REMARKS OF JEFFREY E. GARTEN, UNDERSECRETARY OF COMMERCE FOR INTERNATIONAL TRADE (Senate - May 12, 1994)

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Mr. DOLE. Mr. President, I ask unanimous consent to place in the **Record** a recent speech by Jeffrey Garten, Undersecretary of Commerce for International Trade.

Mr. Garten points out the fundamental importance to many U.S. industries of an effective antidumping law. United States companies must have a remedy against unfair price competition. Also, as Mr. Garten's speech makes clear, the Uruguay round agreement creates a system for holding other countries to the same standards of transparency and due process that apply in our system. The speech is good reading for any member as we move forward on drafting implementing legislation for the Uruguay round.

There being no objection, the remarks were ordered to be printed in the **Record,** as follows:

New Challenges in the World Economy: The Antidumping Law and U.S. Trade Policy

(BY JEFFREY E. GARTEN)

SUMMARY

Few areas of American trade policy have become more contentious than the antidumping law. Those firms which have used it have found it essential for their survival, and those who think they may need it are comforted by its existence. Others see the antidumping statute as protectionist and arbitrarily administered; many of them worry, also, that other countries will adopt U.S.-type laws and use them against American exporters abroad. The debate was evident in the recently completed Uruguay Round. It will no doubt be continued in Congress as the legislation implementing the Uruguay Round results is considered.

The proponents and opponents of the antidumping laws often argue in highly legalistic terms which make the stakes appear to be at the fringes of trade policy. This is especially true in a world in which international commerce has grown so fast, and so complex, and become so central to both domestic and foreign policy. Yet the underlying debate is not marginal; in many ways the fundamental issues are central to the maintenance of a liberal trading system.

This speech attempts to describe some of the major issues, and to put them in the broader context of the Administration's trade strategy and the competitive environment for U.S. firms. It begins with a brief history of the antidumping laws, explains their current purpose, and describes how dumping occurs. It raises criticisms of the law and provides responses. It recounts what was achieved during the Uruguay Round in Geneva. And finally, it discusses a series of issues such as: the special problems of Japan and China; the needs of U.S. exporters facing antidumping actions abroad; the need to address the unique circumstances of `economies in transition' such as Russia; the implications of the new World Trade organization; and the importance of fair administration of the law.

The most important conclusion is that a strong antidumping law is more important than ever to American interests. It is an essential cornerstone of U.S. support for the kind of liberal and open trading system to which President Clinton is dedicated. The Administration will administer and enforce this law as vigorously and as fairly as possible.

It is a pleasure to be here today to discuss one of the most crucial issues in international trade policy these days--our international trade laws, particularly the antidumping law. In the short time that I have been in Washington, I know of no other aspect of trade policy that has generated more controversy. To a large number of companies, Congressmen and Senators, the laws and the way they are administered play a critical and essential role in trade. On the other hand, we find many who are opposed to the law, feeling it is

protectionist, arbitrarily implemented, and copied by foreign governments who use them against American exporters. Since it is the Department of Commerce that has statutory responsibility for administering the antidumping law, it falls to the Secretary of Commerce, myself, and the Assistant Secretary for Import Administration to deal with competing interests and to execute the law as fairly and efficiently as possible. As someone who is constantly at the intersection of competing claims and interests, I wanted to explain what I believe the antidumping law is all about, and some of the fundamental challenges we face in the future.

I arrived in Washington last Fall with very little technical background concerning international trade law. During my government tenure in the Nixon, Ford and Carter administrations, I was involved in a broad array of international economic issues, but never trade law per se. In the subsequent twelve years as an investment banker on Wall Street, I was more concerned with pushing money around the world than with the intricacies of trade law. Still, as a result of having spent a good portion of my professional life working abroad, I know that while capital flows and trade have been mushrooming, contributing to quantum leaps in global economic integration, the differences among countries in the way they deal with trade are still enormous. Having lived in Japan and worked throughout East Asia, for example, I know first hand the meaning of industrial policies that rely on subsidies, de facto cartels, and other trade distorting measures. Having worked in several Latin American countries, I know for a fact that none of the countries south of the Rio Grande are as open to trade as the United States, though many are taking encouraging steps in that direction. And so I have always had a visceral appreciation for why the United States, the most open of all major industrial economies, needed to have laws against unfair trade practices of foreign countries.

It was one thing to harbor these feelings, another to be jettisoned into the fray as Under Secretary of Commerce. It happened about two hours after I was confirmed on November 8, 1994. No sooner did I hear the good news than phone messages started to pile up on my desk. One trade lawyer after another HAD to see me immediately on antidumping. The subject was the Uruguay Round, and the alleged disaster that was about to engulf
the United States if it did not take a very tough line against the rest of the world, which I was told was out to destroy our laws. I met with many of these lawyers for a solid two weeks. I heard their views. I heard opposing views, too, especially those who were worried that our laws, however they emerged from the Uruguay Round, would be emulated by other countries and used against our exporters. The arguments were clear enough, and I proceeded to Geneva to help Ambassador Mickey Kantor and Ambassador Rufus Yerxa negotiate the new antidumping code. And it was in Geneva that I saw the strong international emotion that our laws elicit.

In a minute I will review what happened in Geneva. Suffice it to say, we achieved most of our objectives there--we were in fact, quite pleased with the results--and now the spotlight is turning to implementing legislation. This, too, promises raise a host of issues on all sides.

What I want to do today is to try and put our laws and the controversy surrounding them in some perspective. I'd like to review the history of the antidumping statute and the reasons why it is so important to us today. I will then focus on several crucial issues for the future, including the importance of pursuing the interest of those companies applying for the protection of the law without neglecting those American exporters who are concerned that the spread of antidumping actions in other nations could block their sales; the importance of protecting the interests of American industry at the same time that we recognize the need for Russia and other `non-market' economies in transition to have access to western markets; the need to work assiduously to make the new World Trade Organization (`WTO') a success from our point of view; and the importance of fair and objective administration of the law itself.

In the end I will conclude that a strong antidumping statute, vigorously enforced, is more important than ever to America's interest. The Clinton administration is intensely committed to opening foreign markets, and to keeping our own economy open to fairly priced foreign products. The existence and implementation of our laws against unfair trade are absolutely essential to creating public confidence that we can counteract unfair practices and create a level playing field. Without this concept of fairness, popular support for an open world economy, let alone American leadership towards that goal, would be badly weakened.

But I will also conclude that it would be unrealistic and very bad policy to believe that the laws against unfair trade practices can take all the burden of helping U.S. industry to compete in the world economy. The international trade laws, including antidumping, are a critical component, to be sure. The fact is, however, that most of the essential ingredients of U.S. competitiveness are found in other areas of the Administration's programs. These include better fiscal balance, a climate conducive to long term investment, an emphasis on rejuvenating our technological base, a focus on education and training of the
workforce, and attention to such human resource issues such as health care--to take the most obvious examples. It most certainly includes our efforts to open foreign markets in Asia, Latin America, and Europe via multilateral regional and bilateral negotiations. In all these areas the Administration is pulling out all the stops to make sure U.S. firms have the best environment to succeed at home and abroad. In my view, the importance of what President Clinton has done to help U.S. firms compete cannot be emphasized enough.

History of the antidumping statute

Let's begin with a little history.

With the advent of the industrial revolution, the possibility for dumping in earnest began. As the first nation to industrialize, England was the first nation accused of dumping. English manufacturers, it was repeatedly alleged, were dumping goods in the United States with the intent of preventing the development of industry here. Alexander Hamilton, in his Report on Manufacturers, declared that the greatest obstacle encountered by new industries in a young country was the system of export bounties which foreign countries maintained in order to `enable their own workers to undersell and supplant all competitors in countries to which these commodities are sent.' While there appears to be little empirical evidence to support these general claims (though there does appear to be some evidence of sporadic dumping from England after the War of 1812), the result of the debate was the Tariff Act of 1816, the first distinctly protectionist tariff enacted by the United States. In the words of Jacob Viner, the famous economist, and the first to write a comprehensive work on the history and theory of dumping:

`There is no doubt that the fear of English dumping, actual or pretended, played a part, although probably a very minor one, in the development of American protectionist sentiment.'

The United States did become progressively more protectionist during the 19th century. Henry Clay, in a speech to Congress in 1824, urged protection of American industries:

`* * * the unprotected manufacturers of a country are exposed to the danger of being crushed in their infancy either by design or from the necessities of foreign manufacturer s.'

But with the establishment of free trade in England and the development of large scale manufacturing industries in other countries, complaints of England dumping diminished and charges of dumping began to be directed against producers of other countries.

In fact, dumping became a real problem in international trade around 1880, when the manufacturing enterprises of two newly industrializing powers, Germany and the United States, began mounting a challenge to British commercial hegemony using dumping as a systematic export tactic. The German-American commercial onslaught shook British confidence and touched off a national debate on the value of free trade.

At the time, Britain believed in open markets while its trading partners, in particular Germany and the United States, believed in protected home markets. One area where dumping was particularly pronounced at the time was steel. Dumping by American and German industrialists lowered their unit costs compared to competing steel producers in Britain. Because of high tariffs, these German and American manufacturers could maintain high prices at home by restricting supply at home and disposing of surplus in Britain's open market. German and American Companies that were dumping engaged in the practice known then as `continuous running' or `rapid driving'--that is, running their mills at high operating rates, which resulted in progressively lower per-unit production costs for each additional unit of output. British producers generally could not do this; foreign markets were increasingly closed to their exports, and continuous running, on their part, tended to further depress prices in the home market. The British Government, after much debate, took no action. The British steel manufacturers chose not to invest in the latest steel making technologies. The result was the British found themselves, by 1914, hard pressed to fight a protracted war of attrition against a stronger industrial power in World War I.

Much of the dumping which was occurring in Great Britain during the turn of the century was coming from the United States. At the time, there were significant differences between the United States and Great Britain in attitudes toward the economy in general and in particular toward competition and trade. The United States believed in closed markets and tolerated monopolization. The two factors which allowed American manufacturers to dump were high U.S. tariffs and U.S. monopolies, or what at the time was known as `The Trust.'

As we moved into the 20th century a cultural shift in the United States began to occur. Tolerance of monopolization faded, the antitrust laws were enacted and enforced, and tariffs began to come down. As historian Alfred Chandler observes, the U.S. enactment of antitrust legislation and institutionalization of the values it reflected:

`* * * probably marked the most important non-economic cultural difference between the United States and Germany, Britain and indeed the rest of the world insofar as it affected the evolution of the modern industrial enterprise.'

As the rest of the world remained or became more protectionist, the United States developed a culture which highly valued competition--a value this country still holds today both nationally and internationally.

DUMPING BECOMES A PROBLEM IN AMERICA

One result of this cultural shift in the early part of the 20th century was that the United States began to experience dumping in its own market. As U.S. industries began to suffer the same adverse effects as British industries had several decades earlier, pressure built to deal with injurious dumping. Unlike Britain, the United States took action by enacting its first antidumping law. Under Title VIII of the Revenue Act of 1916, the concept of dumping in international trade was formally addressed under U.S. law for the first time. The Act's antidumping provisions were rooted more in the concepts of unfair trade under U.S. antitrust law than in tariff law. The intent of the exporter would be a factor, for dumping was illegal if:

`* * * such act or acts [importation and sale of articles `sold at a price substantially less than market value or the wholesale price of such articles'] be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States. [Revenue Act of 1916 at 801].'

Violation of the 1916 Act was punishable by serious criminal and civil penalties. However, as a criminal statute, the Act was subject to strict interpretation. The level of proof required, and the need to show intent to injure a domestic industry, severely curtailed its effectiveness. The failure to assign the task of enforcement to a specific government agency also contributed to the Act's ineffectiveness.

THE FIRST EFFECTIVE U.S. ANTIDUMPING LAW

As the problem of dumping became more severe, the United States saw a need for an effective antidumping remedy. The concerns of Congress were stated in the House Ways and Means Committee report on antidumping provisions in 1919:

`In 1903 there were in the United States five manufacturers of salicylic acid. By 1913 three of these had failed . . . During the latter part of the decade referred to, salicylic acid was selling in Germany at from 26 to 30 cents. During this same period, the German houses were selling in this country, after paying a duty of 5 cents at 25 cents or a [net] price of 6 to 10 cents below what they were getting at home.

`In 1901 where there was no American manufacture [of oxalic acid] it was sold by the Germans at 6 cents. In 1903, when the works of the American Acid and Alkali Co. was started, the price was immediately dropped to 4.7 cents, at about which figure it remained until 1907 when the American factory was shut down for a number of months. During this shut down the price was instantly raised to 9 cents. When the factory reopened the price was again dropped until 1908, when the company failed. . .

`The same process was carried on in regard to bicarbonate of potash. In 1900 there was no manufacture and imports ran about 160,000 pounds. In 1901 American manufacture began. This succeeded so well that in 1906 imports had dropped to 45,000 pounds. At this time the American manufacture's price was 6.5 cents, while the import value was given at 4.9 cents. In the following year, the Germans made a determined and successful onslaught. Their import value was lowered to 2.2 cents with the result that instead of 45,000, 310,000 were imported. Accordingly in 1908 the American manufacture failed. The price was immediately raised to 7.5 cents and remained thereabout until the war.' *Antidumping Legislation*, H. Rept. 479, 60 Cong. 2 session.

In light of the ineffectiveness of the 1916 Act and the perceived need to prevent the stifling of domestic industries due to dumped merchandise, the Antidumping Act of 1921 was passed. This Act, while not completely addressing all of the problems of dumping, provided the first effective means to counteract injurious dumping in the United States.

ADVENT OF DUMPING PROBLEMS IN THE 1970'S

For many years the U.S. antidumping law was used relatively little, except for a spurt of activity against German exports in the years immediately preceding World War II. Continuing into the later part of the 1960's, few petitions were filed. This was not because dumping did not occur, but because U.S. industries, for a long period after the war, enjoyed a preeminent competitive position in world markets such that dumped imports seldom caused injury. However, the strong growth of the European and Japanese post-war economies radically changed this picture. Beginning in the early 1970's, many U.S. industries found themselves facing intense, and sometimes unfair, competition at home and abroad. Their response, when facing unfair price competition in the United States, was to seek relief under the antidumping law.

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IMPORTANT CHANGES OF 1979

An important change in U.S. antidumping law occurred in 1979 when the law was significantly transformed as a result of the new GATT code negotiated under the Tokyo Round. Shortly afterwards, the administration of the law was moved from the Department of Treasury to the Department of Commerce. There were important, substantive changes in the administration of the law, as well.

First, many of the statutory deadlines which we have today were added. Prior to 1980, there were few time limits for cases and therefore, a case could and often did drag on for years. Often when a case was politically sensitive it was simply not finished, thereby denying the U.S. producer a remedy under the law.

Secondly, a system of administrative protective orders (`APO's') was implemented. An APO enables opposing counsel to gain access to business proprietary information. This allows attorneys to effectively represent their clients and actively participate in the process, which in turn helps ensure that the system is open and transparent. It became a major goal of the Department of Commerce to make certain that all parties, whether they agree with a decision or not, know on what basis the decision was made.

Finally, a more detailed judicial review was allowed, allowing parties the right to appeal a determination of either the Department or the ITC.

A combination of increased international competition and a greater probability of receiving relief drastically increased the number of dumping orders issued. From 1970 to 1979, 79 orders were issued. From 1980 to 1989, 175 orders were issued. Sixty four orders were issued in just the three years from 1990 to 1993. With this increase in cases has come an obvious increase in the size of the Department of Commerce's Import Administration. In the late 1960's, for example, there were fewer than ten professionals working part time on dumping and countervailing cases; today Import Administration has nearly 300 employees.

HISTORY IN INTERNATIONAL LAW

The antidumping law likewise has a long history in international law. One of the results of the Genoa conference, held in May 1922, was a request that the League of Nations undertake a study of dumping and differential pricing. Reporting on the conference, the League's Secretary General explained that:

`* * * questions regarding dumping and differential prices being among those which concern most closely the equitable treatment of commerce, it is desirable that the League of Nations should undertake at an early date an inquiry on the subject.'--
The Genoa Conference and the League of Nations: Memorandum of the Secretary General, League of Nations Off. J. Aug. 1992, at 1003.

The league undertook the inquiry and the most tangible result was Jacob Viner's second major work on the topic of dumping called `A Memorandum on Dumping.' The League failed, however, to produce any sort of general agreement on further international action.

In the negotiations to write the original General Agreement on Tariffs and Trade (`GATT'), one area that was covered, largely at the insistence of the United States, was unfair trade in the form of dumping and subsidized exports. Since the formation of the GATT in 1947, signatory countries have recognized the pernicious effects of dumping. Indeed, Article VI of the GATT specifically says:

`The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than normal value of the products, is to be *condemned* if it causes or threatens material injury * * *.' [emphasis added]

The first four rounds of trade negotiations which occurred after the GATT's inception in 1947 were largely limited in focus to tariff reductions among the contracting parties. In 1967, however, as a result of the Kennedy Round of negotiations, a GATT Antidumping Code was adopted which expanded upon the limited rules set out in Article VI. The code was amended in 1979 in the Tokyo Round of negotiations. In the recently completed Uruguay Round GATT negotiations, the code was further amended. A major goal of the United States in the Uruguay Round was to maintain the effectiveness of its antidumping law--a goal I am happy to say we achieved.

The purpose of the antidumping law

Let me discuss in more detail what the antidumping law is designed to do. Broadly speaking, dumping refers to price discrimination between national markets, such as the sale in the United States of a product at a price less than is charged for the product in the producer's home market. In these circumstances, U.S. producers may be at a disadvantage because their prices are unfairly undercut. The U.S. law seeks to end such injurious pricing practices that commonly result when the free market is prevented from operating properly because of trade barriers or other reasons. The antidumping law provides for the imposition of duties on imported products that are sold in the United States at `less than fair value' (i.e. dumped) and cause `material injury' to a U.S. industry. Fair value usually is determined by the foreign producer's home-market price of a comparable product of its price in a third country market. Alternatively, the constructed value (which is the sum of the cost of materials, an amount for general expenses, an amount for profits, and the cost shipping containers) of the foreign producer's merchandise may be used to determine fair value. Constructed value is generally used as the basis for foreign market value when one of two conditions exist. Either there is no home market or third country sales; or, alternatively, the manufacturers home market or third country sales are below this cost of production.

In its simplest form, if a manufacturer in country `X' sells a widget in the United States for a price which is lower than the price charged in the manufacturer's home market, then the manufacturer is dumping. This is rarely a simple determination, for both international agreements and U.S. law mandate a complex series of adjustments to ensure that price comparisons are fair. Thus, if there are physical differences in the products sold in the two markets or differences in selling expenses that logically and directly affect price, adjustments for these differences are mandated to ensure that only actual price discrimination is detected. If imports are dumped and cause or threaten material injury to the competing U.S. industry in the sense that the industry loses sales, suffers profit losses, or is forced to lay off workers, the United States has the right, under international agreements, and the obligation under U.S. law, to impose a duty on those goods equal to the amount of the dumping. That duty is designed to correct the competitive imbalance created by the dumped imports.

While one form of dumping may arise from price discrimination, dumping may also occur when the U.S. producers are unfairly undercut by foreign producers selling below their costs of production. In this case, where the manufacturer is selling below cost in both markets, the U.S. price is compared to the constructed value. However, this alone is not enough to justify the assessment of antidumping duties. Such below cost sales must be shown to be injuring the competing U.S. industry. In other words, during a recession where producers in other countries are selling below cost, that fact alone would not be sufficient to sustain a dumping finding and impose a duty. It must be shown that such sales are adversely affecting the U.S. industry--i.e., that U.S. producers are bearing a disproportionate share of the burden of the recession because of the selling practices of the foreign industry.

The international economist Jagdish Bhagwatii described, in his essay Protectionism, the basic purpose behind free trade and by extension the laws against unfair trade:

`If one applies the logic of efficiency to the allocation of activity among all trading nations, and not merely within one's own nation state, it is easy enough to see that it yields the prescription of free trade everywhere--that alone would ensure that goods and services would be produced where it could be done most cheaply. The notion that prices reflect true social costs is crucial to this conclusion, just as it is to the case for free trade for one nation alone. If any nation uses tariffs or subsidies (protection or promotion) to drive a wedge between market prices and social costs rather than to close a gap arising from market failure, then surely that is not consonant with an efficient world allocation of activity. The rule then emerges that free trade must apply to all.

`Therefore, where the nationalist theory of free trade glosses over the use of tariffs, quotas, and subsidies by other countries, urging free trade for a nation regardless of what others do, the cosmopolitan theory requires adherence to free trade everywhere. The trade regime that one constructs must then rule out artificial comparative advantage arising from

interventions such as subsidies and protection. *It must equally frown upon dumping, insofar as it is a technique used successfully to secure an otherwise untenable foothold in world markets.* [emphasis added]

Dumping sends false signals to the market. While free trade increases world wealth, dumping causes resources to be misallocated, ultimately resulting in reduced wealth for the nation in which it occurs. This raises the most basic issue presented by dumping: `Where will investment occur--in this country, or somewhere else?' The ability to dump acts as a disincentive to investment in the country where dumping is occurring and fosters excessive investments in the market of the dumper. This is because certain market distortions such as closed market, anticompetitive practices and government subsidization shield investors in the dumping country from normal market risk in the open market where dumping occurs. Accordingly, capital will flow to those industries and markets where investors believe that they are most likely to make money on their investments; and will flow away from industries where this is less likely. Dumping has a dramatic effect on investors decisions.

Other mechanisms, such as Section 301 of the Trade Act of 1974, do not address the problem of dumping and furthermore, do not work fast enough or surely enough to deal with the underlying causes of dumping. The antidumping law deals relatively promptly with the adverse effects of dumping and that is particularly important today, given how quickly the manufacturing processes are changing and how fast import penetration can surge, and how much damage can be done to domestic industry in so short a time. This is especially true in the high technology area, where product life cycles are so short that failure to achieve economies of scale in one product jeopardizes the next generation of products.

The antidumping law seeks to foster a strong, fair, and competitive U.S. market. It seeks no special advantage for U.S. producers, but simply seeks to preserve any natural comparative advantage they have. If a foreign producer sells to the United States at a price no lower than his home market price, and also no lower than his full cost of production, then it is not dumping. However, if the foreign producer dumps, and in so doing injures a U.S. industry, the antidumping law steps in to rectify the imbalance.

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How dumping occurs

The circumstances which give rise to dumping are varied and widely debated among economists. It has been argued by some analysts that dumping is a result of closed home markets, anticompetitive practices or predatory intentions. Others point to dumping investigations where nothing like this is present but dumping is still found to be occurring. It is important to note that neither U.S. law nor our international obligations require a finding of any particular market condition--like anticompetitive practices--in order to impose a dumping duty. However, I believe that there are certain market distortions which do give rise to dumping. Moreover, I believe that there is an implicit presumption underlying the law that dumping is a result of these distortions.

The Administration is committed to resolving, through bilateral or multilateral negotiations with our trading partners, any policies or conditions which I believe give rise to dumping. However, dumping is a real problem today, and the only immediate solution to these problems is the antidumping law.

Here are some of the conditions that give rise to dumping:

CLOSED MARKETS

Let's start with the phenomenon of closed foreign markets in which the foreign manufacturer has a degree of market power. In this case, the exporter is able to sell in the home market for a high price, run his factory at full capacity and thereby lower his per unit cost of production. The excess capacity is then sold in international markets. As long as the exporter is able to sell overseas at a price above his marginal cost, the export sales will increase the exporter's profitability. Some Japanese producers have successfully used this strategy for a number of years.

ANTI-COMPETITIVE PRACTICES WHICH PERMIT SALES BELOW COST

Another, and often related, phenomenon occurs when companies engage in anti-competitive practices which provide the resources

to sustain losses (i.e. sell below costs) in order to gain market share and drive competitors out of the market. In this case, comparing prices in the United States with the producer's home market price may not indicate price discrimination. This might be because the producer has such leverage that it is able to undercut competitors at home as well as in the United States. For this reason, the law prohibits the use, as the basis for fair value, of home market prices which are below the cost of production.

When anti-competitive practices, such as collusive behavior, or closed markets, or both, provide foreign producers with significant economic leverage, dumping is an expected result. For example, when foreign producers account for a broad range of different but related products, and have significant market power for such products, they can afford to `cross-subsidize' one or more products from the profits derived from the sales of other products, permitting below cost sales of targeted products.

The most insidious results of such dumping is in the high technology area where, in order to remain competitive, a producer must finance the research and development for future products with either the profits from the current generation's production or new investment capital. If that producer is undercut by exports even for a short while, he will have difficulty raising capital and will have to cut back on research and development and may ultimately be forced out of the market.

GOVERNMENT SUBSIDIZATION

Another example of marketplace distortion that gives rise to dumping occurs when foreign industries are supported by government actions including subsidies and price controls. Such actions distort both the home and international markets by funding production that would not make economic sense under free trade principles. Often, the result is excess world production of a product and falling prices because supply exceeds demand. To the extent that the government actions are in the form of subsidies, we can and do use the countervailing duty law to counteract them. However, often the effect of subsidized increases in production capacity is that the goods are also dumped in the United States. The subsidy to the producer at home enables it to sell at low prices in the United States and to undercut U.S. competitors in the U.S. market. In the recent steel cases where there was both an antidumping and a countervailing duty case, in each case, dumping margins were found far in excess of the countervailing duty margins.

Governments often believe that they have valid reasons for supporting their industries; their subsidies are not necessarily given with the intent of distorting markets or injuring competition, but for social and political reasons, typically to
avoid the need to close or downsize important industries. They understandably wish to avoid the problems created by significant decreases in productive activity and increases in unemployment. However, by funding continued or increased production that is uneconomic, foreign governments inescapably create worldwide over production and lower prices that, more often than not, are dumped prices. Furthermore, these governments create inexorable pressures to export greater quantities of goods and, in doing so, export unemployment. U.S. industries and U.S. workers should not be forced to bear this burden.

NON-MARKET CONDITIONS

Dumping also occurs where the normal market forces of supply and demand simply do not operate, as in the case of non-market economies (`NMEs'). The most prominent current NME exporter is the People's Republic of China--a special problem which I will discuss later--but Russia and the other former Soviet republics--including Ukraine, Kazakhstan etc. as well as Romania, Hungary, and the Czech and Slovak Republics--are also still considered to be non-market economies. The NMEs pose special problems and challenges in the implementation of the antidumping law. Indeed, the antidumping law mandates special calculation methods to determine fair value of products in NME countries, because of the absence of normal market forces. Internal prices and costs are disregarded since they are essentially meaningless in market economy terms. Instead, fair value is determined by constructing the cost on the basis of the NME's actual factors of production (e.g., quantities of raw materials, labor, energy, etc.) using surrogate prices from a market economy of comparable economic development.

Industry specific examples

Examples from several cases may help explain how these conditions can cause dumping and their effect on U.S. industries.

BEARINGS

The 1988 antidumping investigations of antifriction bearings from Japan and multiple European countries are excellent examples of closed foreign markets. Because of market

barriers in Japan and Europe, manufacturers there were able to sell at high prices in their home markets; in other words they had insulated themselves from foreign competition. As a result, they could afford to dump their excess production at low prices in the United States rather than disrupt the artificially high prices in their own markets. In fact, the U.S. market became a battleground as the Europeans and Japanese engaged in a price war here, crippling the U.S. market and the competitiveness of U.S. companies. Almost without exception, the dumping margins were significant, vividly reflective of the distortion created by closed markets.

SEMICONDUCTORS

The experience of the U.S. semiconductor industry in the 1980's shows the pernicious effects of anti-competitive practices which can allow selling below the manufacturer's cost of production. A combination of a protected home market, a cartelized home market, substantial financial resources, and aggressive dumping, including selling below the cost of production, allowed Japanese companies to nearly decimate the U.S. semiconductor industry. In the case of commodity memory products, the displacement of U.S. producers by Japan occurred in two bursts of intense price undercutting during the 1981-82 and 1984-85 periods. The first episode (1981-82) culminated in Japanese domination of the then current 64K generation DRAM and leadership in the race to commercialize the 256K DRAM; the second episode (1984-85) saw Japan achieve a virtual monopoly over the 256K DRAM as most U.S. producers exited the market altogether. Each episode began with an extraordinarily rapid, massive buildup of DRAM capacity by Japanese producers, establishing far more than the world market could absorb. In each case, a precipitous price collapse followed, led by extreme discounting by Japanese firms. In each episode, tremendous losses were experienced by American firms, and from all accounts, by Japanese firms as well. The net result was a virtually complete withdrawal by U.S. firms from the production of DRAMs by the end of 1985. Whereas 11 U.S. firms had been producing DRAMs at the 16K level in 1980, by 1986, only two U.S. firms remained in the market at the 256K level and these accounted for less than 10 percent of world sales.

Some might say that this was just good old fashioned competition and the United States lost. But was this fair competition? Japanese semiconductor manufacturers had a number of advantages not shared by their U.S. counterparts and these were not `comparative' advantages arising from the operation of genuinely free markets.

First, they were able to enter into arrangements such as joint producer groups which were used to regulate competition in the home market and which represented a degree of market manipulation and control that would be illegal in the United States.

Secondly, the Japanese keiretsu-based firms enjoyed enormous resources, among other things, from their consumer electronics divisions which, operating from a protected home market export base, could finance or cross subsidize, a push into the contested, strategic microelectronics sector. All of the Japanese producers were able to underwrite losses in their semiconductor divisions with profits from other electronics product divisions, many of which were also protected from foreign competitive pressure.

Both of these factors--control over home market prices and access to significant amounts of capital--relate to investment risk. These factors lower the risk associated with investing in new products. The threat of dumping increases the risk of investing. As risk increases in a sector, investment will decrease, and the industrial competitiveness of that sector will decline. To the extent that the risk is not equal between two countries, the competition will not be equal and governments have a legitimate role to play in correcting the distortion. Ideally, the correction will come from opening markets. However, until markets are truly integrated there will be a need for the antidumping law to assure that industries are not lost to unfair competition.

In the case of semiconductors, dumping cases, which led to a negotiated semiconductor agreement with the Japanese, worked to bring back an industry. Albeit, the industry is much different today than it would have been without the unfair trade actions and has still not regained its former strength in the products where the dumping was most concentrated. Although some questioned the use of the antidumping law and the resulting agreement, there is not question that they operated to prevent the demise of a substantial portion of the U.S. industry, a demise which would have been caused by practices that, by any definition, were unfair. Nevertheless, dumping remains a real concern for potential investors in the U.S. semiconductor industry despite the fact that Japanese dumping on a massive scale has not occurred since 1987. The pernicious effects of dumping often remain long after the dumping itself has been eliminated.

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STEEL

The classic example of sustained government intervention that led to excess production and dumping is steel. For years, European steel industries have benefited from substantial subsidies and other structural support from their governments. During the late 70's European governments tried to maintain an artificial price floor in Europe; excess capacity was dumped in the United States. Only when U.S. industry filed antidumping and countervailing duty cases did the onslaught of unfairly priced steel into the United States subside. Subsequent to the filing of these cases, the United States entered into a series of voluntary restraint agreements (`VRAs') with European, Japanese and other major steel producing nations to regulate the flow of steel imports. The VRAs expired in 1992, and the U.S. industry again filed antidumping and countervailing duty petitions in June of 1992. The Department of Commerce found dumping, typically with large dumping margins, in every case. Although injury was not found in a number of the cases, often because of the greater health enjoyed by the U.S. industry as a result of its own efforts to modernize and become more efficient, dumping orders
were issued in roughly half the cases and remain in place today. Although many countries have made significant efforts to reduce subsidies, substantial subsidies persist, and their effects will be felt for many years. The principal effect, of course, is a persistent world overcapacity for steel, which alone makes dumping virtually inevitable. Further, these cases make it clear that the United States is still the principal dumping ground for the world's excess steel capacity, and will remain so as long as the policies in Europe and elsewhere which give rise to dumping persist.

When you think about these cases, it is evident to me that the antidumping law is not an aggressive tool for protecting U.S. industries from unwanted competition, but a defensive instrument needed as an effective response to market distortions abroad which create or foster unfairly priced and injurious exports to the United States.

Attacks on the antidumping law

While the U.S. antidumping law has a long history of enforcement and has been administered in a manner consistent with our GATT obligations, the use of the law has, for some time, been attacked by foreign countries who want to protect their industries' ability to dump in the United States at the expense of U.S. industries. We had to fight hard to obtain acceptable antidumping provisions in the Uruguay Round Agreement.

Authorization to take antidumping actions remains firmly embedded in the multilateral trading system. Further, the U.S. antidumping law will remain an effective remedy against dumped imports. Nevertheless, there are those who argue that while it may be consistent with international law, the antidumping law is not in the best interest of the United States.

Here are some of the assertions that are made, and how I would reply to them.

THE ARGUMENT THAT THE ANTIDUMPING LAW HARMS CONSUMERS

There are those who argue that the antidumping law serves to keep domestic prices higher, thereby depriving the domestic consumer of the benefits of competitively produced goods from whatever source and placing domestic users of dumped merchandise at a competitive disadvantage in relation to foreign producers.

Such critics tend to focus on the short-term benefits of low-priced imports to consumers and consuming industries, conveniently ignoring the effects of such imports on directly competing U.S. industries.

History has shown that the idea that we should simply accept
all low-priced foreign goods would be a disaster for the manufacturing sector. The antidumping law has saved numerous U.S. industries, not from more efficient production or better products, but from competitors who are able to sell in the United States at artificially low prices, supported by government subsidies or profits earned in protected home markets.

When dumping results from price discrimination between the home market of a foreign producer and the U.S. market, the U.S. manufacturer who purchases the dumped inputs is not put at a disadvantage globally by an antidumping order. That manufacturer is simply required to pay a price comparable to that of its foreign competition.

In the case where dumping exists not because of price discrimination, but because the foreign producer is selling below cost in both the home market and the United States, a different result occurs. An antidumping order only affects prices in the U.S. market. As a result, customers of dumped products may find themselves competing with firms that have purchased the input at a lower price abroad. However, the answer is not to sacrifice one domestic industry for another, a producer for a consumer. In these cases, the trade laws

cannot bear all the burden. We must have a broad range of policy devices to create a competitive environment. DRAMS are a good example of this. We not only took trade actions to provide short-term relief to the industry, but we also created SEMATECH, which is a government-industry partnership, to improve development and production processes for use by American producers. This will help to assure the long term competitiveness not only of the DRAMS producers but of the users of DRAMS as well.

In the short run, the consumer may have to pay higher prices for individual goods. Let's acknowledge the painful truth. However, without antidumping enforcement, in the long run the consumer will ultimately be the one to pay as reduced competition enables foreign producers to raise prices. Moreover, the consumers as citizens will also pay in terms of high unemployment as well. In the long run, the consumer will ultimately benefit as increased supply by domestic producers ensures a stable and competitive market place, in which industrial users are not forced to rely only on off-shore sources for components which may very well be controlled by their direct competitors. Finally, we need to bring some perspective to this short term picture. Antidumping orders affect very limited amounts of U.S. imports. In 1993, less than one percent, by value, of total merchandise imports were covered by an antidumping duty order. Antidumping orders have only a limited impact on consumers in the short run and provide a long term benefit to the economy.

THE ARGUMENT THAT IF THE PROBLEM IS WITH MARKETS THAT ARE NOT OPEN WE SHOULD USE THE MULTILATERAL PROCESS TO OPEN MARKETS AS OPPOSED TO A UNILATERAL DUMPING MECHANISM

There are those that would argue that if closed or anti-competitive foreign markets are the problem, the United States should use bilateral and multilateral negotiations to open up markets.

As I mentioned, it is among the highest priorities of the Clinton Administration to press foreign governments to reduce their barriers to trade. However, in the short run we cannot afford to forgo immediate action where the effect of closed markets is to cause immediate injury in our own market through dumping. Critics fail to appreciate how quickly an industry can be lost to dumping. Often there is simply not time to negotiate, and our trading partners have often proven less than willing to open their markets or have entered into agreements that, in retrospect, actually changed nothing. Furthermore, when the closed market is due to private practices the task is even made more difficult.

The more open an economy is, of course, the more vulnerable its industries are to dumping, and the United States unquestionably has the most open market of any country in the world. The developing countries in particular typically maintain relatively high tariff rates today, even though many such countries are world-class competitors in some product categories. Even developed countries maintain high tariffs on some products. For example, Japan still has high tariffs on petrochemical and related products, and paper.

Less transparent than high tariff rates, and harder to combat, are the other means that countries use to restrict trade. Non-tariff barriers to trade and lack of internal competition still foster the conditions under which dumping can occur. The most important country where this is prevalent is Japan.

Although many of the overt trade barriers in Japan, such as tariffs and quotas, have been eliminated or significantly reduced, Japan remains an essentially closed market which will not be as open as ours for many years to come at least. The Japanese economy is characterized by numerous barriers which stem from a variety of factors. Structural barriers include an overall lack of transparent rules, statutes or regulations which are not published or made available to importers, exclusionary business practices, and close government-business relations. Foreign firms must also overcome excessive government regulations, burdensome standard and certification requirements, and a multilayered, antiquated distribution system that is extraordinarily costly and difficult to enter. All these barriers work to limit the ability of foreign firms across a wide range of sectors to compete fairly in the Japanese marketplace.

Japan is by no means the only country that maintains barriers to trade. No country, including the United States, is absolutely pure, and most countries maintain or tolerate conditions, at least in some product sectors, which create the distortions I discussed earlier. While the Administration strongly supports free trade, and will continue to do so in the future, the conditions which allow dumping to occur still exist and will continue to exist in the foreseeable future. This Administration is committed to addressing dumping effectively when it is encountered, as well as to the aggressive opening of markets.

Ultimately opening markets will reduce the need for and use of the antidumping law. This phenomenon can already be observed in our trade with Canada. Although that country is our largest single trading partner, there are very few dumping cases involving Canadian goods. Not so coincidentally, Canada, also an active user of its antidumping law, has relatively few cases against U.S. exports. We expect to see the same result with Mexico in the near future.

However, the opening of markets in the long run is no solution for the manufacturer--or the manufacturer's workers--to the problems created by unfair imports today. If we remain passive and simply put our faith in the belief that someday the global market will be truly open, we will have lost significant portions of our industrial base in the meantime. Dumping can have deleterious effects in a very short period of time. Perhaps the semiconductor case presents the most striking example of how quickly an industry can be lost, or nearly so, to unfair trade practices and of the need to respond rapidly and effectively when such practices occur. The antidumping law, and no other U.S. trade law, provides such an effective and relatively rapid remedy, and it does so consistent with our international obligations.

The economy is changing rapidly, in large part because of increased globalization and rapid changes in technology, and with it comes ever increasing competition. If we allow ourselves to be the dumping ground for the world's excess production and unemployment, investment dollars will flow out of the United States, for investors are by no means limited to investing here. Money will flow to any country that offers the prospect of a high rate of return with low risk. If U.S. industries are willing to put capital at risk here at home to manufacture a product as efficiently and cost effectively as it can be produced anywhere in the world, they should not be denied the right to prosper because the trade laws are not properly enforced.

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THE ARGUMENT THAT IF LACK OF COMPETITION IS THE PROBLEM, THEN WE SHOULD BE USING OUR COMPETITION LAWS TO SOLVE IT

Much of what I have been talking about today, the conditions which may allow dumping to occur, involve a lack of competition in the exporter's market. There are those who argue that if the problem is lack of competition, then the solution should be found in the competition or antitrust laws and not the antidumping law.

The argument that we could rely exclusively on our antitrust laws is based on a fundamental misunderstanding of the scope of the problems addressed by the antidumping law. The Administration supports increased global standards in the area of competition law and believes that, with success in this effort, the need to invoke the antidumping law will be reduced. Competition laws can and do work effectively alongside the antidumping law, but are not a substitute for it. The need for vigorous enforcement of the U.S. antidumping law will continue for the foreseeable future.

The proponents of sole reliance on antitrust measures have a basic disagreement with us as to what is needed to promote and protect competition internationally and therefore of the purpose behind the two bodies of law. Both laws seek to protect and foster competition. The antidumping law, however, focuses on insuring that distortions in markets abroad do not restrict the ability of U.S. producers to compete in their own market. From the standpoint of some competition law advocates, if there seems to be a large number of competitors in the market, if prices are low, and if the consumer benefits--all is as it should be. Where the products are produced is irrelevant. However it would be a mistake to assume that low prices to consumers always reflect a genuine competitive market, and that this situation and low prices will continue. If the low prices are the result of dumping and the exporter succeeds in driving its U.S. competition out of business, prices could still rise, likely to higher levels than if there had never been dumping. Further, I would argue, that where goods are produced does matter. If U.S. producers leave markets because other countries have a comparative advantage and U.S. producers enter other markets where they have a competitive advantage, so be it. That, after all, is what free trade is about. However, if they are forced out of the market because they could not compete against dumped imports, from producers which enjoy no real comparative advantage, the country will be worse off, in my view.

Remember what dumping does--it distorts the market signals and thus the markets themselves. The low prices resulting from dumping may temporarily please consumers, but they send a signal that chills investment, with potential fatal consequences for the industry and long run harm to the consumer. In the case of semiconductors, for example, when manufactures should have been
investing in technology for future generations of DRAMS, they were leaving the market. Proponents of the application of competition law might say `yes plants are closing but the consumer is getting low prices.' I believe this is a shortsighted view that does not reflect genuine free competition. Moreover, unemployed workers make very bad consumers.

Economic theory says that when everyone produces the goods for which they have a comparative advantage, and trade is free, the welfare of a nation is maximized. That is what we have done in the United States. We have created a free market among all the states and goods can move freely from state to state. Competition laws are necessary and work well to preserve the freedom of the U.S. market. It doesn't matter if a good is produced in New York or Arizona so long as there is sufficient competition to assure low prices.

We are working on expanding free markets globally, but it is highly questionable whether the competition laws of other countries will ever mirror our own in both substance and

zeal of enforcement, and even more questionable how effective our own competition laws can be in addressing and resolving problems that arise outside the United States. At best, they work much too slowly to be of meaningful benefit to U.S. industries in urgent need of protection from unfairly traded imports. Thus, the day when, for example, the U.S. and Japanese markets are truly integrated is far off, if it ever arrives. Even in the case of the U.S. and Canadian markets there remain distortions, such as investment restrictions, differences in technical standards, and sectors of the economy are excluded not only from investment liberalization but also from liberalization of the trade rules--the so called `cultural' industries being perhaps the best example. This is not to say that as the U.S. and Canadian markets become more integrated there won't be a need for greater harmonization in competition laws, but it will be a while before they can be a substitute for the antidumping law.

I am hopeful that our goal of free trade and fully integrated markets will someday be achieved. When this occurs, either in North America or globally, then our critical manufacturing industries will no longer be forced to rely upon the antidumping law to have a fair chance to compete.

THE ARGUMENT THAT DUMPING MARGINS WILL ALWAYS BE FOUND DUE TO EITHER FREIGHT CHARGES OR TARIFFS

Some would argue that the antidumping law is inherently unfair because a manufacturer in some other country could sell the identical product for the identical price in the United States and the home market and still be found to be dumping. Dumping may be found in this instance because the law mandates a deduction of freight from both the U.S. and home market price and
import duties from the U.S. price. Therefore, to the extent that there are import duties or the transportation cost to the United States is higher than the home market freight costs, there is dumping, and I would argue that this result is accurate.

Location is a comparative advantage. The steel manufacturer who is located next to the automobile manufacturer has a comparative advantage over the steel producer located a thousand miles away. In a competitive market, the price charged by the two producers should reflect differing transportation costs, and to the extent that a manufacturer can absorb the costs of transportation, this reflects market inefficiency. The foreign producer should sell at the factory gate at the same price for similar kinds of sales both to domestic and foreign customers. If it absorbs the freight to U.S. customers, it is engaging in price discrimination in order to gain market share abroad unfairly at the expense of its customers at home and of its U.S. competition. This also results in an inefficient allocation of resources.

A tariff is an `artificial' advantage. A major achievement in the Uruguay Round was lowering tariff levels worldwide. However, where they still exist the price should include the import duties.

What was achieved in Geneva

Let's turn to the latest round of global trade negotiations--the Uruguay Round. I'd like to explain what happened. In the area of antidumping, the United States faced stiff opposition from a host of countries whose goal was to weaken the U.S. antidumping law. Our goal in the negotiations was to ensure the effectiveness of U.S. law was preserved while at the same time hold over governments administering antidumping laws accountable to the same standards of transparency and due process that we apply under our system. Put another way, we had to take into account both the protection of our firms operating in the United States, and those operating abroad.

In attempting to achieve these goals we faced an uphill battle in early November of last year. The GATT Secretariat had produced a text--the so-called Dunkel Draft--which served as a basis for the final phase of the negotiations. This draft would have severely restricted effective antidumping enforcement. It would have allowed arbitration panels of the new World Trade Organization (`WTO') to second-guess national administering authorities, limited U.S. ability to counteract circumvention of antidumping orders, and made continuance of dumping orders after five years almost impossible, among other things.

I am happy to say that we achieved our goal, and the worst
aspects of the Dunkel Draft were changed. Among the achievements were:

Dispute Settlement and Standard of Review: The dispute settlement system will be binding and efficient, allowing the United States to use it to ensure other countries follow the negotiated rules. The special standard of review for settling antidumping and countervailing duty disputes will ensure that well founded application of the U.S. trade laws will not be summarily overturned.

Sunset Reviews: While there will be reviews of antidumping and countervailing duty orders every five years to determine if they are still serving their purpose, these so called `sunset reviews' will not prohibit us from continuing duties if their removal would likely lead to renewed or continued dumping and injury. This is in stark contrast to the Dunkel Draft, which would have made continuance of duties beyond five years nearly impossible.

Anti-circumvention: Since 1988, the United States has had legislative authority to take action to prevent the circumvention of antidumping and countervailing duty orders through the establishment of screwdriver assembly operations in the United States or in third countries. The Dunkel Draft would have placed fatal restrictions on our ability to exercise this anti-circumvention authority. The final agreements totally eliminated these restrictions.

Initiation of Investigations: The Dunkel Draft would not have recognized the right of U.S. workers to file antidumping and countervailing petitions to protect their livelihoods from injurious dumping and subsidization. This right has been completely restored with this agreement.

Under the new agreement U.S. industry will continue to have a remedy against injuriously dumped imports. Given where we began at the beginning of November last year, this Administration did very well in protecting U.S. interests.

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Antidumping law: selected issues

While the law allows very limited discretion in the administration of antidumping law, administration of the law is not conducted in a policy vacuum. While I am an ardent supporter of vigorous enforcement of the antidumping law, I recognize that other interests must be considered as well.

THE NEED TO PURSUE BOTH THE INTERESTS OF AMERICAN FIRMS WHICH USE THE LAW FOR PROTECTION AND THE INTEREST OF U.S. EXPORTERS WORRIED ABOUT OTHER NATION'S EMULATING OUR LAWS AND USING IT AGAINST U.S. FIRMS

As I said in my introduction, when I first became Under Secretary I heard both from those who said that the antidumping law had to be protected and from those who were concerned that antidumping laws were being unfairly applied against U.S. exporters. Not only do I have a dual role of promoting exports and administering the antidumping law, but the Administration accords the very highest priority to each. Put another way, we recognize both the need for protection which must be provided to domestic industries from dumped imports and the protection that must be provided to exporters from arbitrary administration of foreign antidumping laws. However, these two objectives are not in conflict and have been an overriding theme in all of our recent negotiations.

We cannot and should not stop countries from using their antidumping law to counteract injurious dumping. At the same time, the Administration supports the reasonable concerns of our exporters. In both the NAFTA and Uruguay Round agreements, we insisted that provisions be included to ensure transparency in the administration of the laws and that judicial review be provided. The Administration will continue to fight to see that U.S. exporters are treated in a fair and consistent manner, that they have a real opportunity to defend themselves, and that dumping margins are not calculated in a way which is not open to public scrutiny.

We will also continue to give these same benefits to foreign firms selling in the United States.

Furthermore, as a result of the Uruguay Round, we will have an increased opportunity to assist U.S. exporters. Specifically, we will closely review the antidumping and countervailing duty laws of other countries to ensure that they are in compliance with the Uruguay Round agreement. If we find that they are not, we will use the new dispute settlement system to elicit compliance. We will also more closely monitor subsidies provided by other countries. To the extent that U.S. exporters lose sales overseas to subsidized goods, action can now be taken in the World Trade Organization to provide a remedy to those exporters.

THE NEED TO ADDRESS BOTH THE INTEREST OF U.S. INDUSTRY AND OUR INTEREST IN ECONOMIES IN TRANSITION

`Economies in Transition' are countries moving from one economic system to another. Many of these economies, such as Russia, Hungary, the Czech and Slovak Republics, are suffering from 50 years of central planning under Communist systems and the United States supports their efforts to become market-oriented. This transformation cannot happen overnight, and they have yet to fully achieve their goal. At present, most of the economies in transition are still considered non-market economies under the antidumping law.

The United States strongly believes that increased international trade is their best opportunity for development. Because we are the most open large economy in the world, however, there is a temptation on the part of many nations to think that we will be the dumping ground of last resort--much as we have been in the past. The Clinton administration will not allow this to happen. Just as the United States can no longer be the primary source of foreign aid, we also cannot absorb all of the world's excess production. We want to encourage trade with these countries but we cannot allow domestic industries to be injured by unfair pricing.

To this end, we will continue to work with the economies in transition so that they understand how the antidumping law works and how to avoid having unnecessary problems under it. As happened with Poland in 1993, moreover, as the economies of these countries develop, the Department of Commerce will change their designation from a non-market to a market economy.

However, the statute gives the Department limited discretion in the administration of the law. If a case is filed providing sufficient evidence that injurious dumping is occurring, the Department must initiate the investigation. Furthermore, the law specifies the methodology to be used in NME cases. The existence of antidumping investigations should not be interpreted as a policy decision to discourage trade with economies in transition, but a realization of our responsibility under the law not to become the dumping ground for the world's excess production.

Russia and the other `economies in transition' are going to need help in making the transition to market economy status, and they are going to have to make major adjustments themselves. In dealing with these complicated issues we will need to keep certain factors in mind:

First, the integration of economies in transition into the world economy is a challenge on the order of importance and difficulty as the challenge of reintegrating Japan, Germany, and many former colonies into the global economy after the second World War. It won't happen overnight, and it will require a herculean effort.

Second, the burden of adjustment must be spread. The effort must be multilateral and include both the economies in transition and the market economies.

Finally, we need policies that really are appropriate to `transition.' This means having policies with enough flexibility to reward economies in transition which are taking tough adjustment measures, and the procedures to differentiate those nations from others
which are not making those efforts.

Thus far the global framework for helping them is barely developed, We will need to think through the balance between macro adjustments and industry-by-industry adjustments. We will need to look again at barriers to market access that these countries face, barriers which could keep them out of world markets. We will have to think about sensible ways to work with our own industries as they feel the brunt of new production from economies in transition, and we must work closely with the European Union, Japan and other industrial market economies so that none of us is forced to accept disproportionately the twin burdens of increased imports and escalating foreign aid.

THE PEOPLE'S REPUBLIC OF CHINA

The People's Republic of China (`China') is a special case in terms of the antidumping law. It is first a non-market economy (`NME'), which separates it from our other major trading partners. However, unlike other NME's, it is a major trading partner. In 1993, the U.S. trade deficit with China was $22.8 billion, or $4.5 billion more than in 1992. U.S. merchandise exports to China were $8.8 billion, up $1.3 billion or 17 percent, from 1992. U.S. imports from China totaled $31.5 billion in 1993, or 23 percent higher than those in 1992. However, along with this increase in imports dumping has become a significant problem. In *all* the 1980's, the Department of Commerce had 11 antidumping investigations against the PRC which resulted in dumping orders. We have already imposed 14 antidumping orders against Chinese products in the 1990's and 8 China investigations are currently ongoing.

Trade with China poses two particular problems. The first is that the pricing of their exports has little relationship to market prices, and second is that their markets are significantly

closed to U.S. products.

Because the cost of production of goods in China, as in all NME's, is not governed by market driven prices, the import price charged to the Untied States also need not be driven by the normal market forces of supply and demand. When Chinese prices are compared to the cost of production using market determined factor prices, the dumping margins are often in excess of 50 percent. If China decides for whatever reason--either to earn hard currency or to maintain employment--to increase production in a given industry even if the excess will be dumped on the world market, the United States must have some recourse to assure that the price charged is a fair price.

Moreover, China significantly impedes foreign goods from its internal markets. This further shields Chinese producers from market forces. China uses prohibitively high tariffs--in combination with import restrictions and foreign exchange controls--to protect its domestic industry and restrict imports. The Chinese government maintains a system of licensing requirements which encompasses 53 large product categories of consumer goods, raw materials, and some production equipment. Covering approximately 50 percent of total imports by value, China's import licensing system acts as an effective import barrier.

These are systemic problems with the Chinese economy which will not be resolved by use of the antidumping law, and we will continue to use other tools to achieve a more global solution. The Administration is continuing to negotiate market access opportunities for U.S. exporters in the Chinese market. Furthermore, in the GATT accession process, the Administration has made clear that we will only support Chinese accession if it is on a sound commercial basis.

The antidumping law is not the long term solution to either of these problems. The antidumping law is, however, the only effective remedy available to U.S. industries which are today being injured by dumped Chinese goods.

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THE NEW MULTILATERALISM

Since the end of the World War II the United States has been at the forefront of international economic cooperation. In the area of trade, these efforts occurred primarily through the GATT and have resulted in increased economic integration of the global economy. Several events over the last year will increase the level of global integration and expand multilateral trade cooperation. The two most important events are the completion of the Uruguay Round and the implementation of the NAFTA. These two events will help to protect exporters from arbitrary and capricious use of trade laws as protectionist tools, while at the same time respecting a country's sovereign rights to administer its laws.

World Trade Organization: As I've said, we worked hard during the Uruguay Round negotiations to maintain the effectiveness of the antidumping laws. One of the most important achievements under the new agreement was in the area of dispute settlement. The new World Trade Organization (`WTO') dispute settlement process will be much more effective than that of the old GATT system. Whereas in the past parties could interminably delay the resolution of disputes, dispute settlement procedures will now be subject to strict deadlines and the adoption of panel findings will be binding and all but automatic. Through binding dispute settlement, we can ensure that other countries are administering their trade laws in a manner consistent with their international obligations.

We, too, will adhere to our international obligations. But we are taking several steps to ensure that the new process is a success and does not infringe upon our sovereign rights.

During the negotiations, we foresaw the need for special rules for antidumping and countervailing duty cases. Some other governments wanted the WTO panels to be able to substitute their judgments for that of the Department of Commerce and the International Trade Commission. In order to avoid this problem, we insisted that a specific `standard of review' be followed in panels involving antidumping and countervailing duty orders.

The standard of review sets the rules by which a panel evaluates the challenged actions of a government in a particular dispute. In terms of considering questions of fact, a panel's job is to determine whether the establishment of facts was proper and the evaluation of those facts was unbiased and objective. If the findings of fact meets these criteria even if the panel might have reached a different conclusion, the panel cannot overturn a determination. For questions of law, the panel must determine if the interpretation of the agreement given by the national authority is a `permissible' interpretation of the relevant provisions of the agreement. In other words, even if there is more than one way to interpret the wording of the agreement, as long as the U.S. interpretation is an acceptable interpretation, the U.S. action or law will not be overturned. This is a critical concept, since the actual

language of international agreements is often artfully crafted to allow parties with opposing views to accept it. Without the ability to `agree to disagree,' negotiations might never be concluded.

The standard of review is designed to prevent the World Trade Organization panel from overturning a U.S. antidumping and countervailing duty decision unless our findings are clearly inconsistent with the GATT Code. Also, if other countries use their laws against our exporters in a biased manner or their laws are inconsistent with their obligations, we have a dispute settlement procedure with teeth to defend the interests of U.S. exporters.

The panel system was carefully crafted to provide a means to ensure compliance with the agreement on one hand while respecting a nation's sovereignty and right to implement its own national laws on the other. The United States want to be at forefront, working to ensure that the panel system is a success. In order to do this, we will be intensely reviewing the actions of WTO dispute settlement panels, and we will be vocal in our criticisms in cases where a panel decision is either not soundly reasoned or exceeds the scope of its authority. This criticism will not be an attempt to undermine the panel system but to ensure its longevity.

WTO panels will not become substitutes for domestic courts. As in the past, we will only implement panel decisions on a prospective basis. If a foreign government believes a U.S. action is contrary to our obligations, that government may seek relief through a panel. If a panel rules against the United States, we will either discontinue the practice or face economic retaliation. The proper forum for a private party to seek relief against an incorrectly calculated margin will remain the U.S. court system (or, for NAFTA members, a bi-national panel). In other words, the WTO panels will not be a replacement for the domestic judicial system.

Furthermore, we hope to minimize the need for panels at all. As much as we may support the system, we would rather not be litigants in it. In order to lessen the need for dispute settlement panels, we (and we hope all of our trading partners are doing the same) are drafting implementing language in such a way as to guarantee that our laws are consistent with the letter and the spirit of the GATT Uruguay Round agreement. The agreement is only as good as the implementing legislation both here and abroad. As vigilant as we will be with our own legislation, we will be reviewing other countries' laws for consistency with the agreement.

Since the end of the war, the United States has been at the forefront of liberalizing international trade. We have seen the increased international trade and economic wealth which have occurred with each subsequent GATT round. We are hopeful that the World Trade Organization, as the successor organization to the GATT, will be equally successful not only in the area of dispute settlement, but in the many other areas such as trade and the environment and worker's rights which it will be called upon to tackle in the coming years.

NAFTA: The North American Free Trade Agreement (`NAFTA') will also affect some disputes arising from antidumping actions. The bi-national panel system which existed in the Canadian Free Trade Agreement has been incorporated in NAFTA. Furthermore, the agreement requires the Mexican government to increase the level of transparency and provides access to judicial or bi-national panel review. NAFTA will also bring down trade barriers. As we have seen with Canada, as the economies become more integrated we expect the use of the antidumping law among NAFTA members will decline.

Multilateralism: Both the WTO and the NAFTA agreements point to the increasing importance of multilateralism in the area of trade law. The United States must become an active participant in this multilateral process. We will use the tools available to protect U.S. interests and ensure that the standard of review is respected so as to not undermine U.S. sovereignty. We will also seek additional resources to review the actions of other nations
to ensure their conformity with the Agreements.

The importance of fair administration of the law

Just as American producers can expect vigorous enforcement of our laws, foreign exporters can expect fair and reasonable treatment in our investigations. Effective enforcement does not mean harassment. Relief from trade distortions can be obtained without creating new barriers through unduly complex or unreasonably demanding procedures.

In conducting antidumping investigations we will adhere to the following principles:

Openness and transparency will be a hallmark of our system. We will make every attempt to let people know our thinking before it is final, so that their views can be fully considered. Of course, while some may inevitably be disappointed with particular decisions, they will know how and why such decisions were reached.

In this terribly complex area, even when there is cooperation, simple mistakes and omissions can occur. In this situation we will not mechanically reject information and will apply reasoned judgement to the situation.

Simplification will be pursued wherever possible. Procedures should not provide an unnecessary burden to either domestic or foreign producers.

Respect will be given to all parties. The root causes of dumping may be various, and the exporter concerned may not be acting with the intent to injure anyone. While this is no reason to ignore dumping, neither does it justify regarding exporters as less than honorable persons.

The need not to place all the burden of trade policy on unfair trade laws

The antidumping law, and the trade laws in general, cannot bear all of the burden of supporting U.S. industry. As I have said, the antidumping law is one, but only one, element of sound environment for trade and investment.

In the trade area, for example, the Administration is aggressively pursuing market opening around the world. In Latin America, President Clinton began with the conclusion of NAFTA and is now embarked on an effort to extend free trade throughout the hemisphere. In Asia, the Administration brought together the heads-of-state of the nations in the Pacific Basin last November,
and we continue to pursue freer trade in the region. In Japan, in particular, we have pressed for more open markets with considerable intensity. The United States took the lead in the Uruguay Round to conclude seven years of negotiations and we will not let up in our efforts to make the multilateral system more open and effective.

The Administration is making other efforts to create a climate in which U.S. firms can better compete in the world marketplace. In 1993, the President's leadership brought about major deficit reduction. This helped to create the lowest interest rates in 20 years. This year the President submitted a tough new budget, and the prospect is for three consecutive years of declining deficits for the first time since the Truman Administration. With low interest rates and reduced deficits freeing up resources for the private sector, business investment is growing at seven times the rate of the previous four years and leading the economy's expansion.

Along with cutting spending, the Administration has pushed to reorient spending toward productive public uses such as infrastructure, technology, and education. We are committed to the information superhighway, increased spending for research and development. We are committed to a comprehensive agenda of education and training, starting before kindergarten and extending into the workplace. This includes an expanded Head Start, higher performance standards for teachers and students known as Goals 2000, a new School-to-Work program to provide work-related training for students still in high school, the recently passed National Service Program to provide opportunities for community service and help send more Americans to college, and a new program for dislocated workers including retraining.

All of these efforts are intended to increase the competitiveness of the nation. They are already paying off.

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Conclusion

Being in charge of the International Trade Administration, I believe I have one of the most interesting portfolios in the American government. One of our divisons--the U.S. and Foreign Commercial Service--is composed of over a thousand men and women whose job it is to promote American exports. Two divisions focus on the development of trade policy and the promotion of U.S. exports--one does it by industry, the other by geographical region. And then there is the Import Administration, which administers the antidumping and countervailing duty laws.

I am often asked whether I need to be schizophrenic to focus on both export promotion and import administration. My answer--
a resounding `no.' Everything I do is geared to promoting a more open trading system in which U.S. companies have the best shot at competing. Given a fair chance, I am convinced that U.S. firms are poised to increase their presence all over the world. Our economy is now strong, many of our firms have gone through painful restructuring, and our

policies are moving in the right direction. The Japanese are still reeling from the 1980's, the Germans are mired in domestic problems, the big Emerging Markets--from China to Mexico, and from India to Brazil--are growing fast and becoming new frontiers for our products. I truly believe that the rest of the 1990's is America's moment. A strong and balanced approach to trade policy will help us seize it--for all our firms.

[**Note**: This speech is one in a series on `America in A Changing World Economy.' The others have dealt with Asia, Europe, Latin America, the Big Emerging Markets, the U.S. and India, the U.S. and Brazil, the National Export Strategy, Trade and Technology. Upcoming presentations will include `The United States and China,' `The Future of American Trade Law: New Rules, New Institutions,' and `Trade, Foreign Policy, and National Security.' These are available from the Office of Public Affairs, International Trade Administration, Department of Commerce, tel (202) 482-3809, fax (202) 482-5819.

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