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American Enterprise Institute for Public Policy Research

AEI

On the Issues

Real Help for the Everglades

By Robert W. Hahn

In her hearings for confirmation as administrator of the Environmental Protection Agency, Carol Browner spoke of the need for a "new era of communication" between environmentalists and business. As one of her first moves, she has a rare opportunity to work to the benefit of the environment and the economy, resolving a dispute with which she is keenly familiar.

As head of the Florida Department of Environmental Regulation, she led the state into an agreement with the U.S. Justice Department aimed at preserving the Everglades, one of the world's great wetlands. The pact between Florida and the Federal Government called for protecting the area by reducing phosphorus runoff from farmland. The phosphorus, thought to harm native plant species, comes from soil, fertilizer, sugar mills, rain, and irrigation water.

Despite a pro-business reputation, the Bush administration, through the Justice Department, imposed a cleanup on Florida, requiring farmers to ensure that their runoff water is cleaner than rain. The $400 million plan envisages building 35,000 acres of experimental filtering marshes which even some government environmental consultants doubt would work as advertised, and handing the bill to farmers. Sugar and vegetable farmers said that the costs would drive out most of the region's agriculture and, by some estimates, put 20,000 people out of work.

Because of the huge costs associated with the plan, the Everglades issue is far from settled: the so-called solution makes no attempt to balance the economy and environment.

Here's a way to break the logjam: adopt a system that allows pollution credits to be traded, an arrangement that was successfully built into the 1990 Clean Air Act to curb acid rain. The idea is to have government set targets for phosphorus reduction but give farmers maximum flexibility in achieving them.

The Justice Department plan made no attempt at a fair distribution of public and private responsibilities for cleaning up the Everglades. Initially, farmers were to pay for everything, no matter how much of the phosphorus problem they actually caused. Then there was talk of an arbitrary deal, dividing costs between agriculture and government.

While any division of environmental responsibility is arbitrary, people should be asked to pay to clean up only the part of the problem they cause. In the Everglades, farmers should be responsible for making sure that the level of phosphorus in water leaving their land is no greater than the rain and irrigation water that comes on in the first place. If government thinks the water should be cleaner than that, then it has an obligation to pay for the cleanup.

The key is to allow farmers to decide how best to reduce the phosphorus. Each farm would receive one credit for each pound of phosphorus it may put into public canals. Farmers whose water is easily cleaned up can sell their credits to others. That way, farmers will have a powerful market incentive to invest in new cleanup technology—a Clinton Administration goal—and costs will come down for everyone.

This market is intended to make pollution

1150 Seventeenth Street, N.W., Washington, D.C. 20036, 202/862 5800

prevention pay. Farmers may well discover they can remove more phosphorus than they now believe is possible, thereby lowering public cleanup costs too. As the history of technological progress has always shown, where there is an incentive, someone finds a way.

Government may end up building filter marshes to meet some of its own cleanup responsibilities. Then the question will be which level of government should pay. As EPA administrator, Ms. Browner can help see to it that the Federal Government faces up to its share of blame for the problems in the Everglades.

Washington has poured money into a vast canal system near the Everglades that supplies water and controls floods, but it has hurt the environment by rerouting natural waterways and disrupting native life.

The Everglades, a national treasure, has received short shrift for too long. Ms. Browner can achieve an early victory if she can gain the support of environmentalists and farmers for a pioneer plan that could be the model for environmental policy for decades to come.

[from the *New York Times*, February 6, 1993]

Robert W. Hahn is resident scholar at the American Enterprise Institute.

1993 - # 7

American Enterprise Institute for Public Policy Research

Book Summary

Tort Reform by Contract

By Paul H. Rubin

This book is a study of ways to reduce the costs of accident liability litigation through tort reform. The author is professor of economics at Emory University. The following summary by AEI President Christopher C. DeMuth is taken from the book's foreword.

Legal liability for accidents has expanded considerably in recent decades as courts have revised traditional legal standards of causation, liability, evidence, and damages in accident lawsuits. Newspaper reports of huge damage awards (often greatly exceeding the actual costs of medical treatment and lost income resulting from an injury) against business firms and providers of medical and other services have become commonplace, as have reports of firms declining to market potentially valuable products and of physicians practicing costly "defensive medicine" in response to liability concerns.

These developments have led to boisterous political debates in Congress and state legislatures—generally pitting producer groups against trial lawyers—over tort reform bills aimed at restoring previous legal standards by statute.

The political debates have been reflected in more austere but equally contentious debates among legal scholars. Some academic students of the liability system argue that a liability explosion is indeed imposing fabulous costs on the American economy—retarding innovation, increasing costs to consumers, and damaging U.S. competitiveness with other nations that maintain more reasonable accident liability regimes. Others assert that recent modifications of legal standards have been, at least for the most part, beneficial responses to modern economic developments (such as increased division of labor and specialization of knowledge, and increased income, wealth, and aversion to risk). Additional arguments are that the popular perception of a liability explosion is exaggerated (focusing, for example, on dramatic jury awards that are later overturned or modified by trial or appellate judges) and that, even if the liability explosion is real and harmful, it is no worse than the cure of legislating—and thereby to some degree politicizing—accident law.

This volume introduces a new argument, of great potential significance, to both the political and the academic debates over accident liability. Paul H. Rubin asks us to set aside questions of appropriate standards of liability (that determine when the costs of an injury will be assessed against another party) and to focus on the types of costs assessed when courts do impose liability. He demonstrates that "high" damages—damages exceeding an injured party's tangible, pecuniary costs of medical care and lost income—are of little value to consumers and not worth their actuarial cost before an accident. Although this demonstration is made theoretically, the basic point may be grasped by observing that individuals generally purchase (that is, are willing to pay the costs of) insurance for their own medical expenses and lost wages in the event of illness or injury but virtually never purchase insurance for pain and suffering, lost companionship, and related intangible losses customarily assessed by courts in accident cases.

Judicial award of "high" damages—which are a cost of production and go into the prices of goods and services that may involve injuries—effectively obliges consumers to pay for a form of insurance that they would rather do without. And therefore—coming finally to Professor Rubin's reform proposal summarized in the title of this volume—courts should allow producers and consumers to specify in advance the extent of damages to be paid in the event of an accident. If courts enforced such contractual specifications, goods and services involving potential injury would generally be sold subject to a limitation of damages (in the event of the seller's liability for an accident) to pecuniary damages for medical care, lost income, and related tangible losses: it is only these sorts of losses that consumers are generally willing to insure against. This result depends on no unrealistic assumptions about producers and consumers negotiating over the terms of individual sales and services. In competitive markets, goods and services sold with damage limitations—at lower prices reflecting the savings in "high" damage payments—would take business from identical goods and services offered without damage limitations.

Such damages limitations are extremely rare today because courts do not enforce them. Once an accident has occurred, the injured party naturally seeks the highest possible damage award, regardless of any preaccident agreement. In response to such pleas, courts have fashioned a number of rationales for refusing to enforce damage-limitation contracts in accident cases—usually in the belief that this refusal protects consumers, a belief Professor Rubin shows is not only mistaken but backward. There are, however, some useful precedents at hand; for example, damage limitations involving losses other than personal injuries, such as the familiar limitation on the side of a box of photographic film, are routinely enforced. Professor Rubin argues forcefully that expanding these precedents to embrace cases of accident liability would benefit producers and consumers alike and, indeed, would be likely to lead to safer products and services and fewer accidents.

Although Professor Rubin describes his proposal as "modest," it would, if adopted by courts or legislatures, go a considerable way toward solving the problems of our accident liability system, whatever their magnitude. The "high," nonpecuniary damages that would generally be excluded under his proposal have come to be a substantial portion of total damages awarded in liability cases and have undoubtedly added a bonanza potential to tort litigation that has compromised its social role of minimizing the incidence and costs of accidents.

One does not need to take sides in either the political or the academic debates over the liability explosion to see the virtue of Professor Rubin's approach. His proposal, moreover, does not depend on legislation and may proceed incrementally through case-by-case development in the courts. For these reasons as well as for its intrinsic interest, Professor Rubin's study merits careful consideration by judges and practicing attorneys as well as those directly engaged in the liability reform debates.

American Enterprise Institute for Public Policy Research

On the Issues

Balance of Power in Bosnia

By Joshua Muravchik

Secretary of State Warren Christopher has stated eloquently America's interests and goals in the conflagration in Bosnia, but the actions he has announced are not commensurate. He was right to reject the Vance-Owen plan, which so clearly favored the aggressors that its authors wanted Washington to force it down the throats of the Bosnian victims. But the imbalance in the Vance-Owen plan was not the result of bias or some kind of diplomatic error; rather it reflected faithfully the realities on the ground. The heavily armed Serbs enjoy a decisive advantage over the Bosnians, who have been kept disarmed by virtue of a misguided UN weapons embargo.

The Vance-Owen calculation was easy to understand. A deal that satisfies the stronger party more than the weaker stands a chance of success. The stronger party has a stake in the deal, and if the weaker party violates the agreement it is more easily put down. Hence, Vance-Owen's proposed force of 20,000 or 40,000 UN peacekeepers might suffice to police compliance by the Bosnians. But it could scarcely suffice to police compliance by the Serbs. We have been told that for outsiders to handle the Serbs in Bosnia would require hundreds of thousands of troops.

The flaw in the Vance-Owen approach is the assumption that the Serbs, unchecked militarily, would rest content with half (or two-thirds) of a loaf. The Serb gunmen of Bosnia are not just out for autonomy, they are out to build a "greater Serbia." Since the ten cantons into which Vance and Owen would divide Bosnia are heterogeneous, the Serbs surely would proceed to ethnically cleanse the ones in which they predominate (as indeed they commenced to do as soon as the design was unveiled). Other groups might do likewise where they predominate. It is hard to imagine that the Serb and Croat provinces of this mutilated state would refrain from trying to link up with Serbia and Croatia or from seizing vulnerable pieces of neighboring cantons.

No wonder Christopher rejected this plan. It would make the Bosnian Muslims, and perhaps other Bosnians too, wards of the American military. And it would put American troops in harm's way on the most awkward terms: under the UN flag and in the role of policemen rather than soldiers.

Christopher's alternative is to seek a settlement different from the one proposed by Vance and Owen, one that satisfies all parties to the point where they will want it to hold. Although Christopher stated his readiness to contribute U.S. troops as peacekeepers, the heart of his approach is to find an agreement that is largely self-enforcing because none of the sides will want to subvert it. That is why he disavows any "American plan" and emphasizes the need for an agreement hammered out by the parties themselves.

Alas, this is a chimera. No such common ground exists. The Muslims and others loyal to the government of Bosnia want to preserve their state, and the Serbs want to dismantle it. Both sides cannot be satisfied.

Vance and Owen split the difference by tilting strongly toward the Serbs because the Serbs hold most of the cards—or rather, the guns. And even this the Bosnian Serb forces have not accepted, although their rejection has been less categorical than that of the Bosnian government.

There is no way to square this circle, except by creating a balance of power in Bosnia. To do this requires arming the Bosnians and bringing Western air power to bear against the guns that rain terror on civilians. Christopher has ruled out these options on the grounds that UN peacekeepers would be endangered. But is the role of peacekeepers to protect themselves? The foreign minister of Bosnia has said that if forced to choose between arms and the peacekeepers, he would forgo the peacekeepers. The only military action Christopher contemplates is to enforce the no-fly zone. This, in itself, would be only a symbolic gesture. If the Bosnians were better armed, however, then denying the Serbs air superiority would take on military significance.

If, and only if, the Bosnians were able to hold their own militarily against the Serbs, then a genuine compromise might be reached. It would rest not on diplomatic artistry nor on UN peacekeepers but on the firmer ground of military stalemate. That is the only kind of agreement imaginable in this situation that would be to some degree self-enforcing. Sure, it sounds risky to supply arms and exert U.S. air power, but that is a prudent, self-restrained alternative to sending U.S. troops to police an unstable agreement. That is what Vance and Owen would have us do, and Christopher, for all his demurrals, is headed down the same path.

[from the *Washington Post*, February 15, 1993]

Joshua Muravchik is resident scholar at the American Enterprise Institute.

1993 - # 8

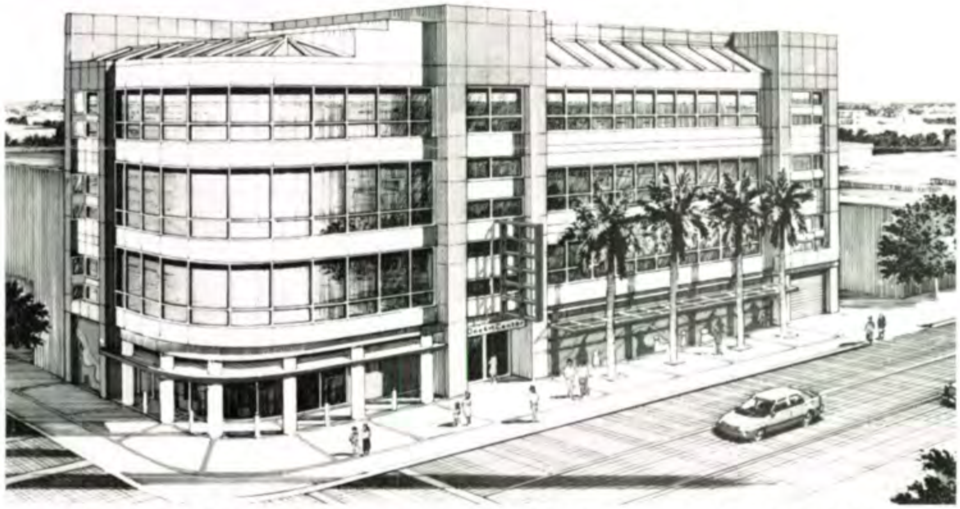
OneArtNews

dedicated to the cultural enrichment of handicapped and underprivileged children, since 1979

Vol.2 No.2 | **A Report on Activities** | **Jan/Feb 1993**

OneArt to Build Arts and Education Children's Community Center

Well, here it is - the **OneArtCenter!** This 12,000 square foot community arts and education center will be the new home of **"Kids Off Streets,"** and will be specifically designed to provide early intervention after-school educational and cultural programming for inner-city and physically challenged children. Dedicated to enhancing children's educational experiences through arts and education, the center will provide workshops and classes in dance, drama, art, music, photography, and film-making. The OneArtCenter will also provide children with access to a library of educational computer programs, books, and multimedia platform personal computers allowing children the opportunity to learn with computers. Special tutoring and counseling will also be provided at the center.



Final rendering of the OneArtCenter designed by Richard Benzaquen Associates Architects to be constructed at 15 NE 39th Street.

"A Matter of Time"

The goal of building the OneArtCenter came about as a result of an increasing need for after-school cultural and educational programs in the inner-city. A study released by the **Carnegie Council on Adolescent Development**, titled: **"A Matter of Time,"** warns that half of America's 20 million children between the ages of 10 and 15 are in danger of not reaching their full potential, because nobody watches them after-school. The study also states that unless they are kept busy - in recreational programs ranging from sports leagues to scouting - more and more of these children will spend their free time doing drugs, joining gangs, committing crimes, and having sex. The most disturbing finding in the Carnegie report was the inaccessibility of programs, particularly for low-income children. It's not that low-income children don't want to be involved in programs, it's simply because of transportation problems and lack of money. OneArt's programs will be provided free of cost to all children, both during the after-school hours and during the day time hours through it's outreach and field-trip programs in conjunction with Dade County Public Schools. OneArt will break ground on August 16th, so mark your calendars and be sure to attend this special occasion.

Metro and Miami Police Join to Help Keep "Kids Off Streets"

The Metro-Dade Police and The City of Miami Police Departments have joined OneArt in an effort to provide after-school and day time activities for "at-risk" children through the "Kids Off Streets" Program. The program which provides dance and art classes/workshops at OneArt and two Dade County Public Schools is in full swing with classes filled to over capacity on Mondays, Tuesdays, Wednesdays, Fridays, and Saturdays. Participants are presently rehearsing dance routines and mounting their art works in frames for an exhibition and dance presentation at OneArt on Saturday, April 24th at 1:00 p.m. Over 30 participants of "Kids Off Streets" who have shown exceptional improvement in their behavior and school grades are also gearing up for a field trip to the Blockbuster I-Max Film Theater and Museum of Discovery and Science in Fort Lauderdale on Sunday, March 28th. We would also like to take this opportunity to thank The Metro-Dade Police and The City of Miami Police Departments for making "Kids Off Streets" possible and for enriching the lives of over 130 participants of the program.

OneArt is located in the Miami Design District in Plaza 2 at 180 NE 39 Street, Studio 209/10
For further information on classes, rehearsals or upcoming events call (305) 576-7447 or 279-5373
Mailing Address: OneArt, Inc., P.O. Box 558555 - Miami, Florida 33255-8555

A Special Thanks...

We would like to take this opportunity to thank **Richard Benzaquen, President of Richard Benzaquen Associates, Inc.**, for his generous contribution of $30,000.00 in architectural fees. His understanding and interest in the needs of children brings to Dade County one of the finest and most innovative facilities in the country. Thank you again!

Rejoining OneArt...

We would also like to take this opportunity to thank the following sponsors for rejoining OneArt's efforts in the South Florida community. Thank you all once again for your generous support of our programs.

Dr. M. Lee Pearce Foundation, Inc.
The Albert E. & Birdie W. Einstein Fund, Inc.
Harold & Patricia Toppel Foundation, Inc.
Terrabank

"Kids Off Streets" Program at Shadowlawn Elementary & OneArt

OneArt is Sponsored by...

The City of Miami Department of Community Development, The Metro-Dade Police Department, The City of Miami Police Department, The Florida Department of State, Division of Cultural Affairs through The Florida Arts Council, The Metro-Dade County Cultural Affairs Council and The Metro-Dade County Board of County Commissioners, Dade County Public Schools, American Express Philanthropic Program, NationsBank,

&

The Dr. M. Lee Pearce Foundation, Inc.
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Voluntarism Review and Reporter

An Independent Voice Supporting the Field of Voluntarism

Volume 8 | **ISSN 1051-5429** | **February 1993** | **Issue Number 1**

Self Serving

Self serving, as a concept, was introduced during one of the general sessions at the annual meeting of ARNOVA held at Yale University in October, 1992. What better place to use the term as a descriptive and analytical tool than at a meeting on nonprofits and voluntary participation in collective life.

But would it be forever neglected by any who indeed are self serving? How pervasive is it? How can it be identified wherever it is? It may not at all be just the "bad" people who do it. That does not make it more acceptable. The author of **Six Years with God**, reviewed in this issue (abstract 43), reports that Ralph Nader supported Reverend Jim Jones and denied the validity of opposition to the minister in the Peoples Temple. The popular consumer advocate was not alone. Several others who heard the story conveniently saw the situation as one of conflict between sides and either sided with the preacher or maintained some contact from a safe distance.

Professionals do a lot of self serving, and at least some of it is masked behind "shepherding one's own career." There is enough self serving among professionals that professionals who have not yet formed what Roger Lohmann calls a *common* had better be watched carefully. Of course, a *common* may become a status and power coalition that shuts people out, and then self serving can flourish.

The program committee of the American Sociological Association once asked for suggestions for making the annual meetings more interesting. I sent in a proposal designed to interfere with self serving as usual. A

REVIEW

What One Citizen Requires for Him to Support a National Service Program: An Essay Review of
Gratitude: Reflections on What We Owe to Our Country
by William F. Buckley, Jr., New York: Random House, 1990.

Those who would read the author rather than merely read the book should realize that William F. Buckley, Jr. is a presence, as is Leo Buscaglia (See **Voluntarism Review and Reporter**, Volume 3, Number 1, February, 1988, pp. 9-10). Of course, their messages are different and the interaction styles contrast so sharply that any comparison of these two authors may seem ridiculous. Yet both speak to loyal followers and both arouse unexplained hostility in others: Buckley as something of a remnant of the British monarchy in colonial America and Buscaglia as a love professor operating publicly out of the academy. Readers who become acquainted with their authors could not expect them to care much about each other.

While this review is not primarily about the author, there is much that cannot be ignored. Buckley is attempting to perfect the political conservatives, a monumental task even for this former editor of the **National Review**, a magazine he founded in 1955. They keep doing the right things for the wrong reasons or they do the wrong things for the ideologically exalted reasons. In either case they need correcting while being continually reassured that the political liberals are a threat to everyone. For purposes of this review the conservative/liberal framework can be disregarded, because those ideologies are not directly relevant, despite the author's attempt to make a national service program more acceptable to a segment of the national society (the political conservatives).

Buckley speaks for "constitutionally well-mannered Americans, who are brought up in the tradition of freedom and equality" (p. 61). Incidentally, freedom for this segment in the society is freedom from the controls of government, but they are not libertarians who insist upon freedom for everyone. Wait until you see what government controls Buckley wants in his incentive plan to make the national service program acceptable. Those who resist most strongly may feel that they are having "their eyes gouged out" (a phrase used by a poor Texas-Mexico border area farmer reacting to U.S. government regulations).

The author thinks and writes on behalf of a ruling, or at least a prominant, elite. His essay is far different from that of Harry C. Boyte, also concerned with community service, (See **Voluntarism Review and Reporter**, Volume 6, Number 2, August, 1991, pp. 1-2) who attempts to rescue cynical youth convinced they have been bequeathed a "colossal mess." What Buckley has tried to do to them, or for them, is not likely to be reassuring. Of course, the program is to be voluntary but with positive and negative sanctions — the incentives.

National survey material has indicated that the youth have not been the most supportive segment of the national population and yet they are the most directly affected by the program. Perhaps the country is not ready to adopt such a national service program until the youth are as committed to it as any other part of the population. (Moskos, who is part

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WASHINGTON REPORT

Dedicated to exposing the Washington standards of greed, corruption, self-indulgence and the Great American Dream of profit at all cost!

A MONTHLY WASHINGTON POLITICAL NEWSLETTER

APRIL 1993 Subscription $25.00 per year VOL. 14 NO. 4

ONE MORE TIME

EUROPEAN sources tell us that strange things are going on in RUSSIA. They say the April session of the RUSSIAN CONGRESS OF PEOPLES DEPUTIES could try to replace President BORIS YELTSIN with former SOVIET President MIKHAIL GORBACHEV.

BRITISH MORALE

A recent Gallup poll in ENGLAND found morale plummeting with 49 % of the people wanting to leave the country and 39 % said they could not find one thing about their country that gave them pride. The poll revealed a loss in confidence in all BRITISH institutions - the monarchy, the media, the church, the legal system and Parliament.

AIDS TESTING

If you plan to visit GUANGDONG province in CHINA be ready to have immigration officials stick you with a needle and take some blood. They random test visitors for AIDS. As a result, they have had a 30 % drop in visitors from HONG KONG. A number of other countries are thinking about similar random testing.

CAN WE LEARN?

If the "PEOPLE" want change in Washington, DC, we could learn from ITALY. Like ours, the ITALIAN civil servants have become less civil. The ITALIAN Treasury Minister decided to change that. He has issued orders to make civil servants helpful to the public. He ordered them to answer the telephone with their name and the office where they work. Office hours should suit the public and most of all, civil servants should learn to be "HELPFUL" to the people.

BEAU VALLEY

Fourteen years ago BEAU BRUMMEL, a former rock'n'roll singer, opened BEAU VALLEY, a family style nudist colony at WARMBATHS, 100 miles north of JOHANNESBURG, SOUTH AFRICA. It was all WHITE. Recently he decided to become a part of the "NEW" SOUTH AFRICA and opened BEAU VALLEY to BLACKS. The WHITES charge they paid fees for a "NATURISM FOR FAMILIES" and it's now a "GAY RETREAT". The police seized the resorts records.

ANGRY HIPPOPOTAMUS

LAURALEE PETERS, U. S. Ambassador to SIERRA LEONE, was on a canoe trip up the Great Scarcies River in the Outamba-Kalimu National Park when they came too close to a baby hippo. Mama hippopotamus headed for her canoe and her party had to paddle briskly in order to escape.

THE LATEST WRINKLE

High-definition television brings out skin wrinkles that current make-up can't hide. TOKYO based POLA COSMETICS is bringing out a new powder that hides skin blimishes from the camera. It's based on ball shaped powder particles that erase the shadows caused by skin wrinkles.

KEYS FOR INMATES

NEW ZEALAND has adopted a new building code requiring access to exits in case of fire. When the police applied for a bulding permit for a new jail they found that to comply with the new code they would have to give each prisoner the key to their cell so they would have immediate access to exits in case of a fire. The Justice Ministry is taking a new look at the code.

P. P. WILLIE

FOR

ASSISTANT "KING" OR "QUEEN"

P.O. Box - 10309
St. Petersburg, FL 33733

POSITION PAPER NO. 6: LOBBYIST CONTROL IN THE "NEW WORLD ORDER"

In his efforts, legal, illegal, open and covert, to become the "ASSISTANT KING", or "QUEEN" (he can adjust), of this once great nation, when the "NEW WORLD ORDER" arrives, P. P. WILLIE, a four (4) legged ALL AMERICAN RED WHITE AND BLUE, FLAG WAVING, FOOT STOMPING, BIBLE QUOTING, SMILING, "WONDER DOG", is speaking out on the issues of the day. WILLIE wants "CHANGE", lots and lots of "CHANGE" - change his food and water dish, small change - nickels, dimes, quarters and silver dollars (no pennies, PLEASE).

P. P. WILLIE loves LOBBYIST, really. He had never bitten one and rarely even barked at one, especially when they have given him milkbones or other goodies. Like most of our "LEADERS", WILLIE has grown to feel that lobbyist are sent from heaven to reward our public servants for being good to the special interests of our wealthy and important people, companies, groups (large and small) as well as any and all fruitcakes who can pass the hat and raise big bucks for a cause, real or imaginary, good or bad.

How else can our grossly under paid, under appreciated and basically dishonest public servants, elected, appointed and otherwise sneaky public servant's drink the best booze, fly first class, covert with lovely "LADIES" of the evening and buy annunites to take care of their old age if lobbyists didn't make regular contributions to them in exchange for using their position to abuse the taxpayers to favor the lobbyist with the mostest and the cause he/she/it represents?

This low, sneaky, underhanded, dishonest, depraving acceptance of lobbyist and the goodies they disperse requires the attention of a group that is beneath contempt, dedicated to promoting pure, raw greed and the highest forms of dishonesty - namely, P. P. WILLIE's one and only "KEEPERS OF THE BODY". The "KEEPERS OF THE BODY" are outstandingly corrupt, overwhemly untalented, underhanded and overhanded beyond belief, greedy to the ultimate power, tantalizingly devious and representative of life in this once great nation at its very worst.

P. P. WILLIE called his "KEEPERS OF THE BODY" to a session at a expensive luxury resort where they can have every fantasy and lustful desire fulfilled at the expense of lobbyists to propose a plan to hang all lobbyist to the highest trees in the land. The "KEEPERS OF THE BODY" prolonged this orgy until the lobbyist were without funds and then presented their plan to P. P. WILLIE.

The UNITED STATES OF AMERICA is above all else a national of laws and individual freedom. We must keep this in mind in trying to rid our society of vermin and other creatures beneath contempt. We must worship our CONSTITUTION and follow it as the Bible of FREEDOM. Even the lowest forms of humanity in this once great nation have CONSTITUTIONAL RIGHTS.

Even LOBBYIST have rights. Of course, they are mostly wrong but even the wrong have rights. Some have more lefts than rights but the CONSTITUTION protects all citizens. So, what do we do about LOBBYIST in the "NEW WORLD ORDER"? We read them their rights and then hang them. No, just kidding. P. P. WILLIE is a great kidder.

P. P. WILLIE does not believe that all LOBBYISTS are evil and that HELL and damnation is too good for them. Some, while it may be only a few, are no doubt border line human. Still, to protect the taxpayers P. P. WILLIE proposes new guidelines for LOBBYISTS.

First of all, no LAWYER should ever, under any condition, be allowed to be a LOBBYIST. That includes even those creatures who flunked out of law school or for any reason didn't make it. To be fair, no other "PROFESSIONAL" people should be LOBBYISTS. This includes DOCTORS, ACCOUNTANTS and ENGINEERS. Business executives, even of small companies, should be bared.

All LOBBYISTS, state and national, must register. No LOBBYIST should ever be paid more than the minimum wage at the time. They should not be allowed to travel first class or stay at first class hotels or motels. They should be denied any and all benefits, such as health care, food stamps, Social Security, interest deductions, etc.

LOBBYISTS should have a degree from a state college (no major university or private college should have a major in "LOBBYING") and pass a national LOBBYING examination to be administered by a panel of Deans of Divinity Schools. Once they pass this four (4) year course, they should be required to serve as an apprentice to a licensed LOBBYIST for two (2) years with satisfactory conduct.

To remain unbiased, all LOBBYISTS should practice celibacy, like Catholic priests. They should not be allowed to appear before any elected legislative body or even enter any city, county, state or federal building, including such buildings that are leased by such government bodies. They should not be allowed to drive or own automobiles, airplanes or boats. Bicycles are allowed.

Once people become LOBBYISTS they should be required to study and become an expert on the cause they LOBBY for, or against. They should be tested by a peer group representing both sides, for and against, the cause they LOBBY for or against and be acceptable by both. This approval subject to review at least once a year but at any time a formal complaint is filed against them by anyone.

LOBBYISTS should be prohibited from giving, loaning, or imparting any gifts or services to anyone who works for the government, any branch at any location. If found guilty of any violation of the LOBBYING rules or regulations proposed by P. P. WILLIE, such LOBBYISTS would be stripped of all assets they may own or control and deported, immediately, after a fair trial under our CONSTITUTION, to any third world country that will accept them as indentured servants for the remainder of their lives, or longer, as the case may be. P. P. WILLIE has spoken, harken unto him.

tech-nology POLICY

More Government or Less?

4th Annual
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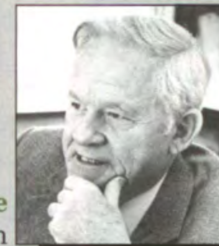
Washington, D.C.

"It is futile for the federal government to pour vast sums into high-tech enterprises if, at the same time, it erects statutory and administrative roadblocks to the application of new technologies."

—Murray L. Weidenbaum

Murray L. Weidenbaum
Washington University



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Briefing

NAM

Volume XVIII
Number 8
March 29, 1993

A Weekly Summary
of Legislative and
Regulatory Developments

National Association
of Manufacturers
Washington, D.C.

NAM Continues Efforts To Improve Economic Plan

The NAM last week continued to press for improvements in the Administration's economic plan. Congressional consideration of the "economic stimulus" and budget resolution components of the President's plan shifted last week to the Senate, where the NAM position met with mixed success. Consideration of the all-important FY 1994 budget reconciliation bill, however, likely won't be completed until at least August, providing additional opportunities for industry to attempt to improve the plan.

In a 3/22 letter, NAM President Jerry Jasinowski urged senators to "delete or substantially" reduce the $31 billion short-term stimulus package, which will add to the deficit without encouraging long-term economic growth or sustained private sector job creation. Next week, a number of the association's member company CEOs will meet with reporters to publicize the need to improve the Administration's overall plan.

Last week, the Senate began debate on the economic stimulus bill, H.R. 1335, which is technically an FY 1993 supplemental appropriations bill. The Administration urged that no changes be made in its stimulus proposal, and Appropriations Committee Chairman Robert Byrd (D-WV) used procedural tactics to nullify key amendments.

Hence, Sen. Herb Kohl (D-WI) was effectively blocked from offering an amendment that would have required spending cuts in other federal programs to finance the new spending. Sens. David Boren (D-OK) and John Breaux (D-LA) were also denied the opportunity to suspend much of the new deficit spending until proposed spending cuts and tax changes are enacted later this year. As *Briefing* went to press, Sens. Boren and Breaux were leading a filibuster on the measure.

Earlier, the House passed a separate version of H.R. 1335, but only after the House Rules Committee denied Rep. Charles Stenholm (D-TX-17), chairman of the Conservative Democratic Forum, the right to offer a spending cut amendment with language identical to that offered by Sen. Kohl in the Senate.

If the Senate ultimately passes a version of H.R. 1335 that is different from the House measure, a conference committee will be needed.

In related news, both chambers have now passed differing versions of the FY 1994 budget resolution, a non-binding spending blueprint which sets aggregate revenue and spending totals. A conference committee will iron out differences this week. Congress must also pass legislation to increase the federal debt limit beyond the current $4.145 trillion by 4/7, according to Treasury Secretary Lloyd Bentsen.

The NAM will continue its dialogue with Clinton Administration officials and key lawmakers on the need to improve the Administration economic plan. The association thanks those NAM members who responded to last week's Briefing *request to contact policymakers on this topic, and encourages them to continue to do so.*

Photo: Bruce Reedy

Labor Secretary Robert Reich outlines the challenges facing the Administration and industry at an NAM Issue Briefing Breakfast. See article, page two.

NAM Board Survey Shows Opposition To Administration Economic Plan

The NAM's position on the economic plan was bolstered by a recent survey of the association's Board of Directors. The survey—based on 90 responses— dis-

Inside

Budget Impact Statement

March 19, 1993

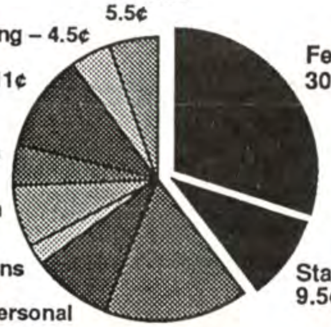
Typical American Family Already Sacrificing Under Heavy Tax Burden

By Paul G. Merski

President Clinton has abandoned his call for middle-class tax relief and has instead proposed a host of tax hikes that will significantly boost the tax burden of working middle-income families. While the total amount of middle-class tax "sacrifice" is still being debated, one thing is certain, the typical family is already losing ground to inflation and the rising toll of taxes at all levels of government.

❑ Federal, state, and local taxes already represent the largest item in the family's 1992 budget (See chart). The American family will spend 39.7 percent of its 1992 budget on taxes, more than on food, clothing, and housing combined. After paying its tax burden and purchasing these necessities, the family has only 29 cents left on a dollar to pay for such items as health care, transportation, insurance, and, of course, to put into savings. And this burden is getting heavier. Accelerating taxes, combined with weak income growth and inflation, has left the typical American family $168 dollars poorer in 1992 than it was in 1991. A household with two full-time earners and two dependent children has lost purchasing power every year since 1989, for a four-year total loss of $1,395.

Taxes Dominate Family Budget



1992	Dollar Amount	Percent of Income
Family Income	53,984	100.0%
Total Taxes	21,445	39.7
Federal	16,163	29.9
State and Local	5,282	9.8
After-tax Income	32,539	60.3
Total Personal Consumption Expenditures	32,539	60.3
Housing and Household Expenses	8,795	16.3
Food and Tobacco	5,935	11.0
Health and Personal Care	4,750	8.8
Transportation	3,940	7.3
Recreation	2,482	4.6
Clothing	2,428	4.5
Insurance and Pensions	1,241	2.3
All Other	2,968	5.5

This example uses a median two-earner family earning $53,984 per year with two dependent children.
Source: Tax Foundation.

Citizens for a Sound Economy
1250 H Street, N.W. Suite 700; Washington, D.C. 20005; 202•783•3870

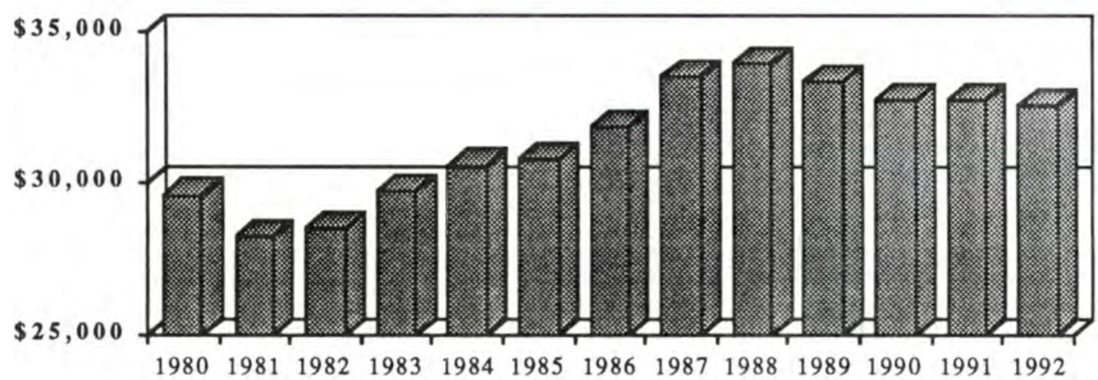
❑ The two-earner family making $33,492 back in 1982 earned an estimated $53,984 by 1992. However, when federal, state and local taxes, and inflation are taken into account, the $20,492 nominal increase in this family's income between 1982 and 1992 resulted in only a $4,062 net gain. Stated simply, after a decade of work, more than 80 percent of the family's income growth has been eroded by taxes and inflation.

❑ The Social Security tax rate has increased six times since 1981, so that it now takes 7.65 percent of the family's earnings, up from 6.1 percent in 1980. The level of earnings to which this tax is applied also has been ratcheted up under a scheme of automatic adjustments. The bite that Social Security takes out of the typical family's income reached a record $4,130 in 1992.

❑ Middle-income families also have been hit with of host of less obvious tax increases, such as the employer's share of Social Security taxes; excise taxes on gasoline, liquor, tobacco, and telephone use; business taxes, and miscellaneous levies. These taxes make up nearly 40 percent of federal revenues and garner a significant portion of the family's earnings as they work, spend and invest. These indirect taxes can mean lower wages and salaries for family workers, higher prices for the products and services they consume, and reduced returns on the family's savings and investments. The median family paid an estimated $5,832 in total indirect federal taxes in 1992, or 10.8 percent of the family's 1992 income.

❑ The increased growth rate of taxes levied by state and local governments is another significant reason for the decline in the family's after-tax income. In the past two years alone, states collectively legislated $21.5 billion in new taxes. Since 1990, states have added an additional $42 billion in new tax increases. Total state and local taxes that claimed 8.9 percent of the typical family's income in 1982 now commandeer 9.8 percent of their earnings, or $5,282.

Real Family Income After Taxes



Income after taxes in 1992 dollars. Source: Tax Foundation

❑ President Clinton's proposed $293 billion in new taxes and user fees over the next five years will only make things worse for the typical family. Moreover, this tax approach is likely to be only the beginning, with the Clinton administration already hinting of another $30 to $90 billion in new taxes to cover increased health care spending. These tax increase pressures, combined with inflation and slower income growth, do not bode well for the American family's purchasing power in the coming years.

Paul G. Merski is an economist with Citizens for a Sound Economy.

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NEC GREEN DRAFT FOR NAFTA SHUNS SUPRANATIONAL SANCTIONS, BACKS BAUCUS PLAN

A draft options paper developed by a National Economic Council working group recommends against allowing any trilateral environmental commission set up by the U.S., Mexico and Canada in conjunction with the North American Free Trade Agreement to have the power to penalize a NAFTA country with trade sanctions for failing to enforce its own environmental laws.

"According the [North American Commission on the Environment] the further ability to act as a supranational enforcement authority (as opposed to leaving other enforcement action to national authorities) would run up against serious Constitutional concerns in the United States," warns the draft paper, a copy of which is reprinted below.

continued on page 10

NEW RULES COULD DENY EXPORT SUPPORT TO FOREIGN-OWNED U.S. COMPANIES

In a little noticed move in the waning days of the Bush Administration, the Commerce and State Depts. established new export promotion guidelines for U.S. embassies abroad that could deny government services to some foreign-owned U.S.-based firms. The Jan. 12 guidelines, which were cabled to the embassies, say that even if a bid by a foreign-owned U.S. firm meets all the other criteria for gaining government support, the government may refuse to provide assistance if the company's home country denies "equivalent" access to the same products from U.S. companies.

This so-called "closed home market" provision marks a significant departure from the previous guidelines, which generally said that the U.S. government would support any bid from a U.S.-incorporated

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KANTOR SIGNALS CHANGES IN URUGUAY ROUND DRAFT AS GATT CONSULTATIONS RESUME

U.S. Trade Representative Mickey Kantor this week publicly insisted that the Clinton Administration will seek major changes in a draft Uruguay Round agreement in the area of antidumping, subsidies, intellectual property, dispute resolution, and the creation of a Multilateral Trade Organization. The USTR also told the Semiconductor Industry Assn. on March 3 that the Administration is still dissatisfied with the market access negotiations in agriculture, goods and services.

Kantor said that President Clinton is "fully committed" to successfully concluding the Uruguay Round negotiations. But decisions on the timing of the request for a renewal of fast-track negotiating authority and on the length of the extension still await "extensive consultations" with Congress and the private sector, he said.

continued on page 16

CHINA'S BID TO JOIN GATT STALLS FOLLOWING NEGOTIATIONS WITH U.S. ON PROTOCOL

The Chinese government has backed away from previous commitments to change its trade practices that are needed if China hopes to join the General Agreement on Tariffs & Trade, a senior U.S. trade official said this week, raising the possibility that it could be many years before the country succeeds in becoming a member of the world trade body. Assistant U.S. Trade Representative for GATT Affairs Douglas Newkirk said this week following two days of negotiations in Beijing that China has refused to accept five key obligations necessary to become a GATT member.

The biggest obstacle, Newkirk told reporters in Beijing March 2, is China's refusal to accept a selective safeguard mechanism that would allow other countries to protect themselves against an unexpected flood of its goods, according to a transcript of his remarks. The safeguard would be

Confidential Draft Text of Administration Paper on NAFTA Environment Side Deal, see page 12

eliminated when China becomes a full market economy, but the Chinese government has refused to accept the principle of a safeguard that applies only to China and not to other countries, Newkirk said.

The talks represented the first time that U.S. negotiators had travelled to Beijing to discuss China's application to join the GATT since the negotiations were broken off in 1989 following the Tiananmen Square massacre. The U.S. has played the leading role in negotiating the terms of China's accession to the GATT. But Newkirk said that China this week abandoned commitments that had already been made during negotiations on the protocol of accession prior to Tiananmen. China had previously accepted in principle the concept of the special safeguard, and had also made a commitment to move to a full market price economy, but rejected both positions in negotiations this week, he said.

China insisted in this week's negotiations, Newkirk said, that it had made major reforms in its economy since 1989, and that the demands made by the U.S. in 1989 were no longer appropriate. The U.S. position, he said, remains unchanged, and China's willingness to meet the demands will determine how quickly it accedes to the GATT. "The accession process is driven by the acceding country," he said. "If they want to agree to very tough obligations, we can do it very quickly. But if they want to draw the process out by talking about the virtues of a socialist market economy, it is going to take a long time."

China had aimed at completing the negotiations needed to join the GATT by the spring of this year, informed sources said.

Newkirk also insisted that China's GATT accession is in no way linked to the question of whether the U.S. will continue to provide most-favored nation status for Chinese goods, an issue that will arise again this year when Congress votes on the controversial MFN issue. Newkirk said that even if China becomes a GATT member, the U.S. could still deny it MFN treatment. Under the Jackson-Vanik legislation still in force for China, the U.S. would have to enter a reservation saying that the U.S. would not apply the GATT to China, he said.

Newkirk spelled out five conditions that China needs to meet if it hopes to become a GATT member. First, he said, China must institute "a single national trade policy" so that entry of goods into any port in China is treated identically. Secondly, China has to offer "full transparency" in its trade system, so that all quotas and licensing requirements are fully known to firms that want to export to China. Newkirk said that China is still refusing to put these requirements in writing, and is still insisting that certain rules about exporting and the issuing of licenses must remain secret. Third, he said, China has to move to eliminate non-tariff barriers. Fourth, China has to commit itself to establishing a "full market price economy" which would make its system compatible with other GATT provisions in such areas as antidumping, subsidies, and customs valuation. And finally it has to accept the special safeguard against dumping and subsidization until it completes the transition from a "socialist market economy" to a full market economy.

The selective safeguard would mean that, during China's transition to a market economy, a country that experienced a surge in imports from China would be able to take steps to reduce them. Under regular GATT safeguards, increased tariffs or other measures to reduce imports must be applied to all countries on a MFN basis, and cannot be targeted at one trading partner. While special safeguards have been negotiated for other non-market GATT members such as Hungary, Newkirk said these have not worked very well, and a more effective system is needed for China, which has a far greater capacity for disrupting world markets than other countries.

Newkirk said that the safeguard is particularly important because China wants to join the GATT as a developing country, which will allow it to "evade many of the obligations" the U.S. would like to impose on China as the price for GATT membership.

A meeting of the GATT working group in China's bid for membership is scheduled for March 15 in Geneva, where the results of this week's bilateral talks with the U.S. will be assessed.

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RICE MILLERS URGE ADMINISTRATION TO OPEN JAPANESE RICE MARKET BILATERALLY

U.S. rice growers this week pressed U.S. Trade Representative Mickey Kantor to open the Japanese rice market through bilateral negotiations rather than waiting for an Uruguay Round agreement. However, the Administration continues to look for a solution within the talks in the General Agreement on Tariffs & Trade, Secretary of Agriculture Mike Espy said last week.

Representative of the Rice Millers Assn. met with Kantor March 2 to find out if the Clinton Administration would be sympathetic to launching a Section 301 case against Japan over its ban on rice imports, an informed source said. The Rice Millers have had two previous requests for Section 301 cases against Japan rejected by the U.S. government, and withdrew another when the Bush Administration assured them that the Japanese rice import ban would be eliminated as part of an eventual Uruguay Round Agreement. Having a third petition rejected would not accomplish anything, the source said.

The U.S. rice industry is also very concerned about the market in the European Community, which they feel is closed to fair competition because of government subsidies to long-grain rice growers, an industry source said. He said prior to the meeting that he expected this problem, as well as those of the Korean and Taiwanese markets, would be raised in the meeting with Kantor.

But Espy, speaking to a meeting of the Rice Millers and the Rice Growers Assn. of California Feb. 26, said that a 301 case would be "extreme" at this time. He stressed, however, the importance of lifting the Japanese ban, and said the administration would fight to do so. "Our allies misunderstand the value of an open trading system," Espy said, referring to Korea as well as to Japan.

"Whether it's by bilateral means or within the context of the GATT, it doesn't matter to me, as long as we can move toward that goal," Espy added. "Certainly some one-on-one discussions might become necessary," but he emphasized that the Administration would negotiate within GATT as its first option.

NEC DRAFT SHOWS ADMINISTRATION WANTS NAFTA SIDE DEALS FINISHED BY MID-YEAR

The Clinton Administration assumes it must finish negotiating side accords to the North American Free Trade Agreement on import surges and environmental and labor standards by June 1 if those pacts are to be passed concurrently with the legislation implementing the NAFTA, according to a draft working document prepared for the National Economic Council.

"The proposed timing of submission of implementing legislation to Congress and the up-or-down vote on that legislation is such that if side agreement(s) are to be concluded concurrently, their negotiation must be concluded by June 1, 1993," says a three-page outline of "assumptions/considerations" used by an NEC environmental working group to develop a draft options paper during the third week of February.

Such a timetable for the side pacts appears to confirm that the Administration has committed to Mexico and Canada to gain passage of NAFTA by the Jan. 1, 1994 target date for implementation written into the version signed by President Bush last December. Three senators who oppose NAFTA as currently drafted are asking their Senate colleagues this week to join them in urging President Clinton not to be bound by the Jan. 1, 1994 target date so that they can consult more fully with Congress on the NAFTA side accords, whose negotiation begins March 17-18 in Washington, D.C. (see separate article).

Under the fast-track authority that NAFTA is expected to enjoy, legislators in the House of Representatives and the U.S. Senate will have no more than 90 legislative days to deliberate over the NAFTA implementing legislation once it is submitted to Congress. In past instances where fast-track procedures were used to approve trade pacts, the single vote on the unamendable bill was taken by each chamber very quickly after an understanding was reached between the executive branch and the congressional leadership on the content of the implementing legislation. But given the controversial nature of NAFTA, it is unclear how many of those 90 legislative days would be needed if the side pacts fail to allay congressional fears about environmental impact and potential job loss.

The June 1 assumption was one of 16 points taken into consideration by an NEC subgroup working on options for the U.S. negotiating position on the environmental side pact, according to the three-page attachment reprinted below.

Another key point made in the document is that the contents of the parallel agreement will influence the form in which it would be presented to Congress. It could end up as an executive agreement, a treaty requiring ratification by the Senate only, or as an accord with implementing legislation that could be "rolled into NAFTA implementing legislation," depending on exactly what is negotiated, the document points out.

The draft assumptions were prepared under the direction of Assistant Secretary of State for Oceans & International Environmental & Scientific Affairs Curtis Bohlen, sources said. *By Scott Otteman*

APAA CALLS FOR JAPAN POLICY TO INCLUDE USE OF TRADE LAW TO BATTLE KEIRETSU

The Clinton Administration should use U.S. trade law provisions, such as section 301, U.S. antidumping law and the Fair Trade in Auto Parts Act as part of a results-oriented approach to open Japan's market to U.S. auto parts exports and curb alleged Japanese dumping of parts in the U.S., according to a group of auto parts companies.

"U.S. trade, trust and tax policies should be marshalled to enforce our pro-competition system's rules and stamp out Japan's predatory trust-style practices," the Auto Parts & Accessories Association said in a Feb. 17 position paper sent to all members of Congress.

Given the failure of Japan to meet its 1992 commitment to buy $19 billion worth of U.S. parts, the Administration should seek enforceable, verifiable agreements measured by new sales from non-Japanese owned firms, the APAA said. The reduction of the U.S.-Japan auto parts deficit should be the ultimate measure of success, the paper added.

The U.S. government's efforts to open Japan's market over the last twelve years have failed to dismantle the car maker-supplier relationships which have been blamed for blocking foreign competition, according to the APAA. The group cited the current $10 billion trade deficit in auto parts in arguing that Japan has "consistently robbed the U.S. of otherwise global surpluses."

Japanese transplant auto makers and transplant parts suppliers in the U.S. have erected identical barriers to parts sales, displacing sales by the Big Three U.S. car companies as well as those of both original equipment and replacement parts makers, the APAA said.

KANTOR SAYS U.S., JAPAN NEED TO REVIEW COMMITMENTS ON AUTO PARTS PURCHASES

U.S. Trade Representative Mickey Kantor said late last week said the Administration needs to talk to Japan in "serious terms" about voluntary commitments made last year by Japanese automakers to increase to 70 percent the local content in Japanese nameplate cars made in the U.S. The Administration wants to get the figures that would show "where they are on that commitment," Kantor told reporters in a Feb. 26 briefing.

In addition to what he termed the "auto and auto parts" issue, Kantor said the U.S. would meet with the Japanese government after the release of the final 1992 numbers on foreign market access on semiconductors this month. He said the U.S. will want to confer with the Japanese if they have not yet met the 20 percent "expectation level" in 1992 and to understand the reasons for the shortfall and develop possible remedies (see related story).

Kantor also said the U.S. will "want to look" at government procurement in Japan, because the U.S. has a "very tiny share" of that market. Another area to consider is services, which Kantor pointed out is the fastest growing part of U.S. trade. He said that the services issue had not been addressed "as adequately" as it should be in the Uruguay Round by the previous Administration. Some business groups, including a financial services group of the U.S.-Japan Business Council, are pressing for the Administration to deal with services issues in bilateral negotiations with Japan. The Council has prepared a list of demands which it hopes could serve as a blueprint for a negotiating agenda (*Inside U.S. Trade*, Special Report, Feb. 26, p S-6).

Kantor also emphasized in the briefing that the President continues to support the revival of the Super 301 law, which has in the past been used by the U.S. as a tool for opening the Japanese market.

Kantor defended the U.S. against charges of abusing its trade remedy law in the current steel cases, saying that the U.S. process in terms of "getting a fair hearing and transparency" is probably "as good or better than any process in the world." At the same time, he emphasized that no country subject to the cases has disputed that steel is being dumped in the U.S. market. Kantor said that there has been a large amount of criticism only in the application of the duties. "No one has said there was no dumping -- what an interesting thing."

Kantor also highlighted President Clinton's Feb. 26 speech at American University as laying out a trade policy that is active, not passive as he charged the Bush Administration's had been, and integrated with an economic policy program domestically. According to Kantor, the President is trying to provide leadership in the U.S. economy, and also seeks to enhance global growth through opening markets and requiring trading partners to take the responsibility of providing access to theirs, Kantor said. He is trying to provide leadership by stimulating global growth through the group of the seven most industrialized nations, and promoting stability and growth in the developing world and emerging democracies.

MSA TALKS FAIL TO START SERIOUS NEGOTIATIONS AMID CONTROVERSY ON STEEL CASES

Efforts to restart negotiations on a Multilateral Steel Accord ran into strong opposition from U.S. trading partners this week, who showed little enthusiasm for serious negotiations with the current trade cases pending against their steel exports to the U.S. market, according to several government and industry sources. However, one Administration source said some new ideas had been put forward during the Feb. 24 to 26 session in Geneva.

One EC official said that most countries are "still not in the process of negotiating," and the new U.S. Administration is still deciding how to proceed on the MSA. Administration officials do not have "a greenlight for continuing serious negotiations," the official said.

The EC source identified three major outstanding issues in the negotiations: an "antiharassment" clause that would require consultations before trade cases could be brought, the issue of greenlighting subsidies, and the availability of a waiver that would exempt steel companies temporarily from the MSA disciplines. The U.S. has rejected the notion of prior consultations on trade cases, and has insisted there can be no subsidies permitted under a MSA. That position was taken under pressure from the U.S. steel industry and the Commerce Dept., but is seen by several government agencies as a position that ultimately cannot be sustained, informed sources said.

Separately, the EC last week asked for consultations under the dumping code of the General Agreement on Tariffs & Trade challenging the methodology used by the Commerce Dept. in the pending antidumping cases. The EC and the U.S. already held consultations on the countervailing duty cases on Feb. 26, which will be continued in about two weeks, EC sources said.

A representative of the integrated U.S. steel mills spoke out against a political settlement of the cases in a March 2 hearing before the House Steel Caucus. But Curtis Barnette of Bethlehem Steel acknowledged the Administration could decide to settle the causes under pressure from foreign governments. Speaking on behalf of the American Iron & Steel Institute, Barnette said the industry wants the cases to run their course.

Representatives of the Specialty Steel Industry of the United States and the Steel Manufacturers Assn. also raised the possibility of a political settlement for the trade cases, but insisted they were not advocating such a course. The Specialty Steel Industry representative emphasized that a potential settlement, such as a voluntary restraint arrangement, must include "all primary steel mill products" to avoid shifting of imports into higher value categories not covered by an import program. Robert Heaton of the Washington Steel Corp. urged the members of the Caucus to examine any potential settlement of these cases in that light, saying that such a potential product shift of foreign carbon steel producers into specialty steel remains the "preeminent concern" of his industry.

The SMA representative said his industry must take part in negotiating any political settlement of the steel cases, because it represents a "significant portion of the domestic steel industry and its production." Ralph Boswell of SMA acknowledged that foreign pressure on the Administration to settle the cases may force the Administration into a deal. He said that possible solutions could be for foreign producers to accept a minimum import price that reflects the dumping and subsidy margins, or the negotiation of a voluntary restraint agreement. Boswell emphasized that he is not at this time supporting "even the notion of a negotiated solution" to the cases. And he highlighted his group's determination to have strong U.S. trade remedy laws, and said the SMA would develop a "complete legislative proposal" to that effect in the spring, including directives to the Commerce Dept. to initiate more trade cases, reexamine the subsidies law and make the filing of petitions "less complex and difficult."

The EC official emphasized there were no easy solutions to the trade cases, because the problems facing the U.S. steel industry differ from those in 1982 and 1984, when trade cases were settled with import restraint agreements. He acknowledged the EC is thinking about a possible settlement, but said the solution has to come from the U.S. government, which in turn must have the backing of the U.S. industry.

Any potential settlement would likely exclude certain EC producers from the U.S. market, the official said, a notion that was also raised by EC private-sector sources. Potential producers that may have to be excluded because of the high preliminary subsidy margins found in the trade cases include Italy, Spain and France, because no deal would merely waive these margins, one source said. But an EC industry source said that excluding France from a potential deal would cause more problems than it would solve. Eurofer, the association of European steel producers, is trying to work out proposals for a potential settlement that will cover as many member states as possible, but one source said that it is hard to imagine a scenario where all states are covered.

The biggest problem facing U.S. producers, EC industry sources say, is the low price of steel in the market and the lack of profitability, which are caused by pension and health care costs faced by the integrated producers, and the low-price production from minimills and steel manufacturers using scrap metal. With the trade cases, the price has already risen somewhat because foreign producers are essentially foreclosed from participating in the U.S. market.

The next MSA meeting is being considered for early April, but informed sources said that it could easily slide into May or even June. Major parties, such as the U.S. and the EC, have agreed to hold informal consultations on the MSA, according to U.S. and EC government sources. A U.S. government official said the U.S. would put forth shortly a written document on the MSA, but that it had not yet been decided whether it would be a formal MSA draft or an informal working paper. One private-sector source familiar with the negotiations this week said that the U.S. industry has made it clear to the Administration that it does not want any new proposals tabled from the U.S. side, and that the Administration should be waiting for trading partners to come forward with concrete proposals. However, other steel industry sources categorically rejected that assertion, and insisted that there had been no such pressure on the Administration.

OILSEEDS GROUPS WANT TO PRESERVE DEAL WITH EC, BUT SEE POTENTIAL RETALIATION

U.S. oilseeds producers late last week advised U.S. Trade Representative Mickey Kantor not to reopen a controversial deal with the European Community that settled a five-year old dispute over oilseeds subsidies last year because such a step is unlikely to lead to a better agreement. But failure of the EC to ratify the oilseeds agreement before its 1993 planting season begins should lead to U.S. retaliation against EC exports, the producers advised Kantor in a Feb. 26 meeting.

U.S. oilseeds growers realize they have "nothing to gain" from reopening the deal struck on Nov. 20, 1992, even though it is "far from fair" as it now stands, according to an official of the American Soybean Assn. But ASA and other oilseeds producers are "very wary" that the EC will go back on its deal given the current delay in ratifying it, the official said. If that happens, the U.S. has only one option, and that is retaliation, he added. The U.S. industry has claimed it is losing $2 billion annually as a result of EC oilseeds subsidies and the Bush Administration late last year took steps toward retaliating against $1 billion worth of EC exports to the U.S. in the oilseeds dispute.

If the EC reneges on the oilseeds deal, ASA will do "everything in its power" to stop an Uruguay Round agreement, he said. But he added that U.S. oilseeds producers are convinced that the new Administration would not take lightly an EC refusal to ratify the deal. The Feb. 26 meeting was attended by ASA, the National Oilseeds Processors Assn., and representatives for canola and sunflower producers. ASA is the trade association that brought the original section 301 case in 1987 against EC oilseeds subsidies with the argument that they nullified and impaired the international trade benefits U.S. exporters could expect to gain from the zero tariff the EC conceded for oilseeds imports in 1962. U.S. oilseeds producers hope to deliver the same message to Agriculture Secretary Mike Espy in the near future.

They also told Kantor they want the EC to implement the bilateral oilseeds deal in the General Agreement on Tariffs & Trade before the Uruguay Round is concluded, another participant said. If that were not the case, EC oilseeds production could not be restrained under Uruguay Round rules on internal supports, and the EC might refuse to accept the disciplines of the bilateral oilseeds agreement, he said.

The EC member states are currently embroiled in a fight with the Commission over ratifying the oilseeds provisions of the so-called Blair House agreement. Under a French threat to veto the deal, Agriculture Commissioner Rene Steichen has agreed not to force a vote on the agreement in a March 8 council meeting of foreign ministers. Instead, it will only be discussed at the council, even if the Commission would have the votes to pass it with a qualified majority, informed sources said. So far, only Belgium has joined with France to oppose the deal, and a Belgian official said last week his country would vote against the agreement but not invoke a veto. Member states discussed the handling of the oilseeds deal in a meeting of their ambassadors held last week, at which the majority of representatives said they supported the oilseeds deal but saw no reason for the Commission to bring it to a vote on March 8. Partially, that stance stems from the desire of Denmark and the United Kingdom to preserve a strong veto right for major issues, such as problems arising from the Maastricht Treaty, some sources said. Separately, a number of member states such as Italy and Ireland are opposing a compensation offer made by the Commission to eight oilseeds producers other than the U.S. under article 28.4 of the GATT.

Commission officials now say they want to bring the issue to a vote after the French election in late March, but some sources hold open the possibility that France may insist that the oilseeds deal can only go forward as part of an overall Uruguay Round deal, which would likely mean another planting season for oilseeds without the disciplines laid out in the agreement. Most sources agree that it is unlikely the new French government will take a softer line on agriculture issues than the current Socialist government.

The Blair House agreement contains the oilseeds deal as well as a compromise on the Uruguay Round that would oblige countries to cut the volume of their subsidized exports by 21 percent over six years starting from a 1986-90 base year. It also asks countries to cut their internal supports by 20 percent, but with conditions that would ensure no further U.S. cuts. France is objecting to the Uruguay Round part of the agreement, which the Commission is refusing to bring before the member states for approval because it argues its provisions can only be judged as part of an overall Uruguay Round agreement. France has been pressing the Commission to prove the Blair House accord is compatible with the reform of the Common Agricultural Policy, and a panel of member states representatives continues to examine the issue.

The Feb. 26 meeting with Kantor only generally discussed a GATT agriculture agreement, because U.S. oilseeds producers are still working out a common position on the issue. Producers have already raised problems with the export subsidies provisions of the draft agreement, which would force them to cut back 77 percent from 1991-92 export levels to achieve the first-year obligation of the agreement. The draft GATT deal on export subsidies uses the 1986-90 base year, and U.S. subsidies for the export of vegetable oil have only picked up in recent years, which accounts for the drastic cut that would have to be made. In light of the fact that the Blair House oilseeds deal with the EC only produced minimal cuts in production, and the draft agreement would not affect the EC's oil export program, ASA has "no option" but to seek "exception" from the export subsidies disciplines or their modification, the group said in a Jan. 27 letter to Kantor and Espy. "If implemented in their present form, the U.S. will lose over 500,000 tons of vegetable oil exports annually under the export enhancement program and similar programs," the letter said.

SENATORS URGE CLINTON TO CONSULT, PROCEED SLOWLY ON NAFTA SIDE PACTS

Three Senate opponents of the North American Free Trade Agreement urged their colleagues late last week to join them in pressing President Clinton to work closely with the U.S. Congress as he seeks to finalize the NAFTA side accords and not to commit to any artificial deadlines for implementing the NAFTA. That comment is an apparent reference to the Administration's commitment to stick to a Jan. 1, 1994 implementation date.

Sens. Donald Riegle (D-MI), Byron Dorgan (D-ND) and Kent Conrad (D-ND) urged other senators to sign on to a letter, reprinted below, that indicates serious concerns about NAFTA's agricultural and energy provisions, as well as with regard to its effect on environmental protection, fair labor standards, worker health and safety standards and consumer safety (*Inside U.S. Trade*, Feb. 26, p. 1).

According to the letter, they want Clinton not to honor a commitment, written into the current NAFTA text, that the regional pact would be implemented by the U.S., Mexico and Canada by Jan. 1, 1994. A draft memorandum prepared for the National Economic Council indicates the Administration believes it must finish the negotiation of parallel accords for NAFTA by June 1 in order to honor that pledge (see separate article).

As of March 4, the three senators' offices had garnered "more than twenty" tentative co-sponsors, and sources said there was a possibility the senators might be able to obtain thirty or more before formally sending the letter sometime next week. The follow-up campaign to obtain co-signatures was being hampered by Congress' almost-total focus on budget issues, congressional sources said.

At the same time, however, there appears to be little support in the Senate even among NAFTA critics for an alternative approach being considered by Dorgan that would call on Clinton to renegotiate the NAFTA because it is unsatisfactory and cannot be salvaged by side accords, according to an informed congressional source (*Inside U.S. Trade*, Feb. 26, p. 1).

PIPE AND TUBE PRODUCERS TO FILE PETITIONS CHARGING CIRCUMVENTION OF AD CASES

A group of steel producers will press the Commerce Dept. to crack down on what it charges is the evasion of antidumping orders that impose tariffs on certain pipe products from Korea, Mexico, Taiwan, Venezuela and Brazil, a representative told the House Steel Caucus on March 2. The Committee on Pipe and Tube Imports charged that these countries are circumventing the duties by selling pipeline-grade product for use as standard pipe, according to its executive director Roger Schagrin. The existing antidumping orders cover standard pipe, but not pipe used in building pipelines.

Schagrin emphasized after his March 2 testimony that the committee had not yet decided whether it would file petitions against all five countries, for which standard pipe faces antidumping duties ranging from 103.38 percent to 6.21 percent. The circumvention petitions most likely will be filed next month, and would ask the Commerce Dept. to extend the scope of the existing antidumping order on standard pipe to dually-marked products, he said.

KANTOR, BROWN SAY U.S. DETERMINED TO ENFORCE CHIP DEAL WITH JAPANESE

Two Clinton Administration Cabinet officials this week publicly emphasized that the Administration is determined to enforce a U.S.-Japan semiconductor agreement as part of its policy of demanding that all trading partners abide by trade deals with the U.S. Under the agreement, the U.S. government called for Japanese imports of foreign semiconductors to reach 20 percent by the end of 1992, but numbers to be released in mid-March are expected to show a shortfall.

In a March 3 speech to the Semiconductor Industry Association, U.S. Trade Representative Mickey Kantor insisted that "we will enforce these agreements. We have to or we shouldn't have entered into them in the first place." And Commerce Secretary Ron Brown accused Japan of engaging in unfair trade in the semiconductor sector, charging in a speech to the SIA March 2 that "when every market in the world outside Japan prefers your products, I have to conclude, as all of you have, that we are facing unfair barriers." He said that the U.S. has to ensure that agreements are kept "even if it takes some hard-nosed head-knocking." Brown said the U.S. intends to negotiate with Japan to ensure it lives up to the agreement, but said he did not want to get into "inflammatory rhetoric" and talk in terms of sanctions and retaliation.

A few years back, unfair trading practices in the Far East almost destroyed the American semiconductor industry, Brown said. "It took harsh action to end Japanese dumping. We must be prepared to act again--in Japan or any other market," he said.

In his comments, Kantor acknowledged that foreign market access in Japan is likely to fall short of the 20 percent target, but stopped short of saying that he would find that Japan has not complied with the agreement. A formal finding of non-compliance under U.S. trade law would trigger sanctions. He said he had discussed "a number of options" with SIA executives during a March 3 meeting. The Administration "would begin to operate" as soon as the fourth quarter numbers are released showing how far short Japan has fallen on its commitment to increase purchases of foreign semiconductors to 20 percent of the market by the end of 1992. "We'll make it very clear where we are going at that point," he said.

Kantor left the door open to maintaining U.S. pressure on Japan without launching sanctions. He said that the U.S.-Japan Semiconductor Arrangement "remains in force through 1996," and that the Administration expects "to use it as a vehicle for steadily improving market access." He also said that the Administration would continue to work with the SIA "to ensure that this agreement is fulfilled."

Kantor did not spell out the government role in ensuring Japanese compliance, but Brown said the U.S. intends to negotiate with Japan.

Key industry officials indicated that they would support a policy of maintaining pressure on Japan to increase foreign purchases without launching sanctions for non-compliance. James Norling, the president of Motorola and chairman of the board of SIA, told reporters March 3 that U.S. government pressure was still needed to get the Japanese to increase purchases. He said that the goal of the agreement was to build tight links between U.S. chip manufacturers and Japanese end-users, but that without continued U.S. government pressure, industry to industry efforts would not lead to further Japanese purchases. He emphasized that the agreement remains in force until 1996, and "nobody ever thought that 20 percent was going to be the final milestone. We anticipate that there would be future milestones." The SIA board issued a public statement after its March 3 meeting emphasizing the importance of increased market access in Japan (see related story).

SIA EMPHASIZES NEED TO ACHIEVE 20 PERCENT ACCESS TO CHIP MARKET IN JAPAN

The Semiconductor Industry Assn. this week insisted that Japan's failure to increase purchases of foreign semiconductors to 20 percent last year means that it has failed to comply with the terms of the U.S-Japan Semiconductor Arrangement. When the final 1992 figures are released later this month, they will likely show that Japan has failed to meet the target, and the SIA emphasized that improving market access in Japan remains its top priority.

In the case of non-compliance, the SIA will work closely with the Clinton Administration and Congress "to seek redress and pursue appropriate measures to ensure compliance," according to a March 3 statement released by the association, which represent U.S. semiconductor manufacturers. The statement does not, however, advocate that the U.S. government launch sanctions over Japanese non-compliance.

The statement also does not elaborate on what specific measures the industry will seek, but several industry sources emphasized this week that the next steps will be determined by the exact market access numbers to be released by the two governments this month. The more sales have risen from the 15.9 percent level achieved in the third quarter of 1992, the easier it will be for SIA to focus on making further progress rather than on seeking redress, one industry source said.

The SIA board discussed a range of possible responses to the shortfall at its March 3 meeting in Washington, including sanctions, industry sources said. But they emphasized that the SIA is interested in sales, not sanctions. The board also weighed possible demands it should make for additional market access in an upcoming high-level industry meeting in Hawaii, which will bring together chief executive officers of SIA member companies and Japanese electronics companies. The meeting is tentatively scheduled for the end of March.

The SIA expects to hear Japanese proposals for when and how foreign semiconductors can achieve "sustainable" access to the Japanese market, one source said. He and others refused to say what they might consider a new deadline for meeting that goal, insisting only it has to be as soon as possible. The board considered various possible options, including one that Japan achieve an average 20 percent market share over four quarters in 1993. That would be consistent with the demand verbalized by other SIA sources that Japan provide 20 percent access over an extended period of time, not just in one quarter.

In preparation for the high-level industry meeting, the SIA board also looked at the product mix of U.S. sales in Japan, one source said. He pointed out that sales are weakest in the areas of telecommunications switching equipment, consumer electronics and automotive sales.

A representative of the Japanese electronics industry has previously emphasized that any agreement on additional industry steps from the Japanese side will also place demands on U.S. companies in terms of quality and product availability. Japan has insisted that the 20 percent figure is a target rather than a commitment, and that reaching that goal depends as much on actions by U.S. semiconductor firms as it does on action by Japanese semiconductor users.

NEW U.S. GUIDELINES OPEN DOOR TO DISCRIMINATION . . . begins page one

company if the bid had greater than 50 percent U.S. content, regardless of the company's ownership. Under the new guidelines, U.S. embassies could refuse to help promote a sale of products that have 50 percent U.S. content if the firm's home country is closed to U.S. exports of the same products.

Some industry and foreign government sources charge that the new guidelines for export promotion represent a sharp break with the established U.S. practice of offering equal national treatment in trade matters to all U.S.-based companies, regardless of whether they are owned in the U.S. or abroad. U.S. embassies abroad have been playing an increasingly active commercial role in recent years, particularly by pressing foreign governments to consider U.S. company bids for large procurement contracts in sectors such as construction, aircraft and telecommunications.

A Commerce Dept. official said that former Commerce Secretary Barbara Franklin approved the guidelines before she left office, and that the new Administration would continue to implement the policy. The official said that Commerce Secretary Ron Brown had endorsed the new approach.

Domestic industry sources have applauded the new guidelines, saying that it is only reasonable to deny U.S. government support to foreign-owned companies that come from countries which consistently block opportunities for U.S.-owned firms. While sources said that the new policy would likely have little effect in leveraging open these closed markets in the European Community, Canada and elsewhere, it will at least deny companies from those countries the benefits of direct U.S. government support. One domestic industry source said that the new policy "won't allow those U.S. subsidiaries to wrap themselves in the American flag when they have maple leafs or the *fleur-de-lis* on their shorts."

The new policy would appear to have the largest implications in the telecommunications sector, where A.T.& T., which is U.S.-owned, and Northern Telecom, which is Canadian-owned, often compete directly for large procurement contracts abroad. Northern Telecom had over $4 billion in U.S. revenues in 1991, roughly half of its total revenues, and services many export contracts from the U.S. The company has a strong manufacturing component in the U.S.

Some U.S. industry sources charge that Northern Telecom was able to use the old guidelines, which prevented U.S. embassies abroad from actively favoring one U.S. bid over another, to stop the U.S. government from backing A.T.& T. bids, while at the same time Northern Telecom could get export promotion support from the Canadian government. "We thought this was a perversion of the guidelines," said one domestic industry source. Under the new guidelines, Northern Telecom may be denied U.S. government support if the U.S. finds, as A.T.& T. and other U.S. companies charge, that Canada does not provide equivalent competitive access for U.S. companies.

One source said that the new guidelines had already helped A.T.& T. complete a major deal to provide a broad range of telecommunications infrastructure and services to China. The deal, which was announced last week, could result in billions of dollars in revenue to A.T.& T. and its suppliers. A domestic industry source said that originally the Administration had not actively favored A.T.& T. over Northern Telecom in competing for contracts in the Chinese market, but that the new guidelines allowed the U.S. government to more actively support A.T.& T.'s bid. The Commerce Dept. official said that the department had been dealing with new cases steadily, and in some cases the closed home market provision has been utilized.

The U.S. telecommunications industry has recently stepped up pressure against Canada, charging that the preferred relationship between Bell Canada and Northern Telecom has allowed Northern Telecom to dominate the Canadian market for telecommunications equipment at the expense of U.S.-owned suppliers. The new policy could also be used to deny government support to European-owned telecommunications firms, such as Siemens of Germany and Alcatel of France, which are increasingly acquiring the capacity to produce contracts which have at least 50 percent U.S. content, industry sources said. The U.S. argues that both the German and French markets are closed to U.S. bids in the telecommunications and heavy electrical equipment sectors.

The determination of whether a market is closed in a particular sector will be based on the annual National Trade Estimate report prepared by the Office of the U.S. Trade Representative. This report details barriers to U.S. market access abroad. The 1992 report, for instance, says that the preferred supplier relationship between Bell Canada and Northern Telecom "constitutes a barrier to U.S. telecommunications equipment sales."

One industry source said there had been rumors that USTR would leave Canadian market access issues out of the report in order to avoid triggering the closed home market provision, but the source said USTR officials had insisted this was not the case. One USTR source said that the preparation of the NTE would not be influenced at all by the new Commerce guidelines.

Export advocacy has become an increasingly central activity of U.S. embassies abroad, with foreign commercial service officers, and even the ambassadors themselves, intervening on behalf of U.S. companies who are trying to win contracts with these governments. Export advocacy is most influential in the case of large government contracts, usually in such sectors as construction, telecommunications, aircraft, power generation, and weapons purchases. The Commerce Dept. official said that, in response to the increasing importance of export advocacy, the Commerce and State Depts. had been working over the last three years to develop and codify some guidelines for export advocacy. Previous guidelines, the official said, had never been formally written down.

The official said that the issue was widely discussed with private sector advisers, as well as with the President's Export Council, a high-level group of industry advisers. But some sources charge that the decisions were made behind closed doors, and argue that formal notice should have been given of the proposed change in guidelines, to allow all affected companies an opportunity to comment.

The new guidelines, which are reprinted below, spell out the criteria that U.S. embassy personnel should use in deciding on a case-by-case basis whether to offer advocacy support to a company. The key factor is the level of U.S. content, with bids meeting a 50 percent content threshold "presumed to be in the national interest." A Commerce Dept. official said that large contracts which, though they may have less than 50 percent U.S. content, would still provide substantial benefits in the U.S., would also likely be given support. But the guidelines also state clearly that even a bid with greater than 50 percent U.S. content "may not be in the national interest... if the bidding firm's home market is closed to U.S. firms."
By Edward Alden

WHITE HOUSE PAPER LAYS OUT RULES FOR NAFTA SIDE DEALS . . . begins page one

The paper was prepared for a National Economic Council working group on NAFTA the week of Feb. 22 by an inter-agency team led by Curtis Bohlen, assistant secretary of state for oceans and international environmental and scientific affairs. Its contents were later rewritten and merged by the Office of the U.S. Trade Representative with options prepared by another NEC NAFTA subgroup for the U.S. negotiating position on a labor standards accord.

The integrated paper, which reportedly sought to present options for policymakers more clearly and concisely, and a USTR-prepared paper on import surges, formed the basis for initial discussions March 2-3 among an NEC deputies group on the opening U.S. negotiating position on the side accords.

Two sources familiar with the paper said it reflected the thinking of career bureaucrats who had been involved in the previous NAFTA talks during the Bush Administration. They warned that it might not reflect the full scope of options that political-level Clinton appointees might be prepared to recommend to Clinton and his cabinet. The NEC was scheduled to meet at the cabinet level beginning March 4 to decide on the parameters of the U.S. negotiating approach for negotiating NAFTA side accords on the environment, labor and import surges in talks with Mexico and Canada that open March 17-18 in

Washington, D.C.

The 14-page draft NEC paper also appears to rule out the use of U.S. anti-subsidies law for trade-related environmental disputes. It says that any amendment to U.S. trade law to allow the application of countervailing duties to goods produced in "pollution havens" where environmental laws are not properly enforced or are not up to U.S. standards "was not considered desirable" by the NEC environmental subgroup. The use of U.S. CVD law "could be considered inconsistent with U.S. international obligations under the NAFTA," it says.

"Further," the paper continues, "concern has been expressed that the use of trade sanctions is dangerous, in light of the slippery slope toward their use for protectionist purposes."

As an alternative to commission-imposed sanctions, the paper recommends reliance for enforcement on a sanctions system similar to that proposed last month by Senate Finance trade subcommittee Chairman Max Baucus (D-MT). The Baucus proposal calls for national enforcement bodies to retain all authority to impose penalties for lax enforcement. It would limit the enforcement role of the trilateral commission to one of investigating and publicizing violations, and issuing non-binding recommendations for action, which might include trade sanctions, in cases of a persistent pattern of abuse, to the appropriate governments (*Inside U.S. Trade*, Feb. 5, p. S-6).

Three "options packages" are laid out in the original 6-page labor options draft prepared under the direction of Jorge Perez-Lopez, the director of the Labor Dept.'s international economic affairs office, for an inter-agency NEC subgroup on NAFTA labor issues.

All three packages would set up an American social charter, establish a North American Commission on Labor, promote the creation of minimum continental labor standards in some areas, and grant some enforcement powers to the commission, a copy of the labor draft shows. But the three alternatives differ vastly with respect to the number and type of standards they would seek to cover, as well as to the extent of independence and enforcement powers they would grant to the commission.

Option A would create an "unabtrusive" commission with the least expansive mandate that would implement the narrowest social charter and promote the minimum standards for the narrowest range of worker rights. Under that proposal, the commission, characterized in the labor draft as "three fax machines" and a small staff, would seek to define in negotiations with Mexico and Canada minimum continental standards only for "non-political, easily defined" standards such as those regarding child labor, work hours and health and safety. The social charter under this option would only include worker rights that are already incorporated into U.S. trade laws: freedom of association, freedom to organize and bargain collectively, prohibitions against forced or child labor, and the setting of standards regarding minimum wages, work hours, and health and safety regulations.

Efforts to ensure that countries enforce their national labor standards would be limited under option A only to the ability of the commission to call attention to lapses through "weak moral suasion."

An intermeditate alternative laid out in the labor draft, option B, would create a commission that has more independence, more staff, and a mandate to carry out all the activities called for under option A plus additional ones. For example, the labor draft said the social charter would be expanded to include "commitments linked to a high productivity North American development strategy." Such commitments could include the promotion of worker participation and representation, linking of wages to productivity, "investing in people," "anti-discrimination" measures, protection against "downward harmonization of social security," and limits on trends toward inequality. Concepts such as these could be derited vrom documents like Article 123 of the Mexican Constitution, the Mexican Accord on Productivity and Growth, the social provision of the Canadian draft constitution that failed to be approved last year, and the European Social Charter, the labor paper indicates.

Under option B, promotion of minimum labor standards would include the promotion of a "tri-national labor-management dialogue on labor standards in key sectors," such as autos, apparel and electronics.

To enforce national labor legislation, a trinational dispute settlement mechanism could feature "remedies ranging from weak moral suasion to strong moral suasion and even some negotiated economic remedies where ambiguity over standards has decreased over time." according to option B. The economic remedies would likely not include trade sanctions that would stop goods at the border, the labor draft appears to indicate.

Option C includes all the features of option B, but goes further in the area of enforcement, where a trilateral dispute settlement panel controlled by the labor commission could eventually levy trade sanctions, including border measures, according to the labor draft.

In contrast to the NEC environmental draft, recommendations on a North American Commission on the Environment delivered this week to USTR Mickey Kantor by a number of environmental groups, including the Center for Environmental Law and Defenders of Wildlife, call for the commission to be able to levy trade sanctions directly, and would go further in allowing a public advisory group to compel the commission to initiate the dispute resolution process in cases it believes are important (see separate story).

The NEC environmental draft mentions several additional enforcement-related options. One such measure, it says, would be for the U.S. to seek to get Mexico and Canada to allow their publics to bring civil actions for the enforcement of environmental laws. Another would be to use the intellectual property provisions of NAFTA as a model. But environmental paper says taking the latter step could prove "cumbersome," and points out that there is "no easy equivalent" for the IPR concept of "right holders" in the environmental arena, among other caveats.

In addition, the U.S. could also press its regional trading partners to adopt "community right-to-know laws," although "[a]ny mutual commitment would have to be carefully crafted to be consistent with U.S. law," according to the environmental draft.

In the future, the U.S. also could seek to add other international environmental agreements that contain mandatory trade provisions to the three already listed in NAFTA as taking precedence over NAFTA, the paper notes.

The environmental draft also lists and comments on eight different options for funding NAFTA-related environmental and infrastructure projects on the U.S. side of the border with Mexico and in Mexico and proposes a series of measures related to the U.S.-Mexico border. *By Scott Otteman*

NEC NAFTA Work Group Draft on Environment

Environmental Issues Surrounding the NAFTA: Options Paper

Statement of the Problem

-- Numerous environmental concerns have been raised by environmental NGOs, Congress, and others in connection with the NAFTA.

-- In the view of the working group, several of these concerns will need to be addressed by the Administration, namely:

• that closer economic integration with Mexico will adversely affect the environment in the U.S.-Mexico border area;

• that Mexico, while having environmental laws broadly comparable to those of the U.S., does not adequately enforce such standards; such lax enforcement not only results in environmental degradation, but raises competitiveness concerns for U.S. industry;

• that no institution/oversight mechanism currently exists to continually monitor, and work to improve, the state of the North American environment; and

• that increased funding will be necessary to address the concerns above.

Summary of Options Package

-- The working group has developed a package of suggested measures/options designed to address the concerns above.

-- The package contains basically four components:

• a series of measures related to the U.S.-Mexico border;

• the establishment of a North American Commission for the Environment ("NACE"), which would play a role with respect to both enforcement and monitoring of the state of the North American environment, as well as perform other functions;

• various other measures to address enforcement and other issues; and

• funding options to assist in carrying out the above.

-- There is working group consensus on many of the measures suggested; where there is no consensus or where agencies considered that various options should be considered by the Deputies' Committee (as in the case of funding), such options are set forth.

-- The assumptions/considerations that underlay the development of the options are attached.

-- Coupled with the options below, the Administration might also seek to further educate the public/Congress on the positive aspects of the NAFTA's environmental provisions, given the lingering confusion surrounding such provisions and such cooperation.

I. Border Measures

-- As a general matter, U.S.-Mexico border issues should be addressed bilaterally with Mexico, without Canadian involvement.

-- The first phase (1992-1994) of the U.S.-Mexico Border Plan should be implemented.

• The U.S.-Mexico Joint Committee for Wildlife Conservation should be strengthened, with its programs added to the Border Plan.

-- There should be an expectation that cooperation will be further enhanced in the second phase of the Plan (1995-1997); development of this phase should include greater involvement by HHS and CDC, as well as state and local health authorities.

-- The 1983 "La Paz" Agreement should be revitalized and strengthened; additional annexes on necessary topics should be considered.

• (The "La Paz" Agreement is a bilateral framework agreement with Mexico intended to address environmental concerns in the border region. It currently has five annexes, on: border sanitation; chemical emergencies; transboundary shipments of hazardous wastes; air pollution from copper smelters; and international transport of urban air pollution. While helpful on paper, this package of agreements has been criticized for inadequate funding/implementation.)

-- Implementation and enforcement of wildlife trade controls on each side of the border should be strengthened.

II. Establishment of the NACE

-- The United States should reach agreement with Mexico and Canada that a North American Commission for the Environment be established, with at least three functions:

• facilitating implementation of the NAFTA's environmental provisions;

• playing a role with respect to enforcement of environmental laws in the three NAFTA countries; and

• generally addressing environmental issues in North America, including monitoring the state of the North American environment (particularly any environmental impacts of free trade), and recommending ways to further cooperation.

-- In all these functions, "environment" should be construed broadly to include conservation of living natural resources.

NAFTA-Related NACE Functions

-- In terms of facilitating implementation of NAFTA's environmental provisions,

• the NACE should monitor, and report regularly and publicly, on the extent to which the parties are meeting the NAFTA's environmental objectives;

• the NACE should serve as a point of inquiry; in addition to points available at trade authorities, for information on NAFTA disputes related to the environment under Article 2008, disputes implicating Article 104, and environmental consultations under Article 1114.2;

• the NACE should serve as a point of receipt, in addition to points available at trade authorities, for comments on Article 2008/104/1114.2 disputes and consultations from interested non-governmental organizations and other private parties and forward these comments to trade authorities involved in such disputes (the NACE should not delay the timetable for resolution of disputes under Chapter 20);

• the NACE should assist in the implementation of NAFTA Article 1114.2, which provides that the Parties "recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures" and providing for consultation in the event "a Party considers that a Party has offered such an encouragement;"

• the NACE should provide environmental expertise to NAFTA dispute settlement panels, at the letters' request; and

• the NACE should generally discuss/report on (including to the NAFTA Free Trade Commission) any environmental issues related to the NAFTA.

Enforcement-Related NACE Functions

-- The NACE should also play a role with respect to the enforcement of environmental laws and regulations in the three NAFTA countries.

-- It should be noted that many of the functions set forth above as NAFTA-related functions are also related to enforcement, including:

• reporting on the extent to which the parties are achieving NAFTA's environmental objectives, in that one of those objectives is "to strengthen the development and enforcement of environmental laws and regulations"

• playing a role in the implementation of NAFTA Article 1114.2 in that this provision directly addresses the issue of lax enforcement leading to "pollution havens"; and

• discussing/reporting on any environmental issues related to the NAFTA, in that this could include enforcement-related issues.

-- Beyond these, the NACE should enjoy additional powers related to enforcement:

• The NACE should be able to receive complaints/input from the public regarding the enforcement of environmental laws and regulations in the three countries. Such complaints/input could be either general or specific to a particular situation, plant, etc.

• The scope of such complaints/input should be left open with the NACE being accorded discretion as to what issues to pursue.

•• (There have been suggestions that the public should only be able to raise issues concerning its own government's enforcement; others have suggested that complaints be limited to transboundary ones, i.e., environmental impacts in one country caused by lax enforcement in another; still others would limit complaints to trade-related ones, i.e., competitiveness impacts in one country caused by lax enforcement in another.)

-• The NACE should be able to "investigate" complaints/input through means such as public hearings and review of public documents.

•• However, according the NACE the ability to inspect facilities or subpoena documents would run up against serious Constitutional problems in the United States (and equally strong sovereignty concerns in Canada and Mexico).

• The NACE should be able to make recommendations to the relevant government.

•• The NACE would be relied upon to use its discretion in making recommendations. For example, if a particular situation were the subject of a pending lawsuit, it is assumed that the NACE would not choose to make a recommendation in that case.

• Any other enforcement measures (e.g., imposition of penalties) would be left to national enforcement authorities of the three countries (in line with the proposal of Senator Baucus).

•• According the NACE the further ability to act as a supranational enforcement authority (as opposed to leaving other enforcement action to national authorities) would run up against serious Constitutional concerns in the United States. (Mexico has stated that such a function would be unacceptable.)

-- Further, in order for the NACE to be able to report on enforcement (as it will be called upon to do in connection with reporting on the extent to which the parties are achieving the NAFTA's environmental objectives), the parties should be obligated to report to the NACE on their enforcement actions. This would promote achieving comparability in evaluating enforcement programs, so that reliable indicators of compliance and enforcement productivity can be generated and made available to the public.

-- Additional enforcement-related obligations that the United States could seek from Mexico and Canada, but that are not directly related to the NACE, are discussed below under "Other Measures."

General Environmental NACE Functions

-- In terms of addressing generally environmental issues in North America:

• the NACE should monitor, and report regularly and publicly on, the state of the North American environment, including any environmental impacts of free trade;

• the NACE should discuss, and make recommendations to the three governments on, any aspect of the North American environment; and

• the NACE should promote and facilitate environmental cooperation between and among the NAFTA parties, including with respect to the provision of technical assistance.

Other Possible NACE Functions

-- An additional option is to have the NACE begin developing "minimum" North American environmental standards.

• Environmentalists appear divided on whether this would be desirable. Although "minimum" standards mean that each NAFTA country would remain free to set higher standards, some are concerned that this could lead to lower standards than currently mandated under Mexican law and could also lead to pressure in the United States for downward harmonization. Further, the real problem with Mexico is not its standards, but the inadequate enforcement of such standards.

• If the NACE were to be given the function of beginning to develop "minimum" standards (recognizing that there may be a better term), it should be noted that the NAFTA Standards Committee is already charged with harmonizing product standards and sanitary/phytosanitary measures; in these areas, the NACE could provide input to the NAFTA Standards Committee.

Other Aspects of NACE

-- In addition to the NACE functions discussed above, there are several other important aspects of the NACE:

• the NACE should be composed of government representatives (but each government should be free to include an NGO representative(s) on its delegation;

• the NACE should operate by consensus;

• the NACE should meet at least annually, or more frequently upon the request of at least one party;

• in terms of support to the NACE, there should be some sort of secretariat; at a minimum, it should perform administrative functions (e.g., receiving input from the public); it might also have more substantive functions (e.g., assisting in the preparation of reports, supporting various working groups). In any event, there is an issue whether:

•• a secretariat should rotate among the three countries (possibly coupled with a permanent point of contact in each country);

•• each country should have its own standing section of the secretariat for which it pays the operating costs (similar to the CFTA and NAFTA); or

•• there should be an international, permanent secretariat housed in one of the countries and paid for collectively (if so, there is an issue whether the staff would be seconded by the three governments or hired directly; further, it might be necessary to accord the NACE international legal personality);

• there should be maximum appropriate public involvement in the work of the NACE, including:

•• NACE meetings should normally be open to the public (with the option left open for occasional closed sessions, if necessary);

•• the public should be able to submit information/complaints to the NACE concerning enforcement of environmental laws (as described in more detail above);

•• the public should be able to give input to the NACE for inclusion, as appropriate, in the NACE's reports and recommendations;

•• as noted above, all reports of the NACE should be made available to the public;

•• there should be a mechanism for the NACE to gather advice from the public; there is an issue whether each government should have its own advisory committee, the NACE should have an international advisory committee, and/or the NACE should hold public hearings (applicability of the U.S. Federal Advisory Committee Act needs to be taken into account); and

•• the NACE should be able to establish subsidiary working groups that involve members of the public.

III. Other Measures

-- The United States should seek Mexican agreement to conclude the bilateral agreement on environmental pollution negotiated last year (but not signed), which constructs a framework for bilateral cooperation and assistance activities -- including with respect to enforcement -- throughout Mexico.

-- Implementation of the 1989 Agreement on Cooperation for the Protection and Improvement of the Environment in the Metropolitan Area of Mexico City should be strengthened.

• While several working groups have been created to address various forms of pollution, these groups have not met regularly and have not developed joint programs. (Implementation of DOE's separate agreement on Mexico City is apparently being successfully implemented.)

-- It might also be considered whether to consolidate the new bilateral, the La Paz border agreement, its annexes, and the Mexico City agreement into a new overall environmental agreement that supersedes the previous agreements.

• A consolidation might be desirable: to avoid a proliferation of working groups under various agreements (which has been a financial concern for Mexico); and to have one agreement that covers all of Mexico (as opposed to the border, Mexico City, etc.). At the same time, such a consolidation is not legally required and could unnecessarily complicate negotiations.

-- Technical assistance to Mexico (e.g., including training of enforcement personnel) should be increased.

-- Implementation of the established Tripartite Committee for the Conservation of Wetlands and their Migratory Waterfowl should be strengthened.

-- Existing collaborative relationships regarding the management and protection of cultural and natural resources should be expanded.

-- With respect to an environmental review of the NAFTA.

• prior to the effective date of the NAFTA, the United States should update and supplement the review completed over a year ago;

• the United States should urge Mexico to complete its review, which has not yet been completed.

-- Further enforcement-related steps that could be taken (either included in the NACE agreement or in a separate instrument) include:

• seeking Mexican and Canadian commitment to provide, in their domestic legal systems, for the public to be able to bring civil actions for the enforcement of environmental laws.

•• Certain aspects of NAFTA Articles 1714-1718 on intellectual property could be used as a model, although it would presumably be necessary: to spell out the U.S., Mexican, and Canadian laws in question, which could be cumbersome; and to spell out "standing" requirements (note: the intellectual property provisions refer to "right holders," for which there is no easy equivalent in the environment area.) It should also be noted that the intellectual property provisions are targeted at private claims against private actors, not the government.

• seeking Mexican and Canadian commitment to adopt community right-to-know laws, which tend to promote citizen involvement and governmental responsiveness. Any mutual commitment would have to be carefully crafted to be consistent with U.S. law.

-- A longer-term option, once the NAFTA has entered into force, is to seek Mexican and Canadian agreement to add to the list of agreements contained in Article 104 of the NAFTA.

• Under that Article, certain enumerated environmental agreements that contain mandatory trade provisions are to take precedence over any inconsistent NAFTA provision. The list may be expanded by agreement of the NAFTA parties without formal amendment. Agreements that might be added in the future include: the U.S.-Mexico Convention for the Protection of Migratory Birds and Game Mammals; the Convention for the Protection of Migratory Birds in the United States and Canada; the Convention on Nature Protection and Wildlife Preservation in the western Hemisphere; the World Heritage Convention; and the SPAW Protocol.

-- The option of amending U.S. trade law to provide that countervailing duties may be applied to goods produced abroad in "pollution havens" or without enforcement of comparably strict environmental standards was not considered desirable, in that it could be considered inconsistent with U.S. international obligations under the NAFTA. Further, concern has been expressed that the use of trade sanctions is dangerous, in light of the slippery slope toward their use for protectionist purposes.

IV. Funding

-- There are at least two aspects to the funding issue:

• to what extent, and from what source(s), the United States will fund environmental activities on the U.S. side of the U.S.-Mexico border; and

• to what extent, and from what source(s), the United States will assist Mexico in addressing environmental concerns.

-- In the view of the working group, it is important that the United States not promote initiatives, including those set forth above, for which it is not prepared to dedicate financial resources.

-- At the same time, in any reallocation of resources to NAFTA-related environmental purposes, it will be important to consider from where such resources are being diverted.

-- Regarding the U.S.-Mexico Border Plan, it would be advisable for the United States and Mexico to begin examining now the likely amount of resources that will be necessary to implement the Plan's second phase (beginning in 1995).

-- In general, there is a need for closer coordination between OMB and the various U.S. agencies engaged in environmental activities in Mexico.

-- Funding options that have been proposed include:

• funding all NAFTA-related environmental commitments through reallocation within agency budgets;

•• Such an approach would be consistent with the President's commitment to reduce the deficit, as well as the spending and tax proposals in A Vision of Change for America. On the other hand, it would provoke opposition from beneficiaries of the programs adversely affected by the reallocation.

• creation of a special North American Development Bank (President Salinas);

•• This approach would encourage all three countries, which benefit economically from increased trade, to make financial commitments to border protection. On the other hand, the United States (Treasury) has, as a matter of policy, opposed sub-regional development banks; further, it would duplicate existing expertise and administration (e.g., federal and municipal environmental agencies) and would not minimize costs; if it were a grant institution, contributions would have little leveraging impact; if it were a lending institution, credit reform legislation could require subsidies to be appropriated for any direct loans or guarantees. As a source for Mexican financing, Mexico could borrow from the World Bank or the Inter-American Development Bank.

• assessment of a transaction fee (border "user fee") on goods or investment crossing the border, with the proceeds directed to border environmental restoration (Congressional: Baucus/Gephardt/de la Garza/Moynihan);

•• This approach would target "beneficiaries" of trade liberalization as a source of revenue. On the other hand, it: would be contrary to the goal of free trade between countries; would be inconsistent with the phaseout of the customs user fee for trade with Mexico; would increase transactions costs on activities that currently are not taxed (e.g., GSP imports and the duty-free portion of maquiladora provisions), unless limited to goods currently subject to duties. It has been noted that, because increased trade will increase economic activity in the border region and thus increase local revenues, these might be a more appropriate source of funding. Issues include: to whom would funds under this option be dedicated; is a customs user fee GATT-consistent?

• reallocation of some duties collected on Mexican and Canadian goods entering the United States during the period that duties are phased out under NAFTA (up to 15 years) to environmental purposes, including border infrastructure;

•• This approach would target NAFTA activity as a source of revenue and could be subsumed in an overall package to offset tariff reductions of NAFTA. On the other hand, it does not identify "new" funding, because tariff revenues currently go to financing overall government activities -- it therefore still "increases" the deficit and increases required offsets for NAFTA. Further, it could create jurisdictional problems with Congressional Committees (e.g., Ways and Means and Finance address mandatory spending, where activities for border clean-up are appropriations activities), with these types of resources being subject to different rules under the current budget legislation.

•• [It should be noted that collected duties on Canada are very low ($158 million in FY 1991) and will be eliminated by 1998. Duty elimination on Mexican goods is very rapid: 64% of all collected duties will be eliminated in the first year of NAFTA's implementation (collected duties estimated in FY 1994 is $256 million); 85% by the fifth year (collected duties estimated in FY 1998 is $97 million).]

• commitment of a portion of general tax revenue to border environmental issues;

•• This approach would attempt to capture benefits to the overall economy to pay for the specific costs of NAFTA. On the other hand, it would not be a "new" source of duning, since general revenues are used to offset the existing deficit; further, there would still be a need to have support for additional activities from appropriations committees.

• creation of a binational border finance corporation with bonding authority, capitalized through initial contributions by both the United States and Mexico, to fund border environmental infrastructure (Richardson);

•• This approach would maximize each country's contribution through leveraging on bond markets. On the other hand, it would duplicate existing expertise and administration (e.g., federal and municipal environmental agencies) and would not minimize costs; if it were a lending institution, credit reform legislation could require subsidies to be appropriated for any direct loans or guarantees.

• earmarked increase in corporate income taxes (Hufbauer);

•• This approach could be integrated with general increases in taxes under the President's plan. On the other hand, it is not a "new" source of funding, since general revenues are used to offset the existing deficit and there would still be a need for support for additional activities from appropriations committee.

• technology partnerships (the private sector).

•• More detail would be required to assess this approach.

ADMINISTRATION REVEALS CHANGES SOUGHT IN GATT DRAFT . . . begins page one

The areas Kantor identified as problems are the same ones noted by the Bush Administration in December 1992. The same list of issues was also delivered yesterday (March 4) by Ambassador Warren Lavorel to a group of trading partners in an informal consultation session held under the direction of Arthur Dunkel, the top official of the General Agreement on Tariffs & Trade. Lavorel told trading partners that they had to make a "good faith" effort to address the demands for changes to the 1991 draft final act made by the U.S. late last year, informed sources said. Any indication that countries are serious about addressing these issues will help the Administration to determine how long of an extension of the fast-track negotiating authority it would need from Congress, they said. It would also help garner support for fast-track in Congress, they said.

Lavorel told trading partners that the Administration would reveal the length of the fast-track extension it will seek as soon as possible, which some participants interpreted to mean two to three weeks, according to informed sources. One informed source said the Administration will seek a fast-track extension that will force the negotiations to finish by the end of the year.

Lavorel also urged trading partners in the meeting not to put off dealing with these changes to the draft agreement, and emphasized that countries need to make further concessions in the area of market access for services, goods and agriculture, participants said. These demands led to criticism from several trading partners, whose representatives argued that they were unwilling to make concessions to ensure passage of the fast-track extension through Congress when they would again be asked to make additional concessions later in the negotiations, according to one participant.

Separately, a European Community official warned this week that there is a limit to the extent that the U.S. can use the approval of the fast-track approval process as a lever for extracting more concessions from trading partners. He pointed out that the future of the Uruguay Round negotiations cannot hang on what he termed "an internal U.S. procedure." In the March 4 meeting, the EC also emphasized that the negotiations should be concluded this year, and that trading partners would have to stick closely to the draft agreement to make that deadline.

Privately, U.S. officials concede it would be unlikely for foreign countries to engage in a serious negotiation without the fast-track being reauthorized. However, the U.S. will begin a process of consultation and informal exploratory sessions this week, sources said. In addition, heads of delegations will meet again next week in a Green Room session that will be a follow-up to this week's meeting. Work to move the negotiations forward will take place on all levels, bilaterally as well as plurilateral, U.S. officials said. That will include work between the U.S. and EC, but not an extended negotiation as last year's effort to strike a compromise agriculture deal that would serve as a basis for an Uruguay Round agreement. The issues that need to be resolved do not lend themselves to such a negotiation, U.S. officials said.

In addition, U.S. and EC officials are preparing for a visit to Brussels by Kantor to meet with EC External Affairs Commissioner Leon Brittan in mid-March, as well as a trip there in mid-April by U.S. Agriculture Secretary Mike Espy to see EC Agriculture Minister Rene Steichen.

GREEN GROUPS PRESS KANTOR FOR POWERFUL NAFTA ENVIRONMENTAL COMMISSION

Environmental groups recommended to U.S. Trade Representative Mickey Kantor this week that any North American Commission for the Environment (NACE) set up in conjunction with the North American Free Trade Agreement be empowered to levy trade sanctions to enforce violations of national environmental laws.

"Sanctions, including both trade and non-trade measures, must be available to ensure compliance," said the groups, which include the Center for Environmental Law and Defenders of Wildlife.

The groups sent Kantor 11 pages of recommendations on March 4 in response to his request made in a Feb. 23 meeting with environmentalists that they provide comments to help develop the U.S. negotiating position for upcoming talks with Mexico and Canada on the NAFTA side accords.

The organizations want the NACE to be able to trigger dispute resolution procedures based on complaints filed either by governments or by private groups. A "public advisory committee" would be empowered to force the commission to form a panel to judge a dispute even if the commission dismisses the case. The members of that committee would be four representatives apiece from each government and a representative chosen by the NACE secretariat. The proposal would mandate that two of the four U.S. representatives be members of non-profit environmental groups.

The proposal distinguishes two broad areas of dispute resolution where the NACE should be given authority. One is with regard to being able to dismiss complaints against laws that clearly were passed solely for environmental reasons. "The NAFTA package must recognize that some cases should not be actionable under a trade regime;" the letter states, "rather, a complaining party's 'remedy' in such cases lies more appropriately in the party's participation in the domestic political process that passed the law in question."

The other area is as an enforcer of NAFTA countries' environmental, health and safety standards. A dispute panel verification of a complaint would entitle the complainant to recourse from its domestic agency through "snapback" tariffs contained in NAFTA's safeguards chapter, it says. Lax enforcement of environmental laws in another country where no trade injury exists could lead to the NACE levying a fine upon the violator, under the proposal.

Sources said other groups giving serious consideration to signing on to the recommendations included the Sierra Club, Friends of the Earth, Greenpeace, Environmental Defense Fund, Public Citizen, and the Institute for Agricultural and Trade Policy, among others. Two other key groups -- National Wildlife Federation and Natural Resources Defense Council -- are not prepared to sign and appear likely to back initiatives set forth by Sen. Max Baucus (D-MT) and/or Reps. Ron Wyden (D-OR) and Bill Richardson (D-NM) last month (*Inside U.S. Trade*, Feb. 19, p. 1).

LEGISLATORS PRESS CLINTON TO OBTAIN FLAT-GLASS TARIFF DROP FROM MEXICO

A majority of the Senate Finance Committee, including Senate Majority Leader George Mitchell (D-ME), as well as more than 10 members of the House Ways & Means Committee this week urged the Clinton Administration to convince Mexico to accelerate tariff reductions for U.S. flat glass exports. The legislators want U.S. producers to receive similar treatment under the North American Free Trade Agreement to that given to their Mexican counterparts.

At press time March 4, more than half of the Senate Finance Committee and at least 11 members of the House Ways & Means Committee had signed separate letters to President Clinton asking him to give the matter his "utmost attention" prior to submitting the NAFTA for congressional ratification. Letters expressing similar concerns were being sent to Clinton by the entire Michigan and Texas congressional delegations and by the two senators from Tennessee. Sen. Ernest Hollings (D-SC) also sent a March 3 letter to U.S. Trade Representative Mickey Kantor decrying the alleged disparity. A copy of the Feb. 16 letter from Senate Finance Committee members is reprinted below.

The members of Congress argued that the NAFTA failed to "level the playing field" for U.S. flat glass producers by allowing Mexico to retain a 20 percent tariff on imports from the U.S. that would be phased out over 10 years. According to the Senate letter, the industry considers itself worse off under the proposed NAFTA because it would prevent them from petitioning the U.S. Trade Representative to revoke the tariff preference. They say that the disparity could cost thousands of U.S. jobs and a loss of global competitiveness for U.S. flat glass manufacturers. Flat glass is mainly used for glazing in the construction and automotive industries, according to the U.S. International Trade Commission.

The issue can be resolved "without major negotiation or reopening the existing text" by using a NAFTA clause that allows acceleration of tariff phaseouts if agreed to by all parties, according to the senators. They "strongly urge" Clinton to include an agreement to accelerate the phaseout flat glass tariffs in the final NAFTA package that he asks Congress to ratify.

Signers of the House Ways & Means letter as of March 4 included Reps. Sander Levin (D-MI), J.J. Pickle (D-TX), Michael Andrews (D-TX), Bill Archer (R-TX), Bill Brewster, (D-OK), Don Sundquist (R-TN), Philip Crane (R-IL), Wally Herger (R-CA), Jim McCrery (R-LA), and Clay Shaw (R-FL).

The letter-writing campaign was instigated by Guardian Industries, which has production facilities in the states whose representative wrote letters.

But a source close to Vitro, S.A., the Mexican flat-glass producer that dominates the Mexican market, took issue with the several of the allegations made in the letters to Clinton. He pointed out that although the senators state that U.S.-made flat glass products are now "effectively barred" from Mexico by a 20 percent tariff, U.S. exports of such products actually increased 174 percent between 1989 and 1991 to $85 million, and exports of the glass itself to Mexico has gone up 30 times since 1988 to $27 million in 1991.

He also said that under the NAFTA only seven of 12 flat-glass tariff subheadings under the Mexican Harmonized Tariff System are subject to the 10-year phaseout, not all of U.S. production as the senators state. And contrary to the letters' inference, only three of the seven tariff categories for Mexican exports of flat glass under the U.S. HTS will receive immediate zero duty rates because they qualify under the Generalized System of Preferences, which the senators refer to as a "special GATT exemption."

In addition, increased flat-glass production in Mexico would not cost thousands of U.S. jobs because the industry is capital- rather than labor-intensive, he argued.

Senate Letter on Flat Glass in NAFTA

February 16, 1993

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

Dear Mr. President:

We are writing, as members of the Senate Finance Committee, to express our concern about the North American Free Trade Agreement's (NAFTA) proposed treatment of the flat glass sector. We understand that you are familiar with this problem and share our concern. We are hopeful, therefore, that you and your trade negotiator will give it your utmost attention in your effort to improve the agreement prior to submitting it for ratification.

The American flat glass industry is a key industrial sector that accounts for the tens of thousands of jobs related to the automotive and construction industries. At present, American made flat glass products are effectively barred from Mexico by a protective 20 percent tariff. At the same time, the thriving Mexican flat glass industry, which is dominated by one of the Mexico's premier industrial conglomerates, enjoys duty free access to the U.S. market under a special GATT exemption. The Mexican industry has taken full advantage of this disparity by rapidly increasing its production capacity just south of the border and acquiring extensive distribution outlets throughout the United States. Profits earned in the protected Mexican home market are being used to acquire market share in the U.S. to the unfair detriment of a competitive U.S. industry.

NAFTA was supposed to have resolved this problem. Regrettably, it did not. Members of Congress and the U.S. flat glass industry were surprised and disappointed when we realized that the final NAFTA text allowed the Mexicans to keep their high 20 percent tariff on U.S. flat glass imports, to be phased our slowly over ten years, while all U.S. tariffs on Mexican flat glass products that are currently subject to the GATT exemption would be eliminated immediately. Not surprisingly, the U.S. flat glass industry has concluded that they will be worse off if NAFTA is implemented in its current form, since at least without NAFTA they could petition USTR to revoke the flat glass industry's tariff preference. The U.S. industry has estimated that thousands of American flat glass jobs will be needlessly lost as a result, not because they are uncompetitive, but because NAFTA in its current form would effectively bar their competition in Mexico and render them defenseless against the loss of market share in the U.S. from a competitor that will continue to enjoy monopoly profits in its home market until the year 2004. By that time, thousands of U.S. flat glass workers will be permanently displaced and the global competitiveness of U.S. manufacturers diminished.

We regard this as an error that can and should be corrected before ratification. The Mexican flat glass industry does not need protection. On the contrary, it currently enjoys by far the highest profit margins of any flat glass operation in the world. Moreover, the U.S. flat glass industry believes, as you do, in free and fair trade. It is not looking for protection or trade barriers. All it asks for is fair and equal treatment, and an opportunity to compete on both sides of the border. This is precisely the type of level playing field NAFTA is supposed to achieve.

Fortunately, this problem can be resolved without major negotiation or reopening the existing text. There is currently a clause in the proposed NAFTA that provides for acceleration of tariff reduction rates, if both parties agree. We strongly urge you to instruct your trade negotiator to include such an agreement on flat glass tariffs in the final NAFTA package that will be submitted for ratification.

Your consideration of this important issue is much appreciated.

Sincerely,

Senator Max Baucus (D-MT)
Senator David L. Boren (D-OK)
Senator John B. Breaux (D-LA)
Senator Orrin G. Hatch (R-UT)
Senator George J. Mitchell (D-ME)
Senator Donald W. Reigle, Jr. (D-MI)
Senator Thomas A. Daschle (D-SD)
Senator Malcolm Wallop (R-WY)
Senator John D. Rockefeller, IV (D-WV)
Senator Kent Conrad (D-ND)

ADMINISTRATION LOOKS TO KEEP GRAIN FLOWING TO RUSSIA DESPITE CREDIT CRUNCH

Department of Agriculture proposals to solve the Russian credit crisis and keep U.S. grain flowing into the Russian market with increased food aid appear to have met opposition from other government agencies. After a series of meetings which failed to produce a solution, Agriculture Secretary Mike Espy publicly acknowledged on March 1 that the Administration might not be able to reach a solution.

At the same time, Espy emphasized the need to act quickly. "Delay is not our ally," Espy said, noting that if the U.S. does not find a solution soon, the government will have to make good on the credit guarantees of the commercial bank loans on which Russia is defaulting. USDA, through its Commodity Credit Corporation guaranteed the loans which enabled the Soviet Union, and later Russia, to purchase grain from the U.S. In addition, the failure to act will trigger additional government payments to farmers because the price of grain will go down, sources point out.

Espy described Russia as an "incredibly important market" for the U.S., and its loss due to a prolonged delay, will cause Russia to buy grain on the world market. "Our competitors will soak it up," Espy said. However, he rejected the suggestion of the April 4 summit meeting between Presidents Clinton and Yeltsin as a deadline, adding, "I have no time frame [for making a decision]."

At a February 24 meeting with Espy, U.S. commodity groups pressed for the resumption of commercial sales, instead of opting for food aid under the so-called Food for Progress program contained in P.L. 480, which USDA seemed to favor, an informed source said. Similarly, Russian representatives do not seem to favor increased food aid, they said. In an effort to preserve commercial sales, the North American Export Grain Assn. has proposed setting up a fund that would take over the payments from Russia.

One possible way to use the food aid program effectively would be to lift a cap contained in the Food for Progress program stipulating that the Administration can pay the freight for only 30 million tons of grain, they said. That idea seems to have some support among wheat producers in case commercial sales cannot be restored, they said. Any use of food aid programs raises the issue of additional freight cost because donated commodities must be transported on U.S. ships, which are more expensive than foreign ones.

USDA has been leaning toward expanding food aid programs, which would avoid the credit issue entirely, private-sector sources said. The USDA is prohibited from extending guarantees for loans to nations which are not creditworthy. Russia, which had defaulted on $437 million worth of payments as of March 3, is simply not creditworthy under the criteria spelled out in the 1990 farm bill, an industry source said.

Russia did make some previously missed payments totaling more than $11 million to four banks this week, but is continuing to default on almost $15 million worth of payments daily, according to a USDA source. Total claims on loan guarantees received by the government reached $9.7 million, of which $8.8 million has been paid as of March 3, the source said.

Espy has proposed several possible solutions, but each one has been rejected by the interagency council, which includes ten government agencies in addition to USDA, sources said. Espy described a very intensive work schedule when he said that the Administration had tried to tackle the Russian debt issue in meetings on Feb. 26, over the weekend, and on March 2. He added that he had proposed a plan to the council and a high-level delegation of Russian officials on Feb. 26. "It may not work at all," he said, but "If it fits, then I have to go forward to this interagency council and then to President Clinton. And they may not agree."

Commodity groups have also suggested using barter arrangements, such as that used by Uzbekistan in a recent cotton for wheat deal. The American Farm Bureau last month suggested tying grain shipments to the dismantling of nuclear armaments (*Inside U.S. Trade*, Feb. 12, p. 9).

Senate Agriculture Chairman Patrick Leahy (D-VT) last week called on the Administration to engage in a dialogue with Congress and develop "bold and imaginative strategies" to ease Russia's transition to democracy. "If we do not find a way to help stabilize the Russian economy, American taxpayers are going to wind up holding a bag of over four billion dollars worth of Russian debt," he said in a Feb. 26 speech to the Senate.

Leahy, who also serves as chairman of the Appropriations Foreign Operations subcommittee, argued that standard loans and guarantees are not an effective way of dealing with Russia's economic problems. Criticizing the one to three year loans backed by the GSM-102 program administered by the CCC as "back-door foreign aid," he demanded new ideas on a sufficient scale to make a difference. He emphasized that the U.S. cannot tackle Russia's problems even with the assistance of other western democracies. However, he recommended an international strategy involving Western Europe, Japan, the World Bank, the International Monetary Fund and the European Bank for Reconstruction and Development.

CLINTON ADMINISTRATION TO PRESS FOR NAFTA AS MODEL IN IPR NEGOTIATIONS

The Clinton Administration will press its trading partners in bilateral negotiations to adopt the patent protection standard contained in the North American Free Trade Agreement, which the U.S. believes is superior to the text being negotiated in the Uruguay Round, a senior trade official said this week. Carmen Suro-Bredie, the assistant U.S. Trade Representative for Intellectual Property, told reporters following a Worldnet broadcast that the U.S. would use the NAFTA standard in evaluating progress on patent protection abroad under the Special 301 statute.

The Administration is currently engaged in a wide range of bilateral negotiations, Suro-Bredie said, as part of the process leading up to the designation of priority countries at the end of April. In the broadcast, she emphasized that the Clinton Administration has not changed the policy of pressing for intellectual property protection abroad and linking intellectual property to trade. "It would be a gross error to think that this initiative will fall by the wayside," she said in a March 3 broadcast to Venezuela, Argentina and Peru.

The Pharmaceutical Manufacturers Association, which represents the U.S. patent-based drug industry, called in its Special 301 submission for both Venezuela and Argentina to be designated as "priority countries," which could lead to the initiation of Section 301 investigations and possible sanctions. Suro-

Bredie said, however, that recent developments in Venezuela on patent protection are "very encouraging." She said that the major concern of the U.S. remains with Decision 313 of the Andean Pact countries, which sets a new minimum level of patent protection for the member countries. Venezuela's pending patent law, based on the Andean Pact standard, is still inadequate in terms of the length of protection for patents, "pipeline" protection for products which have been patented abroad but are not yet marketed in Venezuela, and requirements that force companies to work a patent within the country or face losing the patent to a compulsory license.

Suro-Bredie said that the Decision 313 provisions still fall short of those contained in the intellectual property text of the Uruguay Round negotiations, and told reporters after the broadcast that the U.S. was seeking to extend to other countries the stronger provisions contained in the NAFTA. The U.S. government and U.S. industry have criticized the Uruguay Round text for failing to offer pipeline protection, and for the 10-year transition period it allows for developing countries until full patent protection is instituted.

There also remain some outstanding copyright issues in Venezuela, Suro-Bredie said, including the lack of protection for computer software within many companies, as well as pirating of satellite signals. The International Intellectual Property Alliance, a coalition of U.S. trade associations, has urged the Administration to move Venezuela from the so-called "watch" list to the "priority watch" list, indicating more serious U.S. concern with copyright violations. The IIPA has also said it will file a petition to deny Venezuela the benefits of the Generalized System of Preferences, which allows for duty-free export of certain products to the U.S. market, unless improvements are made before June 1.

Suro-Bredie also said there were long-standing problems with the lack of patent protection in Argentina, and said that it constituted a very important issue in U.S-Argentina trade relations. The U.S., she said, is waiting to see whether Argentina will succeed in passing a new pharmaceutical patent protection law, which she described as "very good legislation." Suro-Bredie also said that the lack of patent protection in Brazil is a "very serious" problem for the U.S.

U.S. copyright-based and pharmaceutical companies called for a total of 12 countries to be designated this year as priority foreign countries for intellectual property violations. Suro-Bredie said that the long list of requests may reflect what she called "pent-up anticipation" because of the continued failure to conclude the Uruguay Round negotiations, which would institute new global rules on intellectual property.

NAM URGES U.S. TO STAY IN PROCUREMENT CODE, APPLAUDS SANCTIONS AGAINST EC

The National Association of Manufacturers this week urged the Administration not to withdraw from the Government Procurement Code in the General Agreement on Tariffs & Trade over a dispute with the European Community, but said that the initial proposed sanctions against the EC were "a measured and appropriate response." In a March 1 letter from NAM President Jerry Jasinowski to U.S. Trade Representative Mickey Kantor, the NAM warned that pulling out of the code would be "premature," and that the procurement code remains "the best existing basis for negotiating broader access to the EC market."

The U.S. has threatened to pull out of the GATT procurement code in response to the EC's refusal to open its telecommunications and heavy electrical equipment contracts to U.S. suppliers. While the U.S. has said it will retaliate against the EC on March 22 by denying EC companies access to some U.S. government procurement contracts, pulling out of the code would potentially allow the U.S. to retaliate against a much wider array of products without violating GATT obligations. The USTR has called for industry comments by today (March 5) on the initial March 22 sanctions against the EC, the possibility of a second tranche of sanctions, and the option of pulling out of the GATT procurement code entirely.

In the letter, the NAM charges that Article 29 of the EC's Utilities Directive, which has a mandatory three percent price preference against procurement of bids with less than 50 percent EC content, is a violation of the GATT, even though the products in question are not currently covered by the procurement code. The letter argues that because the Article 29 provisions apply to some non-government companies, such as British Telecom, the mandatory discrimination is a violation of the EC's existing GATT obligations.

The letter also reiterates NAM's contention that the procurement code should not be extended to cover private U.S. companies. The EC has argued that some U.S. private companies which are heavily regulated by the government, such as telecommunications companies, should be included under the disciplines of the code. The letter argues that it has never been U.S. policy to influence the procurement practices of such companies, and argues that imports of foreign equipment by these companies has grown "exponentially" in the 1980s. The only commitment the U.S. government should accept here, the letter argues, is not to apply future trade restrictions in these areas.

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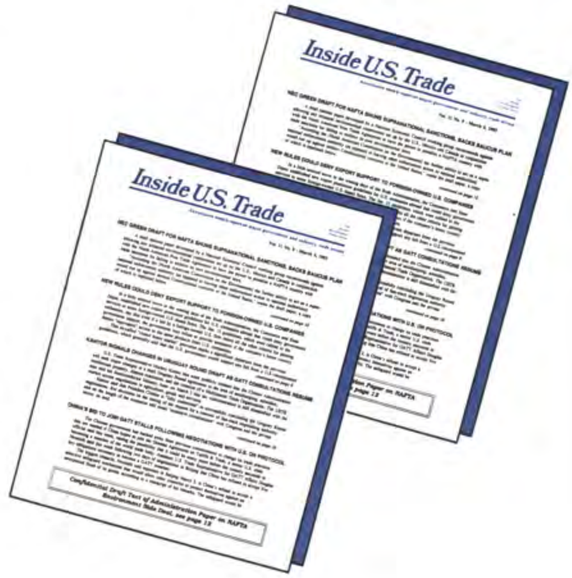

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