

WORLD AGREEMENT ENDS LONG DEBATE, BUT NOT CONFLICTS

THORNY ISSUES LIE AHEAD

International Agreements May Give Way in the Future to More Regional Accords

By DAVID E. SANGER

Special to The New York Times

WASHINGTON, Dec. 3 — The enormous global trade agreement approved by Congress this week does not mean an end to trade conflicts, economists and Administration officials say, much as arms control does not mean an end to strife. If anything, the biggest trade accord in two generations will clear the way for new struggles over a different breed of trade barriers, which may prove more daunting than those it resolved.

The 22,000-page General Agreement on Tariffs and Trade, known as GATT, dealt with many of the enormously sensitive political issues facing the international trading system, including the gradual reduction of tariffs on agricultural products and the protection of intellectual property rights, like copyrights and patents.

But the conflicts the Clinton Administration and others see ahead will involve a whole new generation of issues that mirror many of the foreign policy problems facing the United States today: questions of how countries act within their borders — like labor conditions, environmental standards and human rights — rather than simply how they interact with other states.

These were some of the most emotional matters brought up by GATT opponents in the debate that preceded Thursday's Senate vote. But many of the targets of these complaints, like China and Indonesia, have already told Washington that they consider these questions to be none of its business.

All of those issues are outside of GATT and many believe they should stay that way.

Talks have already begun, however, on another set of thorny issues that were left over when the GATT negotiations ended, including the movement of "cultural" products, like movies, across national borders and the opening of markets to foreign insurance companies, securities firms and banks. Those are also the subject of a number of bilateral negotiations, particularly between the United States and Japan.

These new issues are likely to be played out in new forums. For many reasons, this GATT, in fact, may prove to be the last sweeping global agreement of its kind. No one is eager to slog through another 12 years of talks with such a huge array of players, each with radically different interests.

And during the recent debate,

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members of Congress repeatedly expressed frustration that the expansion of the GATT was so vast, and its effects so unpredictable, that none of the experts and lobbyists who descended on Capitol Hill could come up with believable estimates of how much the American economy would benefit, or how many American workers would lose their jobs because of increased foreign imports.

"In the end most everyone voted on an emotion about freer trade," one senior Clinton Administration official said on Friday. "No one wanted to look like an economic Neanderthal."

To make the next set of agreements easier to negotiate and more understandable, many believe the drive to liberalize commerce will continue largely on a regional basis, through accords in Asia, the Americas and Europe.

President Clinton has already begun down that road, pressing Asian leaders at a summit meeting last month in Indonesia to create a regional free-trade area that will go beyond the minimum rules set out in the GATT accord. He will do it again starting on Friday in Miami, when he gathers the first summit meeting of leaders from Central and South America since 1967.

"It is difficult to negotiate with over 100 countries on things so politically sensitive" as labor rights or the environment, the United States Trade Representative, Mickey Kantor, said today. "Regionally, you have a lot more leverage."

But the Administration argues that without rules set by GATT, it would not have the political backing to pursue a broader free-trade agenda around the world. "To grow trade, we are going to have to create more and more credibility for trade," Mr. Kantor said. "If the rules are not fair, the playing field not level, we will not have the credibility among the American public that free trade is to our benefit."

The global trade pact Congress approved established the precedent that the common barriers to trade that countries have used for decades at their borders — tariffs on imports, quotas on the amount of rice or the number of cars or VCR's that can enter a country, regulations that domestically made products need a certain percentage of "local content" — must be gradually eliminated. Of course, even when the new agreement is fully implemented more than a decade from now, many such barriers will remain. Future arguments, however, will not be over whether they should fall, but how fast.

But opponents of the GATT agreement have complained, for example, that it would not allow the United States to stop the import of products made by child labor, by companies that pollute the environment, or that force companies to keep wages artificially low.

Few countries, however, are prepared to allow international trade inspectors to come into their factories and press questions like this: "Excuse me, how old is that little girl who is gluing the leather soles of those shoes?" or "Could you show us how you treat the chemicals coming out of this factory before you dump them in the river?" Or even: "Why do you imprison workers who de-

mand to make more than 50 cents an hour?"

The chairman of the President's Council of Economic Advisers, Laura Tyson, said after the GATT victory: "Are these really international trade issues at all? Ralph Nader is willing to have the United States pay a higher price for goods because we eliminate imports from countries that don't adhere to environmental standards we consider to be acceptable. But he doesn't tell us the price-

A new era dawns, and with it new struggles.

tag that consumers should be willing to pay."

If anything, the Clinton Administration has backed away from linking such domestic political issues to trade. The underlying message of its decision earlier this year to remove China's human rights record from the question of whether to renew its preferential trade status is that commerce is commerce, and connecting it to politics is just an invitation for America's competitors — Japan, the European Union — to move into markets while the United States stands on principle.

Moreover, getting 124 countries as varied as Malaysia and Sweden to agree on common labor or environmental standards would be next to impossible. President Suharto of Indonesia made it clear to President Clinton last month that he was not interested in talking about why his country throws labor leaders in jail. Singapore's founder, Lee Kuan Yew, has forcefully argued against Western interference in "Asian values," including a national right to economic development that supercedes most individual rights.

The result of such divisions is that the world's trading partners may determine that rather than trying to hit another global home run, they should try something a bit less ambitious.

C. Fred Bergsten, the president of the Institute for International Economics and a key participant in the past two Asian economic summits, argues that regional agreements, as long as they do not create warring trading blocs, can speed overall change: If Europe sees the Asians and the United States sign a regional economic agreement, "it is likely to want to match or better the terms." Fear of a closer alliance between the United States and the Pacific nations, he contends, was a major factor in persuading European countries to finish long-stalled negotiations on GATT last year.

But the doom of global trade agreements has been predicted before, and those predictions have proven wrong. "I thought they were over for good in the early 1980's," said John H. Jackson, a professor of law at the University of Michigan and one of the leading authorities on the workings of the GATT. "They seemed to be a mess, out of control. But there is something systemic that happens when you get so many countries together, and the issues rise to the top political level. I wouldn't be surprised if, after a number of years of stepping back, everyone decides they need to do this again."

U.S. and Bosnia: How a Policy Changed

The following article was based on reporting by Michael R. Gordon, Douglas Jehl and Elaine Sciolino and was written by Mr. Gordon.

Special to The New York Times

WASHINGTON, Dec. 3 — It was the Sunday after Thanksgiving when Anthony Lake sat down in his Massachusetts farmhouse to work on a confidential memo to President Clinton, conceding reluctantly that American policy in Bosnia had run into a brick wall.

For months, Mr. Lake, Mr. Clinton's national security adviser, had been talking about the need to combine the threat of force with diplomacy to protect towns designated by the United Nations as "safe areas" in Bosnia and quell the fighting. Now Bihac, a Muslim town in northwestern Bosnia that the United Nations had promised to protect, was on the verge of falling to the Serbs.

Colliding Missions

A special report.

In his three-page note, drafted with the help of Alexander Vershbow, his top aide for European affairs, Mr. Lake said Washington had failed to persuade Britain and France to support NATO air strikes to try to save the town. Instead of pressing further for bombings, Mr. Lake recommended that the United States concentrate on trying to secure a cease-fire and on stepping up its diplomacy.

"Bihac's fall has exposed the inherent contradictions in trying to use NATO air power coercively against the Bosnian Serbs when our allies have troops on the ground attempting to maintain impartiality in performing a humanitarian mission," he wrote. "The stick of military pressure seems no longer viable."

From his house overlooking a pasture full of cattle, Mr. Lake faxed the memo to the White House, which in turn faxed it to Mr. Clinton, who approved it. Still smarting from his setback in mid-term elections, the President was at his Camp David retreat and had been involved only episodically in the Bosnian issue.

The next day Mr. Lake's conclusions were formally embraced at a meeting of the President's top advisers that neither Mr. Clinton nor Vice President Al Gore attended, and American policy on the 32-month-old war in Bosnia reached an important milestone.

The threat of bombing raids to pressure the Serbs to go along with a peace settlement would be put aside for now. Having failed to stop the assault on Bihac because it could not bend the

wills of Britain and France, the United States concluded that it was more important to re-establish unity in NATO. But to do so, the leader of the alliance had to take a back seat to its junior partners, Britain and France.

The story of how and why the allies failed to act in Bihac, pieced together from interviews with American, British and French officials, goes well beyond the Balkans. It is a tale of the changing dynamics within the 45-year old NATO alliance, which is still searching for a role in a world with no clear adversary like that embodied by the Soviet Union.

The common enemy gone, it has become increasingly hard for the United States, Britain and France to find the point where their national security interests converge. The United States, unwilling to send troops into Bosnia until the fighting stopped, was unable to impose its will on European allies that do have soldiers in the Balkans. Washington managed to ease the worst NATO dispute since the 1956 Suez crisis not by leading the alliance to a consensus, but by acquiescing to the British and the French.

Last February, in response to the Sarajevo marketplace bombing, President Clinton successfully pushed the alliance to create a weapons-free zone around the Bosnian capital. This time, Mr. Clinton, contacted only President François Mitterrand of France.

This time, the French, the architects last year of the "safe area" policy, were siding with the British, who had been forced to go along with the threat of air strikes last February, and the Europeans prevailed.

NATO's unity was preserved. But a solution to the long war in Bosnia seemed more elusive than ever, and the United States is now looking for ways to keep the Serbs from feeling they have a completely free hand.

The Rift

Congress Presses On Embargo

The low point in the dispute between the United States and Western Europe over Bosnia came three weeks ago. Frustrated by the Bosnian Serbs' refusal to accept an international peace proposal, and by the Western Europeans' unwillingness to use military pressure, Congress mandated a significant change: as of mid-November, the United States would no longer enforce the arms embargo against the Bosnian Government.

Though the move had been telegraphed in the Congressional record since August, and its importance was more symbolic than substantive, it led to bitter recriminations within NATO. The leader of the alliance took the extraordinary step of saying it would no longer share intelligence with its closest allies or use its ships to monitor the weapons ban on the Bosnians.

As the Americans and Western Europeans squabbled, the fighting in Bosnia was heating up.

Long frustrated over being cut off from food and relief supplies, the mainly Muslim Bosnian Government troops in Bihac opened an offensive in early November to push out of the enclave. The Clinton Administration refused to condemn the attacks, reasoning that the Muslims were victims in the war and were trying to reclaim their own territory. But Foreign Minister Alain Juppé of France and Foreign Secretary Douglas Hurd of Britain complained that the Muslims were now acting as aggressors.

The United States and Western Europe might simply have agreed to disagree on the wisdom and morality of the offensive, had the Muslims prevailed for more than a few weeks. But the Muslim breakout from Bihac was risky — so much so that Croatian military leaders warned the Bosnian Government against launching the attack.

Bihac was near Krajina, the Serb-controlled area of Croatia, and the Croatian Serbs soon joined in the fighting. According to an American official, 2,000 to 4,000 Croatian Serbs joined some 10,000 Bosnian Serbs in the fray, using supplies from Serbia, despite an agreement by Serbia's President, Slobodan Milosevic, to cut off all aid to the Bosnian Serb combatants.

"We saw no shortage of ammunition, no shortage of supplies on the part of the Bosnian Serbs as they conducted the Bihac counteroffensive," a senior Administration official said.

The Bosnian Government apparently had not calculated that the United States and its Western European allies would allow the Krajina Serbs to cross an international border in support of their Serb brethren. The Serbs were also supported by Muslims loyal to a secessionist Muslim leader, Fikret Abdic.

The Croatian Serbs' intervention was decisive, and the Muslims were beaten back.

In a move that would set off alarm bells in Washington, the Croatian Defense Minister, Gojko Susak, signaled to Peter Galbraith, the American Ambassador to Zagreb, that Croatia planned to respond to the Serbian assault by entering the war. A cross-border triumph by the Croatian Serbs and Bosnian

Serbs threatened the Croatian Government's ability to reclaim the third of territory that fell to the Serbs in fighting there in 1991. Mr. Galbraith sent an urgent message to Washington on Friday, Nov. 11, passing on the Croatian warning.

The Clinton Administration feared that a Croatian Government offensive would lead to a wider war in the Balkans that could even prompt Serbia to join in.

No Line in the Sand

Ever-Shrinking Exclusion Zone

On Nov. 12, the day Washington stopped enforcing the arms embargo against the Bosnian Government, Defense Secretary William J. Perry and General John M. Shalikashvili, the Chairman of the Joint Chiefs of Staff, met in Mr. Perry's office at the Pentagon. Secretary of State Warren Christopher and Mr. Lake, traveling with President Clinton in Asia, were represented by their senior aides.

Throughout the consultations on Bihac, Mr. Clinton was distracted by Asian economic issues, the push to win Congressional support for the General Agreement on Tariffs and Trade and forging a relationship with Republicans in Congress.

The goal at the meeting in Mr. Perry's office was to draft a plan to keep the Serbs from taking Bihac and keep the Croats from joining in the fight.

"Our No. 1 objective was to prevent the war from widening," said a senior Administration official who attended the meeting. "The only leverage we had was to apply an exclusion zone."

The plan seemed straightforward enough. Washington had won NATO approval for establishing zones free of heavy weapons around Sarajevo and Gorazde earlier this year. This would just be one more.

Tanks, artillery pieces and other heavy weapons would be forbidden within 12 miles of Bihac and would be subject to NATO air strikes if the Serbs violated the ban. Since the zone would include part of Croatia, new Security Council and NATO resolutions authorizing the move would be sought.

The next day, American ambassadors throughout Europe received an urgent message to begin emergency consultations with allies on the plan. Meanwhile Washington sent a message to the President of Croatia, Franjo Tudjman, urging restraint.

But the plan proved to be a hard sell, and the Clinton Administration gradually shrunk the proposed exclusion area, trying to make it more acceptable to the allies.

Finally, it proposed a six-mile zone that would not include Croatian territory. That way, the Administration figured, the zone would not need a Security Council vote, with the risk of a veto by Russia, France or Britain.

But even the shrunken zone was too much for the Western Europeans to swallow.

For his part, Lieut. Gen. Sir Michael Rose, the British commander of United Nations peacekeeping troops in Bosnia, refused to acknowledge that Croatian Serbs had joined in the fighting, even though the United States shared intelligence with London and the United Nations indicating that they had done so.

Clinton Administration officials say they believe that General Rose and his French colleague, Gen. Bertrand de Lapresle, commander of United Nations peacekeeping troops in all of the former Yugoslavia, have been taking their cues from their own Governments rather than from the United Nations, a charge the generals deny.

In their deliberations with the Americans,

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The Trade Pact's Key Provisions

THE SWEEPING WORLD-TRADE AGREEMENT has taken eight years to finish. As trade pacts go, this is a big deal: slashing tariffs globally by roughly 40%, extending intellectual-property protection world-wide and tightening rules on investment and trade in services. The General Agreement on Tariffs and Trade, which sponsored the negotiations, estimates that the agreement could boost U.S. income by \$122 billion by the year 2005. Other organizations predict smaller gains, but all of them show a positive effect.

Although 124 nations have signed the GATT accord, only about three dozen so far have given final approval. In the trade world, at least, everyone still looks to the U.S. for leadership. Now that Congress has approved the agreement, the 47-year-old GATT goes out of business on Jan. 1, 1995, and its successor, the World Trade Organization, sets up shop. Here is a rundown on how the trade pact may affect U.S. industries.

WORLD TRADE ORGANIZATION

The new organization will oversee the trade agreement and set up a powerful dispute-resolution system, with three-person arbitration panels. The panels will have to follow strict schedules for rendering decisions; WTO members can't veto the findings, as was the case under GATT. That's a big plus for U.S. agriculture, which had won GATT rulings against European Union subsidies of soybeans and other produce, only to have the EU block the decisions.

Environmentalists and consumer groups worry that the WTO will overrule environmental laws. Partly to allay those fears, the trade pact allows any member to withdraw from the WTO after six months' notice. The U.S. is setting up its own panel of judges to review WTO decisions.

TARIFF CUTTING

"Tariff" is an old-fashioned word for a tax on imports. The negotiators agreed to cut tariffs on many thousands of articles, giving a big boost to U.S. exporters. In particular, the U.S., EU, Japan, Canada and other industrialized nations agreed to eliminate tariffs among themselves in 10 industries:

Beer	Medical equip.
Construction equip.	Paper
Distilled spirits	Pharmaceuticals
Farm machinery	Steel
Furniture	Toys

DUMPING and STEEL

The agreement allows tougher and quicker action to resolve disputes over use of antidumping laws by the U.S., EU and, increasingly, developing countries. Steel industries around the world use these laws to impose stiff penalties on foreign competitors that are found to sell steel "below cost."

But the calculations of cost are highly suspect. In the GATT legislation, U.S. steel companies won approval of several provisions making it easier for them to prove foreign competitors guilty of dumping. Look for the WTO dispute-resolution panels to review whether those provisions violate the trade pact.

INTELLECTUAL PROPERTY

The pact provides seven years of protection for trademarks, 20 years for patents and up to 50 years for copyrights. That represents a big win for the book, software, film and pharmaceutical industries, which complain bitterly of piracy. Solo inventors, however, call the new patent terms harmful. They prefer the current system, which provides pro-

tection for 17 years once a patent is granted; the term can be longer than the 20 years under WTO rules, which begins when a patent is filed. Congress is expected to review the patent question next year.

SUBSIDIES

The agreement limits government subsidies for research in such goods as computer chips to 50% of applied research—the work leading to a first prototype—and 75% of basic research conducted in industry. It allows governments to average the two limits for research that is a combination of the two. That is a boon for the electronics and other high-tech industries, which are big recipients of government research grants.

AVIATION

The agreement continues limitations on government subsidies to the civil-aircraft industry. That is a plus for U.S. aircraft makers, which want to restrict government handouts to Europe's Airbus Industrie and also deter Japan, China and other nations from building aircraft industries through government grants.

AGRICULTURE

Big exporters should prosper. The agreement requires countries that export farm goods to reduce the volume of subsidized exports by 21% over six years. Bans on rice imports in Japan and South Korea are to be lifted. Quotas for imports of sugar, dairy products and peanuts into the U.S. are to be phased out and replaced by tariffs.

Initial access to previously closed markets would equal 3% of domestic consumption; Japan agreed to allow the share of imported rice to increase to 4% in 1995 and 8% over six years.

U.S. rice, grain, fruits, vegetables and dairy products can be expected to gain most. Small farms, though, may face tougher competition from low-cost producers. As part of the GATT legislation, the administration promised to increase funds for agricultural export programs by \$600 million over five years.

AUDIO-VISUAL

A loser. After pledging to push Hollywood's agenda of dismantling EU limits on foreign programming shown on TV, the U.S. gave up. Nevertheless, U.S. films continue to dominate the European market, and the film industry stands to benefit from greater copyright protection.

CHEMICALS

Modest gains. Tariffs world-wide will be reduced to a low, common level among many nations, with the cuts phased in over a period of between five and 15 years. However, several important developing countries, including Argentina, Brazil, India and Indonesia, wouldn't go along with the harmonization.

ELECTRONICS

A big winner. The EU agreed to reduce its semiconductor tariffs by half, to about 7%, and eliminate its tariffs on semiconductor equipment. In return, the U.S. agreed to end tariffs on EU exports of semiconductors and semiconductor equipment. Intellectual-property protection is strengthened. And the new subsidy code would allow the U.S. to continue a consortium in flat-panel TV sets, computer parts and other areas.

PHARMACEUTICALS

The International Trade Commission says the pharmaceutical industry should be the clearest winner in the trade agreement. Tariffs are eliminated among big industrialized countries. Patent protection is extended to drugs world-wide, which are now subject to rampant piracy. But U.S. pharmaceutical makers complain that developing countries have 10 years to phase in patent protection and that patent protection for biotechnology products is weak.

SERVICES

A disappointment overall. Some countries agreed to open their markets in legal services, accounting and software. U.S. negotiators failed, however, to secure access to foreign markets that are largely closed to U.S. banks and securities firms, such as Japan, several Southeast Asian nations and many developing countries.

The U.S. agreed to open its doors to foreign financial-services firms but asserted the right to limit access after July 1995 to firms from nations that don't reciprocate. In other words, negotiations will continue. More talks will also be scheduled on plans to liberalize basic telecommunications services.

TEXTILES and APPAREL

The biggest loser—at least for the industry's workers. The agreement calls for phasing-out over 10 years the Multi-Fiber Agreement, a system of quotas that limits imports of textiles and apparel to the U.S. and other developed countries. In addition, most U.S. textiles tariffs are to be reduced by about 24%; apparel tariffs would be cut about 9%. Europe and Japan would make steeper tariff reductions.

Nevertheless, the textile industry supports the pact for three reasons. First, developing countries want an even faster phase-out of the quota system. Second, the U.S. is pushing Pakistan and other big textile makers to open their markets to U.S. exports. And third, industry lobbyists were able to insert into the GATT legislation a provision that effectively reduces imports from China, the biggest textile and apparel producer.

U.S. textile and apparel makers expect Chinese production to shift to Mexico, where U.S. companies can buy factories or sign up Mexican firms as customers. In any event, U.S. textile and apparel jobs may continue to shrink. North Carolina and South Carolina will feel the brunt of the textile job loss, the ITC predicts.

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Many Business Leaders See Long-Term Gain, Especially at Computer, Drug, Farming Firms

A WALL STREET JOURNAL News Roundup

From selling more ketchup in Japan to gaining protection for high-technology designs, many U.S. business leaders say the passage of GATT will boost business for years to come.

The accord's approval yesterday "is a clear, huge win not just for [the computer-software] industry but for everyone who buys products or has a job," says William Gates, chairman of Microsoft Corp. Enthusiasm for GATT runs rampant among U.S. executives in industries that benefit directly from the trade accord, including computers, pharmaceuticals, agriculture and electronics. Even in industries that don't directly benefit from the new trade accord, some executives take the attitude that a rising tide lifts all boats.

"It will create economic growth and good-paying jobs for Americans, and for us that means they will have more discretionary income to spend at Pier 1 stores," says Clark Johnson, chief executive officer of Pier 1 Imports Inc. of Fort Worth, Texas.

But the trade accord, which also opens up U.S. companies to more competition from foreign companies, found only mild support among chemical companies and many others that see few benefits, or improvements only after many years.

The trade accord means "new projects coming on line and new competition. It's a two-way street," says John Breed, manager of civic affairs at Cooper Industries Inc. in Houston.

Abroad, however, the General Agreement on Tariffs and Trade is causing far less excitement. In Japan, little fanfare is greeting the legislation's apparent march toward approval; India sees changes only many years down the line; and executives in many European countries liked the accord in theory but didn't expect much immediate impact: "This is of little interest to me," said one French banker.

Here are some recent snapshots from executive offices as officials report on what an approved GATT means to them:

SHOES THAT FIT RIGHT: A. Robert Stevenson, a vice president who monitors legislative issues for discounter Kmart Corp., Troy, Mich., says that over the next 10 years Kmart will get better access to low-priced imports. Now, countries are limited in the number of goods they can send the U.S., so they favor exporting

high-priced wares. While an upscale U.S. retailer can buy, say, \$100 shoes from one country, Kmart doesn't have access to \$10 shoes from the same country. This is costing consumers an extra \$46 billion a year, Mr. Stevenson reckons.

And GATT's breakdown of trade barriers would allow Kmart to ship goods to its 13 stores in the Czech Republic and Slovakia for less money, he adds.

CHIPPING AT CHIP TARIFFS: Compaq Computer Corp., which has manufacturing plants around the globe, likes what GATT would do to parts costs and tariffs. In Europe, for example, the 4.9% tariff on computers will drop to 2.5%, and

We want to be able to make our products and sell our products anywhere on the planet.
—CEO of Nu-Kote, printing-products maker

the average 14% tariff on computer chips imported into Europe, where Compaq has a major manufacturing plant, will drop by one-third to one-half.

Compaq will share in the removal of U.S. tariffs as well, since imported items such as computer monitors will become cheaper and U.S. duties on products from Compaq's Singapore manufacturing plant will disappear. The company says it will also benefit from protections on intellectual property included in the treaty. "There's no downside from our perspective," says Joseph Tasker Jr., director of federal regulatory affairs. "It's an unequal-

At home, however, the Houston-based company will see foreign rivals enjoy a reduction in U.S. duties.

GOOD MEDICINE: Randall L. Tobias, chairman and chief executive of pharmaceutical company Eli Lilly & Co., Indianapolis, says, "With GATT, the once rocky road of international growth now is at least partly paved." And Peter Teeley, vice president, Amgen Inc., a Thousand Oaks, Calif., biotechnology company, says the drug industry isn't totally satisfied with GATT's protections for intellectual prop-

erty, but "they would be an advantage to [Amgen] as we look forward."

As it develops new drugs, Amgen hopes to expand beyond its current markets into countries in Latin America, the Far East and India. "In some of those places, there is no patent protection at all right now," Mr. Teeley says.

Meanwhile, Tony L. White, executive vice president of medical-products maker Baxter International Inc., Deerfield, Ill., says, "It's supposed to make medical products virtually duty-free. It makes these products available to developing countries at a lower price." Baxter is looking to Pacific Rim countries, in particular, to generate an increasing percentage of earnings and revenue in the next few years. But he says the success of GATT will depend on how thoroughly its provisions are enforced, and "we can expect creative efforts to try to game the system."

GAMESMANSHIP: "This is a big win for Mattel, the toy industry, and our country," says John W. Amerman, chairman and chief executive officer, Mattel Inc., El Segundo, Calif. "GATT will completely eliminate duties for us, which can be as high as 12%" on finished products coming into the U.S. from production plants in Asia. "We will be able to drive the cost of products down to consumers; and if we can sell more toys at lower prices it is also beneficial to those [Asian] countries and factories" where the toys are made.

GATT will also simplify and standardize customs procedures, speeding the movement of products into the market-

PAPER PROFIT: "A few pennies, nickels and dollars make the difference," says John Turner, vice president of government affairs for Atlanta forest-products giant Georgia-Pacific Corp. about a 10-year phase-in of tariff reductions. When exporting paper to Europe, for instance, Georgia-Pacific now encounters tariffs of 5% to 12% on some products. Such duties often give Scandinavian competitors, which aren't subject to those tariffs, a significant advantage.

Mr. Turner says GATT would give Georgia-Pacific's building-product sales a boost primarily in Asia, though the company is disappointed that GATT reduces tariffs on wood products by only about 50%.

FOOD-FIRM FEAST: Bernard Steinweg, senior vice president of New York-based Continental Grain Co., says he expects annual U.S. corn exports to climb back to the two-billion-bushel level by the end of the decade, up 23% from this year. That's partly due to GATT, and forecasts that China's growing economy will need to consume much of the corn that it has been exporting throughout Asia.

GATT "is vitally important to IBP and our industry. We can not afford further delay," wrote Robert Peterson, chairman and president of IBP Inc., the country's largest beef-processing concern, in letters fired off last week to all the members of Congress he has had dealings with, urging them to pass GATT this year. GATT makes it harder for other countries to use health standards to restrict meat imports, and cuts subsidies for meat and poultry competitors abroad.

Anthony J.F. O'Reilly, chief executive of H.J. Heinz Co., says GATT will allow the company to increase imports of its ketchup to many countries, including Japan. Ten years ago, Japan lowered its quota on ketchup imports but doubled the tariff. "Now those days are really over," he says.

THE EARTH MOVES: "The beauty of this is we are trading a 2.2% tariff [for equipment imports to the U.S.] for access to markets where today we face up to 20% to 30% tariffs," says Timothy Elder, head of governmental affairs for Caterpillar Inc. the Peoria, Ill., maker of earth-moving machinery and other heavy equipment. Caterpillar expects GATT will lead to a \$350 million gain in annual company sales by the time the tariffs are cut to zero. Its sales totaled \$11.6 billion in 1993.

SEWING DISCONTENT: "The government made the decision that textiles aren't as important in the overall scheme of trade as some of the high-tech industries," says Gerald B. Andrews, president and chief operating officer of Johnston Industries Inc., a Columbus, Ga., maker of textile products for autos and other industries. "Textiles per se are not necessarily being treated fairly relative to other industries." But he adds, "We do selective and specialty products, and therefore we're less susceptible to imports like apparel. It's going to be very tough on the apparel cutting-and-sewing trade."

REACTION ABROAD: It will be 10 years before the elimination of textile quotas and the new patent laws — the two main areas where India will be affected — come into force. "If it goes through as intended, it'll be boom time for India," says fashion-garment exporter Naresh Gujral of Span India Ltd. But he's afraid U.S. textile companies will impede market access.

As for Japan, it has long complained of U.S. strong-arm tactics to open its markets, such as pressuring Japan several years ago to agree to give foreign semiconductor makers a 20% share of Japan's chip market. Thus the Japanese welcome the third-party arbitration GATT would set up. And while farmers will suffer from imports, the GATT pact comes as a relief for hundreds of Japanese companies that rely on international trade to survive.

One view appears to be shared by executives on many latitudes and longitudes: "We want to be able to make our products and sell our products anywhere on the planet," says David Brigante, chairman and chief executive of Nu-Kote Holding Inc., a Dallas maker of printing products. "Anything that fosters freer trade, we support it."

Even With New GOP Majorities in Both Houses, Term Limits Face Likely Doom in Next Congress

By JACKIE CALMES

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—It was for good reason that House Republicans promised in their "Contract With America" only to vote on a term limits measure, not necessarily to pass it. Even with new GOP majorities in both houses, odds are that term limits will be doomed in the next Congress.

As much as any issue in the "contract," the proposal to limit the terms of members of Congress illustrates just what a political gamble that much-touted document is for Republicans. The contract's 10 provisions, each included only after polling confirmed an idea's overwhelming popularity, helped nationalize the Republicans' message and break the Democrats' 40-year hold on the House. But now, those promises will be the checklist by which congressional Republicans in turn are judged.

And on term limits, even its advocates in Congress expect the party to fall short when the still-unscheduled votes occur. "I'm not holding my breath that the Congress will get the two-thirds vote" to approve a proposed constitutional amendment, says Florida Rep. Bill McCollum. But compared with Democrats' past inaction, he adds, "We're making great progress" just to have a vote.

Term-limit groups, and perhaps the broader public as well, won't see it that way. "The idea of arguing, 'All we promised was a vote' is going to really sound lame to voters," says Paul Jacob, executive director of Washington-based U.S. Term Limits. And at the Term Limits Legal Institute here, Elizabeth Stern warns, "A lot of people are going to ask, 'If you guys can't deliver, why did we vote for you?'"

Given that potential backlash, says Rep. Bob Inglis of South Carolina, a freshman who vows to limit himself to three terms, "We have to work very hard not just to have votes for these things but to do these things." Still, he isn't optimistic. "Asking an incumbent member of Congress to vote for term limits," he says, "is a bit like asking the chicken to vote for Colonel Sanders."

Questioning GOP Commitment

The Supreme Court hears arguments tomorrow in a case that tests the constitutionality of term limits on Congress. Meantime, advocates are pressing ahead to amend the Constitution. But many are questioning the new Republican leaders' commitment.

Rep. Richard Armey of Texas, in line to be House majority leader, last week had to issue a statement reaffirming his support for term limits after National Public Radio aired an interview in which he suggested that Americans' enthusiasm for the idea will wane if Republicans "can straighten out the House." Similarly, House Speaker-

Term-Limit Trend

So far 22 states have voted for congressional term limits:

STATE (YEAR PASSED)	% YES	NO. OF TERMS	STATE (YEAR PASSED)	% YES	NO. OF TERMS
Alaska (1994)	63%	3	Montana (1992)	67%	3
Arizona (1992)	74	3	Nebraska (1994)	68	3
Arkansas (1992)	60	3	Nevada (1994)	70	3
California (1992)	63	3	North Dakota (1992)	55	6
Colorado (1994) ¹	51	3	Ohio (1992)	66	4
Florida (1992)	77	4	Oklahoma (1994)	67	3
Idaho (1994)	59	3	Oregon (1992)	69	3
Maine (1994)	63	3	South Dakota (1992)	63	6
Massachusetts (1994)	51	4	Utah (1994) ²	—	6
Michigan (1992)	59	3	Washington (1992)	52	3
Missouri (1992)	74	4	Wyoming (1992)	77	3

¹Colorado first voted for more liberal term limits in 1990

²Utah's limits were passed by state legislature

Source: U.S. Term Limits

in-waiting Newt Gingrich privately predicted before this month's elections that the momentum for term limits would fade if, as happened, Republicans triumphed.

The Georgian's own record is mixed. He backed a limit of a dozen years for House members during his first successful campaign — 16 years ago. "I think that the advantages of incumbency are so massive that there ought to be some kind of limit, probably 12 years," he told a local paper in 1978. In 1989, he told reporters he wanted 32 more years in the House.

More Wiggle Room

The "Contract With America" that Mr. Gingrich promoted promises early House action on "The Citizen Legislature Act: A first-ever vote on term limits to replace career politicians with citizen legislators." But the fine print gives lawmakers more wiggle room than most of the 22 states that have imposed limits. The proposal that will be put to a vote calls for a 12-year, or six-term, limit for House members, and 12 years, or two terms, for senators. The House GOP also will allow a vote on an amendment to that version that would limit House members to three terms, but that option is expected to get far fewer votes than a six-term maximum.

Rep. McCollum, a GOP leader who is the chief sponsor of the six-term proposal, describes himself as "Numero Uno on term limits" in the House. But U.S. Term Limits, which insists on no more than three House terms, calls him "a term-limits phony" and derides his version as "the Incumbent Protection Act." Even at the more pragmatic Term Limits Legal Institute, which would accept a six-term maximum, director Cleta Mitchell says, "I don't think this is as high a priority in his office

as it should be. Some of his staff is very open that they're opposed to term limits."

Senate Republicans never signed the "Contract With America," and party leaders have been notably cool to the idea of term limits. In remarks after the elections, Sen. Phil Gramm of Texas repeatedly said he never thought such limits were "the be all and end all." Senate GOP Leader Robert Dole of Kansas says he could support term limits, but at the same time objects that small states like his would forfeit the influence that goes now to lawmakers with seniority.

"Bob Dole says, 'Yeah, I'll vote for term

limits,' and then proceeds to give you 15 reasons why it's a bad idea," says Ms. Mitchell. She says she recently felt depressed about the outlook in Congress — until a flood of angry calls unleashed after Rep. Armey's comments reassured her that the public would keep up the pressure on Republicans.

Ms. Mitchell says she had been told the term-limits provision was "the most controversial item on the list" when House Republicans earlier this year winnowed the proposals to go into the 10-point Contract for the first 100 days of a GOP Congress. Among the chief foes was Rep. Henry Hyde of Illinois, who will become chairman of the Judiciary Committee, which has jurisdiction over the issue.

'Harmful to Democracy'

"The whole term limits movement, which I abhor, contributes to the notion that this is a place of corruption," says Rep. Hyde, a notion that "is harmful to democracy." But the lawmaker, who has filed a brief at the Supreme Court against state-imposed term limits, says he won't try to block the proposed constitutional amendment in his committee.

Early vote tallies indicate he won't have to. While Republicans will have about a 230-vote House majority, a proposed constitutional amendment needs 290 votes, or two-thirds. Yet even counting a few Democratic supporters, Rep. McCollum sees just "close to 200" term-limit backers. In the Senate, Colorado Sen. Hank Brown says he will push for a vote there even before the House acts. Yet he concedes that the resistance to limits is greater than in the House.

What's more, even if Congress did approve term limits, the version that most likely would carry — a 12-year limit for House members — won't satisfy the high-profile U.S. Term Limits. "A vote against three terms and for six terms is a vote against term limits," says Mr. Jacob, and that is the message his group will take to voters in 1996.

Meanwhile, Rep. Inglis holds out hope that the pro-term-limits message he sees in this year's election results will sway Congress ultimately. He notes that in his own South Carolina delegation, newly elected Republican Mark Sanford likewise has limited himself to three terms. But the state's congressional delegation also includes Strom Thurmond — a veteran of

more than 40 years in the Senate who, though he turns 92 next week, is widely expected to seek re-election in 1996.

Nevertheless, the 35-year-old Rep. Inglis notes that each time the two men appear together at political events back home, the elderly senator says, "It's so good to be here with Bob. He's for term limits, and so am I. I figure that by the time Bob gets it, it won't matter."

A Primer on GATT: Sure, It's Tedious, But the Important Things Often Are

By BOB DAVIS

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — After seven years of negotiations in Geneva and six months of haggling on Capitol Hill, the trade pact known as GATT is finally coming to a vote in Congress. Tomorrow, the House votes; on Thursday, it's the Senate's turn.

GATT is one of those subjects that makes people feel inadequate. You know it's supposed to be important, but you have no idea why. Here's a guide for the perplexed:

Q: Why should I care if GATT passes or flops?

A: A few reasons. GATT means big money. GATT cuts tariffs world-wide. That reduces the price of U.S. exports, which boosts sales, and cuts the price of imports, which boosts income. Sweaters will be cheaper because of GATT, so will semiconductors. Depending on who's doing the counting, GATT could pump up U.S. national income by \$25 billion to \$100 billion annually after the agreement takes full effect in 10 years. Overall, the number of jobs should grow too.

But there is a price to pay. Businesses that depend on subsidies or can't meet foreign competition will suffer. Look for textile and apparel jobs to continue their decades-long migration abroad. Expect more for-sale signs on family farms.

Q: OK, I'm reading. What is GATT anyway?

A: GATT stands for the General Agreement on Tariffs and Trade, which sounds like a document but is actually an organization that was founded in Geneva in 1947. Since that time, GATT has sponsored seven rounds of trade talks in which tariffs have been cut to an average of 4.7% in industrialized nations. World trade has boomed. Now GATT's members have come up with its most ambitious agreement ever, and Congress is voting on whether the U.S. should go along. The newest GATT agreement would cut tariffs again, by roughly 40%, as well as reduce agricultural subsidies, extend patent protection, and set rules on global investment and trade in services.

Q: Who could be against that?

A: A lot of people. They include many labor, consumer and environmental groups as well as some conservatives. They especially object to a provision replacing the GATT with — and here comes another bureaucracy — a World Trade Organization. The WTO would have powerful arbitration boards to decide whether domestic laws violate the new trade pact.

Under GATT, which is a pretty napsack organization, any country could delay arbitration panels and veto their rulings. That drove U.S. negotiators crazy. The U.S. won decisions at GATT requiring the European Union to slash subsidies on soybeans, canned fruit and other agricultural products, for example, but the EU blocked or delayed the rulings and told the U.S. to get lost. The U.S. could do the same when it comes out on the short end.

Q: How would the WTO change that?

A: The WTO arbitration boards would have to adhere to a strict time schedule. No country would have a veto. A country that lost a WTO ruling would have to comply or face trade sanctions by the winners. Let's say a WTO panel found that a U.S. law blocking imports of \$100 million of Polish ham was improper. The U.S. would have to either change the law or let Poland assess prohibitively high tariffs on \$100 million of U.S. imports. In trade circles, that's considered a big club

Q: Trade critics say the WTO panels violate U.S. sovereignty. True or false?

A: In a strict sense, false. The WTO couldn't ever force the U.S. or any other country to change its laws. There are no trade police, after all, to enforce WTO rulings. However, the U.S. would be under pressure to accept rulings, for two reasons. First, trade sanctions limit U.S. exports, however modestly. Second, the U.S. wants other countries to obey WTO rulings that the U.S. wins. If the U.S. simply pays the fines, or ignores the rulings altogether, so would other countries. The WTO, then, would be as hapless as GATT.

Q: What kinds of U.S. laws might be challenged at the WTO?

A: Under the trade pact, signatories agree to a phenomenally complicated code of trade conduct. Environmentalists point to WTO provisions requiring that health and food safety laws be "necessary" and "based on scientific principles." They worry that laws banning certain food ingredients may flunk if they unduly limit trade. But trade lawyers say the GATT language is broad enough to protect such U.S. laws and regulations, which are routinely based on scientific assessments.

Q: Anything else at risk?

A: During the drafting of the U.S. GATT legislation, lobbyists managed to insert a number of provisions that could be tossed out by WTO panels. After losing a big GATT case alleging that other countries "dump" steel in the U.S. at below-market prices, the steel industry used the GATT bill to change parts of the U.S. antidumping law. WTO panels might find those changes improper.

Q: If the U.S. doesn't like WTO decisions, can it get out?

A: Yes. Any country can withdraw from the WTO after giving six months' notice. In a bid to win support from Senate Republican Leader Robert Dole, the Clinton administration also agreed to set up panels of judges to review WTO panel rulings. After three WTO decisions that the judges ruled were improper, Congress could start proceedings to withdraw. Other countries will probably do the same thing. In short, there are checks on checks on checks. The real question, many proponents say, is whether the WTO will have any real power, not whether it will have too much.

Q: Arbitration panels seem to be a pretty narrow reason to oppose a broad trade deal.

A: That may be, but there are broader issues involved that are hard to articulate and on which it is even harder to build a political campaign. Apart from GATT's particular provisions, the pact is a metaphor for the growth of the global economy. Domestic barriers fall, global investment increases, foreign competition intensifies. For those with education, money and a sense of adventure, the world is their oyster. But for many others, the world is a sea full of sharks. GATT strips away domestic protection, including job protection. Even those with skills feel more vulnerable.

Q: Will GATT pass?

A: Almost certainly in the House, where Newt Gingrich, the speaker-in-waiting, is trying to roll up a big vote. The outcome is less certain in the Senate, where 60 votes are needed because of budget rules that are arcane even by GATT standards. Given that almost all of corporate America backs GATT, that Sen. Dole has finally signed on, that critics haven't roused broad-based opposition, and that Americans tend to look at the future optimistically, GATT is probably a go.

Q: Last year, there was the North American Free Trade Agreement; this year GATT. Are we finally done with trade issues?

A: No. Next year, Congress will debate

Please Turn to Page A20, Column 2

A Primer on GATT: It May Be Tedious, But It's Important

Continued From Page A3

whether to give the administration authority to negotiate even more trade deals. The U.S. plans to extend Nafta to Chile, for starters. Expect a bruising fight; trade disputes always are.

Q: Finally, some questions from the kids. My nine-year-old son asks whether anyone really reads the GATT legislation, which consists of two bound volumes, each 2,000 pages long. And my six-year-old daughter asks whether GATT will ever be fun.

A: Judging from the phone calls that come in to trade reporters, some people apparently do read the GATT bill in its entirety. Ralph Nader even boasts about reading it. But GATT will never be fun.

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Uruguay Round (GATT) 1994

What is the Uruguay Round?

- The largest, most comprehensive trade agreement in history among 125 nations.

What Will the Uruguay Round Do?

- Create hundreds of thousands of high-paying U.S. jobs;
- Increase U.S. GNP by \$100 to \$200 billion per year over ten years;
- Boost the world economy, which is currently stalled;
- Eliminate foreign tariffs in key U.S. export sectors;
- Cut global tariffs by more than one-third;
- Expand U.S. exports of goods and services;
- Increase U.S. agriculture exports by as much as \$8.5 billion per year by 2005;
- Reduce foreign agricultural subsidies;
- Protect intellectual property of U.S. entrepreneurs from piracy in foreign markets; and,
- Provide market access in fast growing countries like Brazil, Thailand, and Malaysia.

The Uruguay Round Agreement— the right agreement at the right time for the United States

- The Uruguay Round agreement is the product of the Reagan, Bush, and Clinton administrations. It was U.S. leadership that broke years of global gridlock to forge a successful agreement.
- U.S. leadership must continue through rapid approval of the implementing legislation.

Why Should Congress Approve the Agreement This Year?

- All of our major trading partners are planning to approve the agreement by January 1, 1995.
- The U.S. pressed the world to complete the UR—delay would undermine U.S. leadership and deny U.S. workers growing economic opportunity.
- The sooner we implement the agreement—the sooner we'll see the benefits.
- Our credibility in asking Japan and others to open their markets is tied to U.S. passage of the Uruguay Round.

Will the U.S. lose its sovereignty because of the World Trade Organization?

- No. Only the Congress can change U.S. laws. The United States retains all its current rights to set its own laws and standards.

How will we pay for the agreement?

- The Administration and the Congress are currently looking at options to offset the revenue losses from lowering U.S. tariffs. The Administration is committed to work with the Congress to finding a viable, bipartisan funding package.
- Implementing the agreement will both increase U.S. GDP and, in turn, increase federal revenues over time.

Who are the big winners under the Agreement?

- U.S. consumers
- Workers and firms in the following industries, to name a few: agriculture; chemicals; paper; toys; software; travel and tourism; beer; banking; construction, transportation, and medical equipment; steel; computers; retailing; electronics; pharmaceuticals; household appliances; insurance, telecommunications; aerospace; semiconductors; and furniture.

And the list goes on. . .

~~NO RUSH~~

~~NO RUSH~~

7-7-94

✓ done

—

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WRITER'S DIRECT DIAL*

June 14, 1994

VIA FAX (202) 456-2215

Mr. John Podesta
The White House
Washington, D.C.

VIA FAX (202) 456-5558

Mr. John Emerson
The White House
Washington, D.C.

Dear John and John:

The attempt to link the proposed repeal of § 412 of the U.S. Copyright act to the GATT implementing legislation is causing enormous concern among a variety of industries. Since I represent many book publishers, magazine publishers, newspaper publishers, authors and broadcasters, a number of my clients have called me in horror at the now confirmed rumor that the advocates of repeal are attempting to append their totally unrelated bill to the urgently needed GATT legislation.

I believe such a step would be a serious error for the Administration based a number of reasons, a few of which I have set forth below:

1. The repeal of § 412 has absolutely nothing to do with GATT. Indeed, the issue of repeal was addressed six years ago when the Berne Implementation Act was adopted, and at that time copyright experts concluded that § 412 was not incompatible with the Berne Convention.

2. The proponents of repeal, principally photographers and their representatives together with a few strong-willed members of the House staff, pose no significant threat to GATT implementation;

*Todd will
you talk to KA
about this.
I think
Victor is right
John*

Mr. John Podesta
Mr. John Emerson
June 14, 1994
Page Two

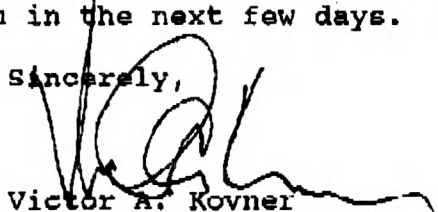
3. I fear that linkage of the proposed repeal of § 412 would deprive the implementation legislation of some of its most natural supporters:

4. The very notion of linkage is a blatant attempt to deprive the Senate of an opportunity to resolve the amendments to the Copyright Reform legislation through the usual committee process. Merely because the House has proposed the photographers' version does not mean that the Senate Judiciary Committee should be denied the opportunity to make whatever modifications it deems appropriate after hearing fully from all sides;

5. On the merits, repeal is disastrous for libraries, scholars, educational institutions, and the press generally. It should be called the "Lawyers Employment Act of 1994", since it will generate a plethora of claims involving the use of unpublished materials such as personal photographs, memoranda and documents. Infringement of the right to use such material may currently be addressed in a standard copyright action, but the purpose of this legislation is to add statutory damages and attorneys fees to the remedies. Those remedies would invite claims where few exist today, and thus seriously impair to work of scholars, historians and journalists and the institutions which serve them.

I would very much appreciate the chance to discuss this linkage with you and will call you in the next few days.

Sincerely,



Victor A. Kovner

VAK:AK

2150a/88-89

IRA SHARRO 7/7/94

✓ Hughes wants §412 repeal

No consensus so USTR
not inclined to do it

Adm. endorsed repeal of §412 -

Commerce ^{letter} endorsed

A bill passed House

final

June 7, 1994

The Honorable Michael Kantor
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20506

Dear Mr. Ambassador:

We are writing to inform you of our strong opposition to any attempt to incorporate the repeal of §412 of the U.S. Copyright Act into the forthcoming GATT implementing legislation.

Specifically, we are referring to the possibility that the Copyright Reform Act, either in the form passed by the House or as pending before the Senate Judiciary Committee, may be incorporated within the GATT implementing legislation to be put forward shortly by the Administration. Our concern with either of these versions of the Copyright Reform Act is that they include a provision to repeal §412 of the U.S. Copyright Act.

At the outset, we note that the Copyright Reform Act is under active consideration by the Senate Judiciary Committee and that repeal of §412 -- regardless of its substantive merits -- is completely extraneous to GATT and is not required by the Berne Convention. This issue was addressed squarely six years ago when the Berne Convention Implementation Act was enacted into law. At that time the President, both Houses of the Congress, and copyright experts who carefully examined the issue concluded that §412 was not incompatible with the Berne Convention. That conclusion remains equally valid today.

The proposed repeal of §412 is an extremely contentious issue. A growing number of broadly-based American industries and other interested parties, including those representing scholars, librarians, museums, authors and school boards, are actively voicing their concerns with respect to the grave implications of the repeal of §412. The possibility of this repeal has prompted the undersigned organizations to join together in opposing the outright repeal of §412. We have attached for your review a letter sent previously to Senator Dennis DeConcini, chairman of the Senate Subcommittee on Patents, Copyrights and Trademarks, which has jurisdiction over the Copyright Reform Act. This letter spells out both our fundamental concerns with the proposed repeal of §412 and our interest in working with the Senate in addressing these concerns.

page 2

The Senate Judiciary Committee is now immersed in giving the important and complex issues raised by the Copyright Reform Act -- especially the proposed repeal of §412 -- the careful scrutiny that they deserve. Attaching the repeal of §412 to the GATT implementing legislation would circumvent the orderly review of this legislation by Congress and short circuit the on-going consideration of this important legislation. We strongly urge you to reject any attempt to incorporate the §412 repeal into the GATT implementing legislation. Your assistance in this matter will be greatly appreciated by all of the undersigned.

Sincerely,

American Association of Law Libraries
American Association of Museums
American Library Association
American Society of Magazine Editors
American Society of Newspaper Editors
Association of American Publishers
Association of American University Presses
Association of Authors' Representatives, Inc.
Association of Research Libraries
Authors Guild
Coalition for Consumers' Picture Rights
Magazine Publishers of America
National Humanities Alliance
National School Boards Association
Newspaper Association of America
Publishers Association of the South
Radio-Television News Directors Association
Special Libraries Association
Text and Academic Authors Association, Inc.

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FACSIMILE COVER LETTER

DATE: June 8, 1994

TO: Todd Stern

FACSIMILE NO.: 456-2215

FROM: Mike Remington

NUMBER OF PAGES, INCLUDING THIS COVER LETTER:

COMMENTS:

As promised.

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MEMORANDUM (BY TELEFACSIMILE)

TO: JOHN PODESTA
ASSISTANT TO THE PRESIDENT AND
STAFF ATTORNEY

FROM: MIKE REMINGTON 

RE: GATT AND COPYRIGHT REGISTRATION REFORM

DATE: JUNE 3, 1994

Attached you will find a letter that I recently hand-delivered and discussed with Ira Shapiro. Ira confirmed that USTR is seriously considering the addition of the registration reform to GATT but, at the same time, seemed convinced by my arguments.

As you will recall from our Berne Convention Implementation Act days, the U.S. does not need to accomplish this reform in order to be a member in good standing of Berne.

My message to you is a political one: it would be a serious and unnecessary political mistake to add an unnecessary and controversial amendment to the GATT implementing legislation. I can guarantee that such a ploy, even if successful, will alienate millions of American consumers and small business people. "No, mam, you can't get a copy of that photo of your deceased husband for the obituary page; President Clinton changed the law on that matter." The insertion of a non-germane copyright amendment in the GATT implementing legislation is unfair and anti-democratic and will benefit very few professional photographers. As a matter of fact, the underlying proposal will hurt American industry -- as you will hear from the publishing and printing industries, newspapers, magazines and photofinishers. Finally, we have a lot of Senators (including the Majority Leader) working to achieve balanced reform in the copyright law. Let's not insult the Senate on a matter that it already has under consideration.

"J'espere que tu as eu un bon voyage en Europe."

cc: Todd Stern

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June 2, 1994

Honorable Ira Shapiro
General Counsel
USTR
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ira:

On behalf of the Coalition for Consumers' Picture Rights, I would like to express strong opposition to a proposal apparently being considered by the Office of the United States Trade Representative to add the text of a House-passed bill (H.R. 897, as passed by the U.S. House of Representatives on November 20, 1993) or that of Senate companion legislation (S. 373) to the implementing legislation for the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). The Coalition is a national *ad hoc* organization of camera store owners, minilab retailers, photo processors and photofinishers, film and paper manufacturers, camera and lens manufacturers, frame and album manufacturers, professional and amateur photographers, and consumers. While opposing the proposed legislation, the Coalition at the same time is constructively working towards a compromise in the Senate that would balance the legitimate business interests of a successful American industry with author's rights as well as those of American consumers.

The principal reform made by H.R. 897 and S. 373 is the seemingly innocuous repeal of section 411(a) and 412 of the Copyright Act. Section 411(a) operates in tandem with section 412. The former requires that United States authors register their works with the Copyright Office before bringing an infringement lawsuit in Federal district court. Section 412 conditions the award of

Honorable Ira Shapiro
June 2, 1994
Page Two

statutory damages and attorneys fees on registration being obtained before an infringement occurs. Receipt of statutory damages (the current range is between \$500.00 to \$20,000 for all infringements to any one work to be determined by the court) and reimbursement of attorneys fees (which can rise to thousands of dollars) are two very important economic incentives to bring lawsuits in the federal courts. Due to court congestion in the federal courts, lawsuits (even those brought against legitimate commercial interests and innocent infringers) are often followed by pressure to settle the case for a compromise amount of money. Bear in mind that today less than one-tenth of one per cent of photographs are registered. If enacted, H.R. 897 or S. 373 could be expected to chill or jeopardize legitimate commercial or personal activities that currently flourish under current copyright law. The chilling effect will occur in, but is not limited to, the areas of photography, scanning, printing, publishing, and television dissemination.

There are at least three reasons why the proposed legislation should not be included in the implementing legislation for the GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1. First, GATT TRIPS does not require reform of the current registration system. As regards copyright, GATT TRIPS requires compliance with articles 1 through 21 of the Berne Convention. Member states are not required to implement in their domestic laws more extensive protection than is required in the TRIPS Agreement. Today, the United States is a member in good standing of the Berne Union. In 1988 Congress determined in the Berne Convention Implementation Act that "the amendments made by this Act, together with the law as it exists on the date of enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention...." See Pub.L.No. 100-568. The Senate confirmed this finding when, on October 20, 1988, it gave its advice and consent to accession to the Convention. Today, other Berne countries maintain registration systems, in keeping with their national experiences, and indeed have procedural requirements (as we do) for bringing copyright infringement actions: pleadings must be filed, documents produced, and court costs paid. Most Berne countries do not offer the economic incentives of statutory damages and attorneys fees in copyright infringement lawsuits.

2. Second, the underlying proposal is controversial and, if included, would diminish public support for the GATT implementing legislation. In addition to photofinishers, the proposed legislation is opposed by many quarters including representatives of authors, newspaper editors and publishers, magazine publishers and editors, the library community, school boards and universities. All of these parties, however, have committed themselves to proceed

Honorable Ira Shapiro
June 2, 1994
Page Three

along the normal legislative course in the Senate. Supporters and opponents can do battle and perhaps reconcile their differences. Without the full and fair participation of all the parties, inclusion of a controversial proposal in a legislative package that cannot be amended in the Congress can only result in a great deal of unhappiness by affected parties.

3. Third, from a trade perspective, the proposal will hurt American competitiveness, as it will chill a successful domestic industry and raise prices for consumers. Today, in the United States, the photography market has risen to \$21 billion annually. Photography is an American success story. The photographic industry is highly competitive, with camera stores and minilabs sprinkled throughout every State. Approximately 16.6 billion photographs are taken annually, generating over \$5.5 billion in sales for photofinishing retailers. Thousands of domestic jobs are implicated. We sometimes forget how powerful a tool a camera can be; but our memory loss is remedied by the sight of a high school yearbook, a photo greeting card, a baseball card of a Little Leaguer in uniform, or a family picture on a cluttered desk.

Today, a significant number of innocent reproduction activities occur downstream in the photographic industry -- photos from photos, photos from slides, photos from negatives, compact disks of photos. With the elimination of registration as a prerequisite to lawsuit and the broadening of the availability of statutory damages and attorneys fees, photofinishers will be forced to more carefully scrutinize each and every work submitted for duplication. The consumer's right to obtain copies of legitimate photographs will surely be compromised, higher prices will be unavoidable, and the industry will suffer as a whole.

In conclusion, current American copyright law is appropriately captured in article 7 ("objectives") of the GATT TRIPS Agreement:

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

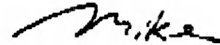
In the United States, the Supreme Court has regularly and consistently confirmed the requirement of balance between proprietary rights and the public good in the exercise of Congress' constitutional mandate to "promote the Progress of Science and the useful Arts." Nothing in the GATT, the Berne Convention, or current copyright law requires the USTR to bypass procedures contemplated in the Constitution for copyright law reform. To the contrary, our treaty obligations, constitutional text, and

Honorable Ira Shapiro
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Page Four

legislative processes envision respect for the normal process.

I look forward to discussing this matter with you in more depth. With personal admiration for your work and your commitment to public service, I am

Sincerely,



Michael J. Remington
Counsel
Coalition for Consumers'
Picture Rights

cc: Catherine Field

456-
2215

Clinton: AV fight not over

President tells entertainment industry Euro trade talks will continue

By Andrew Ross

WASHINGTON — Entertainment executives irate over the shutout from the new General Agreement on Tariffs and Trade are finding some solace in Clinton administration indications that the United States will continue to push to lower trade barriers for audiovisual product.

In his message notifying Congress of his intention to enter into the 116-nation agreement, Clinton gave assurances that the industry would not be left out in the cold.

"With regard to entertainment

issues, we were unable to overcome our differences with our major trading partners, and we agreed to disagree," Clinton wrote in the message.

Some motion picture sources saw allusion to entertainment industry concerns in the message as a silver lining in an otherwise dark cloud.

"We will continue to negotiate, however, and until we reach a satisfactory agreement, we think we can best advance the interests of our entertainment industry by reserving all our legal rights to re-

spond to policies that discriminate in these areas," Clinton concluded.

It's important that the president make a statement indicating that the United States could retaliate if it found it necessary, a motion picture industry source explained.

"It's significant that the president in his letter emphasized that

See CLINTON on page 16

TO: TODD
John

Clinton

Continued from page 3—

we are reserving our rights to respond in these other areas," the source said.

The message comes at a time when some key lawmakers on trade issues are also pushing for tough action on behalf of the industry.

Aides to Sen. Max Baucus, chairman of the Senate's international trade panel, said that included the possibility of Special 301 actions, referring to a portion of the trade law that allows the U.S. to retaliate.

"Just the threat of retaliation will bring people to the table," said an aide. "Whether or not they'll reach a solution is harder to say." □

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A LOOK AT... *Keeping C*

The GATT Gaffe?

How America Could Give Away the Store in its Next Big Trade Treaty

By Clyde Prestowitz

IN WINNING congressional approval of the North American Free Trade Agreement and pressing Pacific Rim leaders for reduction of the \$100 billion U.S. trade deficit with Asia, President Clinton has reached for trade as his top tool for job creation at home. It's a good choice; exports are one of the few live prospects for substantial U.S. job gains. And trade agreements can assist that pursuit—if they're balanced agreements.

The danger at the moment is that too hasty approval of the current draft agreement of the Uruguay Round of world trade talks could undo the good work on the trade front—and likely open up another NAFTA-like fight in Congress that no one wants. With the rapid approach of the Dec. 15 deadline for concluding the General Agreement on Tariffs and Trade (GATT) talks, the president must act quickly to improve the deal and to establish a foundation on which to base a new trading order.

Concern over the current draft is not limited to a few French farmers, as many commentators suggest. Nor is it a matter of protectionism versus free trade. Many in the business and trade policy community who supported NAFTA and the Pacific Rim initiative are actively calling for improvements in the so-called Dunkel proposals (named for former GATT Director General Arthur Dunkel). Whereas NAFTA clearly removes barriers to U.S. trade, leaders of such industries as banking, semiconductors, entertainment, autos, pharmaceuticals, steel, software, paper and telecommunications fear the Dunkel draft could actually bring a net increase in objectionable practices and swell the U.S. trade deficit by \$10-30 billion at the cost of thousands of jobs.

At the heart of the matter is the fact that the United States has by far the most open of the world's major markets. The U.S. system is also totally transparent—we do not camouflage import barriers through special inspection requirements, restricted access to retail outlets, limitations on foreign investment and the myriad devices that other countries use. Thus any agreement that fails to open foreign markets fully, or that diminishes America's ability to push the world toward U.S. levels of openness and transparency, will tend to lock U.S. business into a disadvantageous position.

Some progress has been made on the market-opening front. Agriculture, which accounts for less than 20 percent of U.S. trade, has received the lion's share of effort. Real reductions of agricultural subsidies and import impediments have been agreed upon, as well as significant cuts in some industrial tariffs. Yet, these gains fall short of initial objectives that envisioned the virtual elimination, over time, of agricultural subsidies as well as abolition of a whole series of industrial tariffs.

In the area of services trade, another major focus of negotiations, gains are also limited—perhaps even negative. A good statement of principles for services trade has been drafted, but its value depends on the extent to which countries offer concrete liberalization measures in highly regulated sectors.

To date, most countries have made little more than standstill offers. In most cases U.S. companies would not even be offered "national" treatment—that is, the same treatment

that domestic firms enjoy. Moreover, under the Dunkel draft it is not clear that the United States could prevent "free riders" who keep their own markets closed from exploiting the open U.S. market. Thus, for example, U.S. insurance companies might not be able to operate freely in Japan, but Japanese insurance firms would be free to operate here on the same basis as U.S. firms.

The situation is only a little better with respect to market access based on stronger protection of intellectual property. The establishment of binding standards is an important gain, but loopholes would work to the great disadvantage of some of our fastest-growing industries. Many key biotechnology products would be denied any protection at all. Moreover, other patents might be subjected to compulsory licensing requirements in return for "reasonable compensation." Thus a company such as Intel might be forced to license its leading-edge microprocessor technology to a foreign competitor for a mere 5 or 10 percent royalty—in other words, give away the keys to the kingdom for a song. Intellectual property protection in developing countries would only be phased in over 10 years and pharmaceuticals now in the development pipeline would not be covered. All this means that for at least the next decade, U.S. patents could be stolen legally in some of the world's most dynamic economies.

New subsidy provisions would put the United States in double jeopardy. Strict limits on subsidies for research and development could restrict the support of science by such agencies as the National Institutes of Health. At the same time, regional development subsidies, such as those used to support inefficient industries in Europe and Asia, would be legitimized. Such subsidies are now actionable under U.S. trade laws. So, for example, subsidized Canadian lumber currently under restriction in the U.S. market could be sold freely without possible protest from the largely unsubsidized U.S. lumber industry.

Finally, under the Dunkel text, the Multi-Fiber Arrangement quotas on textile imports into the U.S. market would be phased out with no reciprocal opening of the markets of other major producers. Big exporting countries such as India, Pakistan and Thailand could thus increase their U.S.-bound exports of apparel, in which they are highly competitive, while keeping their own markets hermetically sealed against imports of competitive U.S. fabrics.

So while the Dunkel draft offers modest market-opening progress (a gain of perhaps \$3 to \$5 billion annually by GATT estimates) in some areas, it does not come close to bringing other markets to U.S. levels of openness. In some instances, it may actually widen the gap. Yet U.S. negotiators are under enormous pressure to pay for this modest progress by agreeing to concessions that would dramatically dilute the efficacy of U.S. unfair trade laws.

Why does this matter? Over the past 40 years, U.S. industries such as consumer electronics, semiconductors, steel, communications equipment and machine tools have been severely damaged by dumping and other predatory activity, often by companies operating from highly protected overseas havens. Consequently, Congress explicitly set the strengthening of anti-dumping regulations as a top priority at the outset of the talks. Yet most of the relevant provisions of the Dunkel text would actually weaken existing rules.

Circumventing anti-dumping duties would become easier, while the ability of affected groups to file cases would be reduced. The

method of calculation would also change so as to make the discovery of dumping more unlikely, and there would be no meaningful disincentives for repeat offenders.

Beyond this, the president's authority to retaliate against unfair trade under section 301 of U.S. trade laws would be largely nullified by provisions requiring that all disputes relating to GATT purposes be submitted to mandatory GATT arbitration. The only appeal would be to the full body of the GATT—where a country the size of Malaysia has the same vote as the United States (like the United Nations without a Security Council), and where many pursue trade policies antagonistic to U.S. interests.

At present, the United States can take unilateral action against trade practices not specifically covered by GATT. Moreover, although it does not often do so, it can ignore GATT panel rulings contrary to U.S. interests. For instance, to protect tuna from drift-net fishermen, the United States has barred tuna imports from certain countries. Although a dispute panel ruled that this order violated free trade rules, the United States is currently under no obligation to weaken its wildlife protection regulations so as to conform with GATT rulings. Under the Dunkel text provisions, it would be.

Some argue that 301 could still be used in areas where GATT jurisdiction is unclear or after appeal procedures have been exhausted. But such a step would likely result in retaliation against the United States by the GATT.

This dilution of U.S. trade laws has three major implications. First, it would invite a flood of imports from heavily subsidized and protected foreign producers in industries with worldwide excess capacity. Bush administration estimates of multi-billion dollar gains from conclusion of the Round do not include any calculation of losses stemming from the kind of predatory trade activity that cost 40,000 jobs and nearly wiped out the U.S. semiconductor industry in the early 1980s. The net result could easily be to increase the U.S. trade deficit.

Second, U.S. ability to achieve further progress in such areas as market access, services trade, subsidies and intellectual property would be greatly diminished. It was the threat of anti-dumping action coupled with the threat of 301 that led to the 1986 semiconductor agreement with Japan under which foreign producers increased their share of the Japanese market from 8 to 20 percent. It was the threat of 301 that opened the Brazilian informatics market and that led Korea, Taiwan and others to reduce piracy of U.S. intellectual property in the late 1980s.

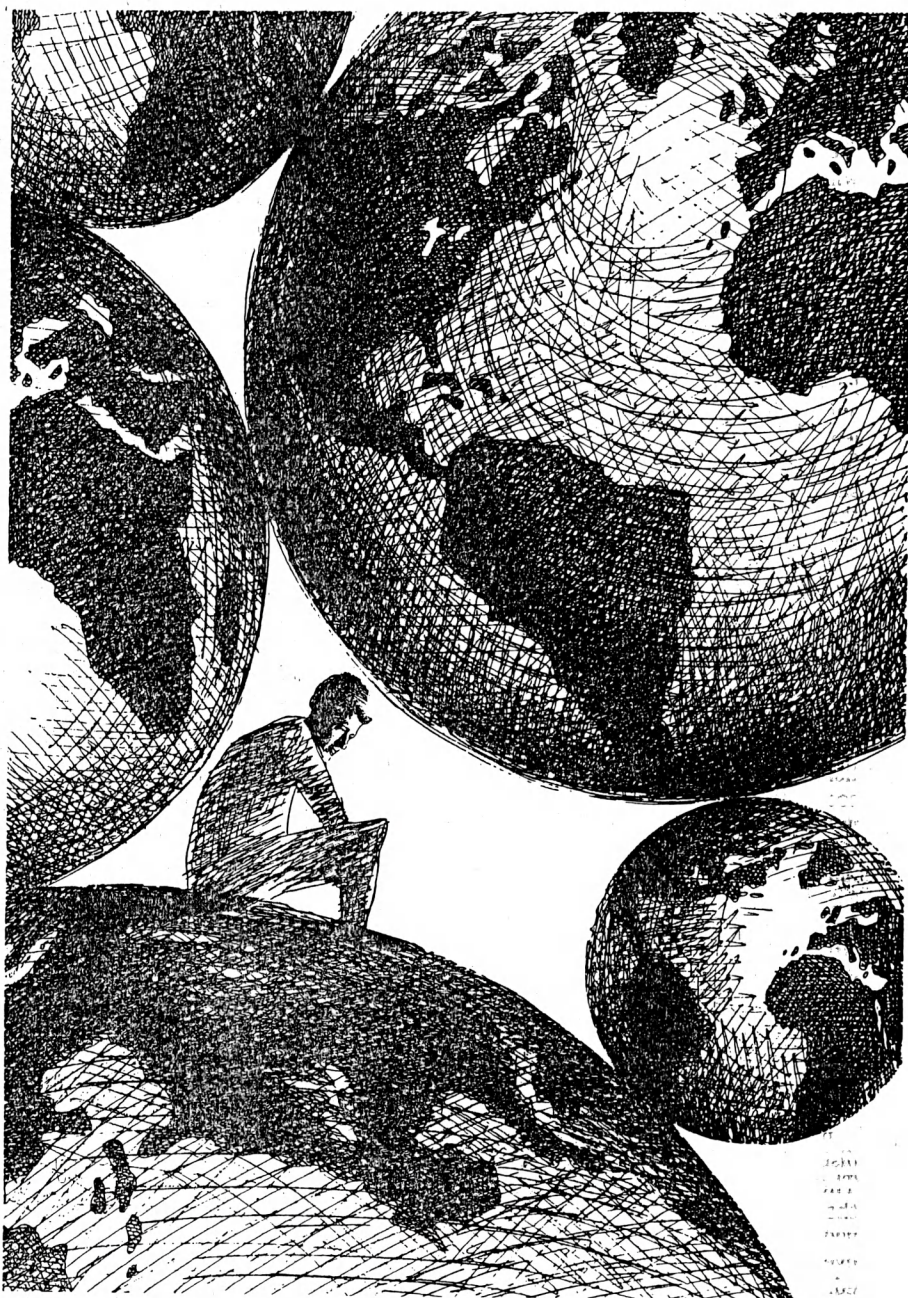
Without these tools, many U.S. industries must see the Uruguay Round as a matter of getting perhaps an eighth of a loaf in return for giving up for all time any possibility of coming back for more of the loaf. They would be better off to reject such a deal and to continue using the leverage of U.S. trade laws to engage in far-reaching bilateral negotiations with key trading partners. A variant of this would be the extension or creation of more NAFTAs.

Finally, the administration's ability to get past the problems it inherited and on to setting a badly needed new trade agenda for the 21st century will be badly impaired. The technologically based need for global economies of scale is forcing increasingly deep integration of national economies. The terms of this integration will be the overriding international question of the future. A tragic flaw in the Uruguay Round

Clyde Prestowitz is president of the Economic Strategy Institute.

PHOTOCOPY
PRESERVATION

Competitive



BY IGOR KOPELNITSKY/INX

agenda has been the fact that it focused too heavily on the old-era trade agenda—tariffs, quotas and subsidies—while largely ignoring the new-era issues of industry targeting, government authorized or tolerated cartels, informal administrative practices and impenetrable distribution systems. Whether the current talks succeed or not, a new American-led trade initiative will be needed during the next four years, and the president should be able to proceed from a position of strength. The recent APEC summit in Seattle made clear Clinton's grasp of the new economics and the very high priority he places on penetrating the booming Asian markets. During his first trip to Asia this summer, he concluded a framework for negotiations toward reducing our \$60 billion trade deficit with Japan. But it is precisely with the Asian countries that the new trade problems are most prominent. Decades of slogging negotiation should have taught us that they are not easily resolved even when we have substantial leverage—much less if that leverage is greatly reduced by the Dunkel draft.

To achieve "success" in the Round, the administration must preserve the modest gains on agriculture and industrial tariffs, achieve reciprocal market opening for the services and textile industries, plug the gaps in intellectual property protection, obtain a more rational subsidies policy and change the mandatory dispute settlement provisions to require unanimity when vital national interests are at stake. Most of all, however, the administration must

lay the foundation for a new Clinton world trade and jobs initiative that will deal with the issues unaddressed by the Uruguay Round.

As for the concern that these proposals will make it impossible to meet the December deadline, thus causing the talks' collapse, there are indications that Congress will give the president an extension if he wants and needs one. In any case, better an extension than an agreement reached primarily for the political purpose of having an agreement, particularly one largely negotiated by prior administrations. Indeed, adoption of a flawed text would undermine GATT and the world trading system, just as the flawed Tokyo Round agreement, presented as a major success in 1979, failed to deliver on its extravagant promises and thereby weakened GATT's credibility in the 1980s.

None of this means that the United States should never cede an ounce of sovereignty on trade. But it does mean that we cannot give up bargaining leverage while there is still a great need for bargaining. Former Japan Ministry of International Trade and Industry Vice Minister Naohiro Amaya once likened the GATT to a golf match in which the United States had given the other players a large handicap. Over the years the other players improved dramatically; but the handicap was never adjusted because the GATT, unlike golf matches, has no independent handicapper. U.S. trade laws are the de facto handicapper, and until a new world trade order guarantees equity for U.S. interests, we cannot afford to give them away.

JOBS, JOBS, jobs—we will create the high-wage jobs of the future.” That was Bill Clinton’s mantra in 1992. And with his dramatic win on the North American Free Trade Agreement, his hosting of the Asian summit in Seattle, and his hopes for a General Agreement on Tariffs and Trade by Dec. 15, he is continuing to campaign on the issue. Nevertheless, as Tom Donahue, secretary treasurer of the AFL-CIO, said last week, the president still has to “show people he is able to create jobs in America.”

The best, and perhaps the only, way to meet the “good jobs” challenge is to dramatically increase exports to the world’s growing economies. At least during his first term, President Clinton will not find his opportunities in Europe or Japan. Instead he will have to look to the regions that have absorbed so much of his energies these last few weeks: Asia and Latin America.

Exports to the private sector—whether they be consumer products or investment goods—are probably best left to private markets. But the federal government does have a role. Military exports provide a good model for how the Clinton administration might proceed. In the 1960s, the Department of Defense financed the research and development and helped establish the production lines for a multitude of weapon systems. The Pentagon provided further help, in the form of training and technical assistance, so that foreign buyers could effectively use the new systems. As a result, America exported billions of dollars worth of military equipment during the Cold War (and is continuing to do so), thereby creating good jobs for American workers. Developing military capacity is not the same as developing health or transportation systems. Yet many aspects of this defense model can be adopted by other government agencies.

Exports to foreign government ministries should become a top priority. Asia is the best opportunity. Over the last 20 years East Asia has averaged 7 percent growth compared to 2.5 percent in the rich countries. The World Bank estimates that East Asia’s economy will grow twice as fast as the rest of the world and even India’s will grow 50 percent faster. The Economist guesses that East Asia alone will contribute more additional output than North America and the European Community combined during the 1990s. More important for potential American jobs is the com-

Arnold Packer is a senior fellow at the Johns Hopkins Institute for Policy Studies and co-author of “Workforce 2000.”

Where the Jobs Are

How Clinton Can Find Markets for the Goods American Workers Make Best

mon prediction that Asia, not including Japan, will spend \$1 trillion on infrastructure in the 1990s.

Most of this will be spent by government ministries. Take Indonesia as an example. Its GNP is expected to double in the current decade, from about \$100 billion in 1990 to over \$200 billion in the year 2000. It has already spent heavily to bring roads and electricity to rural areas and has modernized parts of Jakarta. As Indonesia continues to grow it will spend



more on health, education and the environment; it will invest in financial, transportation and communication systems and other hallmarks of industrial countries. If the United States acts swiftly to take advantage of these markets, especially now when dollar-yen and dollar-mark exchange rates are so favorable, Clinton’s campaign promise of 1992 can be redeemed by 1996.

Consider education and training or, as it is felicitously known, human resource development. Education is a big employer in the United States. This sector accounts for almost 10 million jobs (including public and private institutions) and added 300,000 jobs annually in 1988-91. The heightened emphasis on developing human resources is good news for educators. Weak state and local finances, a sense that the education bureaucracy is overstaffed and the financial squeeze on colleges are the bad news. Fortunately, education and training are now universally seen as the key to economic growth. Most importantly in terms of export markets, technology—from satellites to computers—is seen as a major component of education’s future.

American firms, such as IBM, Apple and hundreds of smaller companies, are the leading

producers of educational technology. In education, as in health, the federal government can finance the R&D needed to create effective products that can first serve domestic needs and then be exported. For example, a computer-driven course to teach English as a Second Language has its uses both here and abroad. And our Departments of Education and Labor can be of assistance if they develop the same relationship with their counterpart ministries that the Pentagon did with foreign defense ministries.

Next consider the health sector and the Department of Health and Human Services (HHS). The health sector employed 11.5 million persons in 1991. Over the last few years, the health sector added about one-half million jobs annually. But the growth in our health care bill—and the jobs it pays for—are a big part of our economic and deficit problems. Controlling health care costs means slowing job growth. This slowdown can be offset if American firms increase their export of goods, such as pharmaceuticals (or the equipment to manufacture them) and services, such as hospital management systems. Our Departments of Education, Labor and HHS could finance the development of domestic products and assist their counterpart ministries in Asia and Latin America in employing them: traffic control systems, technology for police and fire protection, and environmental products come readily to mind.

The Departments of Agriculture and Commerce also promote U.S. exports but, unlike the Defense Department, they are rarely able to fund the development of services and products. This model fits other federal agencies such as Housing and Urban Development (HUD). Six million Americans are employed in construction and real estate, 600,000 less than in 1991. To promote employment growth HUD should work with U.S. firms to encourage the export of sophisticated construction materials (rather than unfinished material like logs) and the technology incorporated in such things as “smart” buildings. Cities in many developing countries are building office space and there is every reason to use American equipment and technology.

About 5.4 million persons work in transportation services or manufacturing transportation equipment, such as autos and airplanes. The bad news in these sectors is the problems

faced by the airlines and aircraft manufacturers. The Department of Transportation already plays a strategic role in sustaining them. The recent, apparently successful effort to have the Saudis shift a \$6 billion jet aircraft order from Airbus to Boeing and McDonnell Douglas is a (too rare) case in point. That role can be increased, however, to include air and road traffic management technology.

Agriculture and food stores accounted for 7.3 million jobs in 1991. But this sector is only producing 100,000 new jobs annually, many of them at low wages. The falling dollar and the growth prospects in the developing world offer new opportunities. Although the Agriculture Department already pays considerable attention to U.S. agricultural exports, might not the department help American supermarkets become involved in food distribution overseas providing greater markets for U.S. food processors?

The hospitality industry includes restaurants, tourism and lodging. The good news in this area is 9.3 million jobs in 1991 and 200,000 new jobs every year since 1988. The bad news, of course, is that a lot of these jobs are “hamburger flipping”—short-hand for a lack of career ladders, low pay scales and high



ILLUSTRATIONS BY JOHN McDONALD FOR THE WASHINGTON POST

turnover. Some observers believe that hospitality and tourism (including the airlines) will be the world’s largest industry by 2025. Developing countries, with considerable government investment, will build hotels, airports and restaurants to meet the growing demand. U.S. firms are already heavily involved, but again federal agencies can help more than they have in the past. When Singapore built its modern airport a few years ago, U.S. firms provided only the electronic billboards.

Almost 11 million of the nation’s jobs are in finance and insurance firms or business services. Domestically, the large banks and insurance firms, while historically good employers, are laying off workers as they restructure around new information technology. Internationally, however, developing nations will need to strengthen their financial systems. This phenomenon has not gone unnoticed by U.S. banks and financial firms but, again, the Treasury Department could assist.

The U.S. government (federal, state and local), outside of health and education, employed 9.1 million people in 1991 and added 100,000 jobs annually in the years 1988-91. Cutting deficits and reinventing government may mean fewer government workers. But the same technology and expertise that are used for these purposes at home can be sold to counterpart agencies abroad.

Wholesale and retail trade, even excluding food stores and restaurants, is a very big employer, accounting for almost 15 million jobs. But the nation is now “overstored”—as Sears, Macy’s and others can attest to—and employment has been declining in this sector. Still, Wal-Mart is growing and a new way of merchandizing may emerge in the next four years. Again, the Department of Commerce can help export these improvements, providing access to foreign markets for U.S. firms.

Remaining sectors accounted for 28.5 million jobs in 1991. Among those were another 16.6 million manufacturing jobs, including producers of cellular phones, faxes and other products that few would have predicted four years earlier. But these manufacturing employees also include those working in defense, aerospace and pharmaceuticals whose jobs are threatened by the effort to reduce the deficit. All of these could (and do already) sell to the growing developing world. The Commerce Department can help American computer, telephone and communication companies gain a larger share of what fast-growing nations will inevitably spend for these purposes.

Vigorous export growth, coupled with moderate domestic demand, can add 8 million good jobs by 1996 and set the nation on the high-wage jobs track for the 21st century. If the health and education sectors alone add jobs slightly faster than their recent rate, half of the 8-million-job problem will be solved. The president could then assign the remainder of the 8-million-jobs pledge to his other Cabinet secretaries. The reports they provide should supply the debating points Clinton will need in 1996 when “jobs, jobs, jobs” is Topic A once again.

Economic Strategy Institute

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10/26
1. Cc Mr. Kantor
2. BC

October 25, 1993

Ms. Nancy Hernrich
Deputy Assistant to the President for
Appointments & Scheduling
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Bob Rubin
Per our discussion
H.

Dear Ms. Hernrich:

Enclosed is a letter to President Clinton in reply to his request for additional information on the Uruguay Round of trade talks. I would appreciate you forwarding my letter to him at your earliest convenience.

Thank you for your assistance.

Sincerely yours,

Clyde V. Prestowitz Jr.

Clyde V. Prestowitz, Jr.
President

ESI

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Telephone 202-728-0993/Facsimile 202-728-0998

October 25, 1993

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Thank you for your kind note of September 23 regarding my Washington Post article in support of NAFTA. I am writing now to respond to your post script request, that I further explain the concerns about the Uruguay Round I expressed in the same article. These concerns are described in the attached paper.

I am supporting NAFTA because, despite its flaws, I think the United States will be better off with it than without it. But I believe the reverse could well be true of the Uruguay Round. By failing adequately to protect intellectual property and to curb subsidies, industry targeting, and other predatory practices, the potential of the current Dunkel draft agreement to seriously damage the U.S. economy is great while the likely gains seem limited. This conclusion is reinforced by the probability that adoption of the Dunkel text would dramatically reduce the efficacy of U.S. trade laws, and particularly that of Section 301.

In my view, our strategy now should be to conclude a modest interim deal--a "small package"--while proposing a new Clinton initiative to review and reconstitute the GATT and the entire world trading system in the light of the dramatically new circumstances of the post cold war world.

We view your election 11 months ago as a clear signal from the American people that they want change in terms of expanding job growth and a rise in living standards that have been declining for several years. New rules that bring all world traders to U.S. levels of market openness are essential and achievable if we maintain our bargaining leverage. The Dunkel text would strip us of this leverage in exchange for negligible gains in agriculture, tariffs, and services.

The world economy should guarantee open trade on the basis of equal competitive conditions for all participants. Achieving such an objective via a Clinton trade initiative would continue the American tradition of world economic leadership begun half a century ago at Bretton Woods, spark growth throughout the trading world, create hundreds of thousands of U.S. jobs, and stand as a vital legacy left by your administration as the country enters the new era of geo-economics.

ESI

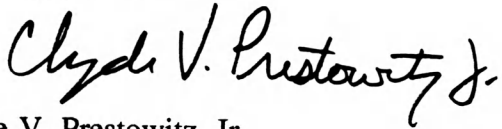
October 25, 1993

Page two

Yet, accepting the present Dunkel text or anything like it, could result in another bruising political battle with a Congress that you know is deeply concerned with potential loss of U.S. jobs. A Clinton trade initiative could forestall this.

I hope this is helpful. I'd be delighted to discuss this further with you and your advisors.

Sincerely yours,

A handwritten signature in black ink, reading "Clyde V. Prestowitz, Jr." in a cursive script.

Clyde V. Prestowitz, Jr.
President

Problems with Uruguay Round

I. U.S. Strategy for the Round was poorly conceived and negotiated

The original U.S. strategy was to slash agricultural subsidies and trade barriers, to gain access to foreign markets for services equivalent to that granted here, to phase out textile quotas, and to create a better trading environment by winning stronger intellectual property protection, reduced tariffs and subsidies, and stronger international rules against unfair trade.

This agenda, however, was poorly conceived. It placed great emphasis on agriculture (less than 20 percent of U.S. trade) and services trade (a relatively small job creator) while largely ignoring the foreign industrial targeting, keiretsu, cartel, and secretive regulatory and administrative practices that have bedeviled U.S. manufacturing trade (the vast bulk of our trade) for decades. In fact, these issues have been the source of most of the major trade disputes of the past twenty years.

Further the small gains conceivable from this agenda were diminished through poor negotiations by a Bush Administration bent on using the Uruguay Round for political gain. None of our original objectives are even close to achievement. Gains on agriculture and tariffs are much smaller than originally desired, and we face pressure to pay for them with concessions that would disadvantage our manufacturing and service industries and weaken our ability to deal with unfair trade practices. Although some of our negotiators claim to have made no such concessions, the text of the Dunkel draft belies their words.

II. The Dunkel Draft will weaken U.S. Trade Laws

The U.S. is far and away the world's most open market. Moreover, the U.S. system is totally transparent; other nations can and do use our procedures to force us to adhere to virtually all established rules. Thus, any agreement that does not fully open foreign markets will tend to lock U.S. industry into a disadvantageous position. And because the GATT allows the application of vastly different national rules to govern trading practices rather than enforcing a common standard of behavior, U.S. exporters are almost certain to face unequal conditions.

From this perspective, the most important problem is the dispute-settlement clause of the Dunkel text, which requires that all disputes be arbitrated by mandatory GATT dispute panel procedures. This clause would effectively nullify present Section 301 authority to take action against unfair trade, because using 301 after exhausting GATT procedures would violate the new GATT rules, and could unleash GATT retaliation against us. Thus, it is extremely unlikely that we would use 301 if the current draft text is adopted. It has been precisely the leverage created by the threat of 301 that has opened many foreign markets to U.S. producers--including the Japanese semiconductor market and the Brazilian computer market--and that has resulted in better intellectual property protection from our trading partners. Without 301, our leverage for future market-opening initiatives would be gone. The draft text would also exempt from GATT dispute-settlement procedures any complaints against practices such as cartel-like behavior, administrative guidance, collusion, and other complex barriers not addressed by the Uruguay Round. Such practices forever would therefore be placed beyond remediation.

The draft's effect on U.S. anti-dumping regulations would be nearly as bad. When Congress created negotiating authority for the Uruguay Round, it specified that the anti-dumping regulations were to be strengthened. In fact, all provisions of the current Dunkel text would weaken them. Circumventing anti-dumping duties would become easier, while the ability of U.S. industry groups to file cases would be narrowed. The method of calculation for dumping would also change so as to make a finding of dumping more difficult to obtain--while providing no disincentive to repeat offenders. In short, the Dunkel text would leave key U.S. industries vulnerable to the same tactics that have already wiped out many other U.S. industries, ranging from CB radios to semiconductor memory chips.

III. The Dunkel Draft is unacceptable on Services and Intellectual Property Protection

Evaluating the negotiations on services, intellectual property protection, and subsidies hinges on the fate of 301. Some gains toward more open foreign service markets have been made, but the Dunkel text would not even come close to giving U.S. services firms the same access abroad that foreign firms have in America. In most cases, for example, our firms would not even be accorded national treatment. Without the potential of 301, adherence to the services draft text would lock U.S. companies into an eternally tilted playing field.

The same is true for subsidies and intellectual property (IP) protection. Although there are some pluses in the draft's IP provisions, there are some major negatives, including provisions that would allow compulsory licensing of patents, deny any IP protection to bio-technology (one of our best potential growth areas), and phase in IP protection for pharmaceutical products over a very long (10 year) period. Without the potential of 301, these flaws become unacceptable. Further, the Dunkel text will actually legitimize subsidies that are now actionable under U.S. law. In terms of ultimately achieving a level playing field in these critical areas, U.S. companies would be better off with a series of bilateral negotiations that utilize the potential of 301 than with the present GATT deal.

IV. The Dunkel Text will hurt the U.S. Textile Industry

Under the Dunkel text, the textile quota system would be phased out without requiring in return any opening of the closed markets of some of the biggest textile exporting countries like India and Thailand. China would undoubtedly be the big winner because in order to earn foreign exchange, it can and does export without regard to cost. This means that China can displace virtually all other suppliers to the U.S. market--including, for example, Mexico. No one is considering the implications of the current \$25 billion trade deficit with China rising to \$50 billion, as many observers are forecasting.

V. Consequences for the U.S. Economy

Recent OECD estimates of a ten-year world GNP gain of \$220 billion from a successful Round are not impressive (less than \$22 billion annually of which the U.S. share would be only \$2 to 3 billion) further, the calculations on which they are based ignore the question of losses America could incur from the GATT talks' failure to curb unfair trade practices. Yet in the past these practices have severely damaged key U.S. industries such as semiconductors, steel, and consumer electronics. Thus, the current draft agreement could easily worsen the U.S. trade deficit by \$20 to 30 billion and reduce U.S. GNP growth significantly, costing Americans thousands of jobs.

VI. What would a Successful Conclusion be for the U.S.?

A "successful" Uruguay Round means that we must change the Dunkel text clauses that would nullify 301 and that would dilute the U.S. anti-dumping regulations. We must also achieve further curbs on industrial subsidies and plug the holes in the intellectual property clauses. And we must gain further tariff cuts in areas such as forest products and semiconductors, while securing a more level playing field in services. Achieving these will be extremely difficult, but compromising significantly on any of them could have very serious consequences for the U.S. economy.

The heart of the matter is that the GATT system has for decades maintained a situation in which the U.S. market is more open than others. This situation has benefitted others--who have come to take it for granted--and the United States has accepted it for Cold War reasons. But the Cold War is over, and American world leadership now increasingly depends on our prowess in technology and industry and on our ability to invest in the future, rather than on our military might. We can no longer accept GATT premises and procedures that put U.S. industries at a disadvantage. As we try to redress the inequalities of the GATT, other countries are striving to limit our options, for obvious reasons.

That is why we cannot afford at this time to give up our ability to act unilaterally. I recognize the limits of unilateral action and do not recommend its frequent use. Nor do I contend that the United States must have such power indefinitely. But before giving it away, we must create an international trading system that will guarantee equity for the United States, and we will need the power that comes from our trade laws to achieve such equity.

VIII. From Uruguay Round to Clinton Trade Initiative

The December 15 Uruguay Round deadline probably does not provide enough time to do all that is necessary. I suggest telling our trading partners that, in the wake of the NAFTA battle, you can not possibly present anything resembling the Dunkel text to the U.S. Congress. You should point out that the text's rejection by the Congress would be worse than a failed Round. Tell our trading partners frankly that the world has changed since the start of the Round back in 1986 and the current agenda is simply no longer adequate. Suggest a small deal of easily agreed-on items and promise to get renewed fast track authority if they accept the Clinton Trade Initiative (CTI). This CTI would not be a conventional negotiating round. Rather, it would recognize that the GATT structure never anticipated today's degree of international economic integration and is inadequate to deal with such a phenomenon. Thus the initiative would aim to redefine the principles of liberal trade and to use them to refurbish the entire trading structure. To give our partners an incentive to cooperate in such an effort, your Administration should initiate vigorous efforts to equalize competitive conditions on a bilateral basis wherever the markets of our trading partners are substantially less open than our own.

TODD —

You wanted
a copy of this.

— LeeAnn

SUMMARY OF TESTIMONY OF IRA SHAPIRO
GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
SENATE FINANCE COMMITTEE
HEARING ON "SPECIAL 301" TRADE REMEDY LAW
April 19, 1993

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The Clinton Administration's policy is to implement the "special 301" review program in a manner that will open markets and create trade opportunities. This means moving forward the U.S. agenda on intellectual property and market access and being prepared to take strong action if countries do not meet our goals of providing adequate and effective protection of intellectual property rights (IPR) and comparable market access for U.S. goods.

We are committed to giving a fresh direction to the "special 301" review process. Our trading partners are expected to live up to the commitments in Agreements we have reached to improve protection, strengthen enforcement and remove barriers to market access. Any partner that fails to meet their commitments can expect a strong, speedy response from this Administration.

We will be evaluating each of our trading partner's laws and regulations and policies to see if foreign countries provide the same high levels of protection that are required in the NAFTA Chapter on intellectual property. In addition, we will give particular importance to specific issues brought to our attention by the private sector.

Enforcement of existing laws is likely to become more of a focus for "special 301" in the future. Countries that do not enforce their laws can expect to receive close attention under "special 301." We seek a sustained effort from our trading partners that is effective in putting the pirates out of business. In particular, countries that are exporters of pirate and counterfeit goods can expect the United States to consider this to be an important factor in determining whether to identify a country as a priority foreign country.

Part of this Administration's new direction under "special 301" will be to address the problem of countries that have been on the "priority watch" or "watch" list for years. To address the problem of slow legislative progress or erratic enforcement efforts, USTR will formulate specific action plans, including deadlines and benchmarks for evaluating a country's performance. We will take action, if necessary, through out-of-cycle reviews of a trading partner's status under "special 301."

Ambassador Kantor is examining every means, including non-trade measures, to deliver the U.S. message on obtaining strong protection and enforcement of IPRs and comparable market access.

**TESTIMONY OF IRA SHAPIRO
GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
SENATE FINANCE COMMITTEE
HEARING ON "SPECIAL 301" TRADE REMEDY LAW
APRIL 19, 1993**

It is a pleasure to appear before the Subcommittee today to discuss the Clinton Administration's plans for the implementation of the "special 301" provisions of U.S. trade law. This Administration's guiding policy is to open markets and create trade opportunities by enforcing U.S. law and ensuring that the countries with which we sign agreements comply with the letter and the spirit of those agreements. In the context of the "special 301" review this means moving our agenda forward and being prepared to take strong action if countries do not meet our goals of providing adequate and effective protection of intellectual property rights and comparable market access for U.S. goods.

As the President stated in his February speech at American University, this Administration will not let trade issues play a secondary role to non-trade concerns. In that context, Ambassador Kantor is willing to look at every possible means to achieve the objective of adequate and effective protection of intellectual property rights and comparable market access for U.S. goods. If we are not successful in achieving this objective, Ambassador Kantor will recommend significant--and not merely symbolic--actions in response to the unreasonable practices of our trading partners.

Today I would like to focus on the importance to the U.S. economy of protecting intellectual property in other countries; the policy direction that this Administration will pursue in implementing this important trade statute; the role of "special 301" in obtaining high levels of protection for U.S. intellectual property abroad; the current track record of achievements using the "special 301" review process.

Importance of Intellectual Property to the U.S. Economy

Intellectual property is an essential element of the U.S. economy and will be even more important in the future. Every industry in the United States has some connection with intellectual property rights (e.g., patents, copyrights, trademarks, and trade secrets). The ideas and products protected through intellectual property rights often represent the highest level of technology available in the world.

Products protected by intellectual property rights represent a major portion of total U.S. exports. U.S. computer software, motion pictures, sound recordings, books and television programs are exported world-wide and benefit from strong copyright protection. Other industries that are an important source of U.S. exports, including the aircraft and pharmaceutical and medical equipment sectors, rely on trademark, patent and trade secret protection. In 1991, exports in these three industries amounted to approximately \$40 billion. Export industries are a driving force in the creation of new jobs in the United States.

Strong intellectual property protection will be even more important in the future. It provides an incentive for investment in the United States and the creation of well-paid, high-skilled jobs in this country. High technology products add greatly to overall productivity. Consider the effect of computers and software over the past decade on U.S. industries. This increase in productivity and development of new products naturally increases our ability to compete at home and abroad.

The ability of U.S. companies to export products protected by intellectual property rights and compete in foreign markets depends to a large degree on whether other governments provide adequate and effective protection of intellectual property and whether these governments provide fair and equitable access to their markets for these products.

As you know, it costs millions of dollars to develop and market a new computer program or pharmaceutical or create a motion picture. It costs little, in the short term, for "pirates" to copy these products. In the longer term, such piracy costs all of us a better future.

Special 301's Track Record

Since 1989, "special 301" has played a key role in obtaining the enactment by many of our trading partners of stronger laws for the protection of intellectual property rights. Special 301 has also helped ensure stricter enforcement of those laws and improved access for products (such as motion pictures) into these markets. Achieving these objectives--strong laws, strict enforcement, and comparable market access--is critical for realizing many of the economic benefits that flow from the creative products protected by intellectual property rights.

When Congress enacted special 301, U.S. owners of intellectual property faced extensive piracy in other countries. Many countries with important markets either failed to provide protection or did not enforce the laws that were in place. For example, barriers, such as quotas, limited access to some markets. "Special 301" has been a major element of the effort to solve these problems. This statute, negotiations on intellectual

property in the Uruguay Round and NAFTA, and other U.S. bilateral negotiations have brought the issue of strong intellectual property protection to the attention of the world's trading community.

We have not attained all of our goals. In some countries we have encountered intense resistance. But, use of "special 301" has resulted in positive changes to our trading partners' laws and some improved enforcement of those laws. The challenge that this Administration now faces is to give new direction to the "special 301" review process to address the difficult remaining problems and to ensure that other countries live up to the commitments that they have made. The Clinton Administration is fully prepared to take a strong position with other governments to obtain world-class laws and enforcement efforts that will put the pirates out of business.

Implementation of Special 301

The "special 301" provisions of the Trade Act of 1974, as amended, require the U.S. Trade Representative to determine whether the laws and practices of foreign countries deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. exporters who rely on intellectual property protection. The USTR must then identify as priority foreign countries those countries that (1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact on the relevant U.S. products and (2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a country is identified as a priority foreign country, the USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a priority foreign country. A "special 301" investigation is similar to an investigation initiated in response to an industry Section 301 petition, except that the maximum time for an investigation is shorter--6 months with the possibility of an extension to 9 months--as compared with the 12 to 18 months permitted under a petition-based section 301 investigation.

The USTR must undertake this global review each year within 30 days after the issuance of the National Trade Estimates (NTE) Report. The announcement each year follows a lengthy information gathering and negotiation process. The interagency group that advises the USTR on implementation of "special 301" obtains information from the private sector, American embassies abroad,

our trading partners, and the NTE report. The Copyright Office and the Patent and Trademark Office provide invaluable advice and support during this process. The statute also authorizes the USTR to revoke or make additional identifications of countries at any time that the information available indicates that such action is appropriate.

In addition to obtaining results through "special 301" investigations that were initiated in the past, significant results have also been obtained through issuance of the so-called "priority watch list" and "watch list." These lists are not required under the statute, but have been used to alert our trading partners of concerns about intellectual property rights practices and the possibility of future identification as a priority foreign country.

"Special 301"--as implemented through initiation of investigations and maintenance of the "priority watch list" and "watch list"--has yielded significant results. The statute has worked particularly well in helping U.S. negotiators to persuade countries to adopt changes in their laws to bring them up to international standards. The list of successes under special 301 is a long and growing one. (Attached to this testimony is a fact sheet that describes the progress on intellectual property issues that has been made since the first annual review in 1989.) In fact, progress continues to be made: just this month Ambassador Kantor signed an agreement with the Philippines in which that Government agreed to legislative and administrative measures that (when implemented) will greatly improve the protection and enforcement of copyrights, trademarks and patents in that country.

Adequate laws, however, are just the first step in the process of ensuring that owners of intellectual property rights have an environment that permits them to market their products in a fair manner and that encourages investment in that country. It is likely that "special 301" will be focused more in the future on the issue of obtaining effective enforcement of existing laws. While effective enforcement of the law is a critical part of obtaining this objective, it is also much more complex and difficult to measure and attain. Effective enforcement requires cooperation between the right owner, police, prosecutors, and the judiciary and other authorities. Each must be educated and convinced of the importance of this issue. Let me give you some examples of the need for the interaction between enacting laws and enforcing them.

Since signing an intellectual property agreement with China in January 1992, we have consulted frequently on its implementation of this Agreement--a U.S. team is in China today. We have obtained results: the Chinese Government has enacted patent law amendments that will provide world-class protection.

China has also joined the Berne Convention For the Protection of Literary and Artistic Works and the Universal Copyright Convention and has issued the necessary regulations to implement those conventions and relevant laws. We also understand that U.S. companies are now in the process of seeking administrative protection in China for their U.S. patented agrichemicals and pharmaceuticals. Yet, we will need to see sustained follow up by the Chinese Government in order to ensure enforcement of the rights provided in its new laws.

Another country that has made good progress in implementing IPR reform is Greece. Early this year, the Greek Government passed a new copyright law which represents a major step forward in the implementation of the European Community's software directive; the new Greek law contains stiff penalties for copyright infringement. We will now monitor enforcement of the new law in Greece, in order to ensure that it has its intended effect: putting pirates out of business.

The agreement reached with Taiwan in June 1992 is a good example of the need for our trading partners to provide effective enforcement and benchmarks for the United States to evaluate the effort. Although the June 1992 agreement with Taiwan includes obligations to draft and use best efforts to enact legislation, a major difficulty in the Taiwan market is obtaining effective enforcement even of existing laws. Taiwan has an export oriented economy. We see counterfeit and pirated products entering the U.S. and other markets from Taiwan. The U.S. Customs Service makes the largest number of seizures against imports of products from Taiwan. Thus, we have asked the authorities on Taiwan to implement an export monitoring system that will prevent these pirate and counterfeit goods from being shipped throughout the world. We still are hopeful that Taiwanese authorities will work with us to implement a system that does the job.

Effective enforcement has also been an elusive goal in Thailand. Although raids on copyright infringers have increased recently and the Thai Government has begun seizing equipment used to copy audio and video cassettes, cases involving infringement of U.S. sound recordings and motion pictures are moving at a snail's pace through the Thai judicial system. In the two years since Thai police conducted major raids, the courts have yet to issue a decision against a major pirate. The Thai Government must take action that convinces the pirates to get out of the piracy business and that deters others from replacing them.

How the Clinton Administration will Implement "Special 301"

The "special 301" provisions permit the USTR to exercise considerable discretion in determining whether to identify a country as a priority foreign country and whether to initiate an investigation. The well-documented success of "special 301" (and its "priority watch list" and "watch list") demonstrates that discretion can be used as a negotiating tool.

With a change of administration, the discretion provided in the statute raises questions about the direction that President Clinton and Ambassador Kantor will take in implementing the "special 301" review. During the few months since taking office, the Administration has examined "special 301" to determine the acts, policies and practices that should be considered "the most onerous and egregious." We have also considered the indicia of actual or potential adverse impact on relevant products and assessed how much progress a country must make to warrant a decision not to identify that country as a priority foreign country. In short, we are committed to giving a fresh direction to the "special 301" review process to ensure that our objectives are clear and that other countries know what we expect.

Submissions received by USTR in response to our request for public comments cited more than 30 trading partners as warranting some action under "special 301" (either identification as a priority foreign country, placement on the priority watch list or watch list, or inclusion in the list of countries that fail to satisfactorily implement a "special 301" agreement.) The USTR must use the "special 301" review to establish priorities in terms of objectionable practices, goals for addressing those practices and evaluation of harm to U.S. interests.

This is the fourth consecutive year of the "special 301" review process. Many trading partners have entered into agreements with the United States that include commitments to improve protection, strengthen enforcement and remove barriers to market access. Those partners must live up to those commitments and fully implement measures necessary to eliminate identified problems. Any partner that fails to meet their commitments can expect a strong, speedy response from this Administration.

In our evaluation of a country's legal framework for protecting intellectual property rights, we will be looking to see if foreign countries provide the same high levels of protection such as those required in the NAFTA Chapter on intellectual property. We will also give particular importance to specific issues that have been brought to our attention by the private sector in the information gathering phase of the "special 301" review when deciding whether a country should be identified

as a priority foreign country or placed on one of the "special 301" lists.

An issue of growing importance is "effective enforcement"; that is enforcement of laws that foreign governments have already enacted. Countries that do not enforce their laws can expect to receive special attention under "special 301."

While sales of counterfeit and pirated goods in a particular domestic market cause damage to U.S. interests, that damage is multiplied when a country exports pirated goods to third markets. Countries that are exporters of pirate and counterfeit goods can also expect the United States to consider this to be an "onerous or egregious" act and consider it an important factor in the "special 301" process.

On the "special 301" market access issue, the Administration has been concerned about barriers that prevent U.S. products from being sold in overseas markets. The European Community's broadcast directive which puts a stringent quota on U.S. television programming throughout the EC is an issue of particular concern. Elimination of these practices are a priority for the Clinton Administration.

These are some of the decision points that the statute presents to Ambassador Kantor. But they are just the beginning. I have described some of the progress that the United States has accomplished in the "special 301" process. Progress in other cases has been painfully slow or non-existent. Some countries, such as Brazil, India, Korea, Thailand, Taiwan, and Argentina, have had a long term place on the "special 301" lists.

In the past, we have seen an annual spring-time flurry of enforcement actions or legislative drafting just before the announcement of the results of the "special 301" review process. In other cases, we have draft laws that have been pending before legislative bodies without positive actions or have laws that need some amendment. "Special 301" cannot be seen as effectively functioning if countries can take up permanent residence on a list without making sustained progress in addressing the problem issues.

To address the problem of slow legislative progress or erratic enforcement efforts, USTR will formulate specific action plans including deadlines and benchmarks for evaluating a country's performance. We will enforce these deadlines and take

action, if necessary, through out-of-cycle reviews of a country's status under "special 301." The statute permits the USTR to revoke identifications made in the annual review process as well as to make additional identifications, if the facts warrant such action.

Actions at the End of an Investigation

It is premature for me to discuss what actions will be taken at the end of an unsuccessful "special 301" investigation. The statute's credibility and usefulness depends on the Administration's commitment to take strong and decisive action in the event that problems remain unresolved. We must also be firm in naming names and telling our trading partners that we will act if they harbor pirates, counterfeiters or permit infringements to go unpunished. The Clinton Administration is determined to put real teeth into retaliation measures.

Ambassador Kantor is prepared to use "special 301" more aggressively; in this context he is looking at every means to deliver our message home: the United States insists on compliance with trade agreements, and on obtaining comparable access in foreign markets. One means used by past administrations is revocation of benefits currently granted under the Generalized System of Preferences (GSP). However, failure to renew the GSP program, which expires in July of this year, will eliminate leverage that this Administration is prepared to use. Ambassador Kantor is also interested in exploring means that have not been used by past administrations, in order to make our responses as accurate and effective as possible.

The Administration is exploring the possibility of a linkage between intellectual property issues and bilateral aid programs, as well as encouraging multilateral development banks to include intellectual property protection as a key component of their programs for improving the investment climate and infrastructure of developing countries. For example, the Inter-American Development Bank (IDB) now includes IPR reform as one of the objectives it considers in developing the investment sector loans (ISL) that it is making throughout Latin American and the Caribbean. In the case of El Salvador, to cite a recent example, technical assistance from the IDB resulted in the introduction of comprehensive draft IPR legislation earlier this year.

These are all steps that we can take to ensure that the "special 301" review process continues to be a positive tool for obtaining stronger laws, stricter enforcement, and improved market access.

Conclusion

The Clinton Administration believes that the "special 301" review process is an effective tool in gaining protection in foreign markets for intellectual property rights. Moreover, the Administration is dedicated to fighting for access to foreign markets for U.S. products. We will bring fresh ideas and new approaches to this fight. By so doing, we intend to further President Clinton's goal of expanding markets and creating trade opportunities for U.S. companies. This in turn will create jobs in the United States, particularly high-quality employment in the vital high-technology sector that relies on intellectual property rights protection.

ATTACHMENT

PROGRESS ON INTELLECTUAL PROPERTY ISSUES

JANUARY-APRIL 1993

- o The Philippines signed an abreement that addresses copyright, patent and trademark concerns. It also includes provisions on enforcement of rights. (April)
- o Switzerland's new Trademark Law came into effect making its protection EC compatible. New copyright amendments, that U.S. industry considers to be lacking, have been passed and will take effect in July. (April)
- o Copyright Reform Law signed in Colombia that increases penalties for infringement and explicitly identifies unauthorized transmissions of satellite signals as illegal. (February)
- o The Canadian Parliament passed a new Drug Patent Law which eliminates compulsory licensing provisions discriminating against pharmaceutical products. (February)
- o Chinese Government enacts amendments to the Trademark Law and supplementary provisions to the criminal law adding to penalties for trademark infringement. (February)
- o Greek Government enacts a copyright law which contains substantial enforcement provisions. (February)
- o The Jamaican House of Representatives enacts a Copyright Law. (February)
- o Cyprus acceded to the Geneva Phonogram Convention and has stepped up enforcement efforts of patent and copyright laws. (January)
- o Egypt amends its copyright and censorship laws. (January)
- o Malta enacts amendments to its Copyright Law which strengthen penalties, extend protection to computer software, and institutes new penalties. (January)

1992

- o A new Trademark law enacted in Thailand provides for higher penalties for infringement and extends protection.
- o South Africa enacted an improved Copyright Act protecting computer software.
- o Italy implemented the EC Software Directive improving protection for computer programs.
- o The United Arab Emirates passed new Copyright and Patent Laws, but copyright protection still needs to be extended to foreign works.
- o The Government of Peru issued a decree law to protect industrial property.
- o The EC has amended its proposal for biotech patents.
- o Denmark became the first member state to implement the EC's Software Directive.
- o Poland enacted a new patent law, although the U.S. remains concerned about the compulsory licensing provision.
- o Korea ratified the US-Korea Patent Secrecy Agreement
- o China joined the Berne Convention and the Universal Copyright Convention.
- o The President of Turkmenistan signed a law for the protection of intellectual property.
- o New copyright law enacted in Pakistan strengthening penalties for infringement and protecting computer programs as "literary works."
- o The Russian Federation enacted and implemented a patent law that meets high international standards and is compatible with the terms of the bilateral Trade Agreement.
- o The Russian Federation enacted and implemented strong laws for the protection of semiconductor layouts and the protection of computer software and databases. Both laws are fully compatible with the terms of the bilateral Trade Agreement and meet international standards.
- o New Zealand repealed legislation that allowed compulsory licensing of pharmaceuticals.

- o The Ukrainian Government adopted the Paris Convention, Madrid Agreement, and the Agreement on Patent Cooperation.
- o Chile extended its term of copyright protection to life plus 50 years -- the Berne Convention standard.
- o Brazilian Government issues Executive decree bringing Brazil into full compliance with the Stockholm Text of the Paris Convention For the Protection of Industrial Property.
- o The United States and the Russian Federation exchanged diplomatic notes causing the entry-into-force of a bilateral Trade Agreement which commits Russia to an extensive IPR legislative agenda.
- o Bolivia passed a new Copyright Law providing a framework for protection but still lacks regulations.
- o Taiwan and the U.S. signed a Memorandum of Understanding on IPR issues.
- o Indonesia agreed to provide improved market access for U.S. motion pictures.
- o The United Arab Emirates enacted a trademark law.
- o Japan's law providing for registration and protection of service marks took effect.
- o The United States and China establish bilateral copyright relations.
- o The Commission of Cartagena (the Andean Pact) passed decision 313, which replaced decision 85 covering industrial property protection and provides for certain improvements in patent protection.
- o Taiwan passed a Fair Trade Law that provides some protection for trade secrets.
- o India committed to the liberalizing of market access for motion pictures effective April 1, 1992.
- o India announced that it will accord national treatment for the use of trademarks owned by a foreign proprietor.
- o Thailand's National Legislative Assembly enacted amendments to the patent law that will extend product patent protection to 20 years from filing. However, the law does not provide protection for existing patented products that have not yet been marketed in Thailand, and contains extremely broad compulsory licensing provisions.

- o The United States and China signed a Memorandum of Understanding committing China to improve protection for U.S. intellectual property, including providing strong protection for U.S. inventions and copyrighted works, computer software and sound recordings, and trade secrets.
- o Japan amended its copyright law: to extend the protection of sound recordings to 50 years; to protect foreign sound recordings created between 1968 and 1978; and to extend to foreign producers the right to authorize and prohibit the rental of their sound recordings from one year from the date of release.

1991

- o Paraguay joined the Berne Convention for the Protection of Literary and Artistic Works.
- o Romania and the United States reached agreement on a trade accord that includes strong protection for intellectual property rights.
- o Chile implemented its new patent and trademark law.
- o Indonesia's Patent Law took effect.
- o Mexico enacted an copyright law which extends the term of protection for sound recordings, creates rental rights and significantly increased sanctions.
- o Mexico enacted an industrial property law which extended patent protection to chemical, pharmaceutical and metal alloy products, as well as to some biotechnological inventions; extended the term of patent protection to 20 years from filing; and extended the term of trademark protection to a renewable period of ten years.
- o China's new copyright law took effect.
- o The European Community adopted a directive requiring member states to provide copyright protection for computer software programs.
- o The United States and Bulgaria signed a trade agreement including strong protection for intellectual property rights.
- o Korea enacted trade secrets legislation.

- o Chile enacted a revised Patent and Trademark Law, including product patent protection for pharmaceuticals.
- o The United States and the People's Republic of Mongolia signed a trade agreement including strong protection for intellectual property rights.
- o Singapore strengthened its Trademark Law.

1990

- o The European Community took a "common position" on protection for computer software, including a 50-year term of copyright protection.
- o Malaysia amended its copyright law and acceded to the Berne Convention for the Protection of Literary and Artistic Works.
- o Japan enacted a law protecting trade secrets.
- o Chile clarified its copyright protection for computer software, thus ensuring that it is a "literary work."
- o The United States signed a trade agreement with Czechoslovakia which includes strong terms of protection for intellectual property rights.
- o Yugoslavia amended its patent law to extend the term of protection to 20 years from filing, among other improvements.
- o The United States signed a trade agreement with Poland which includes strong terms of protection for intellectual property rights.
- o The Federal Republic of Germany increased penalties for infringement of intellectual property rights.

1989

- o Saudi Arabia enacted a new copyright law.
- o Portugal increased penalties for audio piracy.
- o Indonesia enacted its first patent law including product protection for pharmaceuticals, effective August 1991.
- o Colombia passed a law defining computer software as copyrightable material.