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U.S. TRADE LAW AND TRADE POLICY

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ECONOMIC PERSPECTIVES
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U.S. TRADE LAW AND TRADE POLICY

In recent years, the scope and number of the laws that guide U.S. trade policy have expanded as Congress and the president have sought new powers to deal with ever more complex problems as well as an expanding definition of trade issues. In addition, as international trade in goods and services has increased, the issue of how to handle disputes that reach across borders has become even more important.

This issue of "Economic Perspectives" focuses on those laws that give the U.S. government specific powers to act against foreign barriers to U.S. exports and to protect U.S. industries from unfair trade practices and unfairly traded goods.

As U.S. trade officials work to enforce U.S. trade laws, they see the World Trade Organization as offering an effective forum for settling many disputes.

There are other U.S. laws that seek to restrict trade for foreign policy and national security reasons or for other objectives not related to opening foreign markets or protecting U.S. industries from unfairly traded goods. These non-economic trade laws will be the subject of the next issue of "Economic Perspectives."

ECONOMIC PERSPECTIVES

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U.S. TRADE POLICY: ENFORCING U.S. LAWS

An Interview with Susan G. Esserman, General Counsel, Office of the U.S. Trade Representative

The new World Trade Organization (WTO) dispute settlement mechanism has proven itself effective and should become increasingly important as a means of enforcing international trade agreements and for peacefully settling commercial disputes, says Susan G. Esserman, General Counsel at the Office of the U.S. Trade Representative (USTR).

The U.S. government will continue to be vigilant in monitoring for foreign barriers to exports and will continue to use all of its trade laws to address unfair trade practices, she says.

This interview was conducted by USIA Economics Writer Warner Rose

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QUESTION: What is the role of the Office of the United States Trade Representative in formulating trade policy?

Esserman: The Office of the United States Trade Representative is responsible for developing and coordinating U.S. international trade policy and for leading or directing trade negotiations with other countries. The United States Trade Representative, known as the USTR, is a member of the president's cabinet who acts as the principal trade adviser, negotiator, and spokesperson for the president on trade policy matters.

The USTR coordinates trade policy and decision-making within the government through an interagency committee involving 17 federal agencies and offices. This interagency process is organized so that all perspectives are taken into account in making trade policy and in preparing recommendations to the president. Key trade issues are also reviewed by the National Economic Council, which was created by President Bill Clinton and is responsible for coordinating domestic and international economic policy matters.

Q: Could you describe the regular reviews of unfair trade practices overseas that USTR is required by law to conduct?

Esserman: Congress has mandated these reviews and procedures to ensure that the U.S. government focuses on trade barriers that have the greatest impact on U.S. exports.

These reviews provide an additional mechanism through which U.S. companies can bring their trade concerns to the attention of the government. And consistent with an open and transparent system, these reviews are a mechanism for providing information to the public.

The National Trade Estimate Report, which is known as the NTE Report and is released annually at the end of March, is an inventory of the most important foreign barriers affecting exports of U.S. goods and services, foreign direct investment, and protection of intellectual property rights. This report facilitates negotiations and provides the basis for future trade policy and actions. The report is also used for the so-called "watch list" and "priority watch list" of countries whose practices the USTR will monitor.

These reports and reviews are a way of organizing our resources, helping to focus attention on trade problems, and giving us an ability to raise these with foreign countries and to try to resolve them amicably.

Q: Has the threat of action under Section 301, that part of U.S. trade law that allows the USTR to aggressively pursue unfair trade practices overseas, been an effective tool?

Esserman: Yes. If we are considering a 301 case, it's because we have identified a violation of a trade agreement or an unfair trade barrier. This procedure helps us to focus the attention of a foreign country on the need to resolve the problem. If the problem is not resolved, it is understood that this issue could be the subject of dispute settlement and could affect our trade relations. So it is a very effective way of focusing attention on a problem that needs to be addressed to the mutual benefit of both countries.

Special 301, which focuses on intellectual property protection, has also been a very effective mechanism for addressing foreign barriers to adequate protection of intellectual property rights; these barriers are often detrimental to both the foreign country and the United States. And as we noted in this year's Special 301 Report, progress has been made in Taiwan, Brazil, Portugal, Bulgaria, Russia, Turkey, and many other countries.

Q: How do the Clinton administration and the U.S. Congress work together on trade policy?

Esserman: That depends on the issue. Congress has responsibility as a general matter for writing laws and for tariff and revenue measures, but the president has responsibility for conducting foreign affairs, including the negotiation of trade agreements. In the course of negotiating agreements and devising policy, we consult with Congress on a regular basis.

The agencies of the executive branch of the U.S. government are also responsible for writing regulations based on the laws passed by Congress. A good example is the antidumping and countervailing duty regulations now being developed by the Department of Commerce, which will implement changes in U.S. laws necessary to reflect our Uruguay Round commitments.

Q: Is the World Trade Organization dispute settlement process going to play a bigger role in the future?

Esserman: Yes, it will have an increasingly important role. It's important to remember that we signed the WTO Agreement after eight years of tough negotiations. The agreement offers improved rules for the world trading system — rules that provide certainty to exporters, that help expand world trade, and that help increase prosperity worldwide. But improved rules have to be enforceable. The United States insisted that the WTO agreement include an effective mechanism for enforcing the rules, and the WTO dispute settlement mechanism provides that.

In the WTO, the dispute settlement mechanism cannot be blocked or stalled by a defending party, and that is a crucial change from the GATT — the General Agreement on Tariffs and Trade, the WTO's predecessor. It provides a guarantee that there will be a resolution to any case we bring and that the resolution will happen in a time frame that is commercially meaningful.

The time between establishment of a WTO dispute settlement panel and adoption of the panel report generally does not exceed nine months. It is 12 months if the decision is appealed to the Appellate Body. In addition, the time frame for implementation of the decision is 15 months from the date of adoption of the report. A complaint should thus lead to implementation within 30 months or so, if you include the time between consultation requests and establishment of the panel.

Q: What is the U.S. experience with the WTO dispute settlement procedures?

Esserman: We have been very successful in our use of the WTO dispute settlement mechanism. We have brought 30 cases so far as the complaining party in the WTO; five have been resolved successfully through a settlement. Others are still in consultation. We have taken four cases to panels and have won all four.

The larger point is that WTO dispute settlement isn't just about enforcement. We bring disputes because specific government measures abroad are distorting or impeding trade. This dispute settlement mechanism is an important way for WTO member countries to settle peacefully commercial disputes. Also, it has already worked that way — bringing the case to the WTO or the prospect of bringing a case to the WTO provides a basis for discussing and resolving problems. That is particularly important because settlement by negotiation between disputing parties maximizes the control of the parties over the outcome.

The WTO's dispute settlement role will be magnified by the increased importance of international trade. Given the greater prospects for high-profile disputes, it is very important to have an effective dispute settlement procedure, one that enforces trade rules and encourages respect for international trading rules, but also one that encourages the peaceful settlement of trade disputes.

Q: The Clinton administration frequently cites more than 200 trade agreements that have been signed in the last four years. Aren't many of these small bilateral agreements that could be considered at odds with larger administration goals for regional agreements and the WTO?

Esserman: These agreements, combined with aggressive export promotion and enforcement of U.S. trade laws, are all part of an integrated strategy. They are designed principally to address specific problems that hinder U.S. exports of goods or services. These bilateral agreements are quite consistent with our overall strategy because bilateral solutions often lead to regional solutions or multilateral solutions. This ratcheting up of liberalization works to the benefit of both the United States and our trading partners.

Q: You have worked in the Import Administration at the Department of Commerce and now at USTR. Does the existence of separate agencies and divided responsibility sometimes make administering U.S. trade law more difficult?

Esserman: While the different agencies have different roles, we are all working toward the same goal of expanding our trade. USTR is responsible for developing and coordinating overall trade policy among all the agencies of the U.S. government, negotiating agreements to open up foreign markets, enforcing our trade agreements through WTO dispute settlement, and enforcing Section 301 and other laws designed to address foreign barriers and open up markets. Other agencies have particularized roles, as is the case with Commerce. Congress has given Commerce the authority to implement the antidumping and countervailing duty laws passed by Congress. That is appropriate because these are complicated laws that require administration by an agency such as Commerce that is equipped and staffed to handle very detailed technical and legal administrative proceedings.

Q: Isn't it inconsistent for USTR to seek to open foreign markets, while Commerce enforces the antidumping laws that some argue restrict imports?

Esserman: No. The goals of the president and the USTR in opening markets and the ultimate goal of the antidumping and countervailing duty law are consistent. They both address barriers in foreign markets, but in different ways.

In our negotiations under Section 301, we directly address barriers to exports in foreign markets. What the dumping and countervailing duty law does is address the effects of closed foreign markets, because dumping occurs when there are barriers in foreign markets. There are many kinds of foreign barriers such as high tariffs, certain kinds of regulations, unreasonable health and safety standards, closed distribution systems, and anti-competitive practices such as cartels.

Governments sometimes create these situations. In other cases, while they're not necessarily responsible for these barriers, they do nothing about them. This situation puts the firms in these countries in the enviable position of being protected in their home market and therefore able to engage in differential pricing from market-to-market abroad or, beyond that, below-cost pricing abroad.

The U.S. antidumping law provides a remedy for imports found to be dumped and to be a cause of injury to a U.S. industry. Dumping refers to foreign firms' sales in the United States at lower prices than in their home markets or U.S. sales below cost. The ultimate goal of the dumping law is the elimination of foreign market barriers that make dumping — price discrimination and sales below price — possible.

Q: But don't antidumping laws contradict the stated U.S. goal of trade liberalization?

Esserman: The bases for dumping law were part of the GATT trading rules and have been continued in the WTO. It is very important to understand that U.S. antidumping law implements rules agreed to multilaterally in the GATT. They were part of the GATT since its inception. These rules are part of the delicate balance agreed to multilaterally to ensure that in the progressive march toward trade liberalization in the 50 years since the GATT's inception, countries' interests are not unduly prejudiced by internationally recognized unfair foreign trade practices.

Many people don't realize that differential pricing or the ability to sell abroad at below-cost pricing is often made possible by the presence of barriers in foreign markets.

Q: So the antidumping law is here to stay?

Esserman: Yes. U.S. antidumping law is an integral part of the international trading system. Dumping was recognized in the GATT and is now recognized in the WTO. And it is very important that these measures remain in place. It is very important to recognize that in order to have any kind of trade remedy under the WTO and under U.S. dumping law, there must be proof of an unfair trade practice plus injury to the U.S. industry. ❑

❑ MAKING AND IMPLEMENTING U.S. TRADE LAW

An Interview with Thelma Askey, Staff Director, U.S. House of Representatives Ways and Means Subcommittee on Trade

As Republican Staff Director for the U.S. House of Representatives' Ways and Means Subcommittee on Trade, Thelma Askey plays an important role in drafting trade legislation and in getting it approved by the Ways and Means Committee, where most bills involving trade must originate.

Askey says that the U.S. Congress, in general, continues to support trade liberalization. But trade law and trade agreements are becoming more complex. Issues not traditionally included in trade discussions, such as labor standards and environmental practices, are increasingly part of the process when trade agreements and trade law are under consideration, she says.

This interview was conducted by USIA Economics Writer Warner Rose.

Question: Who initiates trade legislation in the United States — the Congress or the president?

Askey: It depends. A lot of trade laws originate in the Congress based on concerns expressed by members of Congress, business, and others. Obviously the president, primarily through the U.S. Trade Representative, also makes suggestions. But many changes to trade law, such as strengthening Section 301 so the United States can take aggressive action against foreign trade barriers, came from pressure from Congress.

Another example of this is the "Special 301" intellectual property protection law, under which the U.S. Trade Representative can cite countries for not providing acceptable protection for intellectual property. That really came from Congress because of industry pressure to protect intellectual property internationally. Congress, to a considerable degree, pressed the administration to make intellectual property a high priority in negotiations and to use whatever leverage was required to persuade countries that they need to improve their practices.

Trade law changes also emerge as a result of international negotiations, such as those that created the World Trade Organization (WTO). As a result of the WTO agreements, for example, the United States had to change its dumping and countervailing duty laws — which protect U.S. industries from unfairly priced imports — to conform with the WTO. The administration then took the initiative to revamp U.S. dumping and countervailing duty laws in a general sense. What we did in the legislation was far more than what was called for by the WTO.

In the end, the statutes that emerge from Congress reflect what authorities the Congress wants to extend to the president and how it wants the president to exercise those authorities.

Q: How does trade legislation normally move forward?

Askey: In normal circumstances, you want to achieve an agreement between the administration and key members of Congress on the crucial elements of trade legislation. Then you create as much of a bipartisan consensus as you can to move the legislation through both the House of Representatives and the Senate.

This year, however, there's going to be quite a bit of conflict between the administration and the Congress on two issues: the annual renewal of China's MFN, or most-favored-nation, trading status — which is really trading status equal to that of most other U.S. trading partners — and "fast track" trade agreement negotiating authority for the president. While Congress this year may be less inclined to cooperate with the president on some controversial issues, most members will want to wait for the president to set the foreign policy agenda here. That's particularly true with something as important as the China MFN, because relations with China have implications that extend far beyond matters of trade.

The other major piece of legislation is the Africa bill, which was originated by three members of the Ways and Means Committee, Trade Subcommittee Chairman Crane, Mr. Rangel, and Mr. McDermott. There is support in both the Congress and the administration for this bill. The bulk of the bill has to do with how aid money is distributed and how international lending entities fund projects. But it also calls for the negotiation of free trade areas in sub-Saharan Africa, and it provides certain textile benefits for that region and certain other trade and tariff benefits. And it encourages bilateral investment treaties.

Q: Which are the important congressional committees for trade?

Askey: All trade laws that involve tariffs or quotas, which are considered tax measures or revenue measures, start in the House Ways and Means Committee, which has jurisdiction over laws for raising revenue. The U.S. Constitution requires that revenue measures originate in the House of Representatives. Once a revenue measure clears the Ways and Means Committee, it goes to the full House and then to the Senate. The Finance Committee is Ways and Means' counterpart in the Senate.

Trade agreements are becoming so comprehensive and so complicated that many other committees in the House and the Senate also get involved. There were elements of the WTO that went before the Judiciary Committee, for example. And the Agricultural Committee always is involved because of the agricultural aspects of most trade agreements. The Africa bill will go to the International Relations Committee because it has to do with how aid is distributed, and also to the Banking Committee because it has to do with how international finance institutions fund projects. Parts also have to be cleared by Ways and Means.

There are many more players than in the past, not only because people are becoming more attuned to trade, but also because of the broader nature of trade agreements and trade issues. They touch upon more committees of jurisdiction, they touch upon more private sector interests that want to be heard and consulted.

For laws that affect trade but that are really intended to accomplish certain foreign policy goals, the committee of origin varies. For example, the Helms-Burton Bill — the sanctions against Cuba — did not come to the Ways and Means Committee because it had no trade sanctions in it. The Iranian sanctions legislation originated in the International Relations Committee but also was referred to Ways and Means because it included trade sanctions, as well as other sanctions to discourage investment in Iran.

Q: A Clinton Administration priority is the renewal of the so-called "fast track" trade agreement negotiating authority. Is fast track necessary for trade agreement legislation to move forward?

Askey: Obviously, it's helpful. Fast track is designed to facilitate trade agreements primarily because the United States has a form of government in which the powers of the executive branch and the legislative branch and the judiciary are separate. Congress and the executive branch — the president — have different things to say about trade law, with Congress having primary constitutional authority over international trade. Under fast track, the Congress lets the administration negotiate a trade agreement, then when the president sends the agreement to Congress for approval, the Congress votes to approve the implementing legislation without amendment. Time for debate is also limited.

When you've negotiated a major agreement like the WTO or the North American Free Trade Agreement (NAFTA) — or in some cases a smaller agreement dealing with a specific sector like ship building — and you don't have a fast track procedure, the implementing legislation can easily get bogged down. Amendments can kill a trade agreement because they usually require that it be renegotiated.

Consultation is a key element in the fast track process. Industry advisory committees are required by statute; consultations are conducted between the administration, industry groups, and Congress; congressional hearings are held; and the like. These are all part of making sure that everyone is aware of what's being negotiated and what results you want from the negotiations. There are reporting requirements with respect to the status of the negotiations, and there is the writing of the statute to implement what was agreed to, along with a statement of administrative action for what will be changed in policy and practice by the U.S. government as a result of the negotiation.

Fast track helps keep the Congress aware of what's being negotiated, and it helps the president make sure that legislators are generally supportive of the end product. It also builds business support and other support as the negotiation is going on.

In return for that, Congress gives up certain of its prerogatives in order to facilitate implementation.

Q: Has there been a trend toward injecting what can be viewed as non-trade issues, such as environmental protection, into trade legislation?

Askey: Non-trade, non-economic goals attempt to assert themselves into the process, and some members of Congress legitimately feel there's a close tie between trade and issues such as environmental protection and labor rights. The question is where do you draw the distinction between what violates international "trade" obligations and what does not.

There are elements of labor standards and environmental practices that directly impact on trade and can be viewed as trade barriers, and those are perfectly legitimate to negotiate under a trade agreement. But when do the elements added to trade measures become extraneous? Exporters and importers don't want to be held hostage to extraneous matters. They don't want their tariffs hiked or their access limited in order to try to achieve protection for dolphins or ensure U.S.-style collective bargaining, for example.

Many members of Congress are concerned because they don't want every issue, no matter how important the issue might be, to get a free ride on trade legislation.

Most presidents in recent years have resisted including their labor and environmental negotiations in the basic trade document; they wanted to conduct those talks separately because so many aspects are not directly related to trade. Certainly on the environmental side, when you're talking about clean air and clean water or protection of the dolphin and other fisheries, it's sometimes hard to make the trade connection. The Clinton administration, however, has been much more willing to include these matters in more general trade negotiations.

Q: Some critics argue that U.S. trade law is protectionist. What has been the record on trade liberalization?

Askey: Well, under very trying circumstances in 1988, when there was significant pressure to close up the U.S. market and restrict the free flow of trade until other countries exactly matched U.S. practice, Congress and the administration took a much broader approach. They recognized that the U.S. economy has been fairly dynamic and resourceful, primarily because you have a more liberalized trade regime, regardless of what other countries do. Neither Congress nor the administration has been convinced that restricting trade actually brings an overall economic benefit. In general, the members believe that problems can be resolved within a trade-liberalizing policy. And, in fact, the administration, working with Congress, saw through to final conclusion the negotiation and implementation of two very important liberalizing efforts — NAFTA and the WTO.

Q: Is the tendency toward more liberalization stronger than the impulse toward protectionism?

Askey: I would say that, on balance over the last 20 years, U.S. trade law has moved toward liberalization. But I think in the last five years, it's been moving toward more protection. However, members of Congress and the administration have resisted their worst instincts in favor of maybe more modest protectionist steps. But I think it has become harder and harder to maintain a free trade position.

The general public does not seem to make trade a big issue when they decide how to vote. Even though politicians sometimes make it a big issue in their campaigns, there are no polling data indicating that elections were won or lost or even significantly influenced by trade. Both Bill Clinton and Bob Dole wanted to avoid discussing trade in the last election campaign because they thought it would be a negative. Post-election polls and voter analysis showed that trade was probably 50th on the list of factors that an individual would consider when deciding how to vote either for president or for a particular senator or representative.

Q: What about U.S. anti-dumping laws?

Askey: Dumping statutes are a perfect example of the trend away from liberalization.

In general, it has become significantly easier for a firm to bring a dumping case and chill trade even though it may not win the case in the end. In fact, the U.S. attitude toward dumping has been spreading as a result of negotiations. We have basically convinced our European counterparts to follow our example, that using dumping laws is the best way to protect domestic industries from unwanted competition.

The definition of dumping itself has been so obscure. So it's pretty hard from an economic point of view to tie what is defined as dumping to a specific dumping practice. If you look at what the dumping statutes are supposed to do — that is, prevent a company from underselling in a foreign market — and then you look at the calculations that the statute provides in order to decide that, it's totally incongruous.

Q: Will U.S. dumping law be reformed?

Askey: Not in the near term. As we have more experience with the dumping statute that was negotiated in the last WTO round and as we have more challenges in the WTO on how various countries decide to implement that trade law, I think some of the problems with the law will be solved.

The WTO, I think, will help soften the worst instincts of all countries in using their dumping laws to protect industries from unwanted competition. Dumping was never intended to be used in that way, but that tends to be how countries want to use it. I think the WTO dispute settlement process will help prevent that to some degree since countries can be found in violation of their obligations under the WTO. The WTO rulings may help moderate the way countries implement their dumping laws.

Q: Is there danger of a sentiment growing in the Congress that the WTO is dictating domestic law?

Askey: Certainly every time the United States loses a case, it's a potential threat to support for the WTO in the Congress. There is concern about the sanctity of U.S. law and the sovereignty of U.S. decision-making. However, we also win quite a number of cases in the WTO. We seem to do quite well in the dispute settlement process, and I think that as long as the balance is there, support for the WTO can be maintained.

Q: In the past, the United States has used unilateral trade preferences as a kind of foreign aid. Is that becoming more difficult?

Askey: Yes, and textiles are an example. Textiles are supposed to go to free trade under the WTO in 2005. Now, completely free trade in textiles will make it hard for the United States to give special access to places like the Caribbean, which it has done in the past as a form of assistance under the Caribbean Basin Initiative. When everybody goes to free trade in textiles, China will clearly be more competitive than the Caribbean. In this kind of situation, it's going to be harder to have those special relationships. We'll just have to find other ways to give assistance to countries or regions of strategic importance to us.

But I have my doubts that the countries will go to free trade in textiles when they promised because of the way it's structured in the WTO agreements. Governments agreed that they would have close to full protection until the final year, after which quotas would be eliminated all at once. It's going to be pretty hard to take that step off the cliff at the end.

There is also the Generalized System of Preferences (GSP) for developing countries, which was designed to boost struggling democracies through "trade not aid" by eliminating tariffs for many of their products. However, this program has to be extended this year, and with each extension it's becoming harder to find money in the U.S. budget to fund the revenue loss caused by the GSP special tariff preferences. ❑

❑ THE VALUE OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT IN DEVELOPING COUNTRIES

By Jonathan Zavin, Partner, Richards & O'Neil, and Scott M. Martin, Associate General Counsel and Vice President of Intellectual Property, Paramount Pictures Corporation

Developing countries will find it in their long-term interest to protect the intellectual property rights of products such as software, pharmaceuticals, and films, even if in the short run they are not likely to be exporters of these kinds of goods, say Jonathan Zavin and Scott M. Martin.

Failure to protect intellectual property rights will discourage legitimate manufacturers from selling their goods in those countries and stunt the development of local knowledge-based industries, say Zavin and Martin.

Countries that pass laws to protect intellectual property also must take steps to make certain there is reliable enforcement of these laws, they say.

Jonathan Zavin, a partner at Richards & O'Neil in New York City, chairs the firm's Litigation and Intellectual Property Departments. Scott M. Martin is Associate General Counsel and Vice President of Intellectual Property at Paramount Pictures Corporation in Los Angeles.

In recent years developed nations have placed great emphasis on the global protection of intellectual property. In 1994, this led to the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (known as TRIPs) as part of the Uruguay Round trade negotiations. TRIPs, which has been adhered to by more than 100 countries, requires member countries, with only limited exceptions, to provide a high level of protection for intellectual property rights and to provide mechanisms for their effective enforcement.

A principal argument advanced by developed countries for protection and enforcement of intellectual property rights is that this will lead to greater international trade, to the benefit of all. Given that developed nations are the major net exporters of intellectual property, however, the argument appears to be purely self-serving. Such protection clearly increases their exports by keeping pirated products out of their markets.

The question, then, is whether developing countries have as clear an interest in protecting intellectual property rights. We believe they do — and that such protection should be high on the agenda of all countries that aspire to economic growth and full membership in the global economy.

I. Effective Protection of Intellectual Property Will Ultimately Increase Trade and Development For Less Developed Countries.

International trade in intellectual property encompasses the motion picture, television, music, and publishing industries, the computer software industry, the pharmaceutical industry, the communications industry, the aerospace industry, and many others. All of these industries rely, to a great extent, on the protection afforded by copyright, trademark, and patent law. Because less developed countries tend not to be exporters of these types of products, those nations might seem at first glance to have fewer reasons to be concerned with the protection of intellectual property. It could even be argued that to increase their economic development, protection of intellectual property is not even desirable. Such arguments could include the following:

• Developing countries might argue that protection of intellectual property will actually stunt their economic development. According to this argument, less developed nations cannot afford to pay for the import of legitimate non-infringing intellectual property. If they are required to pay, there will be less intellectual property and technology available to their industries and people. This, the argument goes, will lessen a country's prospects for economic development and expanded trade. To give but one example of this reasoning: If a country forces its people to use only licensed copies of computer programs, fewer people will be able to obtain such programs, and the country will fall further behind technologically.

• Less developed countries might also argue that offering greater protection for intellectual property will not help expand their trade with other countries, because they do not generally export original movies, books, records, computer programs, and the like. When they do create such works, those works will still be protected by the developed countries, even if the country of origin does not adequately enforce intellectual property rights within its own borders.

While these arguments may have some appeal in the short term, the following are just a few of the reasons why all countries, including less developed countries, should aggressively and effectively protect intellectual property.

• Multinational companies that need intellectual property protection for their products are reluctant to locate in countries that do not offer this type of protection. It is hard to imagine, for example, a record company locating a CD manufacturing plant in a country that does not offer adequate protection against record piracy.

• While the reluctance to locate a plant in a certain country may appear speculative, the reluctance to ship products to such a country is not. Many companies that deal in intellectual property are, in fact, reluctant to distribute in countries that do not protect intellectual property. If their property cannot be protected, they will frequently refuse to license legitimate distributors and will simply ignore the market. This means that legitimate, homegrown, tax-paying channels of distribution will not develop inside the country. Nor will the country develop domestic expertise in licensing and distribution. The market — whether it is for home videotapes, computer software, or even pharmaceutical products — will instead be supplied by illegal importers or duplicators.

• The market of a country that does not protect intellectual property will tend to be flooded with inferior illegitimate products. While it may not matter to a country's economic development or international trade if its citizens watch low-quality videotapes made surreptitiously with a hand-held camera in a movie theater, it does matter whether the technology that is incorporated into a country's infrastructure is state-of-the-art and can call upon authorized technical support. If legitimate producers of intellectual property stay out of a market because their products are unprotected, the products available in the market will frequently be of inferior quality and will not be supported, upgraded, or even necessarily usable. This is true not only for computer software but also for other products, such as patented pharmaceutical products and communication products, in which copyrighted or patented material is basic to the product. Thus, while the availability of pirated products may seem an economic advantage in the short term, in the long term it will inevitably impede a country's development.

• Compliance with requirements of international law for the protection of intellectual property is important not only if a country wants to be a participating member of the world community but also if the country wishes to avoid trade sanctions that can have an economic impact on trade far beyond the boundaries of intellectual property industries. The TRIPs agreement does contain certain transitional provisions that exempt "developing country members" and "least developed country members" from many of the requirements of TRIPs, including some of the enforcement requirements, for a limited number of years. However, even if such exemption is permitted by TRIPs, and a country therefore does not face sanctions for its failure to immediately follow all the TRIPs mandates, it may not be in a country's best interest to take advantage of these transitional provisions for long. If one believes that it is ultimately to the economic benefit of every country to protect intellectual property, the longer the exemption in the transitional provisions is used, the greater will be the long-term economic harm to the country.

• The final purely economic reason for a country to protect intellectual property through adequate laws and aggressive enforcement is perhaps the most important. If a country does not protect intellectual property, it is far less likely that it will develop its own intellectual property industries. The encouragement and development of local authors and inventors depends to a great extent on their ability to earn a living from their work. Without such protection, local intellectual property is less likely to be created, and the developing country may be permanently relegated to the role of net importer of intellectual property.

In addition to the purely economic or trade reasons for protecting intellectual property, other reasons include the protection and encouragement of the country's own language and literature, and the basic shared moral proposition that it is not proper to take someone's work and effort without payment.

II. Intellectual Property Rights Must Be Enforceable

In order to adhere to various international agreements or to join certain international and regional organizations, many developing countries have adopted highly sophisticated, "state-of-the-art" intellectual property laws. On one level, it would seem that all forms of intellectual property are more than adequately protected in such a country. The reality can be quite different, because laws are not always adequately enforced. The adoption of such laws is certainly a first step toward protecting intellectual property and does sometimes accomplish the immediate result of enabling the adopting country to adhere to or join in many key international agreements. However, the mere adoption of these laws without effective enforcement will not fool the intellectual property community for long. Nor will their mere adoption give the country the long-term benefits of protecting intellectual property.

Part III of the TRIPs agreement requires that countries set up mechanisms for effective enforcement of intellectual property rights. The enforcement mechanisms are important and useful. But it appears that many countries are unable to enforce their relatively new intellectual property laws for a number of basic reasons.

• The laws in many developing countries have been modeled on the laws of either the United States or Europe (primarily France). While these models differ in some aspects, one thing they share is that they depend very heavily on private enforcement of the law by intellectual property rights owners, rather than by government. In the United States, for example, while government prosecutors may occasionally become involved in criminal prosecution of a major intellectual property infringer, the vast majority of the policing of intellectual property rights is done by the owner or licensee of those rights in a private civil action.

• One of the basic reasons why private enforcement works in developed countries is that the law provides sufficient incentive to the intellectual property owner to make enforcement economically justifiable, i.e., as a general proposition enforcement should not cost more than can be recovered. While many developing countries have adopted these models, some have left out some of the tools necessary for private enforcement to work. Specifically, the economic viability of private enforcement frequently depends on the infringer's being required to pay the cost of the legal action, including attorney's fees. It also depends on the ability of a judge (or a jury) to award substantial monetary damages, even if the owner of the intellectual property cannot prove the amount of any actual financial loss. Because of the nature of intellectual property, demonstrating specific actual loss from infringement can sometimes be difficult or impossible; if such demonstration is required, the ability to protect the property may merely be ephemeral. Countries should examine their laws to see that it is, as a practical matter, economically sensible for an intellectual property owner to attempt private enforcement.

• Some form of expedited provisional remedy must be part of the intellectual property law. It often is of limited utility for an intellectual property owner to sue for damages after the fact. The damage to the legitimate product will be done long before the case comes to trial, and the infringer is often unable to compensate the owner for damages. There must be some relatively speedy procedure so that an owner of intellectual property can obtain immediate relief, including injunction, seizure of infringing goods, and similar actions.

• In many countries, the judiciary (and frequently the private bar) is not familiar with intellectual property law and is unsure of how it is to be applied and enforced. Education is needed to explain that intangible rights are to be taken just as seriously as property rights for tangible objects. The willingness of the judiciary to award damages in an amount sufficient to act as an effective deterrent, as well as the effectiveness of the expedited provisional remedy discussed above, depend on a judiciary that has been educated as to the necessity for and propriety of such remedies.

• Developing country governments are often faced with a variety of enormous legal problems. In light of these other problems, the enforcement of intellectual property rights often becomes a low priority — particularly where such enforcement is viewed as benefiting only wealthy foreign corporations. But if governments focus on the long-term economic benefits to their own country — in terms of trade, economic development, and compliance with international obligations — it may be possible to make such enforcement efforts a higher priority.

In sum, it is in the long-term economic self-interest of developing countries to protect the intellectual property of all nations. To achieve this goal, emphasis must be placed not only on enacting intellectual property laws, but also on making certain those laws are enforced. ❑

❑ U.S. ANTIDUMPING LAW: THE MOST POWERFUL TRADE LAW

By William E. Perry, Partner; Williams, Mullen, Christian & Dobbins

U.S. antidumping law is the most powerful legal instrument that U.S. industries have to protect themselves from foreign competition, says William E. Perry. An antidumping duty order can effectively bar a foreign firm's products from the U.S. market. But, says Perry, a foreign firm can continue to export to the United States if it obtains a low dumping margin ruling at the U.S. Department of Commerce, or successfully argues before the U.S. International Trade Commission that the imports of the product under investigation are not hurting any U.S. industry.

Politics play a much smaller role in dumping cases than foreign producers might think, Perry adds.

Now a partner in the law firm Williams, Mullen, Christian & Dobbins, Perry previously worked in the Office of Antidumping Investigations at the U.S. Department of Commerce and in the General Counsel's office at the U.S. International Trade Commission.

The U.S. antidumping law is the most powerful weapon that U.S. industries have to protect themselves from imports.

It provides a legal remedy to counteract low-priced competition in the U.S. market from foreign producers who are allegedly "dumping" — that is, selling goods at prices below those in their own home market (price discrimination) or below their fully allocated cost of production (sales below cost) — so as to cause injury to a U.S. industry. Numerous antidumping cases have been brought against products ranging from natural produce such as cut flowers, honey, and garlic, to basic commodities such as steel, to sophisticated high-tech products such as supercomputers and semiconductor chips.

The power of antidumping law lies in the fact that dumping duties levied by the U.S. government can exceed 400 percent. In many instances, the duties can be so high as to drive a foreign company out of the U.S. market. Moreover, an order against dumping can last for 10 to 20 years, forming what amounts to a permanent barrier to imports of a particular product from a certain country.

To win an antidumping case, a U.S. industry must first establish with the U.S. Department of Commerce that a foreign exporter is selling its products in the United States at less than fair value. It must then establish with the U.S. International Trade Commission (USITC) that the dumped imports cause or threaten to cause material injury to a U.S. domestic industry.

In almost 90 percent of the cases brought to date, the Commerce Department has found that a foreign exporter/producer is dumping. So for foreign exporters trying to contest the dumping case, the objective at the Commerce Department is to get the dumping margin as low as possible. The dumping margin is the percentage by which the foreign exporter's prices in the United States are found to be lower than the prices in his home market, or the percentage by which the exporter is selling at less than his cost of production.

In most cases, the only chance for a foreign exporter to completely win a case is at the USITC on the basis of lack of injury to U.S. industry. When my own firm represented two Chinese saccharin exporters, we won the case on the basis of the USITC's determination that there was no injury to U.S. industry — even though the Commerce Department found levels of dumping (the dumping margin) in the range of 160 to 276 percent.

The way the dumping margin is calculated depends on the type of economy in which the product originated.

To determine the dumping margin for market-economy countries such as Germany, Mexico, India, and Japan, the Commerce Department uses the foreign producer's actual prices and costs. In its price comparison, the department starts from the first sales transaction between unrelated parties and then, through a series of adjustments for freight, customs duties, differences in merchandise or quantities sold, peels back the layers until it determines the price of the product at the factory door. Having determined the factory-door price, the department then compares the prices being charged for the product in the U.S. market and the prices being charged in the foreign producer's home market to determine whether dumping has occurred.

If an allegation is made by the U.S. industry that a foreign producer is selling below the cost of production, the Commerce Department determines the fully allocated cost of production and compares that to sales in the producer's home market. The department disregards sales in the home market that are below the cost of production and uses only above-cost home market sales for comparison purposes. If 95 percent or more of the sales in the home market are below the cost of production, the department uses a constructed value — that is, the foreign producer's fully allocated cost of production, plus profit, overhead, and selling, general, and administrative expenses — and compares the constructed value to the U.S. sales prices to determine whether there is dumping.

The Commerce Department treats nonmarket-economy countries such as China and Russia differently. The department has decided that since prices and costs in most Communist and former Communist countries are set by the state, they do not reflect actual market prices. To determine the foreign market value in these cases, the department obtains factors of production from the foreign producer: how much raw material inputs, labor, electricity, and the like the producer uses to produce a single unit of the merchandise, such as a metric ton of a specific chemical or metal product. The department then obtains value information from published data in a surrogate country — that is, a country with a comparable economy that is a significant producer of the product under investigation. In cases involving goods produced in China, for example, the department generally uses India as a surrogate. Based on the values from the surrogate country, the department determines a foreign market value for the product. It then compares the foreign market value with the U.S. price to determine whether there is dumping.

Although it is difficult, it is possible to obtain a zero percent (no dumping) determination from Commerce and be excluded from the antidumping order. In the Polyvinyl Alcohol from China case, for example, our client received a zero percent dumping margin and was excluded from the dumping case, although the dumping margin for all other Chinese exporters is 116 percent.

If the Commerce Department determines that there is dumping, the USITC must then determine whether the dumped imports cause material injury or threaten material injury to a domestic industry. To do so, the USITC sends questionnaires covering such areas as employment and profits to U.S. producers and importers and to foreign producers and exporters. It gathers the questionnaire data into a single income statement for the entire industry. From this, the commission then can see whether employment, capacity utilization, production, shipments, and profits for the industry have gone up or down and can determine if the domestic industry is in a state of material injury. The commission then examines import trends to determine whether the dumped imports are a contributing cause of that injury. It examines whether imports have increased substantially and whether the imported product is priced lower than the domestic product, thereby taking sales away from the domestic producers.

If the Commerce Department finds dumping and the USITC finds injury, the Commerce Department issues an antidumping order setting out the dumping margins for the foreign exporters that were included in the investigation and an "all-others" rate for exporters that did not.

An important point to understand is that the dumping margin does not establish the final dumping duty. Once an antidumping order is issued, a U.S. importer may continue to import the product, but it must post a cash deposit equivalent to the dumping margin with the U.S. Customs Service every time the importer imports the product into the United States. The actual dumping duty owed by the U.S. importer is determined during a review investigation that commences one year later in the anniversary month of the dumping order and every anniversary month thereafter. If the duty is less than the cash deposit, the importer is reimbursed for the difference plus interest. But if the duty is more than the cash deposit, the importer owes the additional amount plus interest. Thus, an importer could import a product under a 5 percent dumping margin, only to discover at the end of the review period that the actual dumping duty is 100 percent. The importer could then be faced with possible bankruptcy because of the additional amount it owes the U.S. Customs Service, which is the agency responsible for collecting the dumping duty.

On the other hand, if a foreign exporter is shut out of the U.S. market because of a high dumping duty, that exporter may try to open up the market by making a small sale of the same product in the United States to establish a lower dumping margin. Once it has made the small sale, it can ask for a review investigation at the Commerce Department and receive a much lower cash deposit rate/antidumping margin so that it can begin to export products to the United States again. If the foreign exporter receives three zero-percent dumping margins in a row, it can apply to have its dumping margin revoked.

Changes to the U.S. antidumping law to implement the 1994 Uruguay Round multilateral trade agreement have given foreign producers at least one advantage in review investigations. Prior to the passage of the Uruguay Round act, there were no time limits on antidumping review investigations. Therefore, the Commerce Department could take a substantial number of years before announcing its determination. In one case, for example, the Commerce Department restarted a review investigation in 1993 of golf carts being imported from Poland into the United States from 1980 to 1982 — more than 10 years later. Under the new law, the department must finish review investigations in 12-18 months.

The Uruguay Round Act also provides new exporters to the United States with additional benefits. If a new exporter was not named in a prior review or investigation and is not related to a company that was, it may, after making a small sale in the U.S. market, request a new-shipper review investigation to obtain its own, lower dumping margin. New-shipper review investigations have shorter time limits than normal reviews and allow U.S. importers to post a bond, rather than cash, when they import products from the new shipper into the United States.

One final point: Many foreign producers view politics as playing a major role in U.S. antidumping investigations. Based on my 17 years of practice in the antidumping area, I can state that this role is not nearly as great as a foreign producer might think. At the USITC, politics has no role. Commissioners there act as judges and are almost always immune from political pressure. At the Commerce Department, politics plays only a small role. Politics can be used, for example, to manipulate procedural rules and level the playing field. In the end, however, the facts presented in the questionnaire responses are what determine whether the domestic or foreign producer wins or loses a case.

The U.S. antidumping law remains the most important law that an American producer can use to prevent low-priced imports from entering the U.S. market. Use of dumping law, once confined to a few industrial countries, has now become prevalent in areas and countries around the world, including Canada, Mexico, Venezuela, Australia, Europe, India, China, Japan, and Korea. Now U.S. companies themselves are facing dumping actions in foreign countries around the world. ❏

❑ AN OVERVIEW OF U.S. TRADE LAWS

The laws governing U.S. trade are numerous and complex. The following overview, drawn from several sources, provides an outline of the most important laws that affect U.S. imports and exports, and of the authorities the Congress grants to the president to react to unfair trade practices, regulate trade for other reasons, and negotiate trade agreements,

The legislation that implemented the agreements reached under the Uruguay Round of multilateral trade negotiations — which established the World Trade Organization (WTO) — required substantial changes in many U.S. trade laws. These changes will go into effect over a number of years. The implementation of the North American Free Trade Agreement (NAFTA) establishes special procedures for eliminating trade barriers between the United States, Canada, and Mexico and for settling disputes.

The principal sources for this overview include: "Overview and Compilation of U.S. Trade Statutes, 1995 Edition," published by the House of Representatives Ways and Means Subcommittee on Trade; "The Year in Trade: 1996, Operation of the Trade Agreements Program," published by the U.S. International Trade Commission; "Summary of Statutory Provisions Related to Import Relief," published by the U.S. International Trade Commission; and "1997 Trade Policy Agenda and 1996 Annual Report of the President of the United States on the Trade Agreements Program," published by the Office of the U.S. Trade Representative.

The overview is divided into seven sections, following the organization of the Trade Subcommittee's "Overview." It includes a brief description of laws regulating trade for foreign policy and national security purposes. This kind of trade law will be the subject of the next issue of "Economic Perspectives."

This overview was written by USIA Economic Writers Bruce Odessey, Warner Rose and Jon Schaffer.

TARIFF AND CUSTOMS LAWS

Tariff system: The U.S. tariff system is the Harmonized Tariff Schedule of the United States. Officially adopted January 1, 1989, this system is based on the Harmonized Commodity Description and Coding System of the Customs Cooperation Council, an intergovernmental organization based in Brussels. Known as the Harmonized System (HS), this tariff system is used by all major trading countries.

Most U.S. tariffs are ad valorem — the tariff is designated as a percent of the value of the imported good. U.S. ad valorem rates range from less than 1 percent to nearly 40 percent, with textiles and footwear imports most often subject to the higher duties. Most ad valorem tariffs are in the 2 to 7 percent range, with the average tariff being around 4 percent.

Some imports, generally agricultural products and other less processed goods, are subject to a "specific tariff," which is a certain charge for a certain quantity. Some products are subject to compound tariffs, a combination of ad valorem and specific levies. Still other products, such as sugar, are subject to tariff-rate quotas — a higher tariff rate is applied to the imported good after a specified quantity of the item has entered the United States during the year at a lower prevailing rate. A small number of mostly special cases are subject to other kinds of levies.

Most Favored Nation Status: Nearly all U.S. trading partners have "Most Favored Nation" (MFN) trading status. The goods from all MFN-designated countries are subject to the same tariffs when they enter the United States. When the United States reduces, eliminates or otherwise changes a tariff, that change is applied equally to all MFN status countries. Imports from the few countries that do not have MFN status face significantly higher tariffs.

When the United States joined the General Agreement on Tariffs and Trade (GATT) at its founding in 1948, it agreed to extend MFN status to all other signatories. The status was also extended to certain countries that did not join the GATT. In 1951, the Congress directed President Harry Truman to revoke MFN status from the Soviet Union and all other Communist countries. As implemented at the time, this exclusion was applied to all then-Communist countries except Yugoslavia. For the Cold War period, most Communist countries were either denied MFN or had to meet certain conditions to be granted the status.

At present, the United States extends MFN status to all members of the WTO and most other countries. Nations excluded from MFN, as of May 1997, include Afghanistan, Cuba, Laos, North Korea, Vietnam, and Serbia/Montenegro. Countries seeking MFN status must fulfill two basic conditions: 1) compliance with the Jackson-Vanik provisions of the Trade Act of 1974 requiring a presidential determination that the country neither denies or impedes the right or opportunity of its citizens to emigrate; 2) reaching a bilateral commercial agreement with the United States. The conditions for Serbia/Montenegro to qualify for MFN may differ. Congressional action denied MFN status to Serbia/Montenegro in reaction to the armed conflict and human rights abuses after the breakup of the former Yugoslavia.

A few countries must get an annual presidential waiver or extension of a waiver to continue their MFN status. By far the most important country requiring this annual waiver extension is China, which has become one of the biggest exporters to the United States.

By July 3 of each year, the president must extend an annual waiver for China from the Jackson-Vanik freedom-of-emigration provisions. The waiver for China has been in effect since 1980. Every year since 1989, legislation has been introduced in Congress to disapprove the president's waiver. The legislation has sought to tie China's MFN renewal to meeting certain human rights conditions that go beyond freedom of emigration. Through 1996, all attempts to deny China MFN status have failed.

While Libya, Iran, and Iraq have MFN status, trade with these three countries has been embargoed by other U.S. laws.

Special Unilateral Programs: There are several laws that extend preferential tariff treatment on some products on a unilateral, non-reciprocal basis to qualifying developing countries. These programs include:

• Generalized System of Preferences (GSP), a program that grants tariff exemptions for more than 4,450 products from around 150 developing countries and territories. The GSP law provides for annual reviews of eligible articles and countries. Limits are placed on tariff exemptions for certain products if shipments rise above a certain dollar level. GSP benefits may also be restricted if the country maintains barriers to U.S. exports, denies intellectual property protection, or fails to abide by internationally-recognized workers rights. The current GSP law expired on May 31, 1997. When GSP was last extended in August 1996, after having been expired for more than a year, tariff exemptions were restored retroactively.

• Caribbean Basin Initiative (CBI), which provides for tariff exemptions or reductions for most products from 24 participating countries in Central America and the Caribbean region. The CBI trade preferences are not subject to annual reviews. Countries can lose their CBI benefits under certain circumstances.

• Andean Trade Preference Act (ATPA), which grants tariff preferences to certain products from Bolivia, Colombia, Ecuador, and Peru. This program expires in December 2001.

Countries with which the United States has trade agreements that reduce tariffs and other trade barriers, such as the NAFTA and the U.S.-Israel Free Trade Area Agreement, are covered in another part of trade law that concerns reciprocal trading agreements.

Special Tariff Preferences: The United States grants an important tariff preference to goods entering the country that are made with parts fabricated in the United States. The provision of the law is HTS heading 9802 under the new Harmonized System — previously known as Section 807 under the old Tariff System of the United States. Under this arrangement, the tariff is levied only on the foreign value added of the product. No duty is applied to the U.S.-made parts. This arrangement, known as "production sharing," is widely used for products ranging from motor vehicles to semiconductors to apparel sewn abroad with cloth made in the United States. In 1996, about 8.5 percent of total U.S. imports entered under the provisions of HTS heading 9802.

Customs Valuation, Other Regulations: The United States accepts the WTO Agreement on Customs Valuation as the basis for the U.S. law on customs valuation, the process for determining the value of an import in order to apply the ad valorem duty.

By adhering to the agreement, the United States uses the rules under the WTO Dispute Settlement Understanding to handle disputes.

Current U.S. law establishes the “transaction value” as the main basis for determining the value of imported merchandise. Generally, transaction value is the price actually paid or payable for the goods, with additions for certain items not included in that price. If this first valuation method cannot be used, the law stipulates that secondary valuation bases be used. In order, these are: 1) the transaction value of identical or similar merchandise; 2) deductive value; 3) computed value.

U.S. Customs laws also requires that the origin of products be clearly and truthfully explained. This is particularly important for products that seek entry under the unilateral tariff exemptions programs of GSP, CBI, and ATPA. For products to be eligible for the tariff concessions of these three programs, at least 35 percent of the direct cost of producing the good must have taken place in the beneficiary country.

There are special “country of origin” provisions for NAFTA.

TRADE REMEDY LAWS

U.S. trade law contains a number of statutes that provide for specific remedies when foreign goods are being given an unfair advantage in the U.S. market or U.S. exports are being discriminated against in foreign markets.

Laws Aimed At Imports

The two most widely known statutes for protecting U.S. industries from unfairly traded imports are the countervailing duty law (CVD) and the antidumping law (AD). Both laws require that extra duties be levied on imports if they are found to be unfairly traded. Both laws contain similar procedures for conducting investigations, imposing duties, and then reviewing and possibly removing the duties.

Countervailing Duty Law: The CVD law provides a remedy in the form of an increased import duty to offset, or “countervail,” a subsidy granted to a foreign product, the sale of which in the United States is injuring a U.S. producer of an identical or similar good. In most cases the countervailable subsidies are directly provided by the foreign government, but the law also applies to indirect subsidies that are identified by the CVD investigation.

A CVD investigation is usually initiated as a result of a petition filed by a domestic industry with the U.S. Department of Commerce and the U.S. International Trade Commission (ITC), but Commerce can initiate a case on its own.

The Commerce Department and the ITC both conduct investigations. Commerce investigates to determine if a “countervailable” subsidy is being provided, directly or indirectly in the country or territory or origin, to the manufacture, production, or export of the product that is the subject of the investigation.

The ITC investigation determines whether the petitioning U.S. industry is materially injured or threatened with material injury, or whether the establishment of an industry is materially injured by reason of imports that are receiving the subsidies. “Material injury” is defined in the law as harm that is not inconsequential, immaterial, or unimportant.

For countervailing duties to be imposed, Commerce must find the countervailable subsidy and the ITC must find injury.

The CVD law also covers “upstream subsidies” — subsidies given to the production of the inputs that are incorporated into a final product that is exported to the United States.

Antidumping Law: Antidumping law is much more widely used than CVD law. Antidumping duties are imposed on imports when it is determined that the foreign good is being “dumped” — sold, or is likely to be sold, in the United States for “less than fair value.” In general, less than fair value means that the price of the import in the United States — the purchase price or the exporter’s sales price — is less than the price of the good in the country of origin.

As is the case for CVD, antidumping proceedings are initiated either by a petition filed by an industry or by the Commerce Department.

Commerce must investigate to determine if dumping has occurred. The ITC then determines if the U.S. industry is suffering material injury or is threatened with material injury, or if the establishment of an industry is materially retarded by reason of the import.

The antidumping duties that are imposed when dumping and injury are found equal the amount by which the "normal value" of the good exceeds the export price, i.e., the U.S. price, for the product.

The Commerce Department determines the import's "normal value" by one of three methods. In order of preference, they are: the sale price in the country of origin; the price of the good in third markets; and the "constructed value," the sum of the cost of production plus additions for profits, selling commissions, and other administrative expenses such as packing. If actual data are not available, then a "surrogate" for profit and other expenses may be used to calculate the constructed value.

If two or more countries are named in an antidumping or a countervailing duty petition, the law requires the ITC to cumulatively assess the volume and effect of the like imports from the countries named if they compete with each other and with like products in the U.S. market. If imports from a country under investigation are found to be negligible, which is generally defined as less than 3 percent of total imports of the product being investigated, the investigation is terminated for that country. Certain exemptions from cumulation rules also are provided, such as those that apply to countries that participate in the Caribbean Basin Initiative and to Israel.

U.S. antidumping law also allows a U.S. industry to file a complaint about dumping in third countries. The U.S. industry would file a petition, which must explain why the dumping is detrimental to U.S. firms, with the Office of the U.S. Trade Representative (USTR), asking the agency to pursue U.S. rights under the WTO.

If the USTR determines that there is reasonable basis for the allegation, it submits a request to the appropriate authorities in the third country asking that antidumping action be taken on behalf of the United States.

Likewise, under the Uruguay Round Antidumping Agreement, the government of a WTO member can file a petition with USTR requesting an antidumping investigation of a product imported into the U.S. market from a third country.

AD and CVD Investigations, Levying of Duties: AD and CVD petitions have to be filed simultaneously at the Commerce Department and the ITC. If the case is accepted, then 45 days after the filing date, or after Commerce has begun an investigation on its own initiative, the ITC must make its preliminary determination on injury or threat of injury to a U.S. industry.

If the ITC determination is negative, then the proceedings end. If the ITC issues an affirmative determination, then Commerce makes its preliminary determination as to whether there is a reasonable basis to believe that a countervailable subsidy exists or that dumping has occurred.

If Commerce decides that there is a reasonable basis, then in the CVD cases it estimates a subsidy margin for each firm or country investigated. These estimates must be made within 65 days of the initiation of the investigation. This deadline can be extended to 130 days.

In AD cases, after the preliminary affirmative determination, Commerce estimates the weighted-average dumping margin — the amount by which the normal value of the foreign product exceeds the export price. This determination is made 140 days after the initiation of the investigation, although this can be extended to 190 days.

In both cases, after preliminary affirmative determinations are made, the importer of the product must post a bond or cash deposit equal to the estimated net subsidy or dumping margin with the U.S. Customs Service.

If Commerce's preliminary determination is negative, cash deposits are not taken, but both the Commerce and ITC investigations continue to the final determination step.

There are provisions for entering into an agreement to suspend both the AD and CVD investigations if certain conditions are met.

Within 75 days of the preliminary determination, under normal circumstances, Commerce makes its final determination in both AD and CVD cases, although this can be extended to 135 days. If the final Commerce determination is negative, the proceedings end and the bond or cash deposit is refunded. If the final Commerce determination is affirmative, then the ITC has to make a final injury determination.

The ITC's final determination must be made by the 120th day after Commerce makes its affirmative preliminary determination, or by the 45th day after Commerce makes its affirmative final determination.

If the final ITC determination is affirmative, then Commerce issues a CVD or AD duty order within seven days of the notification of the ITC's determination. It should be noted that the final duties that must be paid for imports subject to the order can be considerably higher than the cash deposit amount.

Upon request, Commerce must review, as often as every 12 months, the amount of the net countervailable subsidy or dumping margin for merchandise under an outstanding countervailing or antidumping order. Commerce, upon request, must also review suspended investigations to determine the status of and compliance with the agreement, as well as the underlying net countervailable subsidy or dumping margin.

The Uruguay Round Agreements Act requires that the Commerce Department and the ITC initiate "sunset reviews" within five years after the issuance of an order to determine whether the revocation of the relevant order would likely lead to continuation or recurrence of dumping or countervailable subsidies and material injury.

Revocation of the dumping order or termination of the investigation can occur if the ITC determines that revocation or suspension is not likely to lead to a continuance or recurrence of material injury, and Commerce determines that there will be no continuation or recurrence of the dumping or the countervailable subsidy.

Parties dissatisfied with the final Commerce or ITC determinations in AD or CVD cases may file to seek a judicial review in the U.S. Court of International Trade in New York. If the determinations involve merchandise from Canada or Mexico, the parties can seek a review from the binational panel formed as part of NAFTA or can appeal to the Court of International Trade.

There are certain provisions of the law for so-called "critical circumstances" that allow petitioners to seek rapid action against a flood of imports that threaten a domestic industry.

Section 201-204, Adjusting to Imports: Sections 201-204 of the Trade Act of 1974 authorize the president to take action when a certain product is being imported into the country in such increased quantities as to cause serious injury, or threaten serious injury, to a domestic industry. This authority can be used even if the import is not priced unfairly.

The ITC conducts investigations in response to petitions filed by bonafide industry representatives, upon request by the president or by the USTR upon receiving a resolution from the House of Representatives Ways and Means Committee or the Senate Finance Committee, or by its own decision.

The ITC has 180 days from the day on which the petition, request, or resolution is received to conduct its investigation and report its determination and any recommendations to the president. The investigation has two phases, a phase to determine if there is injury, which generally must be completed in 120 days, and a remedy phase, if that is necessary. If the ITC makes an affirmative injury determination, then it recommends to the president the action that will facilitate the industry's adjustment to import competition. This could involve an increase in duties, the imposition of a tariff-rate quota, quantitative restrictions, adjustment measures, or a combination of measures. In the case of NAFTA partners, the ITC must also find whether the imports from Mexico or Canada account for a substantial share of total imports and are contributing importantly to serious injury to the U.S. industry.

The ITC must also hold public hearings in conjunction with the injury and remedy phases of its investigation.

Upon receipt of an ITC report containing an affirmative injury determination and remedy recommendation, the president has 60 days to decide what to do. The president is not bound by the ITC's recommendations. He may implement the ITC's recommendations, implement relief of some other form within his authority, or take no action. The president must report to Congress on the action he is taking. If such action is different from that recommended by the ITC, he must explain the reasons why. Congress may, through a joint resolution within 90 days, direct the president to proclaim the action recommended by the ITC.

There are special provisions that allow "provisional" relief to be provided on an expedited basis pending completion of the investigation process.

Relief may be provided for an initial period of up to four years and may be extended, but the total period of relief may not exceed eight years. When relief is granted, the ITC monitors developments in the industries that are the beneficiaries of the action. When the relief action exceeds three years, the ITC must submit a report to the president and Congress on the situation of the industry not later than the midpoint of the relief period.

An industry receiving relief may request an extension of relief by submitting a petition six to nine months before the end of the relief period if it plans to seek an extension.

Section 337, Protecting Intellectual Property: Section 337 is primarily used to combat intellectual property infringement in imports. It declares as unlawful infringement of intellectual property such as a valid and enforceable U.S. patent, registered trademark, copyright, or registered mask work of a semiconductor chip product. Section 337 prohibits unfair methods of competition and unfair acts in the import and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry or to restrain and monopolize trade and commerce in the United States.

A Section 337 investigation is begun on the basis of a complaint or by the ITC on its own initiative. In general, if the ITC finds against the import, it may issue an order to exclude the product from entry and can order the domestic parties involved in the case to stop engaging in certain unlawful practices. If the product is an intellectual property product, no injury test is required.

The president may disapprove an ITC order within 60 days of its issuance for "policy reasons."

Laws To Assist Exports, Enforcing Trade Agreements

Section 301 of the Trade Act of 1974 is the principal U.S. law to enforce rights for U.S. firms under existing trade agreements, to obtain increased foreign market access for U.S. goods and services, and to respond to certain foreign practices such as infringement of intellectual property rights.

The law sets up a procedure for the Office of the U.S. Trade Representative to investigate foreign practices and hold consultations with a foreign government to seek a resolution of disputes, which may be an agreement by the government to eliminate the offending practice or to provide compensatory benefits to the United States.

If there is no satisfactory agreement, the law requires that USTR use the dispute settlement procedure available under the applicable trade agreement. In 1996, for example, the nine Section 301 cases initiated were referred to the WTO's dispute settlement procedures. If this step still does not bring a satisfactory resolution of the dispute, USTR may take other actions, which can include suspending the trade agreement's concessions, imposing duties or other import restrictions, and imposing fees or restrictions on services.

The impetus for Section 301 cases can be from a domestic petition or by the USTR on its own initiative.

The Congress requires that USTR conduct an annual review of overseas barriers, which is published on March 31 each year as the "National Trade Estimate Report on Foreign Trade Barriers," also known as the NTE Report.

Super 301: The NTE Report is used to establish the so-called "Super 301" list of priority country practices, which is essentially a list of countries likely to be the subject of 301 actions.

Created in the 1988 Omnibus Trade and Competitiveness Act, Super 301 expired in 1990, but President Bill Clinton has revived it by successive executive orders, the latest of which expires at the end of 1997. The executive order requires that within six months of the submission of the NTE Report, the USTR shall identify those priority foreign country practices that, if eliminated, would likely have the most potential for increasing U.S. exports. USTR is also required to report to the Senate Finance Committee and the House Ways and Means Committee on any such practices. Within 21 days after the report is submitted, the USTR must initiate Section 301 investigations of any priority foreign country practices identified in the report. No priority foreign country practices have been designated under Super 301 since 1989.

Special 301: A second expansion of Section 301 is "Special 301," which requires USTR to identify countries that deny adequate and effective protection for intellectual property rights (IPR), or that deny fair and equitable market access for persons who rely on IPR. Countries that have the most onerous or egregious acts, policies, or practices, or whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products, and are not engaged in good faith negotiations to address these problems, must be designated as "priority foreign countries."

USTR must decide which countries to identify each year within 30 days after issuance of the National Trade Estimate Report. If a trading partner is identified as a "priority foreign country," USTR must decide within the next 30 days whether to initiate an investigation of those acts, policies, and practices that were the basis for the identification as a priority country. Countries so designated are potentially subject to Section 301 actions.

Though not part of Special 301 legislation, USTR maintains separate categories of countries in which concerns about intellectual property protection remain. Countries with practices that have less of an impact, but that are still very serious, are placed on either a "priority watch list" or "watch list." Countries placed on the priority watch list are the focus of increased bilateral attention concerning the problem areas. Countries are usually designated, moved to a different list, or completely removed from the lists as a result of USTR's annual Special 301 review.

On April 30, 1997, USTR announced that 10 countries would be placed on the priority watch list and that 36 others had been designated for the watch list. USTR also announced that as a result of the annual Special 301 review, the United States would initiate WTO dispute settlement actions against four countries, bringing to 10 the number of IPR-related WTO cases initiated by the United States. No countries were designated priority foreign countries.

"Out of cycle" reviews can be, and often are, conducted at any time during the year, as a result of which countries can be added or removed from the watch lists.

OTHER LAWS REGULATING IMPORTS

Authorities To Restrict Imports Of Agricultural And Textile Products

The Uruguay Round agreements and the legislation implementing them commit the United States to phasing out restrictions on agricultural products and textiles. Previously, Section 204 of the U.S. Agricultural Act of 1956 authorized the president to negotiate agreements with foreign governments to limit their agricultural or textile exports to the United States. This authority was used extensively prior to the conclusion of the Uruguay Round in 1994.

Multifiber Arrangement/Agreement on Textiles and Clothing: The Multifiber Arrangement (MFA), an international agreement that came into force in January 1974, allowed contracting members of the GATT to negotiate bilateral agreements imposing quantitative restrictions on textile and apparel imports. The MFA, negotiated under the authority of Section 204 of the 1956 act, was intended to help textile importing countries deal with market disruptions such as import surges while giving developing country exporters a greater share of the growing world textile market. Extended six times, the MFA expired on December 31, 1994, and was immediately replaced by the Uruguay Round Agreement on Textiles and Clothing (ATC).

Under the ATC, quotas and restrictions on textiles and apparel trade are set to be phased out in three stages ending on January 1, 2005. All WTO members are subject to the ATC, whether or not they were signatories to the MFA, and only WTO countries are eligible for the agreement's liberalizing benefits.

The bilateral textile agreements negotiated between individual importing and supplier countries under the MFA remain in force during the transition to 2005. The United States currently has textile and apparel quotas with 47 countries. Of these, 38 countries are subject to the ATC. Eight others are not WTO members and therefore will not benefit from the phase-out of quotas and restrictions specified under the ATC. Non-members such as China, Russia, and others will continue to be subject to bilateral textile agreements. Textile imports from Mexico and Canada are governed NAFTA.

Agriculture and the Uruguay Round Agreements Act: Section 401 of the Uruguay Round Agreements Act changed U.S. law to prohibit quantitative limitations or fees on agricultural product imports that are produced within a WTO member-state. When the agreement establishing the WTO entered into force on January 1, 1995, only wheat was excepted from this prohibition.

The Uruguay Round agreements on agriculture require WTO members to commit to reducing export subsidies and domestic subsidies and to improve market access. The agreement establishes rules and reduction commitments to be implemented over six years for developed countries and over 10 years for developing countries. The United States has agreed under the WTO to convert quotas and fees on agricultural products to tariff-rate quotas, and to reduce the tariffs over time.

Sugar Tariff-Rates Quotas: While the United States has always been a net importer of sugar, since 1934 there have been restrictions on sugar imports to foster the domestic sugar cane and sugar beet industries. This system of import protection has maintained a U.S. price for sugar well above the world price.

To bring the U.S. sugar program into conformity with the GATT, and later with the Uruguay Round accord, the absolute quotas imposed on imported sugar were converted into a tariff-rate quota arrangement in 1990. As a result of the Uruguay Round of multilateral trade negotiations, two tariff-rate quotas were adopted, one for raw cane sugar and one for imports of other sugars and syrups.

Under the tariff-rate quota system, the U.S. Secretary of Agriculture determines the amount of sugar that can be imported at the lower import duty rates, and the USTR allocates this quantity among the 40 eligible sugar exporting countries. The quantities allocated to the beneficiary countries under GSP, CBI and the ATPA receive duty-free treatment. Certificates of Quota Eligibility (CQE) are issued to the exporting countries and must be executed and returned with each shipment of sugar in order to receive quota treatment.

Imports of sugar that exceed the quota amount are subjected to much higher duties. The United States agreed in the Uruguay Round not to reduce the amount of sugar it would import and to lower its higher sugar tariffs by 15 percent over six years. Sugar imports from Mexico are governed by NAFTA provisions.

Tariff rate quotas are also applied to meat imports, which were previously subject to restrictions by the Meat Import Act. The tariff rate quotas replace import quotas that were required by the act once meat shipments surpassed a certain level. The Meat Import Act was repealed so U.S. law would conform to the Uruguay Round Agreement on Agriculture.

Authorities To Restrict Imports Under Certain Environmental Laws

Following is the status of the most prominent U.S. laws that use import restrictions to encourage foreign governments to adopt practices that protect dolphins, fisheries, wild birds, and other endangered species:

Marine Mammal Protection Act of 1972 (MMPA): Since 1990 the United States has banned imports of yellowfin tuna products derived from yellowfin tuna harvested in the eastern tropical Pacific Ocean, except from countries that prohibit their fishing boats from using purse seine nets in the harvest, a practice once responsible for the slaughter of hundreds of thousands of dolphins a year. U.S. boats have been subject to the same prohibition since 1972. Twice GATT panels ruled that the law violated GATT obligations, but neither ruling was ever formally adopted.

The Clinton administration supports implementation of the 1995 Panama Declaration, which would make binding on the 12 signatory countries voluntary conservation measures now practiced in the eastern tropical Pacific, where dolphin kills fell below 3,000 in 1996. But it would require changes in the MMPA, including lifting the embargoes and, most controversially, redefining the "dolphin-safe" label on tuna cans. Legislation implementing the Panama Declaration has passed in the House of Representatives, but faces obstacles in the Senate.

Section 609 of U.S. Public Law 101-162: As the State Department currently interprets this law, the United States prohibits imports of wild shrimp from areas of the world where the harvest might harm endangered or threatened sea turtles, except from countries certified by the department as requiring their shrimp boats to employ turtle excluder devices. U.S. shrimp boats have the same requirement. The State Department announces its list of certified countries on May 1 each year. A number of countries have challenged the embargo in the WTO, where a dispute-settlement panel is scheduled to rule on the case by December 1997.

Endangered Species Act of 1973: This law authorizes the secretary of the interior to prohibit imports of species or subspecies that are considered endangered or threatened.

Section 8 of the Fishermen's Protection Act of 1967, as amended, the "Pelly Amendment": The president has authority under this provision to ban imports of any products from any country that conducts fishery practices or engages in trade that diminishes the effectiveness of international programs for fishery conservation or international programs for endangered or threatened species. Under the Pelly Amendment, President Clinton briefly banned certain imports from Taiwan after his administration determined that the island economy was trading in rhinoceros horn and tiger bones in violation of the Convention on International Trade in Endangered Species (CITES). Pelly Amendment sanctions have also been threatened against countries that engage in whaling.

High Seas Driftnet Fisheries Enforcement Act: The president has authority under this provision to ban shellfish, fish and fish products, and sport fishing equipment from any country that his administration determines has violated the United Nations ban on driftnet fishing.

Wild Bird Conservation Act of 1992: The secretary of the interior is authorized to ban imports of exotic birds listed in any of the appendices to CITES.

National Security Imports Restrictions

Section 232 of the Trade Expansion Act of 1962 allows the president to impose restrictions on imports that threaten national security. This has been used from time to time, most notably to impose quotas and fees on petroleum imports and to embargo import of refined petroleum products from Libya.

Balance of Payments Authority

Section 122 of the Trade Act of 1974 gives the president the power to increase or reduce imports to deal with balance of payments problems. The president can tighten import restrictions through quotas or import surcharges of up to 15 percent ad valorem, or a combination of the two. This law has never been invoked.

Product Standards

Differences in product standards, listing and approval procedures, and product certification systems often can impede trade and can be manipulated to discriminate against imports. The Agreement on Technical Barriers to Trade, known as the Standards Code, which was negotiated in the Tokyo Round of GATT negotiations that concluded in 1979, established for the first time international rules for how governments prepare, adopt, and apply standards and certification systems.

The Uruguay Round negotiations built on the Standards Code, establishing the Uruguay Round Agreement on Technical Barriers to Trade. This new agreement seeks to eliminate barriers in the form of national product standardization and testing practices and conformity assessment procedures.

U.S. law on the application of product standards in trade is based on these GATT and WTO agreements. NAFTA has its own provisions that deal with product standards.

Government Procurement

Governments are among the world's largest purchasers of goods — even when military purchases are excluded. Most of this vast market has traditionally been closed to foreign suppliers by various measures that discriminate in favor of domestic producers.

The 1979 GATT Agreement on Government Procurement was a major effort to open up government procurement. It sought to discourage discrimination against foreign suppliers at all stages of the procurement process. The Government Procurement Code established by the agreement bound the signatories to take numerous steps to open up their government procurement processes.

The 1994 WTO Agreement on Government Procurement (GPA), which built on the 1979 code, entered into force on January 1, 1996. It requires central government agencies in member countries to observe non-discriminatory, fair, and transparent procedures in the procurement of goods and services, including construction services. The agreement also applies to subcentral governments and to government-owned enterprises.

The GPA requires the establishment of a domestic bid challenge system and introduces added flexibility to accommodate advances in procurement techniques. It also allows each signatory to negotiate coverage on a reciprocal, bilateral basis with other signatories. The United States has concluded comprehensive coverage packages with several countries.

The GPA is a "plurilateral agreement," which means that its members are those who specifically signed it. The GPA currently has 26 members, including the United States and most other industrial countries.

NAFTA has its own provisions to eliminate discriminatory government procurement practices.

The U.S. Congress passed a law in 1988 that required the president to submit an annual report to Congress identifying signatories to the GATT/WTO government procurement agreements that were in violation of their obligations, and non-signatories that were discriminating against U.S. products and services. The president was authorized to seek WTO dispute settlement procedures with WTO signatories and to impose sanctions against offending non-signatory countries. This law expired in 1996. The Clinton administration is reviewing whether to continued its authority through executive order.

LAWS REGULATING EXPORT ACTIVITIES

Export Controls

The U.S. government controls certain exports to protect national security, to further U.S. foreign policy interests, to limit the proliferation of chemical and biological weapons and missile technology, and to ensure adequate domestic supply of certain goods that are in short supply.

Export Administration Act of 1979 (EAA): This law lapsed in September 1990, but the Bush and Clinton administrations have kept its export-control system operating under an emergency law called the International Emergency Economic Powers Act (IEEPA). Caught between business and defense interests, Congress has failed in several attempts to pass legislation to reform the Cold War-era EAA. Under EAA's provisions, the U.S. Department of Commerce controls exports of dual-use commodities — goods of a civilian nature that also have potential military applications.

The Department of Commerce's Bureau of Export Administration (BXA) is the primary licensing agency for dual-use exports. The State Department licenses the export of defense articles and services under the authority of the Arms Export Control Act, while certain nuclear materials and equipment are licensed by the Nuclear Regulatory Commission under the authority of the Atomic Energy Act.

A very small percentage of exports and reexports require the submission of a license application to BXA. License requirements depend on an item's technical characteristics, its destination, its end-use and end-user, and other activities of the end-user. The first step for an exporter to take to find out whether a license is required is to determine, or request the BXA to determine, whether the product is on the Commerce Control List (CCL). This is the list of products subject to the export controls administered by the Commerce Department.

The BXA screens all export license applications to ensure that items are not illegally exported. In addition, it reviews specific individual license applications to access diversion risks, identify potential violations, and determine the reliability of those receiving controlled U.S.-origin commodities or technical data. BXA also carries out post-shipment verifications to ensure that a controlled U.S.-origin item has actually been delivered to the authorized end-user or consignee, and that it is being used as claimed on the export license application.

Persons knowingly violating export control regulations face fines of $50,000 or five times the value of the exports involved, whichever is greater, in addition to imprisonment of up to five years. If an individual has knowledge that an item will be used for the benefit of — or that the destination or intended destination of the item is — a country to which exports are restricted for national security or foreign policy purposes, the penalties for that individual increase to $250,000, imprisonment for up to 10 years, or both. Penalties for firms can be $1 million or up to five times the value of the exports involved, whichever is greater.

The effectiveness of many of the controls are enhanced by their being maintained as part of multilateral control arrangements. Currently, the United States is a member of the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime, and the Wassenaar Arrangement.

Export Promotion

The U.S. government seeks to promote the export of specific types of products through the following programs.

Fair Trade in Auto Parts Act of 1988: This law requires the U.S. Department of Commerce to establish an initiative to increase the sale of U.S.-made auto parts to Japanese markets. The law expires in December 1998.

Federal Agriculture Improvement and Reform Act of 1996: This law, contained in the 1996 U.S. farm bill, continues a number of export-promotion programs in the

U.S. Department of Agriculture. The Commodity Credit Corporation (CCC) provides credit guarantees of up to 98 percent of the principal and a portion of the interest on loans made by private banks for the purchase of U.S. agricultural exports. The Market Access Program uses CCC money to help the U.S. private sector promote agricultural exports through advertising, trade shows, and in-store demonstrations. The Export Enhancement Program subsidizes U.S. exports of wheat, rice, barley, and other commodities to counter sales in markets subsidized by the European Union. The Dairy Export Incentive Program similarly subsidizes dairy exports to counter subsidized sales by foreign governments. The Emerging Markets Program provides money for technical assistance to promote U.S. agricultural exports to emerging markets.

P.L. 480: The Food for Peace Program, originally passed by Congress in 1954, provides agricultural assistance to countries at different levels of economic development. Title I, administered by the U.S. Department of Agriculture, provides for government-to-government sales of agricultural commodities to developing countries under long-term credit arrangements. Titles II and III are administered by the U.S. Agency for International Development (USAID). Title II provides for the donation of U.S. agricultural commodities by the U.S. government to meet humanitarian food needs in foreign countries. Title III provides for government-to-government grants to support long-term economic development in the least-developed countries. Section 416(b) provides for overseas donations of surplus commodities to carry out assistance programs in developing countries.

The Food for Progress Program, a distinct program created in 1985 that is much smaller than P.L. 480, authorizes exports of agricultural commodities on credit terms or on a grant basis to support developing countries and countries that are emerging democracies committed to free-market practices in their agricultural economies.

AUTHORITIES RELATING TO POLITICAL AND ECONOMIC SECURITY

International Emergency Economic Powers Act

The International Emergency Economic Powers Act (IEEPA), passed in 1977, gives the president of the United States the power to freeze foreign assets in the United States, to impose trade embargoes, and to take other measures judged necessary to deal with an unusual and extraordinary threat to U.S. national security, foreign policy, or economic interests.

Under the act the president, after consulting with Congress, can declare that a national emergency exists because of a threat from a source outside the United States. After the declaration of emergency, the president has the power to "investigate, regulate, compel, or prohibit" virtually any economic transaction by a foreign entity in the United States.

Once the national emergency has gone into effect, the president must submit to Congress a detailed report explaining and justifying his actions.

IEEPA can be used with other laws in the imposition of the emergency economic sanctions.

Some of the uses of the IEEPA include the following:
• President Jimmy Carter, in November 1979, froze Iranian assets in the United States in response to the seizure of hostages at the U.S. embassy in Teheran.
• President Ronald Reagan, in May 1985, imposed a trade embargo on Nicaragua, embargoed certain trade and financial transactions with the government of South Africa in October 1985, and embargoed trade, transportation links, extension of credit, and travel to Libya in January 1986.
• President George Bush, in August 1990, blocked Iraqi and Kuwaiti assets and property and imposed a trade embargo on Iraq and, in September 1990, extended the export control system of the expired Export Administration Act of 1979.
• President Bill Clinton, in August 1994, continued the extension of the export control system of the expired Export Administration Act of 1979 and, in March 1996, blocked dealings with the management or development of the Iranian petroleum industry.

Trading With The Enemy Act

The Trading With the Enemy Act (TWTEA), originally passed in 1917, prohibits trade by the United States with any enemy or ally of an enemy during time of war. In 1977, the presidential authority provided in TWTEA to control economic transactions during peacetime were transferred to the International Emergency Economic Powers Act (IEEPA). Since then, IEEPA has been the principal vehicle for imposing economic measures on foreign adversaries when there has not been an official declaration of war.

Narcotics Control Trade Act

This law, which is part of the Drug Enforcement, Education, and Control Act of 1986, establishes a process whereby the president can impose a level of trade sanctions deemed appropriate against "uncooperative" major drug-producing or drug-transit countries.

Under the law, if a country is found not to be cooperating fully with U.S. anti-drug efforts, the president can revoke all preferential duty treatments, such as GSP, CBI, and ATPA, impose duties of up to 50 percent of the value of products, suspend commercial air services, and take other measures.

International Security and Development Cooperation Act of 1985

Section 505 of this law gives the president discretionary authority to restrict or ban imports from any country that the United States has determined supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations. The president must consult with Congress in advance of invoking this authority and must make semi-annual reports to Congress.

Embargo on Transactions With Cuba

A trade embargo was imposed against Cuba in 1960 under the general authority of the Export Control Act of 1949. The embargo's continuation was contained in the Foreign Assistance Act of 1961 and in subsequent legislation.

As the law regarding trade with Cuba now stands, no U.S. product or service may be exported to that country directly or through third countries except for publications and informational material and certain humanitarian goods licensed for export by the U.S. Department of Commerce, such as medicine and medical supplies. U.S. persons may not deal in or assist with the sale of goods or commodities to or from Cuba from offshore locations. Goods and services of Cuban origin may not be imported into the United States through third countries. No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may enter a U.S. port. Vessels engaged in trade with Cuba are prohibited from loading or unloading freight at any place in the United States for 180 days after departing a Cuban port.

U.S. economic sanctions against Cuba were increased through passage of the 1996 Libertad Act, known as the "Helms-Burton Act" after its sponsors, Senator Jesse Helms and Congressman Dan Burton. This act does not contain new restrictions on trade; its principle thrust is against foreign firms that are investing in Cuba.

Iraq Sanctions Act of 1990

The Iraq Sanctions Act enacted into law the trade embargo and other economic sanctions imposed on Iraq by presidential order shortly after Iraq's invasion of Kuwait.

The act imposes sanctions that go beyond the presidential order. It contains provisions aimed at increasing compliance by third countries with United Nations Security Council sanctions against Iraq.

Iran and Libya Sanctions Act of 1996

President Clinton signed the Iran and Libya Sanctions Act on August 5, 1996. The act tightens existing sanctions against the two countries. It provides for penalties against any U.S. individual or company, including a U.S. or foreign parent or subsidiary, that directly and significantly contributes to the development of the petroleum resources of either country. The law applies to any investment of $40 million or more, or any combination of investments of at least $10 million that add up to $40 million, made during any 12-month period. U.S. persons or companies also face sanctions for providing certain goods and services to Libya that significantly contribute to Libya's ability to acquire chemical, biological, and nuclear weapons or significant amounts and types of conventional weapons, or that contribute to Libya's ability maintain its aviation capabilities. The law also provides for other sanctions.

Antiterrorism and Effective Death Penalty Act of 1996

This law makes it a criminal offense for a U.S. citizen or resident to engage in certain financial transactions with the governments of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, except as provided for in regulations issued by the Secretary of the Treasury in consultation with the Secretary of State. These countries are on the U.S. government list of governments found to be supporting international terrorism.

Other Unilateral Economic Sanctions

Laws that call on the president to impose unilateral economic sanctions against a certain country for non-economic reasons are frequently provisions of much larger pieces of legislation, such as the foreign aid bill.

Disapproving Foreign Investment In Defense-Related Industries

Following the proposed purchase in 1988 of an 80 percent share of a major U.S. semiconductor manufacturer by Fujitsu Ltd. of Japan, Congress passed an amendment to the Defense Production Act allowing the president to block foreign takeovers of firms found to be important to U.S. national security.

This provision is known as Exon-Florio, after its two sponsors, Senator James Exon and Representative Jim Florio. Under the law, the president can act to suspend or prohibit any acquisition, merger, or takeover of a U.S. firm by foreign persons if the president determines that the foreign purchaser might take actions that would threaten national security.

In making the decision to exercise this authority, the president may consider factors such as the domestic production needed for projected national defense requirements, the capacity of domestic industries to meet national defense requirements, and how the control of domestic industries and commercial activities by foreign citizens would affect the capacity of the United States to meet national defense requirements.

PRESIDENT'S NEGOTIATING AUTHORITY/RECIPROCAL TRADE AGREEMENTS

The U.S. Congress has the ultimate authority to decide whether the United States will raise or cut tariffs, erect or remove other trade barriers, or enter into bilateral or multilateral trade agreements.

In the post-World War II period, the Congress and the president have generally supported a more liberal and open world trading regime. This has been reflected by U.S. support and advocacy for the successive rounds of multilateral trade negotiations that took place from the establishment of the GATT in 1948 through creation of the WTO in 1995.

Congress grants the authority to the president and the executive branch to negotiate trade agreements. Congress must then approve the legislation to implement the agreements the president has negotiated.

Fast Track Trade Agreement Negotiating Authority: To make trade agreement negotiation more effective, Congress has on several occasions passed legislation giving the president "fast-track" authority for this process.

Under this authority, the Congress agrees in advance to approve or reject the legislation that implements a trade agreement negotiated by the executive branch, without possibility of amendment. This rule thus avoids amendments that can change the terms of the agreement, requiring that it be renegotiated. Amendments can kill an agreement.

In return for fast-track authority, the president agrees to extensive consultations with Congress while the agreement is being negotiated. This is important because large agreements, such as those that established the WTO or implemented NAFTA, can require many changes to U.S. laws.

Past laws granting fast-track authority have required executive branch consultations, such as:

• Meetings with the House of Representatives Ways and Means Committee, the Senate Finance Committee, and every other congressional committee with jurisdiction over matters affected by the agreement, as well as consultations with industry groups;

• Advance notice to Congress of at least 90 calendar days — 120 days in the case of the Uruguay Round Agreements — of the administration's intention to enter into a trade agreement;

• Submission of a final copy of agreement's legal text to the Congress, together with draft implementing legislation, a statement of any administrative action proposed to implement the agreement, and information supporting the proposed action.

The most recent fast-track authority law expired in December 1993. The implementing legislation for both the Uruguay Round agreements and NAFTA were approved under fast track.

U.S. Trade Representative Charlene Barshefsky has announced that the Clinton administration will send a proposal for renewal of fast-track authority to the Congress in September.

Uruguay Round Agreements/Uruguay Round Agreement Act: The Uruguay Round Agreements represented the culmination of negotiations among 125 countries over eight years. These negotiations began in Punta del Este, Uruguay, in September 1986, under the auspices of the GATT, and concluded in Geneva, Switzerland, in December 1993. The agreements were signed in Marrakesh, Morocco, on April 15, 1994, by 111 countries, including the United States, that committed themselves to gaining approval of the accords by their respective legislatures.

The Uruguay Round Agreements are the broadest, most comprehensive trade agreements in history. They contain commitments to reduce tariffs worldwide and to eliminate numerous other nontariff measures such as quotas, restrictive licensing systems, and discriminatory product standards.

The agreements also contain multilateral rules covering such matters as technical barriers to trade, trade-related investment measures (TRIMs), rules of origin, import licensing procedures, safeguards against import surges, trade-related aspects of intellectual property rights (TRIPs), antidumping and countervailing duties, agricultural trade and government procurement.

A framework of rules for trade and investment in services was set up by the General Agreement on Trade in Services (GATS).

The agreement that established the structure of the World Trade Organization incorporated the previous GATT institutions while expanding the organization to include new offices for services, intellectual property protection, and investment.

The Understanding on Rules and Procedures Governing the Settlement of Disputes established a new dispute-settlement procedure. This procedure is considerably different from its GATT predecessor in that its decisions are enforceable by the WTO.

The Uruguay Round Agreements Act, the U.S. law that incorporates all the trade agreements resulting from Uruguay Round, requires the USTR to report to Congress on the actions and operations of the WTO. The act also changed U.S. laws where necessary to conform to the Uruguay Round agreements.

North American Free Trade Agreement/NAFTA Implementation Act: The North American Free Trade Agreement, which links the United States, Canada, and Mexico, created the world's largest market for goods and services.

Following approval by the legislatures of each country, NAFTA went into effect on January 1, 1994.

NAFTA incorporates or otherwise carries forward most provisions of the U.S.-Canada Free Trade Agreement (FTA), which went into effect on January 1, 1989. The United States and Canada suspended the operation of the bilateral agreement upon entry into force of NAFTA. NAFTA supersedes certain provisions of the U.S.-Canada FTA, such as for rules of origin.

Upon implementation, NAFTA required the immediate elimination of tariffs on more than one-half of U.S. imports from Mexico and more than one-third of U.S. exports to Mexico.

NAFTA committed all parties to ending restrictions on NAFTA-member foreign investors, providing a high-level of intellectual property rights protection, and liberalizing trade in services. It also established its own dispute settlement mechanisms. NAFTA was accompanied by side agreements on environmental and labor standards and cooperation, making it the first U.S. trade accord to be formally linked to such commitments.

NAFTA's central oversight body is the North American Free Trade Commission, made up of the U.S. Trade Representative, the Canadian minister for international trade, and the Mexican secretary of commerce and industrial development. This commission has established working groups and advisory bodies to handle the day-to-day operation of the agreement.

NAFTA has its own rules governing trade and investment liberalization that are used in addition to or in place of the WTO rules. NAFTA rules apply in areas that include openness to government procurement, product standards, protection of intellectual property rights, telecommunications standards, investment, rules of origin, safeguards against import surges, and services.

United States-Israel Free Trade Area Agreement: This trade agreement was signed into law in June 1985. It was the first such agreement negotiated by the United States with a foreign country. The main elements of the agreement are the reciprocal elimination of tariffs on all products traded between the two countries over a 10-year period and the elimination of other regulations that restrict bilateral trade. A joint committee reviews and administers the agreement and provides for dispute settlement.

Telecommunications Trade: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review by March 31 of each year the operation and effectiveness of U.S. telecommunications trade agreements.

The Section 1377 review seeks to determine whether any act, policy, or practice of a foreign country that has a telecommunications-related agreement with the United States is not in compliance with the agreement, or otherwise denies — within the context of the agreement — market opportunities to U.S. firms. An affirmative determination is to be treated as a trade agreement violation under Section 301.

TRADE POLICY: WHO DECIDES WHAT GETS DONE AND HOW

The Constitution of the United States gives the U.S. Congress the power to regulate foreign commerce and to collect duties. However, decisions to raise or lower tariffs, impose import quotas, or take other trade policy actions that affect both domestic and foreign interests are so complex that Congress, through a series of acts, has relegated much of the responsibility to the executive branch, which works on a daily basis with both private sector advisory groups and key congressional committees.

Congress

Congress's role in trade policy is essentially two-fold: the creation and the oversight of trade laws.

To ensure proper implementation of the trade laws by the executive branch, Congress requires that the executive branch regularly consult with it and submit to extensive notification procedures prior to submission of a draft trade agreement or implementing legislation.

In addition, trade law specifies that five members from the House of Representatives Ways and Means Committee and five members from the Senate Finance Committee be appointed as congressional advisers to U.S. delegations negotiating international trade agreements. The Office of the U.S. Trade Representative (USTR) must keep these advisers informed of U.S. objectives and the status of negotiations, and whether a potential agreement would require changes in U.S. laws.

Congress also requires numerous annual reports from the Office of the U.S. Trade Representative and from the U.S. International Trade Commission (ITC) to keep the Congress informed regarding actions taken under various trade laws and programs. The most prominent of these reports are the USTR's "National Trade Estimate Report on Foreign Trade Barriers" and the ITC's "The Year in Trade: Operation of the Trade Agreements Program."

Finally, Congress can make its trade policy concerns known through its power to authorize and appropriate funds for the functions of the major trade agencies.

Executive Branch

The principal mechanism for developing and coordinating U.S. government positions on international trade and trade-related investment issues lies within a three-tiered interagency trade policy process.

The interagency process is coordinated by a Trade Policy Committee (TPC), whose primary function is to assist and make recommendations to the president on broad issues of policy implementation and development.

The U.S. Trade Representative chairs and administers the TPC, which has two subordinate coordinating groups: the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). The TPSC, consisting of senior-level officials from TPC member agencies, has more than 60 subcommittees and task forces. If the TPSC cannot reach consensus on an issue, or if the issue is one involving a significant policy matter, it is referred to the TPRG, whose members are officials at the under secretary and deputy USTR level in the member agencies.

The TPC member agencies include the departments of Commerce, Agriculture, State, the Treasury, Labor, Justice, Defense, the Interior, Transportation, Energy, and Health and Human Services; the Environmental Protection Agency; the Office of Management and Budget; the Council of Economic Advisers; the

International Development Cooperation Agency; the National Economic Council; and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TSPC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

Disagreements at the TPRG level are referred to a final cabinet-level tier of the interagency trade policy mechanism — the National Economic Council (NEC). The NEC has overall responsibility for advising the president on a broad range of domestic and international economic issues. In this final interagency trade process, the NEC meetings are chaired by the president and include the vice president; the secretaries of State, the Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy; the administrator of the Environmental Protection Agency; the director of the Office of Management and Budget; the U.S. Trade Representative; the chair of the Council of Economic Advisers; the National Security Adviser; and the assistants to the president for economic policy, domestic policy, and science and technology policy.

As policy decisions are made within the interagency process, the USTR assumes responsibility for directing the implementation of that decision.

U.S. Trade Representative

The U.S. Trade Representative, a cabinet-level position with the rank of ambassador, has the overall responsibility for developing and coordinating the implementation of U.S. trade policy and is the president's principal adviser and chief spokesperson on trade. Under U.S. law, the USTR must be included in all economic summits and other international meetings at which international trade is a major topic, and the USTR has the lead responsibility for all negotiations on any matter considered under the auspices of the World Trade Organization.

The Office of the U.S. Trade Representative includes two deputy USTRs, one based in Washington, D.C., and the other in Geneva, Switzerland.

Department Of Commerce

The major trade responsibilities of the Department of Commerce are centered in the International Trade Administration (ITA) and the Bureau of Export Administration (BXA).

ITA has general operational responsibility for export development, commercial representation abroad, the administration of antidumping and countervailing duty laws, export controls, and trade adjustment assistance to firms. BXA controls exports of commodities and technology for reasons of national security, foreign policy, and short supply. BXA issues export licenses in accordance with export control regulations.

U.S. Customs Service

The U.S. Customs Service, headed by the commissioner of customs, collects duties on imports and enforces more than 400 laws and regulations relating to international trade. Some of its responsibilities include interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo, and mail into and out of the United States; administering quotas and other import restrictions; and helping enforce U.S. laws on copyright, patent, and trademark rights.

U.S. International Trade Commission

The U.S. International Trade Commission is an independent quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the president and the Congress, on a wide range of international trade issues.

One of its primary functions is to determine whether U.S. industries are materially injured by imports that benefit from subsidies or are priced or otherwise traded unfairly. Under Section 337 of the Tariff Act of 1930, the ITC also is authorized to order actions, subject to presidential disapproval, to remedy situations in which unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.

The ITC's six commissioners, not more than three from the same political party, are appointed for nine-year terms.

Private Sector Advisory Committees

In 1974, the U.S. Congress established the private sector advisory committee system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Over the last 23 years, Congress has expanded and enhanced the role of this system, which now includes some 33 advisory committees, with a total membership of approximately 1,000 advisers.

The USTR manages a three-tiered advisory committee structure. The committees meet on a regular basis, receive sensitive information about ongoing trade negotiations and other trade policy issues, and report to the president on any trade agreement entered into under U.S. trade law.

The most senior level, the Advisory Committee for Trade Policy and Negotiations (ACTPN), is a 45-member body composed of presidentially appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group, which convenes at the call of the USTR, considers trade policy issues in the context of the overall national interest.

The second tier is made up of seven policy advisory committees representing overall sectors of the economy, such as industry, agriculture, labor, and services, whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of 25 sectoral, functional, and technical advisory committees consisting of experts from various fields, who provide specific technical information and advice on trade issues involving their particular sector. Members of the second and third tiers are appointed by the USTR and the secretary of the relevant department or agency. ❏

KEY CONTACTS AND INTERNET SITES

KEY CONTACTS

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Washington, D.C. 20515 U.S.A.
Telephone: (202) 225-6649

U.S. Department of Commerce
International Trade Administration
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Telephone: (202) 482-3809

U.S. Customs Service
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Washington, D.C. 20229 U.S.A.
Telephone: (202) 927-1770

U.S. International Trade Commission
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Washington, D.C. 20436 U.S.A.
Telephone: (202) 205-1819

World Trade Organization
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154, rue de Lausanne
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Tele: 7395111
Fax: 7395458

KEY INTERNET SITES

Office of the U.S. Trade Representative
- Home Page: http://www.ustr.gov
- Agreements negotiated by USTR:
http://www.ustr.gov/agreements/index.html

U.S. International Trade Administration
- Home Page: http://www.ita.doc.gov
- Import Administration:
http://www.ita.doc.gov/import_admin/records
- Anti-dumping, CVD regulations, other materials:
http://www.ita.doc.gov/import_admin/records/library
.htm

U.S. Customs Service
- Home Page: http://www.customs.ustreas.gov
- Search for laws, regulations, rulings, orders, etc.:
http://www.customs.ustreas.gov/cgi-bin/websearch
- Harmonized Tariff Schedule of the United States:
http://www.customs.ustreas.gov/imp-
exp/rulings/harmoniz/index.htm

U.S. International Trade Commission
- Home Page: http://www.usitc.gov

World Trade Organization
- Home Page: http://www.wto.org
- About WTO: http://www.wto.org/wto/about.htm
- Status of disputes filed with WTO:
http://www.wto.org/dispute/bulletin.htm

The United States and the Protection of Intellectual Property Rights
Site maintained by the U.S. Information Agency:
http://www.usia.gov/topical/global/ip/ipr.htm

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- http://www.law.cornell.edu/uscode

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ECONOMIC TRENDS

Just when every U.S. economic indicator was pointing up, the news got better. The Conference Board, a private research group, reported May 27 that consumer confidence in the United States has skyrocketed to a 28-year high.

"Consumers are not only upbeat about the current state of business activity but believe the economy will continue to expand over the next six months," Lynn Franco, associate director of The Conference Board's Consumer Research Center, said of its monthly survey of 5,000 households nationwide.

With continued strong growth, low inflation, and an unemployment rate below what any economist expected a year ago, forecasters don't see a significant downturn anytime soon.

In the meantime, U.S. factory orders for durable goods — items expected to last three or more years, ranging from appliances to aircraft — rose a larger-than-expected 1.4 percent in April, the U.S. Commerce Department reported May 28. This was the third advance in the last four months for this key indicator of America's manufacturing strength.

The nation's 37 leading professional business economic forecasters, in a survey released by the National Association of Business Economists (NABE) May 27, expect gross domestic product (GDP) to slow from its rapid 5.8 percent annual rate of growth in the first quarter of 1997 — the fastest rise in a decade — to a sustainable 2.2 percent during the April-June period, and average out to 3.4 percent for the year as a whole.

Some signs of weakness have appeared. The index of leading economic indicators, a key gauge of future economic activity, fell a slight 0.1 percent in April, its first drop in 15 months, the Conference Board reported June 3.

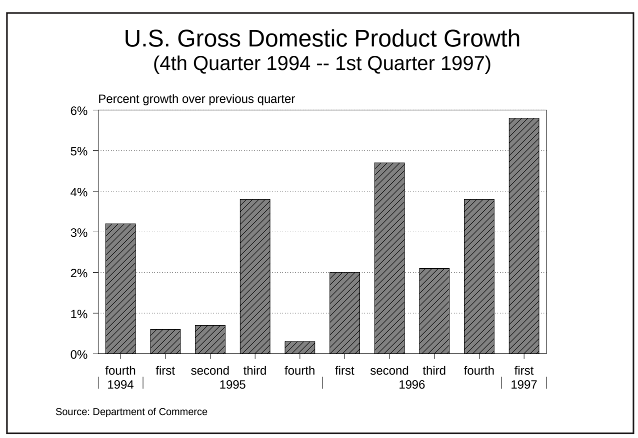
The NABE economists believe that declining personal consumption, which accounts for roughly two-thirds of the economy, will drive the expected slowdown. Total consumer installment debt, at 5.2 percent of disposable income, is almost twice the level of two years ago, making it unlikely that individuals can extend their indebtedness much more.

Growth in after-tax corporate profits also is projected to slow from 7 percent in 1996 to between 5 and 6 percent in 1997. However, the first quarter 1997 GDP report, released May 30, shows profits up 4.5 percent to a record $426,500 million. Meanwhile, industrial production is forecast to rise 4.1 percent in 1997 and 2.5 percent in 1998, compared to 2.8 percent in 1996.

The projected slowdown in some other key indicators — such as retail sales and residential construction — is good news, economists say, as the strong growth registered in the first quarter, if sustained, would have increased inflationary pressures, perhaps causing the U.S. central bank to push up interest rates.

The NABE survey of business forecasters sees inflation rising to a modest 2.8 percent in both 1997 and 1998 — up from 2.0 percent in 1996. One area of concern is rising stock market prices, they say. The unemployment rate, at 4.8 percent in May, is expected to rise to slightly above 5 percent by yearend.

A broader NABE survey of 274 economists, also released May 27, suggests very modest tightening of U.S. monetary policy over the next six months. But the economists believe the expected one-quarter to one-half of a percentage point rise in interest rates will have little, if any, near-term impact. ❑



CONGRESSIONAL CURRENTS

Key international economic issues before the 105th Congress

TRADE

Fast-Track: The White House plans to submit legislation to Congress in September to renew the president's "fast track" trade negotiating authority, which expired in 1994. Under fast track, Congress votes on trade agreements within a time limit and without possibility of amendment. Administration officials are still deciding whether their bill will include language on labor and the environment; leading Republicans have said they will reject any measure that includes such provisions. Fast-track is considered essential to negotiating Chile's accession to the North American Free Trade Agreement, a key Clinton administration goal.

China Trade: President Clinton has again announced a one-year renewal of China's most-favored-nation (MFN) trading status, which gives Chinese goods imported into the United States the same low-tariff treatment as goods from most other countries. As in previous years, members of Congress have introduced legislation to reverse the decision, citing China's human rights record and its expanding trade surplus with the United States. The president's critics include Senate Foreign Relations Committee Chairman Jesse Helms and House Minority Leader Richard Gephardt, but passage of a bill to deny China's MFN status seems unlikely.

Encryption Technology: The House of Representatives Judiciary Committee has approved legislation that would relax U.S. export controls for sophisticated encryption software. Before reaching the House floor, the measure must also be reviewed and approved by the House International Relations Committee. The bill has fairly broad support but runs contrary to Clinton administration policy, which allows only the export of relatively weak encryption software until the industry commits to developing a system that will make the "keys" to encrypted information available to law enforcement officers under certain circumstances.

Generalized System of Preferences (GSP): The Clinton administration has asked Congress to approve a multiyear renewal of the GSP program allowing duty-free entry for some imports from designated developing countries. GSP technically expired on May 31 of this year, but the administration expects Congress to reauthorize the program and recently extended GSP benefits to an additional 1,783 products from 38 countries — most in sub-Saharan Africa. In the past, GSP renewal legislation has made program benefits retroactive to cover the period following expiration.

Africa Trade: In one sign of bipartisan desire to re-shape U.S. trade relations with Africa, the House of Representatives International Relations Africa Subcommittee has advanced legislation that would, among other provisions, increase U.S. aid to sub-Saharan Africa, reduce tariff barriers, provide for the negotiation of a U.S.-sub-Saharan Africa free trade area, and establish U.S.-Africa forums to discuss investment issues. Supporters of the measure say the bill has good prospects for passage.

INTERNATIONAL AFFAIRS

Foreign Policy/United Nations: The House of Representatives on June 5 postponed action on a $16,100 million foreign aid bill, deciding instead to move provisions of that measure into new legislation to restructure the U.S. foreign policy bureaucracy and cover U.S. dues to the United Nations for the next two years. At the time of introduction, the new bill did not address the $1,000 million the United States currently owes the United Nations. Other controversial aspects of the measure include a provision that would cut off U.S. aid to overseas programs that perform or otherwise support abortions. ❑

CALENDAR OF ECONOMIC EVENTS

June 3-19	85th Session of the International Labor Conference, Geneva
June 9-21	International Conference of the Convention on International Trade In Endangered Species (CITES). Southern African states to consider lifting blanket ban on ivory trade, Harare, Zimbabwe
June 12	Launch of the redesigned $50 bill
June 12	U.S.-Japan Investment Talks, Washington
June 16	Madagascar Consultative Group, Antananarivo, Madagascar
June 16-17	Inter-American Development Bank Special Governors Meeting, Washington
June 16-20	Paris Club Negotiations, Paris
June 17-18	Inter-American Development Bank Board of Governors Meeting, Washington
June 18-27	International Telecommunications Union (ITU) Council, Geneva
June 20-22	Denver Summit of the Eight, Denver, Colorado
June 23-25	Dialogue between Council of Economic Advisors and China's State Planning Commission, Washington
June 23-27	WTO Financial Services Negotiations, Geneva
June 23-27	International Maritime Organization (IMO) Council Session, London
June 26-27	1997 Pacific Rim Forum, Hong Kong
June 26-27	WTO Committee on Agriculture, Geneva
June 27	Transatlantic Business Conference, Berlin
June 30-July 6	ECOSOC Annual Meeting, New York
June 30-July 2	OECD Multilateral Agreement on Investment (MAI) Negotiations, Paris
July 10-11	Summit of the Americas (SOA) FTAA Working Group on Competition Policy, Lima, Peru
July 11	World Population Day
July 14-18	Paris Club Negotiations, Paris
July 14-18	WTO Financial Services Negotiations, Geneva
July 16	APEC Telecommunications Working Group Meeting, New Zealand
July 21-26	4th African-African-American Summit, Harare, Zimbabwe
July 27-29	ASEAN Regional Forum, Kuala Lumpur, Malaysia
August 12-13	OAS: Meeting of the Steering Committee and Meeting of the Ad Hoc Working Group on the Structure and Operations of the Inter-American Telecommunication Commission (CITEL), Washington
August 20-31	APEC Senior Officials and Related Meetings, St. John's, Canada
Sept. 4	Global Environmental Facility Replenishment Meeting, Paris
Sept. 7-11	Transparency International, 8th International Anti-Corruption Conference, Lima, Peru
Sept. 8-12	U.S.-China Joint Commission on Commerce and Trade (JCCT), Beijing
Sept. 10-11	China America Telecommunications Summit (CATS), Dalian, China
Sept. 15-19	WTO Financial Services Negotiations, Geneva
Sept. 18-19	APEC Small and Medium Sized Enterprises Ministerial Meeting, Ottawa
Sept. 22-Oct. 1	WIPO Governing Bodies, Geneva
Sept. 23-25	International Monetary Fund and World Bank annual meetings, Hong Kong
Oct. 16	World Food Day
Oct. 24	World Development Information Day
Nov. 16-18	Middle East/North Africa Economic Summit, Doha, Qatar
Nov. 24-25	APEC Leaders Meeting, Vancouver, Canada
Dec. 1-5	OECD Development Assistance Committee, Senior Level Meeting on Implementing the Partnership Concept, with developing country representatives, Paris

WHAT'S NEW IN ECONOMICS: ARTICLE ALERT

Mandel, Michael J. THE NEW BUSINESS CYCLE (Business Week, no. 3520, March 31, 1997, pp. 58-68)

High technology has replaced the housing, automobile, and other traditional industries as the primary force for U.S. economic growth. Hence, a downturn in that sector could have dire consequences for the stock market, warns Economics Editor Michael J. Mandel. Recent drops in technology stock prices may indicate an incipient slowdown in that sector, he notes, or "a mere blip in a remarkable upward trajectory." A decline in domestic high-technology sales could be cushioned by rising foreign demand for U.S. products, particularly in the new markets of India and other developing countries, as well as in Europe after completion of telecommunications deregulation, Mandel says.

Bhagwati, Jagdish N. FEAR NOT: THE GLOBAL ECONOMY AND AMERICAN WAGES (The New Republic, vol. 216, no. 4296, May 19, 1997, pp. 36-41)

Bhagwati identifies two basic reasons for distress in the U.S. workplace: the decline in the real wages of unskilled workers, and the feeling among workers that they can't really improve their situation in life. Part of the distress comes from unrealistically high expectations that the growth of the 1950s and 1960s would continue uninterrupted, Bhagwati says. The challenges of the global economy can be met, he says, if the power of government is used to retrain and assist those dislocated by economic competition.

Krueger, Anne O. TRADE POLICY AND ECONOMIC DEVELOPMENT: HOW WE LEARN (The American Economic Review, vol. 87, no. 1, March 1997, pp. 1-22)

Stanford University's Anne O. Krueger examines the dramatic changes in developing countries' trade policies over the past 40 years and the similarly dramatic changes in conventional wisdom on trade and economic development. In the article, which is the text of Krueger's Presidential Address to the 1997 American Economic Association meeting, she traces the evolution of the import-substitution model from its theoretical origins to its widespread use and final demise. She analyzes why a theory so at odds with the widely accepted economic concept of comparative advantage gained such support among professional economists.

Garten, Jeffrey. TROUBLES AHEAD IN EMERGING MARKETS (Harvard Business Review, vol. 75, no. 3, pp. 38-50)

The lack of "democratic capitalism" may sidetrack some of the so-called big emerging markets, says the author, a former Under Secretary of Commerce for International Trade who supported the Clinton Administration's focus on expanding U.S. trade with 10 big emerging markets (BEMs) in Asia, Africa, and Latin America. After taking the first major steps toward opening domestic markets, several BEM governments face domestic challenges that could lead to the election of new governments, possibly with different policies. Such setbacks to BEM liberalization could affect the export growth of the industrialized countries that increasingly rely on these markets for sales and even financing of pensions.

Srodes, James. NEITHER FREE TRADE NOR FAIR (World Trade, vol. 10, no. 4, April 1997, pp. 20-24)

There has been a "schizophrenia" in U.S. trade policy in the post-war period, says the author. On one hand, the U.S. government has actively and successfully promoted worldwide trade liberalization. At the same time, it has used trade as a way to dispense favors and, through trade laws and trade agreements, sought to bully other countries into accepting U.S. notions of what proper trade balances should be. The policy has not eliminated the chronic U.S. trade deficit because it does not address its causes. ❑