suggested that MOFTEC may be seeking to progress far enough on the goods side so that it can argue internally that making a services offer is unavoidable.

Much of the discussions last week centered on new annexes which China tabled last week, trade officials said. The main document outlined the planned elimination of 395 non-tariff measures, the phase-out periods of which have been reduced for a maximum of eight years. China also outlined a formula allowing an eight to twelve percent growth rate for products that are now subject to quantitative restraints, depending on the product. Many of the NTMs will also be eliminated immediately upon accession.

But the EU argued that since Chinese exports to Europe have grown 15 percent over the last ten years, the growth factors should be at least that much, informed sources said. China countered that growth in the last few years has not been nearly that much, and that the Chinese formula is actually very generous, these sources said.

Long told the working party that concessions in this area are "the most difficult and most sensitive sectors" for China to make. "By making this decision, we have fully demonstrated our determination in eliminating market access barriers."

There were slight changes last week to a previously tabled annex on domestic agricultural supports, informed sources said. One official said that the Chinese "seem to be arguing" that the price for its commitment last week not to use agricultural export subsidies is treatment as a developing country in the area of internal subsidies.

Under the Uruguay Round agriculture agreement, if a developing country's aggregate measure of support is ten percent of production or less, it is not subject to any reduction commitments. To the extent that a developing country subsidizes above that level, it can phase in the required reductions over ten years.

China made the commitment on agricultural export subsidies early last week in bilaterals (*Inside U.S. Trade*, Aug. 1, p. 1). Barshefsky noted that China has not used such subsidies recently, but could have done so in the future to break into new markets.

China also tabled annexes which detailed subsidies to state-owned enterprises and subsidies it will phase out. Another outlined statutory inspection requirements for a broad range of products.

A final annex removed no products from a list of goods subject to state trading, and instead included a few additional tobacco products, informed sources said.

Long also responded sharply to perceived criticism that China must reduce or eliminate its use of so-called "greenbox" subsidies, which are subsidies allowed under the agriculture agreement. Trade officials said this statement was likely a response to inquiries about the precise nature of these subsidies.

"Nobody is challenging their greenbox, but we want to know whether [the subsidies] are green," one official said.

U.S., JAPAN TABLE INITIAL PROPOSALS ON AVIATION . . . begins page one

authorities of Japan and the United States shall resume consultations to amend or review the agreement prior to expiration of this agreement, aiming at another new regime other than Open Skies."

While U.S. officials have said their main goal is to negotiate an agreement that would lead to open skies, an informed source reiterated this week that the U.S. will likely have to abandon that goal given Japan's strong opposition.

As it is, the two sides agreed to enter into formal negotiations only because Japan hinted that it could be flexible in certain areas. Sources said last month that the U.S. would have to use the talks to discover the areas in which Japan might be flexible. For example, Japan said last month that it would consider a "fully liberalized market," but refused to define the term.

The initial U.S. proposal, also reprinted below, is different from Japan's proposal in almost every area to be covered by the talks. Nevertheless, the two sides agreed to meet again in Washington from Aug. 27-29, and are still committed to making an effort to conclude the talks by September (*Inside U.S. Trade*, July 18, p. 8).

Specifically, the Japanese proposal would allow two passenger airlines from each country to be considered "incumbent" carriers under a 1952 bilateral aviation agreement. Under the deal currently, only one of Japan's passenger airlines, Japan Airlines (JAL), is an incumbent carrier, while All Nippon Airways (ANA) is not. Two U.S. passenger airlines enjoy this status, Northwest Airlines and United Airlines.

Incumbent carriers under Japan's proposals would be allowed to land freely in either country, but would have their "beyond rights" capped at an unspecified level. Japan also proposed a formula for increasing these rights every year based on the increase in their use in the previous year. Beyond rights allow airlines to land in a country, pick up passengers there, and continue to a destination in a third country.

In talks leading up to the formal negotiations, Japan had proposed cutting back U.S. beyond rights, which the

U.S. has argued are unrestricted under the 1952 deal, in exchange for more direct flights to Japan.

Japan also insisted last week on an arrangement in which beyond rights are controlled in a way that ensures that U.S. airlines do carry more than a certain percentage of Japanese passengers to third country destinations. Japan has argued that Article 12 of the 1952 agreement indicates that its main purpose is to allow direct landing rights between countries, but the U.S. has rejected the use of this argument as a way to limit U.S. beyond rights under the pact.

Japan's proposal would also grant airlines other than the four U.S. and Japanese incumbent carriers "a considerable amount of weekly frequencies" for direct routes to the U.S. and Japan. Finally, Japan would not limit the ability of U.S. and Japanese airlines to collaborate in providing service on certain routes, known as code sharing, as long as one of the airlines involved has the right to the route in question.

For cargo, the Japanese proposal would allow two Japanese airlines and three U.S. airlines to operate without any limitations between the two countries. But, again under Article 12, Japan proposed limiting the beyond rights of cargo carriers to an unspecified limit. Japan also proposed limiting beyond rights for cargo based on such factors as weight and final destination.

Finally, Japan's proposal said that a "considerable number of slots at [Tokyo's] Narita [airport] will be transferred from U.S. airlines to Japanese airlines." A U.S. official said last month that the U.S. would not accept this demand under any circumstances.

The U.S. has warned previously that these Japanese proposals would be unacceptable. In contrast to Japan's paper, the U.S. paper proposed that two U.S. passenger airlines and only one Japanese passenger airline be designated as incumbent carriers under the 1952 agreement. Under the U.S. proposal, a second Japanese carrier could be designated as an incumbent "in the context of a transition to Open Skies."

An open skies regime would remove all restrictions, including on landing rights, beyond rights, and code sharing rights. The U.S. calls for all restrictions to be removed under its proposal after a three year period, after which an open skies regime would be achieved.

The U.S. also proposed that non-incumbent carriers would be allowed a total of 91 weekly direct flights between the U.S. and Japan, and would allow them to operate between certain non-major cities between the two countries without restrictions.

Regarding beyond rights, the U.S. proposed that these be unrestricted for incumbent carriers, and that seven weekly beyond rights would be granted to non-incumbent carriers. In addition, a second Japanese passenger carrier would be granted unrestricted beyond rights in the context of moving to an open skies regime.

For cargo, the U.S. would grant unrestricted rights for three U.S. carriers and one Japanese carriers. Northwest, United, and Federal Express currently enjoy incumbent status for cargo. The U.S. also said there should be no "Article 12 formula", which would allow U.S. carriers to take only a certain percentage of cargo from Japan to third countries, as Japan has proposed. And the U.S. is also seeking additional routes and frequencies for non-incumbent cargo carriers.

U.S. Proposal on Civil Aviation

U.S.-Japan Aviation Negotiations

The United States advocates a three-year transitional agreement. When the three-year period is concluded, all existing restrictions on entry, routes and capacity would be eliminated. During the transition to an Open Skies regime there would be significant new opportunities for air services. A specific proposal reflecting this concept is presented below. (**Note:** The end of the initial 3 year period, and the date January 1, 2001, used throughout this document, are assumed to be equivalent.)

I. Combination Services

A. Between the United States and Japan

1. Two carriers of the United States and one carrier of Japan would be permitted to operate between any points in the United States and any points in Japan without frequency or capacity limitations.

2. An additional carrier of Japan would have the rights provided in I.A.1. above in the content of a transition to Open Skies.

3. In addition, all carriers not authorized under I.A.1. or I.A.2. above would be permitted to operate the following services, which would be **in addition** to any frequencies already authorized under existing agreements:

A total of 91 weekly roundtrips between any points in the United States and any points in Japan.

Effective January 1, 2001, no limitations on weekly roundtrips.

4. Any and all airlines of each country would be permitted to operate between any cities in the United States, except New York, Los Angeles, and San Francisco, and any cities in Japan, except Tokyo and Osaka, without frequency or capacity limitations. (This would apply to all United States-Japan city pairs, including those between Guam/Saipan and Japan and would be **in addition to** existing Guam/Saipan-Japan route authority.)

B. Intermediate Stops and Beyond the Other Country

1. Upon signature, two carriers of the United States and one carrier of Japan would be permitted to operate with full flexibility beyond the other country's territory to any points.

2. An additional carrier of Japan would have the rights

provided in I.B.1. above in the context of a transition to Open Skies.

3. Carriers not authorized under I.B.1. or I.B.2. above would be permitted to operate up to seven weekly flights in each direction beyond the other country's territory to one point with full local fifth freedom traffic rights. This restriction on beyond services would expire January 1, 2001.

4. There would be no limitations on the carriage of sixth freedom traffic.

II. Cargo Services

A. Incumbents

1. No restrictions on third, fourth, and fifth freedom points or on frequencies for three incumbents for the United States and one incumbent for Japan.

2. An additional carrier of Japan would have the rights provided in II.A.1. above in the context of a transition to Open Skies.

B. Regional Services

Unlimited designations and frequencies for services operated between any points in the United States except Los Angeles, San Francisco, and New York, and any points in Japan except Tokyo and Osaka.

C. Article 12

No application of an Article 12 formula. Freedom composition of traffic on flights operated between the other country and a third country should not be regulated.

D. Nonincumbents

For the initial 3 year period, improvements in routes and frequencies, including fifth freedom beyond services.

E. Additional Designations

1. In addition to the operations provide for pursuant to the Regional Services opportunity described in paragraph II.B. above, each side may designate one additional carrier for all-cargo service during the initial 3 year period following signature. Such designated carrier may operate up to daily service to one point in the other country and beyond to one point with full fifth freedom traffic rights.

2. Effective January 1, 2001, all incumbent and nonincumbent carriers of each side would be permitted to operate between any points in the United States and any points in Japan and beyond to any points with full traffic rights and without frequency limitations.

III. Combination and All-Cargo Services

A. Change of Gauge

Unlimited change of gauge permitted at any point on an authorized route.

B. Pricing

Double disapproval pricing upon signature.

C. Charters

No limitation on the number of charters that may be operated between any points in the United States and any points in Japan, except Tokyo where 400 one-way charters per charter year would be permitted. Improved slot allocation procedures would be negotiated.

D. Code Sharing

1. Any designated airlines could code share with any airlines of the other country on services operated between Japan and the United States.

2. Any designated airlines could code share with any airlines of the other country on route segments between any gateway point and (1) any points in the other country, and (2) any points beyond in third countries. No limitations would apply to the number of such segments.

3. Third country carrier code sharing would be permitted, provided the third country authorizes the other country comparable arrangements.

Japanese Proposal on Civil Aviation

A new framework of civil aviation relationships between Japan and the United States

I. Duration of a new Agreement

The agreement shall be effective for certain years. The aeronautical authorities of Japan and the United States shall resume consultations to amend or review the agreement prior to expiration of this agreement, aiming at another new regime other than Open Skies.

Both sides may also agree to resume consultations to amend or review the agreement at any time, aiming at another new regime other than Open Skies.

II. Combination Services

1. Services between Japan and the US

1) Two designated airlines of each side may operate between any point or points in Japan and any point or points in the US without any limitation as to the number of frequencies or type of aircraft.

2) A certain number of airlines other than the airlines above may operate between any point or points in Japan and any point or points in the US, except certain routes, with a considerable amount of the weekly frequencies for each side in addition to the rights available under the authorization granted to these airlines.

3) There will be, in principle, no restriction on co-terminalization and change of gauge.

4) Any designated airline of either side may enter into a code sharing arrangement with a designated airline of the other side on the route between any point or points in Japan and any point or points in the US including a domestic segment or segments, provided that <u>either of the airlines</u> involved holds the traffic right.

Services under such a code sharing arrangement shall be limited to the total number of frequencies prescribed by limitations, if any, imposed on both airlines involved. (In case either of the airlines involved is entitled to operate on the route without frequencies limitation, no frequency limitation is imposed on the services under such a code sharing arrangement.)

5) A code sharing arrangement with an airline of a third country will not be allowed.

2. Fifth freedom services on beyond and intermediate segments (hereinafter referred to as " fifth freedom services")

1) The two designated airlines of each side referred to in paragraph 1.1) may operate fifth freedom services without any limitation as to type of aircraft up to a certain number of weekly frequencies in total for each side for 1997.

2) From 1998, the annual number of the frequencies referred to in paragraph 2.1) may be increased each year by a percentage equal to whichever higher increase in the fifth freedom traffic to or from Japan or that to and from the US over the preceeding year. The number will not be required to be reduced even in case that the fifth freedom traffic decreased.

3) There will be no restriction on co-terminalization and change of gauge for the two designated airlines of each side referred to in paragraph 1.1).

4) Any designated airline of either side may enter into a code sharing arrangement with a designated airline of the other side without any limitation as to routes and the number of frequencies, notwithstanding paragraph 2.1) and 2.2), provided that the airline of the other side holds the traffic right.

5) A code sharing arrangement with an airline of a third country will not be allowed.

6) Article 12 shall be operated based on the common understanding with regards to the number of passenger.

III. All-Cargo Services

1. Services between Japan and the US

1) Two designated airlines of Japan and three designated airlines of the US may operate between any point or points in Japan and any point or points in the US without any limitation as to the number of frequencies or type of aircraft.

2) There will be no restriction on co-terminalization and change of gauge for the five designated airlines referred to in 1.1).

3) Any designated airline of either side may enter into a code sharing arrangement with a designated airline of the other side on the route between any point or points in Japan and any point or points in the US including a domestic segment or segments, provided that either of the airlines involved holds the traffic right.

Services under such a code sharing arrangement will be limited to the total number of frequencies prescribed by limitations, if any, imposed on both airlines involved. (In case either of the airlines involved is entitled to operate on the route without frequency limitation, no frequency limitation is imposed on the services under such a code sharing arrangement.)

4) A code sharing arrangement with an airline of a third country will not be allowed.

2. Fifth freedom services on beyond and intermediate segment (hereinafter referred to as "fifth freedom services".)

1) The five designated airlines referred to in paragraph 1.1) may operate fifth freedom services without any limitation as to point or type of aircraft up to a certain number of weekly frequencies in total for each side for 1997.

2) From 1998, the annual number of the frequencies referred to in paragraph 2.1) may be increased each year by a percentage change equal to whichever higher increase in the fifth freedom traffic to and from Japan or that to and from the US over the preceding year. The number will not be required to be reduced even in case that the fifth freedom traffic decreased.

3) There will be no restriction on the co-terminalization and change of gauge for the five designated airlines referred to in paragraph 1.1).

4) Any designated airline of either side may enter into a code sharing arrangement with a designated airline of the other side without limitation as to routes and the number of frequencies, notwithstanding paragraph 2.1) and 2.2), provided that the airline of the other side holds the traffic right.

5) A code sharing arrangement with an airline of a third country will not be allowed.

6) Article 12 shall be operated based on a common understanding with regard to weight of cargo.

IV. Slots

A considerable number of slots at Narita will be transferred from US airlines to Japanese airlines.

In This Issue

358

AmericasTrade
formerly Inside NAFTA
a biweekly report on NAFTA, Mercosur, the FTAA and trade policy in the Americas

Vol. 4, No. 16 — August 7, 1997

BUSINESS GROUP PREPARES BROAD $3 MILLION CAMPAIGN TO WIN FAST TRACK

The business coalition that will support the Clinton Administration's upcoming fall push for fast-track negotiating authority called on its members late last month to contribute "a minimum of $3 million" to support a broad lobbying campaign that will include paid media, grassroots organizing and Washington-based lobbying. The Business Roundtable warned that gaining approval of fast track will be an uphill battle because many members of Congress are not solid fast-track backers and the bill will come under heavy criticism from a wide range of other groups.

"Reports from Capitol Hill by congressional allies indicate that prospects for enactment of fast-track authority this year are uncertain," the BRT wrote in a July 24 letter to corporate members of its international trade and investment task force. "With the substantial turnover in the U.S. House of Representatives in the last two elections, many mem-

continued on page 21

U.S., OTHERS OPPOSE MERCOSUR PLAN TO BRING LAWMAKERS TO FTAA TALKS

The U.S. and several other Western Hemisphere nations last week strongly opposed a Southern Cone Common Market (Mercosur) proposal that its member countries be allowed to include "parliamentarians" as observers in its future delegations to talks on the Free Trade Area of the Americas.

Mercosur declared its intention to include legislators as observers on its delegation to the region-wide talks at a July 29-31 meeting of the FTAA trade vice ministers in San Jose, Costa Rica. But countries including the U.S., Canada, Colombia and Barbados protested the idea, noting that "opening the negotiations to additional groups" would merely make it harder to reach consensus among the 34 participating governments, a U.S. trade official said.

"The U.S. has never been in favor of including anyone other than the executive branch at the negotiating table

continued on page 16

BARSHEFSKY HINTS AT SOLUTION TO FAST TRACK LABOR-ENVIRONMENT FIGHT

U.S. Trade Representative Charlene Barshefsky yesterday (Aug. 6) hinted at a possible solution to the question of how to treat labor and environment issues in the context of a bill to extend fast-track negotiating authority. Barshefsky said that language proposed by House Ways & Means trade subcommittee chairman Phil Crane (R-IL), which would allow only "directly trade-related" environment and labor provisions, is similar to language advocated by the Clinton Administration in 1995.

During the 1995 fast track debate, Barshefsky and then-U.S. Trade Representative Mickey Kantor were pressing for similar language, she said. But she cautioned that the Administration is also considering other options.

"Our formulation at that point was something rather akin to what Mr. Crane was talking about now," Barshefsky

continued on page 23

TUNA-DOLPHIN LAW DELAYS LABEL CHANGE UNTIL COMMERCE STUDY IS DONE

The Clinton Administration and other proponents of altering U.S. law to allow more imported tuna to be labelled "dolphin-safe" were forced last week to delay that change, and instead negotiated compromise legislation that passed the Senate. The language would immediately lift the U.S. embargo on dolphin-unsafe tuna and set in motion a process that could allow the definition of "dolphin-safe" tuna to be expanded in the future.

The Senate approved the compromise in a 99-0 vote on July 30. The House, which earlier had passed a version that would have altered the label in accordance with the Administration's wishes, is expected to adopt the Senate version upon its return from the August recess, so as to avoid having to hold a House-Senate conference, which could threaten to undo the delicate compromise reached in the Senate, a Senate source said.

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The compromise legislation would immediately lift the ban on imports of tuna from countries including Mexico and Colombia, but would keep in place the current definition of "dolphin-safe" tuna for labeling purposes until at least March 1999, pending the preliminary findings of a study on whether the chasing and encirclement of dolphins in the Eastern Tropical Pacific Ocean (ETP) has a "significant adverse impact" on two species of dolphins.

Current U.S. law does not allow tuna caught using purse seine nets that are set on schools of dolphins, under which mature tuna tend to congregate, to be labeled "dolphin-safe." The proposed new definition would allow tuna caught by setting nets on dolphins to be labeled "dolphin-safe" as long as no dolphins are observed killed or seriously injured during the process.

Under the eventually-adopted compromise, which was based on proposals made by Sen. John Kerry (D-MA), the new definition would go into effect if the Secretary of Commerce makes a preliminary determination in March 1999, based on the initial findings of a National Marine Fisheries Service study, that setting nets on dolphins does not harm the northeastern offshore spotted dolphin and eastern spinner dolphin populations. The Commerce chief would also make a final determination between July 2001 and December 2002 based on a separate, broader study that involves more dolphin species and also takes into account the potential role that "stress" from being chased plays on dolphins' population levels as well as the effect that alternative ways of fishing has on the levels of bycatch, a Senate source said.

Until the positive Commerce determination, all tuna caught during an entire months-long fishing expedition could not be labeled "dolphin-safe" if dolphins are purposely encircled at any point during the trip. If, on the other hand, dolphins are observed killed or seriously injured during any particular setting of nets during a trip that does not purposely target the marine mammal, only the catch from that particular set could not be labeled "dolphin-safe."

The deal in principle was struck between senators on both sides of the issue and the Administration as the scheduled vote to end Senate debate approached on July 25, but only after a communication from National Security Advisor Sandy Berger was delivered to Sen. John McCain (R-AZ), the chairman of the Senate Commerce Committee. Berger told McCain that high-level Mexican officials had provided assurances that Mexico, the main Latin American nation affected by the tuna embargo, would not object to provisions of the Senate compromise as violating the Panama Declaration, according to informed sources.

The Panama Declaration is a 1995 agreement of intent signed between the U.S., nine Latin American fishing nations, France and Vanuatu to create a legally binding international treaty to protect all marine species in the Eastern Tropical Pacific Ocean fishery. Under the declaration, the legally binding international treaty would be negotiated once the U.S. lifts its embargo and implements the "dolphin-safe" label change, although it would now appear that the other countries have agreed to move forward to do that even though the label change has been delayed.

Upon seeing the legislative draft of the compromise, however, Mexican Undersecretary for Fishing Carlos Camacho subsequently tried to insist, in a July 29 letter to McCain, that the interim labeling standard be implemented on a per-set rather than on a per-trip basis. This would have allowed fishermen to encircle dolphins on one set and yet still label tuna caught in other sets on the same trip as "dolphin-safe," without having to exclude all tuna caught on the trip from the label.

Camacho's letter, reprinted below, threatened not to begin negotiations toward creating a legally binding instrument for the Panama Declaration if the per-set designation was not allowed for all labeling purposes. Although Camacho's eleventh-hour demand for changes was largely rebuffed, Mexico nonetheless intends to press for those talks to begin early this fall, informed sources said.

Mexico's acceptance of the deal was confirmed this week by an environment ministry official based in its embassy in Washington, DC.

"Given the circumstances, it was the best available outcome in the short term," Mario Aguilar of Mexico's ministry of environment, natural resources and fisheries said in an interview. "However, I feel very disappointed that the environmental considerations were probably the single-most absent considerations of this process, particularly among the opponents" of the label change.

"Although this result is basically a delay," he said, "I did not hear any argument as to why the ecosystem should continue suffering for another two years." In Mexico's view, harm to immature tuna, sharks, sea turtles and other forms of marine life is encouraged by the current definition of the "dolphin-safe" label used in the U.S., he said. The definition prohibits setting nets on schools of dolphins, where mature tuna often congregate, thereby promoting "predatory fishing practices," such as setting on logs, which increase the bycatch of other marine species, according to Aguilar.

Serious negotiations in the Senate on a potential delay in the labeling change ensued after a cloture motion was filed on July 23, and it became apparent that the proponents did not have a clear-cut super-majority of 60-plus votes on which to override a filibuster threat by opponent Sen. Barbara Boxer (D-CA), congressional sources said (*AT*, July 24, p. 1). At the same time, Boxer and her allies were forced toward a serious compromise by the fear that a breakdown in the negotiations followed by charges of bad-faith from the pro-label-change side could peel enough votes away that the cloture motion could not be defeated, a Senate source said.

Until the compromise was struck, the proponents -- which included the Administration, co-sponsors of the original bill, S. 39, John Breaux (D-LA) and Ted Stevens (R-AK), the U.S. tuna fishing industry, and five U.S. environmental groups -- had steadfastly refused to delay the labeling change. They had argued that such a delay would not faithfully implement the Panama Declaration.

In addition to Boxer, opponents of changing the label included Sens. Joseph Biden (D-DE) and Bob Smith (R-NH) and a range of other U.S. environmental and conservation groups.

Proponents and opponents of the labeling change this week put forward strikingly different interpretations of the implications of the compromise. The proponents emphasized that the new law shifts the burden of producing a 60-vote, filibuster-proof super-majority in the Senate to those who want to preserve the current labeling standards. The shift to the new standard will be automatic once the Commerce Secretary makes a determination that setting nets does not harm two species of dolphins, they noted. The proponents said "existing scientific studies" indicate that this determination should be made without any problem.

But opponents stressed that a previous study carried out by the National Marine Fisheries Service had signalled severe depletions of the two dolphin species at issue, and they questioned whether NMFS could legitimately produce a new study contradicting those findings in such a short time frame.

Because the new law now allows sale in the U.S. of tuna caught in "dolphin-safe" ways under the current definition, one opponent predicted that it could encourage Mexican fishers, one third of whom already fish without setting nets on dolphins, to switch to that method in order to enter the U.S. market with that label. Prices for tuna in the U.S. are higher than in alternative markets.

Opponents were also preparing to reinvigorate a consumer boycott against any dolphin-unsafe tuna which enters the U.S. market now that the embargo has been lifted. Such a boycott could easily be expanded to all tuna if the Commerce Secretary makes a determination that dolphins are not being harmed by chase and encirclement, because that action would, in their view, call into question the "dolphin-safe" label, opponents said.

Mexican Letter on Tuna-Dolphin Compromise

Washington D.C.
July 29, 1997.

The Honorable John McCain
Chairman
Committee on Commerce, Science and Transportation
United State Senate
Washington D.C.205 10

Dear Mr. Chairman:

It is with particular concern that I find necessary to write this letter on behalf of Ambassador Silva-Herzog and myself, in relation to the work that has been taking place over the past several days by Senate staff to draft legislative language for S.39 consistent with the agreement reached among interested Senators last Thursday. It is in this regard and considering the preoccupation previously expressed by Mexico and other countries parties to the Panama Declaration that I would like to share with you substantial concerns regarding the apparent results of those staff drafting meetings.

The resulting legislative draft presented to us at 5:00 p.m. yesterday (identified as the 3:20 p.m draft) includes numerous substantial changes that go well outside of what we understand was the compromise reached among yourself and the other Senators. Furthermore, and most important, the language directly implementing the compromise is significantly inconsistent with the compromise principles we agreed to on Friday morning, and is inconsistent with clarification commitments made directly to us at the time we accepted points one through four of the "compromise".

Specifically, we were assured on Friday that "dolphin safe" labeling standards would be determined on a per-set basis, not a per-trip basis during the period after regulatory implementation and before the March 1999 finding on significant adverse impact. This was the only condition the countries placed on acceptance of the compromise. Such a determination is crucial to the countries not only for effective market access reasons, but also for bycatch reduction efforts. Once tracking and verification regulations are in place, there is absolutely no logical reason why this per-set tracking should be delayed.

If, during this intervening time, the standard for dolphin safe remains on a per-trip basis, there is absolutely no motivation for the countries to seek full and prompt implementation of the Declaration of Panama until just before the March 1999 decision. This adjustment to the labeling standard would be consistent with other changes included by staff, including immediate inclusion of mortality and serious injury standards. Conversely, if the standard will be on a per-set basis, Mexico will call for a special meeting of the intergovernmental body of the end of August to begin work on prompt implementation of the Declaration including negotiation of the binding legal instrument.

I am hopeful that the transfer of the compromise agreement into legislative language can be made consistent with the agreement as it was presented to the nations last Friday.

Once again, please accept my appreciation and respect for your continued support of our effort to effectively manage all of the living marine resources of the eastern Tropical Pacific Ocean.

With warm regards.

Sincerely,

Carlos Camacho

REPUBLICAN FAST TRACK STAND MAY BE POLITICAL HANDICAP, DUNN SAYS

A Republican member of the House Ways & Means trade subcommittee late last week acknowledged that her party's stance in favor of largely excluding labor and environmental provisions from future trade agreements could backfire electorally. Rep. Jennifer Dunn (R-WA) defended the position that such provisions should only be directed related to trade, but noted that this stance could leave Republicans vulnerable to being portrayed by Democrats in the upcoming mid-term congressional elections as anti-environment and anti-labor.

"We don't want ever to be put in that position, so there's a little paranoia attached," Dunn told the Washington International Trade Association July 31. "We are at this time willing to take few chances even though we appreciate how important fast track is."

The current Republican stance is that labor and environmental measures must be directly related to trade in order to be included under the expedited approval procedures provided for trade agreements under fast track. Dunn said Republicans hoped Democrats would not use labor and environmental issues against them in the 1998 elections in the same way the issue of Medicare was used in the 1994 congressional races.

"Republicans continue to be a bit fearful that, if we do go along with the Administration and are where we are now on labor and environment, that we will be portrayed by Democrats in various elections next year as anti-environment, anti-union," Dunn said.

In addition to partisan differences, efforts to renew fast track authority must overcome divisions within both parties, according to Dunn. For example, fast track faces opposition within the Republican party from the supporters of former presidential candidates Ross Perot and commentator Patrick Buchanan, she said.

"Folks from the Perot side are very strong with certain members of Congress, as are the folks from the Buchanan point of view," Dunn said.

On the Democratic side, labor union opposition and the rivalry over the party's presidential nomination present problems for the Administration in its fight for fast track, according to Dunn.

"You have two obvious nominees, [House Minority Leader Richard] Gephardt [(D-MO)] and [Vice President Albert] Gore, who are battling each other over trade, among many, many other issues," Dunn said. "There is some sense, certainly on the part of Gephardt, that fast track is not as important. Presidential politics does play a role."

Dunn added that she was heartened to see the President getting involved in the fast track campaign. "I'm very pleased to see the President finally putting his weight and the weight of the Administration...behind this effort," Dunn said.

She emphasized, however, that Republicans have done all they can to strike a compromise with the Administration on how to include labor and environment concerns in a fast track bill.

"You get to a point where it is not worth moving any farther," Dunn said. "We want fast track, but we believe we have negotiated, and been negotiated with, as far as you can go, and so we are pretty much at the point of no more movement."

But Dunn said fast track supporters must take advantage of timing, and that their greatest opportunity will come in September, when the Administration has promised to present its legislative proposal.

"[T]he bottom line is for the President to come to Congress, demonstrate his good faith [and] ask for our help," she said. "So we are very interested in moving ahead with this, if we can come to a satisfactory conclusion."

COSTA RICA GIVEN GO-AHEAD TO PREPARE DRAFT FTAA LAUNCH DOCUMENT

Western Hemisphere trade negotiators last week authorized Costa Rica to draft by October an initial version of the ministerial declaration which will be used to launch the formal negotiations for a Free Trade Area of the Americas. In a July 29-31 meeting in San Jose, FTAA vice ministers from 28 countries agreed that Costa Rica, which is chairing this round of the FTAA process, should use an "annotated outline" of the Declaration of San Jose as a basis for its drafting effort.

The annotated outline, reprinted below, explains on a point-by-point basis why specific topics should be included in the declaration. According to its introduction, the outline "only represents a point of reference for an ordered dialogue to aide in the drafting of the Declaration of San Jose and is entirely subject to the consideration of the Preparatory Committee," which is made up of the FTAA vice ministers.

The outline says that the document used to launch the FTAA talks should be patterned in large measure after the 1986 Punta del Este Declaration, which kicked off the Uruguay Round negotiations of the General Agreement on Tariffs and Trade. The launch document should outline the general principles which have already been agreed upon by the 34 nations participating in the process, it says. And the launch document should also state the specific issues to be negotiated in each of the 12 subject areas on which an FTAA working group has been formed, according to the outline.

In addition, the document should make clear how the formal talks would be managed and organized, and where they would be held, it says. One of the key questions to be answered in the document is whether the talks "will be conducted in stages or simultaneously," according to the annotated outline.

The final launch document will be approved by FTAA trade ministers at a ministerial in San Jose now tentatively scheduled for March 1998, sources said. Costa Rica is expected to draft the initial version of the Declaration of San Jose in time for the next meeting of the FTAA vice ministers, which is tentatively scheduled to take place Oct. 28-30 in Puntarenas, Costa Rica.

The outline calls for references to be made in a separate section to the roles to be played by the business sector, and by the labor and environmental sectors. But this way of organizing the declaration was called into question by a number of delegations at the last month's vice ministerial, and Costa Rica indicated it would rethink the proposal.

The delegations argued that the established participation of the private sector through the Americas Business Forum (ABF) is more broadly accepted, and should not be placed alongside the less-mature and more-controversial participation of labor and environmental sectors in the FTAA process. The ABF has participated in each of the three FTAA ministerials thus far, and its private-sector recommendations have been taken into consideration by the governments.

The Uruguay Round's Punta del Este Declaration is a "valid" point of reference for the FTAA launch document because both negotiating exercises have addressed complex issues and involved a large number of participants with important differences in size and development levels, the outline says.

Similar to the Uruguay Round, the FTAA will go beyond traditional tariff and non-tariff negotiations to provide disciplines in the areas of subsidies, countervailing duties and antidumping, standards and technical barriers to trade, it notes. And the hemispheric talks will also address the so-called "new issues," such as intellectual property and trade in services and investment, which were addressed in international trade talks for the first time during the Uruguay Round, it adds.

One section of the outline, which called for the inclusion of commitments on "status quo and dismantling," also known as standstill and rollback commitments, spurred significant debate at last week's vice ministerial.

The Southern Cone Common Market (Mercosur) delegation, among others, argued that such commitments were not needed because all members of the FTAA negotiation are members of the World Trade Organization, and thereby already obliged not to raise tariffs beyond their bound WTO rates or to otherwise violate WTO disciplines. But the U.S. and Canada appeared indisposed to relinquish the idea of including such commitments, which have been a standard, though oft-violated, part of most bilateral or regional trade negotiations.

Costa Rican Annotated Outline of FTAA Launch Document

Commented Outline of the Declaration of San Jose
Costa Rica's Pro Tempore Presidency
July 28-31, 1997
ALCA/FTAA

Introduction

In accordance with the mandate of the Ministerial Meeting of Belo Horizonte, the objectives, approaches, structure and site of the negotiations should be defined in San Jose. With this purpose, the Chair has prepared a commented outline, which has the following objectives:

1. Start the elaboration of the outcome (Declaration of San Jose) which will allow to launch negotiations in Santiago, Chile in April of 1998.

2. Achieve consensus - as result of this first meeting - regarding the structure which would constitute the outline of the Declaration; sections, subsections and substantive issues to be included.

3. Start deliberations on the contents of each one of the sections of the commented outline.

4. Facilitate an agreement in order for the Chair to present a draft, based on the commented outline, which includes the observations and comments of all of the countries after the second preparatory meeting. This draft will serve as basis for the countries to work on interactively with the Chair and to be presented as a working document to the Third Preparatory Meeting.

Therefore, the commented outline has the purpose of facilitating the initial discussion of the Preparatory Committee during its First Meeting in Costa Rica, developing the final Declaration during the three preparatory meetings. The Declaration will have to be adopted by the Ministers at their meeting in March of 1998. Also, the Declaration of San Jose should constitute the framework for the negotiations for these to launched by the Heads of State and Government at the II Summit of the Americas in Santiago de Chile in April of 1998.

The commented outline of the Declaration of San Jose covers the subjects of consensus and makes reference to some general issues which might be of interest at this stage. The outline being presented is inspired in part by the Declaration of Punta del Este of 1986, which established the framework for the Uruguay Round of Multilateral Trade Negotiations of the GATT. At the same time, the suggestions obtained during the consultation held by the Pro - Tempore Presidency with several countries of the Hemisphere prior to the I Preparatory Meeting of Costa Rica, were considered.

The reference to the Declaration of Punta del Este is valid due to several reasons:

a) The complexity of the issues. The negotiations of the FTAA, as well as the Uruguay Round will not only cover areas which traditionally were tied to trade liberalization, meaning tariff and non-tariff negotiations, but will also extend to other aspects of trade liberalization referring to "disciplines", such as those relating to subsidies, countervailing duties and antidumping, standards and technical barriers, sanitary and phytosanitary measures. Also, as during the Uruguay Round, the FTAA negotiations will cover the so-called "new issues" (intellectual property, trade in services, investment) which for the first time appear as part of a multilateral trade negotiations in the Declaration of Punta del Este.[1]

b) A large number of participants. The FTAA negotiations will take place among the 34 countries that participated in the Summit of the Americas in December of 1994. Even though the number is smaller than that of the participants in the Uruguay Round, the numerous group of countries participating in the FTAA grants these negotiations a "quasi-multilateral" character.

c) Difference in the level of development of the participants. Finally, as in the Uruguay Round, the FTAA negotiations will be held among countries with important differences in size and level of development.

Finally, this proposals only represents a point of reference for a ordered dialog to aid in the drafting of the Declaration of San Jose and is entirely subject to the consideration of the Preparatory Committee.

Commented Outline of the Declaration of San Jose

Content

It would be convenient to divide the content of the Declaration of San Jose into two sections:

I. The Objectives

II. General principles which will guide the negotiations

III. Status quo and dismantling

IV. Issues of negotiation

V. Participation

VI. Management, organization and site of the negotiations,

In the second section, references to the following issues could be included:

I. Participation of the private sector

II. Participation of the labor sector

III. Participation of the environmental sector

IV. Treatment of the business facilitation recommendations

A. Section I

1. Objectives

The objective of the negotiations was established by the Heads of State and Government when they resolved during the Summit of the Americas *"to begin immediately to construct the "Free Trade Area of the Americas" (FTAA) in which barriers to trade and investment will be progressively eliminated"* and to conclude the corresponding negotiations *"no later than 2005"*. In that opportunity, they also identified the issues that would be object of *"balanced and comprehensive agreements" tariffs and non-tariff barriers affecting trade in goods and services, agriculture, subs*idies, investment, intellectual property rights, government procurement, technical barriers to trade, safeguards, rules of origin, antidumping and countervailing duties sanitary and phytosanitary standards and procedures, dispute resolution and competition policy. The following declaration resultant from the three trade ministerial meetings - Denver, Cartagena and Belo Horizonte, reiterated this objective.

Additionally, this part of the declaration would probably have to make reference to other more general objectives, which would serve as framework to the negotiations and which are already insinuated in the Declaration of Principles of the Summit of the Americas and in the declarations resultant from the ministerial meetings, such as:

* Maximize market openness through high levels of discipline based on the existing agreements in the Hemisphere. (Declarations of Denver and Cartagena)
* Promote prosperity through economic integration and free trade as key factors for raising standards of living, improving working conditions of people in the Americas and better protecting the environment. (Summit of the Americas)
* Promote active participation of the smaller economies in the Free Trade Area of the Americas and increase their level of development. (All of the Declarations)
* Foment the creation of a hemispheric infrastructure, with the cooperation and financing from the private sector and international financial institutions, in fields such as telecommunications, energy and transportation, which will permit the efficient movement of the goods, services, capital, information and technology, that are the foundations of prosperity. (Summit of the Americas)

2. General Principles that will guide the negotiations

a) Consensus as fundamental principle of decision making

The Declaration of Belo Horizonte points out that *"Consensus constitutes the fundamental principle of decision making in the FTAA process, which seeks to preserve and promote the essential interests of our 34 countries in a balanced and comprehensive manner."*

Effective implementation of this principle is closely tied to the need to conduct the negotiations in a transparent manner, so that all countries be aware of the pace of the process and none be excluded from the decision-making.

b) The outcome of the negotiations will constitute a single undertaking

In Belo Horizonte, it was pointed out that *"The outcome of the negotiations of the Free trade Area of the Americas will constitute a comprehensive single undertaking which embodies the rights and obligations mutually agreed upon."*

c) Coexistence with bilateral and sub-regional agreement

The Declaration of Belo Horizonte also pointed out that *"The FTAA can coexist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA"*.

This principle does not imply that special measures cannot be considered for the implementation of some agreements or for countries or groups of countries, like the ones that would be related for example to small economies. Neither does it imply that countries cannot agree to implement, before the end of the negotiations, some agreements that could be reached at in early stages.

d) Consistency with WTO

The Declaration of Belo Horizonte says that *"The FTAA will be consistent with the WTO agreements."*

One of the most important implications of this principle refers to the consistency with disciplines established in the Agreements of the WTO, particularly with the Article XXIV of the GATT 1994 and its Uruguay Round Understanding, and with the Article V of the GATS. In addition, the principle of consistency requires that the countries ensure the implementation of the obligations acquired in the WTO, for which it would be convenient to identify ways to facilitate the **accomplishment** of this objective.

e) Full participation of smaller economies and treatment of asymmetries in the FTAA process

In Belo Horizonte it was pointed out that "Special attention should be given to the needs, economic conditions and opportunities of the smaller economies to ensure their full participation in the FTAA process".

In the Declaration of Punta del Este, it was foreseen that "in order to ensure effective application of differential and more favorable treatment the GNG shall, before the formal completion of the negotiations, conduct an evaluation of the results attained therein in terms of the Objectives and General Principles Governing Negotiations (. . .) taking into account all issues of interest to less developed contracting parties." In the Declaration of San Jose, the commitment of the countries to conduct an assessment of the results of the FTAA negotiations from the point of view of the smaller economies could be included in a similar way to the Declaration of Punta Del Este, to ensure that the objectives and principles of the negotiations that would have been agreed upon in this regard be effectively implemented.

3. Status quo and dismantling

Status quo. It is essential that in the moment negotiations are launched, the countries commit firmly to not increment their protection level or apply measures that distort trade in the hemisphere, with the purpose of improving their negotiating position. This commitment would give stability and foreseeability to the negotiating process.

Dismantling. At the beginning of the Uruguay Round, participant countries agreed that "all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of the GATT or under its auspices, shall be phased out or brought into conformity within an agreed timetable . . ." In the case of the FTAA, this commitment could be tied with the commitments acquired in the framework of the WTO and, in this sense, would include opportune elimination of trade restrictive measures, not in agreement with WTO disciplines, in the terms not consistent with the Uruguay Round.

Surveillance mechanism. It would also be necessary to consider the establishment of a surveillance mechanism to periodically verify the countries respect of the commitments of Status Quo and dismantling.

4. Issues of negotiation

The Summit of the Americas defined the issues that would be object of negotiations and these have been assessed by the twelve established hemispheric working groups, whose progress and activities will be assessed during the first meeting of the Preparatory Committee and whose recommendations for negotiations will be assessed in the second preparatory meeting. The Declaration of San Jose will have to include the objectives of the negotiations in each area and the distribution of issues in negotiating tables.

5. Participation.

In Belo Horizonte, it was established that *"Countries may negotiate and join the FTAA individually or as members of a subregional integration group negotiating as a unit"*. Maybe this will have to be complemented with a commitment of the countries that the obligations acquired as a group can be effectively reflected on a country level.

6. Management, organization and sites of the negotiations.

The Declaration of San Jose will have to include definition on various aspects regarding management and organization of the negotiations:

Negotiation Committee. The Declaration of San Jose will have to contemplate the creation of a body in charge of supervising the negotiations and will have to assign tasks to it. Up to date the issue has not been discussed, although some reference to it has been made in some countries' proposals. The Negotiation Committee could be integrated by the Viceministers Responsible for Trade and could meet once a year.

Negotiating Groups. For the II Preparatory Meeting the countries will have to define which hemispheric working groups will transform into negotiating groups; how will the issues be distributed among them; and which groups, if it is the case, will be created to address new issues.

Periodicity. It will have to be clear in the Declaration of San Jose if the negotiations will be conducted in stages or simultaneously.

Procedural Aspects. Procedural aspects like the following will have to be explicit:

i) Determine the way to elect the chair of the negotiating groups;

ii) Determine the objectives and timetables after the launching of the negotiations in Santiago;

iii) Determine the establishment of the minimum of meetings necessary and other mechanisms of organization and necessary procedures to conclude the negotiations in the year 2005.

Midperiod evaluation. Considering that at the Summit of the Americas, the Heads of State and Government committed to *"make concrete progress toward the attainment of this objective* (the creation of the FTAA) *by the end of this century"* the Declaration of San Jose could contemplate a midperiod evaluation, which considers the progress achieved in this respect.

Secretariat. In the Declaration of Belo Horizonte a significant degree of commonality is recognized with regard to the *"need for establishing a temporary administrative Secretariat to support negotiations."*

Site. Various countries have offered themselves as site for the Secretariat. It is not clear if this includes also the site for the negotiations. Some countries have emphasized that pragmatic criteria should prevail, such as cost-benefit, easy accessibility and infrastructure support.

B. Section II

The second part of the Declaration could make reference to other related issues mentioned in the Declaration of Belo Horizonte, such as:

1. Participation of the business sector and civil society

"We acknowledge and appreciate the importance of the private sector's role and its participation in the FTAA process. In this sense, we consider the inputs from stakeholders of our civil societies to be important to our deliberations, including those from the labor sectors."

2. Participation of the labor sector

"We reaffirm our commitment to the Declaration of Miami and with/to paragraph 4 of the Singapore Ministerial Declaration of the WTO."

continued on next page

3. Participation of the environmental sector

"We will keep this issue under consideration, in light of further developments in the work of the WTO Committee on Trade and Environment."

4. Recommendation for business facilitation. The HWGs [Hemispheric Working Groups] have elaborated recommendations for business facilitation as can be observed in the matrix on business facilitation.

U.S. GUN MAKER FILES SECTION 301 PETITION TO BOOST EXPORTS TO BRAZIL

A major U.S. gun manufacturer has called on the Clinton Administration in a section 301 petition to help open the Brazilian market for the import of small firearms and their parts by pursuing, if necessary, a dispute settlement panel in the World Trade Organization. In its petition, Smith & Wesson charges that the Brazilian government is maintaining discriminatory taxation and distribution requirements as well as licensing procedures which insulate the domestic industry from foreign competition.

The "cumulative effect" of these policies is driving up the cost of U.S. firearms in Brazil to a level "substantially higher" than domestic equipment, a private-sector source said. In addition, imports are further blocked by a partial embargo on certain firearms enforced by the Brazilian government, the petition said.

"Smith & Wesson urges the United States to investigate this matter, consult with the Government of Brazil, and proceed with dispute settlement as necessary under the GATT [General Agreement on Tariffs & Trade]...," the July 17 petition said. "Above all, Smith & Wesson's goal is that the government of Brazil accord national treatment to all imports into Brazil of small firearms and parts thereof from the United States in every regard."

The company filed the complaint after trying for several years to work with the Brazilian government to improve access to the Brazilian market, which was the second-largest worldwide last year behind the U.S., according to a U.S. industry source. But he held out the possibility that the problem could be settled without a formal dispute settlement proceeding. "If there is another way to approach this to open the market, we would consider it," he said. But given that all previous efforts have been fruitless, the section 301 route is the "best approach" now, he said.

The sources dismissed the notion that USTR may shy away from pressing a case for increased exports of firearms. "This is a legal product in the U.S. and in Brazil," he said. There has not been "any reaction" from the U.S. government regarding the nature of the product, he said.

The source pointed out that the facts of the petition have been prepared in close consultations with the U.S. government. "There has been a good deal of back and forth with USTR and other agencies" in the preparation, he said. "It is my impression that there is not great disagreement" on the substantive issues raised.

Under section 301 of U.S. trade law, the Office of the U.S. Trade Representative is required to act in this case because the Brazilian policies in question violate the rights of the United States under existing trade agreements, the petition pointed out. But even without this breach, Brazil's barriers to imports are actionable under section 301 as "unreasonable acts, policies, or practices" that burden or restrict U.S. commerce, the petition said.

Smith & Wesson wants Brazil to terminate the embargo and amend its discriminatory application of taxation rules and regulations, which drive up the cost of Smith & Wesson guns in Brazil, according to the petition. It wants U.S. imports of the specified guns to be treated equally with those made in Brazil, the petition said. If Brazil agrees to do so, the U.S. government should closely monitor the country's compliance with its commitments, the petition said.

None of the Brazilian policies identified can be justified by the exemptions that the GATT allows for countries that need to safeguard their balance of payments, bolster an infant industry or protect their essential security interests, according to the petition.

For example, Brazil cannot claim it needs the restrictions for balance of payments reasons because it is not in the early stages of development. Based on its per capita Gross National Product, Brazil has been classified as an "upper middle income" country by the World Bank, according to the petition. In addition, the country ran a $13-billion balance-of-payments surplus in 1995, the last year for which official data are available, the petition said.

Brazil maintains a partial embargo on certain small firearms and imposes restrictions on the financing of such imports in violation of Article XI, which prohibits trading partners from imposing prohibitions or restrictions other than duties, taxes or other charges, according to the petitioners. A U.S. private sector said that he knew of no public defense of the embargo and other restrictions ever made by Brazil.

The petition also says Brazil's certification and licensing for imports of small firearms goes against the same article because it is an impermissible restriction. The import licensing and administrative procedures applied to the guns in question are also a violation of Article 3 of the licensing agreement because they restrict and distort trade, the petition said. They also violate Article 5 and 6 of the agreement because they are not as simple as they could be, it said.

In addition, Brazil's system of taxation and the requirement that imported small firearms for the civilian market cannot be sold directly from the importer to the retailer violates Article III of the GATT, according to the petition. Under this national treatment provision, Brazil must treat imports no less favorable than domestic products.

This additional level of distribution increases the cost of guns early in the process, a difference which is then compounded by the subsequent application of tax rules, the petition charged.

Brazil also requires since March that importers provide immediate payment for goods, including firearms, by depositing Brazilian currency in specified banks, the petition said. This means importers must transfer their payments "far ahead" of the time specified in regular commercial contracts, thereby making products more expensive for importers, the petition said. This obligation violates Article XI and Article III of the GATT, which states that signatories must treat foreign products no less favorably than domestic ones.

Brazil also implements the provision in a way that favors its trading partners in Latin America by setting a higher value of imports at which it is triggered, the petition charged. This violates Article I of the GATT, which obligates Brazil to extend the same treatment to all its trading partners, according to the petition.

The petition defines small firearms as pistols and revolvers ranging in caliber from .22 to .45 inches.

While Brazil's volume of exports of small firearms to the U.S. has risen dramatically to about 250,000 units yearly since 1997, total U.S. exports to Brazil have been 5,766 units during that same time period, according to petition. Last year, 180,000 small firearms were purchased in Brazil, it said.

CRANE SAYS NAFTA PARITY COULD BE ATTACHED TO FAST-TRACK LEGISLATION

House Ways & Means trade subcommitee Chairman Phil Crane (R-IL) last week said that a bill to extend the benefits of the North American Free Trade Agreement to countries of the Caribbean Basin Initiative could be attached to legislation extending fast-track negotiating authority this fall. But the Clinton Administration believes it is unlikely that such a legislative strategy would improve the prospect for passage of a NAFTA parity measure, an informed source said.

"[A]t the end of the day that is not going to happen," the source said. "That combination has no vote-gathering potential."

The source pointed out that some elements of the textile and apparel industry, which had worked out a compromise on NAFTA parity, are likely to oppose fast track itself. The source also noted the skepticism of key members of the Republican leadership towards NAFTA parity, an apparent reference to Senate Majority Leader Trent Lott (R-MS).

A congressional source confirmed this interpretation, pointing out that combining the weak support for NAFTA parity with fast track, which divides both Republicans and Democrats, would doom both bills. "Two negatives do not make a right," the source said.

In addition, last month's experience with NAFTA parity has shown that the politics of the measure make it entirely a liability with regard to fast track, another congressional source argued. "We had the broadest possible coalition of the textile industry, except for Fruit of the Loom, and it still died," the source said.

Crane told reporters on July 29 that fast track represented "the next window of opportunity" for NAFTA parity, though he admitted that funding the plan, which would cost $217 million per year, would present a tough obstacle to its passage. But he argued that once authorized, it would be easier to secure extension of the program in future years.

"If you get [NAFTA parity] in the [fast-track] bill, then it's easier to extend it next year than to originate it," Crane said. "But the problem, even in September, is where you come up with the funding offsets."

Crane also said that he would seek to attach his bill on trade with sub-Saharan Africa to the fast-track legislation, a move that has been opposed by several members of the Congressional Black Caucus. But Crane has promised Rep. Charles Rangel (D-NY) that he would move the Africa measure separately if the fast-track bill would stall, one congressional source said.

The exact cost of the Africa bill is not known because it has not been scored yet, an informed source said.

A congressional source said as well that combining NAFTA parity with other trade bills, such as most-favored nation status for Mongolia or a bill implementing an international agreement to curb shipbuilding subsidies would not significantly reduce parity's political liability or make funding the program easier.

Crane made the comments following the apparent demise of efforts to include NAFTA parity in the omnibus tax bill that will implement the budget deal between the White House and the Republican leadership. The tax bill did include another short-term extension of the Generalized System of Preferences, which will now run retroactively from May 31, 1997 through June 30, 1998 at a cost of $376 million.

There was nevertheless a concerted effort by President Clinton and White House officials to resurrect NAFTA parity after it was excluded from the deal reached on the last weekend of July. But a congressional source involved in the process questioned the Administration's strategy of lobbying very late for the NAFTA parity bill instead of declaring it a priority earlier in the process.

Senate Finance Committee Chairman Bill Roth (R-DE) had sought to trade off NAFTA parity for Administration consent to an amendment that would have changed the labor and financial practices of Amtrak, which was legally necessary in order to release $2.3 billion in Amtrak funds. Clinton and Roth spoke on July 29 to try to hammer out a solution but were ultimately successful, a Finance committee source said.

The next step for NAFTA parity in the Senate will likely be "the normal legislative process," the committee source said. "No one is focused" on the idea that fast track might serve as the next vehicle for this legislation, the source added.

The negotiations between Roth and the White House followed discussions which in the end left intact with minor modifications an intra-industry agreement on how NAFTA parity would be structured, Administration and industry sources said. One industry source argued that this agreement proved that there is support for NAFTA parity, and that it was only defeated by an issue that was not trade-related.

The industry agreement had been based on a detailed proposal hammered out by industry associations last month and forwarded to congressional negotiators (*AT*, July 24, p.1).

But one congressional source argued that there was never really a firm agreement on NAFTA parity. As soon as a tentative agreement was reached, individual companies sought to "gain just a little bit more" by petitioning individual members of Congress and the industry associations did not rally around the original deal, the source said.

"All of the industry associations and companies thought they could get one more thing," the source said. "Maybe the fact that they lost it all will settle them down."

U.S. INFORMALLY FLOATS IDEAS FOR SETTLEMENT OF BANANA DISPUTE WITH EU

The Clinton Administration has asked the European Union to give direct payments to some Caribbean banana producers to offset the trade losses they will suffer when the EU is forced by a World Trade Organization ruling to abandon some of the preferences it now extends to Caribbean bananas, according to informed government sources. These aid payments to some producers on the basis of need would be in addition to a tariff preference that Caribbean bananas would enjoy compared to Latin American products under a U.S. proposed settlement of the dispute, they said.

While the U.S. has not offered a formal proposal, Deputy Assistant U.S. Trade Representative for Europe Ralph Ives raised these ideas informally in a meeting with EU officials in Geneva last month. It was held after a hearing before the WTO appellate body on the banana dispute.

"Ives floated only suggestions in case the EU would substantially lose [the WTO case]," one official said. "The ideas [raised] were already familiar to the EU."

The U.S. characterized the aid payments as "deficiency payments" that would make up the difference between the price of bananas Caribbean producers could get in the EU market and a set return linked to their production price, officials said. The U.S. has proposed the payments could go to banana producers in the Windward Islands, such as St. Vincent and the Grenadines, Dominica, St. Lucia, and Grenada, which are the least competitive producers, sources said. In a December 1996 fact sheet, USTR argued the EU should give aid to the Windwards because they are the least competitive producers.

Some EU officials at the meeting pointed out that it was "astonishing" for the U.S. to ask them to dismantle preferences for Caribbean producers and then finance an aid program, one official said. These officials pointed out that the Caribbean countries most hurt by a change in the EU banana regime are closer geographically to the U.S. than to the EU, he said. This is an apparent reference to the fact that the U.S. would face more of the fallout from destabilized Caribbean economies than the EU.

Ives presented these ideas as ways to create a "WTO consistent" regime, which the U.S. has interpreted to mean changes in the current licensing regime, and elimination of the banana framework agreement that allocates the EU quota for Latin American banana imports to specific countries. The U.S. has long argued that the EU can extend tariff preferences to Caribbean bananas, but did not specify any numbers for such tariff differences in the Geneva meeting. But informed sources said the U.S. wants to increase the tariff on Latin American bananas by 10 percent over the bound 20 percent duty rate, sources said.

Informed sources said Ives acknowledged that changes in the banana regime would hurt Caribbean producers, and generally seemed less strident and more interested in working out a compromise than he had previously been. Some sources have speculated that there is a strong White House interest in getting the case settled after President Clinton met with Caribbean leaders in May.

Ives also made it clear that the U.S. is not seeking to eliminate the current tariff-rate quota for Latin American bananas, the access of which is restricted in favor of African, Caribbean and Pacific bananas, officials said. Separately, USTR officials have made it clear that they would seek an increase in the TRQ for Latin American bananas, informed sources said.

The U.S.-EU meeting, which was also attended by the USTR lawyer in the case, was a followup to a commitment made by EU External Affairs Commissioner Leon Brittan to U.S. Trade Representative Charlene Barshefsky at the Denver summit of the world's most industrialized nations.

The U.S. hopes to begin talks about a possible settlement after the appellate body issues its ruling, which will happen no later than Sept. 11, officials said. The EU has made it clear from the senior-official-level on down that it will not begin exploring a possible settlement until the appellate body has issued its ruling.

Barshefsky emphasized her commitment to a negotiated solution in June letters to members of the House Black Caucus.

The U.S.-EU meeting followed a three-day session of the appeals body, where the EU challenged every point in the original panel report that went against the regime. The U.S. and the other complainants limited themselves to three key objections to the panel's original ruling.

This included the charge that the panel erred when it found that the waiver the EU obtained for the Lome Convention allowed it allocate market access for ACP banana producers under a discriminatory quota system, according to a June 26 submission released by the Office of the U.S. Trade Representative. The U.S. argued that the waiver allows the EU only to extend tariff preferences to ACP banana producers, according to the submission.

CHILE TO TARGET U.S. TRADE REMEDY REGIME FOR WTO CONSULTATIONS

Chile last week notified the World Trade Organization that it is planning to request formal WTO consultations on its charges that the U.S trade remedy regime currently examining whether Chilean salmon has been subsidized or dumped in the U.S. is inconsistent with international trade rules.

"There is some consensus in lawyers' circles in Washington that deal in trade and WTO, that there are provisions in anti-dumping and subsidies of the U.S. that can be challenged with quite an option of success," a Chilean trade official said.

But a U.S. trade official disagreed. "We are confident that we are handling this complaint in a manner completely consistent with our WTO obligations and U.S. domestic law," he said July 30.

The official in Santiago now spearheading the initiative is Ricardo Lagos, who directs WTO-related matters for Chile, sources said.

The U.S. Commerce Dept.'s investigation on imports of Chilean salmon has prompted an unusually large outcry in Chile, U.S. and Chilean officials have acknowledged.

"It's just a culmination of frustration" over the inability of the U.S., in the absence of securing fast-track authority, to move forward on trade negotiations, one U.S. official said. "Everything has boiled over."

Another factor, he said, is that several investors in the Chilean salmon industry are "well-financed and well-educated," and have clout in government circles.

But while the U.S. trade case is an "unfortunate development," the countries continue to maintain a healthy dialogue on overall trade matters, the U.S. official said. "It's certainly not a stake through the heart," he said.

The notification to the WTO was sparked by, but will not focus exclusively on, a July 28 U.S. International Trade Commission affirmative preliminary determination that there is a reasonable indication that imports of fresh Atlantic salmon from the South American nation are causing material injury, or threatening to cause material injury to U.S. salmon producers. That initial finding made evident that the probe would consider all imports of fresh, farmed Atlantic salmon to be like products competing with U.S. salmon sales, regardless of whether the import arrived as a "dressed" whole fish or was shipped as a fillet. Chile had argued to the ITC that its shipments, which are primarily fillets, should be considered distinct products from U.S. salmon, which are mainly sold as whole fish.

A negative ITC determination would have resulted in the termination of the investigation. By Aug. 4, the ITC's views were slated to be sent to the Commerce Dept., which will calculate whether subsidization or dumping has occurred.

The investigation was instituted in response to a petition filed June 12 by a group of U.S. salmon farmers, the Coalition for Fair Atlantic Salmon Trade.

Under scrutiny are a range of more than a dozen Chilean programs which the petitioners say provide unfair subsidies to their Chilean competitors.

"It opens the door for any other law firm to pick their commodity and start a petition," one source noted. "It is definitely a bad precedent."

Chilean Director General Juan Gabriel Valdes raised Chilean concerns about the salmon matter in meetings with WTO Director-General Renato Ruggiero and with U.S. trade officials during a mid-July visit to Geneva.

In a related development, Sen. Richard Lugar (R-IL) highlighted the need for the U.S. to use its trade remedy laws carefully in a July 24 letter to ITC Commissioner Marcia Miller. Lugar had met a few days earlier with a delegation of Chilean officials who had traveled to Washington to protest the U.S. salmon industry's petition to members of Congress and Clinton Administration officials.

"At a time when the U.S. is considering expansion of NAFTA to Chile, we should be sure to apply our antidumping laws in a consistent and fair manner," Lugar wrote Miller.

Among the lawmakers with whom the Chilean delegation met were Sens. Chris Dodd (D-CT), John McCain (R-AZ), Paul Coverdell (R-GA) and Bob Graham (D-FL), and Reps. Jack Metcalf (R-WA) and E. Clay Shaw (R-FL).

continued on next page

In addition, members of the Chilean delegation met with Counselor to the President Thomas "Mack" McLarty, National Economic Council Deputy Asst. to the President for Economic Policy Daniel Tarullo, National Security Council Special Asst. to the President and Senior Director of Inter-American Affairs James Dobbins and Commerce Secretary Bill Daley, sources said.

CUSTOMS LAWYERS CHARGE NAFTA CHAPTER 19 PANELS ARE UNCONSTITUTIONAL

The Customs and International Trade Bar Assn. (CITBA) last month charged in federal appeals court that NAFTA's system that reviews antidumping and countervailing duty cases is unconstitutional because it prohibits review by U.S. courts of government decisions that assess import duties.

AD/CVD duties are a form of federal taxation, the review of which, under Article III of the U.S. Constitution, can only be conducted by U.S. courts, CITBA argued. "The system of binational panel review under NAFTA is unconstitutional because, in contravention of Article III of the Constitution, it precludes Article III judicial review of government decisions assessing import duties, a form of federal taxation," according to a July 22 amicus brief filed by CITBA with the U.S. Court of Appeals for the D.C. Circuit.

"The drafting history of the Constitution shows that the federal judicial power under Article III was intended to cover import duty cases," the group wrote.

But under the NAFTA system, the "government can assess taxes without having the lawfulness of its tax-assessment decisions judicially reviewed by an Article III court," CITBA argued.

CITBA also argued that the system, established under NAFTA's Chapter 19, violates the Appointments Clause of Article II of the Constitution, which requires that judicial officials be appointed with the advice and consent of the Senate. The group specifically argued that traditional jurisprudence which suggests that Chapter 19 panelists need not receive Senate confirmation should not apply in this case.

In the 1890 case *Auffmordt V. Hedden*, the Supreme Court concluded that independent merchants used to help resolve contested customs valuation decisions qualified as one of the "inferior officers" which the Appointments Clause allows Congress to create, CITBA pointed out. But Chapter 19 panelists, unlike these independent merchants, "perform a judicial-type function by adjudicating questions of law based on an underlying administrative record," CITBA argued.

In addition, Chapter 19 panelists make decisions which are not subject to judicial review "at all," while the decisions which independent merchants helped make were subject to court challenges, the group argued.

The New York-based group lodged its amicus brief in support of a lawsuit filed against the NAFTA panel system last January by a coalition of 21 citizen groups and corporations. The American Coalition for Competitive Trade (ACCT) also charged that the NAFTA violates Articles II & III of the Constitution.

Oral arguments in the case (Docket Number 97-1036) have been scheduled for October 21. One informed source said the court could issue a ruling no sooner than 60 days after the oral hearing.

The Canadian government is slated to file its brief on Sept. 5, according to a court schedule. Mexico and the province of Quebec are expected to submit amicus briefs in support of the U.S. on that same date, it said.

CITBA's brief is the latest salvo fired at NAFTA's Chapter 19, which has prompted opposition by several members of Congress and an ad-hoc coalition of private-sector organizations. The coalition has urged the Administration to include in any new fast-track bill an explicit prohibition on extending the Chapter 19 panel system to new countries.

Some members of Congress are "keeping a very close eye on the lawsuit as to its impact on issues of fast track," one informed source said. If the lawsuit succeeds, it "will obviate the necessity of keeping Chapter 19 out of fast track," the source contended. "It will remove a lot of current objections to fast track."

But if the lawsuit fails, "it may spur congressional opponents [of Chapter 19] to greater action," according to the informed source.

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U.S. KEEPS DUTIES ON LIMES DESPITE CONSULTATIONS WITH MEXICO

The Clinton Administration stood firm during bilateral consultations with Mexico last month on its decision to restore a duty on lime imports into the U.S., U.S. officials said.

The talks, held July 17 in Washington, were in response to Mexico's request last month to hold formal consultations about the move under NAFTA's Chapter 20 dispute settlement provisions. Mexico alleges that the U.S. action violated the free-trade pact's rules, which say that no NAFTA nation may hike an existing tariff on a NAFTA-originating good.

"We think we did nothing out of the ordinary and it is fully justified," the U.S. official said. "There are no grounds for complaint." Until the change, Mexico had been enjoying a "windfall," he said.

At the center of the controversy is a mid-June U.S. decision to modify a measure taken a year ago to provide for a separate tariff subheading, or statistical breakout, for certain kinds of limes of the *citrus latifolia* variety. The breakout resulted in the diversion of trade from one tariff classification to another, allowing most Mexican limes to enter the U.S. under duty-free categories.

During the consultations, U.S. officials also laid out the regulatory timetable leading up to a final rule which would allow entry of Mexican wheat from the Mexicali Valley into the U.S., the official said. Mexico had asked in April for Chapter 20 consultations regarding its request that the Mexicali Valley be designated a disease-free area for purposes of wheat exports.

Meanwhile, a five-member panel was constituted July 18 under NAFTA's Chapter 20 regarding the U.S.-Mexican broomcorn broom skirmish, an official said. Last March, the U.S. requested consultations with Mexico regarding its tariff hikes on certain products in response to the U.S. safeguard action on broomcorn brooms. For its part, the U.S. continues to argue that Mexico's retaliatory tariff increases appear to exceed those permitted by NAFTA, according to informed sources. Consultations were last held in early April.

By July 31, Mexico was expected to lay out its arguments to the U.S. that the U.S. International Trade Commission used an inaccurate definition of the broomcorn broom industry, a Mexican official said, and the U.S. plans to submit its brief Aug. 25. A hearing will likely be held in September, a U.S. official said. At issue is the ITC's finding that the product "like or directly competitive with" these imports was broomcorn brooms and did not include plastic ones.

The U.S. is a defendant in another proceeding relating to a request by Mexico earlier this year for the establishment of a Chapter 20 panel based on Mexico's charges related to the ITC's use of an inaccurate definition of what constituted the U.S. broomcorn broom industry.

In a third case, Colombia and the U.S. held consultations last May regarding the Andean nation's launch of a case at the World Trade Organization under the General Agreement on Tariffs & Trade Art. XXII and the safeguards accord about the U.S. safeguard measure on broomcorn brooms.

ADMINISTRATION DIRECTED TO FIX DUTY-EXEMPTION LIMITS IN PENDING BILL

A bipartisan group of senators who represent U.S. border states last month attached an amendment to the 1998 Treasury appropriations bill (S. 1023) directing the Clinton Administration to take concrete steps to achieve "parity" in the monthly duty-free allowances on merchandise purchased in all three NAFTA countries, Capitol Hill sources said.

The amendment, which was approved by voice vote July 21, was spearheaded by Sen. Kay Bailey Hutchison (R-TX) to address longstanding complaints by U.S. retailers with operations along the U.S.-Mexico border that current Mexican rules make it too costly for Mexican residents to buy certain items in the U.S. as compared to the U.S. rules governing purchases by U.S. citizens in Mexico.

The measure directs the U.S. Trade Representative and the Treasury Secretary to report within 90 days after the Treasury appropriations measure is enacted on the "progress" made in talks between the U.S., Mexico and Canada to "correct any disparity" between the three NAFTA countries on the matter.

If parity is not achieved within another 90 days, the two U.S. officials "shall submit recommendations to Congress for appropriate legislation and action" to bring the U.S. allowance into conformity with the allowance levels established by Mexico and Canada, according to the language of the amendment.

Among those U.S. products which have been made too costly under the current arrangement are appliances, electronics, furniture and any other item costing more than $50 in the U.S., argued Hutchison when she introduced the amendment July 17. The co-sponsors are Sens. John McCain (R-AZ), Jeff Bingaman (D-NM), Barbara Boxer (D-CA), Phil Gramm (R-TX) and Ron Kyl (R-AZ).

Mexico and the U.S. each now levy distinct duty-exemption limits for tourists returning from a NAFTA country. Mexico partly harmonized its personal-duty exemptions for returning residents in late 1995, raising its monthly limit from $350 to the U.S. level of $400 and permitting pooling by family members. But Mexico's per-crossing limit is $50 for land crossings and $300 for air/sea crossings, which in particular limits the ability of Mexican residents to purchase big-ticket items on the U.S. side of the border. For U.S. residents returning to the U.S., the limit is $200 per crossing, with one $400 entry allowed each 30-day period. Canadian residents are limited to $35 worth of duty-free goods.

Last spring, a bipartisan group of lawmakers urged President Clinton during his visit to Mexico to press Mexican President Ernesto Zedillo to jumpstart talks among the NAFTA nations on the issue (*IN*, April 3, p. 22).

The U.S. specifically seeks broader product coverage for Mexico's duty exemptions, a U.S. official said.

IPR GROUP MINUTES SHOW TABLING OF U.S. PROPOSAL FOR FTAA TALKS

The U.S. last month tabled a proposal on how to negotiate intellectual property issues in upcoming Free Trade Area of the Americas talks (*AT*, July 24, p. 8). At the same time, the Southern Cone Common Market (Mercosur) and Andean Group countries said they would soon present their own proposals.

This exchange took place at a July 10-11 meeting in Washington, DC of the FTAA working group on IPRs. A copy of the minutes of the meeting is reprinted below.

Minutes of July 10-11 FTAA Meeting on Intellectual Property

REPORT
FTAA WORKING GROUP ON INTELLECTUAL PROPERTY RIGHTS
OAS HEADQUARTERS, WASHINGTON, D.C.,
JULY 10-11, 1997

1. The Working Group on Intellectual Property Rights held its fifth meeting at OAS Headquarters in Washington, D.C., on July 10-11, 1997. Delegates from 23 countries attended, as well as representatives from the OAS Trade Unit, the latter as observers. The list of participants is attached (see Annex 1.) A Seminar/Workshop on the Implications of Emerging Technologies with respect to the Protection of Intellectual Property Rights was held on July 9.

2. Following opening remarks by the Coordinator of the Working Group, Dacio Castillo, the Working Group approved the Agenda of the meeting (see Annex 2).

3. In relation to the second point of the agenda, the Coordinator informed the Group about the instructions to the working groups approved by the Ministers responsible for trade at their meeting in Belo Horizonte, Brazil, on May 16, 1997.

4. Regarding the third point of the agenda, the OAS Trade Unit presented the updated version of the "Draft Inventory of International Conventions and Intellectual Property Agreements Treaties and Arrangements in the Western Hemisphere (SG/TU/WG.IPR/DOC.1/96/Rev.4)." It also informed the Working Group that it was reorganizing the documents "Draft Inventory of Intellectual Property Protection Laws and Enforcement Measures in the Western Hemisphere (SG/TU/WG.IPR/DOC.2/96/Rev.2)" and "Draft Inventory of Intellectual Property Provisions in the Trade and Integration Arrangements in the Western Hemisphere (SG/TU/WG.IPR/DOC.3/97/Rev.1)" on the basis of revised frameworks approved by the countries at their last meeting held in Cuernavaca. These documents will be presented before the next meeting of the Group.

With respect to the questionnaire prepared to complement the "Inventory of Intellectual Property Protection Laws and Enforcement Measures in the Western Hemisphere," answers received from countries were distributed to Members of the Working Group. Countries that have not yet submitted their answers were invited to send them to the OAS Trade Unit. These answers will be distributed to all Members of the Working Group before the next meeting.

5. Concerning the fourth point of the agenda, it was agreed that countries will send to the OAS Trade Unit no later than August 15, 1997 their suggestions and comments on methods to promote the understanding and effective implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). It was also agreed that countries would identify the issues for which they would require assistance and topics which could be addressed in a workshop that could be organized in the future with the support of the WTO. Finally, countries were invited to indicate the possibility of providing expertise in specific areas to other Members. The OAS Trade Unit will compile these submissions in a document to be distributed before the next meeting.

6. With respect to the fifth point of the agenda "Analysis of the implications of emerging technologies with respect to the protection of intellectual property rights," the Working Group held a seminar/workshop the day prior to the meeting, which allowed for an exchange of views and information on these issues among countries. Costa Rica, Jamaica, Mercosur, Mexico and the United States made contributions on biotechnology; and Colombia and the United States on the implications of new technologies on copyrights. The program of the seminar is attached as Annex 3. The Group thanked the speakers for their presentations.

As agreed at the last meeting of the Working Group, Mexico will compile information on how these issues have been addressed in recent seminars and workshops. Such information will be distributed to countries before the sixth meeting of the Working Group. Mexico invited countries to send any type of information that could be useful in preparing this compilation.

7. Regarding the sixth point of the agenda on formulating specific recommendations on the steps to follow for the construction of the FTAA in the area of intellectual property taking into account the results of the Belo Horizonte Ministerial Meeting, the United States presented a proposal which is attached as Annex 4. Observations were made by other participants and further explanations were provided by the United States. The Andean Community and Mercosur indicated their intention to present proposals on this issue. The United States invited other delegations to conduct informal discussions of these proposals to further the work on this agenda item at this meeting. Other delegations suggested that such discussions be held when their proposals are formally submitted. In order to provide countries with enough time to review all these proposals before the next meeting of the Working Group, it was agreed that countries should submit proposals to the Coordinator no later than August 15, 1997. The proposals should be distributed before August 30, 1997 to allow for their analysis before the next meeting. This will allow the Group to

comply with the Belo Horizonte mandate, i.e. to submit to the PrepCom at its second meeting in October of 1997 different technical alternatives and negotiating approaches with respect to intellectual property.

8. In relation to the seventh point of the agenda "Analysis of the ways to provide opportunities to facilitate the integration of small economies through technical assistance," the Chairman of the FTAA Working Group on Small Economies, Ambassador Richard Bernal, made a presentation to the Group on the challenges related to the participation of the smaller economies in the FTAA process, and invited the Group to take into consideration these issues in its work. The Group expressed its appreciation to Ambassador Bernal for his contribution.

9. When considering the eighth point of the agenda, the recommendations of the Belo Horizonte Business Forum Workshop on Technology and Intellectual Property Rights were distributed. The Working Group acknowledged the importance of the need to take into account the views of the private sector. Some countries shared their experience on mechanisms for consulting the private sector. It was agreed that this item should remain on the agenda of the next meetings and countries were invited to share their experience in this matter.

10. Under point nine of the agenda, "other matters," consideration was given to the publication of the "Draft Inventory of International Conventions and Intellectual Property Agreements, Treaties and Arrangements in the Western Hemisphere (SG/TU/WG.IPR/DOC.1/96/Rev.4)." The Working Group agreed that in order to prepare the final version of this document countries would submit their comments to the OAS Trade Unit as soon as possible. It was also agreed that references will be made to investment treaties that mention references to intellectual property as a separate section under each country's entry.

The Coordinator will prepare a progress report to the PrepCom at its meeting in Costa Rica updating the report presented to Vice Ministers in Recife. Also, as requested by Costa Rica, the current Chair of the FTAA process, the Coordinator shall present a document that will summarize the work of the Group based on the reports of the meetings held until now. These documents will be sent to countries no later than July 16, 1997.

Mercosur requested that best efforts be made to include Portuguese as a working language of this Group.

11. On July 9, following an invitation of the Working Group, the Assistant Director General of the World Intellectual Property Organization (WIPO), Carlos Fernandez Ballesteros, made a presentation on the cooperation program that WIPO could offer to members of this Working Group upon request.

12. The next meeting of the Working Group will be held on October 2-4, 1997. Following a request by the Coordinator, Colombia agreed to consult with the relevant authorities about the possibility of hosting this meeting. Mexico also offered to host the meeting in Mexico City.

BOXER UNVEILS BILL TO SNIP FLOWERS FROM ANDEAN PREFERENTIAL PROGRAM

Sen. Barbara Boxer (D-CA) unveiled late last month a bill which would withdraw the duty-free treatment accorded fresh-cut flowers under the Andean Trade Preference Act (ATPA).

"Fresh-cut flowers should be considered a sensitive domestic product, and thus also exempted from the ATPA," Boxer argued July 22 upon introduction of the legislation.

Other products, she noted, including textiles and apparel, watches and watch parts, and petroleum products, were exempted from the program since it began in 1991, she noted.

The bill (S.1052), which would amend the ATPA to bar the provision of duty-free treatment for live plants and fresh-cut flowers, was referred to the Senate Finance Committee.

In particular, Boxer charged that the ATPA's inclusion of such flowers has been "devastating" to California growers while providing the most benefits to Colombia, she said, which controls more than 50 percent of the U.S. market for roses and 80 percent of the carnation market.

The preferential program also has failed to serve its intended purpose of slowing coca cultivation in the Andean region, she charged.

The ATPA provides for duty-free treatment or reduced duties on various goods, including fresh-cut flowers from Bolivia, Colombia, Ecuador and Peru, and aims to encourage Andean farmers to grow products other than coca.

Identical legislation in the House has garnered 39 co-sponsors, including 16 Republicans and 24 Democrats. It was introduced by Rep. Sam Farr (D-CA).

SENATE THREATENS WTO ACTION AGAINST MEXICO ON ANTI-DUMPING DUTIES

The Senate last week unanimously passed a non-binding resolution threatening Mexico with World Trade Organization dispute settlement measures if Mexico refuses to end its antidumping action against U.S. corn sweeteners. In addition, the House approved a similar resolution on July 31 by unanimous consent.

"Resolved, by the Senate (the House of Representatives concurring), that it is the sense of the Congress that (1) the Government of Mexico should review carefully whether it properly initiated this antidumping investigation in conformity with the standards set forth in the World Trade Organization Agreement on Antidumping, and should terminate this investigation immediately; (2) if the United States Trade Representative considers that Mexico initiated this antidumping investigation in violation of World Trade Organization standards, and if the Government of Mexico does not terminate the antidumping investigation, then the United States Trade Representative should immediately undertake appropriate measures, including actions pursuant to the dispute settlement provisions of the World Trade

Organization," the Senate resolution said.

At issue are preliminary antidumping duties imposed by Mexico on imports of U.S. high fructose corn syrup (HFCS) following a complaint by the Mexican sugar industry. U.S. producers of HFCS claim that under multilateral rules the Mexican sugar industry does not have legal standing to request the antidumping action. U.S. corn refiners also claim the Mexican Dept. of Commerce used improper procedures in calculating the preliminary antidumping duties imposed June 25.

As a ton of HFCS generally sells for between $250 to $350, the Mexican duties amount to an additional charge ranging from roughly 20 to 60 percent, industry sources said.

"The duties now in effect because of this decision are as much as four to five times the pre-NAFTA levels," Agriculture Committee Chair Richard Lugar (R-IN) told the Senate July 25. The pre-NAFTA tariff level for HFCS was 15%, according to a U.S. industry source.

The Senate resolution was introduced by Sen. Charles Grassley (R-IA), and was cosponsored by Lugar, Agriculture Committee Ranking Member Tom Harkin (D-IA), Minority Leader Tom Daschle (D-SD) and Robert Kerrey (D-NE).

House Ways & Means subcommittee on trade chairman Phil Crane (R-IL), Rep. Thomas Ewing (R-IL), and Glenn Poshard (D-IL) worked to get the resolution passed in the House, according to congressional staff.

The Office of the U.S. Trade Representative is currently donating significant resources to an in-depth analysis of the WTO and NAFTA rules potentially violated by the Mexican action, according to Chuck Conner, President of the Corn Refiners Association (CRA).

Conner also noted that the deadline for submission of CRA's reply brief to the Mexican government on the duties has been pushed back by Mexico to Aug. 17 from Aug. 6. Conner indicated that Aug. 17 was not firm, however.

MERCOSUR PLAN TO INSERT LEGISLATORS INTO FTAA SPARKS REACTION . . . begins page 1

except for rare exceptions," the U.S. official said.

He said it appeared that the proposal emanated from Brazil, the largest Mercosur member. Brazilian negotiators believe the proposal would help the government of President Fernando Henrique Cardoso build support for proceeding forward with the hemisphere-wide trade talks if members of Brazil's legislative branch better understood "what is really going on in the FTAA negotiations," the official said.

Mercosur's delegate stressed that trade agreements ultimately must receive legislative approval, and therefore inclusion of parliamentarians could aid in gaining that approval. But at least one other delegation pointed out that elaborate domestic processes can and have been set up to ensure that other country's legislative branches are fully consulted during trade negotiations.

A point made by the Barbadian representative at last week's FTAA meeting received wide support, officials said. He noted that, although Mercosur could name as a member of its delegation anyone it desired, to create an additional level of "observers" beyond the three regional bodies which provide technical support to the process would require a consensus decision by the entire group of vice ministers, according to participants.

For her part, the Canadian delegate noted that participation by its legislators in international negotiations is at the very least reserved to minister-level meetings rather than lower levels, and that it does not involve anyone but executive branch officials directly in trade negotiations, they said. One official noted that the Canadian vice minister made the point that Canadian legislative delegations always include opposition parties as well as the governing party, and that Canada viewed the inclusion at the level of officials rather than ministers to be "extremely dangerous."

"The Mercosur delegation raised the issue of the composition of individual country delegations," says the final, approved minutes of the July 29-31 meeting. "It was recognized as a sensitive issue."

But an earlier draft of the minutes reveals more fully the extent of opposition to the move. "Despite recognizing each country's sovereign right to appoint delegates, the various delegations expressed their concerns regarding the possible implications of this decision," it says.

A copy of the final meeting minutes is reprinted below.

Besides the exchange over delegation composition, participants agreed that there were few fireworks at last month's FTAA vice-ministerial, which was the first of three scheduled to take place between last May's ministerial in Brazil and the next minister's meeting, now expected to take place in March 1998 in Costa Rica.

Because the second Summit of the Americas in Santiago, Chile has been pushed back to April, current FTAA chair Costa Rica proposed changes in the dates for the preceding FTAA ministerial meeting and vice-ministerial preparatory sessions. The proposed dates are Oct. 28-30 for the next vice-ministerial in Puntarenas, Costa Rica; Feb. 10-12, 1998 for the third vice-ministerial in San Jose; March 16-18, 1998 for the Americas Business Forum in San Jose; and March 19-20, 1998 for the FTAA ministerial in San Jose.

The vice ministers approved a set of guidelines to be followed by 11 of the 12 FTAA working groups in preparing recommendations on the technical alternatives on possible issues and negotiating approaches in their respective disciplines for the next vice-ministerial meeting.

Approval of the specific, detailed guidelines, which are reprinted below as annex 3 to the meeting minutes, were the "major accomplishment" of the meeting, several officials confirmed. Those guidelines instruct the working groups, with the exception of the recently formed dispute settlement panel, to give priority to preparing those recommendations and providing them to FTAA chair Costa Rica no later than Oct. 14.

If working-group delegates cannot reconcile their differing positions controversial issues despite making "diligent efforts," those differing positions should be reported to the vice ministers, according to the guidelines.

Minutes of July 29-31 FTAA Vice-Ministerial in Costa Rica

Minute
First Meeting of the FTAA Preparatory Committee
San Jose, Costa Rica
July 29-31, 1996

1. The Preparatory Committee (PrepCom) held its first meeting in San Jose, Cost Rica, on July 29-31, 1997. Delegates from 28 countries attended, as well as representatives of the Tripartite Committee (OAS-IDB-ECLAC), the latter as observers.

2. Costa Rica's Trade Vice Minister and PrepCom's Chairman, Carlos Murillo, welcomed delegates and thanked the Government of Brazil for the work done between the Cartagena and Belo Horizonte Ministerial Meetings, as well as for its cooperation with Costa Rica, in its capacity as Chair of the FTAA process. Following these openings remarks, the Agenda of the meeting was approved (see Annex 1).

3. In relation with the second item of the Agenda "Report of the Presidency Regarding the Organization of the IV Trade Ministerial Meeting and IV Business Forum of the Americas" to be held in San Jose, the Chairman proposed a new date, March 19, 1998, to hold the next Trade Ministerial Meeting. This date takes into account that the Santiago Summit will be held in mid-April. Some delegations indicated that they would have to consult with their capital before confirming the availability of their Trade Minister. In view of this new development, the Mercosur delegation suggested that the date of the Third Meeting of the PrepCom should also be changed to February 1998. The Chair made the commitment to analyze the possibility of determining another date and submitting it to the consideration of Vice Ministers at their Second Meeting.

4. The Chairman also informed the participants that the Executive Director of the San Jose Business Forum, Marco Vinicio Ruiz, will conduct discussions with countries to prepare the program of this event.

5. Regarding the third point of the Agenda "Analysis of the Work Done by the Hemispheric Working Groups and Instructions for Future Work," the Chair made a brief presentation of the documents that were distributed to delegations with the objective of fostering the discussions on this issue.

6. After an exchange of views, the PrepCom agreed that this item should be divided into two parts: 1) to analyze and approve the reports presented by the Hemispheric Working Groups up to Belo Horizonte; and 2) to give instructions to Working Groups regarding their tasks to comply with the mandates of the Belo Horizonte Ministerial Declaration, paragraphs 7 ("to submit to Vice Ministers at the Second Meeting under Costa Rica's Chairmanship different technical alternatives on possible issues and negotiating approaches in their respective disciplines...") and 10 ("to take into account, in their deliberations, the findings and recommendations of the Working Group on Smaller Economies in order to realize the opportunity of the economies in the FTAA and to increase their level of development").

7. The Chair suggested that before approving the reports of the Working Groups, the PrepCom should clarify what is understood by "approval" of these reports. It was agreed that "approval" of these reports means the satisfaction with the work done and their consent for the Working Groups to continue with the pending tasks, as well as acknowledgment of the recommendations, the work program, the business facilitation measures and the areas for immediate action.

8. The PrepCom proceeded to approve the reports according to the following methodology suggested by the Chair: regarding reports not considered in previous meetings (Smaller Economies; Customs Procedures and Rules of Origin; and Sanitary and Phytosanitary Measures), the delegation of the country that chairs the Group made a brief presentation of the report. With respect to those that had already been considered by the Vice Ministers (Market Access; Investment; Standards and Technical Barriers to Trade; Subsidies, Antidumping and Countervailing Duties; Government Procurement; Intellectual Property Rights; Services; and Competition Policy), they were submitted to the approval of the PrepCom. The report of the Sanitary and Phytosanitary Measures Working Group is pending for approval since it does not fully represent the Group discussions. The status of all these reports is included in Annex 2.

9. The delegation of Peru, which chairs the Working Group on Competition Policy, informed that said Group approved the documents "Inventory of Domestic Laws and Regulations Relating to Competition Policy in the Western Hemisphere" and "Inventory of Competition Policy Agreements, Treaties and Other Arrangements Existing in the Western Hemisphere," and asked the PrepCom to approve their publication at its next meeting.

10. The PrepCom approved a "General Guide from Viceministers to the Working Groups" (see Annex 3) to facilitate the future tasks of the Working Groups.

11. Regarding the discussion on the instructions for future work of the Hemispheric Working Groups, the PrepCom agreed that no new mandates would be given to these Groups, and that they should focus on those mandates in paragraphs 7 and 10 of the Belo Horizonte Ministerial Declaration, without prejudice to continue their other tasks.

12. Concerning point four on the Agenda, the Chair presented a draft Annotated Outline of the Declaration of San Jose. The delegations expressed comments that were gathered by the Chair, which in turn committed itself to prepare a draft text of the

Declaration of San Jose for the next meeting.

13. Regarding point five of the Agenda, "Treatment of Business Facilitation Measures", the Working Groups were instructed to review and analyze the recommendations arising from the different Belo Horizonte Business Forum Workshops dealing with this subject, and include those relevant for their tasks as appropriate in compliance with their mandates. Also, the PrepCom agreed to ask the forthcoming Business Forum to include Business Facilitation in its Agenda to complement the work done.

14. The Chair was charged with preparing a technical note on Business Facilitation, based on the consultations with the delegations, which will serve as a basis for discussion during the next meeting.

15. Concerning "Other Issues" on the Agenda, the following were mentioned:

a) Definition of a mechanism of response to the Business Forum - After exchanging points of view, the Chair was requested to prepare a general response to the Forum.

b) The Mercosur delegation raised the issue of the composition of individual country delegations. It was recognized as a sensitive issue.

c) Given the infrequent use of the Internet discussion room set up by the United States, which was created to provide a better flow of information at the level of Vice Ministers and Working Group Chairs the Chair offered to explore mechanisms for its more efficient use.

Annex 1
I Meeting of the Preparatory Committee of the FTAA.
July 29-31, 1997

Agenda for the meeting

1. Approval of the Agenda
2. Report of the Presidency regarding the organization of the IV Trade Ministerial Meeting and the IV Business Forum of the Americas to be held in San Jose
3. Analysis of the work done by the Hemispheric Working Groups and instructions for future work.
4. Discussion of the Declaration of San Jose commented outline
5. Treatment of Business Facilitation Measures
6. Other issues

ANNEX No. 2

STATUS OF THE REPORTS PRESENTED BY THE HWGS TO THE VICE MINISTERS

REPORT	Approved by Viceministers	Not approved by Viceministers	Presented at
Market Access	•		Recife
Customs Procedures and Rules of Origin	•		
Investment	•		Rio de Janeiro
Standards and Technical Barriers to Trade	•		Recife
Sanitary and Phytosanitary Measures		•	
Subsidies, Anti-dumping and Countervailing Duties	•		Recife
Small Economies	•		Recife
Government Procurement	•		Recife
Intellectual Property Rights	•		Recife
Services	•		Recife
Competition Policy	•		Rio de Janeiro

General Guide From the Vice Ministers to the Working Groups (Annex 3)

The Vice Ministers wish to remind the Working Groups about the specific instructions to these Groups contained in **paragraphs 7 and 10** of the Belo Horizonte Declaration. The instructions agreed to during the First Meeting of the Preparatory Committee are as follows:

* Priority is to be given to preparing recommendations for the October meeting of the PrepCom regarding different technical alternatives on possible issues and negotiating approaches in their respective disciplines. Recommendations are expected from all Working Groups, with the exception of the Dispute Settlement Working Group, who shall present an updated report.

* The following format is suggested to fulfill this mandate:

A) Possible technical issues

1. Objectives of the negotiation in the issue area
2. Principles of the negotiation in the issue area
3. Possible subjects and issues (Open subjects and issues, each Working Group defines them specifically)
4. Relevance of other international/regional agreements, negotiations and fora related to the issues of the Negotiating Group

B) Possible negotiating approaches

5. To consider the linkage with the disciplines from the other Working Groups to determine whether the issue area requires a single negotiating group, coordination with other Negotiating Groups or inclusion in a broader Negotiating Group
6. Different options to achieve the objectives presented

* The mandate in **paragraph 10** of the Belo Horizonte Declaration shall be taken into consideration so that the Working Groups develop specific recommendations in their area, explicitly considering the objectives of the Miami Declaration; as well as the recommendation of the Working Group on Smaller Economies, regarding the Smaller Economies, and present these during the next PrepCom meeting in October.

* As pointed out in **paragraph 9** of the Belo Horizonte Declaration, after dilegent efforts to reach agreements on controversial issues, the Working Groups shall report the different positions to Vice Ministers.

* All Working Groups shall meet sufficiently in advance of the October PrepCom meeting so as to advance as much as possible in fulfilling their mandates. The recommendations on technical alternatives, on possible issues and negotiating approaches shall be provided to the Pro Tempore Presidency for distribution to the Preparatory Committee no later than Oct. 14. The Working Groups should post these reports in the Internet Discussion Room for Vice Ministers.

* All Working Group Chairs shall participate in the PrepCom meeting in October.

* The Working Groups shall ensure that reports and minutes of meetings are provided to all members of the Working Group and not solely to participants in the meetings.

* The Working Groups shall review and analyze the recommendations arising from the different Belo Horizonte Forum Workshops and include the relevant ones in their tasks as appropriate in compliance with their mandates.

* Each Working Group Chair shall inform the Group of decisions made by the PrepCom, e.g. by sending the minutes and guidance suggested by this Committee.

* Working Groups are urged, as long as there is consensus, to hold seminars and conferences with the private sector to request views and possible business facilitation measures.

* The Working Group Chairpersons shall send the Tripartite Committee all information regarding seminars, conferences and contact points to be placed on the official FTAA Website, when consensus exists.

U.S.-EU OFFICIALS STILL FAR APART IN HELMS-BURTON NEGOTIATIONS

After their fifth formal meeting last week, U.S. and European Union negotiators remained far from resolving their dispute over the Helms-Burton law, which seeks to punish foreign companies that traffic in former U.S. property in Cuba. In their July 31 meeting in Washington, the U.S. and EU each tabled proposals on how the dispute might be settled, but sources said those proposals mostly reiterated their opposing views.

"Some progress was made," an informed source said this week, "but the same issues still persist."

For example, the two sides last week exchanged proposals on language aimed at discouraging investment in expropriated property, one of two areas in which the two sides are trying to agree in order to settle the Helms-Burton dispute, informed sources said. Sources said the U.S. proposal was more of a "concept" paper, while the EU proposal was closer to draft language on investment disciplines.

But in order for the U.S. and EU to make progress, negotiators have decided for the time being not to discuss the key issue of how retroactive these disciplines should be, an area in which there is no agreement.

The U.S. has insisted that the disciplines should apply to properties expropriated in the past, so that they can in effect apply to properties in Cuba. But the EU has argued that the disciplines should only apply to properties expropriated after the disciplines take effect, and has rejected specific references to properties in Cuba.

Sources said that the decision to postpone this fight has allowed the two sides to make some progress on the disciplines themselves. However, the source said this strategy does not mean that either side has agreed to the other side's view on retroactivity.

"You can talk about these issues without running afoul of problems related to when [the disciplines] take effect," an informed source said this week. "We're taking the practical approach of looking at the concrete issues."

In addition, the U.S. last week also tabled a "concept" paper on the second issue the two sides are trying to resolve: how companies should respond when facing conflicting laws from two different countries, as they do under Helms-Burton. The law requires foreign companies to comply with U.S. investigations into allegations of trafficking, but the EU and Canada have passed legislation barring their domestic companies from complying with Helms-Burton.

The U.S. paper reiterated the U.S. position that countries should consult with each other when their laws make opposing demands of companies. In contrast, the EU has previously proposed strict rules under which the law in a company's home country would automatically prevail over another nation's laws when the two conflict with each other, according to an informed source.

The two sides agreed last week to meet again the week of Sept. 15 in Paris, on the fringes of meetings to negotiate a Multilateral Agreement on Investment (MAI) in the Organization for Economic Cooperation & Development. The U.S. and EU have agreed to try to fold their bilateral disciplines into the MAI once they are completed.

Next month's meeting will give the two sides less than one month to finalize these disciplines, as they decided on a deadline of October 15 in their April 11 agreement. The U.S. and EU are hoping that a successful conclusion to the talks will allow the EU to withdraw its World Trade Organization challenge of the law, and convince Congress to allow Title IV of the law to be waived by the president. Title IV requires the U.S. to deny visas to foreign executives that traffic in expropriated U.S. property in Cuba.

Sources close to the negotiation added last week that the U.S. is now more optimistic about the prospects for a successful conclusion of the talks because the new EU lead negotiator, Deputy Director General for External Relations Gerard Depayre, seems more determined to move the talks forward. The U.S. side was led by Assistant Secretary of State for Economic and Business Affairs Alan Larson, sources said.

continued on next page

In a related development, Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) last month publicly accused the Clinton Administration of purposefully failing to enforce Title IV of the Helms-Burton Act.

"Mr. President, it is increasingly obvious that your Administration has decided -- unilaterally -- not to enforce that provision of the Helms-Burton law," Helms wrote to Clinton in a July 16 letter, reprinted below. "Indeed, through its failure to enforce this provision, the Administration has issued what amounts to an effective (and, in fact, an unlawful) waiver of Title IV."

In addition, Helms warned that not enforcing Title IV leaves the impression that the Administration has promised the European Union that Title IV would not take effect while the two sides try to settle their dispute over the law. EU member states have in fact warned that if Title IV is applied against an EU company, they would demand that the WTO challenge of Helms-Burton be resumed.

Helms' questions to the Administration in his July 16 letter mirrored those asked in a June letter to the State Department from House International Relations Chairman Ben Gilman (R-NY). In response, State insisted that it is fully enforcing Title IV, and that delaying its enforcement in order to provide companies such as STET and ITT time to settle disputes over expropriated property is "fully consistent" with Title IV.

Gilman said in a July 23 statement that while he welcomes the agreement, his committee would be reviewing it to ensure it is "consistent with the U.S. embargo on Cuba."

Meanwhile, a House amendment that would require the Administration to report to Congress on the status of Title IV's implementation was included in the State Department authorization bill that emerged from a House-Senate conference committee last week, according to congressional sources.

The measure would require periodic reports to Congress on the number of companies that have and have not been cited under the law, and explanations of how and why those decisions were made. The amendment does not require State to submit the names of specific companies to Congress.

A congressional source added that while the language in the final amendment also does not require State to provide a sector-by-sector breakdown of companies being investigated under Title IV, State has made a "verbal commitment" to provide this analysis. Rep. Ileana Ros-Lehtinen (R-FL), who chairs the House International Relations subcommittee on international economic policy and trade, last week introduced legislation to this effect in case State does not keep to that commitment, the source said.

Also surviving the conference committee was a Senate amendment that would deny visas to foreign executives that traffic in expropriated property anywhere in the world. However, the amendment does not apply to property claims resulting from disputes between United Nations members in which an ultimate resolution has not been reached.

For example, the amendment does not apply to lands in dispute as a result of the Peru-Ecuador conflict, the 1969 "Soccer War" between El Salvador and Honduras, and Middle East conflicts between UN member states, according to House report language explaining the amendment. In contrast, the report said the measure could be used to target property claims in Nicaragua, Costa Rica, Honduras, and the Dominican Republic.

A congressional source said both of these measures were "not a matter of great controversy." A conference report on the authorization bill will likely be assembled after the August recess, after which it will be voted on by the House and Senate and then go to the president for signing.

The broad aim of the bill is to consolidate international affairs agencies, reform foreign assistance programs, and authorize appropriations of foreign assistance programs for 1998 and 1999.

Finally, congressional sources said that Ros-Lehtinen and Rep. Lincoln Diaz-Balart (R-FL) introduced legislation last week that would require the U.S. to withhold non-humanitarian assistance to members of the Caribbean Community (Caricom) and the Central American Common Market (CACM) if Cuba is allowed to join either of those organizations. The bill would also deny Caribbean Basin Initiative tariff benefits to those countries.

Helms Letter on Title IV Enforcement

July 16, 1997

The President
The White House
Washington, D.C.

Dear Mr. President:

I am dismayed by your decision today to issue, without consultation, another waiver of Title III of the Helms-Burton law, a decision that will allow foreign businesses to continue trafficking in stolen U.S. property with impunity -- while denying the rightful American owners any legal recourse whatsoever to seek compensation from those traffickers.

I am aware, of course, that the law does provide you with the legal authority to waive Title III. However, I must remind you, Mr. President, that Congress explicitly refused to grant any waiver for Title IV of the Helms-Burton law -- the provision denying visas to foreign business executives trafficking in stolen American property in Cuba.

Mr. President, it is increasingly obvious that your Administration has decided -- unilaterally -- not to enforce that provision of the Helms-Burton law. Indeed, through its failure to enforce this provision, the Administration has issued what amounts to an effective (and, in fact, an unlawful) waiver of Title IV.

Mr. President, with all due respect, I find it difficult to fathom how, since Helms-Burton was signed into law on March 12, 1996, the State Department has seen fit to issue Title IV letters (denying entry to the U.S.) to the executives of just two companies -- Sherritt of Canada, and Grupo Domos of Mexico.

Surely after 16 months of research, your Administration has uncovered sufficient evidence of other Canadian, Latin American and European companies that are in violation of Title IV. Or does the Administration seriously believe that Sherritt and Grupo Domos are the only companies trafficking in stolen American property in Cuba?

It is obvious, for example, that the Italian telecommunications monopoly STET (a partner in Cuba with Grupo Domos) is in clear violation of Title IV. Indeed, it is my understanding that the State Department sent STET a "warning" letter in March, 1996. Thirteen months have passed since that letter was sent, yet no action has been taken against STET. Why, Mr. President, have their executives not been declared *persona non grata* in the United States?

Mr. President, there is a growing suspicion in Congress that your Administration has promised the European Union it will not enforce Title IV against European companies, as a quid pro quo for European agreement to suspend their WTO suit. Your failure to enforce this provision of the law reinforces that impression.

Allow me to emphasize respectfully, Mr. President, that you and your Administration do not have the legal authority to waive Title IV. It is the law of the land, and your Administration is legally bound to enforce it.

I will appreciate your explaining to me the reasons behind your Administration's failure to enforce Title IV of the Helms-Burton law. Further, has there been any agreement, oral or written, with the European Union, or with any European Union government, that Title IV will not be enforced during the period of negotiations over the WTO case? What is the Administration's legal justification for such an unauthorized waiver of the law? And, is your Administration planning to take any actions during the coming months against executives in violation of Title IV?

I will be genuinely grateful for an early response to these questions.

Sincerely,
Jesse Helms

BRT SEEKS TO BUILD $3 MILLION FAST-TRACK CAMPAIGN . . . begins page 1

bers of Congress will be facing this issue for the first time."

The BRT letter, reprinted below, also warned that criticism on various fronts has weakened the coalition supporting new trade agreements. "In addition, opposition by organized labor, human rights groups, protectionists, isolationists and environmental groups has taken its toll," it said. "Many members view fast-track as a referendum on NAFTA, which is remembered on Capitol Hill for the strong views expressed by proponents and opponents, leading to a difficult vote for members of Congress."

The group warned that without the "active participation" of U.S. exporters, the Administration will lose its battle for fast track. "Our goal will be to help persuade undecided members of Congress or those new to this issue about the critical importance of fast-track to our nation's future," the BRT said.

Private-sector sources noted that the letter was slightly negative about the prospects for getting fast track, though they cautioned that it is primarily a letter designed to convince members to contribute money to the effort.

The letter outlined a lobbying effort on several fronts. One element will be paid advertising in selected congressional districts, "especially where an incumbent member of Congress is undecided," it noted. The publicity campaign will also seek to build on Administration activities and use mailings to news media, "periodic news conferences as required," visits to local editorial boards and op-ed pieces "in key states and districts throughout the country," according to the letter.

As part of efforts to create a grassroots campaign, the business groups will make "[a]ggressive use of [a] 1-800 number to generate Congressional communications from company employees, suppliers and constituents," according to the letter. The group will also recruit "opinion leaders in select Congressional districts" to support business lobbying and distribute "lobbying kits" to companies and trade associations involved in the effort.

The group will also mount an "[a]ggressive Washington campaign relying on the use of corporate offices of Roundtable companies and CEO communications with legislators," according to the letter.

The letter was signed by the heads of Caterpillar Inc., TRW Inc., The Boeing Company, Chrysler Corporation, The Proctor & Gamble Company, and General Motors Corporation. Each of these companies have pledged $100,000 for the effort, according to the letter.

The BRT earlier this year helped found the American Leads on Trade Alliance, which is a coalition of trade associations and companies dedicated to gaining the passage of fast track. An informed industry source said last month that the BRT has not sought to raise funds from other alliance members, but instead has taken the "financial lead" itself while expecting other groups to gain funds or involvement from their member companies as they see fit.

BRT Funding Letter, Proposed Strategy for Fast Track

July 24, 1997

Dear:

As you know, the Business Roundtable has lead the business community for many years in promoting the growth of the U.S. economy through trade agreements. The Roundtable's leadership on NAFTA in 1993 was absolutely critical to passage of that landmark free trade agreement. Similarly, the Roundtable took the lead in organizing the Alliance for GATT NOW in 1994-1995 when Congress enacted the Uruguay Round implementing legislation.

Today, we are faced with a similar challenge. The president has announced his intention to send to Congress this autumn a proposal that reinstates his authority to negotiate new market-opening trade and investment agreements under "fast-track" authority. Without this other Congressionally-granted authority, there can be no expansion of NAFTA to include Chile or other Central and South American countries. There can be no Free Trade Agreement of the Americas. There can be no new sectoral trade agreements such as the recently concluded information technology and telecommunications agreements. There can be no new multilateral agreements to cover, for example, agriculture, or to expand intellectual property protection under the auspices of the WTO. In short, without new fast-track authority, America's global trade leadership will be irreparably harmed.

Perhaps more unsettling is the political backdrop we face on Capitol Hill. Despite current economic growth, historically low unemployment, growing exports and the increasing percentage of our nation's GDP that is attributable to international trade, the political climate for new trade agreements is not good. Organized labor, human-rights groups, protectionists, isolationists and some environmental organizations are questioning the benefits of trade and investment to the United States. This is why the Roundtable has undertaken its trade communications initiative, seeking to inform our stakeholders about the importance of trade and investment to the growth of our own companies and to our nation's future.

With the Congress scheduled to debate and vote on fast-track authority this fall, it is imperative that the Roundtable's member companies step forward to make our collective voices heard. Without our active participation, fast-track authority for the president will not be enacted.

We have pledged to work with the President and with the Congressional leadership to achieve passage. Our goal will be to help persuade undecided members of Congress or those new to this issue about the critical importance of fast-track to our nation's economic future.

With our participation and support, we will be fighting this campaign on three fronts: direct lobbying in Washington, a fifty-state grassroots campaign, and a media program of advertising and public relations directed at key, targeted Congressional districts. All of these communications will be designed to demonstrate the importance of fast-track to our nation's economic future and to correct misleading and inaccurate objections raised by its opponents.

In order to conduct this critical campaign, we need your immediate financial assistance. Each of us has pledged $100,000 to this effort. We believe we need to raise a minimum of $3 million in order to insure that the voice of the business community is heard. Of course, each of us is called on frequently to make pledges of corporate resources for a variety of worthwhile causes. This cause, however, is tied directly to our business future, the economic growth of our country, the opportunities and job security of our employees, and a growing standard of living for the United States.

Maintaining U.S. global leadership on trade is at stake in this battle. If fast-track is not passed by Congress, U.S. global leadership on trade will surely be a thing of the past. While the United States remains on the sidelines, new trade agreements are already being forged by our trading partners with the economically growing countries of South America and Southeast Asia.

With or without U.S. participation, such agreements will continue to be forged. In possession of fast-track authority, U.S. negotiators have the power to lead negotiations and shape these agreements to better suit the trade and investment liberalization needs of U.S. firms and workers. Without fast-track, the U.S. merely watches from the sidelines while other nations craft rules to the detriment of U.S. interests. We simply must do our part to get fast-track approved.

As a member of the International Trade and Investment Task Force, we are asking you to make a special commitment. We hope that you will contribute at the $100,000 level. If you are unable to do so, we hope that you will contribute $50,000, $25,000 or some other appropriate sum. In any event, your participation is important. Enclosed is a fax-back pledge sheet. Please respond as quickly as you can. With resources in hand, we will gear up for our efforts to counter the ads already being run by opponents of trade in key Congressional Districts around the country. Your checks can be made payable to The Business Roundtable and sent to the Roundtable at 1615 L Street, NW, Suite 1100, Washington, DC 20036.

Thank you in advance for your support of this critical initiative.

Sincerely,

Donald V. Fites
Chairman & CEO, Caterpillar Inc.
Chairman, The Business Roundtable

Joseph T. Gorman
Chairman & CEO, TRW Inc.
Chairman, The Business Roundtable
International Trade and Investment Task Force

Philip M. Condit
Chairman, President & CEO
The Boeing Company

Robert J. Eaton
President, Chairman & CEO
Chrysler Corporation

John E. Pepper, Jr.
Chairman & CEO
The Procter & Gamble Company

John F. Smith, Jr.
Chairman, CEO & President
General Motors Corporation

cc: Washington Representatives

Enclosures

Proposed Strategy

Reports from Capitol Hill by Congressional allies indicate that the prospects for enactment of fast-track authority this year are uncertain. With the substantial turnover in the U.S. House of Representatives in the last two elections, many members of Congress will be facing this issue for the first time. In addition, opposition by organized labor, human rights groups, protectionists, isolationists and environmental groups has taken its toll. many members view fast-track as a referendum on NAFTA, which is remembered on Capitol Hill for the strong views expressed by proponents and opponents, leading to a difficult vote for members of Congress.

The Business Roundtable proposes a multi-pronged strategy to secure support for enactment of new trade negotiating authority for the President, leading to continued U.S. leadership on global trade.

__Media__

* Selective advertising in targeted Congressional districts and, as appropriate, in Washington in support of fast-track.

* Radio and television advertising in selected Congressional districts, especially where an incumbent member of Congress is undecided.

* Aggressive use of earned media, leveraging Administration activity as much as possible. Conduct mailings to news media, periodic news conferences as required, editorial board visits, and production and placement of op-eds in key states and districts throughout the country.

__Grassroots__

* Aggressive use of 1-800 number to generate Congressional communications from company employees, suppliers and constituents.

* Recruiting opinion leaders in select Congressional districts to support the fast-track effort.

* Distribution of fast-track lobbying kits to companies for use in Congressional visits.

* Grassroots lobbying by BRT-member companies and other business trade associations.

* Expand breadth of support through interaction with other business organizations.

__Washington Lobbying__

* Aggressive Washington campaign relying on use of corporate offices of Roundtable companies and CEO communications with legislators.

__Other__

* Development and distribution of other promotional materials on fast-track.

BARSHEFSKY HINTS AT COMPATIBILITY OF FAST-TRACK PLANS . . . begins page 1

said in an Aug. 6 press conference. "But we are looking at a number of options."

Crane told reporters on July 29 that he had not heard back from the Administration regarding his proposed language. In May, House Republicans presented this language to the Administration as they considered moving more quickly on fast track. The Administration did not reject it outright but objected at the time to being presented with what it viewed as an "ultimatum."

At that time and since then, congressional staff have informally discussed possible formulations based on the "trade-related" phrase, but possibly including the words "specifically" or "directly" to narrow the scope of what could be included in trade agreements which would utilize a fast track bill with this formulation, a congressional source said. The source suggested that other legislative tools, such as committee report language, could further clarify what any language would allow in a trade agreement.

Trade subcommittee Ranking Member Bob Matsui (D-CA) has warned that tighter language would make it more difficult to attract enough House Democrats to pass such a bill.

Barshefsky on Aug. 6 repeatedly refused to be more specific about how the Administration bill would treat labor and environment issues, and how many Democratic votes she believes could support a compromise proposal. She stressed that the Administration wants a bill with broad support, but that the key goal is to pass a bill.

"The goal is to achieve fast track," Barshefsky said. "We want the broadest possible support."

The comment on labor and environment was the closest Barshefsky came to characterizing the substance of how the Administration bill, which is expected to be delivered to the Congress in early September, will address key contentious issues. She declined to comment on how the bill might treat the question of whether legislation can include measures "necessary" or "appropriate" to implement trade agreements.

She did say that talks on a free trade agreement with Chile would be grandfathered into any fast track bill, since consultations began before the 1994 Miami summit. She declined to specify whether such a provision would then result in Chile formally acceding to NAFTA or whether the U.S. would seek a bilateral FTA with Chile. Canada has a NAFTA-equivalent agreement with Chile, and Mexico is updating its agreement with Chile to reflect that standard, she pointed out.

More generally, the Administration is considering the precise nature of the "procedural mechanisms" which the fast track bill will outline for consultations with Congress on other negotiations besides those with Chile. "Plainly, Congress would be involved [from the outset] with respect to countries beyond Chile," Barshefsky said. "The bill takes care of the Chile issue."

A congressional source noted that the Administration has already signalled its support for the enhanced consultation procedures in Crane's bill from 1995. The source suggested that Barshefsky was emphasizing this point "to address the perception that fast track shuts Congress out of the process."

The Administration is still discussing whether the Multilateral Agreement on Investment, whose negotiation has already begun, would be grandfathered so that it could be implemented using fast track, Barshefsky said. Barshefsky said "it is not clear" whether the MAI would change U.S. law, and therefore whether it would need implementing legislation.

She argued that the absence of fast track for the MAI would not necessarily hamper the negotiation because other countries could not be sure the U.S. could follow through on its commitments. The absence of fast track "didn't hurt us" in World Trade Organization negotiations on basic telecommunications, Barshefsky said.

continued on next page

Barshefsky said that "over the course of the next two to three weeks" the Administration will consult with members of both parties in both houses of Congress. This process will also bring in business, labor and environmental groups, she said. The goal of the consultations is to allow the introduction of a bill that will be broadly supported from the outset and need not be changed substantially, she said.

Meanwhile, Jay Berman, the recently named White House coordinator on fast track, told business groups on July 5 that the Administration would decide on the key issues related to the substance of legislation within the next week to ten days, according to informed sources. The bill would then be presented informally to members in the week before its formal introduction. Ways & Means Chairman Bill Archer (R-TX) has told the Administration that the bill would take two weeks to go through committee, and that a full House vote could come at the end of September or early October, Berman said.

He spoke to the America Leads on Trade Alliance, a coalition of business associations organized specifically to campaign in favor of fast track (see separate story).

The Administration was seeking to obtain a baseline vote count before Congress adjourned last week, according to informed sources. The vote count is not based on members' response to a specific fast-track proposal but to the general idea of extending new negotiating authority to the President, these sources said.

In addition, the Administration is working with members of Congress to pull together a whip group in the House which would champion fast track and reach out to other members, according to a congressional source. This group will likely include trade subcommittee Ranking Member Bob Matsui (D-CA) and as many as 15 to 20 other members, according to the source.

At the same time, President Clinton continued his outreach to House Democrats on fast track with a July 31 meeting before members left town. The meeting was scheduled to be attended by Clinton, Vice President Al Gore, Treasury Secretary Bob Rubin, Agriculture Secretary Dan Glickman, Commerce Secretary Bill Daley, U.S. Trade Representative Charlene Barshefsky, Labor Secretary Alexis Herman, Environmental Protection Agency Administrator Carol Browner and Undersecretary of State for Economic, Business and Agricultural Affairs Stuart Eizenstat. It follows a July 24 White House meeting with a group of Democrats who told Clinton that they expect to take a "lot of heat" if they support fast track, according to a congressional source.

White House Spokesman Mike McCurry highlighted the problems members had raised to the President in the July 24 meeting in his briefing that day. Berman said this week that the President urged members not to commit to one side or another and give the Administration the chance to make its case on fast track.

"The message was: give us a shot before you commit," one informed source said. The source added the Administration was most likely trying to prevent members from joining the anti-fast track camp during the August recess.

Members told Clinton that there needs to be "sufficient protection" for U.S. workers as well as attention to the needs of workers in other countries and to the environment, according to McCurry. The group raised "all issues that we are very well familiar with, and the President thought it was very useful to hear from House Democrats about some of the concerns they're hearing in their districts," he said.

Clinton told House Democrats that competing globally is one element in his plan to ensure a dynamic U.S. economy, McCurry said. The President expressed an understanding of members' difficulties, but emphasized that the more that members of Congress and the public understand the issues in the fast-track debate, the more they will support it, an Administration official said. Clinton emphasized that it was important to communicate what the fast-track debate is about, and promised to do that personally in the coming weeks, the official said.

House Minority Leader Richard Gephardt (D-MO) was not invited to the July 24 meeting, nor were other Democrats who oppose the extension of any fast-track negotiating authority which would not include labor and environmental issues in the core provisions of a trade agreement. But Administration officials spoke to Gephardt after the July 24 White House meeting to convey their desire to speak to him, a congressional source said.

Berman said in an interview last week that the Administration's effort on fast track will try to "walk a fine line" to avoid deepening conflicts in the House Democratic Caucus. President Clinton has instructed his officials to achieve passage of the fast-track bill in a way that does not "exacerbate" the split on trade in the Democratic party, Berman said.

Berman emphasized that the President wants to obtain fast track this year in both the House and the Senate. "We are now at a point where we do not have the luxury of deferring the decision," he said. Another Administration official said that the need to act this year largely stems from the fact that fast track would be even more controversial in 1998, a congressional election year.

Berman said he will coordinate the Administration's activities on the fast track, as well as efforts outside Washington, which could include a grass-roots campaign. These efforts could include having the states "bear witness" that expanded trade has contributed to their economic health, and would counteract the anecdotal evidence presented by opponents of fast track on the problems caused by NAFTA.

Berman said there would be daily briefings among Administration officials on fast-track-related activities, but was reluctant to talk about a "war room" as the command center of the initiative. "We are trying to make peace" and expand the prosperity the U.S. has experienced in peace time, he said.

But other Administration officials say the fast-track effort will use a "virtual" war room in which officials will carry out their responsibilities without leaving their regular positions.

Berman conceded that obtaining fast track is made "more challenging" by the absence of a major trade initiative, such as the Uruguay Round, that must be passed. "The Uruguay Round did not end the trade agenda," Berman said. He pointed out that there is a large trade agenda to be fulfilled, even though it may not have the "glamour" of the Uruguay Round. This includes the built-in World Trade Organization agenda, with its commitment to hold agricultural negotiations after 1999, the Free Trade Area of the Americas, and initiatives in the Asia-Pacific Economic Cooperation forum, he said.

ADMINISTRATION DEVELOPS FAST-TRACK STRATEGY . . . begins page 26

With the fast-track bill, the Administration will submit to Congress a report required under Section 108 of NAFTA's implementing bill identifying future candidates for FTAs.

One way to assess a country's adherence to core labor standards that has been discussed is their membership in the International Labor Organization, informed sources said. According to this idea, no commitments on core labor standards would be sought in agreements with countries that are already members of the ILO, they said.

This proposal suffers one major problem, which is that the U.S. itself is not a signatory to all ILO conventions, one source pointed out. The source predicted that it would ultimately not be pursued by the Administration.

The Administration is likely to decide on key issues related to the substance of fast-track legislation within the next week to ten days. This timetable is intended to secure committee consideration and passage of a bill through the House in September or early October (see related story).

That would be in time for President Clinton's scheduled mid-October trip to Argentina, Brazil and Venezuela. Those countries and other Latin American and Caribbean governments view progress by the Administration toward obtaining fast track as a key to its negotiating credibility in the Free Trade Area of the America talks that are expected to be launched next April in Santiago, Chile.

UPCOMING CONFERENCES ON WESTERN HEMISPHERE TRADE POLICY

Sept. 8-9, Washington, DC — "The Brazil-U.S. Trade Agenda: Impact on Business," Brazil-U.S. Business Council; Tel. 202-463-5485; Fax. 202-463-3126.

Sept. 18-22, Quebec City, Canada — "Parliamentary Conference of the Americas," Quebec National Assembly; Tel. 418-643-7391; Fax. 418-643-7391.

Sept. 25-27, Santa Fe, NM — "6th Annual Conference," The United States-Mexico Law Institute, Inc.; Tel. 505-277-7825/0080; Fax. 505-277-0068.

Sept. 30-Oct. 2, Santiago, Chile — "Transpacific Partnership: Implementing Trade and Investment Opportunities," Pacific Economic Cooperation Council 12th International General Meeting.

Oct. 8-10, New Orleans, LA — "Encuentro Las Americas 97," City of New Orleans et al.; Tel. 888-529-4398; Fax. 504-524-4303.

Oct. 25-28, Acapulco, Mexico — "International Conference on Trade and Investment," Border Trade Alliance, Tel. 800-333-5523; Fax. 602-250-3360.

Oct. 29-Nov. 2, Acapulco, Mexico — "The Present and Future of the Maquiladora Industry in Mexico," Consejo Nacional de la Industria de Exportacion (CNIME); Tel. 011-525-611-3366.

Nov. 14-19, Guatemala City, Guatemala — "The Business of the Future of the Americas," Assn. of American Chambers of Commerce in Latin America; Tel. 202-463-5485; Fax. 202-463-3126.

Dec. 7-11, Miami, FL — "The Americas 1997 - A New World for Business," Miami Conference on the Caribbean and Latin America, Caribbean/Latin American Action; Tel. 202-466-7464; Fax. 202-822-0075; FaxBack. 202-776-9010.

March 16-20, 1998, San Jose, Costa Rica — Americas Business Forum and IV FTAA Ministerial

April 1998, Santiago, Chile — "Foro Ciudadano Hemisferico Frente a la Globalizacion," Red Chile de Accion Para una Iniciativa de los Pueblos, Tel./Fax. 011-526-341-6597.

April 1998, Santiago, Chile — Second Summit of the Americas.

ADMINISTRATION CONSIDERING NEW POLICIES TO WIN PASSAGE OF FAST TRACK

The Clinton Administration is planning to use the next few weeks to decide "critical policy issues" which would help pave the way for the passage of fast-track negotiating authority, according to an Administration official. In addition, the Administration is doing this work with a view to introducing fast-track legislation soon after Congress returns in September in the hope to have a House vote that same month, informed sources said.

Policy issues facing the Administration include the possible expansion of programs to retrain workers adversely affected by trade agreements, and finding an approach to demonstrate the Administration's commitment to core labor standards without explicitly including them in fast-track legislation, informed sources said. This is part of an effort to develop a bill that would attract sufficient Democratic votes, an Administration official said.

The Administration is currently split over whether to pursue additional retraining programs as a way of demonstrating its commitment to U.S. workers. Some Administration officials are arguing against such initiatives because they will not blunt the opposition of organized labor to fast track, but others say that it would be helpful in securing support among House Democrats, an Administration official said.

"The politics of these that say do not do anything on [retraining] is perhaps shortsighted," the official argued.

The worker retraining initiatives would not necessarily have to move as part of a fast-track bill, but could move simultaneously or in the "margins" of the bill, the Administration official said. The need for retraining programs to help U.S. workers hurt by global competition has been raised by a number of Democrats, including Ways & Means Committee Ranking Member Charles Rangel (D-NY). It may also help to win over some of the Hispanic House members, who told President Clinton in a letter earlier this month that NAFTA has cost more jobs than it has created for Latinos, African Americans and women.

The Administration's debate is also focusing on how to finesse handling the relationship between labor and trade, informed sources said. One way of demonstrating that the Administration cares about promoting core labor standards would be to limit candidates for potential free trade agreements to countries that also promote these standards, they said.

"There are a lot of different thoughts that are being discussed under the umbrella of country criteria" that would define the countries with which the U.S. would seek free trade agreements, an Administration official said. The rule of law would be another criterion the Administration would consider in its selection of potential free-trade agreement candidates.

continued on page 25

Inside This Issue . . .

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continued on page 18

CHINA OFFERS TARIFF CUTS FALLING SHORT OF DEMANDS BY QUAD MEMBERS

China has offered key members of the World Trade Organization, including the U.S., Japan, and the European Union, selected tariff cuts which failed to meet their demands in terms of the number of products covered and the extent of the reductions, according to informed government sources. Chinese negotiators also indicated in advance of a formal meeting of the WTO working party today (Aug. 1) that it would be "difficult" for them to sign on to the Information Technology Agreement, which would eliminate tariffs by the year 2000, these sources said.

"The tariff offers constitute improvements, but they fall well short of what people are asking for," one negotiator said. "They are continuing to make improvements in market access, but it is rather slower than people had hoped."

For example, the Chinese offer to the U.S. covered 400 items, while the one to the EU covered 900 items,

continued on page 19

U.S., EU WRESTLE WITH CONFLICTING JURISDICTION IN HELMS-BURTON TALKS

European Union and U.S. negotiators met in Washington yesterday (July 31) to take another stab at resolving their dispute over the Helms-Burton law, which is aimed at punishing foreign companies and executives that traffic in expropriated U.S. property in Cuba. Negotiators were expected to cover all aspects of the dispute in the meeting, but one source said they were expected to focus on the controversial issue of conflicting jurisdiction.

But sources said that the two sides are still far apart on this issue, which centers on how companies should respond when facing conflicting laws from two different countries, as they do under Helms-Burton. The U.S. law seeks to limit foreign investment in Cuba in certain circumstances, which conflicts with EU and Canadian law.

The EU has so far proposed rules under which the law in a company's home country would automatically prevail over another nation's laws when the two conflict with each other, according to an informed source.

continued on page 20

BOEING DEAL INCLUDES ARBITRATION PROCESS ON PATENT LICENSING DISPUTES

The deal struck between Boeing Co. and the European Union to clear the way for the company's merger with McDonnell Douglas Corp. (MDC) contains a commitment by Boeing to use arbitration to settle disputes with the EU over the licensing of patents derived from U.S. government research and development, informed sources said this week. As part of the deal, Boeing agreed to license patents to other aircraft manufacturers that cover commercial aircraft innovations derived from U.S. government funded research.

The arbitration provisions of the Boeing-EU agreement do not create a body in which disputes over patent licensing would be settled, but instead commits the two parties to seek "independent arbitration." The agreement envisions using arbitration to settle fights concerning how much Boeing should charge for licensing its patents, informed sources said. Another source added that arbitration may also be used in disputes over whether or not a

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patent in question was actually derived from U.S.-government funded R&D.

Disputes over what innovations stem from government funded research could arise easily because the EU believes that much of the U.S. commercial industry's technology is derived from R&D done by the National Aeronautics and Space Administration (NASA), the Federal Aviation Administration (FAA), and the Defense Department. But a U.S. industry source said this week that Boeing believes that it will have to license only very few of its patents under the merger agreement with the EU. That assessment reflects U.S. government and industry claims that the commercial aircraft industry gains little benefit from government R&D.

Specifically, Boeing last week agreed to license "patents obtained under U.S. government-funded contracts to commercial aircraft manufacturers on a non-exclusive, reasonable royalty basis." Sources said this week that Boeing's commitment covers all past and future non-expired patents held by Boeing and MDC, and is not limited to certain technologies or in any other way.

One industry source said the EU is not obligated under this agreement to provide similar access to patents derived from EU government R&D that benefit Europe's commercial aircraft industry. But the source said it is likely that few of these patents exist anyway.

In addition, Boeing agreed to annual reports to the European Commission for ten years on its current patents derived from government R&D. The EU made that demand so that it would know which patents exist that Boeing could potentially license, an industry source said.

But again, the source said Boeing anticipates that the number of patents it will make public to the EU is "not a big list," and that it is only required to provide information on patents with a commercial application that were derived from government R&D.

A U.S. official said this week that "there is a chance" that Boeing has made commitments that go beyond what the company has previously agreed to under the 1992 bilateral aircraft subsidies agreement in terms of providing information to the EU. But the official said Boeing has not yet briefed the Clinton Administration on the exact details of the agreement.

Sources this week were undecided on the significance of other concessions that Boeing made to the EU last week. For example, Boeing agreed to cross-license blocking patents, which are patents that are so broad that they cannot be designed around by Boeing's competitors. But one informed source said Boeing and Airbus were discussing the possibility of cross-licensing these patents before the EU's merger review took place.

In addition, Boeing agreed to not enforce provisions of its contracts with three U.S. airlines that prohibit those airlines from buying planes from any company other than Boeing. But an industry source said two of those three companies, Continental Airlines and American Airlines, have already announced that they do not expect to deviate from those contracts. And while Boeing did agree to not enter any other exclusive-supplier arrangements until 2007, the Federal Trade Commission (FTC) had already warned Boeing in its approval of the merger that it would likely have to examine any future sole-supplier deals for anticompetitive effects.

Boeing also committed to not leverage the existing MDC customer base for the purpose of obtaining an advantage in selling Boeing aircraft. As part of this commitment, Boeing agreed to have an independent auditor confirm to the EU that Douglas Aircraft Co., the division of MDC that makes commercial aircraft, remains a separate legal entity from Boeing. This commitment should demonstrate to the EU that Boeing is treating the companies separately in terms of selling Boeing and MDC commercial aircraft, an industry source said.

Aside from this structural commitment, Boeing also committed itself separately to not seek to use its position to increase Boeing's sales (*Inside U.S. Trade*, July 25, p. 1).

Meanwhile, the European Commission this week formally approved the merger in a July 30 meeting, according to EU sources. Commissioners agreed that Boeing's commitments are "adequate" in resolving the competition problems identified by the EU, but warned that it would be monitoring Boeing to ensure it meets its obligations.

"The Commission will strictly monitor Boeing's compliance with these commitments," the Commission said in a July 30 statement. "The EU Merger Regulation allows for appropriate measures to be taken by the Commission in the event of non-compliance by Boeing."

In addition, the House Transportation subcommittee on aviation has postponed a hearing on the merger that was initially scheduled for today (Aug. 1). Scheduled witnesses included Director of the FTC's Bureau of Competition William Baer, Assistant Secretary of State for Economic and Business Affairs Alan Larson, Boeing Chairman and CEO Phil Condit, and President and CEO of MDC Harry Stonecipher.

CRANE SAYS NAFTA PARITY COULD BE ATTACHED TO FAST-TRACK LEGISLATION

House Ways & Means trade subcommitee Chairman Phil Crane (R-IL) this week said that a bill to extend the benefits of the North American Free Trade Agreement to countries of the Caribbean Basin Initiative could be attached to legislation extending fast-track negotiating authority this fall. But the Clinton Administration believes it is unlikely that such a legislative strategy would improve the prospect for passage of a NAFTA parity measure, an informed source said.

"[A]t the end of the day that is not going to happen," the source said. "That combination has no vote-gathering potential."

The source pointed out that some elements of the textile and apparel industry, which had worked out a compromise on NAFTA parity, are likely to oppose fast track itself. The source also noted the skepticism of key members of the Republican leadership towards NAFTA parity, an apparent reference to Senate Majority Leader Trent Lott (R-MS).

A congressional source confirmed this interpretation, pointing out that combining the weak support for NAFTA parity with fast track, which divides both Republicans and Democrats, would doom both bills. "Two negatives do not make a right," the source said.

In addition, the last week's experience with NAFTA parity has shown that the politics of the measure make it entirely a liability with regard to fast track, another congressional source argued. "We had the broadest possible coalition of the textile industry, except for Fruit of the Loom, and it still died," the source said.

Crane told reporters on July 29 that fast track represented "the next window of opportunity" for NAFTA parity, though he admitted that funding the plan, which would cost $217 million per year, would present a tough obstacle to its passage. But he argued that once authorized, it would be easier to secure extension of the program in future years.

"If you get [NAFTA parity] in the [fast-track] bill, then it's easier to extend it next year than to originate it," Crane said. "But the problem, even in September, is where you come up with the funding offsets."

Crane also said that he would seek to attach his bill on trade with sub-Saharan Africa to the fast-track legislation, a move that has been opposed by several members of the Congressional Black Caucus. But Crane has promised Rep. Charles Rangel (D-NY) that he would move the Africa measure separately if the fast-track bill would stall, one congressional source said.

The exact cost of the Africa bill is not known because it has not been scored yet, an informed source said.

A congressional source said as well that combining NAFTA parity with other trade bills, such as most-favored nation status for Mongolia or a bill implementing an international agreement to curb shipbuilding subsidies would not significantly reduce parity's political liability or make funding the program easier.

Crane made the comments following the apparent demise of efforts to include NAFTA parity in the omnibus tax bill that will implement the budget deal between the White House and the Republican leadership. The tax bill did include another short-term extension of the Generalized System of Preferences, which will now run retroactively from May 31, 1997 through June 30, 1998 at a cost of $376 million.

There was nevertheless a concerted effort by President Clinton and White House officials to resurrect NAFTA parity after it was excluded from the deal reached last weekend. But a congressional source involved in the process questioned the Administration's strategy of lobbying very late for the NAFTA parity bill instead of declaring it a priority earlier in the process.

Senate Finance Committee Chairman Bill Roth (R-DE) had sought to trade off NAFTA parity for Administration consent to an amendment that would have changed the labor and financial practices of Amtrak, which was legally necessary in order to release $2.3 billion in Amtrak funds. Clinton and Roth spoke on Tuesday night (July 29) to try to hammer out a solution but were ultimately successful, a Finance committee source said.

The next step for NAFTA parity in the Senate will likely be "the normal legislative process," the committee source said. "No one is focused" on the idea that fast track might serve as the next vehicle for this legislation, the source added.

The negotiations between Roth and the White House followed discussions which in the end left intact with minor modifications an intra-industry agreement on how NAFTA parity would be structured, Administration and industry sources said. One industry source argued that this agreement proved that there is support for NAFTA parity, and that it was only defeated by an issue that was not trade-related.

The industry agreement had been based on a detailed proposal hammered out by industry associations last week and forwarded to congressional negotiators (*Inside U.S. Trade*, July 25, p. 29).

But one congressional source argued that there was never really a firm agreement on NAFTA parity. As soon as a tentative agreement was reached, individual companies sought to "gain just a little bit more" by petitioning individual members of Congress and the industry associations did not rally around the original deal, the source said.

"All of the industry associations and companies thought they could get one more thing," the source said. "Maybe the fact that they lost it all will settle them down."

U.S. INFORMALLY FLOATS IDEAS FOR SETTLEMENT OF BANANA DISPUTE WITH EU

The Clinton Administration has asked the European Union to give direct payments to some Caribbean banana producers to offset the trade losses they will suffer when the EU is forced by a World Trade Organization ruling to abandon some of the preferences it now extends to Caribbean bananas, according to informed government sources. These aid payments to some producers on the basis of need would be in addition to a tariff preference that Caribbean bananas would enjoy compared to Latin American products under a U.S. proposed settlement of the dispute, they said.

While the U.S. has not offered a formal proposal, Deputy Assistant U.S. Trade Representative for Europe Ralph Ives raised these ideas informally in a meeting with EU officials in Geneva last week. It was held after a hearing before the WTO appellate body on the banana dispute.

"Ives floated only suggestions in case the EU would substantially lose [the WTO case]," one official said. "The ideas [raised] were already familiar to the EU."

The U.S. characterized the aid payments as "deficiency payments" that would make up the difference between the price of bananas Caribbean producers could get in the EU market and a set return linked to their production price, officials said. The U.S. has proposed the payments could go to banana producers in the Windward Islands, such as St. Vincent and the Grenadines, Dominica, St. Lucia, and Grenada, which are the least competitive producers, sources said. In a December 1996 fact sheet, USTR argued the EU should give aid to the Windwards because they are the least competitive producers.

Some EU officials at the meeting pointed out that it was "astonishing" for the U.S. to ask them to dismantle preferences for Caribbean producers and then finance an aid program, one official said. These officials pointed out that the Caribbean countries most hurt by a change in the EU banana regime are closer geographically to the U.S. than to the EU, he said. This is an apparent reference to the fact that the U.S. would face more of the fallout from destabilized Caribbean economies than the EU.

Ives presented these ideas as ways to create a "WTO consistent" regime, which the U.S. has interpreted to mean changes in the current licensing regime, and elimination of banana framework agreement that allocates the EU quota for Latin American banana imports to specific countries. The U.S. has long argued that the EU can extend tariff preferences to Caribbean bananas, but did not specify any numbers for such a tariff differences in the Geneva meeting. But informed sources said the U.S. wants to increase the tariff on Latin American bananas by 10 percent over the bound 20 percent tariff, sources said.

Informed sources said that Ives acknowledged that changes in the banana regime would hurt Caribbean producers, and generally seemed less strident and more interested in working out a compromise than he had previously been. Some sources have speculated that there is a strong White House interest in getting the case settled after President Clinton met with Caribbean leaders in May.

Ives also made it clear that the U.S. is not seeking to eliminate the current tariff-rate quota for Latin American bananas, the access of which is restricted in favor of African, Caribbean and Pacific bananas, officials said. Separately, USTR officials have made it clear that they would seek an increase in the TRQ for Latin American bananas, informed sources said.

The U.S.-EU meeting, which was also attended by the USTR lawyer in the case, was a followup to a commitment made by EU External Affairs Commissioner Leon Brittan to U.S. Trade Representative Charlene Barshefsky at the Denver summit of the world's most industrialized nations (*Inside U.S. Trade*, June 27, p. 3).

The U.S. hopes to begin talks about a possible settlement after the appellate body issues its ruling, which will happen no later than September 11, officials said. The EU has made it clear from a senior official level down that it will not begin exploring a possible settlement until the appellate body has issued its ruling.

Barshefsky emphasized her commitment to a negotiated solution in June letters to members of the House Black Caucus.

The U.S.-EU meeting followed a three-day session of the appeals body, where the EU challenged every point in the original panel report that went against the regime. The U.S. and the other complainants limited themselves to three key objections to the panel's original ruling.

This included the charge that the panel erred when it found that the waiver the EU obtained for the Lome Convention allowed it allocate market access for ACP banana producers under a discriminatory quota system, according to a June 26 submission released by the Office of the U.S. Trade Representative. The U.S. argued that the waiver allows the EU only to extend tariff preferences to ACP banana producers, according to the submission.

EU COMMISSION FORMALLY DECIDES AGAINST MANDATORY SEGREGATION OF GMOs

The European Commission this week informed the U.S. that it has decided against requiring the segregation of agriculture products containing genetically modified organisms (GMOs) from traditionally produced products for export to Europe, according to informed sources. Commissioners formally made this decision in a July 23 meeting, which also resulted in broad guidelines that will be used by the various directorates to draft labeling requirements for GMO products, EU officials said.

"We will not ask for mandatory segregation [of GMO products], that much is clear," a EU official said of the commissioners meeting. Another official added that the idea to require segregation was already "gone" earlier this month, and that commissioners used last week's meeting to formally reject it.

That message was reiterated in a July 30 letter from EU Agriculture Commissioner Franz Fischler to U.S. Trade Representative Charlene Barshefsky and Agriculture Secretary Dan Glickman, in which he said U.S. companies would not be required to separate their GMO and non-GMO crops. Instead, Fischler's letter described the guidelines for GMO labeling, which call for the labeling of products based on the results of testing done by EU authorities.

The letter also stressed that the purpose of the guidelines is to give EU consumers "clear, honest and neutral" information about the presence of GMOs in products, and is not aimed at stigmatizing products containing GMOs, an informed source said. And the letter indicated that the EU took U.S. reservations about mandatory segregation into consideration in its decision, the source said.

Specifically, EU commissioners last week agreed to labeling guidelines that would require GMO products to be labeled at all stages, whether in the form of seeds, food ingredients, or products ready for consumption. For GMO products, the guidelines provide two labeling options.

First, a label such as "contains material of GMO origin" would be required for products for which it can be scientifically shown that GMO material is present. It is also possible that this requirement could involve mandatory labeling to indicate that a product is made up of less or more than a certain percentage of GMO material, sources said.

Second, labels indicating that products "may contain" GMO material would be required for products for which the presence of GMOs cannot be excluded but where no evidence of such material is available. An EU official said the EU is hoping that this label will be much less prevalent than the "contains" label. He said the EU hoped that this label would mostly be used for products that are made up of several ingredients, some of which might have a GMO origin, that cannot be accurately traced. As with the "contains" label, the "may contain" label could be allowed to indicate that a certain proportion of the product may be of GMO origin, sources said.

Aside from these mandatory labels, the EU guidelines would allow voluntary labels indicating that products are free of GMOs. But sources said it is unclear whether testing would be required for this kind of labeling.

EU officials stressed that these guidelines are in a "quite primitive state," and it is still unclear how final EU rules will turn out. The guidelines are meant to help the EU directorates for environment, agriculture, industry and consumer safety draft consistent labeling rules. These directorates are expected to table legislation this fall.

One EU official speculated that the guidelines could prompt a change in the Novel Foods regulation, which is handled under the EU's industry directorate and governs approval and labeling for products ready consumption. There are no rules under Novel Foods for labeling of food ingredients, although those rules might be developed under the guidelines, he said.

Another official said the guidelines will affect Fischler's proposal for labeling of seeds and animal feeds, as Fischler had initially suggested segregating GMOs from non-GMOs for these products. Under the guidelines, mixed animal feed could potentially be labeled as "may contain" GMOs, while seeds would be simple to label as GMO or non-GMO because they are a "pure" product, and because farmers will generally want to identify GMO seeds in order to get a higher price for them.

Sources said the guidelines would also affect the environmental directorate's efforts to revise Directive 90/220, which governs the release of GMOs into the environment. But sources said the possible effects of the guidelines on 90/220 are still unclear.

Finally, sources were skeptical on how much testing the EU could actually do on imported food products. One informed source said the EU is likely to discuss the possibility of developing lists of products that must be labeled in certain ways. It could then require those labels on those products without testing them as they enter Europe, he said.

A July 25 Commission statement said the EU is hoping that the guidelines result in rules that are "not unduly costly" for exporters to comply with and that "minimize uncertainty." The statement said the rules should be "in accordance with the EU's international obligations," and should not raise doubts about the safety of GMO products.

EU PASSES NEW BAN ON ANIMAL PARTS OVER U.S. OBJECTIONS, WTO THREAT

Over U.S. objections, the European Commission this week approved a new policy that the U.S. says endangers about $100 million of its beef tallow exports to the European Union, according to government and private-sector sources. The EU ban on the use of animal materials that pose a risk for Bovine Spongiform Encephalopathy (BSE) would cut off U.S. tallow exports sent to the EU for further processing into derivatives used in the production of cosmetics and pharmaceuticals.

The ban prohibits the use of the specified risk material, such as spinal cords, in animal feed, food, cosmetics and pharmaceuticals. It is scheduled to go into effect on Jan. 1, 1998.

The problem for U.S. tallow exports stems from the fact that U.S. authorities say they would not be able to certify as being free of these specified risk materials banned by the EU in the July 30 decision. But U.S. sources point out that U.S. tallow is further processed in the EU into components such as glycerol under heat and pressure conditions that kill the Spongiform Encephalopathy element in these risk materials.

The EU's Scientific Committee on Cosmetology on June 24, 1997 found that tallow derivatives processed in this way are safe materials.

Senior U.S. officials and staff unsuccessfully lobbied the Commission before its July 30 decision to include a specific exemption from the ban for tallow derivatives processed in a way that eliminates the BSE risk, sources said. Commerce Secretary Bill Daley called EU Commissioner Martin Bangemann and State Dept. Undersecretary Stuart Eizenstat spoke to EU Commissioner Leon Brittan to urge them not to take this action. In addition, staff-level U.S. officials from USDA and the Office of the U.S. Trade Representative spoke to their EU counterparts, and some of them warned of a possible U.S. challenge in the WTO to the new policy.

At press time, U.S. sources believed that the wording of the ban does not exempt tallow derivatives, but some held out the hope that such a derogation may be included in accompanying documents. The U.S. government was still evaluating its response to the EU decision at press time, according to an Administration official.

Under the EU ban, a country could also seek a total exemption by proving on the basis of scientific data that it is BSE-free even though the final wording approved by the Commission does not contain an explicit reference to such a derogation, according to a Commission spokesman.

The explicit reference was struck when EU member states complained to the Commission in a July 21 agriculture council meeting that the Commission was more inclined to grant derogations to third countries than to member states. As a result, the final language only states that the EU will honor its international commitments with regards to the ban, the spokesman said.

The EU ban defines specified risk material as brains, spinal cords, and heads, with the exception of tongues, from cattle and sheep older than 12 months, a Commission spokesman said. In addition, it also bans the use of spleens from all sheep, he said.

The Cosmetology Committee ruled that tallow derivatives used in the manufacture of cosmetic products, such as fatty acids, glycerol, and esters, are safe if they are processed with certified heat and pressure treatments. That ruling was meant to clarify the application of the EU's cosmetic directive 97/1, which went into effect on July 1, 1997, and ruled out the use of specified risk materials in the production of cosmetics. By finding tallow derivatives safe, their use would have been allowed under the cosmetics directive.

But that possibility is foreclosed if the July 30 ban, which is effective across the board, does not provide for a tallow derivative exemption, U.S. sources said.

The U.S. rendering industry affected by the new ban has the support of the EU oleo chemicals industry, which is also urging the Commission to allow an exemption from the ban for tallow derivatives. Not do so would be to act against the EU's own scientific finding, these industry sources said.

U.S. FACES POTENTIAL EU FUR BAN THIS WINTER AFTER EU COUNCIL DECISION

A vote by European Union member states last week will result in a ban on all U.S. fur caught in leghold traps by this winter unless the two sides can first conclude stalled efforts to negotiate a bilateral fur trapping agreement, EU officials said this week.

In a July 22 meeting, the EU's General Affairs Council voted to take steps toward implementing the fur ban by publishing a list of countries, which does not include the U.S., that will be exempt from the ban because they conform to acceptable trapping standards. EU sources said the list will likely be published in September, after which about three months must pass before ban takes effect for countries that are not on that list, sources said.

With the ban scheduled to take effect about four months from now, EU member states urged the European Commission in a July 22 declaration to conclude a trapping agreement with the U.S. before that time. But at the same time, the Council also urged the Commission to reach a deal with the U.S. that is "at least equivalent" to the ones finalized between Canada and Russia.

"The Council cannot thus take into consideration the conclusion of agreements with other States or the accession of other States to the sought-after accord with Russia and Canada unless the results obtained are equivalent to those attained with Russia and Canada, in particular that which concerns the question of banning steel jaw leghold traps," the Council's declaration said.

Canada and Russia have each agreed to end the use of steel jaw leghold traps, which the EU considers "inhumane," in the next few years regardless of whether they meet a set of negotiated "humane" trapping standards in the agreement.

But the U.S. seems unlikely to agree to similar terms. The U.S. has so far rejected EU demands that the use of all steel-jawed leghold traps be automatically phased out. In addition, U.S. Trade Representative Charlene Barshefsky has warned that this EU demand will "likely lead to a breakdown" of the negotiation (*Inside U.S. Trade*, July 11, p. 6).

Sources said the U.S. and EU may get another chance to sort out their differences in late September, when EU External Relations Commissioner Leon Brittan is expected to travel to Washington. The U.S. has previously warned that an EU ban of U.S. fur would likely prompt it to take its complaints to the World Trade Organization.

In addition, the General Affairs Council asked the Commission to begin studying "the implementation of a system of labeling furs indicating that the animals were captured in non cruel traps." U.S. officials could not be reached to comment on whether the U.S. would challenge such a system.

At last week's Council meeting, France agreed to back the Canadian and Russian agreements, a decision that broke up a blocking minority and allowed the implementation of the ban to move forward. The French and Belgian environmental ministers had opposed the deals in June because they did not include the U.S., and because implementing the ban against the U.S. would likely lead to a WTO challenge.

France and Belgium were part of a blocking minority with the United Kingdom and Austria that forced the Council to delay a scheduled June vote until last week.

The United Kingdom, Austria and Belgium continued their opposition to the agreements last week, and complained that the agreements with Canada and Russia would not go far enough in banning inhumane traps. The United Kingdom also issued its own declaration, in which it strongly criticized the two agreements.

"The Agreement does not guarantee a ban on padded leghold traps nor on leghold drowning traps, but could have the effect of giving some leghold traps an international seal of approval," the UK statement said. The Canadian and Russian agreements would allow those traps to be tested against negotiated injury criteria, and be banned only if they don't meet that threshold.

The UK also said the agreement contains a "loophole" in that it would allow steel jaw traps to be used if there were no viable alternatives. As a result, UK officials believe that the agreement "does not constitute a humane trapping standard," and said that other countries wishing to be exempt from the fur ban, such as the U.S., should agree to ban steel jaw traps altogether in a specified time period.

WTO PANEL FORMED TO HEAR U.S. COMPLAINT ON INDONESIA AUTO REGIME

Members of the World Trade Organization this week formed a dispute settlement panel to hear a U.S. complaint that Indonesia's tax and tariff regime for automobiles violates international trade rules, according to a WTO official. At a July 30 meeting of the WTO Dispute Settlement Body, the U.S. formally requested a panel for the second time, a move Indonesia could not block.

No countries requested third-party status to the dispute, even though Korea and India had done so when a separate panel against Indonesia was formed at the request of Japan and the European Union.

The U.S. has been seeking a bilateral solution to the fight over the national car regime which would improve market access for U.S. vehicles and eliminate many trade-related investment measures the U.S. has said violate WTO rules. Although the U.S. and Indonesia had been discussing the issue for weeks, the U.S. held out the possibility of making a second request if no solution was reached (*Inside U.S. Trade*, July 4, p. 1).

The DSB also formally adopted the report of the WTO Appellate Body on Canada's magazine policies. Canada told the meeting that it would circulate a communication on Aug. 29 indicating its intentions regarding compliance with the report. The final ruling supported virtually the entire U.S. complaint regarding so-called "split run" magazines and preferential postal rates.

Two Canadian ministers strongly hinted early last month that Canada would seek other ways to promote its magazine industry that are consistent with WTO rules (*Inside U.S. Trade*, July 4, p. 4).

At the meeting, Canadian Ambassador to the WTO John Weekes delivered a lengthy critique of the Appellate Body ruling but reiterated Canada's commitment to the WTO dispute settlement system. He also noted that the original dispute settlemetn panel stressed that it was not passing judgement on a country's ability to take measures to protect its cultural identity, and hinted that Canada would seek to abide by WTO rules while seeking other ways to promote Canadian culture.

"For its part, Canada is commited to policies and measures to strengthen the viability of Canadian cultural industries, bearing in mind the need to ensure that Canada's rights and obligations as a WTO member are respected," Weekes said.

Under the Uruguay Round Dispute Settlement Understanding, Canada has 15 months from the date of adoption of the panel report to implement changes that bring its policies into conformity with the Appellate Body ruling.

The U.S. gave a report on the progress it has made in implementing an Appellate Body report which found that U.S. regulations on conventional and reformulated gasoline violate the General Agreement on Tariffs & Trade. The deadline for implementation is Aug. 19. The U.S. said that the Environmental Protection Agency is currently considering public comments on the rule EPA proposed earlier this year to eliminate the discrimination.

Also at the DSB meeting, eight countries complained that the U.S. and EU have not yet notified to the WTO the outcome of their negotiations on a dispute resulting from a change in U.S. textile and apparel rules of origin. Hong Kong-China, India, Pakistan, Switzerland, the Dominican Republic, Honduras, Japan and Argentina all noted that WTO members have not been notified of the bilateral solution to a problem which has drawn complaints from other WTO members as well.

The EU had planned to solicit opinions about the tentative agreement, which was concluded in mid-July, before formally approving the deal. The U.S. agreed to partially roll back the 1996 rules of origin change as it relates to fabric (*Inside U.S. Trade*, July 18, p. 1).

The U.S., Canada, Australia, Argentina, New Zealand and Thailand also announced that they had reached a solution to a dispute over Hungary's agricultural export subsidies which would require Hungary to seek a WTO waiver for the measures. Until the waiver is granted, these countries indicated they will continue the dispute settlement process.

EU SAYS IT MUST REQUEST WTO CONSULTATIONS ON U.S. POULTRY BAN

European Union Agriculture Commissioner Franz Fischler last week told U.S. Agriculture Secretary Dan Glickman that he is taking the first step towards a World Trade Organization challenge of a U.S. decision to ban about $1 million worth of EU poultry product exports to the U.S. Fischler told Glickman in a July 22 letter that the EU will go to the WTO because it is apparent that U.S. inspections of French plants are unlikely to lead to a quick resumption of poultry shipments.

"I am glad to hear that these inspections are about to begin but understand that the programme which is proposed is not scheduled to end before 30th August and that the [inspector] has just now requested a large amount of additional information from the French veterinary authorities," Fischler said in the letter, reprinted below. The inspection is unlikely to lead to an "immediate solution," Fischler said.

"In the circumstances you will understand that I have no alternative to initiating formal consultations on this issue in Geneva," Fischler said.

At the same time, Fischler said he hoped that the issue could be resolved bilaterally "before this process has advanced very far." In addition, informed sources said at press time that the EU had not yet requested formal consultations in the WTO.

Fischler said he was "glad to hear" that a U.S. inspector was sent to examine the affected EU poultry plants, which are mostly located in France, with one located in the United Kingdom. The inspector, who arrived on July 22, is to examine whether the plants comply with U.S. law, particularly new rules regarding pathogen reduction.

But an EU official said the two sides have not agreed which standards must be met in inspecting plants that process goose and duck, which makes up a large part of France's poultry product exports to the U.S. Therefore, it is unclear whether the U.S. will decide to approve these plants for export to the U.S., he said.

The U.S. decided to cut off EU poultry products after a veterinary equivalency agreement with the EU failed to resolve a dispute over acceptable poultry processing methods. The U.S. argued it was unsure if the plants met U.S. sanitary requirements after the EU cut off U.S. poultry exports to its market worth about $50 million.

Immediately following the U.S. decision, Fischler held out the possibility of challenging it in the WTO, particularly since the exports had been cut off without an inspection that found EU plants did not meet U.S. sanitary requirements (*Inside U.S. Trade*, May 23, p. 3).

Fischler Letter on Poultry Ban

July 22, 1997

Dear Dan,

In my letter of 2nd June I warned you of the very strong reaction which your decision to ban imports of poultry and poultry products had provoked amongst our member states and the way in which this action had influenced reactions to the draft veterinary agreement.

When we discussed this issue on my recent visit to Washington, you said that veterinary missions would be sent to those E.C. member countries who were previously able to export poultry meat to the United States with a view to confirming their capacity to fulfil your requirements.

I am glad to hear that these inspections are about to begin but understand that the programme which is proposed is not scheduled to end before 30th August and that the F.I.S. has just now requested a large amount of additional information from the French veterinary authorities. It seems clear, therefore, that this mission will not provide an immediate solution.

In the circumstances you will understand that I have no alternative to initiating formal consultations on this issue in Geneva. Naturally I continue to hope that before this process has advanced very far the issue can be resolved bilaterally.

Yours sincerely,

F. Fischler

WTO MEMBERS LAUNCH WORK ON IMPROVED TRANSPARENCY IN PROCUREMENT

Members of the World Trade Organization last week launched the first substantive work aimed at developing an agreement to ensure transparency in government procurement, according to informed government sources. WTO members are now likely to spend the coming months studying the transparency issue before hammering out specific elements of a procurement regime that could be included in an agreement covering all WTO members, these sources said.

At a July 22 meeting in Geneva, WTO members took an initial step by discussing a secretariat paper which outlined possible elements of a definition of transparency and analyzed a number of existing international procurement instruments. The U.S. and Canada also tabled initial papers on procurement which proposed a process for negotiating a procurement pact and outlined substantive issues for that process, respectively.

The U.S. and Canadian papers sought to "move away from study to [negotiating] the elements of an agreement," one trade official said.

WTO members agreed at the Singapore ministerial to form a working group that would conduct a study on transparency in government procurement "taking into account national policies" and "based on this study, to develop elements for inclusion in an appropriate agreement." The establishment of the group was the outcome of an initial U.S. proposal to negotiate an interim procurement pact to combat corruption (*Inside U.S. Trade*, Dec. 16, Special Report, p. S-1).

WTO members "did not contest" the list of items relevant to transparency that was presented in the secretariat paper last week, one trade official said. The list included: information on national legislation, information on tendering and procurement opportunities, transparency of decisions on qualifications of suppliers and on the awarding of contracts, appeals processes following initial decisions, the maintenance of records, and the application of information technology to improve transparency.

The secretariat paper also outlined the provisions of three existing procurement agreements: the model procurement law of the United Nations Commission for International Trade Law, the World Bank Guidelines on Government Procurement, and the plurilateral WTO Government Procurement Agreement.

The U.S. paper outlines six "guiding principles" which could guide the group's work, according to the copy reprinted below. The U.S. argued that it should take into account "the wide variety of procurement systems which exist in member countries" and consider transparency "in the broadest sense to include concepts such as access to information, meaningful opportunities to participate in the procurement process without prejudice to national preferences, and means for seeking reviews of procurement decisions," according to the paper.

The group should also consider how improved transparency can enhance market access, the U.S. said.

WTO members should also consider how innovations in information technology and existing international agreements on procurement can help the group's work, the U.S. said. And it should study ways to improve the understanding of developing countries regarding transparency in procurement.

Finally, the U.S. cautioned that the development of an agreement limited to transparency "may be for many countries only the first step in a longer term process of liberalizing international procurement markets," according to the paper.

The Canadian paper outlined in some detail the elements of a transparency procurement regime, according to the copy reprinted below. Those elements include the publication of procurement procedures, knowledge of national policies, publication of procurement opportunities, publication of contracts awarded via reliable media and an independent tribunal which can review contested awards.

A paper tabled by the European Union offered details about the procurement regime established by EU treaties and European Commission directives.

There was minimal discussion of the papers, which were tabled shortly before the meeting, informed sources said. There was a brief discussion on the extent to which the group considers improved market access the eventual goal of its work, or whether it should stay focused on transparency, these sources said.

WTO members who are not one of the 26 signatories to the GPA have generally been more cautious about the group's work, trade officials said. The U.S. in particular has argued that its work can contribute to improved market access and government efficiency, these officials said.

The next meeting of the group is scheduled for Nov. 3-4, according to informed sources. At that meeting, WTO members will likely discuss a secretariat paper on international procurement agreements and national regimes, and gauge support for various elements of a definition of transparency, these sources said.

U.S. Paper on Procurement

U.S. NON-PAPER

The initiation of the Transparency in Government Procurement Working Group's efforts and the realization of its mandate, as set forth in the Singapore Ministerial Declaration, have the potential to enable governments to develop more transparent procurement systems and contribute to a more efficient allocation of resources in the pursuit of economic growth.

The United States welcomes the constructive approaches that all WTO Members have taken in the commencement of the Working Group, the contributions made so far by the representatives of the World Bank and UNCITRAL and the submission by Japan of its non-paper. The resulting discussions at the first formal meeting of the Working Group were instructive on the elements of transparency found in two existing international instruments on government procurement. The United States also views the WTO Secretariat paper entitled "Transparency-Related Provisions in Existing International Instruments on Government Procurement" (WT/WGTGP/W/3) as an important contribution to the Working Group that will allow participants to begin to identify those principles and procedures that commonly are perceived to be essential to transparency.

In view of the fact that the subject matter under discussion in the Working Group is new to many of the participants and that the WTO itself has only just initiated multilateral work on developing trade disciplines in this area, the United States suggests that it may be helpful to establish some guiding principles to assist participants in conducting discussions and deciding how to develop a multilateral agreement on transparency in government procurement practices.

Guiding Principles

The following principles are not proposed with the intention that they be agreed as an approach for continuing discussions and eventually commencing negotiations in the Working Group. Instead, they are intended to assist participants in developing their own individual priorities in this work and to suggest approaches for maximizing efficiency and effectiveness in the organization of the discussions.

1) Examination of various elements of transparency should take into account the wide variety of procurement systems that exists in member countries, including both centralized and decentralized systems.

2) Transparency should be considered in the broadest sense to include concepts such as access to information, meaningful opportunities to participate in the procurement process without prejudice to national preferences, and means for seeking reviews of procurement decisions.

3) The study should be forward looking by giving special consideration to innovative procurement practices, such as use of information technology (e.g., electronic publication of procurement information over the Internet), and how these might contribute to increasing market access.

4) Wherever possible, advantage should be taken of existing sources of information on transparency in procurement, including work undertaken in the GATS Rules Group and in other fora, such as APEC and the FTAA.

5) While the Singapore Ministerial mandate is specifically limited to transparency and does not include the concept of national preferences, participants should seek to identify how transparency elements by themselves can enhance market access in international procurement markets. The OECD Trade Committee is already undertaking research in this area, and APEC and the FTAA may be in positions to undertake similar work on commercial opportunities in procurement, particularly infrastructure, in their respective regions.

5) The Working Group, during both the study and negotiating phases, should identify and promote means for increasing understanding of developing countries regarding transparent procurement practices and procedures, particularly by utilizing the resources of the International Trade Centre in providing technical assistance to these countries.

6) Participants should also keep in mind that the eventual completion of the Singapore Ministerial mandate, including the study and development of an agreement, may be for many countries only a first step in a longer term process of liberalizing international procurement markets.

Canadian Paper on Procurement

Elements of Transparency

Non-Paper from Canada

The following non-paper from the Permanent Mission of Canada has been received with the request that it be circulated to Members.

At the WTO Ministerial Conference in Singapore last December, Trade Ministers agreed to *"establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement"*. In accordance with this mandate, and with a view to advancing discussion on elements of transparency in government procurement, Canada submits the following views for the consideration of the Working Group on Transparency in Government Procurement (WGTGP). This non-paper is not intended as an exhaustive compilation, nor is it intended to prejudge the outcome of the WTO discussion on transparency.

Publication of procedures

Publication of information on the environment in which government procurement takes place is arguably the first aspect of transparency. In the absence of this information, suppliers will not know how and where to submit proposals, and what procedures to follow in order to obtain consideration of these proposals. Publication provides a clear road map for potential suppliers and a check against arbitrary practices. The resulting procedural certainty also will reduce costs in the procurement cycle.

- Members should publish all laws, regulations, administrative guidelines and other measures related to government procurement (herein referred to as "procedures") in printed or electronic media, in a form accessible to interested parties, including suppliers and other Members.

• Members should provide a listing of government departments, agencies and enterprises subject to these procedures. Alternatively, a listing of those not subject to these procedures may be provided.

• Members should ensure that changes to government procurement procedures are published.

National policies

Acknowledging that Members posses different procurement regimes with different objectives, it is nevertheless possible to take steps to increase transparency to provide for competition and economy, without compromising existing regimes or objectives for which the regimes are designed. National policies (including discriminatory measures in the form of laws, regulations and administrative guidelines) can be taken into account, even in open, competitive bidding. Prior knowledge of national policies can assist suppliers in understanding procurement requirements and in determining XXXXX XXXX the procurement process.

- Where national policies (including discriminatory measures in the form of laws, regulations and administrative guidelines) exist, Members should inform prospective suppliers in both the publication of procedures and procurement opportunities.

- In the context of an eventual agreement on transparency in government procurement, Members should review their national policies from time to time to determine the continued compatibility of these policies with the goals of value, efficiency and competitiveness.

Publication of procurement notices

Competition engendered through transparency will result in savings to the purchaser and to the public. However, competition is only possible if suppliers are aware of procurement opportunities. Effective competition among suppliers requires a broad dissemination of information regarding procurement opportunities.

- Procurement opportunities should be published regularly in a recognized publication readily accessible to suppliers. Publication may be in printed or electronic media (e.g., official journals, large-circulation newspapers, specialized trade journals, Internet, etc.).

Requirements for transparency of procurement notices

Procurement notices and related documentation inform the potential supplier of, *inter alia*, the good or service to be procured, the quantity required, technical specifications to be met, time-frames for delivering the good or services, and other criteria, as well as where to submit related bids. A transparent procurement regime will not only ensure that potential suppliers can obtain all relevant criteria, it will also ensure that bids are evaluated according to these criteria in a fair and equitable manner.

- With a view to allowing suppliers to submit responsive bids, procurement notices should include, at a minimum, the following information: the nature and quantity of the good or service to be procured; where to obtain tender documentation; closing times and dates; where to obtain procedures related to the procurement; and where to submit bids.

- Members should specify time-limits for the preparation and submission of bids which are adequate and reasonable, and which take into account the complexity of the intended procurement. Changes in time-limits should be notified to all suppliers participating in the tendering process and should be published in the publication where the original notice appeared.

- Technical specifications should be drawn up in terms of performance requirements rather than design characteristics, and should be based on internationally-agreed or other relevant standards.

- Tender documentation should be supplied on request. Where changes are made during a particular procurement, this information should be communicated to all suppliers participating in the process and should be published in the publication where the original notice appeared.

- Open and competitive tendering should be the preferred method for tendering. Where other types of tendering are to be used, procurement notices should clearly indicate the intended method and provide information concerning qualification procedures.

- Qualification of suppliers should be limited to necessary requirements only. These could include financial, commercial and technical capacities of suppliers. Suppliers meeting qualification criteria should be recognized and allowed to participate. In procurement notices requiring qualification, time-limits should be adequate to accommodate the qualification procedure.

- Tender documentation should describe the intended bid evaluation criteria. Upon closing, bids should be evaluated according to these criteria in a fair and equitable manner.

Publication of awards

Suppliers who have expended resources in conforming to procurement requirements will wish to be informed of the results of the procurement process. Unsuccessful suppliers will wish to learn the name of the successful supplier and the value of the winning bid. Disclosure also provides a "check" against unfair practices and reinforces government accountability respecting procurement practices to suppliers and to the public.

- The award of contracts should be published and include information regarding the name of the successful supplier and the value of the winning bid.

Media of publication

As described in the various sections above, suppliers need to know where to find information on procedures, opportunities, specifications, and so on, in order to compete in government procurement markets. The vehicle for that knowledge is consistent and regular publication in recognized printed or electronic media, in a form accessible to interested parties, and in a timely manner.

- Transparency in government procurement requires consistent and regular publication in recognized printed or electronic media, in a form accessible to interested parties, and in a timely manner.

Due process

An essential element of fair, open and impartial procurement procedures is the provision of a timely remedy or bid challenge system available equally to domestic and foreign suppliers. This system should include a reviewing authority (e.g., independent tribunal, agency or judicial body) which has no interest in the outcome of the procurement.

- Members should establish or designate a reviewing authority and provide information on its procedures as part of its publication of procedures.

- Access to reviewing authorities should be available equally to domestic and foreign suppliers.

- In cases where complaints are found to be valid, reviewing authorities should have powers to provide relief to complainants.

GOODLATTE ENCRYPTION BILL FACING TOUGH FIGHT IN NATIONAL SECURITY PANEL

Members of the House National Security Committee this week signalled that they would mount a strong effort to derail the passage of a bill sponsored by Rep. Bob Goodlatte (R-VA) that would decontrol exports of encryption technology. In a July 30 hearing on the Goodlatte bill, several members of the committee declared their outright opposition to the measure, and the chairman of the committee indicated his intent to make unspecified changes before reporting the bill next month.

"It is my intention, working in concert with [the Ranking Member] and members on both sides of the aisle, to use the weeks ahead to better understand these issues in order to arrive at recommended changes to [the Goodlatte bill] that we can report to the House in early September," Chairman Floyd Spence (R-SC) said in his opening statement. "While I personally have not reached any final conclusions, I should state that I do hold several concerns with the changes being proposed by this bill that could have serious national security implications."

Spence's comments came at the beginning of a hearing in which members present overwhelmingly criticized the Goodlatte bill for being detrimental to national security. Even though 25 members of the committee are co-sponsors of the legislation, none of them presented a concerted defense.

Ranking Member Ronald Dellums (D-CA), though he did not offer a specific opinion on the Goodlatte bill, urged other members in his opening statement not to "go along with the actions of the previous committees of jurisdiction, rather than to delve into these matters and try to reformulate policy in a better balanced fashion." The committee should "take up the more difficult task of producing a U.S. government policy on encryption software that makes the best balance between security, commerce and privacy," Dellums argued.

Dellums posed a series of basic questions about the encryption issue to the Clinton Administration witnesses at the hearing, Undersecretary of Commerce for Export Administration William Reinsch and Deputy Director of the National Security Agency William Crowell. Specifically, Dellums sought information on the military applications of commercial encryption technology, the difficulty in decrypting strong encryption technology without the key, the effect of export decontrol on U.S. military and intelligence capabilities, and Administration plans for a so-called "key recovery" system to ensure law enforcement access to encrypted information.

Dellums also asked Reinsch and Crowell about other countries' plans for dealing with encryption technology and the extent to which it is available from non-U.S. sources.

After Dellums' initial set of questions, Rep. Bob Stump (R-AZ) criticized the Goodlatte bill as doing "far too much far too quickly," and said he would make a "personal effort" to "educate members" about the dangers of its passage. "This bill does not take us in the right direction," he argued. Rep. Duncan Hunter (R-CA), a longtime advocate of tighter export controls, harshly criticized the bill as "terrible" and "beyond the pale."

Rep. Neil Abercrombie (D-HI) also made clear his opposition to the bill but said that opponents face an "uphill fight" to stop it given its large number of co-sponsors. He also criticized the bill for what he called unclear drafting.

A number of other members hinted at their opposition to the Goodlatte bill but did not state it outright. Rep. Bill Redman (R-NM) argued that commercial issues are generally "very minor" compared to possible adverse effects on national security. Rep. Silvestre Reyes (D-TX) noted his extensive experience in law enforcement and questioned how the bill advanced as far as it has. Rep. Vic Snyder (D-AR) inquired as to what alternative legislation might be available to deal with the encryption issue, and Rep. Jane Harman (D-CA) explicitly noted that she has refused to co-sponsor the Goodlatte bill.

Supporters of the Goodlatte bill this week succeeded in raising the number of co-sponsors of the bill to 249. The support for the bill foreshadows passage if the measure came to a vote on the House floor. But one private-sector source pointed out that National Security and a subsequent referral to the Intelligence Committee could result in substantial alterations to the bill.

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ALBRIGHT PRESSES ASEAN COUNTRIES ON WTO FINANCIAL SERVICES TALKS

Secretary of State Madeleine Albright this week called on members of the Assn. of Southeast Asian Nations (ASEAN) to significantly improve their offers in World Trade Organization negotiations on liberalizing financial services markets. Albright argued that their offers in this sector should mirror contributions made in this year's agreements on information technology and telecommunications.

"No country can have a world class, high-tech economy without a world-class, properly regulated financial services sector to allocate capital efficiently," Albright said in a July 28 speech before ASEAN foreign ministers. "Significantly improved offers from all ASEAN states will help generate the momentum needed to reach a global agreement by the Dec. 12 deadline."

ASEAN offers in the Information Technology Agreement and the agreement on basic telecommunications services "helped shape a critical mass of newly-industrialized economies willing to make bold liberalizing offers," Albright argued. "By doing so, ASEAN members showed they are ready and able to assume greater responsibility for the open trading system that has enabled them to prosper and grow."

Albright cited four specific goals for the November meeting of the Asia-Pacific Economic Cooperation forum in Vancouver, Canada: garnering support for the financial services talks, improving Individual Action Plans, "voluntary offers to liberalize quickly in key sectors," and "pushing for concrete, focused outcomes that offer immediate benefits to our businesses and workers."

She also called ASEAN "a dynamic force" within APEC, and noted that an ASEAN country has hosted APEC meetings every other year. "Next year, Malaysia will lead APEC at a pivotal point in our drive for liberalization across the Pacific Basin."

Albright also lauded the improved enforcement of intellectual property rights in ASEAN countries, noting specific changes in the Philippines, Thailand, Malaysia and Vietnam. "We now face the challenge of ensuring these new provisions are carried out fully," she said.

EU LIKELY TO BE OVER WHEAT GLUTEN LIMITS DESPITE DISPUTE OVER NUMBERS

Sources on both sides of a dispute over European Union wheat gluten shipments to the U.S. this month acknowledged that the EU has reached a share of the U.S. market that triggers consultations, even though the EU has continued to dispute the market share figures presented by the U.S. in recent talks.

The U.S. and EU met July 10-11 for formal consultations under a bilateral grains agreement in Brussels, where sources said the EU argued that the U.S. market share figures for 1995 were inaccurate. The agreement calls for formal talks with a view towards finding a mutually acceptable solution when EU exports of wheat gluten exceed 17 percent of the U.S. market.

Despite the EU's claim that U.S. figures are off, and the fact that the EU has previously argued that its exports have not exceeded that limit, sources said the two sides now seem to agree that EU wheat gluten makes up more than 17 percent of the U.S. market.

"In a general way, even without precise numbers, it seems likely the EU is over the limit," one informed source said. A U.S. Administration official added that it is now "absolutely indisputable" that EU exports have exceed their limit under the grains agreement.

The U.S. and EU have not yet decided what a solution might be, and have not scheduled any follow-up consultations, sources said. A new meeting may not take place until after August. But the U.S. official warned that the EU "owes us consultations" leading to a resolution of the wheat gluten dispute without preconditions.

The EU is planning to provide the U.S. with a paper that explains the market factors that are leading to an increase in EU wheat gluten exports to the U.S., according to a senior U.S. official. But a U.S. official said at press time that the paper had not been delivered yet. One informed source said the paper would likely highlight the fact that the EU market encourages wheat processing, which leads to an increase of wheat gluten that can be exported. In contrast, the U.S. market encourages corn processing, which results in more corn gluten feed that can be exported to the EU, the source said.

The EU accepted formal consultations under the grains agreement in June (*Inside U.S. Trade*, July 4, p. 5).

In a related development, the two sides met July 11 in Brussels to examine whether U.S. corn gluten feed exports to the EU have exceeded levels set up under a separate bilateral agreement. The two sides agreed that the specified level has not yet been exceeded, according to an Administration official.

While the EU has linked the wheat gluten and corn gluten feed talks, the U.S. official said the U.S. expects an "independent review of the problem" (*Inside U.S. Trade*, June 20, p. 10).

CUSTOMS LAWYERS CHARGE NAFTA CHAPTER 19 PANELS ARE UNCONSTITUTIONAL

The Customs and International Trade Bar Assn. (CITBA) last week charged in federal appeals court that the North American Free Trade Agreement system that reviews antidumping and countervailing duty cases is unconstitutional because it prohibits review by U.S. courts of government decisions that assess import duties.

AD/CVD duties are a form of federal taxation, the review of which, under Article III of the U.S. Constitution, can only be conducted by U.S. courts, CITBA argued. "The system of binational panel review under NAFTA is unconstitutional because, in contravention of Article III of the Constitution, it precludes Article III judicial review of government decisions assessing import duties, a form of federal taxation," according to a July 22 amicus brief filed by CITBA with the U.S. Court of Appeals for the D.C. Circuit.

"The drafting history of the Constitution shows that the federal judicial power under Article III was intended to cover import duty cases," the group wrote.

But under the NAFTA system, the "government can assess taxes without having the lawfulness of its tax-assessment decisions judicially reviewed by an Article III court," CITBA argued.

CITBA also argued that the system, established under NAFTA's Chapter 19, violates the Appointments Clause of Article II of the Constitution, which requires that judicial officials be appointed with the advice and consent of the Senate. The group specifically argued that traditional jurisprudence which suggests that Chapter 19 panelists need not receive Senate confirmation should not apply in this case.

In the 1890 case *Auffmordt V. Hedden*, the Supreme Court concluded that independent merchants used to help resolve contested customs valuation decisions qualified as one of the "inferior officers" which the Appointments Clause allows Congress to create, CITBA pointed out. But Chapter 19 panelists, unlike these independent merchants, "perform a judicial-type function by adjudicating questions of law based on an underlying administrative record," CITBA argued.

In addition, Chapter 19 panelists make decisions which are not subject to judicial review "at all," while the decisions which independent merchants helped make were subject to court challenges, the group argued.

The New York-based group lodged its amicus brief in support of a lawsuit filed last January with the court by a coalition of 21 citizen groups and corporations against the NAFTA panel system. The American Coalition for Competitive Trade (ACCT) also charged that the NAFTA violates Articles II & III of the Constitution(*Inside U.S. Trade*, Jan. 17, p. 5).

Oral arguments in the case (Docket Number 97-1036) have been scheduled for October 21. One informed source said the court could issue a ruling no sooner than 60 days after the oral hearing.

The Canadian government is slated to file its brief on Sept. 5, according to a court schedule. Mexico and the province of Quebec are expected to submit amicus briefs in support of the U.S. on that same date, it said.

CITBA's brief is the latest salvo fired at NAFTA's Chapter 19 which has prompted opposition by several members of Congress and an ad-hoc coalition of private-sector organizations. The coalition has urged the Administration to include in any new fast-track bill an explicit prohibition on extending the Chapter 19 panel system to new countries (*Inside U.S. Trade*, May 23, p. 7).

Some members of Congress are "keeping a very close eye on the lawsuit as to its impact on issues of fast track," one informed source said. If the lawsuit succeeds, it "will obviate the necessity of keeping Chapter 19 out of fast track," the source contended. "It will remove a lot of current objections to fast track."

But if the lawsuit fails, "it may spur congressional opponents [of Chapter 19] to greater action," according to the informed source.

SPECIALTY STEEL INDUSTRY TARGETS EU, ASIAN PRODUCERS IN TRADE CASES

The U.S. specialty steel industry, backed by the U.S. steelworkers union, this week filed dumping cases against wire rod imports from four European Union member states, Korea, Japan and Taiwan. The industry group also filed a separate countervailing duty petition against imports of wire rod from Italy and announced it would seek an annual administrative review for an existing case against Spanish stainless steel rod.

The long-awaited filings make good on a threat issued by the Specialty Steel Industry of North America (SSINA) earlier this year when efforts to strike a multilateral specialty steel accord with the EU failed. SSINA pointed out that a number of subsidies cited in the Italian petition would not have been subject to a case if there had been an agreement.

"Under a draft MSSA developed by Eurofer (the European steel industry trade association) and SSINA, a number of subsidies covered in the petition would have been 'grandfathered' and therefore not subject to a countervailing duty petition," the SSINA said in a July 30 statement.

Efforts with the EU to reach an MSSA broke down when the EU Commission wanted to use the disciplines of its state aids code for steel in the MSSA, which SSINA considered too lenient (*Inside U.S. Trade,* June 6, p. 25).

But a source close to the EU steel industry disputed SSINA's assessment of the code given its current filings. He questioned whether the EU state aids code is as inefficient a discipline as SSINA has claimed given that it only filed one new cvd case against an EU member state.

The dumping cases target Italy, Germany, Spain and Sweden as EU member states. If successful, the seven cases together would cover almost 90 percent of imports to the U.S., one private-sector source said. The filing will likely meet with opposition from U.S. wire producers, who use steel rod for their production, he said.

In the antidumping cases, SSINA alleges dumping margins as high as 46 percent, according to its announcement. The announcement also said that there has been a "dramatic" 28 percent increase in rod imports from the target countries in the past three years.

SSINA is preparing additional antidumping and CVD cases on a number of additional products, including stainless steel bar and stainless sheet and strip, according to the announcement.

U.S., JAPAN REVIEW KEY ISSUES ON DEREGULATION OF CONSTRUCTION SECTOR

U.S. and Japanese officials last month reviewed the key contentious issues regarding the deregulation of the Japanese construction sector but made little headway in developing concrete steps to be taken in this area, according to informed government sources. In July 14-15 meetings in Washington, officials discussed Japanese plans to move toward building standards based on the performance of materials rather than their physical characteristics.

The meetings were a combination of the Wood Products Subcommittee, which is part of the Market-Oriented Sector Specific (MOSS) initiative, as well as the housing sector subgroup of the Enhanced Initiative on deregulation of the Japanese economy developed in June. The chief issue of the talks concerned the "main direction" of a Japanese plan to revise its Building Standards Law sometime next year, a government official said.

The new law, which is currently being developed by the Ministry of Construction and will come before the Diet in mid-1998, will embrace so-called "performance-based standards," a Japanese official said. The U.S. has long argued that such standards, which base building regulations on, for example, the ability of a particular material to hold a certain weight rather than physical characteristics, would be more favorable to U.S. building materials manufacturers.

Japanese officials also told their U.S. counterparts that the shift to such standards will require the development of "extensive testing safeguards," one official said. In order to avoid having to increase government expeditures, this testing will likely be conducted by "private institutions" recognized by the Ministry of Construction, the official said.

The U.S. also raised two specific issues regarding Japanese construction regulations, one of which appears likely to change under the new Building Stadards Law, a Japanese official said. The U.S. criticized a rule which does not allow the construction of wood buildings of three stories or higher in so-called "quasi-fire protection areas," essentially Japan's most densly populated urban areas. This rule is "under review" and could be modified or eliminated by changes to the law, the official said.

The U.S. also criticized a Japanese ban on a type of nail gun which used firearms technology instead of compressed air to drive in nails. Japan would have to modify its gun control measures to allow this product, something it is "unwilling" to do, a Japanese official said.

Under the rubric of the MOSS subcommittee, U.S. and Japanese officials discussed generally Japan's Agricultural Standards Law, which governs the import and export of wood products, a Japanese official said. The two sides agreed to exchange data on wood products trade, the official said.

Other deregulation efforts under the June Enhanced Initiative are likely to gear up sometime this fall, government officials predicted. Japan is still awaiting a proposed agenda from the U.S., and expects that the U.S. will want to focus on regulations which have long been the target of U.S. government and industry criticism. As agreed in June, the new initiative will focus on the telecommunications, housing, medical devices/pharmaceuticals and financial services sector (*Inside U.S. Trade*, June 27, p. 1).

The overall U.S.-Japan talks will also likely move in concert with internal Japanese efforts to complete a dregulation package by the end of the year, a Japanese official said. A subcommittee of Japan's Administrative Reform Committee is compiling recommendations of various agencies this summer and will forward a final report for cabinet approval by the end of the year, the official said.

DEFENSE, FBI EXPRESS OPPOSITION TO FCC RULE ON WTO TELECOM AGREEMENT

The Dept. of Defense and the Federal Bureau of Investigation last month expressed their opposition to a proposed regulation implementing the World Trade Organization agreement on basic telecommunications services, which they charge would not sufficiently protect national security and law enforcement exemptions. In public comments to the Federal Communications Commission, Defense and the FBI strongly argued against an FCC proposal to establish a strong regulatory presumption in favor of granting licenses to telecom firms from WTO member countries.

Both agencies strongly criticized the FCC for not considering in a June 4 Notice of Proposed Rulemaking that Executive Branch agencies should be allowed to invoke national security or law enforcement reasons to deny a license. "Nowhere in the NPRM does the Commission even acknowledge that the NPRM would alter the way the Commission has historically evaluated the national security and law enforcement components of the [foreign ownership] public interest test," the FBI wrote in its comments.

"No presumption in favor of approval should be applied with respect to a public interest review for national security," Defense wrote in its comment to the FCC.

In the NPRM, the FCC proposed to replace the so-called "effective competitive opportunities" (ECO) test with a public interest test based on a "rebuttable presumption" that telecom firms from WTO member countries can enter the U.S. market. It also proposed a high burden of proof on petitioners who would seek to block a company's entry (*Inside U.S. Trade*, June 13, p. 11).

The FBI comments also revisited the issue of whether the FCC can allow full foreign ownership of telecom licenses. It argued that Congress has explicitly stated its opposition to full foreign ownership in Section 310 of the Communications Act of 1934. The FBI pointed to an earlier FCC rule of November 1995 on foreign ownership and a 1996 letter from former FCC International Bureau Chief Scott Blake Harris which explicitly noted deference to the Executive Branch in matters of law enforcement or national security.

The only other U.S. government agency to comment on the rule was the Office of the U.S. Trade Representative, which had nothing but praise for the WTO telecom agreement and expressed its approval of the proposed FCC rule. The public interest test, which will focus not on reciprocal market access opportunities but on the possibility of competitive distortions in the U.S. market, represents the best way to implement U.S. market access commitments, according to USTR.

USTR also called for continued deference to the Executive Branch "in matters concerning the interpretation of U.S. international commitments, such as our most-favored nation obligations."

Within the U.S. telecommunications industry, AT&T offered the most extensive critique of the proposed rule. Generally, AT&T called on the FCC to lower the threshold which petitioners must reach in order to persuade the agency to block the entry of a foreign carrier into the U.S. market, and argued that the proposal goes beyond what is strictly required by the WTO agreement.

"U.S. practice has been not to make sweeping changes in U.S. regulatory rules in response to new trade agreements unless it has been clear that those agreements have strictly required them," AT&T wrote.

In particular, AT&T suggested that a lower threshold of harm, such as the "risk of substantial harm to competition" (instead of the FCC's proposed "very high risk of harm") or a neutral presumption which places no burden of proof on any petitioner in order to deny a license for U.S. operations. AT&T stressed that the post-entry conditions on U.S. licenses may not be enough to protect competition in the U.S. market, and argued that the General Agreement on Trade in Services does not require the FCC to use the "very high risk of harm" standard."

The company also argued that the ECO test could continue to provide the "necessary elements" to determine whether a foreign firm could distort competition in the U.S. But it suggested that the test be modified to consider whether a country has implemented WTO commitments to "provide unrestricted market access for the provision of the relevant service," allow foreign ownership of carriers for this service and meet the requirements of the Reference Paper on pro-competitive regulatory principles.

MCI and Sprint were generally supportive of the FCC approach, though Sprint offered a number of suggestions for improving its administration and conformity to WTO rules. Most notably, it criticized the FCC for continuing to defer to the Executive Branch on license applications which have implications beyond telecommunications issues.

"The use of national security, law enforcement, or foreign policy grounds as a basis for denying applications also leaves the Commission open to charges that applications are being denied on the basis of national origin without explicitly saying so," Sprint wrote.

Japanese telecommunications giants NTT and KDD also weighed in with the FCC about the rule, but only KDD used the opportunity to criticize the FCC's delay in approving their applications to provide international services from the U.S. to some European countries. The FCC delayed the applications as a result of pressure from the Clinton Administration, which wanted to use the applications as leverage to ensure the renewal of the NTT Procurement Agreement (*Inside U.S. Trade*, March 14, p. 3).

KDD also argued that the FCC proposal raised "serious concerns" about U.S. compliance with the transparency requirements of the GATS. "The proposed public interest tests are subjective, vague, undefined, and thus give the FCC the ability to act in an arbitrary manner that would disadvantage foreign providers of telecommunications services," KDD wrote.

Other comments on the FCC rule came from France Telecom, Deutsche Telekom, the International Brotherhood of Electrical Workers, Nynex, and Ameritech.

SENATE THREATENS WTO ACTION AGAINST MEXICO ON ANTI-DUMPING DUTIES

The Senate last week unanimously passed a non-binding resolution threatening Mexico with World Trade Organization dispute settlement measures if Mexico refuses to end its antidumping action against U.S. corn sweeteners. In addition, House members that support U.S. corn growers were working to get a similar resolution passed by today (Aug. 1) before Congress adjourns.

"Resolved, by the Senate (the House of Representatives concurring), that it is the sense of the Congress that (1) the Government of Mexico should review carefully whether it properly initiated this antidumping investigation in conformity with the standards set forth in the World Trade Organization Agreement on Antidumping, and should terminate this investigation immediately; (2) if the United States Trade Representative considers that Mexico initiated this antidumping investigation in violation of World Trade Organization standards, and if the Government of Mexico does not terminate the antidumping investigation, then the United States Trade Representative should immediately undertake appropriate measures, including actions pursuant to the dispute settlement provisions of the World Trade Organization," the Senate resolution said.

At issue are preliminary antidumping duties imposed by Mexico on imports of U.S. high fructose corn syrup (HFCS) following a complaint by the Mexican sugar industry. U.S. producers of HFCS claim that under multilateral rules the Mexican sugar industry does not have legal standing to request the antidumping action. U.S. corn refiners also claim the Mexican Dept. of Commerce used improper procedures in calculating the preliminary antidumping duties imposed June 25 (*Inside U.S. Trade*, July 11, p. 29).

As a ton of HFCS generally sells for between $250 to $350, the Mexican duties amount to an additional charge ranging from roughly 20 to 60 percent, industry sources said.

"The duties now in effect because of this decision are as much as four to five times the pre-NAFTA levels," Agriculture Committee Chair Richard Lugar (R-IN) told the Senate July 25. The pre-NAFTA tariff level for HFCS was 15%, according to a U.S. industry source.

The Senate resolution was introduced by Sen. Charles Grassley (R-IA), and was cosponsored by Lugar, Agriculture Committee Ranking Member Tom Harkin (D-IA), Minority Leader Tom Daschle (D-SD) and Robert Kerrey (D-NE).

House Ways & Means subcommittee on trade chairman Phil Crane (R-IL), Rep. Thomas Ewing (R-IL), and Glenn Poshard (D-IL) were working to get the resolution passed in the House before the August recess, according to congressional staff.

The Office of the U.S. Trade Representative is currently donating significant resources to an in-depth analysis of the WTO and NAFTA rules potentially violated by the Mexican action, according to Chuck Conner, President of the Corn Refiners Association (CFA).

Conner also noted that the deadline for submission of CFA's reply brief to the Mexican government on the duties has been pushed back by Mexico to August 17 from August 6. Conner indicated that August 17 was not firm, however.

demonstrating its commitment to U.S. workers. Some Administration officials are arguing against such initiatives because they will not blunt the opposition of organized labor to fast track, but others say that it would be helpful in securing support among House Democrats, an Administration official said.

"The politics of these that say do not do anything on [retraining] is perhaps shortsighted," the official argued.

The worker retraining initiatives would not necessarily have to move as part of a fast-track bill, but could move simultaneously or in the "margins" of the bill, the Administration official said. The need for retraining programs to help U.S. workers hurt by global competition has been raised by a number of Democrats, including Ways & Means Committee Ranking Member Charles Rangel (D-NY). It may also help to win over some of the Hispanic House members, who told President Clinton in a letter earlier this month that the North American Free Trade Agreement has cost more jobs than it has created for Latinos, African Americans and women (*Inside U.S. Trade*, July 18, p.6)

The Administration's debate is also focusing on how to finesse handling the relationship between labor and trade, informed sources said. One way of demonstrating that the Administration cares about promoting core labor standards would be to limit candidates for potential free trade agreements to countries that also promote these standards, they said.

"There are a lot of different thoughts that are being discussed under the umbrella of country criteria" that would define the countries with which the U.S. would seek free trade agreements, an Administration official said. The rule of law would be another criterion the Administration would consider in its selection of potential FTA candidates.

With the fast track bill, the U.S. will submit to Congress a report required under Section 108 of the North American Free Trade Agreement identifying future candidates for FTAs (*Inside U.S. Trade,* July 4, p. 4).

One way to assess a country's adherence to core labor standards that has been discussed is their membership in the International Labor Organization, they said. According to this idea, no commitments on core labor standards would be sought in agreements with countries that are already members of the ILO, they said.

This proposal suffers one major problem, which is that the U.S. itself is not a signatory to all ILO conventions, one source pointed out. The source predicted that it would ultimately not be pursued by the Administration.

The Administration has been trying to obtain a baseline vote count before Congress adjourns today (Aug. 1), according to informed sources. The vote count, which was begun last week, is not based on members' response to a specific fast-track proposal but to the general idea of extending new negotiating authority to the President, they said.

In addition, the Administration is working with members of Congress to pull together a whip group in the House which would champion fast track and reach out to other members, according to a congressional source. This group will likely include trade subcommittee Ranking Member Bob Matsui (D-CA) and as many as 15 to 20 other members, according to the source.

At the same time, President Clinton is continuing his outreach to House Democrats on fast track with a meeting scheduled for July 31 at the White House before members leave town today. The meeting will be attended by Clinton, Vice President Al Gore, Treasury Secretary Bob Rubin, Agriculture Secretary Dan Glickman, Commerce Secretary Bill Daley, U.S. Trade Representative Charlene Barshefsky, Labor Secretary Alexis Herman, Environmental Protection Agency administrator Carol Browner and State Dept. Undersecretary Stuart Eizenstat.

This follows a July 24 White House meeting with a group of Democrats who told Clinton that they expected to take a "lot of heat" if they supported fast track, according to a congressional source.

White House Spokesman Mike McCurry highlighted the problems members had raised to the President in the July 24 meeting in his briefing that day. Members said that there needs to be "sufficient protection" for U.S. workers as well as attention to the needs of workers in other countries and to the environment, according to McCurry. The group raised "all issues that we are very well familiar with and the President thought it was very useful to hear from House Democrats about some of the concerns they're hearing in their districts," he said.

Clinton told House Democrats that they competing globally is one element in his plan to ensure a dynamic U.S. economy, McCurry said. The President expressed an understanding of members' difficulties, but emphasized that the more members of Congress and the public understand the issues in the fast-track debate, the more they will support it, an Administration official said. Clinton emphasized that it was important to communicate what the fast-track debate is about, and promised to do that personally in the coming weeks, the official said.

In addition to the meeting with Clinton, the Administration also planned this week a meeting with Barshefsky and Democratic members of the House. But the meeting was cancelled this week because of conflicting activities related to the release of the budget deal, informed sources said.

House Minority Leader Richard Gephardt (D-MO) was not invited to the July 24 meeting, nor were other Democrats who oppose fast-track negotiating authority that would not include labor and environmental issues in the core provisions of a trade agreement. But Administration officials spoke to Gephardt after the July 24 White House meeting to convey their desire to speak to him, a congressional source said.

The Administration's effort on fast-track will try to "walk a fine line" to avoid deepening conflicts in the House Democratic Caucus, according to Jay Berman, the Administration's coordinator on the fast-track issue. Berman took a leave of absence from his position as Chairman and Chief Executive Officer of the Recording Industry Assn. of America (*Inside U.S. Trade*, July 25, p. 3).

President Clinton has instructed his officials to achieve passage of the fast-track bill in a way that does not "exacerbate" the split on trade in the Democratic party, Berman said.

Berman emphasized that the President wants to obtain fast-track negotiating authority this year in both the House and the Senate. "We are now at a point where we do not have the luxury of deferring the decision," he said. Another Administration official said that the need to act this year largely stems from the fact that fast track would be even more controversial in 1998, a congressional election year.

Berman said he will coordinate the Administration's activities on the fast-track, as well as efforts outside Washington, which could include a grass-roots campaign. These efforts could include having the states "to bear witness" that expanded trade has contributed to their economic health, and would counteract the anecdotal evidence presented by opponents of fast track on the problems caused by the North American Free Trade Agreement.

Berman said there would be daily briefings among Administration officials on fast track activities, but was reluctant to talk about a "war room" as the command center of the initiative. "We are trying to make peace" and expand the prosperity the U.S. has experienced in peace time, he said.

But other Administration officials say the fast-track effort will use a "virtual" war room in which officials will carry out their responsibilities without leaving their regular position.

Berman conceded that obtaining fast-track authority is made "more challenging" by the absence of a major trade initiative such as the Uruguay Round that must be passed. "The Uruguay Round did not end the trade agenda," Berman said. He pointed out that there is a large trade agenda to be fulfilled, even though it may not have the "glamour" of the Uruguay Round. This includes the built-in agenda, with its commitment to hold agricultural negotiations after 1999, the Free Trade Area of the Americas, and initiatives in the Asia-Pacific Economic Cooperation forum, he said.

CHINA OFFERS SELECTED TARIFF CONCESSIONS . . . begins page one

which compare with request lists that cover thousands of items, officials said.

The cuts offered would leave Chinese tariffs higher than trading partners consider acceptable, in the case of the EU almost double the rate it has called on China to accept, these officials said. The EU has requested an average weighted tariff of about eight percent or twice the average of industrialized countries, but the Chinese offer amounted to an average tariff rate of 15 percent, one official said.

But one negotiator warned that even if China offers an attractive tariff rate, it may mean little improvement over the currently applied rate. The starting point of the proposed cuts is the base tariff rate in 1992, not the currently applied rate, and China is offering to stage the cuts over a period as long as ten or 15 years, the negotiator said. Even if China frontloads the cuts as it is promising to do, the commercial benefit of a given cut may be less than the applied current rate.

On non-tariff barriers, Chinese negotiators offered to shorten the time for phasing out quotas and licensing arrangements for selected industrial products, these officials said. In the automotive sector, China offered to cut the phaseout period for quotas and licenses from twelve to eight years, which WTO members say is too long, they said. For motorcycles, China offered to cut the phase-out period from eight to six years, and for electrical appliances, the new phaseout period has been reduced from six to five years, the officials said.

China also offered to phase out non-tariff measures for a specified list of products immediately upon accession, officials said. Regarding these improvements, Chinese negotiators indicated they had little flexibility to make additional concessions, one negotiator said. Another official said that Chinese negotiators did not present their NTM list as a "take it or leave it" offer. But he said that Chinese negotiators take the position that they have "done so much" that it is up to the trading partners to offer more flexibility, the official said.

Chinese Foreign Minister Qian Qichen delivered a similar message at a press conference in Malaysia with Secretary of State Madeleine Albright. "We have already made tremendous effort for China to join WTO, and we will continue our efforts," he said. "We hope that the U.S. side will also demonstrate pragmatism and flexibility, so as to push forward substantive progress in the talks as soon as possible."

In their meetings, Albright and Qian were discussing the upcoming summit of President Clinton and Chinese President Jiang Zemin, which is now tentatively scheduled for Oct. 28, informed sources said. In addition, White House advisor Sandra Kristoff and her deputy Jeff Bader met with officials in Beijing earlier this month to prepare the summit, these sources said.

The tariff and non-tariff barriers concessions were offered by Chinese officials in a series of bilateral meetings with trading partners, including the EU, U.S., and Japan in advance of today's (Aug. 1) formal session of the working party. The new NTM phaseout periods are laid out in a paper presented to trading partners, but China has not submitted a new annex to the draft protocol on them, informed sources said. But China tabled new versions of three annexes to be attached to the draft accession protocol covering state trading, statutory inspections and internal subsidies, officials said.

WTO members had hoped that the market access negotiations in July would catch up to the work done on the draft protocol, but early indications were that would not be the case (*Inside U.S. Trade,* July 25, p. 4).

Bilateral talks produced little movement in agriculture, except a promise by China that it will commit to not using export subsidies in the future, officials said. But China failed to concede on the size of tariff-rate quotas to be established for agricultural commodities, officials said. Chinese negotiators continued to insist that TRQs should be based on the average of imports over the preceding five years with the ability to shift quantities from one year to the other for certain sensitive commodities, they said.

Officials this week expressed some disappointment over China's concessions because they fell short of a promise to present a comprehensive market access offer for goods at the July meetings. One negotiator expressed the hope that China would show enough flexibility during the working party meeting on Aug. 1 to ensure that the whole process will keep going.

China has now promised to make an offer on market access for goods in mid-September, and there may be a services offer at that time, officials said. But it is very likely that a services offer would fall short of the concessions the trading partners are seeking, one official said. China is clearly hoping that an acceptable accession package could be developed with only minor changes to its trade rules governing services, officials said.

But other sources cautioned that China may make bigger concessions only after the Chinese Party Congress meets in September or October.

Japan may be the earliest of the Quad trading partners to develop a market access package with China, according to a Japanese official. Prime Minister Ryutaro Hashimoto will visit China in the first half of September, and both sides are committed to making a "maximum effort to reach some sort of understanding" on WTO accession concessions, he said. But he said the two sides cannot conclude an accession package because China will not be ready to conclude a services deal.

In the annexes China tabled, it outlined out statutory inspections it requires for 127 categories of products, officials said. The annex breaks out inspections according to the Technical Barriers to Trade agreement and the Sanitary and Phytosanitary standards agreement, but appears to largely justify existing mandatory standards that China imposes, one official said.

China also tabled a new version of Annex Five on subsidies, with section A listing the subsidies the government extended to state-owned enterprises from 1990 to 1994, and section B identifying the subsidies China plans to phase out, officials said.

U.S., EU SEEK HELMS-BURTON DEAL . . . begins page one

In contrast, the U.S. has argued that this proposal is not the right "starting point" for negotiations, he said. Instead, the U.S. is pushing for what it terms is a more flexible approach that would allow countries to consult with each other and negotiate disputes over conflicting laws.

"[U.S. negotiators] don't think the solution is to establish new jurisdictional rules," the source said. "The U.S. feels that current approaches on consultation, self-restraint and comity have worked effectively."

The U.S. and EU are also far apart in efforts to negotiate disciplines covering investment in expropriated property. While the EU has argued that the end result should be to deter investment in property expropriated after the disciplines take effect, the U.S. has argued that past expropriations must be covered. The two sides also disagree on whether expropriated properties in Cuba should be explicitly covered by the disciplines (*Inside U.S. Trade*, July 11, p. 3).

The U.S. and EU agreed in April to try to agree to disciplines in these two areas by October 15 as a way of resolving their dispute over the Helms-Burton law. The two sides are hoping that a successful conclusion to the talks will allow the EU to withdraw its World Trade Organization challenge of the law, and convince the Congress to allow Title IV of the law to be waived by the president. Title IV requires the U.S. to deny visas to foreign executives that traffic in expropriated U.S. property in Cuba.

Sources close to the negotiation said the U.S. is now more optimistic about the prospects for a successful conclusion of the talks because the new EU lead negotiator, Deputy Director General for External Relations Gerard Depayre, seems more determined to move the talks forward. The U.S. side was led this week by Assistant Secretary of State for Economic and Business Affairs Alan Larson, sources said.

In a related development, Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) last month publicly accused the Clinton Administration of purposefully failing to enforce Title IV of the Helms-Burton Act.

"Mr. President, it is increasingly obvious that your Administration has decided -- unilaterally -- not to enforce that provision of the Helms-Burton law," Helms wrote to Clinton in a July 16 letter, reprinted below. "Indeed, through its failure to enforce this provision, the Administration has issued what amounts to an effective (and, in fact, an unlawful) waiver of Title IV."

In addition, Helms warned that not enforcing Title IV leaves the impression that the Administration has promised the European Union that Title IV would not take effect while the two sides try to settle their dispute over the law. EU member states have in fact warned that if Title IV is applied against an EU company, they would demand that the WTO challenge of Helms-Burton be resumed.

"Mr. President, there is a growing suspicion in Congress that your Administration has promised the European Union it will not enforce Title IV against European companies, as a quid pro quo for European agreement to suspend their WTO suit," Helms wrote.

As a result, Helms asked Clinton whether any such agreement with the EU exists, what the Administration's "legal justification" is for failing to enforce Helms-Burton, and whether the Administration plans on taking further action against foreign companies through Title IV in the coming months. Congressional sources said at press time that Helms had not received a response.

Helms also asked why the U.S. hasn't invoked Title IV against STET, an Italian telecommunications company, even though 13 months have passed since the State Department's initial warning letter was sent to the company. But State last week announced that STET and ITT, whose property was nationalized in Cuba and was subsequently acquired by STET, reached an agreement under which STET will lease the property in question for a ten year period in return for a lump sum payment to ITT.

While Helms credited Helms-Burton last week for prompting the settlement, he also warned that the deal does not ease his concerns that Title IV is not being enforced properly.

"Despite these welcome developments, I remain dismayed by the Clinton Administration's utter failure to enforce Title IV of the Helms-Burton law," he said in a July 23 statement. "This deal in no way justifies their failure to enforce the law."

Helms' questions to the Administration in his July 16 letter mirrored those asked in a June letter to the State Department from House International Relations Chairman Benjamin Gilman (R-NY). In response, State insisted that it is fully enforcing Title IV, and that delaying its enforcement in order to provide companies such as STET and ITT time to settle disputes over expropriated property is "fully consistent" with Title IV (*Inside U.S. Trade*, July 18, p. 1).

Gilman said in a July 23 statement that while he welcomes the agreement, his committee would be reviewing it to ensure it is "consistent with the U.S. embargo on Cuba."

Meanwhile, a House amendment that would require the Administration to report to Congress on the status of Title IV's implementation was included in the State Department authorization bill that emerged from a House-Senate conference committee this week, according to congressional sources.

The measure would require periodic reports to Congress on the number of companies that have and have not been cited under the law, and explanations of how and why those decisions were made. The amendment does not require State to submit the names of specific companies to Congress.

A congressional source added that while the language in the final amendment also does not require State to provide a sector-by-sector breakdown of companies being investigated under Title IV, State has made a "verbal commitment" to provide this analysis. Rep. Ileana Ros-Lehtinen (R-FL), who chairs the House International Relations subcommittee on international economic policy and trade, this week introduced legislation to this effect in case State does not keep to that commitment, the source said.

Also surviving the conference committee was a Senate amendment that would deny visas to foreign executives that traffic in expropriated property anywhere in the world. However, the amendment does not apply to property claims resulting from disputes between United Nations members in which an ultimate resolution has not been reached.

For example, the amendment does not apply to lands in dispute as a result of the Peru-Ecuador conflict, the "Soccer War" between El Salvador and Honduras, and Middle East conflicts between UN member states, according to House report language explaining the amendment. In contrast, the report said the measure could be used to target property claims in Nicaragua, Costa Rica, Honduras, and the Dominican Republic.

A congressional source said both of these measures were "not a matter of great controversy." A conference report on the authorization bill will likely be assembled after the August recess, after which it will be voted on by the House and Senate and then go to the president for signing.

The broad aim of the bill is to consolidate international affairs agencies, reform foreign assistance programs, and authorize appropriations of foreign assistance programs for 1998 and 1999.

Finally, congressional sources said that Ros-Lehtinen and Rep. Lincoln Diaz-Balart (R-FL) introduced legislation this week that would require the U.S. to withhold non-humanitarian assistance to members of the Caribbean Community (Caricom) and the Central American Common Market (CACM) that allow Cuba to join either of those organizations. The bill would also deny Caribbean Basin Initiative tariff benefits to these countries.

Helms Letter on Title IV Enforcement

July 16, 1997

The President
The White House
Washington, D.C.

Dear Mr. President:

I am dismayed by your decision today to issue, without consultation, another waiver of Title III of the Helms-Burton law, a decision that will allow foreign businesses to continue trafficking in stolen U.S. property with impunity -- while denying the rightful American owners any legal recourse whatsoever to seek compensation from those traffickers.

I am aware, of course, that the law does provide you with the legal authority to waive Title III. However, I must remind you, Mr. President, that Congress explicitly **refused** to grant any waiver for Title IV of the Helms-Burton law -- the provision denying visas to foreign business executives trafficking in stolen American property in Cuba.

Mr. President, it is increasingly obvious that your Administration has decided -- unilaterally -- not to enforce that provision of the Helms-Burton law. Indeed, through its failure to enforce this provision, the Administration has issued what amounts to an effective (and, in fact, an unlawful) waiver of Title IV.

Mr. President, with all due respect, I find it difficult to fathom how, since Helms-Burton was signed into law on March 12, 1996, the State Department has seen fit to issue Title IV letters (denying entry to the U.S.) to the executives of just two companies -- Sherritt of Canada, and Grupo Domos of Mexico.

Surely after 16 months of research, your Administration has uncovered sufficient evidence of other Canadian, Latin American and European companies that are in violation of Title IV. Or does the Administration seriously believe that Sherritt and Grupo Domos are the only companies trafficking in stolen American property in Cuba?

It is obvious, for example, that the Italian telecommunications monopoly STET (a partner in Cuba with Grupo Domos) is in clear violation of Title IV. Indeed, it is my understanding that the State Department sent STET a "warning" letter in March, 1996. Thirteen months have passed since that letter was sent, yet no action has been taken against STET. Why, Mr. President, have their executives not been declared *persona non grata* in the United States?

Mr. President, there is a growing suspicion in Congress that your Administration has promised the European Union it will not enforce Title IV against European companies, as a quid pro quo for European agreement to suspend their WTO suit. Your failure to enforce this provision of the law reinforces that impression.

Allow me to emphasize respectfully, Mr. President, that you and your Administration do not have the legal authority to waive Title IV. It is the law of the land, and your Administration is legally bound to enforce it.

I will appreciate your explaining to me the reasons behind your Administration's failure to enforce Title IV of the Helms-Burton law. Further, has there been any agreement, oral or written, with the European Union, or with any European Union government, that Title IV will not be enforced during the period of negotiations over the WTO case? What is the Administration's legal justification for such an unauthorized waiver of the law? And, is your Administration planning to take any actions during the coming months against executives in violation of Title IV?

I will be genuinely grateful for an early response to these questions.

Sincerely,
Jesse Helms

EU REPORT BLASTS U.S. EXTRATERRITORIAL, UNILATERAL TRADE MEASURES

The European Commission this week lashed out at U.S. extraterritorial and unilateral trade measures in its annual comprehensive assessment of U.S. barriers to trade and investment, and cited them as the most troubling features of U.S. trade policy today. In its report on U.S. barriers to trade and investment, the Commission also highlighted a new trend of U.S. states aimed at regulating trade beyond the territory of the U.S.

"The European Union remains concerned about the tendency of the United States to enact domestic legislation with extraterritorial application," the EU said in a July 29 announcement. The EU cited the Helms-Burton law and the Iran-Libya sanctions law as the most prominent examples of U.S. efforts to hamper international trade and investment by regulating EU trade with third countries.

Additional U.S. extraterritorial measures include environmentally driven embargoes, export control legislation, and state- and city-level selective purchasing laws, the EU said. The report cited the Massachusetts law that penalizes firms doing business in Burma from bidding on certain state contracts, on which the EU has requested consultations in the World Trade Organization as a violation of the Government Procurement Agreement.

But the EU warned that selective purchasing laws have been passed in Connecticut, California and Texas and in several cities, including New York. "[T]he multiplication of such initiatives seems indicative of a worrying trend in U.S. subfederal policy-making aimed at regulating the behaviour of economic agents beyond U.S. territorial jurisdiction," the EU said in its announcement. "Quite apart from the strict legality of these actions, they are clearly disturbing the conduct of normal economic relations."

The Commission's 50-page *Report on United States Barriers to Trade and Investment* was released July 29.

The Commission also cited the U.S. Section 301 legislation as a "striking example" of unilateral measures, which "casts doubt on U.S. support for a multilateral rules-based trading system." But the Commission conceded that the U.S has made extensive use of the WTO dispute settlement system instead of opting for unilateral measures.

The report also cited specific obstacles in the areas of tariffs, non-tariff measures, investment, intellectual property rights, and services.

The charged that high U.S. tariffs in several sectors, including ceramics and glass, chemicals, textiles and leather goods, and jewelry pose trade barriers for EU exports. On non-tariff barriers, the report criticized U.S. rules of origin determinations, excessive invoice requirements, customs user fees, national security based import prohibitions, import bans for tuna caught with fishing methods that hurt dolphins, complex standards and technical regulations for protection of consumers and the environment categories and federal Buy American procurement laws. The Commission also accused the U.S. of violating through indirect support its bilateral commitment on subsidies for large civil aircraft.

Limitations on foreign direct investment, foreign ownership restrictions, and tax discrimination against foreign owned corporations were also cited by the Commission in its report as troublesome barriers to transatlantic investment flows. In addition, while U.S. patent laws are used to keep infringing foreign products out, U.S. copyright and designation laws do not provide adequate protection and compensation for foreign authors, performers, and wine and spirit producers, the Commission claimed.

The EU also faces U.S. barriers in the fields of radio licenses, mobile satellite communication services, financial services, air transport computer reservation systems, and maritime transport services, according to the report.

CLINTON ANNOUNCES INTENT TO NOMINATE SCHER TO RANK OF AMBASSADOR

President Clinton this week announced his intent to nominate Peter Scher to the rank of ambassador to serve as the Special Trade Negotiator for Agriculture at the Office of the U.S. Trade Representative. In that role, Scher will conduct trade negotiations and assist the U.S. Trade Representative in developing and coordinating U.S. trade policy as it relates to agriculture, Clinton said in a July 28 announcement.

Scher came to USTR after serving as Chief of Staff to former Secretary of Commerce Mickey Kantor, a role he also had when Kantor was the U.S. Trade Representative. Before joining the Clinton Administration, Scher was the staff director at the Senate Committee on Environment and Public Works, the announcement said.

U.S., EU SEEKING NEW WAYS TO REDUCE BILATERAL TRADE BARRIERS

Senior Administration officials said last week that the U.S. and European Union are actively pursuing a joint government study that will identify new ways to remove trade and investment barriers as early as the end of the year. In addition, the U.S. and EU are committed to expanding existing agreements on mutual recognition of standards and manufacturing practices to new sectors, Deputy U.S. Trade Representative Jeff Lang and Acting Commerce Undersecretary for International Trade Timothy Hauser told a congressional panel on July 23.

"We intend to pursue actively the joint study on eliminating barriers to trade and investment and expect to have preliminary recommendations for government action available by the end of this year," Lang said in testimony prepared for the House Ways and Means Trade Subcommittee.

Hauser told the subcommittee that key priorities for U.S.-EU trade in the near term include the implementation of the recently agreed mutual recognition agreement (MRA) -- on pharmaceuticals, medical devices, recreational craft, telecommunications equipment and certain information technology products -- and the broadening of the agreement to include more types of products.

"[W]e look forward to broadening the scope of the MRAs by expanding them into new sectors determined to be of priority by the business community and to be of mutual interest to U.S. and European regulators," Hauser said.

Neither Hauser nor Lang listed the sectors that would be included in the MRAs, but the U.S. and EU signed a letter of intent in June identifying industrial fasteners and veterinary biologics as possible additions (*Inside U.S. Trade*, June 27, p. 20). Informed private-sector sources said the chemical sector is also an area for potential inclusion.

Both officials said they expected a November meeting of the Transatlantic Business Dialogue in Rome to identify new areas for trade liberalization.

Hauser told the subcommittee that other near-term priorities for the U.S. and EU include the successful negotiation of a World Trade Organization agreement on financial services, promotion of electronic commerce, harmonization of standards in the automobile sector, and sectoral tariff reductions.

"[T]here are still product sectors in which European tariffs are keeping out U.S. products -- including paper products," Hauser said. "Tariff reductions in areas like paper and other important sectors that were not fully liberalized in the Uruguay Round are other areas where we expect progress could be made rapidly."

He noted that the U.S. still has residual authority to cut or accelerate reductions in tariffs in the paper and paper products sectors, as well as in the wood products, electronics, and medical equipment sectors. In the automobile sector, the U.S. hopes that a sufficient consensus will develop in the EU auto industry to convince the Commission to join the U.S. in the pursuit of a new global forum to develop common standards.

Hauser told the panel that other countries have expressed an interest in MRAs with the U.S. "Other countries have raised the possibility of bilateral MRAs -- Switzerland and Norway have asked us about it," Hauser said. "We have had soundings from Asian countries like Taiwan, Japan, Australia." The Food and Drug Administration has already begun talks with its Canadian counterpart, Health Canada, on an MRA in the pharmaceuticals area.

Hauser noted that a broader approach to MRA negotiations could be helpful in addressing these requests, and should be explored. "I think the thing would be, one, to look at where the opportunities are; two, because of the complexity of doing these things, it would be useful to look at whether there's some broader way to address this than a series of very intensive bilateral talks," he said.

Lang offered a sober assessment of the New Transatlantic Agenda (NTA), a year-and-a half old U.S.-EU initiative to strengthen cooperation. "From USTR's point of view, I would say the results are mixed, but then, we always suspected they would be by this point in the process," he said.

Under the NTA, the U.S. and EU have worked together to achieve "notable successes" multilaterally, Lang said. A landmark WTO agreement on eliminating tariffs for information technology products by the year 2000, and an agreement on basic telecommunications services could not have been achieved without the participation of the EU, Lang said. The U.S. and EU appear to be working well together in the WTO negotiations on financial services, he said.

"We have what appear to be many common objectives, if not almost identical objectives, and I think we can work well together in the coming months," Lang said.

But the NTA has not settled many bilateral U.S.-EU disputes, some of which are serious, he said. "Sometimes, as with certain EU attitudes toward the regulation of trade in bioengineered foodstuffs, tens or hundreds of millions of dollars in trade can be at stake," he said.

Some of the bilateral agreements are long-standing and connected to the EU's common agricultural policy, he said. Other agricultural disputes stem from "popular attitudes" in Europe toward protection of the environment and of human health, he said. Europe also has strong views on animal welfare, which has led to threats to cut off U.S. fur exports from animals caught in leghold traps, he said (see related story).

In addition, a new dispute is arising over the U.S. practice of using European regional designations as generic wine categories, which the EU has long opposed as infringing on its producers' rights, an EU official said. In the budget legislation that passed Congress this week, Sen. Alfonse D'Amato (R-NY) included an amendment that will make these U.S. designations, which are now stipulated in U.S. regulations, allowable under federal law, according to the official.

Hauser told the subcommittee that "regulatory differences remain the most significant barriers to transatlantic trade" and noted continued U.S. concern regarding the EU's approach to labelling of environmentally friendly products, so-called eco-labelling. The U.S. sees eco-labelling as a fruitful area for discussion and cooperation to see that environmental objectives are met without negatively affecting trade, Hauser said.

Lang also reiterated U.S. concern over the EU's use of the WTO dispute settlement to address "political issues", including the Helms-Burton Act, "rather than the kinds of commercial issues that the dispute settlement system was designed for."

In This Issue

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BOEING MERGER LIKELY TO ALTER IMPLEMENTATION OF U.S.-EU AIRCRAFT PACT

A deal struck between the Boeing Company and the European Commission this week to clear the way for a merger with McDonnell Douglas shows that the EU extracted concessions it has up to now failed to win under a bilateral agreement on civil aircraft subsidies. As part of the deal, Boeing agreed to provide information to the EU for ten years about the indirect subsidies it gains from government-sponsored research and to license some patents obtained from government contracts to European companies, according to a July 23 announcement.

These commitments are meant to offset the benefits Boeing would reap from a "spillover" of benefits from defense and aeronautics contracts to the commercial business, Boeing Chairman and Chief Executive Officer Phil Condit said in a July 23 press conference. Spillover is the "relationship between your defense business, [National Aeronautics and Space Administration] business and the commercial business, which is the subject covered in a

continued on page 21

EU CAP REFORM AIMED AT ELIMINATING ACCORD ON OILSEEDS WITH U.S.

A new proposal presented by the European Commission last week for a reform of the common agricultural policy is partially aimed at invalidating an agreement with the U.S. negotiated to curb EU oilseeds production. The agreement, which was included in the Uruguay Round, limited the acreage of EU farmers who received specific subsidies to grow oilseeds after a ruling of two international dispute settlement panels that these EU payments unfairly undermined U.S. exports.

In its proposal labeled Agenda 2000, the EU is aiming to invalidate the so-called Blair House accord by doing away with oilseeds specific subsidy payments to farmers. Instead, the EU is proposing to pay a general subsidy to all its producers that would force them to produce at prices close to world market levels, which in turn would mean no routine use of export subsidies.

continued on page 23

U.S., KOREA REACH DEAL TO END TELECOMMUNICATIONS PROCUREMENT FIGHT

The U.S. and Korea this week finalized a deal aimed at addressing U.S. complaints about discriminatory procurement practices in the telecommunications sector and ending a case under Section 1374 of U.S. trade law. The agreement, which consists of a unilateral statement by the Korean Ministry of Information and Communications (MIC), outlines measures Korea will take to ensure nondiscrimination in the areas of procurement, technical standards, services and intellectual property.

U.S. Trade Representative Charlene Barshefsky welcomed the agreement and emphasized that it is fully reviewable under U.S. trade law, and open to action in the World Trade Organization. "The United States will continue to monitor closely Korean adherence to its commitments and will make use of U.S. trade laws and WTO procedures, if appropriate, to ensure effective implementation," Barshefsky said in a July 23 statement.

continued on page 26

U.S. GROUPS LIKELY TO FILE 301 CASE ON CANADIAN DAIRY PRACTICES

Members of the U.S. dairy industry are likely to file a petition under Section 301 of U.S. trade law against Canada next month for its failure to open its market to selected dairy products, such as fluid milk, and its effort to unfairly gain market share in third countries by circumventing its Uruguay Round export subsidy commitments. Canada operates a two-tier price system for the sale of milk that the U.S. industry charges acts as an export subsidy by setting a lower price for milk processed into goods for export than for milk sold for domestic production.

The return from both types of sales are pooled by marketing boards into one payment to Canadian producers.

"We are very, very unhappy with the state of dairy trade relations between the U.S. and Canada, and believe that special pooling classes are, at best, questionable under the [General Agreement on Tariffs & Trade]," one industry source said.

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"It's likely we'll file a formal 301 in the next 60 days,... possibly by mid-August," one industry source said. One U.S. official said that dairy industry representatives are telling Administration officials to "self-initiate or we'll file."

He said the U.S. was "close to deciding" what, if any, action it will take in the World Trade Organization. The U.S., he said, is "looking at this very carefully and deciding whether or not to make a formal challenge in the WTO."

Agriculture Undersecretary for Farm & Foreign Agricultural Services nominee Gus Schumacher referred to the upcoming case in his July 23 confirmation hearing, according to government and industry sources. At the July 23 hearing, Schumacher said an industry section 301 submission against Canada "may be forthcoming," they said.

Legal counsel for the National Milk Producers Federation and U.S. Dairy Export Council is currently preparing an analysis on the approach to use in a submission to the Office of the U.S. Trade Representative regarding the Canadian dairy scheme, according to sources.

If filed, the industry's request would likely charge that the Canadian pooling arrangement violates the export subsidies commitments in Article 9 of the Uruguay Round agreement on agriculture as well as the commitments under Article 10 not to circumvent them.

The two dairy groups claim they have received some favorable input from senior Administration officials about a possible filing, and its ultimate consideration at the WTO, according to an industry background paper.

"Cabinet level administration responses have been encouraging that relief through a WTO dispute panel is very viable," it said. One industry source said that USTR officials have given "assurances" that Canada's practices are "objectionable."

According to the backgrounder, dairy industry representatives have raised their problems with both U.S. farm and trade officials.

U.S. officials have already raised objections to the Canadian price-pooling system in the WTO Committee on Agriculture. The USDA official noted this week that the U.S. was "encouraging its trade partners to do something...like New Zealand." New Zealand held out the possibility of a WTO case against Canada last month (*Inside U.S. Trade*, July 4, p. 19).

According to a dairy industry background paper, one argument against the Canadian dairy scheme is that it could used by other countries to get around export subsidy constraints. "...It could well become the instrument used by agricultural sectors from a host of countries to circumvent all export subsidy constraints," it said.

For its part, Canada has maintained that exports under the pooling arrangement are not subsidies under the terms of the Uruguay Round agricultural agreement, and thus are not bound by its constraints.

The complaint, if filed, will likely raise allegations that Canada has failed to implement a tariff-rate quota for fluid milk it negotiated in the Uruguay Round, according to sources. In addition, it could target Canada's failure to implement a General Agreement on Tariffs & Trade ruling against its import quotas on ice cream and yogurt. It would not try to reopen the fight on Canada's right to impose tariff rate quotas in the dairy and poultry sector, which the U.S. lost in a North American Free Trade Agreement dispute settlement system.

U.S. dairy industry organizations earlier this month raised complaints against Canada in a July 10 submission to USTR under the Super 301 process. They also criticized a number of practices by Mexico, Brazil and several other countries.

In that filing, they specifically targeted the "monopolistic" Canadian Dairy Commission, saying it "provides fluid to processors to manufacture exportable dairy products at prices below those prevailing in Canada."

"Otherwise, the resulting manufactured dairy products will not be competitive anywhere in the world," according to the submission. "This system provides direct subsidies to dairy processors, and simultaneously circumvents Canada's WTO subsidy commitments."

In addition, Mexico also has erected barriers to trade in the form of state trading enterprises, the two groups charged in the same submission. Mexico's state trading enterprise, CONASUPO, "restrains" the potential expansion of dairy product sales directly into the country, they claimed.

CONASUPO, the sole authorized importer of skim milk power, buys the powder at the world price, which is artificially reduced by European export subsidies, and then sells the U.S. product to the Mexican processing industry at a marked-up price equivalent to the U.S. price for the same product, they said.

Under this arrangement, the U.S. is required to use the Dairy Export Incentive Program so as to export U.S. dairy products to Mexico. The result is a government-to-government transfer of some $25 million a year, they charged. "This cannot be defended nor can it be changed until the United States obtains the rights for dairy exporters to sell directly to the ultimate customer," according to the submission. It also criticized Mexico's excessively high tariffs on certain types of milk powder.

Brazil also came under fire by the two groups for its 30-percent tariffs on most dairy products, including butter and dairy spreads, evaporated and condensed milk and powdered milk. For its part, Venezuela was criticized for its system of variable tariffs on dairy and other farm goods, that allow tariffs to fluctuate depending on the price of the import.

CLINTON UNVEILS NEW FAST-TRACK TEAM, MEETS WITH HOUSE DEMS

President Clinton yesterday (July 24) announced the appointment of Recording Industry Assn. of America (RIAA) Chairman and CEO Jason Berman to coordinate the Administration's effort to pass fast-track trade negotiating authority this fall. The naming of Berman "makes clear my determination to fight for passage of this important legislation," Clinton said.

At the same time, Clinton revealed that Victoria Radd, chief of staff to White House Chief of Staff Erskine Bowles, has been tapped to join Berman in coordinating the campaign. During the last four years, Radd has also served as associate counsel to the president and as deputy director of communications at the White House. Previously she was a partner in the Williams & Connolly law firm.

Berman will take a leave of absence from RIAA to serve as Special Counselor to the president, according to Clinton. Berman's "extensive knowledge of trade policy and unparalleled experience on the Hill will be invaluable to our effort," Clinton said.

"I am calling on Congress to enact fast track legislation so we can continue our aggressive drive to open markets to our goods and services and create more high skilled jobs for the American people," he added.

Clinton also met July 24 with about 30 House Democrats to discuss fast track, private-sector sources said. The original idea was to meet with a bipartisan group of legislators, they said, but congressional Republicans declined to attend in light of the lack of an agreed-on fast-track approach with regards to environmental and labor issues.

"Presumably he will tell [House Democrats] to keep their powder dry and urge them to support the Administration's [fast-track] proposal when it comes out," one private-sector source said.

Another source said the purpose of the meeting was for the President to let the Democratic caucus know now, before the August recess, that he is prepared to lead them on the fast-track issue." In addition to moderate, pro-trade Democrats, one official expected the meeting to be attended by "labor-leaning pro-traders and Bill Richardson wanna-be's." Current U.S. United Nations Representative Bill Richardson played a key role in passage of NAFTA and other trade matters when he was in the House prior to this year.

A congressional source said House Minority Leader Richard Gephardt (D-MO), who has opposed the Administration's trade policy and has advocated inclusion of labor and environmental provisions in trade agreements, was not invited to the session.

According to U.S. officials, the White House fast-track effort is likely to be partitioned into four components: communications; legislative strategy; policy; and outreach. These areas of activity would be co-chaired by cabinet-level officials, they noted.

The increasing White House activity on fast track has been noticed by Republican congressional leaders and private-sector fast-track advocates, industry sources said.

"It suggests a very elaborate and multi-faceted effort the President has used for high profile and high visibility legislative battles" in the past, one industry source said.

Congressional Republicans "are obviously still waiting to see the Administration's [fast-track] proposal," he said, but they also are beginning to be reassured by some of the White House actions."

TUNA-DOLPHIN MEASURE TO FACE CRITICAL SENATE PROCEDURAL VOTE TODAY

The fate of controversial legislation aimed at lifting the U.S. ban on tuna imports and altering the definition of "dolphin-safe" tuna for labeling purposes is likely to be determined by a procedural vote slated to take place on the Senate floor today (July 25), according to private-sector, congressional and environmental sources.

After receiving a request for action on S. 39 from President Clinton, Senate Majority Leader Trent Lott (R-MS) committed to holding a July 25 cloture vote on a motion to proceed with consideration of the bill. S. 39, whose companion measure in the House has already been approved, would allow tuna caught in the Eastern Tropical Pacific Ocean (ETP) by setting purse seine nets on schools of dolphins to be labeled "dolphin-safe" as long as no dolphins are killed or seriously injured.

Sixteen senators submitted a cloture petition on the evening of July 23, although several pro-bill sources said that the bill's original co-sponsors, Sens. John Breaux (D-LA) and Ted Stevens (R-AK) did not yet have clear commitments from the 60 senators required to win a vote on cloture. Democratic support for the bill began to soften last week after Senate Minority Leader Thomas Daschle (D-SD) told his caucus that the vote should be a "party-line" vote against cloture, even though Clinton wants to proceed.

Current U.S. labelling law, whose alteration is opposed by Sens. Barbara Boxer (D-CA), Joseph Biden (D-DE) and Bob Smith (R-NH), does not permit tuna caught by setting nets on dolphins from being labeled "dolphin-safe." Boxer and her allies have threatened to filibuster rather than allow the bill to come to a vote.

If the cloture vote garners 60 votes or more, debate can proceed on the bill under rules that allow 30 total hours of debate and no more than one hour per senator. Boxer would subsequently have a second opportunity to filibuster the actual vote itself, but if the first vote indicates she does not have the 40 votes required to sustain a filibuster it is unclear why she would attempt one.

One backer of S. 39 claimed this week to have a five-vote margin of victory beyond the necessary 60 votes based on direct polling of senators rather than their staffs, but Administration and Senate sources said this was no longer the case in light of Daschle's comments last week.

In a related development, Sen. John Kerry (D-MA) was floating a compromise proposal on July 23 that would delay the labelling change for three years until completion of a study on the effects of encirclement of dolphins on their mortality.

S. 39 is backed by President Clinton, who personally has urged both Lott and Daschle to allow the measure to be voted on before the August recess. Its passage is required in order to fulfill a U.S. commitment made to Latin American fishing nations in the 1995 Panama Declaration to lift its tuna ban and allow net-setting on dolphins in return for the creation of a binding international marine-species conservation treaty in the ETP. It also is supported by five environmental groups, including Greenpeace and the National Wildlife Federation, but is opposed by a coalition of 85 conservation, environmental and citizen action groups, including Earth Island Institute and the Humane Society.

The tuna-dolphin bill is one of two top Administration Latin America-focused trade priorities that are at a key juncture this week. The other is the four-year-old effort to make good on Clinton's pledge to provide NAFTA-type benefits to the Caribbean and Central American countries.

Numerous efforts at compromise between the two sides of the tuna-dolphin debate have failed, with the main sticking point being whether the labeling change should take effect immediately, as S. 39's backers believe is required to meet the commitment made in the Panama Declaration, or whether it would be put off until after a study on the long-term mortality effects of setting nets on dolphins.

U.S., JAPAN TO DISCUSS EXTENSION OF NTT PROCUREMENT DEAL NEXT MONTH

The U.S. and Japan plan to meet in the second week of August to discuss implementation and extension of the bilateral accord governing the procurement of telecommunications equipment by Nippon Telephone and Telegraph. The U.S. "intends to discuss the renewal" of the agreement, and the Japanese government has informally agreed to do so on the second day of the talks, according to informed sources.

An Administration official said the talks are scheduled for August 5 & 6 in San Francisco, but that "nothing is finalized."

Japan had proposed talks for the week of July 28 or Aug. 4, initially insisting that they could only deal with the implementation of the agreement in fiscal year 1996 as long as the Office of the U.S. Trade Representative maintains its position that the Federal Communications Commission should hold up two licenses for NTT and KDD to provide service from the U.S. to Europe and other points outside Japan (*Inside U.S. Trade,* July 18, p. 11).

CHINA UNLIKELY TO MAKE KEY MARKET ACCESS OFFER IN JULY WTO MEETING

China is unlikely to make good on its promise to present a major market access offer for goods later this month in the negotiations on its accession to the World Trade Organization, according to informed government sources. Instead, China is likely offer minor concessions, such as cutting the time for phasing out quotas and licensing restrictions, in Geneva sessions culminating in an Aug. 1 working party meeting, these sources said.

"There are some problems on the Chinese side on tariffs," one government official said. "But there might be something [offered] on non-tariff measures." Sources close to the WTO negotiations are speculating that China's market access offer could slip to August or September.

Another official said that China will likely offer some concessions to prevent the WTO talks from stalling completely. "If they do not put something on the table, it will send a message that China is not serious about the negotiations," he said.

China is likely to offer reducing the phaseout period by a few years from the current offer of 12 years, according to informed sources.

In a July 16-18 bilateral session with the U.S., China offered some tariff concessions for industrial goods and agricultural commodities, informed sources said. The meeting was initially billed as a session on services, but turned out to be more general preparation for the working party meeting, according to U.S. and Chinese officials. A bilateral session on agriculture earlier in the month left U.S. officials disappointed, one informed source said.

Regarding market access, the U.S. has emphasized to China since June the importance of increasing imports progressively by increasing the size of quotas, for example, informed sources said. Representatives of the agriculture industry have told the U.S. government that growth in tariff rate quotas is critical for major commodities in which the market can grow dynamically in a short time, these sources said.

The U.S. plans to meet with China in a bilateral session on July 29-30 just prior to the working party meeting, and following a July 25-26 session between China and the European Union. The EU hopes to discuss services, tariffs, non-tariff measures as well as national treatment issues, according to one official. On national treatment, the EU will urge that China remove rules that require government licenses for foreign firms to offer maintenance for imported equipment.

The working party meeting was called by chairman Pierre-Louis Girard of Switzerland as a way to anchor a series of bilaterals aimed at making progress in the market access negotiations, government sources said.

None of the WTO members are interested in doing more work on the protocol without having further progress on market access, these sources said. Girard warned at the end of the last working party that failure by China to offer new concessions on goods and services could lead to a deadlock in the negotiations (*Inside U.S. Trade*, May 30, p. 1).

Failure to make major progress on the market access side would set back the talks, but not necessarily ruin their chances for completion in 1998, some foreign diplomats said. If China makes a serious offer in September, a deal may still be possible next year, one private-sector source said. If market access talks are dislodged, there are three to four major protocol issues that must still be settled, he said. These include a transitional safeguards, China's treatment under antidumping law, and its use of balance of payments trade restrictions, he said.

Government officials this week warned against interpreting the delay as a clear sign that the Ministry of Foreign Trade and Economic Cooperation is unable to bring other Chinese ministries into the accession negotiations.

A better indication of whether MOFTEC can deliver the other ministries will be the services offer, which trading partners expect in September, officials said. For example, to present a services offer, MOFTEC will need the support of the Ministry of Finance for banking issues and the Ministry of Internal Trade on distribution services, they pointed out.

Separately, House Minority Leader Richard Gephardt (D-MO) this week reiterated his call for legislation requiring congressional approval of China's WTO accession. In a July 23 "dear colleague" letter, Gephardt warned that the upcoming U.S.-China summit could create pressure to complete an agreement quickly.

"With a summit between President Clinton and Chinese President Jiang Zemin being planned for later this year, there is a very real concern that our negotiators will be pressured to rush to complete a deal," Gephardt wrote. "Congress must have a voice and role in these negotiations."

Some congressional sources said that the Administration still hopes to work out a framework or outline of a WTO deal in time for the summit.

The legislation, H.R. 1140, currently has 50 cosponsors, Gephardt pointed out.

In a separate letter dated July 23, Gephardt asked U.S. Trade Representative Charlene Barshefsky to respond to his request for an analysis by the International Trade Commission on U.S. negotiating objectives in the China accession talks. Gephardt said that the U.S. will be under pressure to complete a deal with China in light of the upcoming summit. "Rather than rush to meet an arbitrary deadline, our negotiating strategy should be guided by concrete analysis and objectives," he said. "A comprehensive study along these lines would help ensure that our negotiators are armed with the information necessary to reach an agreement that advances our long-term economic interests."

KOREA PRESSURES U.S. ON COLOR TV AD DECISION, THREATENS ON DRAMS

The Korean government has taken steps against what could be its first challenge in the World Trade Organization by requesting formal consultations on a U.S. decision to keep in place an antidumping order on color television receivers (CTRs). The U.S. decision violates WTO antidumping rules because the Korean suppliers have received minimal margins for six years and ceased exporting CTRs to the U.S. in 1991, according to a July 16 WTO notification on Korea's consultation request.

The U.S. has not examined the necessity for continuing the duties, and rejected four petitions by Samsung Electronics Co. Ltd. for revocation on procedural grounds such as timing of the requests, rather than address their substance, Korea charged in the notification. "The fifth application for revocation review filed by Samsung on 20 July 1995 was not acted upon for 11 months with no legitimate justification given for the delay," according to the notification.

The department initiated the review in June 1996, but has argued its conclusion must await the outcome of an investigation of whether Korea circumvented the CTR antidumping duties with shipments of CTRs from a factory it established in Mexico. Korea has rejected this argument by pointing out that the CTRs made in Mexico are produced by a factory established there and are therefore North American products that meet the content requirements of the North American Free Trade Agreement.

Korean Trade Minister Chang Yuei Lim had raised the CTR dispute to Secretary of Commerce Bill Daley last month as a "matter of considerable and growing concern to the overall health of our close bilateral relationship," according to a June 25 letter reprinted below.

Kim also raised objections to a then expected Commerce ruling not to end an antidumping order for dynamic random access memory chips (DRAMs). Commerce issued that ruling on July 16, but at press time the Korean government had not requested WTO consultations on the issue. The July 16 finding showed a zero percent margin for Hyundai Electronic Industries, Inc. and a 0.01 margin for L.G. Semicon Co., Ltd.

The department decided to keep in place the order even though Korean producers had met two of three requirements for ending a case. They had zero margins for the first three annual reviews in the case covering the period of Oct. 92 to April 30, 1996, according to an Administration official. In addition, Korean producers had agreed to reinstate the dumping case at some point in the future if dumping recurred, he said. But producers did not meet the third hurdle because Commerce did not find that Korean dumping of DRAMs is not likely in the future, he said.

The department rejected arguments from the Korean producers that a proposal they had made to the U.S. industry for a data collection system allowing an accelerated submission of price and cost information to Commerce should be considered as meeting the third criterion. That proposal, which was made very late in the review process, and was not accepted by the U.S. industry, has "no bearing" on the likelihood finding, Commerce said in its notice of the decision.

In making the likelihood determination, Commerce looked at a range of issues, and found the pricing behavior of petitioners in the 1996 downturn in the DRAM market most relevant, a U.S. official said. The DRAM market is cyclical and future downturns are likely, the official said.

If Korean producers had reached a deal on the data collection with Micron Technology Inc., the petitioner in the case, the dumping case would have been dropped. Micron rejected such a settlement in a July 3 letter to Commerce, saying that there is "no basis" for a data collection agreement and added that the Korean firms' "purported willingness to enter into such an agreement" is not relevant to the margin determination.

Korean Request for Consultations with U.S.

World Trade Organization
WT/DS89/1
G/ADP/D5/1
G/L/171
16 July 1997
Original: English

UNITED STATES - IMPOSITION OF ANTI-DUMPING DUTIES ON IMPORTS OF COLOUR TELEVISION RECEIVERS FROM KOREA

Request for Consultations by Korea

The following communication, dated 10 July 1997, from the Permanent Mission of Korea to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States pursuant to Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (A-D Agreement), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII of GATT 1994, regarding the imposition of anti-dumping duties by the United States on imports of colour television receivers (CTVs) from the Republic of Korea.

Factual Summary

1. The United States has levied A-D duties on imports of Korean CTVs from April 1984 to the present. During this period, Korean CTV makers moved much of their production abroad and, since 1991, exports of Korean-made CTVs to the United States have ceased. Furthermore, a de minimis dumping margin of less than 0.5%, as defined in the US Tariff Act, had been assessed on CTVs made in Korea by Samsung Electronics Co. Ltd (Samsung) for the six year period from April 1985 until the time when the product ceased to be imported into the United States in early 1991.

2. Thus, for the past twelve years (from April 1985 to the present), the United States has maintained an A-D order on Samsung's CTVs despite the absence of dumping and the cessation of exports from Korea, but it has never examined the necessity of continuing to impose those duties. Samsung's four applications for revocation review based on its history of no dumping were all rejected on mere procedural, rather than substantive, grounds concerning the timing of such applications. The fifth application for revocation review filed by Samsung on 20 July 1995 was not acted upon for 11 months with no legitimate justification given for the delay. Since the United States' eventual decision on 24 June 1996 to initiate the review, over one year has elapsed without any definitive result. The Government of the United States has explained that the result of this review must await the outcome of circumvention proceedings initiated in 1996.

3. Apart from this failure to review the need for the continued imposition of the A-D duties, the United States decided, on 19 January 1996, to initiate a circumvention investigation by receiving a petition from certain US labour unions. Eighteen months have since passed without a determination on this matter.

A-D measures and reviews

4. In principle, maintaining A-D duties on imports which cause no material injury (in this case, due to the absence of dumping and the cessation of exports) contravenes Article VI.6(a) of GATT 1994 and Article 11.1 of the A-D Agreement. In

addition, certain other actions by the United States violate various provisions of the A-D Agreement, including Articles 3.1, 3.2, 5.8 and 11.4.

5. Articles VI.1 and VI.6(a) of GATT 1994 and Articles 1 and 11.1 of the A-D Agreement stipulate that A-D measures shall be applied only if there is dumping and if it causes or threatens material injury. They also establish the important principle that A-D measures shall be applied to the minimum extent necessary, specifying that A-D duties shall remain in force only as long as and to the extent necessary.

6. Therefore, it is a contravention of Article VI of GATT 1994 and Article 11.1 of the A-D Agreement that the United States has maintained A-D duties for the past twelve years. The order should have been revoked in light of the absence of Samsung's dumping and its subsequent cessation of exports of CTVs to the United States from Korea. Under these circumstances, there is no conceivable possibility of dumping and material injury.

7. The lack of material injury is clear when the circumstances are assessed under the A-D Agreement's guidelines to determine the effect of imports on the domestic industry, provided for in Articles 3.1 and 3.2 of the Agreement. Article 3.1 states that a determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices, and (b) the consequent impact on domestic producers of the like product. Article 3.2 provides that with regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports. Consequently, the absence of dumping for six years and the cessation of exports for the subsequent six years fully demonstrate that, under the standards set out in Articles 3.1 and 3.2, there can be no injury. In this regard, the United States is in violation of Articles 3.1 and 3.2 of the A-D Agreement.

8. With regard to CTVs manufactured by Samsung, the existence of dumping cannot be substantiated since the company has been assessed di minimis margins for six consecutive years through the US Department of Commerce's annual administrative reviews.

9. Article 5.8 of the A-D Agreement, which demands immediate termination of an investigation in the case of de minimis dumping margins, is relevant to the application of Article 11.2, which provides for revocation of an A-D order if it is no longer necessary to counteract dumping. Having found de minimis margins for Samsung for six consecutive years through its annual reviews, the United States should have immediately initiated a revocation review on its own initiative under Article 11.2 and, consequently, terminated its A-D order pursuant to Articles 5.8 and 11.2 upon the completion of this review.

10. The provision of the US Tariff Act which defines a de minimis margin of less than 0.5% as eligible for revocation is in contravention of Article 5.8 of the A-D Agreement which stipulates a de minimis margin of less than 2%.

11. In order to implement Article 11.1 of the A-D Agreement, Article 11.2 of the same agreement specifies that the authorities shall review the need for the continued imposition of A-D duties on their own initiative, or upon request by any interested party. Thus, despite the fact that there is no material injury and (in Samsung's case) no history of dumping, the United States has neglected its obligation to self-initiate a revocation review, as required in the first sentence of Article 11.2. Moreover, the United States has refused to consider Samsung's repeated requests for revocation, insisting on strict adherence to procedural provisions of US domestic regulations (missing in the A-D Agreement), and has also failed to act on Samsung's request for a changed circumstances review for eleven months - acts that all violate the second sentence of Article 11.2 by unduly restricting the right of interested parties to request a review for the purpose of obtaining revocation.

12. By failing to self-initiate a revocation review and by restricting Samsung's right to request a review, the United States has evaded its Article 11.2 obligations. As a consequence, it still maintains A-D duties, which, if reviewed, should have been revoked pursuant to the third sentence of Article 11.2. All of these actions also constitute a violation of Article 11.1 of the A-D Agreement.

13. In addition, the failure to reach a determination thus far in the Commerce Department's revocation review initiated on 24 June 1996 also violates Article 11.4, which provides for expeditious conclusion of such reviews within the normal 12 months of their initiation.

Circumvention investigation

14. The circumvention investigation initiated on 19 January 1996 is in contravention of Article VI of GATT 1994 and Article 1 of the A-D Agreement, and should thus be immediately terminated.

15. Article VI.1 of GATT 1994 defines dumping as the introduction of products of one country into the commerce of another country at less than normal value, and Article 2.1 of the A-D Agreement defines it as a situation in which the export price of the product exported from one country to another is less than the comparable price for the like product in the exporting country.

16. It is clear from these provisions that if another country becomes the exporting country, dumping should be separately determined because this change would result in a consequent change of the two basic parameters in determining whether there is dumping: an export price and a normal price in the exporting country. Nonetheless, by effectively considering exports from Korea and exports from Mexico and Thailand as identical through its circumvention concept, the United States misinterpreted the basic concept of dumping established throughout the GATT and the A-D Agreement, thus apparently violating, in particular, Article VI.1 of GATT 1994 and Article 2 of the A-D Agreement.

17. It is, therefore a violation of Article VI of GATT 1994 and Article 1 of the A-D Agreement to initiate a circumvention investigation as an extension of existing A-D measures without initiating a new dumping (and injury) investigation under the GATT and the A-D Agreement.

18. Setting aside issues of principle, the US circumvention investigation violates many provisions of the A-D Agreement, including Articles 3.1, 3.6, 4.1, 5.4 and 5.10.

19. Labour unions such as the International Brotherhood of Electrical Workers and others, the petitioners of the circumvention investigation in question, are composed of employees of assemblers and producers of a diverse variety of electric or electronic products. Therefore, they cannot be said to represent employees of the domestic industry of the like product, namely, CTVs.

20. The US authorities neglected to examine the petitioners' representativeness of the domestic industry, and further refused Korean companies' request for such an examination, thus violating Articles 3.1, 3.6, 4.1 and 5.4 of the A-D Agreement.

21. Failure to make a determination in the ongoing investigation after 18 months also violates Article 5.10 of the A-D Agreement.

Link between the revocation review and the circumvention investigation

22. It was arbitrary and illogical for the United States to quickly respond to the request for a circumvention investigation while delaying for one year its response to Samsung's request for a revocation review. This action is all the more questionable, given that a circumvention investigation, even if it were to be justified under the WTO Agreement, can only be undertaken if there is an A-D order to circumvent.

23. Furthermore, the Korean Government believes that it is unreasonable for the United States to investigate the alleged circumvention without first verifying the justification of the A-D order. Similarly, the attempt to link the results of the circumvention investigation with the revocation determination constitutes a further breach of the proper procedural sequence. Indeed, a decision by the US authorities to revoke the A-D order against the Korean CTVs would remove the legal basis for the anti-circumvention investigation, which would need to be terminated forthwith.

24. Thus, extending the review period by making the above-mentioned linkage constitutes a violation of Article 11.1 of the A-D Agreement. This Article is interpreted to require the immediate termination of the A-D order in the absence of dumping which is causing injury.

In light of the above, the Government of Korea considers that the benefits accruing to it under GATT 1994 and the A-D Agreement are being nullified or impaired by the US actions regarding the A-D and related measures against imports of CTVs from Korea.

The Government of Korea reserves its rights to raise any additional factual or legal points concerning this issue during the consultations.

I look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.

Korea Letter to Daley on Dumping Cases

Ministry of Trade Industry and Energy
June 25, 1997

The Honorable William M. Daley
Secretary of Commerce
Department of Commerce
Herbert C. Hoover Building
14th Street & Constitution Ave. N.W.

Dear Mr. Secretary:

Allow me to present my compliments and to bring to your attention a matter of considerable and growing concern to the overall health of our close bilateral relationship.

As you are doubtless aware, the current antidumping issues involving Korean color television receivers (CTVs) and DRAMs have been a source of contention between our countries for some years. It is highly regrettable that a mutually acceptable resolution of the persistent problems raised by the continued existence of antidumping duty orders in both cases still appears to be beyond our reach.

For six consecutive years (from April 1985 through March 1991), CTVs exported by Samsung Electronics Company received de minimis antidumping margin determinations from the Department of Commerce (DOC). Moreover, Samsung's direct exports of Korean CTVs to the U.S. market, ceased altogether by April 1991. In light of these facts, the DOC's decision not to review the continuing need for the antidumping duty order due to purely procedural reasons is inconsistent with WTO Antidumping Agreements. Also the DOC has not reached a decision on Samsung's pending "changed circumstances" review for over one year. Since this review was initiated on June 24, 1996, we are of the opinion that the DOC's failure to make a determination within a one year period is in contravention of the WTO Antidumping Agreements as well as the DOC's own regulations.

Since January 1996, the DOC has also been conducting a circumvention investigation against Korean CTVs exported from Mexico. This investigation is not allowed under the WTO Antidumping Agreement. Moreover, your Department's linking of the conduct of circumvention investigation to Samsung's "changed circumstances" review is a clear violation of the WTO Agreements. In addition, the circumvention investigation has been unduly delayed. This too, would seem to contradict the U.S. Tariff Act and the WTO Agreements. I should also like to remind you that April 1996, Ms. Susan Esserman, then Assistant Secretary for Import Administration sent a letter to the Korean Government providing the DOC's commitment to full compliance with the U.S. Tariff Act by issuing final results in the anticircumvention investigation by the end of November 1996. This commitment has not been fulfilled.

With regard to the antidumping duty order on DRAMs, Korean firms have received de minimis margin determinations for three consecutive years in the annual administrative reviews and they have submitted a written agreement to the immediate reinstatement of antidumping duties in case of the recurrence of dumping. Nevertheless, the DOC interpreted the "likelihood" criterion of its regulation in too strict and arbitrary a manner and, in March 1997, made a preliminary determination not to revoke the antidumping duty order. This action contravenes the WTO Antidumping Agreement, which stipulates that antidumping duty orders should be imposed only "to the extent necessary to counteract dumping."

Several Korean officials, including myself, have requested revocation of the antidumping duty orders on Korean CTVs and DRAMs through various channels, including my meeting with you at the OECD Ministerial Council in May. We regret, however, that we have received no reply to date.

At this juncture, our government would like to notify you that we have no choice but to bring the matter of Korean CTVs before the WTO Dispute Settlement Mechanism. With respect to the investigation concerning revocation of antidumping duties on DRAMs, if a determination to revoke the duty is not made by July 16, the Korean Government will be similarly forced to react to the WTO Dispute Settlement Mechanism.

It is unfortunate that these matters have reached such a serious stage. However, I sincerely hope that this will be an opportunity for both countries to put these difficulties behind us, and then move to a more positive trade partnership. In closing, please accept the assurances of my highest consideration and regard.

Sincerely,
Chang Yuei Lim
Minister

COMMERCE SECRETARY DALEY SELECTS TWO BXA ASSISTANT SECRETARIES

Commerce Secretary Bill Daley has hired Roger Majak of Powell, Goldstein, Frazier and Murphy and Amanda DeBusk of O'Melveny and Myers as advisors in the hope of having them nomimated to assistant secretaries in the Bureau of Export Administration. DeBusk, who was a partner at her law firm, is slated to become assistant secretary for export enforcement.

Majak, who held the position of legislative director at Powell from 1990 to 1996, is slated to become assistant secretary for export administration. Both have been at the Commerce Dept. since May.

If confirmed, DeBusk would replace John Despres and Majak would replace Sue Eckert.

Separately, the Senate Agriculture Committee this week held a hearing on the nomination of August Schumacher, Jr. to serve as Under Secretary for Farm and Foreign Agriculture Services for the U.S. Dept. of Agriculture. Schumacher, who was nominated by President Clinton on July 10, headed USDA's Foreign Agriculture Service. If confirmed, Schumacher would oversee FAS, the Farm Service Agency and the Risk Management Agency.

Separately, Clinton announced last week his intention to appoint two corporate chairmen as new members of the Advisory Committee on Trade Policy and Negotiations (ACTPN).

William J. Hudson, President and CEO of AMP Inc., and Terry Watanabe, President and CEO of the Oriental Trading Company, Inc., were tapped July 17 to join the group.

Clinton also announced that he would reappoint two current members, Maurice Greenberg, Chairman and CEO of American International Group, and San Jose Mayor Susan Hammer, to the body. The ACTPN provides advice on all aspects of U.S. trade policy.

Hudson currently chairs the U.S. Pacific Basin Economic Council and the International Economic Policy Committee of the National Association of Manufacturers, according to the White House announcement. He also co-chaired the Transatlantic Business Dialogue in 1995 and 1996.

Oriental Trading Co. is a leader in sales of "value-priced toys, novelties, party goods, and giftware through mail order and other distribution channels," the White House said in its announcement.

Greenberg is a member of the Board of Directors of the New York Stock Exchange and a former Chairman of the New York Federal Reserve Bank. Hammer was initially appointed to the ACTPN for her ability to develop consensus on complicated issues within a diverse population, according to the White House announcement.

Separately, Paul L. Joffe, former Acting General Counsel at the Dept. of Commerce, joined the Washington, DC law firm of Wiley, Rein & Fielding last week as a partner. Joffe began work at the firm's international trade law and policy practice July 14, according to the firm. As Deputy Assistant Secretary, Joffe was involved in negotiating the 1996 U.S.-Canada Lumber Agreement. Before heading to Commerce, Joffe worked in Congress as Counsel to the House Energy and Commerce Committee and then to Senator Jay Rockefeller (D-WV).

OECD MEMBERS LAUNCH NEGOTIATION OF PACT ON COMMERCIAL BRIBERY

Members of the Organization for Economic Cooperation & Development this month kicked off the negotiation of a convention aimed at making foreign commercial bribery a criminal offense, according to informed government sources. Although the OECD secretariat is already preparing an initial draft of the pact, OECD members will have to resolve a number of difficult issues in order to reach agreement by the end of the year, these sources said.

Nevertheless, following a July 7-9 negotiating session in Paris, OECD member government officials were generally upbeat about the prospects the pact, and emphasized that no countries are backpedaling on their commitment to finish the agreement by the original deadline.

"Everyone seems to be thoroughly engaged in the process of negotiation," a U.S. official said. "Most people considered [this month's session] a fairly good start to the process," another official added.

OECD ministers agreed in May to negotiate an international convention on the criminalization of foreign commercial bribery. The agreement commits members to submit legislation to national legislatures by April 1998 after finishing the pact by the end of 1997. The May deal also included agreement on a set of "Common Elements" laying out what should be included in national legislation (*Inside U.S. Trade*, May 30, p. 9).

At this month's session, OECD members discussed a newly tabled convention proposal by the U.S., as well as one by France and Germany, according to informed sources. The OECD secretariat also prepared a text which reflects the Common Elements in the language of an international treaty, these sources said.

OECD members still have to resolve two issues in particular in order to hammer out convention language, informed sources said. The proposed U.S. text is consistent with the existing Foreign Corrupt Practices Act (FCPA), while the French-German proposal has a different definition of the foreign officials covered by national laws and the conditions of entry into force of the convention.

The U.S. is pressing for a convention that covers a broad range of foreign officials, in particular officials of political parties and "parastatals" -- persons associated with state-owned enterprises. This latter group is particularly important because it accounts for a large number of procurement decisions on infrastructure projects, which have long been the subject of anti-corruption efforts, one informed source pointed out.

The inclusion of officials of political parties is likely to be the "single toughest issue" in hammering out an acceptable definition, a U.S. official said. Another source pointed out that, apart from possible objections from some OECD members, this point presents special difficulties in separating, for example, bribes from campaign contributions.

The U.S. will also likely press for a provision allowing the entry into force of the convention as early as possible, a U.S. official said. The U.S. wants to frame the convention so that it enters into force by the end of 1998, and a U.S. official pointed out that a recent agreement by the Organization of American States was written to enter into force as soon as two countries ratified it.

In contrast, France, Germany and Japan have called for some assurance that a "critical mass" of countries ratify it before entry into force, informed sources said.

The U.S. and some European countries could also lock horns over how differing legal systems affect the coverage and enforcement of the convention, informed sources said. The U.S. legal system requires the existence of a "territorial nexus" -- such as the use of the mails, telephone system -- in order to prosecute U.S. nationals for foreign commercial bribery. Other countries, such as Germany, have systems which allow them to prosecute their nationals regardless of where in the world they are.

Some countries have suggested that the U.S. system would not be as thorough as other countries' systems, informed sources pointed out. But a U.S. official argued that it is possible to work around this requirement of U.S. law, and said that the convention cannot force "fundamental legal changes" on OECD members if it is to be viable.

The official also pointed out that the U.S. is showing flexibility in the area of enforcement, in which the U.S. system is arguably more effective. The U.S., unlike some European countries, can levy criminal penalties on individuals based on corporate conduct, but the U.S. has not insisted on this "fundamental change" in their systems.

It is "possible" that the Clinton Administration would have to send implementing legislation to Congress in order to change the FCPA, according to a U.S. official. For example, the Common Elements call for criminalizing the bribery of any foreign official within one's own territory. A national of a European country who bribed a Latin American official in the U.S. would not be subject to federal prosecution, though he or she could run afoul of state laws.

The convention's provisions on the definition of a foreign official and penalties for violating the law could also require U.S. legislative changes, the U.S. official.

The next negotiating session is scheduled for Oct. 6-10, and will be important in determining how much time political-level officials will need to put into the agreement, a U.S. official said. In November, high-level meetings could be necessary in order to ensure that it is completed by late November. If it is not completed by then, the U.S. and other countries may not have enough time to complete procedural requirements for signing on by the end of the year, the official said.

JFTC REPORT FINDS JAPAN FILM MARKET FREE OF ANTICOMPETITIVE PRACTICES

The Japan Fair Trade Commission this week released a report concluding that the Japanese market for film and photographic paper is largely free of the anticompetitive practices which the U.S. has claimed restrict trade in these products.

Fujifilm and the Japanese Ministry of International Trade and Industry praised the report as the most thorough study of the issue that has ever been made. The report drew strong condemnation from the Eastman Kodak Co. and the Clinton Administration, which charged that the report is a whitewash of the issues now before a World Trade Organization dispute settlement panel, especially those related to the distribution of film.

"[T]he survey findings whitewash the significant distribution problems that exist in this sector," U.S. Trade Representative Charlene Barshefsky said in a July 23 statement. "While the survey asserts that the marketplace is evolving, foreign firms remain unable to gain access to the wholesale channels necessary to be competitive in the Japanese film and photographic paper market."

MITI argued in a statement the same day that the survey, though not "by itself" related to the WTO case, "can be regarded as additional proof for the arguments of the Government of Japan at the WTO." The survey "found that all manufacturers, both domestic and foreign, have adequate channels to distribute their products to retailers throughout Japan," MITI wrote.

Barshefsky also said that the survey found that the "dominant Japanese film manufacturer's use of such exclusionary business practices as rebates, security deposits, horizontal and vertical price restraints, tying arrangements and refusals to deal are thwarting foreign competition in this sector."

The Barshefsky statement on this point prompted a sharp response from the JFTC itself, which charged in a July 24 press release that USTR "totally misunderstood the nature of the Commission's suggestions." The

JFTC did not offer a blanket indictment of the practices cited by Barshefsky, but it did admit to possible anticompetitive effects of some of the measures when combined with others, according to the survey. The agency then suggested minor measures that could be taken in some areas to enhance competition, but none in the distribution sector.

The report also "reinforces the reluctance of the United States" to rely on the JFTC to address "the array of informal market barriers faced by foreign firms in the Japanese market," Barshefsky said. "While the Japanese government has sought to strengthen the JFTC over the past several years, it clearly has not yet developed into the type of strong and independent agency capable of effectively dealing with these issues."

This statement as well prompted a sharp reply from the JFTC. "Rejecting, without any ground, the findings of the survey simply because they are not convenient for one's own contentions is unacceptable," the JFTC wrote.

The JFTC concluded in the survey that Fuji does not exert exclusive control over the tokuyakuten -- the seven major distributors of Fuji products in Japan. "Fujifilm has confirmed to the JFTC that in the past it has never coerced any Fujifilm-related tokuyakuten into an exclusive business relationship and it will never engage in such acts in the future as well," the JFTC wrote.

In its conclusions to the report, the JFTC said it would take steps to enhance competition in the film sector but announced no major initiative. "The JFTC has decided to issue a number of suggestions from the view point of competition policy, with regard to the business practices of manufactures with a focus on Fujifilm, the market leader, as well as those of wholesalers," the agency wrote. "The JFTC believes that improvements to be realized in response to these suggestions will make the business practices in the color film and photographic color paper markets in Japan more transparent and will promote further competition."

Kodak Director for International Trade Relations Chris Padilla blasted the report as a "whitewash" of restrictions in the film sector. He said that 85% of the primary wholesalers have not carried Kodak or Agfa film for 22 years. "This is an exclusive relationship, and it's that way because the government made it that way," he said in an interview.

Padilla also criticized the JFTC for ignoring evidence which Kodak filed over a year ago which showed "explicit price-fixing" by local retailers so that Kodak could not engage in price competition. "Neither this evidence nor the practices have been addressed in this report," Padilla said.

A Fujifilm source argued that the JFTC could not be expected to take up Kodak's evidence in this survey because the evidence was part of Kodak's confidential filing to the JFTC which has no bearing on the survey. Padilla countered that the JFTC "should spend less time doing surveys and more time enforcing antitrust laws."

Kodak made the JFTC filing when the U.S. government launched the WTO case last year, but the agency has yet to issue a ruling (*Inside U.S. Trade*, June 21, 1996, p. 8).

Fujifilm sources argued that the survey painted a basically sound picture of the Japanese film market. They pointed out that a survey of over 100 retail outlets showed they "always" handle Kodak products. "Are they in the distribution channel? The answer is an emphatic yes," one source said.

The survey also notes that Fuji's share of the Japanese market declined from 71.8 percent in 1989 to 65.7 percent in 1995, and that retail prices have fallen by "12 percent on average" over the last three years. These figures are "proof" of robust competition in Japan, a Fuji source argued.

Padilla also pointed out that MITI has handled much of the public relations effort related to the survey and called the JFTC "a rubber-stamp agency for MITI," which "predetermined" the outcome. A Fujifilm source argued that MITI took an interest in the report because it has "some factual connection" to the WTO case.

MITI distributed an English-language summary of the JFTC report and briefed reporters in Tokyo earlier this week. The full version is currently only available in Japanese and includes comparisons with the film and photographic paper markets in other countries, according to informed sources.

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INTERNATIONAL RELATIONS DEFEATS ATTEMPT TO WEAKEN ENCRYPTION BILL

The House International Relations Committee this week soundly defeated an attempt backed by Chairman Benjamin Gilman (R-NY) and Ranking Member Lee Hamilton (D-IN) to thwart the liberalization of encryption export controls proposed in a bill sponsored by Rep. Bob Goodlatte (R-VA) and 200 other House members. The bill now moves to the National Security Committee, which will hold a hearing on the measure on July 30 and mark it up in early September under a sequential referral arrangement.

A private-sector source predicted that National Security's consideration of the bill will be its first real test, since the co-sponsors only compose 17 of the 55-member commitee. The bill will also go before the Intelligence Committee.

"There will be trouble for the bill in both of these committees," the source said.

The Gilman amendment would have effectively granted the President the authority to circumvent the main provision of the Goodlatte bill, an outright decontrol on the export of encryption products. The Gilman provision would have allowed restrictions on exports of hardware and software encryption products if the President found that exports of these items would adversely affect national security.

The International Relations committee voted down the provision by a 22-13 margin on July 22. The passage of the Goodlatte bill was widely expected because the cosponsors composed 34 of the 47 members of the committee.

The Gilman amendment provoked a heated exchange on the encryption issue between members and Clinton Administration witnesses in a repeat of previous debates. Rep. Donald Manzullo (R-IL) raised a point of order immediately after the introduction of the amendment, which Gilman overruled. Rep. Sam Gejdensen (R-CT) was especially outspoken in fighting the Gilman provision.

The bill passed despite a concerted letter-writing campaign by the Administration and law enforcement groups urging members of Congress not to support the elimination of export controls on encryption products and urging support for the Senate encryption bill sponsored by Sens. John McCain (R-AZ) and Bob Kerrey (D-NE). Attorney General Janet Reno and other officials wrote members a long letter on July 18 outlining the dangers of allowing the proliferation of unbreakable encryption products.

Secretary of Defense William Cohen also weighed in against a broad export decontrol, as did the International Assn. of Chiefs of Police, the National Sheriffs' Assn., the National Assn. of Attorneys General and the National District Attorneys Assn.

Industry officials are considering what would be the best legislative strategy now that the Goodlatte bill could be facing an uphill fight after a string of victories. The Senate Judiciary Committee could further tighten rules on encryption when it takes up the McCain-Kerrey bill, private-sector sources said. One source predicted that industry associations would likely hold out for "maximum relief" on export controls since this goal is something "everyone can agree on," but that individual companies would pursue various tracks.

One possibility would be to continue to press for the Goodlatte bill in the House and some version of bills sponsored by Sens. Conrad Burns (R-MT) and Patrick Leahy (D-VT) in the Senate, private-sector sources said. This might force the Administration's hand and possibly result in export control relief through administrative measures.

The source added that there are "still some people" who think that legislation similar to the Goodlatte bill could be forced on the Administration by attaching it to a bill the President would not veto.

Another option would be to push legislation as favorable as possible to industry with the expectation that nothing will pass this year and "set up the debate" for next year" on favorable terms, one private-sector source said.

LANG HINTS AT BRAZILIAN SUPPORT FOR LAUNCHING FTAA TALKS IN ALL AREAS

Deputy U.S. Trade Representative Jeffrey Lang hinted this week that the U.S. has been assured by Brazil that it will eventually back the idea of launching formal Free Trade Area of the Americas talks simultaneously in all areas early next year rather than in separate stages, which has been a major sticking point in FTAA preparations.

"I think this [concept of a simultaneous FTAA launch] will gradually be accepted as the way to move forward," including by Brazil, Lang told the House Ways & Means trade subcommittee, citing conversations he had with a Brazilian trade official last week in Geneva.

Up until now, Brazil and its partners in the Southern Cone Common Market (Mercosur) have publicly continued to advocate a three-stage negotiating approach. It would begin with so-called "business facilitation" measures, move to the negotiation of "non-market access" issues, and conclude with market access talks which would only begin in 2003.

The chief Brazilian FTAA negotiator, Jose Botafogo, has suggested previously that there may be some flexibility in Mercosur's position on this matter, but Lang's comments to the House panel on July 22 marked the first time a U.S. official has acknowledged in public a potential shift by Mercosur. In particular, Botafogo indicated last May that an Uruguay-Round-like approach that ensures that "nothing is agreed until everything is agreed" — in accordance with the agreed-upon principle that the FTAA is a single undertaking — could win some level of Mercosur support.

Lang told trade subcommittee Chairman Phil Crane (R-IL) that last May's FTAA ministerial in Belo Horizonte, Brazil made it clear that "a consensus was developing to move everything forward at once." At that session, which was attended by USTR Charlene Barshefsky and her counterparts from the rest of the Americas, "everyone saw that [a simultaneous launch] was a practical negotiating strategy," according to Lang.

Similarly, Argentine Economy Minister Roque Fernandez appeared to confirm an evolution in Mercosur's stance toward launching the FTAA in comments he made last week during a visit to Washington.

Mercosur is insisting on the concept of a "single undertaking," i.e. that nothing is agreed until everything is agreed, but it will not demand that the FTAA negotiations be launched in separate stages, Fernandez said in a July 14 press conference at the Argentine embassy.

"We are going to negotiate on all fronts, but we will not close any of them until everything is good...," he said. "All the necessary working groups can be established for every sector and every product, but the idea is that when we agree it will be on all of them and not only on one."

This approach is being adopted by Mercosur because a FTAA negotiation that focuses initially or exclusively on tariff cuts puts its members, whose main instrument of existing protection is their common external tariff, at a disadvantage vis-a-vis trading partners such as the U.S., which uses quantitative restrictions more than tariffs to protect its industries, according to Fernandez.

"... We talk about free trade, but Argentina cannot sell any more than $8-million worth of peanuts to the U.S. because there is a quantitative restriction," he noted. "These types of quantitative restrictions exist for... a quantity of products for which if we say we will remove all their tariffs and trade freely, the result is that the quantitative restrictions don't allow access to the markets of the U.S. or Europe."

Lang and Assistant Secretary of State for Inter-American Affairs Jeffrey Davidow testified on July 22 on the Administration's behalf before the subcommittee on U.S. objectives in the FTAA negotiations. Three House lawmakers and two panels of private-sector witnesses also presented testimony.

Prompted by Rep. Robert Matsui (D-CA), Davidow said the FTAA was crucial to U.S. national security if that term is defined in its "broadest context" so as to include economic prosperity and the ability to take collective action against transnational threats such as narcotics trafficking, "illegal alien smuggling" and terrorism.

The FTAA is part of a "coherent, comprehensive approach" that is required if the U.S. wants to gain from its hemispheric neighbors cooperation on those types of threats, the State Dept. official said.

Matsui urged that Secretary of State Madeline Albright "play a significant role" in the upcoming fall debate over fast-track negotiating authority so as to articulate the broader security arguments in favor granting the President the ability to negotiate trade pacts.

Davidow assured Matsui that Albright was likely to take a "very, very active role" on fast track, and he noted that she will be traveling with President Clinton when he visits Venezuela, Brazil and Argentina in October.

Fast track is important primarily because it represents the decision of the Congress that the U.S. should move in the direction of trying to protect U.S. access to foreign markets, Lang said. The boost to U.S. negotiating credibility that a grant of fast track would provide outweighs its "parliamentary significance" with respect to the mechanics of moving a trade accord through the Congress, he said.

"Until we achieve consensus, our leverage and ability to be persuasive is reduced," he said.

Without fast track, there may be some areas in the FTAA working groups where work could nonetheless proceed, Lang said. Although he would not predict "Armageddon" if fast track is not obtained, he did warn that the U.S. would be "significantly sidelined" in a number of areas which are "absolutely crucial" to the development of markets for U.S. goods in the Americas.

In addition, Lang said he raised with some Latin American nations last week the possibility that they join the Information Technology Agreement (ITA) this upcoming fall "in the context of ITA II." Most Latin American nations did not sign on to the ITA when it was first negotiated earlier this year.

Lang said that some of those nations have argued that they do not see the need to lower their tariffs on ITA-related products because they do not export those goods and therefore would not benefit. But the U.S. has argued, he said, that lowering tariffs under the ITA, similar to liberalization under the World Trade Organization telecommunications services agreement, would spur more rapid economic development in those nations regardless of whether they export such goods.

U.S., EU MAKE NO HEADWAY IN DISPUTE OVER MASSACHUSETTS BURMA LAW

The U.S. and the European Union this week failed to make any headway whatsoever in their dispute over a Massachusetts law which penalizes companies that do business in Burma, according to informed sources. In July 22 consultations under the auspices of the World Trade Organization, the U.S. declined to answer any questions on the law's consistency with WTO rules, these sources said.

"The U.S. managed to construct a pretty good stone wall," one official close to the talks said.

The EU had sought the talks in order to clarify the U.S. federal government's position on the Massachusetts Burma law, but "further consultation will be necessary in order to clarify the U.S. response," according to a July 22 EU statement. The EU also "confirmed its recognition of the efforts undertaken by the US Administration to find a satisfactory solution," according to the statement.

"In effect, we put some factual questions to the U.S. on what the Massachusetts legislation does, and what the [WTO] Government Procurement Agreement requires," an EU official said. "And the U.S. confirmed that the law exists."

The U.S. indicated that it would respond to questions raised in the consultations "in the next few weeks," one source said. The U.S. "definitely did not" defend the Massachusetts law as consistent with WTO rules.

The U.S. and the EU, as well as Japan, which participated in the consultations as a third party, also reviewed their respective efforts to encourage democratic change in Burma, informed sources said. The EU agreed with the U.S. that the three all have similar Burma policies, but emphasized that the issue at hand is the consistency of the Massachusetts law with U.S. obligations as a WTO member, one source said.

Although USTR had invited Massachusetts to send an official to the consultations, no one was present from the state government, informed sources said. Attendance by a state official was "not an obligatory matter" for "almost a pro forma meeting," one source said.

The failure of diplomatic efforts to find a solution prompted Japan to initiate its own separate WTO dispute settlement process on July 18. Japan formally requested consultations with the U.S., citing Articles 3:2, 8(b), 10:4 and 13 of the government procurement pact. Japan took this step because it wants to elicit "more information" from the U.S. about its position on the Massachusetts law, a Japanese official said.

Japan has sought answers to a number of questions on the issue since March but has not received a response from the U.S., the official said. The official added that the Japanese consultations could be combined with the EU's case, but this decision has not been made yet.

In a related development, nine members of the Massachusetts House delegation this week called on U.S. Trade Representative Charlene Barshefsky to oppose European and Japanese efforts to force a change in the Burma law but did not argue that the law is consistent with WTO obligations.

"We ask the U.S. Trade Representative to weigh the support for the Massachusetts Burma law from the peoples of Europe, Japan, Massachusetts and, most importantly, Burma itself," the members, who are all Democrats, wrote Barshefsky in the July 22 letter reprinted below. "We strongly urge the U.S. Trade Representative to oppose the unfair and inappropriate efforts by the European Union and Japan to force Massachusetts to amend its Burma law."

The members noted the strong support for the law from the people of Massachusetts, as well as the leader of the Burmese democracy movement. They also argued that the EU and Japan "risk undermining their principled stand against the Burmese junta" by challenging the Massachusetts law.

Massachusetts Letter on WTO Challenge

July 22, 1998

Charlene Barshefsky
U.S. Trade Representative
Winder Building, Room 201
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Barshefsky,

As Members of the U.S. Congress from the State of Massachusetts, we are deeply disturbed by the decision by the European Union and Japan to formally challenge the Massachusetts Burma selective purchasing law at the World Trade Organization (WTO).

We are wholly supportive of fostering good relations between Europe, Japan and the United States. However, we strongly believe that it is highly inappropriate for the European Union and Japan to involve themselves in the internal affairs of Massachusetts. It is not the place of the European Union and Japan to dictate how the Massachusetts legislature and state government should spend its own taxpayers' money. The people of Massachusetts have long vested the power to levy taxes and spend public money with our elected representatives, not European and Japanese bureaucrats.

We also note that the Massachusetts Burma selective purchasing law is strongly supported by the legitimate leader of the Burmese democracy movement, Aung San Suu Kyi. The leader of the party that won the 1990 Burmese elections, Aung San Suu Kyi remarked in a recent interview that selective purchasing laws are very effective means of restoring democracy in

Burma. She also specifically praised the Massachusetts Burma law.

We fear that, by placing European and Japanese corporate interests first, the European Union and Japan risk undermining their principled stand against the Burmese military junta. In March, the European Commission revoked Burma's tariff preferences because of the military junta's pervasive use of forced labor. The new British government recently cut its support for trade promotion in Burma and has "not ruled out the possibility of further measures, including economic sanctions" against the illegal military junta. Japan has called for dialogue between the military junta and the democracy movement.

Opinion in Europe in particular towards business in Burma is best typified by the recent and unanimous resolution on Burma passed by the European Parliament. The resolution called on the European Union to enact economic sanctions on Burma. Moreover, in its resolution, the European Parliament specifically urged the European Commission not to take action against the Massachusetts Burma law under the WTO dispute settlement procedures.

We ask the U.S. Trade Representative to weigh the support for the Massachusetts Burma law from the peoples of Europe, Japan, Massachusetts and, most importantly, Burma itself. We strongly urge the U.S. Trade Representative to oppose the unfair and inappropriate efforts by the European Union and Japan to force Massachusetts to amend its Burma law.

Rep. Barney Frank
Rep. Richard Neal
Rep. Edward Markey
Rep. Joseph Moakley
Rep. Joseph Kennedy
Rep. John Olver
Rep. Martin Meehan
Rep. James McGovern
Rep. John Tierney

EU PRESSURES COMMERCE OVER AD/CVD STEEL CIRCUMVENTION INQUIRY

The European Union last week stepped up its pressure on the Commerce Dept. for its handling of an investigation on whether certain steel products used to make steel bar circumvent existing antidumping and countervailing duty orders on this product. In a July 17 letter, EU Ambassador Hugo Paemen charged that the U.S. has violated its obligations under World Trade Organization rules for not notifying the EU of its decision to launch an investigation, and in accepting a petition without the necessary support of industry.

"The European Commission would like to express its deep concerns about certain procedural and substantive aspects of the proceedings, notably the lack of compliance with notification requirements under the WTO Agreements on Anti-Dumping (AAD) and on Subsidies and Countervailing Measures (ASCM) and the apparent lack of standing of the petitioners," Paemen said.

The letter charged that the U.S. should not have accepted the petition by USS/Kobe Steel and Inland Steel Bar Company to launch the anticircumvention investigation given that certain members of the U.S. industry oppose the proceeding. This includes "petitioners in the original investigation" on dumping and subsidies, the letter said.

The letter was sent after Commerce announced on June 25 that it is investigating whether imports of lead and bismuth carbon steel billets from Germany and the United Kingdom are circumventing the existing ad/cvd orders. The EU and the U.S. did not hold formal consultations on the circumvention claims but informally discussed them, according to EU officials.

In their petition for the circumvention investigation, Inland and USS/Kobe charged that producers of finished steel bar and rods from Germany and U.K. shifted their imports to semi-finished billets after the original orders went into effect in 1993. By 1996, these billet imports had replaced the bar and rod imports forced out of the market by the cases, according to the petitioners.

In its notice, Commerce rejected the EU arguments that an anticircumvention injury must be supported by the majority of an industry. It said that there is "no statutory requirement" to assess industry support for a circumvention investigation, which is different for the initiation of an antidumping or countervailing duty case.

A circumvention inquiry is focused on the enforcement of existing orders by determining whether merchandise is properly within the scope of an order that has been issued. "Significantly, neither the statute nor prior department practice requires that an interested party requesting a scope determination make such a showing of industry support," the department announced.

The anticircumvention investigation is opposed by several companies, including Birmingham Steel Corporation, Nucor Steel, Bar Technologies, and Sheffield Steel, who filed comments with the Commerce Dept. Representatives for these companies and for Republic Engineered and American Steel Wire met on July 10 meeting with Jeff Bialos, the principal deputy assistant secretary of Import Administration, to ask for a speeded up process. They argued that the billets in question should are a separate, not a like, product, according to participants.

They pointed out that the International Trade Commission in the original steel bar cases specifically determined that leaded steel billets are excluded from the product definition and were not subject to the injury findings, they said. They urged Bialos not to proceed with the anticircumvention investigation, and to have the ITC decide whether the billets and steel bar are distinct products. However, Bialos rejected their request by telling the group that he is "committed to the process," participants said.

The July 17 letter by Paemen followed a separate May 23 letter he sent to Commerce Secretary Daley that raised a number of substantive and procedural problems with the anticircumvention petition. But the letter does not challenge the U.S. right to conduct anticircumvention measures, which are not explicitly authorized under WTO rules, according to the copy reprinted below.

Paemen Letters on Circumvention Case

July 17, 1997
The Honorable William M. Daley
Secretary of Commerce
U.S. Department of Commerce
Room 5854
Pennsylvania Avenue & 14th Street, N.W.
Washington, D.C. 20230

Dear Mr. Secretary,

Further to my letter of 23 May 1997 concerning Anticircumvention inquiry into Certain Low Carbon Billets from Germany and the U.K., we have now noticed that the inquiry has been formally initiated on 25 June 1997. In this respect, the European Commission would like to express its deep concerns about certain procedural and substantive aspects of the proceedings, notably the lack of compliance with notification requirements under the WTO Agreements on Anti-Dumping (AAD) and on Subsidies and Countervailing Measures (ASCM) and the apparent lack of standing of the petitioners.

Firstly, under both the AAD and the ASCM, there is an obligation on the part of the investigating authorities to inform the authorities of the exporting Member concerns of the initiation of any investigation, as well as to communicate a copy of the relevant notice of initiation published. Moreover, the European Commission has already, in its previous letter, raised the concerns of the Community about the failure by the Department of Commerce, to formally notify the existence of the complaint and offer the European Community formal pre-initiation consultations as required by Art. 13.1 of the ASCM.

Even if the Department of Commerce is correct in taking the view that anti-circumvention investigations are essentially an issue of scope, this does not affect its responsibility to respect the procedural requirements concerning investigations under the above-mentioned WTO Agreements, and especially those concerning transparency and the communication of information.

With regard to the issue of the standing of the complainants, the European Commission cannot agree with the position taken by the Department of Commerce: the fact that U.S. law remains silent on the issue (i.e., it does not require that an examination of the standing of the industry is carried out before, during or after initiation of an anti-circumvention investigation) does not justify a departure from the relevant requirements of the WTO Agreements, concerning the initiation of investigations. Trade defence measures including anti-circumvention measures exist to protect a domestic industry which has been found to be injured by dumped/subsidized imports; the industry which can request such protection is clearly defined in both the above-mentioned WTO Agreements. There is no basis for imposing or extending trade measures to protect only part of a domestic industry especially where other parts of the same industry, including petitioners in the original investigation which led to the allegedly circumvented measures, fiercely oppose such an extention, without examining the complainant's standing in the normal way.

The European Commission considers that the U.S. authorities should review these issues as a matter of urgency and looks forward to a prompt reply regarding its concerns.

Yours Sincerely,
Hugo Paemen
Ambassador

May 23, 1997

Case No. A-428-811; A-412-810
C-428-812; C-412-811
Anticircumvention Petition
Public Document

The Honorable William M. Daley
Secretary of Commerce
Import Administration
Central Records Unit, Room B-099
United States Department of Commerce
14th & Pennsylvania Ave, N.W.
Washington, D.C. 20230

RE: Certain Low Carbon Billets from Germany and the UK

Dear Mr. Secretary:

Further to our meeting with Mr. Bialos on May 20, 1997, please find attached comments by the European Community in response to an Anticircumvention Petition on Certain Low Carbon Billets from Germany and the UK. The European Community respectfully requests the Department of Commerce to carefully scrutinize the Anticircumvention Petition in view of the above comments before any decision on initiation is taken.

Sincerely,
Hugo Paemen
Head of Delegation

CC: Jeffrey P. Bialos,
Principal Deputy Assistant Secretary

Comments by the European Community in Response to an Anticircumvention Petition on Certain Low Carbon Billets from Germany and the UK

CVD Consultations

1. The Community shares the view that anti-circumvention measures are legitimate instruments of enforcement of anti-dumping and CVD orders and that the absence of specific provisions on anti-circumvention in the ASCM (or in the Agreement on Anti-Dumping - AAD) does not preclude the enactment of anti-circumvention provisions in domestic (and AD) laws. Nevertheless, such provisions must be otherwise in compliance with the provisions of the ASCM (and of the AAD).

2. Article 32.1 of the ASCM clearly provide that no specific action against subsidised goods of another Member can be taken except in accordance with the provisions of GATT 1994 and of the ASCM. This includes circumvention investigations which concern the extension of countervailing measures on imported products.

3. Article 13.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) provides for pre-initiation consultations between the investigating authorities and the authorities of the targeted countries before the initiation of "any" investigation. Although Article 13.1 normally applies to the initiation of brand new countervailing investigations, consultations before the initiation of other types of investigation are quite clearly included in the scope of Article 13 ASCM. In view of the fact that circumvention rules have not been agreed upon under the WTO, the ASCM could not, of course, make a direct reference to consultations on circumvention. However, the purpose of this Article is to provide the authorities concerned with an opportunity to clarify the situation and to attempt to arrive at a mutually agreed solution; this is only possible through consultations before the initiation of any type of investigation including circumvention investigations.

4. The European Community therefore considers that it has the right to consultations under Article 13.1 of the ASCM before the initiation of the investigation. In the event that circumvention investigations are merely considered by the U.S. authorities as an extension of a previous investigation, the European Community considers it has the right to consultations under Article 13.2.

5. The European Community reserves the right to request consultations under Article 13 of the ASCM in the future.

Standing of Complainants

6. It is the view of the European Community that the standard of proof with regard to complaints in circumvention investigations cannot be lower than the relevant standard in initiating countervailing investigations. In that respect, the Department of Commerce (DOC) is requested to ensure that the provisions (Article 11.4 of the ASCM) on the standing of the domestic industry are adhered to. This is even more so where only a portion of the domestic industry of the original investigations supports the circumvention petition, while another portion clearly objects to it - which is currently the case. The extension of anti-dumping and countervailing measures to protect an industry which is not injured is not acceptable.

Like Product

7. The European Community urges DOC to examine with particular circumspection the petition in view of the clear differences between the two products concerned (billets and leaded bars) and the specific exclusion of billets from the scope of the original investigations. In the original CVD investigation, which led to the led bar CVD Order, DOC made an affirmative finding that the class or kind of goods receiving subsidies did not include "semifinished steel". Similarly, in the original injury investigation, the United States International Trade Commission (ITC) made an affirmative finding that lead bar and billets were separate like products. Thus, the domestic industry materially injured by lead bar imports was limited to lead bar producers, and did not include billet producers.

8. It is significant that the two Petitioners in the original investigations (Inland and Bethlehem Steel Corp. Bar, Rod and Wire Division) had the opportunity to include billets within the scope of the DOC and ITC investigations, but chose to treat lead bar and billets as separate products, a position which was accepted by the DOC and ITC. Thus, the DOC should ensure that the anticircumvention petition filed by one of the original Petitioners (Inland) is not an attempt to circumvent the scope of the original Order which was expressly limited to bars. This is especially important in this case where the company which purchases the facilities of the other Petitioner (Bethlehem), and which now produces billets and bars at those facilities clearly considers that the two products are different and that the importation of billets does not in any way affect the original measures against lead bar. Indeed any conclusion to the contrary would immediately call into question the validity of the positive injury findings made in the original investigations.

Sufficient Evidence

9. The European Community notes that the petition contains no information on subsidization and injury thereof with regard to the investigated product (billets).

10. Under European Community law the extension of a countervailing measure is possible only on the basis of the ascertained fact that the imported products still benefit from the subsidy established in the original investigation and that their importation (because of their prices and/or quantities) undermines the remedial effect of the previously adopted measures. The European Community therefore considers that such elements need to be examined in the course of a circumvention investigation to limit any additional trade measures to those really necessary to offset the injurious effect of the alleged circumvention.

Economic Justification

11. The European Community notes that U.S. law requires the Department of Commerce to consider factors such as the pattern of trade, including sourcing patterns. Similarly, under European Community law, circumvention exists where there is insufficient due cause or economic justification for the alleged practice, process or work other than the imposition of the duties.

12. Examination of this factor is important in a case such as the present one where no relationship appears to exist between the exporters and the U.S. processors of the imported carbon billets. The alleged increase in imports of billets could well be due to market demand in the U.S. driven by the U.S. processors of billets and not by low-priced, allegedly subsidized exports from the UK and Germany. The fact that certain exporters of the product subject to countervailing order (i.e., leaded bars) continue to export this product and therefore compete against U.S. processors of billets into bars in the U.S. market notwithstanding their position as suppliers of the billets could be taken as an indication that this could indeed be the case.

Conclusion

13. The European Community therefore submits that this anti-circumvention petition complaint is carefully scrutinized in view of the above comments before any decision on initiation is taken.

Anti-dumping

14. Even though pre-initiation consultations can only refer to the CVD aspects of the circumvention investigation DOC may find the above useful also with regard to the anti-dumping aspects.

U.S. OUTLINES PLAN FOR HEMISPHERIC INTELLECTUAL PROPERTY REGIME

The Clinton Administration this month put forward to Western Hemisphere trading partners its vision of a region-wide agreement on intellectual property rights. Such a pact, which would be part of negotiations to create a Free Trade Area of the Americas, should include at least five principal elements, according to a proposal tabled by the U.S. at a July 10-11 meeting.

A FTAA IPR pact should reaffirm the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement and several other international IPR conventions, and should adopt the standards of protection contained in other IPR-related treaties, the U.S. proposal says.

It also should include general disciplines and basic principles for application to IPR-related goods, according to the U.S. plan. These would include provisions governing such concepts as national treatment, most-favored nation treatment and basic definitions.

In addition, the regional agreement should set other standards on the availability, scope, use and enjoyment of IPRs in relation to copyrights and neighboring rights, encrypted program-carrying satellite signals, trademarks, patents, layout designs of integrated circuits, industrial secrets, protection of test data and industrial designs. Such standards should include the provisions required to deal with technological change in areas such as copyright and biotechnology, it says. Exceptions and limits in the application of those standards would also be spelled out in the pact, under the U.S. proposal.

A fourth aspect of the region-wide pact would involve enforcement of IPRs, including provisions on resources, provisional measures, procedures and criminal sanctions and requirements related to border measures, the U.S. says.

Finally, the IPR accord should include provisions designed to prevent and to resolve disputes, according to the U.S. proposal.

The U.S. made its proposal at a July 10-11 session of the FTAA working group on IPR in Washington, DC. At the meeting, the Southern Cone Common Market (Mercosur) and the Andean Group each said they would circulate their own plans on how to proceed in the area of IPR before the group's next meeting, which is set for Oct. 2-4 in Washington.

The proposals are emerging in response to a mandate put forward by the FTAA trade ministers in the joint declaration they issued last May in Belo Horizonte, Brazil. Under that mandate, the IPR work group and other 11 FTAA panels are supposed to provide recommendations by mid-October to the FTAA trade vice ministers on "technical alternatives on issues and negotiating options" in their areas of expertise.

The need to hash out the different region- and country-specific views in order to produce a consensus set of recommendations promises to make the working-group meetings in late September and early October some of the most contentious to date, several trade officials said.

Before then, the working groups are likely to receive updated instructions on how to proceed toward developing their recommendations. The new instructions are expected to emerge from a July 29-30 meeting in San Jose, Costa Rica of the FTAA vice ministers, who are supposed to review the panels' progress at that time.

The U.S. proposal also spells out Administration views on the level of obligations, and on the focus and organization of the FTAA IPR talks.

With respect to the level of obligations, the U.S. calls on the agreement to reaffirm the region's commitment to current standards and enforcement practices which promote adequate and effective protection of IPRs. It also wants the FTAA to contain the highest levels of IPR protection found in regional trade accords. And, in cases where technological advances demand, the U.S. wants the FTAA pact to go beyond existing practices and/or agreements designed to facilitate trade and investment in the hemisphere so as to ensure that the FTAA is a flexible, sensitive forward-looking instrument.

In this regard, the U.S. document notes that certain norms and enforcement practices have become obsolete since the passage of TRIPs. As examples, it cites the areas of Global Information Infrastructure (GII), biotechnology, and computer software. In such cases, current standards may have to be revised and/or new ones created. In the case of GII, this has already occurred, it pointed out, with the completion in December 1996 by the World Intellectual Property Organization of new treaties to improve the protection of copyrights for works and sound recordings in cyberspace. The WIPO negotiation enjoyed the active support of many of the FTAA governments, the U.S. proposal says.

The FTAA IPR talks should focus on the objective creating an accord that covers the entire hemisphere on the basis of existing standards. The final product of the talks should be an exhaustive text which could include, by reference, the disciplines of the World Trade Organization and WIPO in those cases in which it is considered appropriate. The FTAA IPR talks should be conducted by a stand-alone IPR negotiating group, according to the U.S. proposal.

McCAIN-DODD MEASURE TO SUSPEND DRUG DE-CERTIFICATION PROCESS FAILS

Bipartisan legislation which would have suspended for two years the controversial U.S. drug certification process failed to pass the U.S. Senate last week.

The bill's demise occurred despite a flurry of letters by senior White House officials in support of the measure, saying it could ease "friction" between the U.S. and Latin America and the Caribbean and also allow for nations in the region to try to craft better policies at the Summit of the Americas in Santiago next spring regarding drug trafficking.

On July 16, the Senate voted 60-38 against the measure, which came in the form of an amendment to S. 955, the Foreign Operations, Export Financing and Related Operations Appropriations Bill for FY 1998. It originally was S.J. Res. 34.

The legislative bid, first unveiled last month by Sens. John McCain (R-AZ) and Chris Dodd (D-CT), would have suspended the annual certification process under the Foreign Assistance Act of 1991 because of what the lawmakers described as allegedly vague, inconsistently-applied provisions.

Over the last year, several U.S. lawmakers have vowed to revamp the process for those same reasons. Colombia was one of six drug-producing or drug-transit nations to which the U.S. denied certification this year. And an emotional, rhetorical debate took place on Capitol Hill over the Administration's decision to certify Mexico this year.

The McCain-Dodd bill would have allowed the U.S. President to set up a high-level, interdisciplinary task force under the White House's director of national drug control policy to develop a comprehensive strategy. It also would have urged the President to encourage other nations to take similar actions.

"At a minimum, your bill promises to remove a major cause of foreign policy friction, especially with Latin American and Caribbean countries," argued Office of National Drug Control Policy Director Barry McCaffrey in a July 16 letter to Dodd.

"Timing for consideration of new ideas is fortunate because of the upcoming Summit of the Americas and heightened interest in multilateral counter-drug cooperation following the President's travel to Mexico, Central America and the Caribbean," he wrote.

Assistant to the President for National Security Affairs Sandy Berger also underscored the Administration's support for the legislation.

An informed congressional aide predicted this week that "some movement" may occur in September on Capitol Hill to try to revamp the certification process. President Clinton is due to report to Congress at that time about the status of Mexico's cooperation in fighting drug trafficking, in response to concerns voiced in both the Senate and House this past spring after he announced Mexico would be certified.

U.S., NORWAY CLASH WITH OTHER WTO MEMBERS OVER TRADE-LABOR WORK

The U.S. and Norway last week clashed with other members of the World Trade Organization when they raised the issue of trade and labor standards during a meeting of the WTO General Council, according to informed sources. An inquiry by Norway as to the status of cooperation between the WTO secretariat and the International Labor Organization drew extensive criticism from other WTO members, who argued the issue need not come up in formal meetings, these sources said.

In addition, WTO members rejected a proposal by the U.S. to include one small aspect of labor standards in the WTO Trade Policy Review Mechanism (TPRM), informed sources said.

The discussion at the July 16 meeting was kicked off by Norway, which made an inquiry under the "other business" section of the General Council agenda, which is generally reserved for minor issues. Norway asked for a report on the status of cooperation between the WTO secretariat and the International Labor Organization staff.

The Norwegian request prompted strong responses from countries including Egypt, Pakistan, Brazil, Morocco and India that Norway need not raise the issue in WTO meetings but should have gone to the secretariat. Japan, Singapore, Cuba, Colombia and Hong Kong-China said the question was legitimate but that they were "concerned" about taking up the labor issue, an informed source said.

WTO Director General Renato Ruggiero responded by making a "very factual" presentation on the secretariat's work in this area, one source said. He noted that WTO representatives had taken part in a meeting of the ILO Working Party on the Social Dimensions of the Liberalization of International Trade and the ILO annual conference in June. The WTO secretariat also gave ILO staff members documents on statements made by trade ministers at Singapore, and cooperated informally with the ILO as necessary, Ruggiero said.

Ruggiero stressed that the secretariat keeps "firmly in mind" the attitudes of all WTO ministers expressed at Singapore, and that the cooperation between the WTO and ILO secretariat would continue, the source said.

The 1996 Singapore declaration designated the ILO as the primary organization to handle labor issues, but emphasized that it would continue its cooperation with the WTO. The chairman of the ministerial and Ruggiero emphasized that such cooperation could only cover continued information exchange between the WTO and ILO secretariats (*Inside U.S. Trade*, Dec. 16, 1996, p. 1).

In the General Council meeting, the U.S. unsuccessfully sought to ensure that labor standards in so-called "export processing zones" (EPZs) become part of the TPRM process, informed sources said. EPZs are areas in which different tax and tariff policies can apply to products processed there, and which also sometimes have different labor policies.

The U.S. has already sought to raise the labor issue in the TPRM process, most recently in the case of Fiji (*Inside U.S. Trade*, May 9, p. 5). The U.S. and Norway have also raised the issue in TPRM meetings on Cyprus and Paraguay, but the questions "have been ignored," an informed source said.

U.S., EU AT ODDS OVER ELECTRONIC DATA PROTECTION INITIATIVE

The U.S. and European Union are squaring off over the best approach to protect the privacy of data transmitted electronically from the EU market to third countries, including the U.S. The Clinton Administration is urging the EU not to implement privacy protection rules in a way that would cut off the flow of all personal data to the U.S. because it refuses to create a government role in ensuring privacy, according to Ira Magaziner, the president's special advisor on electronic commerce.

The U.S. approach, presented in President Clinton's framework for electronic commerce released earlier this month, would rely primarily on the private sector to ensure data privacy.

By October, the EU must find that third countries afford adequate privacy protection for data to allow their continued transmission, which is important for Internet or credit card business transactions. The EU approach of creating a government board to carry out government regulations would make it impossible for companies to do business, Magaziner told a July 9 Brussels press conference.

"I think it would be a great mistake for Europe to isolate itself from the rest of the world by not allowing its citizens to do business with the rest of the world on the Internet," Magaziner said. He said he hoped the U.S. could persuade the EU over time that such an approach is "unwise."

Magaziner emphasized that both the U.S. and EU have the same goal of wanting to protect consumers' privacy.

The EU also sees the differences on data protection as a "potential flash point" with the U.S., according to the author of the EU's blueprint for electronic commerce. Patrick Vittet-Philippe, an expert advisor to the European Commission's telecommunications directorate, said this week that the EU has "a less radical view" of self-regulation than the U.S.

"In the EU, we encourage self-regulation when it is appropriate," he said. "But self-regulation is not seen as an absolute panacea because sometimes it doesn't work." Vittet-Philippe said that self-regulation has to be put in conformity with and be backed by legislation. He spoke on July 23 to the Center for Strategic and International Studies.

The U.S. and EU discussed the issue of privacy protection in meetings with Commission officials in Brussels earlier this month. The meetings were not negotiating sessions, but rather a discussion of U.S and EU strategy papers on electronic commerce, according to Magaziner.

The data privacy issue was also raised during the U.S.-EU Information Society Dialogue held in Washington, DC, on July 21 & 22.

At issue in the debate is a European directive on the protection of individual personal data, including medical and financial information. The 1995 directive, which must be implemented by EU members by October 1998, would require EU countries to block exports of personal data to third countries which have not been certified as providing adequate security protection. At present, in the EU view, the U.S. government does not ensure such protection for personal data.

Officials from both sides indicated that the U.S. and EU agree on the substantive principles of data protection. But the parties differ on how U.S. implementation of changes should be achieved, they said.

Magaziner said the U.S. preference on data protection is for industries that send customer data over the Internet to cooperate with consumer groups to develop business conduct rules and technological solutions. Businesses that would follow these rules for protecting privacy would be identified with a "seal" of approval.

The code of conduct would spell out how companies will treat data when and once it has been transferred from the EU market, a U.S. official said. Under such a code, which is allowed under the EU directive, companies would commit to provide the same protection to data as provided by the source country, she said.

Magaziner said the U.S. system is more suited to the "far flung" and "decentralized" nature of the Internet. It would set up the majority of companies that want to do business on the Internet as developers or enforcers of the system, which is more effective than a government body trying to police the Internet, he said.

"What we prefer is something where you're empowering people to protect themselves, and giving them the tools and means to do it, and we are creating a situation where the good actors in industry have an interest in policing it as well, because that way you have a much more widely dispersed protection than you get with just a government enforcement," Magaziner said.

But he conceded that the U.S would be willing to take a new look at self-regulation if it does not work. "[I]f we are proven wrong, we will have to look at it," he said.

The EU is very concerned about binding enforcement of rules on protecting data, especially regarding access of a European individual to his data and to information about how his data is being used, U.S. and EU officials said.

An EU citizen must be ensured of the opportunity to exercise his rights in a third country, including the U.S., and industry self-regulation is not sufficient to do that, according to an EU official.

"There is consensus in Europe that one of the primary conditions for saying there is adequate protection is the existence of a binding regulation in data protection," said the official. "But no one thinks it must exactly correspond to the EU directive," he said.

The EU directive requires member states in close cooperation with the European Commission to determine third countries' levels of protection for data. The EU is not demanding action at a specific level of government, according to the EU official.

"It's not clear that the EU is saying national or state legislation is needed, but they are certainly concerned about enforcement," a U.S. official said.

She added that the EU hasn't addressed all U.S. questions on data protection. "The Europeans haven't yet defined how they will determine adequacy," she said. "A self-regulatory approach can work and should be given a chance."

The official also noted that the EU position is not totally unified in support of government regulation. "Some Europeans I've talked to are also concerned about the EU approach to data protection," she said.

U.S. and EU officials agreed that they will keep talking and working toward possible solutions on data protection and indicated confidence that a prohibition of transatlantic data transfers after October 1998 can be avoided.

"I have no reason to doubt that we will come achieve an acceptable resolution at the end of the day," said the EU official.

BOEING CONCEDES ON INDIRECT SUBSIDIES, LICENSING . . . begins page one

1992 agreement between the U.S. and EU," he said.

In a July 23 press statement, Boeing announced that it had agreed to supply for a period of ten years an annual report to the Commission on its "current unexpired patents arising from government funding contracts and on its non-classified government funded aeronautics research and development projects."

A July 23 press release by EU stated that Boeing commitments on licensing would include "intellectual property rights used in civilian aircraft which were derived from space and military research and development."

The new information will give the EU "a little more detail in terms of where the money does go," Condit said. But informed sources said that in the merger deal Boeing is willing to provide information that it had previously pressured the U.S. government to withhold from the EU under the 1992 bilateral agreement.

Throughout the press conference, Condit sidestepped the question of whether this increased information exchange had been cleared with the U.S. government, which is the signatory to the 1992 bilateral with the EU. "This is information that is already in existence," he said. "We have said we will be willing to [provide it]."

He defended the arrangement as being in line with the 1992 agreement. "We think the agreement we got is well within the context of the 1992 bilateral," he said. It amounts to changes in the implementation of the agreement, not a renegotiation, according to Condit.

The commitments relevant to the 1992 bilateral agreement were made by Boeing officials without consulting with the U.S. government, informed sources said. Company officials only told the U.S. government that nothing they agreed to in the merger deal "runs counter" to the 1992 agreement, they said.

Condit echoed the long-standing Boeing line that there are not "a lot" of benefits the commercial aircraft sector reaps from defense contracts. There is no "overwhelming technology" move from one sector to the other, but more a transfer of "skills" that employees develop, Condit said.

In the second element of the merger deal dealing with the spillover issue, Boeing agreed to license patents it obtained under U.S. government funded contracts to commercial aircraft manufacturers on a non-exclusive, reasonable royalty basis, and to cross license so-called "blocking patents" on the same basis. Blocking patents is a term applied to patents so broad that failure to obtain a license from their owners prevents another aircraft company from manufacturing a product because he cannot "design around" the patented invention.

Under the merger deal, Boeing could license such blocking patents for a royalty fee with the understanding that the licensee would extend to Boeing any blocking patent he may own in the future.

In his press conference, Condit insisted that the licensing arrangements affect a "very limited set" of patents, and that this arrangement is "typical" in the industry.

Licensing such technology will likely be subject to export controls under the jurisdiction of the Commerce Dept., since the patents in question would likely cover dual-use technology, according to an informed source. For example, there are strict controls on hot sections of engines to all destinations, and the department looks "closely" at the export of avionics, electronics and advanced composite materials, he said.

Another source questioned how Boeing would defend a deal that licenses technology financed by U.S. government money to the Airbus consortium, particularly when there is apparently no reciprocal arrangement.

The information and licensing arrangements struck under the merger will partially meet new demands the EU made this month to the U.S. in consultations under the 1992 bilateral agreement. EU officials demanded that EU companies gain access to the technology and know-how derived from military contracts and then applied to commercial aircraft manufacturing. They also asked that subsidiaries of EU companies be allowed to bid for U.S. government research, which U.S. officials say they are already permitted to do (*Inside U.S. Trade,* July 18, p. 3).

The licensing arrangements and increased reporting requirements are one of four sets of concessions the EU extracted from Boeing in an eleventh-hour deal on July 22 to approve the merger in principle. The last concession Boeing made on July 22 was renouncing its right to enforce the exclusive aircraft supply contracts with American Airlines, Delta Airlines and Continental Airlines, according to U.S. and EU sources. The company also agreed not to enter into any new exclusive supplier agreements until Aug. 1, 2007.

In addition, Boeing agreed to maintain the civil aircraft operations of McDonnell as a separate legal entity, and to refrain from signing any exclusive contracts with Boeing's suppliers, the EU and Boeing announced. Boeing also agreed to provide customer support for existing McDonnell commercial aircraft, and promised not to use such customer support as leverage to obtain any advantage in sales of new Boeing aircraft, the EU announced.

Boeing made its final offer as late as the evening of July 22, hours before an EU deadline. As a result, it was not possible to complete all the legal procedures in time for a July 23 meeting of the Commission, the EU announced. The Commission will give its formal approval to the deal on July 30, the EU said.

Shareholders of Boeing and McDonnell Douglas will vote on the merger on July 25, according to officials for both firms.

In its press release, Boeing criticized the EU for pressing the issue of the exclusive supply relationships. "Boeing believes that the European Commission should have given greater deference to the U.S. Federal Trade Commission, which has prime jurisdiction over the merger, and which had examined the same facts in its six-month investigation, during which Boeing and McDonnell Douglas submitted more than five million pages of documents and the FTC interviewed representatives from more than 40 airlines, as well as other industry participants," the statement said.

The deal was struck days after President Clinton warned publicly that the U.S. would take action unilaterally or in the World Trade Organization should the EU block the merger (*Inside U.S. Trade,* July 18, p.1).

But informed sources said that making a case against the EU in the World Trade Organization would not have been very easy.

If the EU had imposed a fee as a matter of a competition policy violation, the U.S. could have made the argument of a national treatment violation. But it would have been very difficult to prove that the application of the competition rules to foreign firms was made under a tougher standard than that applied to Airbus, one informed source said.

The EU would have been able to collect this regulatory fine at the border, and would have been unlikely to impose it as a tariff, he said. If it had imposed the fine in the form of a tariff on Boeing sales in the EU, the U.S. could have argued that the EU broke its Uruguay Round commitment of a zero tariff in the sector, he said.

In addition, the U.S. could have brought a subsidies case or an international subsidies dispute settlement case against the EU on the argument that its government support caused "serious prejudice" to the U.S. manufacturer. Under WTO subsidies rules, serious prejudice is defined by a number of criteria including that the subsidy amounts to more than 5 percent of the product's value. That criterion does not apply to aircraft based on a footnote in the agreement, but that does not rule out a subsidies complaint, an informed source said.

The EU proposal argues that if EU farmers produced oilseeds at competitive prices, it would eliminate the need to set production controls. Production controls through setting aside land were a second key element of the Blair House accord.

"It's clear in Agenda 2000 what our objective is on oilseeds," an EU Commission spokesman said this week. "[The] Blair House [agreement] was linked to crop-specific aid and now we have the intention to pay the same aid" to oilseed and cereals producers.

The EU's paper also highlights that the strategy of reducing support to oilseed producers could allow the EU to "overcome the Uruguay Round constraints for oilseeds."

U.S. officials said they were still analyzing the Agenda 2000 proposals and were not ready to comment. The EU's Deputy Director General of Agriculture David Roberts briefed Paul Drazek, a senior advisor to Agriculture Secretary Dan Glickman earlier this month.

U.S. soybean industry sources this week said they were surprised but not shocked by the EU proposal. A soybean industry spokesman said that the U.S. industry intends to do "everything possible" to keep in place the agreements that were established with the Uruguay Round.

"Some reports make it sound like we don't want European farmers to grow anything," he said. "We just don't want them to expand their subsidized oilseed production."

The Commission's proposal on oilseeds is part of its overall CAP reform proposal that would cut EU agricultural subsidies in general and would cut the connection between government support payments and production. High EU price supports for producing crops have kept European internal prices artificially high.

The CAP reform proposal holds open that EU farmers could obtain some income from direct government payments, which EU Agriculture Commissioner Franz Fischler has argued should be linked to management of natural resources and landscape preservation. In addition, the Commission is proposing the creation of alternative income and employment opportunities for rural areas in its paper.

A primary objective for the proposed reform of the CAP is "improving the competitiveness of Union agriculture on both domestic and internal markets," according to Commission proposal. If farmers produced at competitive prices, the EU could forgo its routine use of export subsidies.

Export subsidies for cereals, oilseeds and protein crops could be employed if world market prices did not sustain a level sufficient to provide stable incomes to producers, an informed source said.

This is consistent with the EU's commitment to ensure fair and stable incomes for the agricultural community, he said.

The proposed agriculture reforms, which would cover cereals, dairy, beef and other sectors, are needed to prepare for the proposed EU enlargement and for the new round of World Trade Organization negotiations on agriculture set to begin in 1999, EU Ambassador Hugo Paemen said in a July 18 briefing.

In addition to the CAP reform proposal, Agenda 2000 contains the Commission's blueprint for reforming and enlarging the EU. The two-volume Agenda includes proposals for internal EU reforms in the financial area and in the use of funds for remedying regional disparities in economic development.

Agenda 2000 was released along with the Commission's recommendations that accession negotiations begin with five of 10 applicants as soon as possible. The five countries named as potential new members are the Czech Republic, Estonia, Hungary, Poland, and Slovenia.

European farm groups voiced strong opposition to the proposed reforms as giving away the EU's bargaining power before the WTO negotiations even begin, sources said. These groups feel that "the Commission should not put the result of the negotiations before the negotiations," one source said.

The direction, timing, scope, and need for the reforms were also roundly criticized by European farm ministers earlier this week and are likely to face stiff resistance, sources said.

German Agriculture Minister Jochen Borchert told reporters July 17 that the Agenda 2000 reforms shed more shadow than light on German farming.

A Commission spokesman noted that the CAP reform proposals will be debated by EU farm ministers over the next few months before they are submitted for approval to EU leaders in December. Detailed proposals are expected from Commissioner Fischler in late December or early January, he said.

Agenda 2000 CAP Reform Proposal

III. The common agricultural policy

[...]

4. New Reforms

The Commission confirms the policy choice expressed in the "Agricultural Strategy Paper" of December 1995. It proposes deepening and extending the 1992 reform through further shifts from price support to direct payments, and developing a coherent rural policy to accompany this process. Direct payments will be set at an appropriate level while avoiding any overcompensation.

Crop sector: Cereals, Oilseeds and Protein crops

Over the coming years, the areas devoted to the cultivation of these crops and to set-aside are expected to stabilize at a level of about 53.5 million hectares. In the present policy framework, and supposing that the set-aside rate returns to its reference level of 17.5 %, the areas devoted to each of the three crops would also be relatively stable over time.

Cereals yields are forecast to resume their upward trend and production is therefore expected to rise from 201 million tons in 1996 to 214 million tons by 2005. Total consumption of cereals is also forecast to further increase, though at a slower rhythm, in response to the development of white meat production. Up to 2000, the situation is likely to remain relatively tight, in particular for wheat. From 2001 onwards, the current GATT commitments on subsidised exports become constraining for both wheat and coarse grains, leading to a rapid increase in intervention stocks (some 58 million tons by 2005).

Oilseed yields are expected to increase very modestly and the area cultivated is strictly limited by the outcome of the Uruguay Round Agreement. Production is expected to increase slightly, from 12.2 million tons in 1996 to 12.8 million tons in 2005. Trade deficits in oilseeds and oilseed meals would remain very substantial.

In theory, it would be possible to react to new cereals surpluses by increasing the compulsory set-aside rate. But this could then risk gradually increasing to over 20 %. Furthermore, the Union could well fail to benefit from the positive developments expected on the world market, since internal prices could be expected to remain above world prices. A more offensive strategy could simultaneously avoid the routine use of export subsidies, reinforce the competitiveness of cereals on the Single Market, overcome the Uruguay Round constraints for oilseeds and, last but not least, bring a good deal of simplification.

The Commission therefore proposes the following measures:

The cereals intervention price is fixed in one step (2000) at a safety net level of 95.35 ECU/ton, (presently 119.19 ECU/ton);

A non crop specific area payment is established at 66 ECU/ton (multiplied by the regional cereals reference yields of the 1992 reform); this payment will be lowered if the market prices are sustained at a higher level than currently foreseen;

Set aside: the reference rate for compulsory set-aside is fixed at 0 %, voluntary set-aside is allowed, extraordinary set-aside is abolished; set-aside areas get the non crop specific payment;

Silage cereals (mainly silage maize) are excluded from the regime;

Special cases: for protein crops, a supplementary aid is established at a level of 6.5 ECU/ton in order to preserve their competitiveness with cereals; for durum wheat the present supplements are maintained.

As it already is the case in the beef and sheep sectors, the Commission will table a proposal enabling Member States to make the granting of direct payments for arable crops and set-aside conditional on the respect of environmental provisions, allowing them to be increasingly used to pursue environmental objectives.

Beef regime

Over the coming years, beef production will be influenced on the one hand by the short term measures adopted in 1996 (i.e. the calf processing and early marketing of veal calves schemes) and on the other by the elimination of adult cattle over 30 months in the UK from the food and feed chain. The first will be felt mainly in 1998 and 1999, whereas consequences of the second will continue until 2001. Beef consumption is expected to gradually recover from the 1996 shock and return to its long term (declining) trend.

These factors add to a cyclical downswing of production until 2000 and should lead to a substantial reduction in stocks over the next few years, from the levels built up during 1996 and 1997. After 2001 however, if the market policy remains unchanged, production would return to its full potential whereas consumption would continue its long term decline. Intervention stocks would tend to accumulate again (given the GATT limited export possibilities) and could reach some 1.5 million tons by 2005.

It is not acceptable in the long run to solve the problem of over-production in this sector by the slaughtering of young calves a few days after birth. Nor can the surplus problem be solved efficiently by pure supply management (quotas on animal number s or on production), as this would present major administrative complications.

A more offensive strategy, on the other hand, could at the same time substantially reduce exportrefunds to traditional destinations, help develop new export outlets without subsidies and rebalance internal meat consumption to the benefit of beef. More over, it would reduce the incentive for higher carcass weights.

The Commission therefore proposes to gradually establish effective market support at a level of 1 950 ECU/ton (presently at 2 780 ECU/ton), over the period 2000-2002. It should be possible to stabilize market prices around or above this level through b order protection, export measures and the introduction of a private storage regime, as already exists for pigmeat.

Single Market prices can be expected to remain higher than the new support price levels. In addition, as observed after the 1992 reform, farmers are likely to adjust their production systems and investment behaviour to save costs, and some input prices may well decrease. On the whole, the income loss farmers perceive due to the reform measures will probably be lower than a simple static analysis would indicate. Nevertheless there will be losses.

The Commission proposes to respond through direct income payments, gradually increasing and still paid per head of cattle and while avoiding overcompensation. In permanent regime, they would reach the following level (the present level is mentioned in brackets):

Suckler cow (yearly payment), 215 ECU (145 ECU)
Male bovine bull (one payment), 368 ECU (135 ECU)
steer (two payments), 232 ECU (109 ECU)
Dairy cow (yearly payment), 70 ECU (no premium)

The different mechanisms governing headage payments and favouring extensification (the density factor, individual and regional ceilings) would be adapted in order to take into account the termination of the silage maize regime. At the same time, the Commission will reflect on how incentives to extensify production can be strengthened with a view to improving their effectiveness in relation to environmental objectives, without a major change in the global level of support.

Dairy regime

If milk quotas remain unchanged over the coming years, total milk production is forecast to decline slightly from 121.6

million tons in 1996 to 118.1 million tons in 2005, due to a small increase in milk fat content and adjustment of production to the quota level. Global milk demand (in whole milk equivalent) is expected to decline from 112.2 million tons in 1995 to 108.7 million tons in 2005. This is the net result of decreasing consumption of some dairy products, notably butter, and increasing demand for other products, such as cheese and fresh products. On-farm consumption (animal feed) should also drop in line with the expected decline in cattle numbers. The net surplus is likely to vary between 9.0 and 9.5 million tons of milk equivalent in the 19 96-2005 period, with a tendency to increase by the end of the period.

Turning to the different milk products, which are all covered by GATT commitments, and supposing no policy changes, it appears that:

further export growth in the cheese sector would appear to be constrained by GATT limitations on subsidized exports;

intervention stocks of skimmed milk powder will tend to increase from 1998 onwards and reach some 200 000 tons in the first half of the next decade, as the GATT export commitments become binding;

for butter, GATT export commitments give sufficient margin for subsidized exports, so that no accumulation of intervention stocks would necessarily be expected; it is however questionable whether real outlets exist on world markets for a quantity as large as the expected surplus of around 300 000 tons.

After an in-depth examination of the different options, the Commission discards radical solutions, such as drastic price cuts and rapid abolition of the quota system. Expected market developments do not justify such extreme measures. The Commission see s no strong reason for introducing fresh quota cuts either, since no major deterioration of the market balance is expected. Finally, the Commission also discards a double price - double quota system, which would raise serious questions of WTO compatibility, could be quite distortive, depending on how it were shaped and implemented, and would add to current administrative complexity and control problems.

However, dairy farmers should not be given the impression that the present system, with its intrinsic rigidities, can last for ever. The recent debate on long term prospects has revealed factors of uncertainty; in particular, the results of the next WT O Round could also affect the dairy sector.

The Commission therefore recommends a cautious approach at this stage. It proposes to:

extend the quota regime up to 2006;

improve flexibility and simplify the present common market organization;

gradually decrease support prices, by an average of 10 % in total over the period;

introduce a new yearly payment for dairy cows adjusted to average yield, at a level of 145 ECU.

Together with the new payment introduced for dairy cows in the beef context, the total dairy cow premium would be 215 ECU, equal to the suckler cow premium.

Mediterranean products

As a continuation of the 1992 reform process, the Commission presented in December 1996 a report on the tobacco regime to the Council and the Parliament. This report gives a positive assessment of the 1992 tobacco reform and proposes further strengthening the market orientation of the sector, while recognising the important economic role it plays in some rural areas. In February 1997, the Commission presented a report on the olive oil regime. It suggests as a possible option a further shift from price support to direct payments and a radical simplification of these payments. As soon as the necessary debates have taken place, the Commission will table detailed legislative proposals on these two sectors.

For fruit and vegetables, a major reform was adopted by the Council in July 1996: budgetary efforts were shifted from supporting prices to strengthening producer organisations and their competitiveness, and emphasis was placed on the structural adjustment of the sector and on its environmental dimension. The Commission will follow the implementation of this reform carefully.

For wine, a reform proposal has been pending at Council level since 1994. In view of the latest developments, and in particular the new context created in this sector by the Uruguay Round Agreement, the Commission intends to review the pending proposal and to table a fresh one as soon as the 1997 situation has been fully analysed. The new proposal would take into account the guidelines which have in the meantime been defined in the 1995 "Agricultural Strategy Paper".

Differentiation and ceilings for direct payments

The Commission intends to propose the introduction of an individual ceiling covering all direct income payments granted under the Common Market Organisations. In addition, while excluding renationalization, Member States would be allowed to introduce differentiation criteria according to commonly agreed rules.

She also praised Korea's recent moves to liberalize trade and investment in the telecommunications sector. "Korea has made important commitments, including the elimination of tariffs on information technology products, and an increase in limitations on foreign ownership of domestic telecommunications services companies, and taken other steps which will promote competition and enhance transparency," Barshefsky said.

The agreement puts to rest a trade dispute which dragged on since last July, when Barshefsky cited Korea as a "priority foreign country" (PFC) under Section 1374. The two sides have been wrangling for months over how Korea would promulgate the statement and what assurances Korea could give that it would implement nondiscriminatory procurement (*Inside U.S. Trade*, April 11, p. 15).

The PFC designation will be lifted effective Aug. 11, though USTR sought public comment by Aug. 8 on this move in a July 23 *Federal Register* notice.

The Telecommunications Industry Assn. strongly supported the conclusion of the dispute, but stressed the importance of assuring full implementation with bilateral and multilateral tools. "TIA believes that effective, results-oriented agreements, coupled with aggressive implementation, are essential to creating a fair playing field in the Korean telecom market," TIA President Matthew Flanigan said in a July 23 statement. "We will encourage USTR to continue to review progress by using all appropriate tools."

The unilateral statement, which is reprinted below, consists largely of restatements that Korea will full implement its international obligations, but emphasizes the commitment to national treatment in areas where U.S. companies have complained of discrimination. In addition to being published in MIC's official gazette, it was distributed to Korean and foreign telecom equipment firms and to the following Korean agencies:

The U.S. originally pressed for the deal at the behest of U.S. telecommunications equipment manufacturers, who charged that the Korean government pressured telecom carriers in Korea to buy Korean-made products as a condition of obtaining licenses. Accordingly, the statement reiterates that private-sector companies are "free to make procurement decisions independently, based solely on their commercial considerations," in accordance with Article XVII:1(c) of the General Agreement on Tariffs & Trade.

"Ministry policies and regulations should not be interpreted as requiring the use of telecommunications equipment or services of any particular national origin."

Korea also emphasized its intent to use performance-based technical standards to ensure that they do not discriminate against foreign suppliers. MIC stated that it would describe technical specifications "in terms of performance, rather than design or descriptive characteristics" and "based on international standards, where such exist, rather than national technical regulations or standards" in accordance with the WTO Government Procurement Agreement, which Korea joined this year.

The statement also outlines new procedures to improve the licensing process for telecommunications services providers. It notes that new regulations provide information on time frames for awarding licenses, the preparation of applications and "detailed licensing criteria." The statement also outlines an enhanced role for the Korean Communications Commission. "KCC will be empowered to address a broad range of issues affecting the preservation of fair competition in the telecommunications sector," according to the statement.

The new KCC role includes the power to intervene if a service provider cannot conclude an interconnection agreement with the dominant provider, presumably Korea Telecom. If no agreement is reached between the two companies within 90 days, then KCC would be obligated to make a decision within another 90 days after the receipt of a request by one of the companies.

The statement contains similar provisions regarding the provision of satellite services and the licensing of radio stations.

A section of the statement on intellectual property emphasizes the overall importance of maintaining the confidentiality of business information, a response to U.S. complaints that the Korean government did not adequately guard against the infringement of foreign patents.

It specifically directs purchasers of telecom equipment to avoid requesting "unnecessary proprietary information." When the information is necessary, companies are "not permitted to disclose the information without the consent of the party supplying the information or to use the information directly or indirectly for its commercial benefit," according to the statement.

The statement also reiterates Korea's intent to comply with the WTO agreement on basic telecommunications services and the Information Technology Agreement to eliminate tariffs on high-tech products by the year 2000, and notes Korea's obligations as a new member of the Organization for Economic Cooperation & Development. It also establishes an official MIC office for inquiries about the policies outlined in the statement.

continued on next page

Information and Communications Policy Statement for the Realization of an Information Society

1. In the wake of the establishment of the World Trade Organization ("WTO") multilateral trading system, the global market is now embracing the trends of liberalization and deregulation. In the area of telecommunications, many of the WTO signatories participated in the Group on Basic Telecommunications ("WTO/GBT") negotiations to seek major liberalization of the basic telecommunications service markets in their countries and pursued a successful conclusion of the Information Technology Agreement ("ITA"). As a signatory to the Agreement Establishing the WTO, Korea also actively took part in these market-opening trade negotiations. Additionally, as a result of Korea's accession to the Organization for Economic Cooperation and Development ("OECD"), Korea's role and responsibilities in the international market have increased substantially.

2. In view of these new developments, the Ministry of Information and Communication (the "Ministry") has recently revised its telecommunications laws, including the Telecommunications Business Act and the Radio Waves Act, in order to reflect the developments in the international telecommunications markets and to foster a telecommunications market environment that facilitates the realization of an advanced information society in Korea. In this connection, the Ministry would like to explain to providers of telecommunications equipment and services its telecommunications policy embodied in the following policy statement, and to request that such providers actively cooperate to successfully implement the policy.

A. The Ministry will continue to: (1) aggressively introduce market principles into the marketplace and increase the competitiveness of the telecommunications industry; (2) expand the market in response to the demand for new and advanced telecommunications equipment and services; and (3) establish and improve the competition rules ensuring fair competition among various providers of telecommunications equipment and services and encouraging the entrepreneurship of the private sector.

A. 1. Within the scope of its commitments and in accordance with its obligations under the WTO, Korea is committed to providing non-discriminatory treatment to foreign-owned or foreign-origin suppliers of telecommunications equipment and services and treatment no less favorable than that provided to domestic-owned or domestic-origin suppliers of like equipment and services.

A. 2. In accordance with Article XVII:1(c) of GATT 1994, private sector companies are free to make procurement decisions independently, based solely on their commercial considerations, such as price, quality, availability, marketability and transportation and other conditions of purchase or sale, irrespective of the origin of the equipment or the nationality of the supplier. Ministry policies and regulations should not be interpreted as requiring the use of telecommunications equipment or services of any particular national origin.

A. 3. In adopting technical specifications, the Ministry will adopt non-discriminatory specifications and describe such specifications, where appropriate, (i) in terms of performance, rather than design or descriptive characteristics; and (ii) based on international standards, where such exist, rather than national technical regulations or standards in accordance with Article VI of the WTO Agreement on Government Procurement ("WTO/GPA"). In the case of private sector companies, it is advisable that they adopt technical specifications that reflect trends in technological developments in the international telecommunications market.

A. 4. Within the scope of its commitments under the WTO, the Korean Government licenses telecommunications service providers, both for domestic and foreign firms, through a transparent process.

A. 5. The previous licensing procedure for facilities-based service providers, which allowed applicants for a license to file their applications only after a notice inviting applications had been published, has been revised. For the purpose of the openness and transparency of the licensing procedures, the new licensing regulations provide information regarding, among other things, the preparation of applications, the time frames for awarding of licenses and detailed licensing criteria. Licensing plans, including assigned spectrum bandwidth and licensing criteria, as well as any subsequent revisions or modifications, will be published in the Official Gazette sufficiently in advance of the close of the licensing application period.

A. 6. The licensing procedures have been streamlined in order to encourage broad participation and promote easy entry into the telecommunications market. The source of equipment described in a license application is not a factor in evaluating an application. Trade secrets and proprietary information contained in applications for licenses will be protected in accordance with relevant laws.

A. 7. From January 1, 1998 until December 31, 2000, Korea will allow foreign ownership in facilities-based telecommunications service providers, other than Korea Telecom ("KT"), up to a maximum of 33%; from January 1, 2001, the Korean Government will allow foreign ownership in such service providers up to a maximum of 49%. However, no single person will be allowed to own more than 10% of a wireline service providers or 33% of a wireless service provider.

A. 8. In order to promote fair competition in the marketplace, the role and function of the Korean Communications Commission ("KCC") will be strengthened. Among other things, KCC will be empowered to address a broad range of issues affecting the preservation of fair competition in the telecommunications sector. In addition, KCC's dispute resolution procedure will be improved and the scope of issues subject to the procedure will be expanded. Specifically:

i. The Ministry's regulations require that, when requested by another service provider, dominant facilities-based service providers should conclude an interconnection arrangement within 90 days of the request at any technically feasible point in the network. If such an interconnection arrangement is not reached within the 90-day period, either of the parties involved may directly request KCC to resolve such a dispute, including disputes concerning the technical feasibility of the requested interconnection and the sharing of the extra costs involved. KCC will be required to make a decision on such disputes within 90 days after receipt of a request from a party, thereby ensuring fair competition in the marketplace.

ii. Pursuant to Ministry of Information and Communication Ordinance No. 24 and Ministry of Information and Communication Notice No. 1996-47, facilities-based service providers are required to establish and maintain separate accounting systems for each of their services operations.

A. 9. The Korean Government permits facilities-based service providers to use satellite systems other than INTELSAT and Koreasat for either voice or data communications using their own facilities. The Ministry will authorize such use through appropriate transparent procedures, thereby providing additional choices of transmission facilities to Korean service providers and promoting the advancement of satellite services in Korea. Beginning January 1, 1998, such use will be authorized based on a commercial arrangement with a foreign satellite service provider through a streamlined procedure. In this regard, in accordance with Korea's commitments under the WTO/GBT agreement, beginning January 1, 1998, foreigners will be allowed to own up to 33% of a facilities-based service provider owning a radio station (in the case of KT, 20%), and beginning January 1, 2001, up to 49% (in the case of KT, 33%).

Facilities-based service providers will be allowed to establish, own and operate on-premise receive-only transmit or transmit/receive satellite earth stations for provisions of domestic or international voice and data communications services through commercial satellites other than INTELSAT or Koreasat.

The establishment of a radio station, including transmit/receive earth stations, is subject of approval by the Ministry. However, in the event that the station's transmission power is limited or the station is for receive only, the station can be established only with notification to the Ministry (pursuant to Article 56 of the Radio Regulations) or without notification (pursuant to Article 56.2 of the same Regulations).

Paragraph 3 of Article 6 of the Radio Waves Act sets forth the criteria for authorizing the establishment of a radio station, which include the following:

(i) The construction plans must be compatible with the relevant technical standards;

(ii) An appropriate bandwidth of radio spectrum must be available to operate the radio station;

(iii) The applicant must possess the necessary financial resources; and

(iv) The applicant must meet the requirements for the construction and operation of a radio station.

Once an applicant has constructed a radio station in a manner satisfying the above requirements at the request of the applicant, the Ministry will inspect the station and notify the applicant in writing of its decision on whether to approve the station.

B. As a member country of the WTO and the OECD, the Korean Government will ensure that Korea complies with the rules of these multilateral institutions. In this connection, the Ministry will continue its efforts to revise and update its laws and regulations in accordance with the relevant international agreements.

B. 1. Korea participated actively in the WTO/GBT negotiations and the ITA negotiations in an effort to contribute to the additional liberalization and growth of the international telecommunications market and to enhance Korea's leadership in the global telecommunications market.

B. 2. As a result of Korea's accession to the WTO/GPA, which took effect on January 1, 1997, foreign suppliers are permitted to participate in various government procurement contracts involving goods and services in accordance with Korea's schedule to the WTO/GPA. In return for this market opening, Korean suppliers are allowed to participate in the government procurement markets of the other signatories to the WTO/GPA. In this connection, it is the Ministry's belief that the Korean suppliers will need to make preparations to effectively exploit new market opportunities, and, upon request, the Ministry will be available to provide the necessary information for such preparations.

B. 3. The Ministry will revise its laws and regulations governing foreign participation in the Korean basic telecommunications service market in accordance with the results of the WTO/GBT negotiations (which were concluded on February 15, 1997).

B. 4. Proceeds from the "Research and Development Funds for the Information Society" will be used in a manner consistent with the provisions of the relevant WTO agreements, including the Agreement on Subsidies and Countervailing Measures. For transparency, terms of contribution to research and development funds as condition of a license are specified in the new licensing regulations. Funds donated in excess of the maximum level specified in the licensing regulations will not be considered in evaluating an application.

B. 5. Tariffs applicable to information technology products will be amended in accordance with the results of the ITA negotiations.

B. 6. In order to facilitate the benefits of the Information Society, the Korean Government will ensure that there are no unnecessary delays in the importation of telecommunications products.

B. 7. For the convenience of users and the continuing growth of trade in terminal equipment, the Ministry will streamline its type approval system and will grant approvals for the use of equipment subject to type approval based only on the equipment itself, and not on the service provider that intends to use the equipment. The scope of wireline telecommunications equipment subject to type approval includes any equipment directly attached to the public switched network and certain of the equipment not directly attached to the public network. The latter type of equipment includes: (i) accessories and components of an integrated system which is subject to type approval; (ii) terminal equipment used for ISDN; and (iii) digital transmission devices directly attached to a channel service unit ("CSU"). Additionally, the Ministry will continue to pursue mutual recognition arrangements with foreign countries so that Korean suppliers may not need separate type approvals from these foreign countries in exporting their equipment.

C. As the demand for advanced information/telecommunications equipment intensifies, the Ministry will strengthen the protection of intellectual property rights in order to encourage the development and sales of advanced information technologies.

C. 1. In procuring telecommunications equipment, government agencies and private sector companies are prohibited from purchasing products that have been found to infringe a third party's intellectual property rights.

C. 2. It is important that intellectual property rights are adequately protected in order to maximize the creativity and entrepreneurship of the private sector. In this regard, it is advisable that a purchaser refrain from requesting a supplier to provide unnecessary proprietary information, and that, if the purchaser requests necessary proprietary information, the supplier make efforts to comply with such request. It is further recommended that, if a purchaser receives proprietary information, it take the necessary measures to maintain the confidentiality of the information.

C. 3. Private sector companies will independently negotiate transfers of technology with foreign suppliers based on their commercial considerations in connection with their purchase or lease of telecommunications products or services from the suppliers.

C. 4. A facilities-based service provider that has received proprietary information regarding another service provider's network for interconnection of the networks will not be permitted to disclose the information without the consent of the party supplying the information or to use the information directly or indirectly for its commercial benefit.

C. 5. If anyone infringes on a third party's trade secrets or other intellectual property rights, such infringement is actionable under the relevant laws, including the Unfair Competition Prevention Act and the Computer Programs Protection Act.

D. For the purpose of facilitating a better understanding of the Korean Government's policy stated above and for the purpose of obtaining comments and input from industry in order to implement the policy more effectively, the Ministry has established a desk to work closely with all the parties interested in the policy, regardless of their nationality. The Ministry expects and encourages all providers of goods and services to utilize the desk as much as possible. If you have any inquiry, comment or suggestion on our policy, please contact the following office of the Ministry.

Name of the Office: International Policy Division,
International Cooperation Bureau

Telephone Number: (02) 750-1410
Fax Number: (02) 750-1439

NAFTA PARITY CUT FROM CONFEREE TAX PACKAGE, BUT MAKES CLINTON LIST

Republican House and Senate conferees this week agreed on a tax-cut package to present to the Clinton Administration which does not include an expansion of trade benefits for Caribbean and Central American countries. But the Administration's proposals for the tax bill still contain a call for including such enhanced trade benefits, which means the fate of the measure will be decided in negotiations between Congress and the Administration which began yesterday (July 24).

Senate conferees insisted on dropping the measure proposed by the House, which would give these countries for one-year trade benefits comparable to those extended under the North American Free Trade Agreement in the textile and apparel sector, congressional sources said.

One important conferee, Senate Finance Committee Chairman William Roth (R-DE), had indicated previously that he does not believe trade provisions should be included on a tax vehicle. Another key participant, Senate Majority Leader Trent Lott (R-MS), has procedural problems with CBI parity and is under pressure from his constituent Fruit of the Loom, a long-standing opponent of the bill.

The Senate declined to negotiate a compromise version of the one-year NAFTA parity bill proposed by the House even though U.S. textile, apparel, yarn, cotton, retail and importer associations this week delivered to the conferees a long-awaited industry-wide compromise on the textile and apparel provisions of the parity bill.

The intra-industry deal would provide immediate duty-free treatment to four types of apparel that meet NAFTA yarn-forward origin rules plus certain yarn and thread requirements. Those four categories are: (1) apparel assembled in the Caribbean Basin Initiative countries from fabric cut in the U.S. and formed in the U.S. from yarn formed in the U.S. (known as the old 807A program); (2) apparel cut and assembled in the region from fabric formed in the U.S. from yarns formed in the U.S. and sewn with thread formed in the U.S. (known as the 809 program); (3) apparel knit-to-shape in the region, such as hosiery, and full-fashion sweaters, that use spun or filament yarn that is formed in the U.S.; and (4) apparel made from fabric knitted in the CBI region that uses spun or filament yarn formed in the U.S.

The agreement also would place a ten-percent annual cap on the growth of the amount of apparel assembled in the CBI countries from fabric that originated from the region rather than from the U.S., an informed industry source said. The cap would limit on a country-specific basis the amount of apparel assembled with regional fabric that could receive the same preferential duties as similar items made in Mexico receive under NAFTA, according to the source. This stipulation is contained on a list of consensus "essential provisions" sent to congressional conferees and reprinted below.

Moreover, the compromise would lend a hand to U.S. wool fabric and apparel makers, the source said. It gives U.S. apparel firms recourse to a standard safeguard measure if CBI apparel made of foreign cotton and man-made fiber under the old 807 program damages or threatens to damage the U.S. industry. This type of safeguard is a clause which U.S. textile and apparel firms have complained they lack under NAFTA vis-a-vis Canada with respect to imports from Canada of wool apparel.

The seven industry associations who struck the last-minute consensus had urged House-Senate conferees in a July 23 letter to incorporate into the final CBI trade package a consensus list of "essential provisions" which are "necessary to ensure our broad support of the overall package." The essential provisions took the form of principles to be included in the House version of the bill "subject to review of the actual legislative language," according to the letter reprinted below.

Signing the letter were the American Apparel Manufacturers Assn., the American Textile Manufacturers Institute, the National Cotton Council, the U.S. Assn. of Importers of Textiles and Apparel, the American Fiber Manufacturers Assn., the American Yarn Spinners Assn. and the National Retail Federation.

If a CBI trade provision were included in the conference report that emerges from the negotiations between the Administration and Congress, it would still face other hurdles. Sen. Ernest Hollings (D-SC) and twelve other senators have threatened to raise a point of order to the conference report as violating the so-called Byrd rule because its budgetary effect is incidental to its policy implications (*Inside U.S. Trade*, July 18, p. 9).

To head off such a challenge, the policy-oriented implications of the bill would likely be toned down, one industry source predicted.

ATMI wants to be able to review the legislative language that would be developed from the joint industry position before a Byrd-rule challenge unfolds. The group could then petition Senators to agree to waive the Byrd rule because the CBI enhancement bill would help their constituents "big time," a textile source said.

The goal of the growth cap on apparel made with regional fabric approved by the industry groups is to ensure that non-U.S. fabric is not able to take undue advantage of the U.S. market under a program that is essentially a unilateral grant to the CBI of duty reductions, an industry source said. ATMI had initially demanded be set at an even smaller level, he said.

Retailers and importers initially did not want any growth cap, he noted. But a source close to importers pointed out that the calculation that now has to be made to establish the base level of regional-fabric apparel trade results in a much higher figure than the method initially proposed by ATMI.

The ten-percent growth allotment would be added annually to a base amount of regional fabric that each participating country would be allowed to export, according to an informed source. The base amount would be calculated under a formula that estimates current exports of regional-fabric apparel by looking at trade levels of the first 12 months of the most recent 14-month period. That calculation is necessary because of the two-month lag time in getting accurate export data, he said.

Once the amount of apparel exports sold by a country into the U.S. under the old 807A program and the old 807 program have been subtracted from the country's total apparel exports during that period, it is assumed that half of the remaining amount of exports consist of those made from regional fabric and that the other half is exports made from foreign fabric. The half attributed to regional-fabric exports is the base amount to which the growth factor can be added to calculate the tariff-rate quota of regional-apparel exports which receive NAFTA-equivalent duty rates. The half attributed to foreign fabric receives no benefits unless it is subject to a tariff-preference level (TPL).

The industry consensus would permit the President, using his discretion and any criteria he chooses, to extend TPLs, which are TRQs for fabric that does not meet NAFTA-type origin rules, to levels equivalent to those granted Mexico in NAFTA. The agreed-on interpretation of this provision is that the President may or may not take into consideration whether a type of fabric is commercially unavailable in the U.S. or the CBI region as a factor in deciding whether to extend TPLs, an industry source said.

ATMI had been pressing for sublimits on the use of TPLs that would have prevented surges in particular categories of wool apparel and other apparel that used foreign fabric, but it settled instead for the use of a standard safeguard against surging imports, an industry source said.

The safeguard would allow the Administration to either restore duties or impose a quota if a surge of a certain broad category of TPL imports occurred and damaged or threatened to damage U.S. firms. Because the CBI trade package is a unilaterally-extended benefits program rather than a reciprocally-negotiated trade pact, the U.S. would not have to provide the CBI nations with compensation if it imposes the safeguard, an industry source noted.

But if the deal goes through, U.S. apparel firms also will be able to assemble wool garments from U.S. wool fabric similar to those made in Canada from foreign fabric and ship them into the U.S. duty-free. This would let them take advantage of the CBI's lower labor costs while avoiding the sizeable U.S. duty on imported wool fabric and to compete with Canadian makers of mid-range wool suits, slacks and sportcoats, sources noted.

The agreement among industry associations does not include certain provisions sought by Fruit of the Loom and Milliken and Co., a source said. They had been seeking, for instance, assurances that no TPL would be extended for blank t-shirts, which would have given Fruit of the Loom a competitive advantage over U.S. rival Sarah Lee due to the different way their operations are structured. "If we had taken their t-shirt demand, they would have come up with another issue," said an industry official.

Other interests whose opposition could still torpedo the CBI package include the textile and apparel labor union UNITE and environmental organizations.

Textile & apparel union allies Reps. John Spratt (D-SC) and F. Allen Boyd (D-FL) also urged the budget reconciliation conferees to drop NAFTA parity from the tax-cut bill earlier this month.

In a July 10 letter to the conferees, they said NAFTA parity should instead be fully debated by the committees of jurisdiction and voted on as a separate bill by Congress. They also argued that the language passed by the House "conceals the true cost of expanding CBI by assuming an unlikely termination of the program after one year."

That assumption, which allowed the cost of the program to be scored at $217 million, "allows the CBI provision to be shoehorned into the budget without accounting for its cost over five or ten years as was required in the budget agreement." The cost of the CBI program "significantly increases" after the first year once the TPLs are implemented, they said.

"It is highly unlikely that Congress would allow this extension of CBI to lapse after one year, and its budget impact over five and ten years is much greater than its scoring in the House," they said. Moreover, approval of the program will cause further job loss in the U.S. textile industry, which has lost 220,000 jobs over the same period since 1994 as the Caribbean share of total U.S. apparel imports has increased from 19 percent to 23 percent of total imports, according to the legislators.

In a subsequent letter to Moynihan, Spratt noted that a Congressional Budget Office study shows that the true five-year cost of NAFTA parity for the CBI would be $1.25 billion.

U.S. Industry Position on CBI Trade Package

July 21, 1997

Members of the Conference Committee
on Budget Reconciliation
211 Dirksen Senate Office Building
Washington, D.C. 20510

This is to apprise you that organizations representing the fiber, textile, apparel, retail and import industries, in a spirit of cooperation and compromise and in order to enact a Caribbean Basin Initiative trade package, are in agreement with the attached principles to be include in CBI trade legislation, subject to review of the actual legislative language. We urge the budget reconciliation conference committee to adopt these provisions which are necessary to ensure our broad support of the overall package.

American Apparel Manufacturers Association
American Textile Manufacturers Institute
National Cotton Council
U.S. Association of Importers of Textiles and Apparel
American Fiber Manufacturers Association
American Yarn Spinners Association
National Retail Federation

Essential Provisions

Rule of Origin: Based on the NAFTA yarn-forward rule of origin with exceptions as in NAFTA plus yarn and thread requirements as noted below.

Product Coverage: Would apply to apparel only, as defined in Chapters 61 and 62 of the Harmonized Tariff Schedule of the U.S., except as noted below.

Duty Free Treatment:

(a) 807A - Apparel would be assembled in the region from fabric cut in the United States and formed in the United States, from yarn formed in the United States.

(b) 809 - Apparel would be cut and assembled in the region from fabric formed in the United States from yarns formed in the United States and sewn with thread formed in the United States.

(c) Knit-to-shape - Apparel that is knit-to-shape in the region (e.g., hosiery, full-fashion sweaters) would use spun or filament yarn that is formed in the United States.

(d) Apparel of Local Knit Fabric - Apparel that is made from fabric knitted in the region would use spun or filament yarn that is formed in the United States.

NAFTA Duties on Regional Textiles and Apparel: NAFTA duties would apply to 1996 levels of U.S. imports by country, plus 10% annual growth, of regional yarns, fabrics, and other non-apparel textile products and apparel, if the NAFTA rule of origin is followed.

Safeguard Provision: Bilateral emergency tariff or quantitative restriction actions can be taken by the U.S. against imports that damage or threaten to damage.

Tariff Preference Levels (TPLs): Tariff Preference Levels permitting the use of non-qualifying fabric would be established and would be equivalent to those granted Mexico in NAFTA: 71.5 million square meters equivalent (SME) annually: 25 million SME for cotton and man-made fiber apparel imported under 9802.00.80; 45 million for all other cotton and mad-made fiber apparel; 1.5 million SME for wool apparel. Ninety-five percent of this total would be allocated among the seven largest exporting countries, the balance going to the remaining countries. Imports under the 25 million SME TPL would be subject to a safeguard action if found to be damaging or threatening damage.

Special Processing: Apparel entered under 9802.00.00 (807 or 807A) that undergoes bleaching, dyeing, stonewashing, oven-baking, enzyme-washing, embroidery and other similar processes would qualify for duty-free treatment.

Transshipment Penalties: Exporters found to be engaging in willful illegal transshipment or willful customs fraud would be denied program benefits for two years.

Customs Entries: Would apply to articles entered or withdrawn from warehouse for consumption on or after January 1, 1998.

In This Issue

...Washington Trade Daily...

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Trade Reports International Group

US Firms Unsuccessful in Japan Construction Market

Getting construction contracts for Japan's Chubu New International Airport has proven to be less successful than US engineering and construction activity for the Kansai International Airport nearly a decade ago (WTD, 7/8/97), the Commerce Department said Friday.

US and Japanese officials concluded two days of talks in Washington on progress under the bilateral public works arrangement signed in 1994.

The potential for US business for big construction projects throughout Japan could reach $100 million this year, Commerce said. Although the value of construction contracts awarded to US firms is expected to be three times higher than last year, the figure falls far short of the success firms experienced in the late 1980's, Commerce noted. US firms won some $300 million in contracts in 1989, much of it for work on Kansai.

Chubu airport will be completed by 2005.

Ex-Im Now Open in Georgia

The US Export-Import Bank and Georgia on Friday signed a special project incentive agreement that will allow the US official export financing agency to start activities in the former Soviet republic.

The first beneficiary of the agreement is Baltimore-based Northrop Grumman Corporation which will build a countrywide air traffic control system. Repayment, which is guaranteed by Ex-Im, will come from overflight fees. Citicorp of New York will make the loan.

The Citicorp loan will be repaid from revenues Georgia receives from international aircraft crossing its air space, Ex-Im said in a statement. The revenues will be deposited in an account with the International Air Transport Association in Switzerland, from which repayments will be made.

Northrop Grumman will provide Georgia will radars, an airspace management system that provides radar and flight data processing, microwave communications, generators and uninterruptable power supplies.

At his first stop during a visit to Washington last week, Georgia President Eduard Shevardnadze explained his country's economic reform efforts to US business executives gathered at the Overseas Private Investment Corporation on Thursday. During the briefing, OPIC acting President announced that the foreign investment promotion agency will likely participate in a $45 million Caucasus Investment Fund that will take equity stakes in Georgian ventures as well as in Armenia and Azerbaijan.

OPIC is active in Georgia now, focusing on the communications and financial services sectors. US investors have requested OPIC backing in Georgia for more than a dozen projects.

May Deficit Up to $10.2 Billion

Slowed exports and rising imports boosted the trade deficit in May to $10.2 billion – a monthly rise of some $1.5 billion (WTD, 6/20/97), the Commerce Department reported on Friday.

Total exports of goods and services in May were of $77.2 billion and imports were $87.5 billion. The revised trade deficit in April was $8.7 billion, Commerce said. May exports were $700

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million less than April exports of $77.9 billion. Imports for the month were $800 million more than April imports of $86.6 billion.

In May, the goods deficit increased $1.5 billion from April to $17 billion, and the services surplus was virtually unchanged at $6.8 billion. Exports of goods decreased to $56.3 billion from $57.2 billion, and imports of goods increased to $73.4 billion from $72.7 billion. Exports of services increased to $20.9 billion from $20.7 billion, and services imports increased to $14.1 billion from $13.9 billion.

A Clearing Horizon

Despite the poor showing, Commerce Secretary William Daley suggested to reporters that strengthening economies in European and other parts of the world – except Japan – will boost US export prospects in the months ahead. The trade deficit in manufactured goods has improved from $114 billion at an annual rate for the first five months of 1996 to $106 billion so far this year. The US services surplus also keeps improving. He noted that falling prices have kept the agriculture trade surplus lower – down 9 percent for the year.

Mr. Daley noted that US exports to both Canada and Mexico are on the upswing. US exports have expanded 12 percent this year to the North American Free Trade Agreement partners, while imports are up only 9 percent. As a result, the US deficit with Canada has fallen from $8.1 billion in the first five months of 1996 to $7.1 billion today. US exports to Mexico – at 21 percent – are outpacing US imports from that country, at 15 percent.

The weakness in Japanese domestic demand has brought a 4 percent drop in US exports this year. Japanese exports to the United States also are down significantly, Mr. Daley noted. The Commerce chief expressed concern with the US trade imbalance with China.

Mr. Daley announced a trip to China in the fall, where he will press for greater market access. He said he had some specific sectors in mind, but did not give details.

The April to May change in exports of goods reflected decreases in capital goods of $300 million – primarily industrial machinery and telecommunications equipment. The monthly change reflected increases in capital goods of $400 million – primarily civilian aircraft.

Services exports increased $200 million from April to May. Small increases occurred in nearly all categories. Services imports increased $100 million from April to May.

China, Japan

The May figures showed surpluses with Australia and Hong Kong of $600 million respectively; South Korea $500 million; Brazil, $400 million; and Egypt and Argentina $300 million each. Deficits were recorded with China of $3.8 billion – up from $3.5 billion in April; Japan, $3.6 billion, down from April's $4.8 billion; Canada, OPEC and Mexico, at $1.7 billion each; Western Europe, $1.3 billion; Taiwan, $1.1 billion; and Singapore, $200 million.

Around the Globe

- Chinese President Jiang Zemin's visit to the United States this year will help Beijing's bid to join the World Trade Organization (WTD, 7/18/97), a senior US official said in an interview published Sunday, reported Agence France-Presse from Tokyo. The Chinese President's scheduled visit to the United States in autumn will become a springboard for China to push its bid for entry to the WTO, Undersecretary of State Stuart Eizenstat told the *Nihon Keizai Shimbun* in Washington Friday. The United States strongly hopes China will gain membership at the Geneva-based institution, as it would help increase US access to Chinese markets and reduce Washington's trade deficit with Beijing, he was quoted as saying. But Mr. Eisenstat noted China needed to make proposals on services, tariffs and nontariff trade barriers in seeking WTO membership.
- China has launched an offensive to block Taiwan's participation in a high-level meeting to be co-sponsored by the World Trade Organization and the United Nations Conference on Trade and Development in Geneva in October, said a report from Taipei by China News. Although Taiwan is not a United Nations member, it is a WTO observer, and under WTO

regulations, Taiwan is entitled to take part in any formal WTO meeting in its capacity as an observer. The planned WTO-UNCTAD conference, initiated at a WTO ministerial-level meeting held in Singapore late last year, is aimed at discussing international aid programs to assist less developed countries (WTD, 5/20/97).

According to the report, diplomatic sources said Wu Jianmin, the Chinese envoy stationed in Geneva, met with WTO Director General Renato Ruggiero and UNCTAD Secretary General Rubens Ricupero last week, asking them to consider problems that might arise from Taiwan's participation in the WTO-UNCTAD conference. Those meetings, according to the report, failed to work out a solution to the issue.

The State Department also confirmed last Wednesday that China has asked the United States not to support Taiwan's attendance at the WTO-UNCTAD conference. State, however, would not give the Clinton Administration's stance on the issue.

- The Boeing Company said Friday it hoped to continue contacts with the European Union, which is threatening to contest its acquisition of McDonnell Douglas, despite the expiration of a deadline earlier in the day (WTD, 7/18/97), according to an Agence France-Presse report from Washington on Friday. "We don't feel that (the deadline) is the end of the process," Boeing spokeswoman Sherry Nebel said. But she declined to say if the company planned to put forward a new proposal on Friday.

- Mexico and the European Union approved a framework agreement for a new trade pact they will begin negotiating next year (WTD, 6/13/97), the Mexican commerce ministry said according to a report from Mexico City by Agence France-Presse on Friday. The cooperation agreement was finalized Thursday and will be initialed July 23, formally concluding the first stage of negotiations to replace the current 1991 trade pact, the ministry said in a statement.

The EU ambassador to Mexico was quoted by Bridge news service as saying trade talks with Mexico will start in the second half of 1998 instead of the beginning of next year, as predicted by the Mexican government. He said he expects complications in reaching a trade accord, especially in the area of agriculture. Last Thursday the EU approved the framework for the talks, and the Mexican Commerce Secretariat said it expected to start trade negotiations in the beginning of 1998.

- The European Union on Friday presented a formal request for consultations with India on its import restrictions following the breakdown of multilateral consultations in the World Trade Organization (WTD, 7/16/97), said a report from Brussels by Xinhua news agency. The request concerns the removal of import restrictions introduced for the purpose of balance of payments. The EU expressed its regret that the balance of payments committee of the WTO had failed to reach a consensus on the issue.

- Russia wants to join the European Union, but it has to sort things out at home first, visiting Russian Prime Minister Victor Chernomyrdin said in Brussels on Friday according to a report by Xinhua news agency. Mr. Chernomyrdin made the remark at a press conference in Brussels after lengthy talks with Jacques Santer, President of the European Commission. He told reporters that what they were doing at the EU headquarters was "directed at one point" – making preparations to join the EU, just as Russian President Boris Yeltsin once said. However, Mr. Chernomyrdin said that the deep restructuring process underway in Russia's economy limited the immediate scope for the Russian authorities to meet requests for commitments, either from the EU or the World Trade Organization.

- Canada's exports and imports dipped slightly in May, Statistics Canada reported on Friday according to a report from Ottawa by Xinhua news agency. Canadian exports, extending the flat trend since February, dipped 0.1 percent to $17.8 billion in May. While its exports in the forestry and auto sectors moved ahead, lower shipments of energy products and industrial goods offset all gains, the federal statistics agency said. Canadian exports to the United States and Europe increased, but declined to Japan and all other trading partners.

In the meantime, Canada's imports slipped 1.6 percent to $16.3 billion after surging 3.8 percent in April. In May, Canadian imports from Japan and the European Union edged up, and its imports from all other trading partners dropped. Canada's trade surplus rebounded to $1.5 billion during the month, moving up from its lowest level in nearly two and a half years, according to the report.

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Congress of the United States
Washington, DC 20515

July 16, 1997

The Honorable William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

As you prepare to request that Congress grant new fast track trade negotiating authority, we are writing to ask your support for future trade agreements that promote improved living standards, a cleaner environment, and the protection of human rights in the U.S. and around the globe.

There is no question that international trade is increasingly important to the American economy. The enhanced integration of the economies in this hemisphere is both inevitable and desirable for the future prosperity of our nation. However, to ensure that the benefits of expanded hemispheric trade are maximized and the harmful effects are minimized, it is imperative that we heed the lessons from existing treaties, particularly as they relate to working families and the environment. After carefully examining the impact of NAFTA, we have concluded that a number of changes must be made to the basic structure and implementation of the Agreement before we can support its expansion.

NAFTA Impact

While there is wide disagreement about the economic impact of NAFTA, it is generally accepted that the treaty has produced both winners and losers. A recent study by a coalition of Latino leaders reveals that NAFTA has produced more job loss than job gains. The study concludes that over 315,000 jobs have been lost or threatened compared to 225,000 jobs gained or supported, for a net labor market impact of 90,000 under NAFTA. Moreover, the Latino Coalition study shows that these losses have been particularly severe in certain regions, industries and segments of the workforce. Latinos, African Americans and women, who are more likely to be employed in low-wage, import-sensitive industries, are particularly vulnerable to dislocation due to trade. For example, El Paso, Texas has lost 6,000 jobs as a result of NAFTA, most of which were concentrated in one industry, contributing to an increase in its unemployment rate from 9 to almost 12 percent.

NAFTA Implementation

Unfortunately, the provisions adopted to mitigate the harmful effects of NAFTA have proven deficient and their implementation grossly negligent. The Latino Coalition study shows that, although Latinos have been disproportionately affected by NAFTA, their experience in the training programs designed to assist NAFTA-dislocated workers has led to neither increased employment prospects nor economic well-being. Latinos displaced by NAFTA are significantly under-served by the NAFTA-TAA program and secondary workers are virtually absent. Furthermore, the typical training offered fails to meet the needs of the most vulnerable displaced Latino workers. In short, the NAFTA-TAA program is just a shadow of the program Latino leaders insisted on as a condition of support for NAFTA.

The NAFTA-TAA program clearly requires improvement in its design and structure; but the principal cause of its failure to adequately serve Latino workers is poor implementation by the Department of Labor. As the Latino Coalition study documents, the program has been plagued by the absence of clear regulations and guidance, inadequate outreach and a severe lack of focus. The implementation of the North American Development Bank's (NADBank) Domestic Window program by the Department of the Treasury has proven to be even more problematic.

The NADBank was created at the insistence of Latino leaders to mitigate the harmful effects of NAFTA on American workers and the environment. It was designed to mobilize financing for environmental infrastructure projects along the U.S.-Mexico Border, and to help create jobs in communities that suffered significant job loss as a result of NAFTA. Yet, after three and a half years, the NADBank's Domestic Window, the component designed to create jobs in communities negatively impacted by NAFTA, has failed to issue a single loan or help to create a single job, despite 315,000 jobs lost or threatened due to NAFTA. This legacy of neglect has occurred despite our consistent prodding, pressure and public criticism of the Domestic Window program.

The NADBank's border environmental infrastructure component has been slowed by limitations in the Bank's Charter and the economic characteristics of the border region. For example, only four loans have been approved to date. The Latino Coalition study reveals that many border communities are too small and too poor to afford any interest rate that is not subsidized. The NADBank's lending rates are market oriented, creating the perception that its rates are too high. Further complicating lending in these communities is the Bank's own borrowing costs, which are based on the taxable, not the tax exempt, market. Despite these problems, the NADBank can actually provide financing at lower rates than U.S. commercial banks, and at much lower rates than banks in Mexico. The economic conditions of these communities have also required extensive technical assistance from the NADBank to produce project proposals that are technically and financially feasible.

A serious lack of coordination between the NADBank and the Border Environment Cooperation Commission (BECC) has also delayed the Bank's lending activity. The Latino Coaliton study found that failure to integrate the NADBank into the initial stages of the BECC's project development process has inhibited both institutions from working efficiently and effectively. This lack of coordination has resulted in the certification of projects by the BECC that did not meet the requirements of the Bank's loan and guaranty policies. Unlike the Domestic Window, however, the NADBank's environmental infrastructure component has diligently worked to overcome these obstacles and we are hopeful that the Bank's lending activity along the border will continue to accelerate.

NAFTA's Structural Limitations

Perhaps the single biggest flaw in NAFTA was its failure to incorporate labor and environmental issues as a chapter in the core agreement, rather than as side agreements. So far, the few complaints that have been brought under the labor side agreement have made little or no impact. Only five cases concerning Mexico have been brought under the labor side agreement, and none of these cases has resulted in a union being recognized or noticeable changes being made in the lives of the workers involved. Clearly, if the rights of workers are to be protected in future trade agreements there must be strong mechanisms of enforcement — a mechanism that is not available under NAFTA.

The environmental side agreement has also failed to provide adequate protection from increased production resulting from NAFTA. The increase in post-NAFTA border economic activity has increased cross-boundary population, industrial and toxic emissions and waste. In addition, the North American Commission for Environmental Cooperation (NACEC), which was designed to ensure enforcement of environmental laws under NAFTA has proven to be ineffective. Of the ten complaints filed not a single one has led to either enforcement orders or economic sanctions against any participating country. Yet, the promised improvements to the health and safety of working families along the border has not occurred. The NAFTA environmental side agreement has simply not been adequate to the task.

Conclusion

We continue to share your goal of expanding trade to Chile and ultimately the rest of Latin America. Delegating fast track trade negotiating authority, however, is a responsibility we take very seriously. Before we can support your request for such authority we must be certain that the economic, safety and health interests of our constituents are not compromised by future trade agreements. As the new Latino Coalition study so vividly illustrates, these interests have not been adequately protected under NAFTA. Therefore, until the flaws in the structure and implementation of NAFTA are addressed, we simply cannot support its extension.

Sincerely,

Esteban E. Torres

ESTEBAN E. TORRES
Member of Congress

SILVESTRE REYES
Member of Congress

Loretta Sanchez

LORETTA SANCHEZ
Member of Congress

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