H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 25, 1996

Serial 104–64

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

37–330 CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-054196-4

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H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

THURSDAY, APRIL 25, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room B–318, Rayburn House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 9, 1996
No. TR-22

CONTACT: (202) 225-1721

Crane Announces Hearing on H.R. 2795, a Bill Regarding Safeguard Investigations of Perishable Agricultural Products

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on H.R. 2795, legislation amending the definitions of "domestic industry" and "like or directly competitive article" in safeguard investigations involving perishable agricultural products. **The hearing will take place on Thursday, April 25, 1996, in room B-318 of the Rayburn House Office Building, beginning at 2:00 p.m.**

BACKGROUND:

Trade agreements such as the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements contain "escape clauses," which are safeguard mechanisms that permit signatories to grant domestic industries temporary import relief in certain circumstances. Sections 201-204 of the Trade Act of 1974, as amended, which implements these provisions, sets forth the authority and procedures for the President to withdraw or modify concessions and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive product, following an investigation and determination by the U.S. International Trade Commission (ITC). The purpose of this authority is to facilitate efforts by the domestic industry to make a positive adjustment to import competition.

On December 15, 1995, Congressman Shaw (R-FL), for himself, Congressman Canady (R-FL), Congressman McCollum (R-FL), and Congresswoman Thurman (D-FL) introduced H.R. 2795, legislation that would change the definitions of "domestic industry" and "like or directly competitive article" in certain cases involving perishable agricultural products. Specifically, the bill would permit the ITC to assess the impact of imports during a particular growing season on a domestic industry limited to producers of a like or directly competitive perishable agricultural product during that same growing season. The ITC, in the past, has traditionally examined the impact of imports on the domestic industry on a yearly, not seasonal, basis.

On January 31, 1996, the Subcommittee requested written public comments on the legislation, due March 1, 1996.

In announcing the hearing, Chairman Crane stated: "The hearing will provide us a good opportunity to assess the impact of this legislation on the U.S. industry seeking safeguard relief, as well as any consequences to U.S. agricultural exports and U.S. efforts to open markets abroad. I also intend to address whether the bill is consistent with our obligations under the NAFTA and the World Trade Organization (WTO)."

FOCUS OF THE HEARING:

The focus of the hearing is to examine the impact of H.R. 2795 on the U.S. industries producing perishable agricultural products, the effect on U.S. industries that export such products, and the extent to which the bill is consistent with U.S. NAFTA and WTO obligations.

(MORE)

WAYS AND MEANS SUBCOMMITTEE ON TRADE
PAGE TWO

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Monday, April 15, 1996. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than noon on Tuesday, April 23, 1996.** Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons or organizations wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by close of business, Thursday, May 9, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available over the Internet at GOPHER.HOUSE.GOV, under 'HOUSE COMMITTEE INFORMATION'.

*****

Chairman CRANE. Welcome to this hearing of the Subcommittee on Trade concerning H.R. 2795, legislation affecting safeguard investigations concerning perishable agricultural products. This hearing will give us an opportunity to address whether it is necessary to amend section 201 of the Trade Act of 1974 to explicitly permit the International Trade Commission to consider seasonality in determining whether a domestic industry is seriously injured by a surge of imports by changing the definition of domestic industry and like product.

Specifically, the legislation which was introduced by our colleague, Mr. Shaw of Florida, would permit the ITC to assess the impact of imports during a particular growing season on a domestic industry limited to producers of a like or directly competitive perishable agricultural product during that same growing season. The ITC in the past has traditionally examined the impact of imports on the domestic industry on a yearly, not seasonal basis. The legislation would apply to any perishable agricultural industry.

I hope that this hearing will permit us to assess the impact of this legislation on the U.S. industry seeking safeguard relief as well as any consequences to U.S. agricultural exports and U.S. efforts to open markets abroad. I also hope that we will address whether the bill is consistent with our obligations under the NAFTA and the WTO.

I now recognize our distinguished Junior Member on this Committee, Mr. Thomas, for any comments he may have to make.

Mr. THOMAS. Do you want me to sub for the Minority?

Chairman CRANE. Yes.

Mr. THOMAS. The Minority thinks this is an excellent piece of legislation. [Laughter.]

I will defer any opening comments, Mr. Chairman, and would prefer to address the Members.

Chairman CRANE. Very good. I would like to yield to Mr. Shaw since he is the author of the legislation.

Mr. SHAW. Thank you, Mr. Chairman. Before we begin I would like to express my thanks to the distinguished witnesses that are here today, our Florida witnesses, Senator Graham, Congressman Miller, Congressman Canady, Congressman Goss, and Congressman Pastor, who I am sure I am going to express disagreement with later. However, we certainly appreciate his joining in on the process.

And also Martha Roberts who will be here on behalf of the Florida Commissioner of Agriculture, Bob Crawford, who is unavoidably detained in Tallahassee. They are trying to finish up on their conference reports on the budget and I understand that his neck is on the line. We all know how that is, so he has to stay and protect the homefront. But he will be well represented by Ms. Roberts.

Hon. Jennifer Hillman, the representatives from the U.S. Trade Representative, and all the other distinguished panelists who will be joining us today on both sides of the issue, but particularly our guests from my own home State of Florida.

I would also like to express my appreciation to you, Mr. Chairman, for having this hearing on H.R. 2795, a bill that will change our trade laws so seasonal perishable agricultural industries can

qualify as an industry and, therefore, gain protection from import surges as other industries do.

Florida's fresh tomato industry, which provides 95 percent of the fresh market tomatoes during the winter months has been devastated during the past two growing seasons by Mexican tomato imports. Mexican tomato imports comprise 95 percent of all tomato imports and Mexico is the primary competition to Florida during the winter season. This import surge by Mexico has resulted in Florida tomato producers receiving prices that are below the cost of production, losses by Florida farmers in the amount of $209 million, and the loss of over 10,000 jobs.

Many Florida tomato farmers have had to watch their tomatoes rot in the fields because the cost of harvesting them is more than the price that they can receive if the tomatoes were sold. I would like to repeat that. The cost of harvesting them is more than they can receive for these tomatoes at the market.

With these types of losses sustained by one industry in just 2 years it is clear that the Florida tomato farmers will not survive if they are not able to access the transitional relief available to other agricultural industries. The Trade Act of 1974 already authorizes the President to provide trade remedies if the ITC determines that the domestic industry has been seriously injured by import surges.

A problem arises, however, when the producers of perishable agricultural commodities such as fruits and vegetables apply for relief under section 201. The statute does not allow the ITC to examine the impact of imports on the domestic industry on a seasonal basis, but rather only on a yearly basis.

In April 1995, the ITC denied relief to the domestic winter tomato industry even though the ITC recognized that the perishable nature of the tomatoes precludes the interchangeability of tomatoes harvested and marketed at different times of the year. The ITC was unable to consider seasonality without statutory authority providing for a seasonal industry, and that is what we are here for today.

Our bill would simply correct this problem by changing the definition of the domestic industry to permit but not require the ITC to consider the impact of perishable agricultural imports on a seasonal basis as opposed to only a yearly basis. This definitional change would ensure that transitional trade relief is also available to domestic seasonal industries which compete directly and often unfairly with international producers during the same growing season.

I believe the bill will be of significant assistance to those portions of the domestic agriculture industry which are currently bearing the full brunt of low-cost international competition such as the Florida tomato industry. Let me emphasize, however, this is not just a Florida bill. Other States such as California have exclusive seasonal industries. California is the only U.S. producer of avocados from May to June and the sole winter producer of asparagus. Current law, however, does not recognize these exclusive seasonal industries, and thus limits their access to section 201 trade remedies.

This bill is not about trade protectionism. It is about allowing all industries access to existing trade remedies when they are injured as a result of import surges.

I would like to also, Mr. Chairman, put into the record a letter that I have from Senator Dole expressing his support for H.R. 2795.

Chairman CRANE. Without objection, so ordered.

[The information follows:]

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER
WASHINGTON, DC 20510-7010

April 24, 1996

Honorable Philip M. Crane
Chairman
Committee on Ways and Means
Subcommittee on Trade
1104 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I would like to express my support for H.R. 2795, which is virtually identical to S. 1463 passed by the Senate earlier this year. I understand a hearing will be held on H.R. 2795 in the near future.

H.R. 2795 will allow the International Trade Commission to consider the seasonal nature of perishable agricultural commodities when making determinations of trade relief. This relief already exists in current trade law to assist domestic industries that are harmed by price-based import surges.

H.R. 2795 will ensure that this relief is made available to our nation's perishable commodities producers. Without this relief, jobs in the perishable commodities industry will continue to be seriously at risk.

I appreciate your consideration and support for this important legislation.

Sincerely,

BOB DOLE

Mr. SHAW. And I would yield at this time to the gentleman from California.

Mr. THOMAS. Thank you very much for yielding. I said I was not going to make an opening statement but the mention of the California problem, I think needs a bit of explanation because it appears as though this is just a tomato problem and a Florida problem. And the gentleman from Florida is absolutely correct; it is not. There will be a subsequent panel with representatives from California.

Our problem is somewhat different but the same. California is 900 miles long and we have a series of growing seasons and they move north. One of the products directly affected by this are grapes. The point that I want to make is that if you analyze all of the grapes grown during a year as a like product you are going to run into problems, because just as the tomato growing season from the beginning of the year to April is 95 percent exclusive in Florida, the grape growing season in California is literally from April until almost September. But in any particular geographic area, especially in the early months, it is virtually 100 percent of the product grown.

If you, as some of the detractors want us to do, try to judge like products 6 months apart, this is what happens. These are grapes. If we try to compare a like product 6 months from now, these are raisins, and they are not like products. Time does make a difference with perishable commodities.

I thank the gentleman for yielding.

Mr. SHAW. I thank you. I do not have a like example to show, this is a tomato and this is a tomato 6 months later, and I am not sure you would want to see it anyway.

[The opening statement of Mr. Ramstad follows:]

STATEMENT OF REPRESENTATIVE JIM RAMSTAD
WAYS AND MEANS SUBCOMMITTEE ON TRADE
HEARING ON H.R. 2795, A BILL REGARDING SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS
APRIL 25, 1996

Mr. Chairman, thank you for calling this hearing today to explore the effects H.R. 2795 would have on the U.S. industries producing perishable agricultural products.

Certainly, it is important to utilize safeguard mechanisms and grant our domestic industries temporary relief in appropriate circumstances.

At the same time, considering the importance of free trade and foreign markets that are open to American products, it is imperative we also discuss the potential consequences of this bill on all U.S. exports and trade relationships.

Mr. Chairman, thanks again for calling this hearing. I look forward to listening to the testimony of today's witnesses and exploring in greater depth these important issues.

Mr. SHAW. I would also like to recognize Congresswoman Ileana Ros-Lehtinen who has also joined us. Mr. Chairman, this particular bill is cosponsored by the entire Florida delegation with the exception of one of its members. So it has a very strong backing. We recognize the need for this and I would certainly hope that the Committee would look favorably on what we are trying to do.

I yield back.

Chairman CRANE. Ileana, do you have a statement you would like to make?

STATEMENT OF HON. ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. ROS-LEHTINEN. I have a statement, Mr. Chairman, that I would make part of the record. There are a few of us from south Florida who represent a great deal of this industry. All of us have a little corner of south Dade and this industry is very important to us. Not just in terms of jobs and livelihood, but also in terms of the future growth for south Florida. We see this industry not as a dying industry but as one that could really produce even better jobs and a brighter future for our children. We do not want to see this industry pack up and go away.

As Clay pointed out, it is far more beneficial now financially for them not to even pick the crop because—it has just been a very difficult situation for us. After Hurricane Andrew devastated a great number of these farms, now we have devastation that may be even far wider in scope and more damaging in its effect.

[The prepared statement follows:]

STATEMENT OF CONGRESSWOMAN ILEANA ROS-LEHTINEN BEFORE THE HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE AT ITS HEARING ON H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

I am pleased to join with the other members of the Florida Congressional Delegation in supporting the immediate approval of H.R. 2795 which will greatly assist winter tomato producers (from seven states including Florida) in their petition before the International Trade Commission (ITC) asking for relief from the recent surge of imported vegetables from Mexico. As the Senate has already passed this bill, its timely passage by the House of Representatives is extremely important.

This bill will allow the ITC to consider the seasonal nature of agricultural produce when making a determination of harm or injury to a domestic industry. It will eliminate a flaw in the Trade Act of 1974 which prevents the ITC from considering this important factor when determining the damage to seasonal agricultural producers throughout the nation, including Florida's tomato and bell pepper growers.

I am greatly concerned that domestic vegetable producers are given fair access to the trade remedy process before the ITC. The Florida Agriculture Commissioner reported recently that Florida alone could lose $1 billion this year due to Mexican produce being dumped below the cost-of-production price on the U.S. market. According to The Miami Herald, the number of Florida tomato growers has dropped from 200 two years ago to about 100 today due to this unfair increase in competition.

Florida's tomato and bell pepper growers are an important part of our nation's agricultural industry. Florida has almost half of the 136,000 acres which are planted with tomatoes each year throughout the U.S. It also provides over 40 per cent of our domestic bell pepper industry.

I appreciate the consideration of the subcommittee for this important legislation which will ensure fairness in the trade remedy process for all domestic producers, including seasonal industries.

Chairman CRANE. Thank you.

Mr. SHAW. Mr. Chairman, we had a number of our delegation members, in fact, probably over half of them who were going to testify and I suggested to them, to save time that they put their statement into the record. So without objection, I would hope that the Committee Chairman would allow that.

Chairman CRANE. That will be done.

[The information follows:]

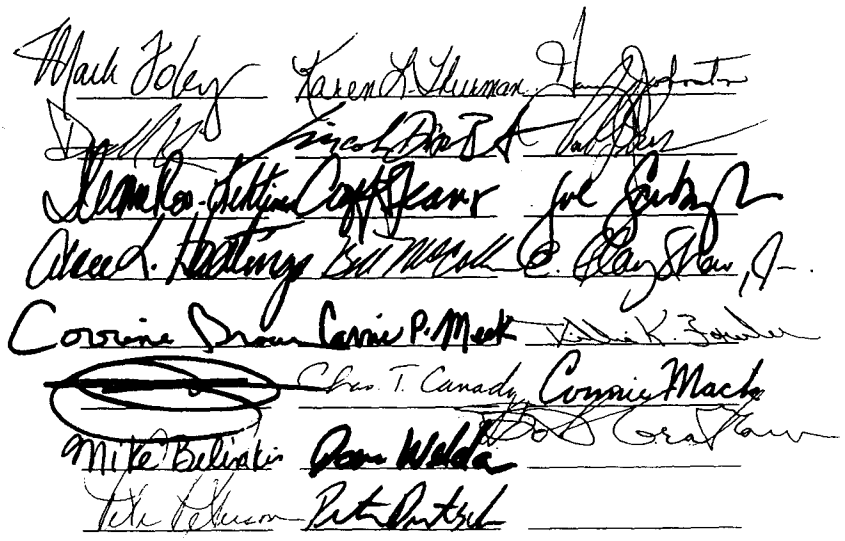
Statement of Members of the Florida Congressional Delegation

H.R. 2795
Before the House Trade Subcommittee
April 25, 1996

We, the undersigned members of the Florida Congressional Delegation, support the immediate enactment of H.R. 2795, a bill to clarify the definition of domestic industry for the purpose of trade investigations in perishable agricultural commodities. As the Senate has already passed this legislation, its timely passage in the House of Representatives is vital.

We are extremely concerned over the impact of the high volume of tomato imports from Mexico and the devastating impact they have had on the Florida tomato industry. As the Florida tomato industry is clearly its own distinct industry, we are extremely supportive of changes in current law to delineate this difference. Outside of Florida, this legislation will have a positive impact on producers of all seasonal agricultural commodities produced nationwide. Finally, according to the United States Trade Representative, this legislation is consistent with all of our current trade obligations.

We appreciate the Subcommittee's attention to this most serious matter and look forward to the speedy enactment of this bill into law.



Signatories to Florida Congressional Delegation Statement on H.R. 2795

Senator Connie Mack
Senator Bob Graham

Rep. Charles Canady
Rep. Karen Thurman
Rep. Mark Foley
Rep. Porter Goss
Rep. Dan Miller
Rep. Ileana Ros-Lehtinen
Rep. Alcee Hastings
Rep. Harry Johnston
Rep. Lincoln Diaz-Balart
Rep. Cliff Stearns
Rep. Joe Scarborough
Rep. Bill McCollum
Rep. Clay Shaw
Rep. Corrine Brown
Rep. Carrie Meek
Rep. Tillie Fowler
Rep. John Mica
Rep. Mike Bilirakis
Rep. Dave Weldon
Rep. Pete Peterson
Rep. Peter Deutsch

Chairman CRANE. Today we are going to hear from a number of distinguished witnesses. And because of time constraints, and I know there are witnesses that have plane deadlines and I know Members do, although ours are flexible obviously, I would ask that all of the witnesses try and compress your presentation to 5 minutes or less. But all written statements will become a part of the permanent record.

So with that our first witnesses are several of our distinguished colleagues, Senator Bob Graham from Florida, Hon. Porter Goss from Florida, Hon. Ed Pastor from Arizona, Hon. Charles Canady from Florida, and Hon. Dan Miller from Florida. So we will proceed in the order I just recited, and please move those mikes around to accommodate everyone.

Senator GRAHAM. Mr. Chairman, if it would be permissible, I understand that Congressman Canady has a serious time constraint and I would defer to Congressman Canady as the first speaker, with your permission.

Chairman CRANE. Very good; absolutely.

STATEMENT OF HON. CHARLES T. CANADY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CANADY. Thank you, Mr. Chairman. Thank you, Senator, I appreciate that. I am in the midst of a markup in the Judiciary Committee now and an amendment is pending.

I want to thank you, Mr. Chairman, for calling this hearing. I appreciate very much the opportunity to appear before you and Members of the Trade Subcommittee today to offer my support for H.R. 2795. This legislation, as has been discussed, is designed to clarify the definition under section 202 of the Trade Act of 1974 of a domestic industry with regard to trade investigations on perishable agricultural commodities. This is an issue of great importance to domestic growers and producers not only in my district in Florida but all over the United States.

The domestic winter tomato industry initially sought relief from Mexican import surges during the early part of 1995. However, the International Trade Commission determined in April 1995 that the growers were not able to justify an investigation into import surges under the existing law. Under current law, the domestic industry definition regards products like perishable agricultural commodities as a whole industry and does not take account for the fact that seasonal growers of a particular perishable agricultural commodity, such as tomatoes, face drastically different market conditions at different times during the year. The current law simply ignores the realities of the market for perishable agricultural commodities.

This unrealistic whole industry approach to perishable agricultural commodities makes it very difficult for growers who have suffered from seasonal import surges to obtain any relief. This inadequacy in the current law demands the urgent attention of this Congress. And until the Congress acts, American growers will continue to face devastatingly unfair competition with no effective remedies available to them from their own government.

H.R. 2795 corrects this inequity by providing that the market for fresh produce and perishable commodities be defined on a seasonal

basis. This does nothing more than require that the economic realities of the market for perishable agricultural commodities be taken into account.

Furthermore, H.R. 2795 will not abrogate any of our obligations under GATT or NAFTA. The U.S. Trade Representative's office has carefully reviewed this bill and found it to be consistent with these two trade agreements.

In conclusion, Mr. Chairman, H.R. 2795 is not anti-free trade. It simply expands the investigative powers of the U.S. Government to ensure that fair trade occurs. Imports of Mexican vegetables are up dramatically compared to last year. Mexican growers have boosted shipments of virtually every major Florida winter crop. Earlier in this season, shipments of some commodities were up by more than 600 percent over the same period last year.

The impact on Florida vegetable producers has been devastating. Due to the drastic collapse in prices, many Florida producers cannot recover the cost of production. Hundreds of producers in Florida have already gone out of business and many more have indicated that they cannot survive another season under similar conditions. If this legislative initiative is not passed, the domestic producers will face future growing seasons of continued unfair trade practices by foreign producers while the Government of the United States sits idly by.

Mr. Chairman, the measure before you today ensures that this critical American industry has the opportunity to gain access to already existing trade relief. I urge you to expeditiously consider and support this important measure.

I thank you, Mr. Chairman. I also want to thank my colleague from Florida, Mr. Shaw, for his outstanding leadership on this issue. I appreciate the opportunity to be with the Committee today and I apologize for having to exit and to return to the Judiciary Committee.

[The prepared statement follows:]

THE TESTIMONY OF REPRESENTATIVE CHARLES T. CANADY

BEFORE THE HOUSE WAYS & MEANS'
SUBCOMMITTEE ON TRADE

HONORABLE PHILIP M. CRANE
CHAIRMAN

H.R. 2795

APRIL 25, 1996
2:00PM
RAYBURN B318

Good afternoon Mr. Chairman. I appreciate very much the opportunity to appear before you and members of the Trade Subcommittee today to offer my support for H.R. 2795. This legislation is designed to clarify the definition under Section 202 of the Trade Act of 1974 of a "domestic industry" with regard to trade investigations on perishable agricultural commodities.

This is an issue of great importance to domestic growers and producers not only in my district in Florida but all over the United States.

The domestic winter tomato industry initially sought relief from Mexican import surges during the early part of 1995. However, the International Trade Commission determined in April of 1995 that the growers were not able to justify an investigation into import surges under the existing law. Under current law, the "domestic industry" definition regards products like perishable agricultural commodities as a whole industry and does not take account of the fact that seasonal growers of a particular perishable agricultural commodity, such as tomatoes, face drastically different market conditions at different times during the year. The current law simply ignores the realities of the market for perishable agricultural commodities.

This unrealistic whole industry approach to perishable agricultural commodities makes it very difficult or impossible for growers who have suffered from seasonal import surges to obtain any relief. This inadequacy in the law demands the urgent attention of the Congress. And until the Congress acts, American growers will continue to face devastatingly unfair competition with no effective remedies available to them from their government.

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Furthermore, H.R. 2795 will not abrogate any of our obligations under GATT or NAFTA. The United States Trade Representative's office has

carefully reviewed this bill and found it to be consistent with these two trade agreements.

In conclusion Mr. Chairman, H.R. 2795 is not an anti-free trade measure. It simply expands the investigative powers of the U.S. government to ensure that *fair* trade occurs. Imports of Mexican vegetables are up dramatically compared to last year. Mexican growers have boosted shipments of virtually every major Florida winter crop. Earlier in this season, shipments of some commodities were up by more that six-hundred percent over the same period last year. The impact on Florida vegetable producers has been devastating. Due to the drastic collapse in prices, many Florida producers cannot recover the costs of production. Hundreds of producers in Florida have already gone out of business and many more have indicated that they cannot survive another season under similar conditions. If this legislative initiative is not passed, the domestic producers will face future growing seasons of continued unfair trade practices by foreign producers -- while the government of the United States sits idly by.

Mr. Chairman, the measure before you today ensures that this critical American industry can gain access to already existing trade relief. I urge you to expeditiously consider and support this important measure.

Thank you Mr. Chairman and members of the subcommittee.

Mr. SHAW. Mr. Chairman, before Mr. Canady leaves I would like to point out that he originally brought this bill to my attention and together we filed it. So he has certainly been the No. 1 player here in the House.

Chairman CRANE. Very good. You are excused for understandable reasons, but we also thank Senator Graham for having yielded. With that, we will yield to Senator Graham.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you very much, Mr. Chairman. I want to thank you also for holding this hearing and commend you for your long years of leadership on behalf of full fair trade for the United States. I think that is the essence of the issue that is before us this afternoon.

Mr. Chairman, with your permission I would like to file for the record my full statement and confine my remarks to a few extemporaneous points.

Chairman CRANE. Without objection, so ordered.

Senator GRAHAM. The issue before us today is not a surprise. During the consideration of the North American Free Trade Agreement it was anticipated that there would be this issue between perishable agricultural products of a variety of forms and product coming from Mexico. For that reason, in the implementing legislation of NAFTA there was a special directive to the ITC to monitor the perishable agricultural industry in order to assess the impact. So what we are debating today is by no means unexpected.

Second, a fundamental principle of fair trade is that it be ruled by a set of laws. Fair trade is not a jungle. It is a regulated set of relationships to benefit the citizens of all of the nations who are involved in that trade.

A fundamental principle of the law is that a right for which there is no remedy is no right. And that essentially is what agricultural producers of perishable products have found to be the case with our relationship with Mexico. There is a stated right to be protected against activities which result in the sale of a product below the cost of production, which therefore damages a significant American industry. But the fact is, without the ability to recognize seasonal aspects of a perishable agricultural industry, whether they are the seasonality of grapes in California or peppers and tomatoes in Florida, it is a right without an effective remedy. The purpose of this legislation is to provide that effective remedy.

Third, this is a very bipartisan issue. As we all know, the passage of NAFTA was extremely contentious. It depended upon votes on both sides of the aisle in both Chambers for its success. The leadership of the Republican Party supported NAFTA, as did a Democratic President supported a NAFTA Agreement which had largely been negotiated under a Republican President. So from its beginning, NAFTA has had strong, bipartisan support.

The same is true of the matter before you today, Mr. Chairman. Congressman Shaw read from a letter dated April 24 from Senator Bob Dole in support of this legislation. If I could just read another two sentences from that same letter in which Senator Dole says, "H.R. 2795 will ensure that this relief is made available to our Na-

tion's perishable commodities producers. Without this relief, jobs in the perishable commodities industry will continue to be seriously at risk." Congressman Shaw has previously placed this letter in the record so I will not be redundant.

But this proposal has the strong support of Senator Dole. He supported it when it unanimously passed the Senate on January 26, 1996. He supports it in this letter of April 24. You will hear shortly from representatives of the administration supporting this proposal. So the strong bipartisan base which led in NAFTA continues in its recognition of the importance of this legislation.

The consequences of failure to act are serious. Not only will they be serious to this specific industry, but in my judgment they will undercut a fundamental basis for future free trade agreements. If American citizens do not believe that the rules established in NAFTA can be meaningfully enforced, what confidence are they going to have in future free trade agreements? I believe this issue is fundamental to building and continuing the base of American support for the principles of expanded trade.

Mr. Chairman, I see my time is up but I want to just make one final point. That is that there is a sense of urgency with this legislation. The winter vegetable industry in Florida begins planting in the early fall in order to meet production schedules that commence in October and November. So, unless this industry has some assurance that it will not be bludgeoned as it was in the last two winter seasons, you are going to see a lot of fallow fields in our State, and I suspect in other States, as a result of the unwillingness to make the heavy commitments that are required to grow the winter vegetables for Americans at the risk that they will again be subjected to the kind of predatory practices that have so damaged the industry in the last two winters.

So I would urge, Mr. Chairman, expedited attention to this matter by this Subcommittee, by the Full Committee, and by the House. And I can assure you, and with the support of Senator Dole, that it will get similar urgent attention in the Senate. Thank you, Mr. Chairman.

[The prepared statement follows:]

House Ways and Means
Subcommittee on Trade
U.S. Senator Bob Graham's Written Statement for the Record
Hearing on H.R. 2795
April 25, 1996

When Congress approved the North American Free Trade Agreement (NAFTA) in 1993, its proponents heralded the agreement as the start of a new, open trade relationship that would reap huge economic benefits for the countries of North America.

A majority of national legislators, including myself, supported NAFTA then, and many of us continue to believe that free trade is vital to America's competitive future in the global marketplace of the 21st century.

Free trade, however, must go hand in hand with fair trade. The confidence in one depends on the integrity of the other.

My support for NAFTA was contingent upon the agreement providing rules that help ensure fairness in our trading system. These rules permit serious and damaging import surges to be addressed in a manner consistent with the overall objectives of sustainable trade growth.

During the NAFTA negotiations, many of us raised concerns about the potential for tomato and pepper import surges from Mexico. Section 316 of the NAFTA implementing legislation acknowledges that unfair competition was likely to occur in the case of tomatoes and peppers. Congress directed the International Trade Commission (ITC) to closely monitor imports of tomatoes and peppers from Mexico so that they could act quickly if a safeguard action was warranted. At the time, Congress believed that is was not necessary to change Sections 201 and 202 of the Trade Act of 1974 to account for seasonal industries.

Last year, the ITC found that the Florida tomato industry did not constitute a domestic industry as defined in Sections 201 and 202 of the Trade Act of 1974. This leads us to where we are today, seeking a legislative change that will allow seasonal agricultural industries to seek relief from unfair trade.

Without prompt legislative reform, the domestic winter vegetable industry will soon end another post-NAFTA growing season with unfair rules and hampered ability to redress harm. In human terms, too many farm families have bankrupted, stopped production, and lost confidence in their Government to assure fairness.

U.S. fresh vegetable growers have united in an effort to level the playing field with their Mexican counterparts. They are seeking relief from Mexican import surges under Section 201 of the Trade Act of 1974. Mr. Chairman, I would like to enter for the record a letter from Senator Dole supporting this bill. Senator Dole states "without this relief, jobs in the perishable commodities industry will continue to be seriously at risk.

Since the implementation of NAFTA, for example, the value of Florida's tomato production has consistently decreased: $607 million in 1993, $465 million in 1994, and $387 million in 1995. These numbers clearly show the deleterious impact on the U.S. vegetable industry, but perhaps the best evidence comes from the many small growers whose livelihoods are under siege.

Teena Borek is one of those growers. A widow with two children, she has dedicated the past sixteen years to working her tomato farm. Already in 1996, she has lost thousands of dollars in a market depressed by dumped Mexican tomatoes. She's not alone. Many other farmers have suffered as a result of Mexican vegetables flooding the market.

Allowing unfair Mexican trade practices to go unchallenged could cost vegetable growers millions of dollars and thousands of jobs. It could uproot proud families that have worked the land for years. Worst of all, it could undermine the United States' ability to negotiate and implement future agreements.

In December, I sponsored S. 1463 -- which was later enacted by the Senate -- to make sure that the safeguard provisions were enforced for seasonal fruit and vegetable growers. Later in the House, a bipartisan group of Members from the State of Florida (Representatives Shaw, Canady, McCollum, Thurman) introduced H.R. 2795, a similar bill to the one I sponsored.

This legislation pertains only to perishable agricultural products which have a history in GATT, NAFTA, and our own safeguard laws. We consulted the Senate Legislative Counsel, USTR, the ITC and the staff of the Ways and Means committee in an effort to make sure the legislation is consistent with our GATT and NAFTA obligations. Furthermore, I want to highlight the fact that these trade agreements and laws all recognize the uniqueness of

agricultural products.

In the case of perishable agricultural products, direct competition among growers is limited based upon the shelf life of the product. Thus, growers in Virginia do not compete with winter growers in Florida. It is the perishable characteristics of fresh vegetables that justifies the seasonal industry definition. If fresh vegetables harvested in the winter months could be stored into the summer months that might be a different matter. I believe this legislation closely follows the intent that our safeguard laws apply to situations where products compete directly.

The bill simply provides producers of perishable agricultural products a fair opportunity to have their claims investigated by the ITC. They will still be required to show that increased imports are a "substantial cause" or threat thereof of "serious injury" to the industry. This legislative change does not reduce the standards of sections 201 and 202 or eliminate any parts of the ITC's investigation.

This legislation, H.R. 2795 is now before this committee for consideration. Mr. Chairman, I urge the immediate adoption of H.R. 2795, a bill that advances fair trading rules for American farmers in crisis. This bill is a step towards making NAFTA work as it was intended.

Chairman CRANE. Thank you, Senator Graham. We thank you also for inconveniencing yourself by coming over to the House side to testify before the Committee.

With that, I would like to yield to Porter Goss.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Mr. Chairman, thank you. In the interest of time, and because of the fact that I cannot say it any better, I would like to associate my remarks with Senator Graham and Representative Canady. I would like to congratulate you for what you are doing. I think basically what we have done is identify a real problem and you have provided a real solution and I think now it is just a question of getting on with it.

I have also been advised while I am sitting here, Mr. Chairman, that there is a rule on the floor that I have been asked to come immediately to assist with in order that we can all get out of here this evening. If you would allow me to be dismissed, and that quid pro quo, I will be quickly gone.

[The prepared statement follows:]

TESTIMONY ON H.R. 2795
BEFORE THE TRADE SUBCOMMITTEE OF
THE WAYS AND MEANS COMMITTEE
PORTER GOSS (FL-14)
25 APRIL 1996

MR. CHAIRMAN:

THANK YOU FOR HOLDING THIS HEARING. MOST OF THE PEOPLE YOU WILL HEAR FROM TODAY ARE HERE BECAUSE THE FLORIDA DELEGATION, THE ADMINISTRATION, AND THE GOVERNOR'S OFFICE HAVE ALL AGREED THAT THE PASSAGE OF CONGRESSMAN SHAW'S LEGISLATION, H.R. 2795, IS A PRIORITY.

AS A SUPPORTER OF NAFTA, I HAVE BEEN PLEASED TO SEE MY STATE GENERALLY BENEFIT FROM THE IMPLEMENTATION PROCESS. HOWEVER, AS THE REPRESENTATIVE OF TWO OF THE MOST PROLIFIC WINTER VEGETABLE PRODUCING COUNTIES IN THE STATE -- AND THE NUMBER ONE COUNTY IN WINTER TOMATO PRODUCTION -- I ALSO KNOW THAT WE HAVE SOME PROBLEMS THAT NEED TO BE ADDRESSED.

SINCE THE IMPLEMENTATION OF NAFTA BEGAN, OUR WINTER TOMATO GROWERS HAVE SUFFERED THROUGH TWO FULL SEASONS OF STEADILY DECLINING PRODUCT VALUE. FROM 1994 TO 1995, TOMATO IMPORTS FROM MEXICO WERE UP 57%. BY NOVEMBER OF LAST YEAR, MONTHLY SURGES OF IMPORTS WERE UP 214% OVER THE SAME MONTH IN 1994. PEPPER PRODUCERS ARE FARING LITTLE BETTER. AND PRODUCERS OF SQUASH, EGGPLANT, SWEET CORN, AND BEANS ARE ALSO FEELING THE PINCH.

IN HUMAN TERMS, THIS MEANS LOST JOBS, LOST REVENUE, AND RISING DEBT FOR THE PEOPLE INVOLVED IN THE PRODUCTION, PACKING, OR TRANSPORTATION OF WINTER FRUITS AND VEGETABLES. REVENUES ARE DOWN 40% FROM LAST YEAR IN BOTH PEPPERS AND TOMATOES, WITH DOLLAR LOSSES IN 1995 ESTIMATED TO BE $125 MILLION AND $30 MILLION RESPECTIVELY. THIS TRANSLATES INTO A 13% DECLINE IN EMPLOYMENT IN THESE INDUSTRIES.

ON 16 NOVEMBER 1993, THE PRESIDENT WROTE A LETTER TO THE MEMBERS OF THE FLORIDA DELEGATION, ASSURING US THAT HE WAS COMMITTED TO TAKING THE NECESSARY STEPS TO ENSURE APPROPRIATE ACTION WOULD BE TAKEN TO PROTECT THE U.S. WINTER FRUIT AND VEGETABLE INDUSTRY SHOULD IT BE REQUIRED. CONGRESS ALSO PREDICTED THE POSSIBLE NEED FOR ASSISTANCE BY INCLUDING SECTION 316 IN THE IMPLEMENTING LEGISLATION. THIS PROVISION SPECIFICALLY DIRECTS THE ITC TO CLOSELY MONITOR TOMATO AND BELL PEPPER IMPORTS AND IS DESIGNED TO ALLOW PRODUCERS OF THESE PRODUCTS TO SEEK RELIEF UNDER THE GLOBAL SAFEGUARD REMEDY (SECTION 201-202).

UNFORTUNATELY, IT SEEMS THAT THE SAFEGUARDS IN NAFTA AND THE IMPLEMENTING LANGUAGE HAVE NOT LIVED UP TO OUR HOPES. IN PART, THESE SHORTCOMINGS CAN BE SOLVED WITH BETTER ENFORCEMENT OF EXISTING LAWS AND REGULATIONS. HOWEVER, IN TERMS OF RELIEF PROVISIONS, WE FIND THAT WE NEED CONGRESSIONAL ACTION TO ALLOW SEASONAL INDUSTRIES TO ACCESS THEM. THAT IS WHAT CONGRESSMAN SHAW'S LEGISLATION IS ABOUT.

TODAY, FLORIDA'S WINTER GROWERS ARE SIMPLY ASKING THAT U.S. TRADE LAWS -- WHICH EXIST FOR PRECISELY THIS TYPE OF CASE -- BE FULLY ENFORCED. THE INTENTION OF THE SECTION 201 PROCESS IS NOT TO STOP TRADE, BUT TO FACILITATE THE TRANSITION OF SPECIFIC INDUSTRIES TO A NEW TRADE REGIME. THE TEMPORARY RELIEF ALLOWED FOR UNDER SECTION 201, IF OUR WINTER GROWERS COULD ACCESS IT, WOULD ALLOW THEM THE BREATHING SPACE THEY REQUIRE TO MEET THE COMPETITION. BEYOND FLORIDA, WE KNOW THAT THERE ARE PRODUCERS OF PERISHABLE AGRICULTURAL PRODUCTS IN STATES LIKE SOUTH CAROLINA, OHIO, VIRGINIA, AND CALIFORNIA WATCHING THIS ISSUE CLOSELY.

THERE ARE A NUMBER OF POINTS THAT MERIT EMPHASIS. FIRST IS THE FACT THAT SIMILAR LEGISLATION, INTRODUCED BY SENATOR GRAHAM OF FLORIDA, HAS ALREADY BEEN PASSED UNANIMOUSLY IN THE SENATE. IT SHOULD ALSO BE NOTED THAT THERE ARE PRECEDENTS IN U.S. CASE LAW, IN PREVIOUSLY PASSED LEGISLATION, AND UNDER OTHER STANDING U.S. LAWS FOR RECOGNITION OF A UNIQUE SEASONAL INDUSTRY. THE EXPERT PANELS TO FOLLOW WILL NO DOUBT TOUCH ON THE FINER POINTS OF THESE PRECEDENTS. LET ME ALSO ADD, FOR THOSE WHO ARGUE THAT THIS IS AN AFFRONT TO OUR INTERNATIONAL OBLIGATIONS, THAT CONSULTATIONS WITH THE COMMITTEE STAFF, THE USTR, AND THE ITC HAVE REVEALED THAT H.R. 2795 IS NOT INCONSISTENT WITH OUR GATT AND NAFTA OBLIGATIONS.

I WOULD ALSO LIKE TO CLARIFY A POINT THAT HAS BEEN DISTORTED BY

THOSE WHO OPPOSE H.R. 2795. THIS LEGISLATION IS NOT PRESCRIPTIVE -- IT DOES NOT LEGISLATE A RESULT, NOR DOES IT CREATE A NEW CATEGORY OF REMEDY. WITH THE CHANGES MADE BY H.R. 2795, OUR WINTER GROWERS WILL STILL HAVE TO MEET THE TEST FOR BEING CONSIDERED A TRULY SEASONAL INDUSTRY; THEY WILL STILL HAVE TO RECEIVE A FAVORABLE FINDING FROM THE ITC; AND THEY WILL STILL BE AT THE PRESIDENT'S MERCY FOR THE DECISION ABOUT WHAT RELIEF THEY MIGHT RECEIVE. THEY ARE NOT ASKING FOR SPECIAL TREATMENT, ONLY THAT THEY BE ALLOWED TO ACCESS THE RELIEF AVAILABLE TO OTHER INDUSTRIES UNDER CURRENT U.S. LAW.

THERE WILL BE SOME WHO MAY ASK WHY THE CHANGES ARE NEEDED IF OUR PEPPER AND TOMATO GROWERS ARE CURRENTLY PURSUING A SECTION 201 ESCAPE CLAUSE CASE. THE FACT IS THAT THE NUMBERS HAVE BECOME SO BAD FOR TOMATOES AND PEPPERS THAT THE SEASONAL ISSUE IS LESS OF AN IMMEDIATE PROBLEM FOR THEM. HOWEVER, THERE ARE OTHER WINTER INDUSTRIES, LIKE ZUCCHINI, SQUASH, AND EGGPLANT THAT ARE UNABLE TO MEET THE YEAR-ROUND NUMBER THRESHOLDS BUT ARE STILL IN GENUINE JEOPARDY. IT BEARS NOTING THAT, HAD THESE CHANGES BEEN IN PLACE, OUR TOMATO AND PEPPER GROWERS WOULD HAVE HAD AN OPPORTUNITY TO SEEK RELIEF BEFORE ENDURING A SECOND SEASON OF LOSSES. EVEN SO, PASSAGE OF H.R. 2795 TODAY WILL CERTAINLY BOLSTER THEIR CURRENT SECTION 201 CASE IF THERE SHOULD BE AN APPEAL.

FLORIDA'S WINTER FRUIT AND VEGETABLE GROWERS PERFORM A UNIQUE FUNCTION FOR THIS COUNTRY. THEY COMPETE HEAD-TO-HEAD -- NOT WITH OTHER AMERICAN PRODUCERS, BUT WITH FOREIGN PRODUCERS -- TO PROVIDE WINTER FRUITS AND VEGETABLES FOR AMERICANS. PRIOR TO THE PASSAGE OF THE NAFTA IMPLEMENTATION LANGUAGE, THEY RECEIVED ASSURANCES THAT THERE WOULD BE SAFEGUARDS AND RELIEF MEASURES IF, AS SOME OF THEM SUSPECTED MIGHT HAPPEN, THINGS WENT BADLY. WHILE H.R. 2795 WON'T FIX THE WHOLE PROBLEM, IT WILL BE A STEP TOWARD FULFILLING THE COMMITMENTS THAT WERE MADE TO THESE HARDWORKING FLORIDIANS WHO TODAY ARE STRUGGLING TO STAY IN BUSINESS, FEED THEIR FAMILIES, AND CONTRIBUTE TO THE U.S. ECONOMY.

Chairman CRANE. I will happily do that if you guarantee me I can catch a 6 o'clock flight.

Senator GRAHAM. I do not do guarantees, but it is better if I leave. [Laughter.]

Chairman CRANE. Thank you, Porter.

Next, Ed Pastor.

STATEMENT OF HON. ED PASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. PASTOR. Thank you, Mr. Chairman, for allowing me to testify before the Committee. As you know, there is a saying that "reasonable people will differ," and I hope to give you the other side of the story.

The reason I am here is that I represent the part of Arizona, Nogales, Arizona, through which many of the Mexican tomatoes enter the United States. It is of great interest to American businesspeople, at least in the area I represent, that we do not pass this legislation. This is a bipartisan issue. I believe that you have before you a letter from Governor Symington, who is a Republican, as well as my Republican colleagues from Arizona, expressing their opposition to this legislation.

Mr. Chairman, in the winter when you and your significant other go shopping and you come to the vegetable counter you probably will see red vine-ripened tomatoes. These tomatoes are luscious, beautiful in color, and equal in price to others you see that are greenish or light pink in color and hard. You probably buy the red tomato which appeals to you, and it's very likely that this tomato has been grown in Sonora, Mexico. It is being grown there because American businessmen have invested in that product. They have sold seed. They have sold greenhouses. They have sold fertilizer to Mexican farmers. So there is an American interest in this product.

Very recently I hosted Senator Graham, Congresswoman Thurman, Congressman Foley, and Congressman Ewing in Arizona. We made a trip into Nogales and into Sonora, Mexico, so they could see the process. I have to tell you that the reason the Florida growers are finding themselves in difficult straits is they cannot compete—basically, because of how the tomato is grown, packaged, and delivered to the marketplace and the final choices the American consumers make. Because of the products and the price they are buying and consuming tomatoes that are grown in Mexico.

So, those that lose if this piece of legislation is passed will be your constituents, your consumers who, in the winter, are looking for a product that they can buy that is affordable and yet has the quality they expect. Others who lose if this legislation is passed will be the American businessman or businesswoman who has invested in the production of this product. I stated before that American businesses sell the seeds and the fertilizer to Mexico and hire the people who transport these products. They have an investment in the Mexican tomato and will be negatively impacted if this legislation is implemented.

I spent 1½ years on the Agriculture Committee talking about the freedom to farm. The philosophy that I heard from its Chairman, Mr. Roberts, to its many Members was that the American farmer now would have to compete in a free market, and in order to com-

pete we had to pass new farm legislation which allows farming decisions based on market demands. That was the spirit of freedom to farm.

This piece of legislation, H.R. 2795, detracts from the freedom to farm philosophy because basically you are dealing with the problem legislatively so that farmers in the Southeast do not need to compete with the product that is being brought. This legislative fix, Mr. Chairman, goes against the philosophy of the freedom to farm. We now need to compete on a global basis and let the marketplace determine what products are consumed and produced.

I also think H.R. 2795 negatively impacts the spirit of free trade, and I would argue that it is against the spirit of NAFTA and WTO. In fact it reduces competition and may cause other countries who send their products to this country to retaliate if we build this wall to protect one particular item, the winter tomato.

Thank you, Mr. Chairman, for allowing me to testify.

Chairman CRANE. Thank you.

Mr. PASTOR. I would ask that I can submit my written testimony for the record.

Chairman CRANE. Without objection, so ordered.

[The prepared statement follows:]

STATEMENT OF THE HONORABLE ED PASTOR
Arizona - Second District

before the

SUBCOMMITTEE ON TRADE
House Ways and Means Committee

APRIL 25, 1996

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee regarding H.R. 2795 which proposes to include "seasonality" as a factor in defining an industry for the purposes of granting import relief. I am here today because this bill drastically affects the Mexican winter tomato industry which is very important to the Arizona economy. I would like to explain why H.R. 2795 is a dangerous piece of anti-competitive legislation that may lead to the misuse of import relief and dismantle the strides the U.S. has made toward open and free trade.

Mr. Chairman, the majority of Mexican fresh winter tomatoes come through Nogales, Arizona, in my district. Due to their excellent quality and flavor, these tomatoes are in high demand and this demand has created numerous employment opportunities for shippers, retailers, truckers and others in Arizona. Export businesses have also benefitted from this constructive trade relationship. Many Arizonan businesses export agricultural supplies, seeds, tractor parts, cardboard cartons, wooden palettes and other supplies to Mexico. These exports help Mexico ship back fresh winter produce. This two-way trade alliance has created jobs, wealth and stability on both sides of the border. To the people along the border, trade is not an abstract concept, it is very much a tangible reality. Open and free trade with our partners in Mexico has had a positive impact on Arizona's economy. However, these trade policies have increased competition for domestic winter tomato growers. H.R. 2795 is a legislative "fix" to reduce competition from foreign markets and protect domestic agricultural markets.

If H.R. 2795 is passed, it would allow domestic winter tomato growers to obtain import relief from Mexican winter tomatoes by adding a new "seasonality" factor to the definition of a "domestic industry." Presently, in accordance with the World Trade Organization (WTO) agreement, import relief is granted if import injury affects the industry as a whole. If a "seasonal" industry is permitted, domestic winter tomato growers would suddenly be eligible for protection from Mexican tomato imports even though they represent a fraction of the U.S. tomato industry. It seems to me that these actions undermine the very spirit of open and free trade by restricting foreign competition rather than allowing the marketplace to determine the outcome.

The anti-competitive effects of this legislation will reach far beyond the agricultural industry. Once seasonal relief is provided for the agricultural industry, other seasonal industries, such as the Christmas products industry and the clothing industry, will follow suit. Making import relief easy to obtain for seasonal agricultural products sets a precedent for other seasonal industries to seek protectionist favors as well.

H.R. 2795 will have a negative affect on U.S. exports when our trading partners respond by imposing their own trade barriers. Nogales, Arizona, in my congressional district, is a key U.S./Mexico crossing point and as such, we communicate often with our friends across the border. Numerous countries, including our Mexican neighbors, have expressed tremendous concern over the possibility that the U.S. might impose protectionist trade barriers such as those contained in H.R. 2795. If this legislation is passed, I feel it is inevitable that Mexico will retaliate with their own trade restrictions on U.S. agricultural

products. After all, political pressure is not unique to the U.S. We certainly cannot expect our friends overseas to extend free trade policies to us when the U.S. practices protectionism.

Mr. Chairman, the U.S. has worked hard to achieve free and open access to foreign markets and thus far, these efforts have been successful. United States agricultural exports are at an all time high. But, we should not lose sight of the fact that the U.S. is not the only source for agricultural products. In a free market, our trading partners can just as easily buy from other countries if the U.S. does not extend favorable terms. We simply cannot afford to alienate our trading partners by closing access to our markets and trade doors. I hope that we do not risk the gains we have made toward free trade by adopting a protectionist bill like H.R. 2795.

Thank you, Mr. Chairman, for the opportunity to address this issue.

Chairman CRANE. I would like to yield now to our colleague from Florida, Dan Miller.

Senator GRAHAM. Mr. Chairman?

Chairman CRANE. Yes, Senator Graham?

Senator GRAHAM. If I could ask your permission, I am afraid that I am going to have to leave. Again, thank you for holding this hearing.

Chairman CRANE. We thank you for giving us the time. Thank you so much, Senator.

Our colleague from Florida, Dan Miller.

STATEMENT OF HON. DAN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MILLER. Thank you, Mr. Chairman. I would like to submit my written testimony for the record and I also have a statement from the members of the Florida congressional delegation, including both of our U.S. Senators, with all the Florida members, Democrats and Republicans, with the exception of one, supporting this particular legislation.

[The statement of the members of the Florida congressional delegation can be found on page 13.]

While I disagree with my colleague from Arizona, the question is not an issue of fairness versus free trade. I supported NAFTA and GATT and the Florida delegation was the swing vote on NAFTA and GATT. We were basically given a lot of assurances that what is happening was not going to happen.

I realize the problem we are having is not a NAFTA issue, it is related to the peso problem and such. But the problem we are having is serious, because I have farmers in my district that have been there fourth and fifth generation, which is really old in Florida. We have two tomato seasons, for example, in my district, one in the fall and one in the spring. Our tomatoes do not compete with New York tomatoes or Michigan tomatoes or Illinois tomatoes. Our tomatoes compete with Mexican tomatoes and there has to be a fairness and that is part of the problem here.

That is what this bill does. It gives us the opportunity to say, is it really going to be fair trade? When you get down to the issue of NAFTA and GATT and future trade agreements, we need to make sure that they always remain fair.

I think my colleagues have stated very well the position of the Florida delegation, and I hope you will give serious consideration to this as one potential remedy to some of the problems. We feel it is unfair. Thank you.

[The prepared statement follows:]

TESTIMONY OF CONGRESSMAN DAN MILLER
BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE
APRIL 25, 1996

Mr. Chairman, I come before the Trade Subcommittee in support of H.R. 2795, sponsored by my Florida colleague Clay Shaw, Jr. I appreciate the opportunity to testify before you today, and I hope the Committee sees the merit in H.R. 2795.

I represent the Palmetto-Ruskin area of Florida, where citrus, tomatoes, and other crops thrive in the balmy temperatures and bright sunshine. The mild temperatures permit two growing seasons, and most of the produce enjoyed by Americans in the winter comes from either Florida or Mexico. My district is the second largest tomato producing region in Florida. The tomato industry is a key component of our local economy, worth about $100 million last year.

Our farms are independent, family owned enterprises. Many have been in operation for over a hundred years. There are few institutions in Florida that go back one hundred years!

Although our growers have been fiercely competing with Mexican farmers for the past decade or so, a year ago the market crashed. In an election year, the Mexican government had been secretly inflating its currency to get a short-term economic boost. When the bills came due and the Mexicans could not meet their foreign debt obligations, the peso absolutely collapsed. We all remember the rancorous debate over the Administration's Mexican bailout plan.

The crash of the peso destroyed the Mexican market for tomatoes, and last year they turned their eyes north to the U.S. market. The Mexicans desperately want dollars, and they are literally dumping tomatoes in the United States at distress prices. The perishable nature of fresh tomatoes means that the market is especially sensitive to supply-- you can't store the tomatoes and wait out the flood until the price rises. The peso remains in the gutter, and this season things were even worse-- in December Mexican shipments were 80% higher than the previous year.

Our trade agreements permit the ITC to take action when extraordinary surges of imports injure American industries. A Section 201 petition our growers filed last year for dumping relief was denied by the ITC. That's because, by law, the ITC looked at the tomato industry as a whole, including other states and different growing seasons. Unfortunately, Mexican winter tomatoes compete almost exclusively with Florida's crop, so our state has borne the brunt of the peso-led surge. The legislation before the House today will make a technical change in the law to allow the ITC to consider damage to seasonal industries. It does not require sanctions. It simply allows the ITC to look at the Florida winter market for what it is: a specific industry.

I support free trade. I voted for both NAFTA and GATT. America's economic future lies in access to world markets. This is especially true for agriculture. As the rest of the world develops and grows in wealth and population, America's farmers will provide their sustenance.

However, our tomato growers need the same protection under our trade laws as other products. The peso crash has destroyed the orderly transition to a free market envisioned in the NAFTA agreement. When Florida citizens see crops left in the fields to rot because it costs more to pick the tomatoes than the farmers would receive from selling them, that undermines support for free trade in general. Selling below the cost of production-- dumping-- is illegal under existing U.S. trade laws if the dumping causes injury. We know that Mexico is dumping its tomatoes, and it is readily apparent that Florida tomato growers are being injured in this dumping. I urge my colleagues to support this bill.

Chairman CRANE. Thank you, Dan.

Now, Peter Deutsch, who was not introduced earlier, who is testifying as a Congressman from Florida, as well.

STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DEUTSCH. Thank you very much, Mr. Chairman. I will be very brief.

I just want to point out again, which we have done, that this is a bipartisan issue in Florida. This letter, I think, really expresses our views very well.

I would, though, like very briefly to try to respond to what our colleague from Arizona said. I am ready for this issue to be decided on the equity and on the merits, because the reality is that I think the Florida farmers are only looking for what is fair. They can compete in a fair environment. What they are really only saying is exactly what this bill does. Let us question a seasonal issue, because the crops really are seasonal crops. But when you go out to the whole year, it just becomes a problem to prove the case.

It truly is a seasonal crop. It is a seasonal crop in Florida and different parts of the State. That is all we are asking for. You have to decide, but when you look at the merits, I think you will, I hope, and I am convinced, really will decide with us, so thank you very much.

Chairman CRANE. Thank you, Peter.

Mr. Thomas, do you have any questions for our remaining witnesses?

Mr. THOMAS. I do not necessarily have a question, but I do also want to respond to Mr. Pastor in absentia, that he had to leave and he was not able to stay. We are not talking about stopping fair competition. We are talking about the dumping of a product. The argument that freedom to farm means you ought to be able to carry out unfair trade practices simply is not the case.

The other part of his testimony, I guess, that bothered me was the idea that somehow people who are small farmers and who only possess the dirt and therefore cannot leave should be disadvantaged to the big business guy who can spend millions of dollars to set up an operation, in this particular instance in Mexico, but otherwise, all around the world, and that we had better wake up to the fact that there is a growing season for every perishable commodity in the United States somewhere in the world. If we are not going to look at it the way this bill wants to look at it, then we will sectorially or segmentally be wiped out by every other region of the world as the product comes in.

The other thing that was mentioned but needs to be underscored, Mr. Chairman, is that we have almost a case history of what you can do if you have 100 percent of the product in one location, and that is the U.S. garlic industry, which is virtually 100 percent in California. There is virtually one growing season. We had enormous competition from the Chinese dumping their product on the market. Had we not sought and gotten relief in a timely fashion, the next year's plantings would have been significantly reduced because they could not have competed and you would have had a sig-

nificant swing, totally dependent on what the Chinese do with their product coming to the marketplace.

So, as we discuss this issue, frankly, from a Trade Subcommittee Member point of view, I am going to be far more interested in the testimony of people who have to defend what we do in this country internationally, and I want to find out whether or not this conforms with the General Agreement on Tariffs and Trade. If it does, I cannot imagine why anyone would be opposed to this unless they wanted to perpetuate an unfair advantage.

Chairman CRANE. Thank you.

Mr. Shaw.

Mr. SHAW. Just very briefly, I would like to respond to what Mr. Pastor said about the quality of the Florida tomato. I can have within one-half hour a Florida-grown tomato which I know was grown in Florida because it was grown in my yard in Florida and is sitting here on the Chairman's desk to show the quality is excellent. It is a question of when you pick the tomato, and that is what makes the difference. I am sure that by the time they get to Arizona, that probably the tomato was probably picked a little on the green side in Florida and sent to Arizona, whereas the Mexican tomato may have been picked as ripened.

There is an old saying in the South. There are two things that money cannot buy, true love and homegrown, vine-ripened tomatoes.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. I do not know whether you know the details of this. I do not, but I have heard that the Florida tomatogrowers have filed a section 201 case with the ITC and they did not find any abuse here. What was the background of that?

Mr. MILLER. The problem is that they took it as a total tomato season for 12 months. They include New York tomatoes, they include the Michigan tomato season, and so it is a 12-month season. So you just compare the seasonal Mexican season to the total U.S. market, you are not going to find any dumping issues.

What we want to say is, let us compare apples to apples, tomatoes to tomatoes and see if there is dumping. If there is no dumping, then there would not be any action. We are just saying there should be a way to be able to compare the Mexican season with our season, which is a winter season. There is no way Mexican tomatoes are going to hurt you in——

Mr. HOUGHTON. So they have cut the season in half, right?

Mr. MILLER. Right.

Mr. HOUGHTON. But have you refiled?

Mr. MILLER. No. That is what we are asking, to have the right to be able to just have the season defined more as 3 months, if we are going to talk about the winter season.

Mr. HOUGHTON. But have you refiled this case with the ITC?

Mr. MILLER. The State was talking about refiling, but we cannot refile it on a seasonal basis. Maybe someone else can testify to that. I think it may have been refiled by the State this year.

Mr. HOUGHTON. I can ask it later.

Mr. MILLER. If we pass this legislation, then we can file comparing our season with their season.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Mr. Neal.

Mr. NEAL. I have no questions at this time, Mr. Chairman.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

I have some concerns about this approach, particularly the possibility that other nations may retaliate against U.S. exports of perishable products as a result of this. So I just wanted to set that out there for the record and I wondered if either of you had any comment on that.

Mr. DEUTSCH. I guess I keep going back to the facts being the facts. And to Mr. Houghton, you would still have to prove dumping. You would still have to make a determination. Do you really believe that there exists a concept of a distinct product of winter vegetable? The farmers tell us there really is. The facts show that there really is.

So I think that if, in fact, we were dumping, someone could, in fact, do that against us, if there were a distinct product. But I think that is the whole purpose of free trade, that it should be free, competitive trade, but if a country wants to dump products below cost, they should not be allowed to because that destroys the whole concept of a free international market.

Mr. CAMP. I thought it was a seasonal issue, not a dumping issue. It is both?

Mr. DEUTSCH. It is a seasonal issue, and the legislation will allow you to argue that there is a distinct season. That is what the legislation does.

Mr. CAMP. Dan, do you have any comments?

Mr. MILLER. That is the issue of dumping. You cannot dump Mexican tomatoes in August because they do not have Mexican tomatoes, I do not think, much in August. So the question is, we want to have that defined as a separate product category as such. But as far as retaliation, I do not know the answer to that.

Mr. CAMP. Thank you.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. I have no questions. Thank you.

Chairman CRANE. With that, I want to thank our panelists for their presentations.

Our next witness is Hon. Jennifer Hillman, General Counsel of the USTR. And again, if you can compress your presentation to 5 minutes or less, all printed material will be a matter of the permanent record.

STATEMENT OF HON. JENNIFER HILLMAN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. HILLMAN. Thank you, Mr. Chairman. I appreciate the opportunity to present the administration's views on this bill, H.R. 2795, a bill which would amend the Trade Act of 1974 to clarify certain definitions of domestic industry and like articles in certain investigations involving perishable agricultural products.

The administration supports this legislation. Unfortunately, safeguard mechanisms available under existing legislation often are unable to address the unique circumstances of perishable agricul-

tural products. The clarifications incorporated in H.R. 2795 would help correct this deficiency.

Clearly, this bill has its origin in the difficult situation faced by Florida producers of tomatoes and other winter vegetables. The administration has been working very closely with Florida growers and their representatives to cushion the impact of relatively high levels of imports of competing Mexican produce entering the U.S. markets during Florida's prime harvesting season. The administration has initiated a number of actions specifically designed to assist Florida growers of winter vegetables.

Frankly, this is a tough problem that has existed for many, many years. There is no single answer to addressing it. Our approach has been to pursue a package of initiatives designed to deal with what is a very difficult situation.

We have done a number of things, including improving the collection and dissemination of pricing, production, and trade data; efforts to ensure the effectiveness of the existing tariff rate quota on tomatoes; a push to increase domestic and foreign outlets for Florida tomatoes and other winter produce; and an effort to foster a greater dialog between Mexican and Florida producers on problems of mutual concern. We also support legislation which would apply to Mexican tomatoes the same packaging requirements that prevail in Florida.

Another important element of this package is the administration's support of this bill here before you today. Last year, the Florida Tomato Exchange and its constituent members sought relief under U.S. safeguard law. The WTO and the NAFTA both allow for safeguard procedures. Indeed, most of our trading partners have safeguard laws on their books.

I would only note there in response to a question that Mr. Houghton asked regarding the 201 action that was filed, the answer is yes, another 201 petition has been filed on tomatoes and bell peppers, as well as an antidumping investigation. The ITC has initiated its second 201 investigation involving tomatoes and the antidumping petition was also initiated by the Commerce Department. Those are both very recent developments in just the past few weeks.

In commenting on this, we note that Congress passed the safeguard law to provide a remedy, under certain circumstances, for U.S. industries that are hurt by imports. Unfortunately, the existing statute has not worked for the Florida tomato industry. The 1995 petition failed, in part, because of the interpretation of the current law definition of what is a domestic industry producing a like or directly competitive product. The law was interpreted so that all U.S. growers of fresh tomatoes were considered one industry.

In fact, tomatoes are produced on a seasonal basis. Different parts of the country produce the product at different times. Florida produces virtually all of the tomatoes grown in the United States for the market during the winter months. It competes directly with Mexican imports during that season.

Lumping the Florida industry together with the rest of the country does not reflect the reality of the fresh tomato market. This in-

terpretation made it more difficult for the Florida growers to demonstrate injury.

H.R. 2795 is a narrow and focused attempt to respond to the particular commercial circumstances of perishable agricultural products. The bill does not expressly override the current law for determining domestic industry under determinations under U.S. law. Rather, it permits the ITC to consider whether it is appropriate to define the domestic industry in a manner that takes into account the seasonal nature of perishable agricultural products. It is worth emphasizing that the bill does not require the ITC to reach a particular result but permits it to do so.

I would like to comment, then, just very quickly on the role of NAFTA in this matter. Understanding the problem of how we have gotten to this, I think, is somewhat important to sorting out how best to seek a solution. Some have attributed the recent imports of Mexican winter vegetables to the effects of NAFTA. I would note that in the past, there have been comparable surges in Mexican tomatoes at times over a period of almost 20 years. While the most recent surges have coincided with NAFTA, given the 20-year history, it is clear that this is not a NAFTA problem.

Indeed, the tariffs that exist under current law for non-NAFTA product is in the order of 4.4 cents per kilogram. The current tariff under NAFTA for Mexican tomatoes is 3.2 cents per kilogram, a difference of barely half a penny per pound. So clearly, this tariff differential between NAFTA and non-NAFTA products is not what is causing the surge in imports.

With that, seeing that the light is on, Mr. Chairman, I will thank the Committee for this opportunity to present USTR's views on the legislation and I would be happy to answer any questions that you might have.

[The prepared statement follows:]

TESTIMONY OF
JENNIFER HILLMAN
GENERAL COUNSEL
OFFICE OF THE U.S. TRADE REPRESENTATIVE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
April 25, 1996

Mr. Chairman, I appreciate the opportunity to present the Administration's views on H.R. 2795 -- a bill which would amend the Trade Act of 1974 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products.

The Administration supports this proposed legislation. Unfortunately, safeguard mechanisms available under existing legislation often are unable to address the unique circumstances of producers of perishable agricultural products. The clarifications incorporated in H.R. 2795 will help correct this deficiency.

Clearly, this bill has its origin in the difficult situation faced by Florida producers of tomatoes and other winter vegetables. The Administration has worked closely with Florida growers and their representatives to cushion the impact of relatively high levels of imports of competing Mexican produce entering the U.S. markets during Florida's prime harvesting season. The Administration has initiated a number of actions specifically designed to assist Florida growers of winter vegetables.

Frankly, this is a tough problem that has existed for at least twenty years. There is no silver bullet to solve it. Our approach has been to pursue a package of initiatives to deal with a difficult situation. These actions include efforts to

improve collection and dissemination of price, production, and trade data; efforts to ensure the effectiveness of the existing tariff-rate quota; a push to increase domestic and foreign outlets for Florida tomatoes and other winter produce; and an effort to foster greater dialogue between Mexican and Florida producers on problems of mutual concern. We also support legislation which would apply to Mexican tomatoes the same packaging requirements that prevail in Florida..

Another important element of this package is the Administration's support for H.R. 2795. Last year, the Florida Tomato Exchange and its constituent members sought relief under U.S. safeguard law. The WTO and NAFTA both allow for safeguard procedures. Indeed, most of our major trading partners have safeguard laws on the books.

Congress passed the safeguard law to provide a remedy, under certain circumstances, for U.S. industries that are hurt by imports. Unfortunately, the existing statute has not worked for the Florida tomato industry. The 1995 petition failed, in part, because of the interpretation of the current law's definition of a "domestic industry." The law was interpreted so that *all* U.S. growers of fresh tomatoes were considered *one* industry. In fact, tomatoes are a seasonal product. Different parts of the country produce at different times of the year. Florida produces virtually all of the tomatoes grown in the United States for the fresh market during the winter months. It competes directly with Mexican imports during that season. Lumping the Florida industry together with the rest of the country does not reflect the reality of the fresh tomato market. This interpretation made it more difficult for Florida growers to demonstrate injury.

H.R. 2795 is a narrow and focused attempt to respond to the particular commercial circumstances of perishable agricultural products. The bill does not expressly override the current standard for determining domestic industry under U.S. law. Rather, within the existing law, the bill does permit the International Trade Commission (ITC) to consider whether it is appropriate to define the domestic industry in a manner that takes into account the seasonal nature of perishable agricultural products. It is worth emphasizing that the bill does not require the ITC to reach a particular result.

I would like to comment briefly on the role of the North American Free Trade Agreement (NAFTA) in this matter. Understanding the problem is an important step in seeking a solution. Some have attributed the recent surge in imports of Mexican winter vegetables to the effects of NAFTA. In fact, there have been comparable surges in Mexican tomatoes at various times during the past twenty years. While the most recent surges have coincided with the early stages of NAFTA phase-in, NAFTA is not the problem.

In fact, tariffs on tomatoes and other winter vegetables were relatively low before the NAFTA was passed. Other than phytosanitary requirements, our only barrier to imported tomatoes has been a tariff. The current Most Favored Nation tariff rate for tomatoes is 4.4 cents per kilogram (March 1- July 14, 1996). Under NAFTA, the current tariff on Mexican tomatoes is 3.2 cents per kilogram (for the same period). The difference between these two rates -- about half a penny per pound -- is not sufficient to cause the surge in imports we have experienced. We have a problem in Florida with Mexican tomatoes -- but it's not caused by NAFTA.

I thank the Committee for the opportunity to offer USTR's views on this legislation, and I'm happy to try to answer any questions you might have.

Chairman CRANE. Thank you very much, Ms. Hillman.

Let me open with a question. Does H.R. 2795, in your estimation, violate the principle that the domestic industry examined must be the domestic industry as a whole, so that as long as a product that is grown in one season is like a product grown in another season, there is no basis for a distinction based on seasonality?

Ms. HILLMAN. Mr. Chairman, our view would be that what you are looking at in the statute is whether the product produced as a whole of a like or directly competitive product is what you are looking at, and the issue here goes to what is directly competitive or like, if you will, a January-grown tomato. I think what you are getting at is the issue of whether or not a January-grown tomato is directly competitive with a June-grown tomato.

Given that it is a seasonal product, the concept that you are getting at with this bill is whether or not products grown in one particular season that are a seasonal product are like or directly competitive with products grown in a different season. What you are saying is you are giving the ITC the discretion to make the determination that they are not directly competitive with products grown in a different season.

Chairman CRANE. My understanding is that a number of countries have alleged already in the WTO that the bill would be WTO illegal, including 14 members of the Cairns group, which represents one-third of the world's agricultural trade. How many countries have made this allegation and does this put us in an untenable position?

Ms. HILLMAN. In our judgment, it does not. We do not believe that the legislation would be inconsistent with the WTO. Indeed, current U.S. safeguard laws mirror exactly the WTO's definition of what is a domestic industry, meaning the definition that producers as a whole of the like or directly competitive product.

As we read the bill, the new provisions would not replace the current WTO-consistent definition, even for perishable agricultural products. The bill would simply permit the ITC to consider the unique circumstances of perishable agricultural products under the existing definition. Therefore, we do not believe that the bill can be read as inconsistent with our WTO obligations.

I would add that given that the NAFTA sort of relates to the same definition under the WTO, we would make the same argument, that the bill is not inconsistent with our NAFTA obligations, either.

Chairman CRANE. Thank you.

Mr. Thomas.

Mr. THOMAS. Thank you. Thank you very much for your testimony. What I get out of it is that in looking at the current U.S. law defining domestic industry and the WTO Agreement on safeguards, all we are in essence doing is giving the option of adding at the end of each of those definitions a phrase like "marketable at that time," because when you deal with perishable commodities, what it is, is a product that is marketable at that time. I think it is a long overdue approach.

The other thing I want to ask you is, do you not believe we increase the ability to find it appropriate under WTO if we increase

the percentage that an area represents when we try to determine whether or not that is the industry for that particular time?

Ms. HILLMAN. I think what you are getting at is——

Mr. THOMAS. For example, if you were to determine that a 60-percent penetration in the area was sufficient to have standing versus a 90-percent, your 60-percent position would be weaker than the 90-percent?

Ms. HILLMAN. I think the way the bill reads is that it states that the definition would be if the producers sell all or almost all of their production of the article in that growing season and the demand for the article is not supplied to any substantial degree by other domestic producers of the article who produce the article in a different growing season.

Mr. THOMAS. And if we were the Europeans or the Mexicans or someone else, we would define "nearly all" or "substantially" or "most" to be probably 51 percent, which would make it a fairly pernicious law, in my opinion, and a very flexible tool to deny people entrance into the market.

How do you think—and I know this is unfair, because you have not made the determination because this is not law—what do you think would be the ballpark percentage that would fulfill those somewhat subjective words?

Ms. HILLMAN. I think, Mr. Thomas, I am a little reluctant to stand in the shoes of the ITC. One of the reasons why we believe this provision is both appropriate and not inconsistent with our WTO obligations is that it leaves it up to the ITC to make the determination on a case-by-case basis, looking at the facts presented before them in a particular case.

Mr. THOMAS. And my guess is that—and I am able to go into that thicket—that they are probably going to use something like a 90-percent standard so that they can have a very high comfort level that this is, in fact, the market at that time. I think that underscores the problem that we have, because given the timeframe for growing virtually 90 to 100 percent of the marketable product at that time, if you do not get your product to market in that timeframe, you are completely devastated. That is the point that we are trying to make.

I do not think people realize how much perishable agricultural commodities have become a niche product to a very great extent, looking for a window in time to maximize their marketability. I have talked to Israelis who are growing tomatoes and I met one fellow who made his entire yearly money supply off a 2-week window in Toronto between Christmas and New Year's because nobody else was—he fooled them in, and, of course, he got exorbitant prices for beautiful large tomatoes, but he found his niche.

When particular farmers live in a particular area in which the niche is given to them by the season, to argue that they then should be determined to be damaged with people 1,000 miles away in an entirely different growing season, I think is the reason we finally moved to this position, and I applaud the administration for supporting this position.

Just let me finally say, Mr. Chairman, the idea that we are going to be retaliated against by Mexico if we do something like this, and I do not know if the General Counsel is aware of what is already

going on with Mexico, we have stone fruit that cannot cross the border because of phony phytosanitary arguments by the Mexicans because we are unwilling to allow weevil-infested avocados to come across and they honestly believe that we are dealing with this as a political decision rather than a scientific one.

It seems to me that this kind of action by this Committee would probably go a long way toward beginning to get some of the folks who share borders with us and who are in free trade agreements with us, to realize that we are going to base it upon science and we are not going to base it upon politics. I believe this is based on science representing growing seasons, not on politics. Do you think that is a fair statement? [Laughter.]

You can say "yes" and I will give up my time.

Ms. HILLMAN. What I will directly comment on is we obviously are going to take the position if we are acting within our WTO and our NAFTA obligations, there is no justification for retaliation.

Mr. THOMAS. That is what I was looking for. Thank you very much.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I will be very brief, in that I think you agreed with what he said, whatever that was. I would like to express the appreciation of the Florida farmers for the amount of attention that the Trade Representative has given to this very real problem, recognizing that it is a very real problem and for being very supportive.

I just wanted to repeat one thing I said in my opening statement, which I believe deserves being repeated, that our Florida farmers cannot afford the labor to pick the crops for the price that the Mexicans are bringing these tomatoes into this country. It is clearly out of our hands and it is in the hands of the Congress and I would hope that we move forward.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Mr. Chairman, I wonder if it would be possible, and if the gentleman would accept, if I could ask Mr. Shaw a question here.

Chairman CRANE. Certainly.

Mr. HOUGHTON. If the 201 case has been resubmitted and injury is proven and therefore remedies are given, would this legislation be necessary?

Mr. SHAW. I would like to defer to the Trade Representative on that. I think that it desperately needs clarification, and I would like to also point out that for these farmers down in Florida, there is very little that you can grow during the summer months. So they are totally dependent upon the winter months because in the summer the sun gets so intense during that period of time and the bug problem becomes very acute. So they strictly are confined to a single window here. But if Ms. Hillman has an answer to that, I would defer to her.

Ms. HILLMAN. I guess I would answer your question in two ways, Mr. Houghton. One is this bill is obviously not directed solely at this issue of Mexican tomatoes. It is a more generic problem with respect to perishable products. So the administration would take the view that because the bill is directed at a broad category of perishable agricultural products and not solely at the Florida tomato

situation, the ITC granting relief in the tomato situation may not address the more generic problem of perishable agricultural products.

Mr. HOUGHTON. Maybe I could just reclaim my time, then. I understand that, but the point is, it has been brought up because there is a tomato issue, not because there is a cabbage issue or something like that.

But I just wonder, in the overall scheme of things, and maybe I could ask your——

Mr. THOMAS. I think I can answer your question. The first 201 was argued on seasonality and was turned down because the law did not provide that. That is the basis of this legislation.

Their second 201 petition is based upon the industry as a whole, in which it is going to be far harder for them to show injury as that portion of the U.S. tomato industry, which is the front of the entire U.S. industry.

So my guess is, not wanting to anticipate a decision, it will be very, very difficult to show injury on a 201 case when the Florida tomato industry is looked at as a portion of the entire domestic tomato market. So I do not think they are going to win their second 201, in my opinion.

Mr. HOUGHTON. You may be right, and I do not want to prolong this thing, but I am assuming, for the sake of argument, that that is not the case and that there will be some correction made. I may be wrong, but that is the assumption.

I guess what I am getting at is that from a practical standpoint in terms of NAFTA and retaliation and all sorts of things like that, if there were a chance for you to get some sort of relief, would not the relief be better through the 201 process, which is a sort of a worldwide approach, rather than having a specific piece of legislation where people just are infuriated at the United States?

Mr. SHAW. Better to go through NAFTA?

Mr. HOUGHTON. Better to follow through the 201 process rather than having this particular piece of legislation.

Mr. SHAW. I think, as Mr. Thomas pointed out, that you need that extra piece of the puzzle to recognize the seasonality of the industry. The Florida industry closes down, basically, and if you spread it out over an entire year when Florida is not even producing tomatoes and Mexico, likewise, is not producing tomatoes, it becomes, as Mr. Thomas says, very, very difficult, if not impossible, to even make the case.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and welcome, Ambassador Hillman.

Ms. HILLMAN. Thank you.

Mr. PAYNE. Thank you very much for your testimony. I am trying to understand this issue, and certainly, I am very interested in getting it resolved and it seems this amendment is probably the very best way to approach that. It is a broader amendment than one simply to address the issue that is going on in Florida at the present time.

There are those who say, though, that there are concerns and there are reasons that we should expect that this would not withstand the scrutiny of a WTO panel. Apparently, their concerns

have to do with article 4 of the safeguards agreement which says, as it defines the domestic industry, that they are producers as a whole of the like or directly competitive products operating within the territory of a member of those whose collective output of the like or directly competitive products constitute a major proportion of the total domestic production of those products.

In other words, it sounds as if it is problematic in terms of trying to separate either by producer or by season an industry like this in the context of what is in the WTO Agreement. Could you comment on that, because I am trying to understand this and trying to understand how it relates to the WTO Agreement.

Ms. HILLMAN. Sure. What you are getting at is the issue of how broadly you can define this industry as a whole, producers as a whole. What we would argue is that our actions if this amendment were to pass would be consistent with our WTO obligations because they have that same definition of those that are affected, producers as a whole of a like or directly competitive product.

The argument goes to what is going to be viewed as a directly competitive product, whether or not you are going to view a January-grown tomato as directly competitive with a June-grown tomato. Clearly, what the ITC would be asked to determine on a case-by-case basis, based on the facts of the particular situation, is whether or not those items are, in fact, directly competitive, given that they are grown and sold and marketed in a different season when, theoretically, prices and other factors in the market are different for the product, that it has a seasonality to it, it has a limited time that it can be sold.

It would be a case-by-case determination on the facts by the ITC, where the ITC would be given the liberty of making a determination that products grown in this seasonal basis is not directly competitive with products or not like—I mean, they would make a determination of whether they are like or directly competitive with products grown in a different season. What they would be then deciding is whether or not they want to grant relief based on competition between imports coming in at the same time as that group of directly competitive products from a given season.

So what you are really getting at is giving the ITC discretion to determine on a case-by-case basis what is a like or directly competitive product to the imports coming in. You would be then choosing the producers as a whole of the product that is, again, like or directly competitive with that season of product coming in.

Mr. PAYNE. So again, then, your position and the position of the administration is that this amendment clearly falls within the——

Ms. HILLMAN. We take the view that this would be consistent with our WTO obligations and consistent with our NAFTA obligations, given that they are based on the same definition of who is eligible for relief.

Mr. PAYNE. You mentioned this has been going on for a very long time and is not directly related to NAFTA. Have there been other attempts such as this in the past to try to deal with this, or are you familiar with them?

Ms. HILLMAN. The issue of the seasonality and whether there should be changes, my understanding is, yes, the Congress at various points has considered a number of different pieces of legisla-

tion. In fact, if my memory is correct, Mr. Thomas has also in the past been an author of various kinds of provisions to look at this issue of seasonality of product in terms of various kinds of relief efforts under our trade laws.

Mr. THOMAS. Would the gentleman yield?

Mr. PAYNE. Yes.

Mr. THOMAS. We were very successful in the early and mideighties in getting the U.S. Trade Representative to understand that when you find relief favorable of a perishable commodity and that relief occurs 9 months, 12 months after the fact, it does not bring a whole lot of relief. We passed a series of bills which produced a 27-day perishable commodity fast track procedure, including review by the President, and I believe it has been very successful in meeting the needs of unique products under unique circumstances.

I thank the gentleman for yielding.

Mr. PAYNE. Thank you very much, and thank you, Madam Ambassador, and thank you very much for the good job that you are doing at USTR.

Ms. HILLMAN. Thank you very much.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. No questions.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. No, I have no questions. Thank you.

Chairman CRANE. We want to thank you, Ms. Hillman, for your testimony and appreciate your appearance today.

With that, I would like to invite our next panel, made up of two State Departments of Agriculture. We have Becky Doyle, director of the Department of Agriculture in my home State of Illinois, and Dr. Martha Roberts, deputy director for food safety from the Florida Department of Agriculture and Consumer Services. Dr. Roberts will read the Florida Commissioner, Robert Crawford's, testimony. He was not able to be with us today.

With that, I would again ask you if you could try and keep your presentations to 5 minutes or under. Any additional printed material will be a matter of the permanent record and I would like to yield to Ms. Doyle.

STATEMENT OF BECKY DOYLE, DIRECTOR, ILLINOIS DEPARTMENT OF AGRICULTURE

Ms. DOYLE. Thank you, Mr. Chairman. It is good to see you. I do not get to see you often enough in Illinois.

I hope you can be a part of this, because this is based on Illinois agriculture. I am here representing today not only Illinois agriculture but the State of Illinois. Our agency serves more than 75,000 farmers and all of the consumers in the State of Illinois. Like others in our economy, our farmers depend on export markets for a growing share of their incomes. I have long believed in and worked for free trade and I represent a Governor, Jim Edgar, who also worked with Congress and recent administrations to promote more open world markets.

We are even stronger supporters of free trade today as we see the benefits that are accruing to Illinois farmers from NAFTA and WTO. For example, agriculture exports represent approximately 23

percent of all Illinois exports to Mexico and 7 percent of all of our exports to Canada.

We are disturbed, therefore, by the sudden reemergence of protectionist arguments in this Nation, both in electoral politics and in legislative and regulatory affairs. I am particularly troubled by this Nation's willingness so soon after years of professional solid negotiations to open global markets to consider breaking its word and unilaterally changing the rules. We feel that if we open this door, it will be an open invitation to other nations to do the same, creating a downward spiral which can only have disastrous effects.

Trade agreements are, after all, a realignment toward comparative advantages which create the efficiencies which benefit consumers and, in the long run, also protect and benefit producers.

The seemingly small issue at the root of the legislation before this Committee today is being supported by what we see as a protectionist trend and, at the same time, is serving as protectionism's poster child. That is why 15 other nations have already objected to this measure and why the 14-member Cairns group has expressed its concerns. A vote by this Committee against H.R. 2795 would not only be of great importance in and of itself, it would also send a message to our trading partners and to leaders in the U.S. Government that we must protect the sanctity of our trade agreements.

I am not the only State Agriculture Director opposed to H.R. 2795. My views are shared by directors and commissioners from other large agricultural States. Most of the 50 States, especially the large agricultural States, can identify a sector of their agricultural economy which has been hurt, at least apparently hurt, by recent trade agreements. But rather than ask Congress for a special preferential treatment, we are working within our States to try to help those sectors that have been harmed, help them identify different options. I would respectfully suggest that the proponents of this bill might want to work with the producers in their States, also, to do the same.

In a letter to your Committee, several State directors or commissioners of agriculture stated that this bill could significantly reduce the gains the agricultural sector has made in the international marketplace. We would like to present a copy of that letter for the record.

Chairman CRANE. Without objection, so ordered.

[The information follows:]

February 28, 1996

The Honorable Bill Archer, Chairman
Ways and Means Committee
U.S. House of Representatives
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Archer:

As leaders of agriculture in the states we represent, we would like to express our opposition to S.1462 and S.1463, and companions H.R. 2921 and H.R. 2795, respectively. If enacted, these bills could significantly reduce the gains the agriculture sector has made in the international marketplace. We believe the gains we have made in the last few years are just the tip of the iceberg for U.S. agriculture.

Just last year, U.S. agricultural exports totaled $54.1 billion. The projection for 1996 is a whopping $60 billion. These gains are due in part to the enactment of the North America Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), despite the economic crisis in Mexico. Because our states' commitment to free trade is solidly for the long-term, we are concerned with the potential consequences these bills would have on our industry's profitability.

S. 1462/H.R. 2921 would provide protection for Florida tomato growers from competition. During both trade agreements' negotiations, legal protection was agreed to in the form of tariff-rate quotas (TRQs) and lengthy phase-out periods. The Florida tomato industry has a 10-year phase-out period for its TRQ. S.1462/H.R.2921 would provide additional protection by requiring Mexican growers to pack their variety of tomato in the same manner that the Florida industry packs their tomatoes, while not regulating other varieties grown in the U.S. By erecting national standards for imported foreign produce while not requiring all domestic produce to follow suit, these bills create a non-tariff barrier and fall short of meeting "national treatment" standards under the NAFTA and GATT. Daily, we work to remove similar barriers and fight national treatment violations to improve opportunities for U.S. agricultural exports. A change like this would affect our nation's ability to fight for export opportunities.

Secondly, the Congress has authorized marketing order quality standards that both domestic and foreign produce must meet, regardless of how they are packaged. These standards protect U.S. consumers from sub-quality produce and are industry-initiated. Without the changes to national packing standards, U.S. consumers will still receive quality produce.

S.1463 and H.R.2795 are perhaps even more egregious than the former bills. These two bills would provide protection for the Florida tomato industry by changing the definition of an "industry." The "seasonal industry" definition would provide additional protections over and above those negotiated under the NAFTA and GATT. These two trade agreements were originally negotiated with specific windows of time to address seasonality concerns about competitive imports by applying additional tariffs during sensitive production periods. S.1463 and H.R.2795 would create a precedent from foreign competition. It would undermine everything we have worked for during the last 10 years to open world markets.

Changes like these go against everything our trade negotiators agreed to under the NAFTA and GATT. They also jeopardize our standing as the leader of the free market. We urge you to evaluate the impact that reduced foreign trade would have on the agriculture industry. The answer is clearly one that we cannot afford, especially when federal policy is directing U.S. agriculture producers to be more responsive to the marketplace.

We would like to submit these comments for the committee's record when hearings are held, and urge you to join us in opposing this legislation.

Sincerely,

Rick Perry
Texas

Illinois

Ms. DOYLE. I hope that you will keep in mind how amazing these gains have been since enactment of NAFTA and the WTO accords and what H.R. 2795 would be imperiling. In just the past 2 years, U.S. agricultural exports have jumped by one-third to $60 billion. Protecting American agriculture's ability to make such gains is obviously much more important than unfairly protecting a single sector of our vast agriculture industry from fair competition.

We feel there is little doubt that H.R. 2795 would imperil those gains. If passed, the bill would require the United States to make trade concessions that could harm other U.S. exporters, encourage other countries to employ the seasonality principle to restrict U.S. exports, and disrupt imports from other U.S. trading partners.

Perhaps most troubling, however, is how this proposed action could undermine the progress toward stability and order in the global economy which we have worked so hard to achieve. The United States has long been pressing other nations not only to accept more open markets but to enforce these new rules, to live up to their obligations, and we should, too.

[The prepared statement follows:]

STATEMENT OF BECKY DOYLE
DIRECTOR, AGRICULTURE DEPARTMENT
STATE OF ILLINOIS

Good afternoon. My name is Becky Doyle. I am the Director of the Illinois Department of Agriculture, and I very much appreciate the opportunity, Mr. Chairman, to appear before this Committee today.

My agency serves more than 75,000 farmers in our state. Like others in the Illinois economy, these farmers depend upon export markets for a growing share of their incomes. I have long been a believer in free trade, and I represent a Governor who has worked with Congress and recent administrations to promote more open world markets. We are even greater believers in free trade today as we see the benefits that are accruing to Illinois farmers from the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) accord. For example, agricultural exports represent approximately 23 percent of all Illinois exports to Mexico and 7 percent to Canada.

I am disturbed, therefore, by the sudden re-emergence of protectionist arguments in this nation, both in electoral politics and in legislative and regulatory affairs. I am particularly troubled by this nation's willingness, so soon after years of solid negotiations to open global markets, to consider breaking its word and unilaterally changing the rules. If we open this door, it will be an open invitation to other nations to do the same, creating a downward spiral which can only have disastrous effects.

The seemingly small issue at the root of the legislation before this committee today is being supported by this protectionist trend and, at the same time, serving as protectionism's

posterchild. That is why 15 other nations have already objected to this measure in Geneva and why the 14-member Cairns group has written to this Committee about its concerns.

A vote by this committee against H.R. 2795 would not only be of great importance in and of itself. It would also send vital signals to other nations and to others in the U.S. government to protect the sanctity of our trade agreements.

I am not the only state agricultural commissioner opposed to H.R. 2795. My views are shared by commissioners from other large agricultural states. In a letter to your committee, we stated that this bill "could significantly reduce the gains the agricultural sector has made in the international marketplace."

I hope that you will keep in mind how large those gains have been since enactment of the NAFTA and the WTO accords and what H.R. 2795 would be imperiling. In just the past two years, U.S. agricultural exports have jumped by a third—to $60 billion. Protecting American agriculture's ability to make such gains is obviously much more important than unfairly protecting a single sector of our vast agriculture industry from fair competition.

There is little doubt that H.R. 2795 would imperil those gains.

If successful, this bill would:

1. **Require the U.S. to make trade concessions that could harm other U.S. exporters.**

Both the NAFTA and WTO require countries imposing safeguards measures to compensate the affected exporting countries by making "concessions having substantially equivalent trade effects." If the countries involved cannot agree on appropriate compensation, then the exporting countries may decide to unilaterally suspend "equivalent" benefits owed the United States, perhaps by raising tariffs or reducing quotas on some U.S. products.

2. **Encourage other countries to employ the "seasonality" principle to restrict U.S. exports.**

This proposal sets a dangerous example for other countries wishing to enact similar changes in their own laws. Major American exporters — of goods ranging from pork and peaches to corn and wheat — could find themselves being denied the opportunity to compete fairly in their current export markets. As the world's largest exporter, the United States has the most to lose from introducing new forms of protectionism.

3. **Diminish the ability of the U.S. to hold other countries to their trade commitments.**

The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements only undermines this "enforcement" initiative. U.S. industries hurt by the failure of foreign governments to comply with their trade obligations could find it harder to obtain adequate remedies.

4. **Disrupt imports from other U.S. trading partners.**

Although the "seasonality" legislation was proposed to protect Florida growers from imports of Mexican tomatoes during the winter months, it could disrupt imports of numerous "seasonal" products from Europe, Canada, Israel, Chile and elsewhere that are consumed or processed through out the United States. Imports could face new barriers whenever any group of "seasonal" U.S. producers is found to be injured by import competition.

Perhaps most troubling to me, however, is how this proposed action could undermine the progress toward stability and order in the global economy which we have worked too hard to achieve. The United States has long been pressing other nations not only to accept more open markets but to enforce these new rules, to live up to their obligations. For us to now be the one considering going back on its word, as H.R. 2795 would do, suggests the beginning of the breakdown of the system. We cannot afford to let this happen. We cannot afford to play fast and loose with the framework of the international trading system. We cannot afford to pass H.R. 2795.

Chairman CRANE. Thank you, Becky.
Dr. Roberts.

STATEMENT OF BOB CRAWFORD, COMMISSIONER OF AGRICULTURE, STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; AS PRESENTED BY MARTHA ROBERTS, PH.D., DEPUTY COMMISSIONER

Ms. ROBERTS. Mr. Chairman, Members of the Subcommittee, I am Martha Roberts, Deputy Commissioner of Agriculture for the State of Florida, representing Commissioner Bob Crawford, who regrettably could not be here due to conferencing on our budget today by the Florida legislature.

The legislation before you today clearly and positively affects both Florida agriculture's perishable fruit and vegetables industry and agriculture nationwide. Mr. Chairman, it is my distinct privilege to present to you strong support from agriculture for the passage of H.R. 2795. This legislation, we believe, is a natural step forward in recognizing the unique characteristics of the ever-changing landscape of agriculture. We want to express to the bill's sponsor, Congressman Clay Shaw, the gratitude of the people of Florida for the leadership demonstrated by his efforts to pass this needed legislation.

I am pleased that the legislation recognizes a distinct and critical difference that we must not forget. Perishable fruits and vegetables cannot be stored like corn, wheat, and other grains, nor can they be stored indefinitely either frozen or refrigerated, like meat and poultry, and held off the market until prices change. So the trade laws that affect perishable products grown in short, concentrated growing seasons must be relevant trade laws.

Congress has labored long and hard to write laws that promote trade and provide remedies for those adversely affected by trade. At the core is a recognition by Congress that as we move to expand trade, domestic producers may be impacted by new conditions of trade.

Mr. Chairman, the Subcommittee has been the originating point of the laws that seek to ease this tension. The safeguard provisions written into the law by this Committee may one day have critical importance to any producer facing newly global competition. For these measures to truly be safeguards, they must work effectively.

The creation of safeguards for winter-produced fruits and vegetables was one agreement made by Congress at the end of the NAFTA debate. In relation to this, in June 1994, the International Trade Commission published report 2771 regarding "The Monitoring of U.S. Imports of Tomatoes." Section 316 of the NAFTA Implementation Act required the commission to monitor U.S. imports of fresh or chilled tomatoes and peppers. And in an opening letter to Congressman Sam Gibbons, then ITC Chairman Don Newquist explained the difficulties of monitoring and reported that recognition of seasonal production would not be possible without statutory change.

Florida producers and delegation members had been told that section 316 was included in the NAFTA Implementation Act in an attempt to monitor the volatile fresh seasonal market for winter fruits and vegetables produced October through May. The ITC let-

ter from then ITC Chairman Don Newquist further stated that, "limiting the scope to the winter marketing season would focus on the time period when imports are of greatest concern to competing domestic growers."

Since the NAFTA Implementation Act requires ITC monitoring until January 1, 2009, for the purposes of expediting relief either under section 302 of the Implementation Act or section 202 of the Trade Act of 1974, then it is critical that we have a workable definition that recognizes commercial reality.

Mr. Chairman, in the dead of winter, when the rest of our Nation sleeps under a blanket of cold and snow, Florida is producing the fresh fruits and vegetables for our Nation. This absence of other winter-producing areas in the United States was also recognized very clearly by the 1991 GAO Report on United States-Mexico trade where they very distinctly showed the seasonality of our production and other States' productions of fruit and vegetables for the Nation's food supply.

H.R. 2795 corrects or clarifies the law and recognizes that perishable agricultural products and producers may exist in the marketplace during distinct periods of time. For the trade laws of our Nation to work, for the international trade agreements we have signed to work as Congress envisioned them, the special safeguard provisions must be effective for all agricultural products, not just for those products stable in long storage conditions and not just in those areas that produce throughout the year. H.R. 2795 is an effective measure. We should not fear retaliation from measures consistent with international trade agreements.

I urge your support of this legislation and we would very much like to provide you copies of resolutions from the Governor and cabinet of the State of Florida, from the Florida House of Representatives, and from the Florida Senate regarding enforcement of trade laws. Thank you, Mr. Chairman.

[The prepared statement and attachments follow:]

Testimony of
Commissioner Bob Crawford
State of Florida

Before the
Subcommittee on Trade , Committee on Ways & Means Considering
H.R. 2795

April 25, 1996

Mr. Chairman, Members of the Subcommittee, I am Bob Crawford, Commissioner of Agriculture for the State of Florida. It is my duty to protect the health, vitality and competitiveness of Florida agriculture. The legislation before you today, clearly and positively affects both Florida agriculture's perishable fruit and vegetable industry, and agriculture nationwide. Mr. Chairman, it is my distinct privilege to present to you strong support from agriculture for passage of H.R. 2795. This legislation is, I believe, a natural step forward in recognizing the unique characteristics of the ever changing landscape of agriculture. I want to express to the bill's sponsor, Congressman Clay Shaw, the gratitude of the people of Florida for the leadership demonstrated by his efforts to pass this needed legislation.

I am pleased that this legislation recognizes a distinct and critical difference that we must not forget. Perishable fruits and vegetables can not be stored like corn, wheat or other grains, they can not be stored indefinitely frozen or refrigerated like meats and poultry or held off the market until prices change. So the trade laws that affect perishable products, grown in short concentrated growing seasons, must be relevant trade laws.

Congress has labored long and hard to write laws which promote trade and provide remedies for those adversely affected by trade. At the core is the recognition by Congress that as we move to expand trade, domestic producers may be impacted by new conditions of trade.

Mr. Chairman, this subcommittee has been at the originating point of the laws which seek to ease this tension. The "safeguards" provisions written into law by this committee may one day have critical importance to any producer facing newly global competition. For these measures to be "safeguards", they must work effectively.

Safeguards for winter-produced fruits and vegetables was one agreement made by Congress at the end of the NAFTA debate. In relation to this, in June, 1994, the International Trade Commission published Report 2771 regarding the Monitoring of U.S. Imports of Tomatoes. Section 316 of the NAFTA Implementation Act required the Commission to monitor U.S. imports of "fresh or chilled tomatoes" and peppers. In an opening letter to Congressman Sam Gibbons, then ITC Chairman Don Newquist explained the difficulties of monitoring and reported that recognition of seasonal production would not be possible without statutory change.

Florida producers and delegation members had been told that Section 316 was included in the NAFTA Implementation Act in an attempt to monitor the volatile fresh seasonal market for winter fruits and vegetables produced October through May. The ITC letter further stated that "limiting the scope to the winter marketing season would focus on the time period when imports are of greatest concern to competing domestic growers." Since the NAFTA Implementation Act requires ITC monitoring until January 1, 2009, for purposes of expediting relief under section 302 of the Act or section 202 of the Trade Act of 1974, it is critical that we have a workable definition that recognizes commercial reality.

Mr. Chairman, in the dead of winter when the rest of our nation sleeps under a blanket of cold and snow, Florida is producing the fresh fruits and vegetables for our nation. This absence of other winter producing areas in the U.S. was recognized by the 1991 Government Accounting Office Report on U.S.-Mexico Trade and showed the seasonality of our production for our nation's health and food supply.

H.R. 2795 corrects or clarifies the law and recognizes that perishable agricultural products and producers may exist in the marketplace during distinct periods of time. For the trade laws of our nation to work, for the international trade agreements we have signed to work as Congress envisioned them, the special safeguards provisions must be effective for all agricultural products, not just for those products stable in long storage and not just for those areas that produce throughout the year. H.R. 2795 is an effective measure, and we should not fear retaliation from measures consistent with international agreements.

Mr. Chairman, The Governor and Cabinet of the State of Florida, the Florida House of Representatives, and the Florida Senate, have in three separate resolutions this month recognized the unparalleled effects of imports on Florida agriculture and have resolved that they urge Congress to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement and to quickly take appropriate administrative action to prevent further adverse effects on Florida's agricultural industry. Mr. Chairman, H.R.2795 will provide positive action to prevent further adverse effects and will do so in a manner consistent with the international trade agreements of our nation. I urge your passage of this measure.

State of Florida

HOUSE OF REPRESENTATIVES

House Resolution No. 9195

By Representatives Harris, Boyd, Greene, K. Pruitt, Mackenzie, Mackey, Rojas, Diaz de la Portilla, Flanagan, Fuller, Ziebarth, Sembler, Minton, D. Saunders, Smith, Bronson, Barreiro, Lacasa, B. Saunders, Webster, Carlton, Cosgrove, Kelly and Laurent

A resolution for the protection of Florida agriculture.

WHEREAS, the United States is the world's greatest agricultural nation and every American, together with people throughout the world, enjoy the benefits of our nation's agricultural efforts, and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of the state, the nation, and the world with annual sales of raw farm products of nearly $6 billion, which provides $45 billion of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production, and

WHEREAS, Florida has produced the majority of the nation's supply of winter fruits, vegetables, citrus and citrus products, and is the sole domestic supplier of many of these commodities for several months each year, and

WHEREAS, eating fresh fruits and vegetables each day provides good nutrition and reduces the risk of heart, cancer, and chronic diseases, and

WHEREAS, as a result of unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production, over the past three years, Florida's percentage share of the United States market has continued to decline each year, and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on Florida agriculture, crippling this industry and placing a major threat on its continued existence, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the House of Representatives of the State of Florida does hereby urge the Chairman of the International Trade Commission Peter Watson, the President of the United States, the United States Trade Representative Mickey Kantor, and Congress to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take whatever administrative actions are within their power to prevent further adverse effects on Florida production of tomatoes, peppers, and other crops.

BE IT FURTHER RESOLVED that the Florida House of Representatives affirms the need to take immediate action against unfair trade practices and supports immediate legal pursuit in the courts of the remedies provided by current United States trade law.

This is to certify the foregoing was adopted on April 12, 1996.

Peter R. Wallace
Speaker

Clerk of the House

Florida Senate
Resolution

By Senator Williams

* * * * * * * * * * * * * * *

A resolution urging the United States to take action to stop further adverse effects on Florida's agricultural producers caused by Mexican imports.

WHEREAS, the United States is the world's greatest agricultural nation and the entire world enjoys the benefits of our nation's agricultural efforts, and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of this state, the nation, and the world, with annual sales of raw farm products of nearly $6 billion which provides $45 billion of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production, and

WHEREAS, this state has produced the majority of the nation's supply of winter fruits, vegetables, citrus, and citrus products and is the sole domestic supplier of many of these commodities for several months each year, and

WHEREAS, as a result of the unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production, over the past 3 years, this state's percentage share of the domestic market has declined each year, and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on agriculture in this state, crippling this industry and placing a major threat on its continued existence, **NOW, THEREFORE**,

Be It Resolved by the Senate of the State of Florida:

That the Chairman of the International Trade Commission Peter Watson, the President of the United States, the United States Trade Representative Mickey Kantor, and the Congress of the United States are urged to take prompt action, including legal remedies, to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take whatever administrative actions are within their power to prevent further adverse effects on this state's production of tomatoes, peppers, and other crops.

BE IT FURTHER RESOLVED that copies of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, to the United States Trade Representative, and to the Chairman of the International Trade Commission.

* * * * * * * * * * * * * * *

This is a true and correct copy of Senate Resolution No. 3030, adopted by the Florida Senate on April 18, 1996.

James A. Scott
President of the Senate

ATTEST:

Joe Brown
Secretary of the Senate

RESOLUTION

WHEREAS, the United States is the world's greatest agricultural nation and every American, together with people throughout the world, enjoys the benefits of our nation's agricultural efforts; and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of the State of Florida, the nation and the world with annual sales of raw farm products of nearly six billion dollars, which provide 45 billion dollars of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production; and

WHEREAS, Florida produces the majority of the nation's supply of winter fruits, vegetables, citrus and citrus products and is the sole domestic supplier of many of these commodities for several months each year; and

WHEREAS, eating fresh fruits and vegetables each day provides good nutrition and reduces the risk of heart disease, cancer and other chronic diseases; and

WHEREAS, as a result of the unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production over the past three years, Florida's percentage share of the U. S. market has continued to decline each year; and

WHEREAS, Mexico, in contravention of the trade laws of this nation, has shipped agricultural products at below the cost of production over the past three years resulting in the decline of Florida's percentage share of the U. S. market during this time; and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on Florida agriculture, crippling this industry and placing a major threat on its continued existence.

NOW, THEREFORE, BE IT RESOLVED that the Governor and Cabinet of the State of Florida do hereby urge the President of the United States, the Congress, United States Trade Representative Mickey Kantor, and Chairman of the International Trade Commission Peter Watson to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take appropriate administrative action to prevent further adverse effects on Florida's agricultural industry.

BE IT FURTHER RESOLVED that the Governor and Cabinet urge the Florida Legislature to take immediate action against unfair trade practices by supporting budget requests to allow full and immediate legal pursuit in the courts of remedies provided by current U. S. trade law.

IN TESTIMONY WHEREOF, the Governor and Cabinet of the State of Florida have hereunto subscribed their names and have caused the Official Seal of the State of Florida to be hereunt affixed in the City of Tallahassee on this 28th day of March, 1996.

LAWTON CHILES
GOVERNOR

SANDRA MORTHAM
SECRETARY OF STATE

BOB BUTTERWORTH
ATTORNEY GENERAL

ROBERT F. MILLIGAN
COMPTROLLER

BILL NELSON
TREASURER

BOB CRAWFORD
COMMISSIONER OF AGRICULTURE

FRANK T. BROGAN
COMMISSIONER OF EDUCATION

Chairman CRANE. Thank you, Dr. Roberts.

Ms. Doyle, I would like to ask a parochial question, as a fellow Illinoisan. What is the magnitude of our agricultural exports on a yearly basis, I mean the total, not to a targeted area but totally?

Ms. DOYLE. We always have trouble identifying that, because most of our exports are our corn and soybeans, which are blended with Iowa and Missouri corn and soybeans. But we are a $9 billion industry in the State of Illinois and it is primarily corn, soybeans, pork, and beef, and about one-third of that is exported.

Chairman CRANE. Of that total number of exports, have you any idea what percentage goes to Mexico and what to Canada?

Ms. DOYLE. No. I know the figures of what goes to Mexico from Illinois, 23 percent of it is agricultural, and Mexico is our third largest trading partner, so it is a pretty significant number.

Chairman CRANE. Yes, that is. I want to thank you both for your testimony and yield to Mr. Thomas.

Mr. THOMAS. Thank you. I represent an agricultural district, one of 52 congressional districts in California, and my value-added is almost $3 billion, two-thirds of which is exported.

In looking at your testimony, I guess it was written before you heard the USTR representative because your third point on page 4 would seem to argue against what the USTR said, where you say, "The Clinton administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative . . . for the United States to breach its own obligations under those same agreements"—I believe she indicated they did not believe they were breaching the obligations. They thought they were consistent with GATT and WTO.

Ms. DOYLE. That is not what that says. That does not indicate that they do believe that they are breaching it. That indicates that I believe they are breaching it.

Mr. THOMAS. So, there is a disagreement between the U.S. Trade Representative and the Secretary of Agriculture of Illinois?

Ms. DOYLE. Not the first time.

Mr. THOMAS. When there is a contest over whether or not the Europeans have violated agreements on corn gluten or on other products that may be important to Illinois, I assume you are going to be looking to other regions of the country to strongly support your claims about unfairness, because all this bill does—there are no guarantees, there are no preferential treatments, there are no preconceived conclusions. All it does is create an opportunity to be heard to determine whether or not in seeking relief you can have it. That is all this does.

Ms. DOYLE. I understand that, but while it is doing that, it also changes the NAFTA Agreement.

Mr. THOMAS. Obviously, we have a disagreement about that, because frankly, the Mexicans have changed the NAFTA Agreement by fiat at the border on a number of agricultural products. So I guess if we are going to get into a contest of whether or not we are inside the law or outside the law, what these folks have done is come to seek redress inside the law. We will always have a disagreement over whether or not it affects an international trading agreement unless and until it is tested at the international level.

Ms. DOYLE. I understand.

Mr. THOMAS. My belief is it does not violate GATT and the WTO. Your concern is, notwithstanding it not violating it, it may put you somewhat at jeopardy.

Ms. DOYLE. No, I have both concerns, and not that it would put me in jeopardy.

Mr. THOMAS. Let us assume that it is GATT enforceable. It is within the GATT Agreement. Then you are still concerned about it, I understand from your testimony, because there may be safeguard action taken in retaliation, is that correct?

Ms. DOYLE. Of course, yes. I probably——

Mr. THOMAS. And that it may affect your products?

Ms. DOYLE. Yes.

Mr. THOMAS. Thank you very much.

Ms. DOYLE. Thank you.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

That type of attitude really worries me, Ms. Doyle. We, during the NAFTA discussions, we were very much concerned about this.

Ms. DOYLE. I remember.

Mr. SHAW. And we talked to other people in other parts of the country as to what the total effect of NAFTA would be. It is not that I agree that this has anything to do with NAFTA but it has a lot to do, I think, with the trading attitude in this country.

For somebody to look at a bill and say, well, it may be the right thing to do but somebody is liable to retaliate against something that I am doing and therefore we develop our trade policy around that——

Ms. DOYLE. I did not say that it was the right thing to do.

Mr. SHAW. All right. Let me ask you a question. You fear retaliation. Do you know of any other perishable, or can you make an example of a perishable seasonal crop grown in the United States in a similar situation in which there will be retaliation?

Ms. DOYLE. I am afraid I do not understand the question.

Mr. SHAW. Then I will repeat it. Can you name or perhaps you can enlighten me, other perishable crops that are exported from the United States to other countries in which you would anticipate retaliation?

Ms. DOYLE. It is not the crop that I am fearing will cause the retaliation, it is the passage of this bill.

Mr. SHAW. I guess you do not want to answer the question.

Ms. DOYLE. If I understood it, but I do not understand the question.

Mr. SHAW. I have expressed it clearly twice. Tell me, is there any other crop, a perishable crop that is seasonal in this country that we export to another country that you expect that country to retaliate against us by in some way restricting its importation into their country?

Ms. DOYLE. Not if the trade agreement sanctity is protected. I guess maybe we are on two different wavelengths here, but I am not understanding the point that you are trying to make.

Mr. SHAW. I think that is very clear, that we are on two different wavelengths.

Ms. DOYLE. I do not want you to——

Mr. SHAW. I disagree, we are on two different planets. You fear retaliation against crops grown in the State of Illinois, which are not readily perishable. These are crops that can be stored. These are crops that if you do not sell them in one month, they are good in another month. The tomatoes are not that way. For tomatoes, and particularly in the State of Florida, you just have your winter seasons, and that is exactly it.

What we are simply asking for is to give the Trade Representative the ability to look at the tomato industry or the fresh fruit and vegetable perishable industries as a single industry.

Ms. DOYLE. In the first place, I am not here just in concern over retaliation against Illinois crops. And in the second place, Illinois does grow perishable crops. I think beyond growing perishable crops, we also produce a lot of meat, which is perishable.

Mr. SHAW. It is not perishable like tomatoes.

Ms. DOYLE. That is probably true, but it is very important——

Mr. SHAW. I can bring in a steak that was purchased a couple months ago and it is still in fine shape, there is no question about that, but with tomatoes, you just cannot do that.

Ms. DOYLE. I understand that.

Mr. SHAW. So we are really in here trying to get the cooperation of the full Congress to look at this as we looked at NAFTA, and that is a nationwide basis. We are not just individual pockets of production here, there, and yonder. We are just simply asking that the right thing be done, and the right thing to be done is to not put us in a situation where we are going to lose tens of thousands of jobs, we are going to put farmers out of business, and being from Illinois and your particular position, you understand how that works, and that we are going to destroy a whole industry of my State because of fear of retaliation.

We are not asking for anything to be strictly imposed. We are simply asking for the ability of the Trade Representative to view a seasonal crop as a separate industry, rather than looking at that particular crop on a 12-month basis, because without some type of relief, the Florida tomato industry will not survive. I mean, they are selling the stuff cheaper than we can pick it, and that is wrong. You put the Florida producers out of business and we are going to be totally dependent upon the foreign producers of these tomatoes.

I think it is extremely shortsighted not to make that type of relief available to be given by the Trade Representative to the farmers of the State of Florida.

Ms. DOYLE. Thank you.

Mr. SHAW. Thank you, Mr. Chairman.

Chairman CRANE. I have a generic question based upon this last exchange. Peaches are perishable, are they not, and apples? Do we export them?

Mr. SHAW. No, they freeze them. You can freeze them. You can can them. You can can tomatoes, but you cannot freeze them, I do not think.

Chairman CRANE. Do we export apples or peaches or pineapples or——

Ms. DUNN. If the gentleman will yield, we have a couple in Washington State, apples, pears, cherries. We are very concerned

about retaliation. These are perishable crops. It is a big problem for us.

Chairman CRANE. But you are into the export market with those products?

Ms. DUNN. Yes.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. I would just make a quick comment. I would like to ask Dr. Roberts, let us just assume H.R. 2795 passes. Are you not always going to have two problems, short term and long term? Are you not always going to have the weather and the currency value problem in the short term, and are you not always going to have, particularly in your State, the increasing appreciation of land and the difficulty of farmers to compete not only with Mexico and other places but also inside the United States? Are not those going to be constant pressures?

Ms. ROBERTS. Yes, Mr. Houghton, you are absolutely correct, but farmers are used to dealing with the pressures of weather. This last year, we had a freeze event. But again, we were able to move product. Regrettably, oftentimes when there is damage in one area, a farmer in another area can have product to sell.

What we are asking for is a change in a definition that would have it permissible for the ITC to look at those crops on a seasonal basis. The farmers deal with weather. That will always be with us. We can be competitive. We are competitive now with agriculture anywhere around the world. We can produce and sell crops competitive with anyone. What we cannot deal with are unfair practices that are not in conformity with the laws we have today. This change in definition would recognize a fact of life. In the commerce of today, we have seasonal commodities.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Another question just came to my mind, and I will direct it to you first, Clay, and that is, do we export tomato juice?

Ms. ROBERTS. Mr. Chairman, we do not produce tomato juice in Florida. The types of tomatoes that are grown for the process operations in California are an entirely different species and grown in different types of culture and there is a whole area of processed products of which the State of California is the greatest producer in that category.

Chairman CRANE. So only California can make tomato juice?

Ms. ROBERTS. No, sir, I did not say that. I said that the species grown for processed tomato products are entirely different species. They are grown under a different culture with mechanical harvest.

Chairman CRANE. But I mean they are not grown in Florida? You are saying that kind of tomato is not grown in Florida?

Ms. ROBERTS. That different kind of tomato is not currently grown in Florida in large quantities, sir.

Chairman CRANE. Thank you.

Ms. Dunn.

Ms. DUNN. I do not have a question, Mr. Chairman. I would just like to thank the panel for coming before us today and giving us a good objective view from two different sides of the aisle.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. No questions.

Chairman CRANE. I want to thank you both for your appearances here today and appreciate the input in helping us to resolve this situation. Any printed matter, as I indicated before, will be made a part of the permanent record.

With that, our next panel is comprised of witnesses who are in opposition to H.R. 2795, Keith Heard, the senior vice president of the National Corn Growers Association, on behalf of Ad Hoc Coalition of Commodity Groups on Trade Issues; Ambassador Philip Hughes, managing director for Washington operations of the Council of the Americas; Charles E. Roh, Jr., a partner at the law firm of Weil, Gotshal and Manges; Humberto Monteverde, president of the Fresh Produce Association of the Americas; and Albert C. Zapanta, executive vice president of the United States-Mexico Chamber of Commerce.

If you gentlemen will get comfortable, I will remind all of you again, try and summarize your statements in 5 minutes or less, but any printed matter beyond that will be made a part of the permanent record.

With that, we will start with Mr. Heard.

STATEMENT OF B. KEITH HEARD, SENIOR VICE PRESIDENT, NATIONAL CORN GROWERS ASSOCIATION, ON BEHALF OF AD HOC COALITION OF COMMODITY AND FOOD GROUPS ON TRADE ISSUES

Mr. HEARD. Good afternoon. My name is Keith Heard. I am senior vice president of the National Corn Growers Association, representing the country's hardworking corn farmers who depend for one-quarter of their livelihood from the export markets. I am also appearing on behalf of the Ad Hoc Coalition of Commodity and Food Groups on Trade Issues, a broad array of organizations representing a large share of the Nation's agricultural products.

Mr. Chairman, I will summarize my remarks and ask that the full text be submitted for the record. I also have a letter the Coalition sent to Chairman Archer I would appreciate being added to the record, as well.

Chairman CRANE. The full statement of each of the witnesses will be placed into the record.

Mr. HEARD. Thank you. Like my organization, all the members of this coalition are deeply committed to the U.S. trade policies that foster the continued expansion of American agricultural exports. We are opposed to any trade policy that may jeopardize these exports.

While H.R. 2795 is designed to protect tomatogrowers, it also threatens the rest of American agriculture, our Nation's largest industry. Our coalition has nothing against any particular group of farmers. As a matter of fact, many of us represent farmers. We encourage the administration to work with these Florida growers and the others here today to address their concerns within the guidelines of NAFTA and the WTO. However, we object to this seemingly obscure measure because it seriously imperils our larger agricultural export sector.

Agricultural exports are one of the dramatic success stories of our economy. Our exports are expected to reach a striking $60 billion this year, representing a one-third increase in just 2 years.

This surge is benefiting virtually all sectors of our farm and rural economy. NAFTA and WTO are working for agriculture. Let us not jeopardize this success.

Many benefit from agricultural trade—manufacturers and distributors of farm equipment, seed, fertilizer, and other supplies; shippers, ports, and the financial world, just to name a few. Not the least among the gainers is the American consumer because our ability to more fully utilize our farm resources tend to keep food prices at affordable levels.

Because of our successful export policies and projected growth, American agriculture has embarked in a new direction in the 1996 farm bill. Congress has unshackled the American farmer from years of production controls so that we can better supply our consumer needs.

At the same time, the government's safety net is being reduced every year. We strongly supported all of these actions with the understanding that our export markets would continue to grow.

We are disturbed, however, by the measure before the Committee today. Against a background of this striking growth in agricultural exports, we are faced today with a bill that could put many agricultural jobs and investments at risk.

This measure would change the definition of a domestic industry to include the concept of a seasonal industry for the purposes of obtaining safeguard relief. It grows out of a case at the International Trade Commission which had ruled against the Florida growers. We are now faced with this effort to create a seasonal industry in U.S. law, even though the United States has already agreed in the WTO and NAFTA to the definition of an industry. In other words, this is an effort to unilaterally rewrite America's international obligations—no discussions with other nations, no negotiations, no new agreement, just changing our word given in accords that were painstakingly negotiated over many years.

We also strongly oppose this effort because the United States has launched high-profile initiatives to ensure that all nations abide by their rules. U.S. farm groups have worked long and hard to open markets around the world and it would be ironic if the U.S. Congress would now adopt a bill that would, in fact, have the potential to start an agricultural war, disrupting all of our recent gains.

That violation of America's word and contradiction of our goals are just two of the serious problems that would arise from the enactment of this bill. There are others. Passage of this bill would surely encourage other countries to afford their seasonal industries special safeguards. Passage of the bill would encourage other groups within our own country to ask for special safeguards, as we have heard today. And passage of this bill would invite immediate trade retaliation from Mexico, because under the rules of international law, trade compensation is required.

But most significantly, this bill is not simply about Mexico but our entire trading system. I can assure you that retaliation and/or compensation claims would be initiated by other countries protecting their special crops with strong constituents.

Mr. Chairman, America is a very strong agricultural country and we will be negatively affected by this legislation. The message I want to leave here today is that all of agriculture, with $60 billion of exports, is concerned about this legislation. I appreciate the opportunity to present that side of the story, as well.

Thank you, Mr. Shaw.

[The prepared statement and attachment follow:]

Statement by B. Keith Heard
Senior Vice President, Public Policy
National Corn Growers Association
Before the
Subcommittee on Trade
House Committee on Ways and Means
Concerning H.R. 2795
April 25, 1996

Good afternoon. My name is Keith Heard. I am Senior Vice President of the National Corn Growers Association, representing the country's hard-working corn farmers, who rely on export markets for one-quarter of their livelihoods.

I am also appearing today on behalf of the Ad Hoc Coalition of Commodity and Food Groups on Trade Issues, a broad array of organizations representing a large share of the nation's agriculture products. The Coalition includes:

Northwest Horticultural Council
North American Export Grain Association, Inc.
National Association of Perishable Agricultural Receivers
American Meat Institute
Food Marketing Institute
National Pork Producers Council
National Turkey Federation
National Grain and Feed Association
USA Poultry and Egg Council
Fresh Produce Association of the Americas
National Corn Growers Association
United Egg Association
International Apple Institute
National Broiler Council

Like my organization, these groups are deeply committed to U.S. trade policies that foster the continued expansion of America's agricultural exports, thereby creating jobs and improving our balance of trade.

We are opposed to any trade policy that might jeopardize those exports.

H.R. 2795 is designed to protect fewer than 80 U.S. growers of winter tomatoes in one state. Unfortunately, it also threatens the rest of American agriculture, our nation's largest industry. We oppose H.R.2795 because it is anti-farmer, anti-rancher, anti-grower and anti-consumer.

Our coalition has nothing against any particular group of farmers. Most of us represent farmers. In fact, we encourage the Administration to work with these Florida growers to address their concerns within the guidelines of the NAFTA and the WTO. We object to this seemingly obscure measure because it seriously imperils our larger agricultural export sector. We simply cannot support a solution that violates carefully negotiated trade agreements with the misguided protectionist sentiments driving this bill.

Agricultural exports are one of the dramatic success stories of our economy. America's agricultural exports are expected to reach a striking $60 billion this year. That represents a one-third increase in just two years. This export surge is benefitting virtually all sectors of our farm and rural economy. NAFTA and the WTO are working for agriculture. Let's not jeopardize this success.

It is interesting to note that $60 billion of agricultural exports is twice the combined value of America's exports of aircraft and automobiles in 1995. In my own area, the dollar value of corn exports is expected to grow by over 20% this crop year. Wheat exports could well climb nearly 30%, meat and poultry 25%, dairy products 12%, oil seeds and products 10 % and horticultural products 10%.

Not just farmers, but many others benefit — manufacturers, distributors and retailers of farm equipment, seed, fertilizer and other supplies, shippers, ports, and the financial world to name a few. Not least among the gainers is the American consumer; because our ability to more fully utilize our farm resources tends to keep food prices at affordable levels.

Because of our successful export policies and projected growth, American agriculture has embarked in a new direction in the Federal Agriculture Improvement and Reform Act of 1996. Congress unshackled American farmers from years of production controls so that we will be better able to satisfy consumer demand abroad as well as at home. At the same time, the government safety net becomes smaller each year. We strongly supported these actions with the understanding that our export markets would continue to grow.

We are disturbed, however, by the measure before this committee today, H.R. 2795. Against the background of striking growth in agricultural exports, we are faced today with a bill that could put many agricultural jobs and investments at risk.

This measure would change the definition of a "domestic industry" to include the concept of a "seasonal industry" for the purpose of obtaining safeguard relief under Section 201. It grows out of a case at the U.S. International Trade Commission, which found, among other things, that the complaining Florida growers were not large enough to be an "industry" and therefore could not seek safeguard relief.

Out of the ITC decision has grown an effort to create a "seasonal industry" in U.S. law—even though this nation has already agreed, in the WTO and the NAFTA, to the definition of an "industry." In other words, this is an effort to unilaterally rewrite America's international obligations. No discussions with other nations. No negotiations. No new agreement. Just violating America's word, given in accords that were painstakingly negotiated over many years. Already 15 other countries have objected in Geneva and the 14-nation Cairns group has written to this Committee with their concerns.

We strongly oppose this effort, especially since the United States has launched high-profile initiatives to ensure that *other* countries abide by *their* trade agreements. It would be sheer hypocrisy to adopt this measure, and it certainly would not help the many American industries that have been fighting for years to ensure other countries live up to international agreements. U.S. farm groups have fought to open markets around the world. We have led the way in free and fair trade. It would be ironic if the U.S. Congress were now to adopt a bill that would, in fact, start an agricultural trade war, disrupting all of our recent gains.

Winter tomato imports are no serious threat to the American agricultural community. H.R. 2795 is the threat.

That violation of America's word and contradiction of our goals are just two of the serious problems that would arise from enactment of HR. 2795. There clearly are others:

- Passage of this bill would surely encourage other countries to afford their "seasonal industries" special safeguards. This is a danger for

many commodities — not just fruits and vegetables. Mr. Chairman, the definition of "seasonal industry" is not the same in all countries and regions. Because of climatic, technological, cultural or other differences, products not considered seasonal in the United States may be seasonal elsewhere. For example, my pork industry colleagues tell me that in Mexico, pork is considered a seasonal product.

- Passage of this bill would encourage other groups within our own country to ask for special safeguards. This no doubt could well result in trade disputes, and in the end, reduced trade and higher prices to U.S. consumers.

- Passage of this bill would invite immediate trade retaliation from Mexico. Under the rules of international trade, it would require the United States to provide trade compensation should we take safeguard actions. But more significantly, it sets the stage for other countries to call for special safeguards based on the very arguments in this bill.

H.R. 2795 is not simply about Mexico but our entire trading system. I can assure you that retaliation and/or compensation claims would not be directed at just our "seasonal" exports. Rather, other countries would likely target our export products that most trouble their own constituent farmers, ranchers, or growers.

Mr. Chairman, America's leading agricultural export states are California, Illinois, Texas, Nebraska, Iowa, Kansas, Indiana, Washington, Minnesota and Arkansas. Eight of those states are represented on the Ways and Means Committee.

This, Mr. Chairman, is perhaps the most important reason I am here today — to remind Committee members that H.R 2795 is a threat to the livelihood of their constituents and to our nation's farmers in general.

I therefore urge this committee to reject a bill that is specifically designed to assist a very few, but that could be detrimental to many.

AD HOC COALITION
OF COMMODITY AND OTHER GROUPS ON TRADE ISSUES
c/o Suite 304, 1000 Connecticut Avenue NW, Washington, DC 20036 (202) 296-4484

April 22, 1996

The Honorable Bill Archer
Chairman, Committee on Ways and Means
US House of Representatives
Washington, DC 20515

Dear Chairman Archer,

We are concerned about a bill pending before your committee that jeopardizes US exports of many agricultural goods as well as other American products and services.

The measure, HR 2795, was created to protect a handful of Florida growers against competition from Mexican winter tomatoes. It would do this by violating global trade agreements, inviting other nations to retaliate against American products, and undermining the critical US drive to hold other countries to their trade commitments. The result clearly would be to imperil many more American jobs than the handful that might be protected by this measure.

Specifically, the bill would change the definition of a "domestic industry" to include the concept of a "seasonal industry" for the purpose of obtaining safeguard relief under Section 201. In other words, Florida growers of winter tomatoes would suddenly be eligible for protection, even though they represent a fraction of the US tomato industry.

The United States has already agreed to how an "industry" is defined for safeguard purposes, both in the World Trade Organization (WTO) accord and the North American Free Trade Agreement (NAFTA). The violation of these agreements, therefore, will have serious consequences. For example:

1. The legislation would make affirmative Section 201 decisions more likely, thereby requiring the US to compensate affected exporting nations by making "concessions having substantially equivalent trade effects." This instantly makes HR 2795 a no-win measure for American exporters.

2. The bill would encourage other countries to employ the "seasonality" principle to restrict US exports. Major American exporters--of goods ranging from apples

and peaches to corn and wheat, and perhaps even toys and seasonal clothing--would find themselves being denied the opportunity to compete fairly in their current export markets.

3. The bill virtually invites immediate retaliation against US agricultural exports, including meat and poultry products to Mexico, because they are always visible, easy to target, and inevitably opposed by a vocal constituency.

4. The legislation would diminish the ability of the US to hold other countries to their trade commitments. The United States, recognizing the fundamental importance of ensuring that trade promises are kept, recently has launched a high-profile initiative to "enforce" existing trade agreements. For the United States to now breach its own obligations under those same agreements would only make a mockery of this "enforcement" initiative designed to assist exports of many US goods and services.

5. The bill could disrupt imports of numerous "seasonal" products from other US trading partners in Europe, Canada, Israel, Chile and elsewhere to the detriment of consumers throughout the United States. Imports could face new barriers whenever a group of "seasonal" US producers (no matter how small or limited in scope) is found to be injured by import competition.

For all these reasons, we strongly oppose this legislation. It is not about fair trade or "leveling the playing field," let alone about free trade. Rather, it is a misguided attempt to unilaterally change the rules of international trade, and it promises to do serious damage to US interests.

Sincerely,

Ad Hoc Coalition of Commodity and Other Groups on Trade Issues

Northwest Horticultural Council, PO Box 570, Yakima, WA 98907
North American Export Grain Association, Inc., 1300 L St. NW, Washington, DC 20005
National Association of Perishable Agricultural Receivers, 5906 Wilmary Lane, Baltimore, MD 21210
American Meat Institute, 1700 North Moore Street, Arlington, VA 22209
Food Marketing Institute, 800 Connecticut Avenue NW, Washington, DC 20006
National Pork Producers Council, 122 C Street NW, Washington, DC 20001
National Turkey Federation, 1225 NewYork Avenue NW, Washington, DC 20005
National Grain and Feed Association, 1400 K Street NW, Washington, DC 20005
USA Poultry and Egg Council, 2300 West Park Place Blvd., Stone Mountain, GA 30087
Fresh Produce Association of the Americas, P. O. Box 848, Nogales, AZ 85628
National Corn Growers Association, 201 Mass. Ave. NW, Washington, DC 20002
United Egg Association, 1303 Hightower Trail, Atlanta, GA 30350
International Apple Institute, 6707 Old Dominion Drive, McLean, VA 22101
National Broiler Council, 1155 Fifteenth Street NW, Washington, DC 20005

Mr. SHAW [presiding]. Thank you, Mr. Heard.
Ambassador Hughes.

STATEMENT OF HON. G. PHILIP HUGHES, MANAGING DIRECTOR, COUNCIL OF THE AMERICAS; EXECUTIVE DIRECTOR, U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE; AND FORMER AMBASSADOR TO BARBADOS

Mr. HUGHES. Thank you, Mr. Chairman, distinguished Members of the Committee. My name is Philip Hughes and I am the managing director for Washington operations of the Council of the Americas, a multisectoral business association comprised of 250 U.S. corporations with interests in Latin America. I am also the executive director of the U.S. Council of the Mexico-U.S. Business Committee, the U.S. side of the oldest private sector organization between Mexico and the United States. While both of these organizations are primarily focused on Latin America, let me emphasize they are U.S. organizations comprised of U.S. companies.

I am honored to appear before the Committee today on behalf of the members of the Council of the Americas and the U.S. Council to express our strong opposition to H.R. 2795. I have detailed testimony which we will submit for the record and I would like to summarize that testimony by emphasizing really five main points, Mr. Chairman, if I may.

Mr. SHAW. Yes, without objection.

Mr. HUGHES. First, the legislation in question, we believe, sets a very dangerous precedent by purporting to set up seasonal agricultural production as a legislated industry category, or more precisely, to permit the ITC to find that there is such a seasonal agricultural industry. Even if that could be sustained in the WTO, which Mr. Roh will explain it probably cannot, such an action would open up the possibility of other countries using a similar tactic to restrict lower priced U.S. exports of agricultural products. Being a temperate zone country, many of our agricultural exports are produced seasonally. Examples of many fruits and vegetables come to mind, some of which Mr. Crane and Ms. Dunn have already mentioned.

If we can define two domestic industries the way the ITC described it, one that is distinctive only because it competes with imported Mexican tomatoes at certain times of the year and another that produces during the rest of the year—that is how the ITC documents characterized this issue—think of how many U.S. agricultural exports could be discriminated against if other countries followed our example and did the same thing.

The second point I would like to make, as the largest agricultural exporter in the world, we have the most to lose. In the first 2 months of this year, I am informed, we exported about $861 million in agricultural products to Mexico.

Texas is the top agricultural exporter to Mexico, followed by Louisiana, Kansas, Nebraska, Missouri, Tennessee, Washington, Iowa, Illinois, Arizona, California, Arkansas, Minnesota, Wisconsin, Oklahoma, Colorado, Florida, New York, Michigan, and North Dakota. Those are the top 20. If farmers in those States saw their agricultural exports to Mexico curtailed in the event that the Mexicans would follow the example we would be setting with this legislation

and enact something like that of their own, how would those farmers react?

The third point I would make is that this legislation is inconsistent with our announced emphasis on insisting that our trading partners live up to their trade agreements with us. In January, Secretary Kantor, then U.S. Trade Representative, announced a major initiative creating a special unit at the U.S. Trade Representative's Office to monitor and ensure compliance by our trading partners with our trade agreements. How can we be credible in this effort if we enact legislation like H.R. 2795, which purports to create a new category of agricultural industry, or at least permit the ITC to recognize such a thing, specifically to sidestep our undertakings in NAFTA and the WTO?

The fourth point that I would make is that we need to consider the costs to the consumers that will result from this legislation. That, after all, is what trade agreements and legislation are all about, improving consumer welfare. This legislation will almost surely raise store prices of tomatoes for families and housewives in the interest of protecting one tiny segment of the overall U.S. tomato growing industry, a segment which, according to press reports and the ITC documents, is dominated by 4 families, and involves fewer than 100 growers and a limited number of shippers. We need to ask whether this is a necessary and appropriate step at this moment in 1996, even in defense of the interests that are at stake.

Finally, we need to consider the costs and consequences of retaliation that will surely follow the enactment of this measure. This is a judgment matter, but as Mr. Roh will explain, under the WTO, countries that are on the receiving end of safeguards action as a result of legitimate and fair trade are entitled either to compensation or to the right of retaliation to a level commensurate with their loss of market access.

Since the U.S. administration currently has no authority to offer compensation in the form of tariff reductions to Mexico, retaliation is the only course left open, and retaliatory action could legitimately be taken against any export or any industry from any other part of the United States. This raises the question, why should exporters in Texas or California or Ohio or Michigan, producers of unrelated products who are, so to speak, innocent bystanders as far as the tomato issue is concerned, pay the price of retaliation that will almost surely follow from this special protection for a small segment of the overall U.S. tomato growing industry?

All of these considerations, as well as the more detailed points that are made in my prepared statement, lead to only one overwhelming conclusion, in my view. Passage of H.R. 2795 or similar legislation would be a very bad mistake in terms of overall U.S. trade and economic interests.

[The prepared statement follows:]

COUNCIL OF THE AMERICAS
AN AFFILIATE OF THE AMERICAS SOCIETY, INC.

1310 G STREET, N.W. SUITE 690 WASHINGTON, D.C. 20005 TEL: (202) 639-0724 FAX: (202) 639-0794

AND

U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE

STATEMENT OF AMB. G. PHILIP HUGHES
HEARING ON
THE SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 25, 1996

Mr. Chairman and distinguished members of the Committee, my name is Philip Hughes and I am the Managing Director for Washington Operations for the Council of the Americas, a multi-sectoral business association of 250 U.S. corporations with interests in Latin America. I am also the Executive Director of the U.S. Council of the Mexico-U.S. Business Committee, the U.S. side of the oldest private sector organization between Mexico and the United States. While both of these organizations primarily focus on Latin America, let me emphasize that they are U.S. organizations, comprised of U.S. companies.

I am honored to be appearing before you today on behalf of the members of the Council of the Americas and the U.S. Council to express our strong opposition to H.R. 2795 — one of the most protectionist pieces of legislation introduced into the Congress in recent history. As indicated by earlier correspondence from the Chairman of the U.S. Council of the Mexico-U.S. Business Committee, former Secretary of Commerce Robert Mosbacher, we have been concerned for some time about the progress of this legislation.

History of the Issue

Last year, tomato growers in Florida petitioned for safeguard protection from Mexican tomato imports, claiming that their production in the months of January through April was a "seasonal" domestic industry, separate from the rest of the U.S. tomato industry, and so should be treated as a separate "winter tomato industry." The petition was rejected by the International Trade Commission (ITC) for a number of reasons, including the fact that current law requires that the domestic producers petitioning for relief must constitute a major proportion of domestic production, and does not have special provisions for identifying separate "seasonal industries."

In their ruling, the Commission noted that they must guard against "industry definitions that are drawn artificially narrow simply to make relief more likely." They concluded that the "concept of 'directly competitive' in the statute serves to expand the class of producers of products who may seek and obtain relief, rather that to create a subclass of preferred producers who may seek and obtain relief."[1] H.R. 2795 is intended to reverse the

[1] Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. No. 2881 at I-11, note 26 (April 1995).

ITC's determination in this case[2] by amending the Trade Act of 1974 so that separate "seasonal industries" would be recognized in the definition of "domestic industry," thus allowing for safeguard protection in cases where only a segment of the domestic industry is at risk.

That is where the issue should have ended, but it gained political momentum even though the industry, according to *The Wall Street Journal*, is dominated by only four families "whose operations are highly diversified and, by all accounts, profitable more years than not."[3] *The Wall Street Journal* article from which I quote, written by Helene Cooper and Bruce Ingersoll, gives an exceptionally astute analysis of this issue. I would encourage all interested parties to read it.

Basis for Opposition to H.R. 2795

In international trade law, safeguard/emergency action provisions are exceptions to the rule. They permit signatory countries to increase tariffs above agreed levels, impose quotas or take other measures ordinarily prohibited by the agreements in response to harm caused by imports. If strict criteria are met, they allow a country to raise barriers to trade, when unexpectedly large increases in the import of those goods cause serious injury to a **domestic industry**. The criteria are strict for good reason, to prevent abuse of the law. For these discussions, the operative words here are "domestic industry." These provisions are intended to be used when an entire industry is at risk, not just a small segment of that industry separated from the rest by geography and production season.

The members of the Council of the Americas and the U.S. Council of the Mexico-U.S. Business Committee believe that trade-liberalizing policies have brought and will continue to bring prosperity to the Americas, and are committed to the letter as well as the spirit of the NAFTA and the WTO. In addition to being a clear violation of NAFTA and the WTO, as my colleague Chip Roh has clearly shown in his analysis prepared for the U.S. Council of the Mexico-U.S. Business Committee, we believe that passage of H.R. 2795 would impede free trade and lead to retaliation by our trading partners seeking to protect their producers from competitive U.S. products.[4] Since this retaliation would not be limited to winter tomatoes, or even to agricultural products in general, it has potentially harmful ramifications for many sectors of the U.S. economy.

H.R. 2795 also sets a very protectionist precedent for U.S. trade policy and would severely weaken the United States' credibility on trade-related issues, particularly given the U.S. government's recently announced actions to ensure our trading partners' compliance with trade agreements. Even faced with extremely difficult economic conditions and intense internal pressure, Mexico has been true to the NAFTA and has not resorted to protectionist maneuvers such as these. For the United States to break its own word when it comes to international trade agreements only impugns our country's good name in world trade fora.

The most basic reasons we oppose H.R. 2795 are economics and history, both of which teach us that protectionism is a short-sighted policy which encourages inefficiency and increases prices in order to shelter certain segments of the economy from competition. The

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[2] See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw); 142 Cong. Rec. S441 (daily ed. Jan. 26, 1996) (statement of Sen. Graham) ("This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers.").

[3] "Playing Catch-Up", Helene Cooper and Bruce Ingersoll, *The Wall Street Journal*, April 3. 1996.

[4] "Comments on Miscellaneous Trade Proposals (Advisory No. TR-17)", Charles E. Roh, Jr. and David W. Oliver, for the U.S. Council of the Mexico-U.S. Business Committee, March 1, 1996.

fate of mercantilism and the theories of Adam Smith and David Ricardo, among others, prove that international trade creates economic benefits for both buying and selling countries. Free trade is probably the single-most important policy we can follow to raise the standard of living of ordinary people across this country.

International trade expands the number of markets in which a country can sell its goods, which results in greater production and greater use of inputs (including labor), thus increasing domestic employment. International trade does increase competition, but competition is something that should be encouraged. Competition reduces the prices consumers pay, and makes domestic companies more efficient, thus allowing them to compete in what we all recognize is a global economy.

As the leaders of the 34 Western Hemisphere nations gathered in Miami on the occasion of the Summit of the Americas said,

> A key to prosperity is trade without barriers, without subsidies, without unfair practices, and with an increasing stream of productive investments. Eliminating impediments to market access for goods and services among our countries will foster our economic growth. A growing world economy will also enhance our domestic prosperity. Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment.[5]

Impact on U.S. Businesses

I would like to focus the balance of my comments on the specific ways that this legislation will affect U.S. companies. While the imposition of certain emergency actions is permitted by the Safeguards Agreement and the NAFTA, they are not without costs for the initiating country. If passed, H.R. 2795 would negatively impact U.S. businesses in at least three specific, and very significant ways:

1. Increased Cost to Consumers

Basic supply and demand economics shows that the initial cost of legislation such as this will be born by the consumers of the goods in question. If, in a free market economy, domestic industry cannot produce goods that are competitive in both price and quality with like goods from foreign suppliers, consumers will demand that those goods be imported. If the price of those imports is artificially inflated by tariffs or restriction of supply, the consumers of those goods will be forced to pay more than they should.

H.R. 2795 was introduced to protect Florida's tomato producers from imports of Mexican winter tomatoes, but what is at risk here is not just a higher price for the slice of tomato that goes on your hamburger in December. Other imports would almost certainly be affected. Astute businessmen in all sorts of industries would not miss the opportunity to gain protection from competitive imports. Imports from Canada, Europe, Chile and Israel could be the next targets of such actions whenever a group of "seasonal" producers (regardless of the percentage of the domestic industry they actually represent) is hurt by competitive imports.

2. Compensation/Retaliation

Under the Safeguards Agreement and the NAFTA, safeguard actions by the United States initiated under H.R. 2795's new definition of domestic industry would invite retaliatory trade action by those countries affected by our actions. While allowing for safeguard action, these agreements also require compensation to be provided for the affected

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[5] "Summit of the Americas Declaration of Principles", December, 1994

country. Thus, should the United States take an emergency action against one of its trading partners, we would have to compensate that country for doing so. As stated in Article 801(4) of the NAFTA,

> The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article.

Thus, if we could not reach agreement on how to pay our trading partners to compensate for our actions, they would be completely within their commitments to the NAFTA and the WTO to take immediate retaliatory action in the form of increased tariffs on U.S. goods.

Perhaps the most important aspect of the issue of retaliation is the fact that the target of this reprisal does not have to be the producers and employees in an industry producing the same or similar products. This means that as a result of the change in law proposed by H.R. 2795, all U.S. export would face the possibility of being slapped with retaliatory tariff increases. So the burden of these measures could easily fall on products or sectors totally unrelated to the initial action. The effects of such a trade-distorting protectionist cycle would likely be felt throughout the economy, and for many years to come.

3. International Response

Any safeguard measures taken under this proposal would likely be challenged successfully under the WTO and/or NAFTA auspices, resulting in a finding that the United States had violated its international obligations. Already, 15 countries have notified the WTO that they consider this proposed change in law a violation of international law. Even if that were not the case, U.S. exports would most certainly face very significant repercussions.

H.R. 2795 would open a pandora's box of other protectionist actions by our trading partners. Facing the inevitable internal pressures for protection and given the fact that the largest economy and most fervent advocate of free trade and free market capitalism had turned its back on international obligations, it seems clear that our trading partners would adopt legislation to redefine the "domestic industry" language in their relevant trade law in a way that would make it easier to impose restrictions on competitive U.S. products. A wide array of U.S. exports, from apples, peaches, corn and wheat to snow tires, Christmas toys and seasonal clothing, could find the playing field in their current export markets tilted suddenly and sharply in favor of their local competitors. As Chip Roh said,

> The United States, as the world's leading exporter of agricultural products, would have a great deal at stake were the requirements for applying safeguard actions watered down in the manner contemplated by H.R. 2795. In Mexico, Canada, Europe, or Japan, new restrictions on products such as corn, apples, beef or poultry could be contrived. Moreover, while this development would certainly impact U.S. agricultural exports, the "who's competing with whom" approach contemplated by the bill could be used in the context of any number of industries of vital interest to U.S. exporters.[6]

In summary, I would like to reiterate what Mr. Mosbacher said in his letter to you earlier this year:

> By amending the Trade Act of 1974, H.R. 2795 would make it easier to obtain "safeguard" protection from imports, even in those cases where only a small

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[6] "Comments", page 4.

segment of the domestic industry was at risk. Although introduced in order to assist a tiny segment of the Florida agricultural sector, this legislation risks triggering a protectionist trade cycle which could have a severe negative effect on the entire U.S. economy. In addition to forcing U.S. consumers to pay higher prices, it would likely lead to retaliation against U.S. exports by our trading partners seeking to protect their "seasonal" producers from competitive U.S. goods. Because the United States is the world's largest exporter, we stand to lose the most from such tariff increases.

Finally, I would like to make one overarching point. This may seem like a trivial issue to some — a technical bill designed to remedy a narrow problem — but make no mistake, this is a big issue. It is not substantively narrow and, without a doubt, its passage would send an important signal that in this election year, the U.S. Congress is open to protectionist legislation. We at the Council of the Americas and the U.S. Council of the Mexico-U.S. Business Committee urge you not to start down this destructive path.

Thank you for this opportunity to address your committee on this important issue. I would be happy to answer any questions you might have for me.

Mr. SHAW. Thank you.
Mr. Roh.

STATEMENT OF CHARLES E. ROH, JR., PARTNER, WEIL, GOTSHAL AND MANGES, WASHINGTON, DC; ON BEHALF OF THE U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE

Mr. ROH. Thank you, Mr. Chairman. My name is Charles Roh and I am a partner in the Washington office of Weil, Gotshal and Manges, but I am also here on behalf of the U.S. Council of the Mexico-U.S. Business Committee.

In a previous life, I must say, I spent 14 years working for the U.S. Trade Representative's Office and it was my privilege there to work for opening up export opportunities for many U.S. agricultural interests, including some Florida products, so I am sorry to be here in opposition to something sought by the Florida delegation.

My colleague, Ambassador Hughes, has summarized the U.S. Council's policy objections to H.R. 2795. I will summarize our concerns in terms of our rights and obligations under international trade agreements.

For reasons discussed at greater length in the statement I submitted for the record, it is our view that H.R. 2795 is not consistent with the rules of the WTO Agreement or of the NAFTA. As you know, Mr. Chairman, both the WTO and NAFTA allow temporary import restrictions, such as quotas or high tariffs, if increased imports of a product cause or threaten to cause serious injury to domestic producers of the like or directly competitive product. Those import restrictions, which are commonly called safeguard or escape clause actions, can be imposed even on fairly traded products, which is why international rules allow such restrictions only in very narrow circumstances.

The WTO's safeguard agreement elaborated the previous GATT rules for when safeguard actions could be taken. One of these elaborations was a definition of the domestic industry, which is defined to mean "the producers, as a whole, of a like or directly competitive products, operating within the territory of the member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products."

H.R. 2795 would breach this WTO standard and reverse a determination made only last year by the ITC under existing U.S. law. H.R. 2795 would allow the ITC in the case of perishable agricultural products to adopt a seasonal definition of the U.S. industry, counting only those U.S. producers who sell all or almost all of their product in a particular growing season and disregarding all other U.S. producers of the like or directly competitive products. No provision of the WTO or NAFTA allows such a redefinition of the safeguard standards.

Proponents of H.R. 2795 have urged their redefinition of the industry standard so as to make it easier for certain producers to obtain import restrictions. They have argued for a broad and flexible interpretation of safeguard rules for this purpose. In the process,

they have also turned on its head the use of the term "directly competitive."

Mr. Chairman, it is perhaps worth a word on that. In the safeguard agreement, when we talk about producers of the like or directly competitive product, the use of the term "directly competitive product" is not intended to narrow the group of producers of the like product but rather to allow a more expansive view beyond producers of just the like product. Those who have been arguing for this bill have taken the view instead that what we should include is only those producers of a like product who are competitive in a particular season. Whatever the policy arguments for that, that is not an interpretation that is sustainable, in my view, under the WTO Agreement.

Mr. Chairman, I think it is most unlikely that the WTO will give the safeguard agreement the kind of reading that would be needed to justify H.R. 2795. The safeguard provisions are likely, if anything, to be read narrowly, since they are an exception to the WTO's normal trade liberalizing rules. That is especially so because under WTO rules, a country that takes a safeguard action that complies with the safeguard agreement is exempt for 3 years from the normal obligation to give trade compensation or suffer trade retaliation.

So what are the consequences of adopting H.R. 2795? Under the WTO and the NAFTA, safeguard actions carry a price. As just noted, safeguard actions that are found not to conform with WTO rules will give rise to a right on the part of the countries harmed by the safeguard action to trade compensation or trade retaliation.

The NAFTA has a different rule. Under the NAFTA, that right of compensation or retaliation exists whether or not the safeguard action was taken consistently with international rules and it is an immediate right of retaliation. So if we take a safeguard action, whether or not it is a legitimate safeguard action, against Mexico or Canada, they will have an immediate right to retaliation. There is no need for the retaliation to be on the same product. They can simply choose products of their choosing of similar value to restrict.

That means, Mr. Chairman, that some U.S. exporters who have done nothing wrong will find that they face new restrictions against their exports because the United States has restricted imports under this law.

I should add that the consequences for U.S. trade interests are not necessarily any better if this law passes, and as I think is most unlikely, the law is upheld in the WTO. As already noted, Canada and Mexico would still have the right to retaliate because there is no grace period from the retaliation right in NAFTA. There would be a grace period with respect to other countries for 3 years under WTO rules, and that might seem like a good result.

However, Mr. Chairman, as the world's largest agricultural exporter, we would have set a precedent that other countries would be sure to use against our exports, perhaps not in exactly the same products, perhaps not in exactly the same way, but the fertile imagination of international lawyers could certainly find many ways to act against our exports.

Thank you, Mr. Chairman.

[The prepared statement follows:]

U.S. COUNCIL OF THE
MEXICO-U.S. BUSINESS COMMITTEE
A COMMITTEE OF THE COUNCIL OF THE AMERICAS
WITH THE SPONSORSHIP OF THE CHAMBER OF COMMERCE OF THE UNITED STATES • AMERICAN CHAMBER OF COMMERCE OF MEXICO, A.C.

Statement of Charles E. Roh, Jr.
Before the Subcommittee on Trade of the
Committee on Ways & Means
Regarding H.R. 2795

Executive Summary

H.R. 2795, if enacted, would be inconsistent with U.S. obligations under the World Trade Organization Agreement and the North American Free Trade Agreement. Under the terms of those agreements, the United States is allowed to impose "safeguard" restrictions on imports of products that cause or threaten serious injury to the U.S. industry producing the like or directly competitive product. H.R. 2795 would narrow the definition of the U.S. industry more than is allowed in an effort to make it easier for the United States to impose such import restrictions. Any safeguard action that was imposed pursuant to H.R. 2795 would likely result in retaliation against innocent U.S. exporters, especially exporters of farm products.

Mr. Chairman:

Thank you Mr. Chairman. My name is Charles Roh and, together with Mr. Hughes I am testifying concerning H.R. 2795 on behalf of the U.S. Council of the Mexico-U.S. Business Committee.

I am a partner in the Washington office of Weil, Gotshal & Manges. Previously, I spent 14 years working for the Office of the United States Trade Representative, including three years as Legal Counsel to the USTR Mission to the GATT and three years as Deputy Chief Negotiator for the United States of the NAFTA.

Mr. Hughes is focussing on the policy issues involved in H.R. 2795, while my statement will focus on the question of the compatibility of the bill with U.S. obligations under the North American Free Trade Agreement (NAFTA) and the World Trade Organization Agreement (WTO). This testimony largely incorporates a paper that my colleague David Oliver and I prepared on the same question for the U.S. Council of the Mexico-U.S. Business Committee, which was submitted to the Subcommittee on February 29, 1996.

Our main conclusions regarding H.R. 2795 are that:

- the proposed amendment is incompatible with the obligations of the NAFTA and the WTO; and
- U.S. exports of other agricultural or industrial products would pay the price for this bill, because U.S. action under the proposed amendment would almost certainly result in retaliation against U.S. exports or, perhaps worse, adoption of similar policies by our trading partners that would harm U.S. exports.

I. Background

H.R. 2795 would significantly amend the safeguard provision of Section 201 of the Trade Act of 1974 by changing the definition of "domestic industry" and adding a definition of the term "like or directly competitive article." The effect of these proposed changes would be to allow the International Trade Commission ("ITC") to exclude certain U.S. producers of the relevant like product from the domestic industry in order to make it easier for "seasonal industries" to obtain relief from import competition under Section 201 of the Trade Act of 1974.

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As we understand it, the proposal is intended to reverse the April 1995 determination of the ITC in the Fresh Winter Tomatoes case.[1] In that case, Florida tomato growers argued that producers of tomatoes in the months of January through April should be treated as a "seasonal" domestic industry that was separate from the U.S. domestic tomato industry as a whole. Petitioners based their case on the claim that theirs was a separate domestic industry on the ground that producers in the January to April period "are the only producers producing a product which is 'directly competitive' with the imports." Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. No. 2881 at I-11 (April 1995).

The ITC held that the petitioners' argument was inconsistent with the statute and not supported by the facts. Id. at I-10-11 and I-13. In reaching its conclusion, the Commission pointed out that "[p]etitioners' proposed domestic industry definition leads to the arguably illogical result of two separate industries producing tomatoes with identical characteristics and uses, some produced in the identical facilities, where the only distinction between them is that one produces products which are 'directly competitive' with imports entering at certain times of the year." Id. at I-11 (citation omitted).

II. H.R. 2795 Violates the WTO Agreement and NAFTA

H.R. 2795, if enacted, would violate the safeguard provisions of the WTO (which incorporates the GATT) and the NAFTA (which explicitly incorporates the rules of the WTO for this purpose). As discussed below, the safeguard rules allow import restrictions under specific circumstances involving serious injury to a domestic industry. H.R. 2795 would violate those rules by redefining the "domestic industry" in a way that is inconsistent with the WTO rules. The WTO rules are set out in Article XIX of the GATT and in the Agreement on Safeguards. Article XIX, also known as the "escape clause," authorizes WTO member countries to restrict imports of products where increased imports of those products "cause or threaten serious injury to domestic producers ... of like or directly competitive products." The WTO Agreement on Safeguards elaborates and expands rules for the application of Article XIX measures.

GATT Article XIX is an exception to fundamental obligations of the GATT. Article XIX permits member governments to increase tariffs above tariff bindings, impose quotas that would otherwise be prohibited by GATT Article XI, or take other measures ordinarily prohibited by the GATT in response to harm caused by imports -- even where the imports are fairly-traded. In fact, Article XIX is the only exception allowing restrictions of this kind against fairly-traded products. As an exception to the GATT's basic obligations, the safeguard provisions of Article XIX and the Safeguards Agreement would, as a matter of well established GATT interpretation, be construed narrowly against the country invoking the exception.

Section 201 of the Trade Act of 1974 implements in U.S. law the safeguard rules of the WTO and the NAFTA.[2] Section 201 authorizes the President to take appropriate action to assist a domestic industry in cases where the ITC finds that imports are a "substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251(a). H.R. 2795 would amend Section 201 to permit the ITC to exclude certain producers of the relevant like products from the domestic industry to make it easier for "seasonal" industries to claim relief. It would even permit the exclusion of the very same "seasonal" producers requesting relief to the extent that they produced the same products at other times of the year. In our view, the proposed amendment would not withstand scrutiny by a WTO panel. Nothing in Article XIX or the WTO Safeguards Agreement suggests that a party may deliberately

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1. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw); 142 Cong. Rec. S441 (daily ed. Jan. 26, 1996) (statement of Sen. Graham) ("This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers.").

2. See S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

exclude domestic producers of the like product in defining the domestic industry. Indeed, Article 4 of the Safeguards Agreement states the opposite. It defines "domestic industry" as the "producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products." (Emphasis added.)

In the Tomatoes case, the U.S. industry tried to argue around the requirements of Section 201 by urging that the term "directly competitive products" in Section 201 should allow the United States to exclude certain domestic producers of the admittedly like product (fresh tomatoes) and limit the domestic industry to those producers that face competition from imports at particular times of the year.

The ITC properly rejected this argument in Tomatoes on the grounds that it was inconsistent with the statute and unsupported by the facts.[3] Noting that the Commission must guard against "industry definitions that are drawn artificially narrow simply to make relief more likely," the Commission correctly concluded that the "concept of 'directly competitive' in the statute serves to expand the class of producers of products who may seek and obtain relief, rather that to create a subclass of preferred producers who may seek and obtain relief."[4]

The Commission's ruling in the Tomatoes case was consistent not only with U.S. law, but also with longstanding GATT precedent. "Directly competitive" is a term of art in GATT. GATT panels interpreting Article III.2, which also distinguishes between "like" products and "directly competitive" products, have repeatedly held that "directly competitive" refers to a broader grouping of products than those that would qualify as "like" products. That is, "directly competitive" products would encompass those products that are not sufficiently similar in characteristics to be "like" products, but which have similar end uses and are considered commercial substitutes. See, e.g., Japan -- Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages, BISD, 34S/83, 116-17 (1987)(whiskey, brandy, and vodka found to be separate like products within a single category of directly competitive distilled liquor products on the basis of their use and characteristics); United States -- Measures Affecting Alcoholic and Malt Beverages, BISD, 39S/206, 276-77 (1992)(various types of wine that arguably constituted separate like products "would nevertheless have to be regarded as 'directly competitive' products"); EEC -- Measures on Animal Feed Proteins, BISD, 25S/49, 63-64 (1978) (vegetable and animal proteins for feedstuff could not be considered "like" products but did constitute "directly competitive" products in light of their final use and technical substitutability).

Thus, the term "directly competitive" in the WTO agreements refers to the nature of the product and its uses and commercial substitutability for the like product in question. The inclusion of "directly competitive" products within the WTO agreements only serves to broaden the potential category of producers that can seek safeguard relief, i.e., to those categories of producers that, while not producing "like" products, are nevertheless producing a product that is substitutable for the imported product.

H.R. 2795, however, would turn the "directly competitive" concept on its head and use it to define a narrower domestic industry. H.R. 2795 would legislate a reversal of the Tomatoes determination by authorizing the ITC to exclude certain like product producers (including the same "seasonal" producers claiming injury with respect to their production at

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3. Tomatoes at I-10-11 and I-13.

4. Tomatoes at I-11, note 26. The ITC's conclusion regarding the meaning of "directly competitive" products is supported by the legislative history of Section 201, which defines "directly competitive" products as those that "although not substantially identical in their inherent or intrinsic characteristics [i.e., are not "like products"], are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor." See S. Rep. No. 1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

other times of the year) from consideration in order to define the domestic industry on the basis of the degree of competition from imports at certain times of the year.[5]

Thus, the bill's application of the concept of "directly competitive" products is at odds with the accepted meaning and use of that concept in the WTO agreements. If enacted and challenged in the WTO, the proposed amendment would almost certainly be found by a WTO dispute settlement panel to be inconsistent with the obligations of the United States under the WTO agreements. Similarly, because Chapter 8 of NAFTA incorporates the obligations of the WTO in this respect, if it were challenged under NAFTA, the proposal also would be found to violate NAFTA.

III. Consequences of H.R. 2795 for U.S. Industry

The issue raised by the bill involves much more than the interpretation of arcane concepts of the WTO agreements. Enactment of the bill would have several harmful consequences.

First, any safeguard action by the United States under this proposal would almost certainly generate retaliatory trade action by the affected countries. The Safeguards Agreement and NAFTA permit member countries whose products are subject to safeguard actions to suspend "substantially equivalent concessions" to the trade of the country applying the safeguard measure (unless the parties otherwise agree on an amount of trade compensation). Safeguards Agreement, Art. 8(2); NAFTA, Art. 801(4). Because the proposed amendment would not be consistent with the Safeguards Agreement, the three-year moratorium on retaliatory action (set forth in Article 8(3) of the Safeguards Agreement) would not apply. Article 801(4) of NAFTA does not limit the right to retaliate in response to safeguard measures (even if validly imposed) by such a moratorium and, therefore, safeguard actions pursuant to the proposed amendment likewise would be subject to immediate retaliation by Mexico or Canada without even the need for a dispute settlement process.

Second, we would fully expect that safeguard measures taken under this proposal would be challenged in the WTO and/or NAFTA, and, for the reasons discussed above, we think that any such challenge would be successful, resulting in a finding that the United States had infringed its international obligations.

Third, in the very unlikely event that a WTO or NAFTA panel were to find the proposed amendment consistent with U.S. international obligations, the overall consequences for U.S. trade policy would still be negative. Specifically, in that event, we would expect U.S. trading partners to adopt legislation that would redefine the relevant "domestic industry" in a way that made it easier for those nations to impose restrictions on U.S. products. The United States, as the world's leading exporter of agricultural products, would have a great deal at stake were the requirements for applying safeguard actions watered down in the manner contemplated by H.R. 2795. In Mexico, Canada, Europe, or Japan, new restrictions on products such as corn, apples, beef or poultry could be contrived. Moreover, while this development would certainly impact U.S. agricultural exports, the "who's competing with whom" approach contemplated by the bill could be used in the context of any number of industries of vital interest to U.S. exporters.

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5. Proponents of the amendment acknowledge that the intended beneficiaries would be like product producers that compete with imports at a particular time of the year rather than producers of different products that are substitutable for the imported like product. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw).

Mr. SHAW. Thank you.
Mr. Monteverde.

STATEMENT OF HUMBERTO MONTEVERDE, PRESIDENT, FRESH PRODUCE ASSOCIATION OF THE AMERICAS; ACCOMPANIED BY LEE FRANKEL, EXECUTIVE VICE PRESIDENT, FRESH PRODUCE ASSOCIATION OF THE AMERICAS

Mr. MONTEVERDE. Good afternoon, Mr. Chairman and honorable Members of the Subcommittee. My name is Humberto Monteverde. I am president of the Fresh Produce Association of the Americas, Nogales, Arizona, and I represent the American businesses and allied industries involved in the sales and distribution of Mexican produce. I am accompanied today by Lee Frankel, executive vice president of the association.

I have submitted a written statement which I will summarize and add a few comments. I would like my written statement to be included in the record as if read. I also would like to submit for the record an excellent article about the Florida tomato industry from a recent issue of the Wall Street Journal.

Mr. Chairman, the bill before us, H.R. 2795, does not mention tomatoes or seasonality, but we all know that it is about Mexican fresh winter tomatoes. H.R. 2795 continues the so-called tomato war between Florida and Mexico from last year, when the U.S. International Trade Commission said the law does not recognize a seasonal industry, and, therefore, tomatoes harvested in south Florida from January to April do not qualify its growers to safeguard import relief under section 201.

A seasonal industry sounds plausible, but let me tell you that the tomato is a particularly bad example to use for a seasonal industry. A tomato vine takes 90 to 120 days to produce fruit. Furthermore, a tomato is a perennial, although it is usually planted and harvested as an annual. A tomato vine planted in the early fall can be harvested until late spring, when the climate is too hot in Mexico for the flowers to set and produce fruit.

Let me clarify one thing. Tomatoes are imported from Mexico almost every single day of the year, with the exception of Christmas and New Year's and Easter, when they close American customs. During the winter seasons, both Florida and Mexico ship tomatoes, but they ship different types of tomatoes. Florida ships mature greens, which are picked green, then artificially processed to degreen them. Mexico, in contrast, ships vine-ripened tomatoes which are left on the vine and picked only when there is natural color to them.

In addition, if Florida growers lost any money this year, it was because of reduced production because of the weather, since prices were the highest they have been in years.

H.R. 2795 is applicable to any perishable agricultural product. It can be used by a lot of agricultural groups and that is why it is such a dangerous piece of legislation. If H.R. 2795 is adopted, it will allow almost anyone to claim injury from imports. A small group of growers can claim injury during a very short and specific period of time, even though other growers are doing very well. There is nothing to require import relief to be narrowly constructed.

As written, H.R. 2795 could increase tariffs and thereby increase the cost of many perishable imports to everyone in the United States all year long. If H.R. 2795 is adopted, and if eventually tariffs are raised, higher prices could be charged by the entire industry, even though the injury was claimed by a very small group.

For example, growers could get into the greenhouse tomato business and then complain just to get import relief for nongreenhouse tomatoes. Such complaints should be a business problem, not a legislative or political one. But with H.R. 2795, it would become a national issue and resolved at the Federal level.

There is also the possibility of a grower planting a small field in one area and then claiming seasonal injury from imports, even though the grower may have thousands of acres in another area that are profitable. In other words, I see a lot of possibilities for abuse with H.R. 2795.

A seasonal industry may sound like a plausible idea to the uninformed, but in the real world of agriculture, it is an absurd idea. If a seasonal industry is to be a reality, dates must be established for the season. If the season is from the first picking until the last harvest, a season for the winter tomato industry would extend from October to June. But that period is too long, because many areas in the United States will be producing tomatoes so that imports will not be the only competition. There will be multiple competitors.

To isolate a specific and narrow time in which imports compete with domestic tomatoes would involve picking arbitrary dates, say, January through March. That will mean the same tomato vine would belong to two industries, because, do not forget, a tomato vine will continue to produce into spring. The same tomato vine that competed with Florida winter tomatoes from January through March will suddenly become a noncompetitive vine on April 1 unless the April domestic tomato claims injury. In that case, the same winter vine would now belong to the spring tomato industry, ad nauseam.

You can see, Mr. Chairman, how ridiculous this can get. You can see also that some packing, sheds, tractors, and other equipment used in the winter tomato industry suddenly will become part of another industry on an arbitrary date. That does not make economic sense.

The tomato vine might seem like an extreme example of a seasonal industry, but take almost any product and you will see how the concept of a season is a moving target. In many cases, a season in the harvest travels north with the weather. Conceivably, each region can claim injury from imports and there would be a rolling procession of petitions as the weather changes from winter to spring to summer. Mr. Chairman, I doubt very much that this Committee has that in mind.

We see this bill as just another Florida demand for special treatment. Mr. Chairman, your Committee and administration already have given Florida special favored treatment. When NAFTA was negotiated, Florida got tariff rate quota for tomatoes. It also got a 10-year phaseout of tariffs for tomatoes, while other commodities were done in 5 years or less. Florida also received a special exemp-

tion from the Federal Government to use two chemicals on its tomatoes that are banned for use on imports.

In addition, Florida growers demanded marketing money from the taxpayers of Florida and the Florida Department of Agriculture responded by giving $1.9 million over the last 5 years for promotional efforts. That means the few multimillionaire tomato-growers in Florida are getting tax money to get richer. Now the same Florida growers are getting at least $1.5 million in Florida taxpayer money to file petitions against Mexican imports.

H.R. 2795 sets a bad precedent. The bill creates bad trade policy. It exposes American exports to retaliation. It is a bad idea, a bad bill, and just simply bad for America and American consumers.

Thank you for allowing me to address this Committee today. We will be very glad to answer questions.

[The prepared statement and attachment follow:]

STATEMENT OF HUMBERTO MONTEVERDE
PRESIDENT
FRESH PRODUCE ASSOCIATION OF THE AMERICAS

Mr. Chairman, my name is Humberto Monteverde. I am the president of the Fresh Produce Association of the Americas, an organization that represents well over a hundred U.S. importers, exporters and distributors of fresh produce in Nogales, Arizona. I am also the owner and president of HM Distributors, a family-owned business that packages and distributes fresh produce throughout the United States. I speak also today for everyone along the Arizona-Mexico border who depends on trade for their livelihood.

We oppose H.R. 2795.

1. Trade in Fresh Produce is Important to our Community

Nogales is ghe gateway city to the Mexican state of Sonora in southeastern Arizona. Trade is vital to our community. Imports of fresh produce are the backbone, the muscle, and the lifeblood of this community of 40,000 people during the winter months. Importers and distributors are responsible for hundred of millions of dollars of trade in fresh produce. Our industry has created thousands of jobs in Nogales and throughout the state -- ranging from truck drivers to mechanics, office clerks and secretaries, warehousemen to laborers, hotel restaurant and retail employees to service station attendants.

We also export U.S.-made paper products, seed, fertilizer, farm equipment and chemicals to fresh fruit and vegetable growers in Mexico. These products are manufactured throughout the United States and in our own backyard. For example, a Weyerhaeuser manufacturing plant in Yuma, Arizona - not far from Nogales - ships 40 percent of its output of containers to Mexican growers in Sinaloa. Wooden pallets, which are used to transport boxes of fresh produce, are also manufactured in Nogales and shipped to Mexico. The fresh produce industry is without question a major factor in the economic well-being of southern Arizona.

Each of these industries could be placed in immediate jeopardy if this legislation is passed. In an area that is already suffering from 20 percent unemployment, we can ill-afford to lose any more jobs.

II. This legislation is Bad Trade Policy

We oppose this legislation not only because it threatens our livelihood, but also because we understand the importance of free trade to the United States. Contrary to our commitments under the GATT and the NAFTA, this measure promises to trigger a perilous protectionist trade spiral. Essentially, it would help to shield a relative handful of U.S. farmers against competition from imports. In the process the bill would:

(1) Invite retaliation by our trading partners against U.S. products. Both the NAFTA and the WTO authorize such compensatory steps.

(2) Encourage U.S. trading partners to adopt similar protections to shield their commodities from U.S. competition.

(3) Undermine the U.S. drive to persuade other nations to honor their trade commitments.

(4) Establish a precedent allowing virtually any small group of producers of a perishable product in the United States or abroad to define themselves as "seasonal" regardless of whether or not that industry as a whole has been injured by imports.

For those of us who depend on international trade, we must ensure that the principles and the integrity of the NAFTA and the GATT are preserved. We must also ensure that a stable and predictable trading regime is protected. So, regardless of whether or not this bill was designed to reduce imports of Mexican produce or widgets from the European Union, I would oppose it. While support for the NAFTA and the GATT may be waning in Washington, DC, it is strong in Arizona.

III Florida Tomato Growers -- Still Vying for Protection

Mr. Chairman, as we all know, perhaps too well, among the strongest supporters of this legislation are growers of fresh fruits and vegetables in Florida - particularly a handful of tomato growers. During the winter months, Florida is the primary domestic suppliers of fresh tomatoes. It competes primarily with imports from Mexican tomatoes during the months of January through April. Although most of Florida's production takes place ooutside of these four months, it is this period that they seemed to be most concerned about. I guess that's because you cant't seek protection from domestic competition.

Although I have tremendous sympathy for growers who have suffered financilly, I have little sympathy for this group of producers that number about eighty. In fact, the industry is dominated by four families, who, by all accounts, have profited handsomely from growing tomatoes. Paul DiMare, one of the leading proponents of import protection, runs one of the largest vegetable operations in the country.

Florida growers have complained about Mexican imports for well over 20 years. A recent **Wall Street Journal** article chronicled: "Back when Jimmy Carter was president, Mr. DiMare accused trade officials of 'driving Florida farmers out of business' by failing to stop Mexican growers from selling tomatoes below cost. The Carter administration didn't do anything. Florida's tomato industry didn't collapse, and Mr. DiMare is still growing and packing tons of produce."

In any event, it seems that each time they have asked for import protection in recent years, they have found a sympathetic political ear in Washington. Short of defeating the agreement outright, Florida growers received exceptional consideration under the North American Free Trade Agreement. Tariff rate quotas were imposed on a variety of fresh winter vegetables, including tomatoes, and their tariffs were subject to a slow, ten-year phase out. Each day I am reminded of this, as I pay more for the produce that I import from Mexico.

Yet, there is little evidence that Florida growers have been harmed by imports. In fact, last year the International Trade Commission determined that whatever problems the Florida growers were experiencing resulted from factors other than imports.

As far as I'm concerned, the Florida growers have injured themselves. They refuse to produce the type of tomato that U.S. consumers want. Florida grows green tomatoes and then gasses them. Mexico, on the other hand, produces a vine-ripe tomato -- much like those that you grow in your own backyard during the summer. Supermarket receipts show that demand for Florida mature green tomatoes has declined, while demand for Mexican vine-ripe and Romas has increased. **The Wall Street Journal** quoted Mr. DiMare as saying "it doesn't really matter" how tomatoes taste because they are condiments, seldom eaten alone. An April 7 article in Fort Lauderdale's **Sun Sentinel** reported that even Mr. DiMare's packing houses in Tampa, Chicago and elsewhere purchase Mexican tomatoes.

"Some people want this huge tomato which we don't grow here, so we buy out of Mexico," he said.

So, instead of changing their production practices to satisfy U.S. consumers, they are spending $2 million on trade lawyers and lobbyists to shield themselves from imports. As far as I'm concerned that is a pretty poor way of conducting business - not to mention that U.S. taxpayers are shouldering the costs of most of these activities.

IV. Conclusion

Mr. Chairman, in conclusion, although to many this piece of legislation is just another technical-sounding bill, to those of us along the U.S.-Mexico border it is very simple -- it threatens the very businesses that we have worked so hard to develop. To all those in the United States whose jobs depend on trade, it threatens the stable trading relationships upon which we rely.

Thank you, Mr. Chairman.

PLAYING CATCH-UP
With Little Evidence, Florida Growers Blame
Tomato Woes on Nafta

Cheap Imports From Mexico Are 'Killing Us',
They Say in a Familiar Refrain

Soft Produce in Hard Boxes

By Helene Cooper and Bruce Ingersoll
Staff Reporters of The Wall Street Journal

HOMESTEAD, FL. - For years, tomato grower Paul J.DiMare has been predicting the demise of the business that made him wealthy.

Back when Jimmy Carter was president, Mr. DiMare accused trade officials of "driving Florida farmers out of business" by failing to stop Mexican growers from selling tomatoes below cost. The Carter administratio didn't do anything, Florida's tomato industry didn't collapse, and Mr. DiMare is still growing and packing tons of produce on the edge of the Everglades, about 30 miles southwest of Miami.

Now, Mr. DiMare is again decrying a surge of Mexican tomatoes and imploring the president to impose quotas and tariff increases. As before, he speaks in apocalyptic terms. Mexican growers are "killing us", he told Agriculture Secretary Dan Glickman in a public discussion. "They are absolutely murdering the state of Florida."

To Mr. DiMare and many other Florida growers, the villain these days is the North American Free Trade Agreement. The growers are exploiting the anti-Nafta backlash in this election year; indeed, Mr. DiMare keeps a thick sheaf of favorable news clippings on his desk. Yet the growers face problems that go far beyond any trade pact:

Pre-Nafta tariffs on Mexican tomatoes were already low, and the treaty's initial tariff reduction cuts their price by less than a penny a pound. What makes all Mexican exports-including produce-more competitive is the 40% peso devaluation, brought on in 1994 by that country's economic troubles. Mexican growers will lose that advantage if a recovey revives the peso, as many experts say will happen.

Mexican growers have improved the shelf life of their vine-ripened tomatoes, taking away an advantage once enjoyed by Florida, which picks its tomatoes green and exposes them to a gas to speed up the ripening process. Indeed, one U.S. agricultural official says Mexican tomatoes "taste far better" than those from Florida, but Mr. DiMare says "it doesn't really matter" how tomatoes taste because they are condiments, seldom eaten alone.

Hurricanes, cold snaps and other weather woes have hurt Florida tomato yields in recent years, enabling the Mexicans to capture a greater share of the market. Says Roberta Cook, an agricultural economist at the University of California, Davis: "Mexico often fills supply gaps when Florida production is down."

'Down the Tubes'

Florida growers insist that Mexican imports endanger thousands of U.S. jobs. Unless President Clinton intercedes "within the next few weeks, the Florida tomato industry is going down the tubes", warns Wayne Hawkins, general manager of the Florida Tomato Committee. Yet the state's industry is dominated by the DiMare clan and three other families whose operations are highly diversified and, by all accounts, profitable more years than not.

Mexicans see Florida growers as intransigent. They "have stated flatly that they dont't want to talk," says Eduardo Palau, head of CAADES, a group of growers in the state of Sinaloa on Mexico's Pacific Coast. "They just continue harassment through legislated proceedings."

Floridians also get little sympathy from their counterparts in California, whose summer-harvest tomatoes compete with Mexico's crop. "All this is about protecting those four big guys," say Ken Moonie, vice president of the California tomatoe operations of Calgene Inc., a subsidiary of Monsanto Co., which is also becoming a Florida grower. "It's not like corn or any agricultural commodity where thousands of

growers (are) involved."

Tomatoes and Politics

Yet the Clinton administration, which considers Florida essential in the November election, is heeding the plea for special protection. "It's not that we're afraid that the farmers won't vote for us-there aren't enough tomato farmers down there," says one Clinton strategist. "The fear is they'll hit us with a negative advertising campaign." So U.S. Trade Representative Mickey Kantor has endorsed a bill sponsored by the Florida delegation that would make it easier to slap tariffs on Mexican tomatoes.

Meanwhile, Florida growers are pressing Congress to impose U.S. packaging and labeling standards on the Mexicans - a wily stratagem. Hard, unripe Florida tomatoes are shipped in ordinary boxes; vine-ripened Mexican tomatoes are hand-packed, tray upon tray, in cushiony ones that resemble egg cartons. If Congress makes Florida-style boxes mandatory, the Mexican say their riper tomatoes would be battered into puree. The Floridians say the move would make it easier to inspect Mexican produce. It also would "allow us to level the playing field," says Ray Gilmer, with the Florida Fruit and Vegetable Association.

The tomato tussle illustrates how special interests can manipulate voter concerns about free trade, particularly in an election year. But there is a risk. Mexico or other trading partners could counter with tariffs and other measures of their own.

"We can't say we will have free trade, except for when it doesn't suit us," says Russell Roberts, a business professor and trade expert at Washington University in St.Louis. Without Mexican competition, he adds, Florida growers would nearly monopolize the $650 million winter-tomato market, giving shoppers higher prices and fewer choice.

For more than 20 years, Florida growers have competed against producers in Sinaloa. In fact, some of their fathers showed the Mexicans how to get started long ago. The Floridians have usually kept most of the U.S. market since, but that hasn't stopped them from grousing. Says William Patterson, a Department of Agriculture economist: "Almost every season, with the exception of years when extremely bad weather wiped out the Mexican crop, they've complained."

Lobbying the ITC

Last year, the Floridians tried to persuade the International Trade Commission, the U.S. agency that arbitrates such disputes, that Mexican imports were injuring their winter market. Though Floridians also grow tomatoes in the spring and fall, they argued their winter production should be treated as a separate industry. That would highlight the impact of Mexican imports and improve Floridians' chances of getting more protection. But the ITC refused, ruling that the overall U.S. tomato industry hadn't been hurt. The agency said it didn't make sense to define Florida production as two industries - one competing with Mexican tomatoes "at certain times of the year" and the second competing primarily with U.S. tomatoes at other times.

Undaunted, Florida growers got their congressmen to back a bill defining winter vegetables, including tomatoes, as a separate industry. The bill cleared the Senate and is pending in the House. Last week, they filed an antidumping suit with the Commerce Department, seeking increased tariffs on Mexican tomatoes. "I have looked into the eyes of proud farmers facing bankrupcy, choking back tears, as they tell of the plight of their crops, employees and creditors, "wrote Sen. Bob Graham, a Florida,democrate, in a letter to local newspapers. "Was this Nafta's vision?"

Clearly, Mexican tomato imports are growing. According to the Agriculture Department, imports increased from 17,547 truckloads during the 1993-94 season (November to April) to 22,833 last season. As of the mid-March this year, Mexico shipped 19,759 truckloads of tomatoes. The Floridians have usually kept more than half of the winter market, though last year their share slipped to 37%.

Penny Tariffs

But Nafta doesn't appear to be the problem. The U.S. tariff on Mexican tomatoes was only 1.4 cents per pound before Nafta took effect in January 1994; lowering it to the present one cent hardly makes a difference. (Mr. DiMare says: "Nafta made it easier for Americans to go down there and set up shop.") The real issue is the peso devaluation that allows Mexicans to cut their dollar prices. But many of the Mexicans' production costs - including everything from pesticides to tractors - are denominated in dollars. As a result, says Ms. Cook, the agricultural economist, the cost competitiveness of Mexican growers hasn't improved in proportion to the devaluation.

The number of Florida tomato growers has declined in recent years. According to the Florida Tomato Growers Exchange, 88 growers are now producing tomatoes, down 10 from a year ago. The dropouts stayed in agriculture but "chose not to grow tomatoes this year," says Bernard Hamel, a field representative for the exchange.

There are many factors in the decline beyond Mexican competitiveness. The winter-vegetable business, like all American agriculture, is consolidating as corporate farms swallow smaller producers. Some growers have sold acreage to developers as suburban sprawl moved their way. Others lost struggles over land use and water management.

Still, Florida tomato production is rising while acreage is holding steady. Growers produced nearly 1.2 billion pounds in 1980-1981 on 46,300 acres, according to a University of Florida study, and 1.6 billion pouinds on 50,600 acres in 1994-1995. There have been dips and spikes in between, but the trend is up. Keith Collins, chief Agriculture Department economist, says, "There are some awfully big tomato producers down there."

Family-run businesses - particularly those owned by the DiMare, Gargiulo, Heller and Esformes families-have dominated the field. Some growers began as peddlers and wholesalers, and some grew tomatoes in Cuba until Fidel Castro forced them out.

Mr. DiMare, the 55-year-old grandson of a Sicilian immigrant, got his start in the tomato business from his father, who sold fruit from a pushcart in Boston. The family now runs one of the largest vegetable operations in the country, with farms in California, Florida and South Carolina. Mr. DiMare himself has done quite well. In 1988, he and two associates tried to buy the New England Patriots professional football team. He has gotten to know most of the political heavyweights in Florida, and many nationally; just last year, presidential candidate Pat Buchanan criticized Nafta at a rally at a DiMare packing plant near Miami.

The Florida growers tend to play down their production and marketing might and are secretive about earnings. But Monsanto, after studying the books of one family, the Gargiulos of Naples, Fla., paid $108 million for its far-flung opration. Tomatoes in Florida and elsewhere account for more than 50% of the revenue of the Gargiulo operation. During the past five years, Gargiulo's revenue more than doubled to $114 million yearly, according to disclosure reports filed by Calgene, a subsidiary of Monsanto. Calgene and the Gargiulo business are being merged with Collier Farms, a Florida grower acquired for $26 million.

Many large growers try to have operations in enough areas to grow and pack produce year round, offsetting vagaries of weather, currency or market fluctuations and changes in trade law. The Gargiulo family, in fact, grows tomatoes in both Florida and Mexico and ships tons of tomatoes into the U.S. from its Sinaloa joint venture.

Many California and Florida growers have different views of the Mexican threat. While Floridians produce mostly in the winter, the Californians grow mainly for the summer market and compete against Mexicans in nearby Baja California. But the Californians aren't blaming Nafta.

Indeed, many California growers have relocated or entered joint ventures in Baja, lured by lower land and water costs, cheaper labor and fewer regulations. They also consider themselves more used to competition than the Floridians, who for years have had a virtual lock on the winter-tomato market. Says Edward Beckman, president of the California Tomato Board: "My growers compete with growers in 28 states."

Mr. SHAW. Thank you.
Mr. Zapanta.

STATEMENT OF ALBERT C. ZAPANTA, EXECUTIVE VICE PRESIDENT, UNITED STATES-MEXICO CHAMBER OF COMMERCE

Mr. ZAPANTA. Thank you, Mr. Chairman. Thank you for the opportunity to testify today. I would also request that my statement be entered in for the record.

Mr. SHAW. Without objection.

Mr. ZAPANTA. The United States-Mexico Chamber of Commerce is a binational, bilateral chamber of commerce, fully funded by the private sector of both Mexico and the United States, representing over 1,000 U.S. businesses and the like in Mexico.

What I would like to begin my statement with today, Mr. Chairman, is to commend the Chairman and the Subcommittee for holding this hearing. Given the importance and complexity of the United States-Mexico trade relationship, it is certainly appropriate to examine U.S. legislation that might affect domestic industries, as well as our trade relationship with Mexico and throughout the world.

Today, I want to tell you why the United States-Mexico Chamber of Commerce, which represents businesses, organizations, and individuals throughout North America, believes the measures in H.R. 2795 that amend definitions of domestic industry and safeguard investigations involving perishable agricultural products will not be productive for the United States.

As you are all aware, the bill will provide protection against imports for U.S. producers of tomatoes and other seasonal perishable products. The legislation is primarily an effort to protect a limited portion of the tomato industry, a move that will work to the detriment of the U.S. robust export-oriented agricultural sectors.

By redefining who can qualify for protection under section 201 of the U.S. trade law, the United States is moving to shelter an industry that the U.S. International Trade Commission found injured not by unfair imports but by unfortunate climate conditions. In addition, the ITC determined Florida tomatogrowers were a relatively small portion of the U.S. tomato industry, making them ineligible for protection as a domestic industry. Thus, the effort to redefine them as seasonal.

Meanwhile, a much broader coalition of private sector interests could suffer retribution if the Congress seeks to protect one regional industry. Oilseeds, wheat, rice, barley, corn, meats, feed, and cotton fibers are among the top 50 U.S. exports to Mexico, our third largest trading partner and a country where U.S. imports account for more than 70 percent of all imports.

U.S. producers are also sending grains, dairy products, pork, poultry, apples, peaches, and other agricultural products to Mexico in substantial volumes. It could well be for Mexico to determine which of these industries qualify as seasonal in response to a protectionist piece of legislation.

The United States is a world leader in agricultural exports and we should not tailor legislation to protect narrow interests, legislation that could be a model for other nations looking to protect themselves from competitive U.S. agricultural goods.

The legislation is also counter to the U.S. position as a world leader for open trade. As the Nation with the world's largest economy and the most exports, it is imperative that the United States first set an example for open trade; second, work to open foreign markets; and third, to hold other countries to trade commitments. This would be made increasingly difficult if the United States does not maintain an open market on its own territory or honor its own commitments.

H.R. 2795 is certainly counter to the spirit of the North American Free Trade Agreement. In addition to directly affecting the United States-Mexico commercial relations, the legislation also sets a precedent for other limited interest groups in the United States who look to protection rather than competition as an engine for prosperity.

The Fort Lauderdale Sun-Sentinel in April of this year noted that much of the advantage for Mexican tomatogrowers comes from an investment in technology and products imported from the United States, technology the Florida growers passed up. An editorial concludes, "Florida's 80 tomatogrowers should begin finding their own solutions. Florida's farmers could take a classic free enterprise approach. They could concentrate on growing excellent tomatoes, trying to exceed the Mexican standard." Also it should be noted that while the Florida growers seek protection from Mexican competitors, many of the workers they employ are from Mexico.

The United States, Mexico, and Canada negotiated a fair agreement to boost economic activity in North America, making competition an engine of economic growth. Too much effort went into NAFTA to allow a special interest to unravel a portion of the treaty, a treaty that has clearly benefited a wide coalition of exporters in the United States.

Too many sectors in the U.S. economy are vulnerable to legislation that mirrors H.R. 2795. Many U.S. crops could be considered seasonal in other nations. Definitional gerrymandering will not serve interests in the United States, Mexico, or elsewhere in the world. We respectfully urge the Trade Subcommittee to vote no on H.R. 2795. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement
before the Committee on Ways and Means
Trade Subcommittee
April 25, 1996
by Albert C. Zapanta
Executive Vice President
United States-Mexico Chamber of Commerce

Thank you very much for the opportunity to testify today. I would like to commend Chairman Crane and the Subcommittee for holding this hearing. Given the importance and complexity of the United States-Mexico trade relationship, it is certainly appropriate to examine U.S. legislation that might affect domestic industries, as well as our trade relationship with Mexico and throughout the world. Today, I want to tell you why the United States-Mexico Chamber of Commerce -- which represents businesses, organizations and individuals from throughout North America -- believes measures in House Resolution 2795 that amend definitions of "domestic industry" in safeguard investigations involving perishable agricultural products will not be productive for the United States.

As you are all aware, the bill will provide protection against imports for U.S. producers of tomatoes and other seasonal perishable products. The legislation is primarily an effort to protect a limited portion of the tomato industry, a move that will work to the detriment of the United States' robust, export-oriented agricultural sectors. By redefining who can qualify for protection under section 201 of U.S. trade law, the United States is moving to shelter an industry that the U.S. International Trade Commission found injured not by unfair imports but by unfortunate climate conditions. In addition, the ITC determined Florida tomato growers were a relatively small portion of the U.S. tomato industry, making them ineligible for protection as a domestic industry; thus, the effort to redefine them as seasonal. Meanwhile, a much broader coalition of private-sector interests could suffer retribution if the Congress seeks to protect one regional industry. Oil seeds, wheat, rice, barley, corn, meats, feed and cotton fibers are among the top 50 U.S. exports to Mexico, our third-largest trading partner and a country where U.S. imports account for more than 70 percent of all imports. U.S. producers also send grains, dairy products, pork, poultry, apples, peaches and other agricultural products to Mexico in substantial volumes. It could well be for Mexico to determine which of these industries qualify as "seasonal" in response to a protectionist piece of legislation. The United States is a world leader in agricultural exports, we should not tailor legislation to protect narrow interests, legislation that could be a model for other nations looking to protect themselves from competitive U.S. agricultural goods.

The legislation is also counter to the United States' position as a world leader for open trade. As the nation with the world's largest economy and the most exports, it is imperative that the United States first set an example for open trade; second, work to open foreign markets; and third, hold other countries to trade commitments. This would be made increasingly difficult if the United States does not maintain an open market on its own territory or honor its own commitments. H.R. 2795 is certainly counter to the spirit of the North American Free Trade Agreement. In addition to directly affecting U.S.-Mexico commercial relations, the legislation also sets a precedent for other limited interest groups in the United States who look to protection rather than competition as an engine for prosperity. The Fort Lauderdale *Sun-Sentinel* in April of this year noted that much of the advantage for Mexican tomato growers comes from an investment in technology and products imported from the United States -- technology the Florida growers passed up. An editorial concludes, "...Florida's 80 tomato growers should begin finding their own solutions. [...] Florida's farmers ... could take a classic free-enterprise approach. They could concentrate on growing excellent tomatoes, trying to exceed the Mexican standard." Also, it should be noted that, while the Florida growers seek protection from Mexican competitors, many of the workers they employ are from Mexico.

The United States, Mexico and Canada negotiated a fair agreement to boost economic activity in North America, making competition an engine of economic growth. Too much effort went into NAFTA to allow a special interests unravel a portion of the treaty -- a treaty that has clearly benefited a wide coalition of exporters in the United States. Too many sectors of the United States economy are vulnerable to legislation that mirrors H.R. 2795 -- many U.S. crops could be considered "seasonal" in other nations. Definitional gerrymandering will not serve interests in the United States, Mexico or elsewhere in the world. We respectfully urge the Trade Subcommittee to vote "no" on H.R. 2795.

Mr. SHAW. Thank you.

I think a brief comment with regard to the price of tomatoes is in order at this time. Mr. Monteverde stated that it was at an all-time high. We know that this was back in the earlier part of the season and was caused in part by a freeze. After the freeze, however, the Mexicans, in fact, held back on their tomatoes in order to run the price up.

In that, I can tell you that the farm price for tomatoes fell as low as 64 cents a pound, and at the same time, the average price of the tomatoes in the grocery store in Florida was $2.50, which bears little resemblance to the 64 cents a pound that became the farm price, and that was on April 10.

We could see what would happen with the farm price back in March when it got up to $1.20 on March 20, and this was caused by the Mexicans really holding back on the tomatoes, and then coming in and flooding the market with them.

I would like to also comment on the question of the longevity of a tomato plant. I happen to know quite a bit about farming and I know that the farmers do not leave their tomato plants in for such a length of time because the productivity of the vine becomes very marginal. If you are making use of good farm practices, you would not be using your land to harvest tomatoes for that extended period of time.

I would like to also mention to the corn producing people, Mr. Heard, the question of, right now, the existing law recognizes a seasonal perishable agricultural industry under 201 as it applies to a region or geographical area. So I would ask you, where do you see the difference in applying 201 to a seasonal industry as we are asking, from the recognition of a regional or geographical industry, which 201 presently does?

Mr. HEARD. Yes, sir. As representing the corngrowers and 13 other groups, we are concerned that once you start opening Pandora's box with this type legislation, then at what level is a geographic change? We just heard today about California. We would have to possibly go into different laws addressing each county as you go north in California as far as grapes, and the same could happen with tomatoes. So, we are concerned that once you get into this process of rewriting the law to adapt to a specific sector, then we would have this happening all over the United States and all over the world.

Mr. SHAW. Then I would be correct in saying that you do not support regional or geographic industries, either, is that correct?

Mr. HEARD. We would support what is in the law and what has passed Congress, what passed NAFTA, what has passed the WTO.

Mr. SHAW. Mr. Houghton, do you have any questions?

Mr. HOUGHTON. No, I do not.

Mr. MONTEVERDE. Could I make a brief statement?

Mr. SHAW. Absolutely.

Mr. MONTEVERDE. My business, I am president of Fresh Produce Association of the Americas, but I also run an importing firm of Mexican tomatoes. That is how I make my livelihood. I would like to know how I held back tomatoes, because you really confused me on that one. You mentioned that Mexicans held back tomatoes. I do not see how we held back tomatoes.

Mr. SHAW. You did. I do not know how you did it——

Mr. MONTEVERDE. I do not know how.

Mr. SHAW. You just simply held them back off the market and the price went up, and it went through the ceiling. You brought up the point that they——

Mr. MONTEVERDE. Shipments in March and February were higher than January. How is this holding back production? Then the other thing——

Mr. SHAW. I received the information from the secretary of agriculture of the State of Florida, Bob Crawford's office.

Mr. MONTEVERDE. The other thing, the longevity of the vine, you must understand, since you do know about tomatoes, that they are perennial. But our vine is an indeterminate vine, not a determinate short vine like Florida might use. So we can harvest from top to bottom all the way up and even have them go over 6 feet and down and keep harvesting. So the longevity of the varieties we use in Mexico is quite something else.

Mr. SHAW. You do leave yours in for that long a season in Mexico?

Mr. MONTEVERDE. It is the nature of the variety we use. Why would we cut production out sooner if the plant is still giving us fruit to market?

Mr. SHAW. If you have high productivity, certainly, but that is certainly not the case in Florida.

Mr. MONTEVERDE. Because of different varieties, different——

Mr. SHAW. But you were applying that to Florida in your testimony, if you recall.

Mr. MONTEVERDE. Pardon me?

Mr. SHAW. You were applying that to Florida in your testimony.

Mr. MONTEVERDE. I do not know——

Mr. SHAW. When you were trying to define a season, we were not trying to define a season in Mexico. We are trying to define a season in Florida, and that is the point that I make.

Mr. MONTEVERDE. My testimony is that there are different tomato vines and so I can only comment on what I am familiar with. I cannot comment about Florida, which I am sure you can appreciate.

Mr. SHAW. I thought you were commenting about Florida, but we will leave that where it is.

I thank all of you gentlemen for being with us here today.

Our next panel are a number of witnesses who are in support of H.R. 2795, Carl Loop, the president of the Florida Farm Bureau and vice chairman of the American Farm Bureau; Barrett Lawrimore, executive director of the South Carolina Tomato Association; Mike Bozick of the National Alliance for Seasonal Agricultural Trade; and Terence Stewart, who is managing partner of the law firm of Stewart and Stewart.

Each of you have submitted your written testimony, which will become a part of the entire record. We would encourage you to summarize or proceed as you see fit.

Mr. Loop.

STATEMENT OF CARL B. LOOP, PRESIDENT, FLORIDA FARM BUREAU FEDERATION; AND VICE PRESIDENT, AMERICAN FARM BUREAU FEDERATION

Mr. LOOP. Thank you, Mr. Chairman, Members of the Committee. I appreciate the opportunity to be here this afternoon. I appreciate you all having these hearings.

My name is Carl Loop. I am vice president of the American Farm Bureau Federation and also president of the Florida Farm Bureau Federation. Farm Bureau supports H.R. 2795 because it extends the same safeguards afforded other commodities to seasonal perishable agricultural products.

Sections 201–204 of the Trade Act of 1974 authorizes the President to help domestic industries adjust to import competition. After a review by the International Trade Commission, the ITC, these provisions give the President the authority to withdraw or modify concessions or impose duties for a limited period of time. These provisions were intended to provide domestic industries transitional relief from import surges to give them the opportunity to adjust to increased competition.

While the current law does expressly provide transitional relief for most U.S. industries and products, it does not provide a mechanism for seasonal perishable agricultural products to gain the same type of transitional relief measures offered to other U.S. products.

Practical relief is simply not available for seasonal perishable crops grown in my State. That fact was demonstrated last year when the Florida Tomato Exchange filed a petition with the ITC seeking provisional relief under section 202(d) of the Trade Act of 1974 for fresh winter tomatoes. The commission ruled that the winter tomato industry of Florida could not be examined separately from the summer tomato industry of California. In effect, the commission ruled that both types of tomatoes are the same because of its determination that the express "like or directly competitive article" meant that all tomatoes produced in the United States in a calendar year define a single industry.

In effect, this meant current law discriminates against perishable crops, offering protection to nonperishable crops but not to perishable crops. Current law, as enacted by the ITC ruling, also does not distinguish or recognize the differences between similar products produced during different and separate marketing seasons.

The deficiencies in current law mean that growers of perishable crops with very distinct market windows, including farms in Florida, do not have access to the type of relief measures we need to adjust to the incredible increase of imports of some perishable crops from Mexico. We hope that you will correct the deficiencies in the law so that we have the mechanism in the law that provides necessary safeguards and transitional measures that allow us to compete.

Make no mistake, imports of fruits and vegetables are causing serious and perhaps permanent damage to many Florida farms. Without the type of transitional relief that is afforded other products in similar situations, Florida simply will not survive in the winter vegetable industry.

Perishable crops are clearly different from other commodities. If market conditions are poor during harvest, farmers of perishable

crops cannot wait for prices to improve. They must take the market price at the time of harvest.

Clearly, some commodities produced by the winter Florida vegetable industry have separate and distinguishable marketing seasons from producers in other States.

There are many reasons why current trade law should be changed. The tremendous increase in vegetable imports from Mexico is due in large part to the devaluation of the peso, a policy change resulting from U.S. help and encouragement.

This is mainly a fairness issue. The passage of this bill does not automatically determine that farmers have been damaged or does it give them relief. It does, however, give them the opportunity to seek a hearing before the ITC if they think they have been harmed. The ITC will then determine if there is evidence to justify a hearing. In other words, it gives the growers their day in court. Thank you, Mr. Chairman.

[The prepared statement and attachments follow:]

STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Presented by
Carl B. Loop
Vice President
American Farm Bureau Federation

April 25, 1996

Good afternoon. I am Carl Loop, Vice President of the American Farm Bureau Federation and President of the Florida Farm Bureau Federation.

The American Farm Bureau Federation is the nation's largest general farm organization, representing over 4.5 million member families in all 50 states and Puerto Rico. Our members raise virtually every commodity grown in the United States. It is a pleasure to appear before the subcommittee today to offer our views on H.R. 2795.

Farm Bureau supports H.R. 2795 because it extends to seasonal perishable agricultural products the same safeguards afforded other commodities. We urge the committee to move quickly to enact these reforms, but to narrow your focus to perishable agricultural products, so export markets for other commodities are not harmed.

Sections 201-204 of the Trade Act of 1974 authorize the President to help domestic industries adjust to import competition, after a review by the International Trade Commission (ITC). These provisions give the President the authority to withdraw or modify concessions or impose duties for a limited period of time. These provisions, enacted before the passage of the North American Free Trade Agreement (NAFTA), were intended to provide domestic industries with transitional relief from import surges to give them the opportunity to adjust to increased competition.

While current law does expressly provide transitional relief for most U.S. industries and products, it does not provide a mechanism for perishable agricultural products to gain the same types of transitional relief measures offered to other U.S. products. Relief is simply not available for many crops grown in my state.

That fact was demonstrated last year when the Florida Tomato Exchange filed a petition with the ITC seeking provisional relief under section 202(d) of the Trade Act of 1974 for fresh winter tomatoes. The Commission ruled that the winter tomato industry of Florida could not be examined separately from the summer tomato industry of California. In effect, the Commission ruled that both types of tomatoes are the same because of its determination that the expression "like or directly competitive article" meant that <u>all</u> tomatoes produced in the U.S. in a calendar year define a single industry. Because of this, the Florida Tomato Exchange withdrew the petition.

In effect, this means that current law, as evidenced by the ITC ruling, does not distinguish or recognize the differences between similar products produced during different and separate marketing seasons. As a result, current law discriminates against perishable crops with separate marketing seasons -

offering protection to non-perishable crops, but not to perishable crops.

The deficiencies in current law mean that growers of perishable crops, with very distinct market windows, including farms in Florida, do not have access to the types of relief measures we need to adjust to the incredible increase of imports of some perishable crops from Mexico. Farm Bureau commends the Subcommittee on Trade for holding this hearing to learn firsthand how it is affecting farmers in my state. We hope that you will correct the deficiencies in the law so we have a mechanism that provides necessary safeguards and transitional measures that allow us to compete.

Make no mistake, imports of fruits and vegetables are causing serious and perhaps permanent damage to many Florida farmers. According to USDA data, Florida tomato growers lost on average $1,571 per acre in 1994 and $2,728 in 1995 - a combined loss of more than $209 million. As a rule of thumb, each $50,000 in lost revenue translates into one less American job. This equates to the loss of over 4,000 permanent jobs. Florida pepper growers over the same two year period lost more than $26 million.[1] Florida cannot continue to absorb these kinds of losses. Without the type of transitional relief that is afforded other products in similar situations, Florida simply will not survive in the winter vegetable industry. This would result in the loss of even more jobs - both seasonal and permanent.

Perishable crops are clearly different from other commodities. Some perishable crops, like fresh tomatoes, peppers or sweet corn can be stored for only limited periods of time. A mature green tomato has a shelf life of about 21 days. A pink tomato can be stored for 7-14 days. Peppers have a shelf life of 8-10 days. Sweet corn should be consumed within 6-10 days. After these crops are harvested, they must be marketed immediately. If market conditions are poor during harvest, farmers of perishable crops cannot wait for prices to improve. They also cannot hold them on the vine or in the field waiting for better markets. They must take the market price at the time of harvest or not sell at all. Producers of non-perishable crops have the opportunity to store their product for extended periods of time if market prices are low. They can wait for market conditions to improve. Farmers of perishable crops cannot. The price at harvest is the price they must take.

Clearly, some commodities produced by the Florida winter vegetable industry have separate and distinguishable marketing seasons than similar crops in other states. Florida is the exclusive domestic supplier for several months of the year for some perishable crops for example, bell peppers from January to April (Table 1). The Florida winter tomato industry is similar (Table 2).

California is also the exclusive U.S. commercial producer for many commodities including artichokes, garlic and kiwifruit. It also is the exclusive U.S. producer for many commodities during specific times of the year. California is the exclusive U.S. producer of avocadoes from March to June. It is the exclusive winter producer of asparagus.

Because of climactic conditions, some states are the sole producer of many commodities and have exclusive access to consumer markets. This exclusivity means that no other U.S. growing region is capable of competing during a particular marketing season. Because of this exclusivity, certain perishable commodity markets are clearly separate from other

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[1] Data compiled from USDA, Agricultural Statistics Board, National Agricultural Statistics Service, Vegetable Annual, 1993-95.

producers of the same or like commodity. While there is overlap of seasons where like commodities from other states and regions compete, a tomato grower in any other state outside Florida is unable to compete with Florida growers for the January fresh tomato market. Because of the highly perishable nature of these commodities, they also cannot be stored long enough to hold them to compete during a different season. For these reasons, Florida has an exclusive and separate winter vegetable industry for several commodities, Current trade law does not recognize this "separateness" or "exclusiveness." As a result, current law is inadequate because it provides transitional relief to some commodities, but not to perishable crops with separate growing and marketing season. In that regard the definition of "like or directly competitive article" needs to be changed so it recognizes separate and exclusive market seasons.

There are other reasons why current trade law should be changed. The tremendous increase in vegetable imports from Mexico is due primarily to the devaluation of the peso - a policy change resulting from U.S. help and encouragement.

On December 20, 1994, the Mexican government devalued the peso by 15 percent and has since allowed the peso to fall further relative to the dollar. Today, one dollar will purchase 7 pesos--an effective peso devaluation of 50 percent. The effect on tomato and pepper exports from Mexico were dramatic.

WEEKLY SHIPMENTS OF MEXICAN TOMATOES AND PEPPERS

Week Ending	10,000 pounds Tomatoes		Peppers
10/1/94	688		-
10/8/94	568		-
10/15/94	728		-
10/22/94	752		665
10/29/94	876		1,155
11/5/94	1,004		735
11/12/94	560		1,680
11/19/94	352		1,855
11/26/94	676		2,240
12/3/94	-		2,520
12/10/94	1,016	Peso	3,360
12/17/94	1,704	Devaluation	7,314
12/24/94	2,160		7,350
12/31/94	2,764		9,940
1/7/95	2,644		13,615
1/14/95	3,052		11,585
1/21/95	3,336		12,005
1/28/95	4,004		14,105
2/4/95	4,388		15,330
2/11/95	3,976		16,065
2/18/95	4,248		10,360
1/25/95	5,120		14,070
3/4/95	4,452		13,930
3/11/95	4,312		15,820
3/18/95	3,652		11,410
3/25/95	2,844		11,900
4/1/95	2,564		6,790
4/8/95	1,988		7,070

Exports of tomatoes from Mexico in January of 1994 totaled 108.08 million pounds. In January of 1995, the first full month after the peso devaluation, exports jumped 34 percent to 144.96 million pounds.

Exports of peppers from Mexico in January of 1994 totaled 46.33 million pounds. In January of 1995, the first full month after the peso devaluation, exports jumped 11 percent to 51.01 million pounds.

Yearly totals from 1994 to 1995 are similar. Tomato exports increased 58 percent in 1995 from 1994 totals. Pepper exports increased 20 percent. In 1993, before NAFTA, tomato exports totaled 882.9 million pounds. In 1994, the first year under NAFTA, tomato exports totaled 829 million pounds, a drop of 54 million pounds or 6 percent from 1993.

In 1993, before NAFTA, pepper exports totaled 223.18 million pounds. In 1994, pepper exports totaled 213.21 million pounds, a drop of 10 million pounds or 5 percent from 1993.

The peso devaluation means consumers in Mexico took an almost 35 percent reduction in per capita income overnight. This price instability caused a crisis of confidence. Businesses lost confidence in the peso as did many Mexican farms. For that reason, many farms sought dollars for their products regardless of price since they had no confidence that pesos received today would be worth the same tomorrow. This is why consignment sales are standard operating procedure for Mexican fruit and vegetable shippers. Consignment sales are sales where fruits or vegetables are shipped without a firm price. A price is assigned after reaching U.S. markets based on other sales for that day. Consignment or "open" sales are clear signs of seller indifference as long as payment is made in dollars.

If the Mexican government does not implement sound economic and fiscal policies that lead to a strong peso, imports of perishable commodities will continue to stream into the U.S.

Without a stronger peso, our winter vegetable markets will continue to be more attractive to Mexico's farmers, regardless of price. This is the key reason why current law needs to be amended to change the definitions of "domestic industry" and "like or directly competitive article."

We need to make available to domestic producers all the relief from the impact of import surges to which they are entitled under our trade agreements. Failure to realistically define the scope of an industry should not preclude the availability of relief.

For these reasons Farm Bureau supports H.R. 2795 and urges the subcommittee to act quickly to pass this important legislation.

Thank you for the opportunity to appear here today.

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TABLE 1: BELL PEPPERS - AVAILABILITY
1994 Arrivals From Producing Areas (1,000 CWT.) Based on unload/arrival figures in 22 major U.S. cities

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	1994	1993
ALABAMA	----	----	----	----	----	----	1	----	----	----	----	----	1	3
CALIFORNIA	----	----	----	----	74	163	158	131	166	185	91	4	972	1,031
COLORADO	----	----	----	----	----	----	----	----	2	----	----	----	2	----
CONNECTICUT	----	----	----	----	----	----	----	1	1	----	----	----	2	1
DELAWARE	----	----	----	----	----	----	----	1	----	----	----	----	1	----
FLORIDA	270	252	317	329	316	91	1	----	----	35	177	265	2,053	1,784
GEORGIA	----	----	----	----	3	139	60	5	2	26	18	2	255	170
ILLINOIS	----	----	----	----	----	----	11	29	21	9	----	----	70	39
INDIANA	----	----	----	----	----	----	1	8	6	----	----	----	15	4
KENTUCKY	----	----	----	----	----	----	2	2	1	----	----	----	5	4
LOUISIANA	----	----	----	----	----	10	1	----	----	----	----	----	11	11
MARYLAND	----	----	----	----	----	----	1	3	1	1	----	----	6	5
MASSACHUSETTS	----	----	----	----	----	----	----	6	6	1	----	----	13	17
MICHIGAN	----	----	----	----	----	----	1	32	42	3	----	----	78	86
MISSOURI	----	----	----	----	----	----	1	1	1	----	----	----	3	7
NEW JERSEY	----	----	----	----	----	----	35	77	41	26	3	----	182	203
NEW YORK	----	----	----	----	----	----	----	17	26	8	2	----	53	60
NORTH CAROLINA	----	----	----	----	----	34	88	6	3	1	----	----	132	121
OHIO	----	----	----	----	----	----	----	10	11	4	----	----	25	11
OREGON	----	----	----	----	----	----	----	----	----	1	----	----	1	----
PENNSYLVANIA	----	----	----	----	----	----	----	7	7	3	----	----	17	29
RHODE ISLAND	----	----	----	----	----	----	----	2	1	----	----	----	3	4
SOUTH CAROLINA	----	----	----	----	----	2	2	----	----	1	----	----	5	3
TENNESSEE	----	----	----	----	----	1	1	1	----	----	----	----	3	2
TEXAS	----	----	----	----	2	9	----	1	5	11	59	32	119	106
VIRGINIA	----	----	----	----	----	----	16	17	14	8	----	----	55	49
WASHINGTON	----	----	----	----	----	----	----	7	10	1	----	----	18	20
WEST VIRGINIA	----	----	----	----	----	----	----	1	----	----	----	----	1	1
TOTAL	**270**	**252**	**317**	**329**	**395**	**449**	**380**	**365**	**367**	**324**	**350**	**303**	**4,101**	**3,771**

U.S. arrival figures generally represent 33 percent to 50 percent of total product originating from individual sources identified. Some states, notably in the West and Midwest, are comparatively underrepresented by arrivals quoted. Figures are intended only to indicate relative availability of product.

TABLE 2: TOMATOES - AVAILABILITY
1994 Arrivals From Producing Areas (1,000 CWT.) Based on unload/arrival figures in 22 major U.S. cities

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	1994	1993
ALABAMA	----	----	----	----	----	2	4	8	4	----	----	----	18	15
ARKANSAS	----	----	----	----	----	20	36	----	----	----	----	----	56	63
CALIFORNIA	8	----	----	----	20	298	612	725	661	643	400	88	3,455	3,703
COLORADO	----	----	----	----	1	2	3	----	1	2	1	----	10	0
FLORIDA	823	750	742	928	1,182	719	80	----	6	251	590	783	6,854	6,800
GEORGIA	----	----	----	----	----	36	11	1	1	9	5	----	63	52
ILLINOIS	----	----	----	----	----	----	9	14	6	----	----	----	29	39
INDIANA	----	----	----	----	----	----	1	1	2	----	----	----	4	2
KENTUCKY	----	----	----	----	----	2	18	20	1	----	----	----	41	43
LOUISIANA	----	----	----	----	----	3	1	----	----	----	----	----	4	3
MARYLAND	----	----	----	----	----	----	41	24	3	1	----	----	69	113
MASSACHUSETTS	----	----	----	----	----	----	----	1	2	----	----	----	3	3
MICHIGAN	----	----	----	----	----	----	2	39	56	5	----	----	102	97
MISSOURI	----	----	----	----	----	----	2	4	2	----	----	----	8	8
NEW JERSEY	----	----	----	----	----	3	42	43	27	8	2	----	125	157
NEW YORK[1]	----	----	1	3	1	3	4	12	23	3	1	----	51	39
NORTH CAROLINA	----	----	----	----	----	2	23	26	24	3	----	----	78	79
OHIO	----	----	----	----	1	3	9	44	61	21	1	----	140	131
PENNSYLVANIA[1]	4	3	4	2	2	3	3	40	80	8	1	----	150	118
PUERTO RICO	2	2	1	----	----	----	----	----	----	----	----	----	5	26
SOUTH CAROLINA	----	----	----	----	----	249	201	7	1	4	2	----	464	431
TENNESSEE	----	----	----	----	----	----	35	151	76	51	3	----	316	309
TEXAS	----	----	----	----	3	7	10	8	2	1	----	----	31	31
VIRGINIA	----	----	----	----	----	----	114	76	89	59	6	----	344	295
WASHINGTON	----	----	----	----	----	----	----	8	3	----	----	----	11	7
TOTAL	**873**	**755**	**748**	**933**	**1,210**	**1,352**	**1,261**	**1,252**	**1,131**	**1,069**	**1,012**	**871**	**12,431**	**12,564**

U.S. arrival figures generally represent 33 percent to 50 percent of total product originating from individual sources identified. Some states, notably in the West and Midwest, are comparatively underrepresented by arrivals quoted. Figures are intended only to indicate relative availability of product.

1. Includes some greenhouse tomatoes

Mr. SHAW. Thank you, Mr. Loop.
Mr. Lawrimore.

STATEMENT OF BARRETT S. LAWRIMORE, EXECUTIVE DIRECTOR, SOUTH CAROLINA TOMATO ASSOCIATION, CHARLESTON, SOUTH CAROLINA

Mr. LAWRIMORE. Thank you, Mr. Chairman and Members of the Committee. My name is Barrett Lawrimore. I am the executive director of the South Carolina Tomato Association. I represent 17 farms who handle 2,600 acres of tomatoes in the State of South Carolina, and that is all of the tomatoes grown there except for 347 acres by 1 Florida grower.

So I have been exposed to seasonal agriculture for a long time. I am a retired county extension director for 30 years, and I am also a member of Charleston County Council as the chairman of that, and that, I do not have any opposition, so I can understand how you have to work for your constituents, although they would give me another term free, and I really appreciated that. But in one way or another, I have been involved in seasonal work for a long time, and if I live as long as Strom Thurmond, I will make 70.

I asked to testify this afternoon to help make the point that this measure, H.R. 2795, enjoys a broad-based support in the U.S. seasonal agricultural community. Those of us who are deeply involved in perishable agriculture, be it tomatoes, cucumbers, eggplant, squash, grapes, watermelon, or any number of horticultural sectors, have long shared a concern that we do not enjoy fair and equal access to the U.S. trade remedy laws, and I want to repeat that, because we do not because we are seasonal. I would like for you to come down and let me show you our seasons. This leaves us feeling dangerously exposed, even helpless, against an influx of foreign products.

In relaying this concern, we do not mean to assign blame to Congress for slighting seasonal agriculture. This body, to its credit, has tried in the past to be sensitive to the special realities and needs of seasonal producers. Your provisional relief mechanism for perishable products is an example. Unfortunately, as last year's tomato case demonstrated, procedural refinements of this sort cannot begin to help us if the basic underlying substantive standard is unfavorably skewed.

You have already this afternoon heard that underlying problem described in some detail by trade and legal experts. Although I am no lawyer or neither a trade scholar, I am experienced in seasonal agriculture and can restate the issue from that perspective.

Let us begin with the plain fact that there are distinct seasonal sectors in agriculture. No one credibly disputes this. If these same seasonal sectors suffer from imports during their growing season, the law, as it is now interpreted, is more likely than not to leave them without relief. The reason is this: Seasonal sectors are not entitled to be analyzed in their relevant growing season. They are artificially grouped with production that falls outside of the season and that, virtually everyone would agree, you have to be competitive in your season.

This irrational, clumsy approach to seasonal agriculture raises two obvious questions. Question one, if the objective of the safe-

guard law is to ensure responsive, fact-finding-based relief, why allow the government to engage in a fictional analysis that ends up effectively discriminating against seasonal producers? Question two, are seasonal producers for some reason less entitled than others in U.S. commerce to receive fair analysis and responsive emergency relief?

Never once have I heard a comforting answer to any of these questions. True, I have heard a lot of legal and technical fine points about administrative precedents, all to explain why a fictional analysis is a perfectly appropriate trade remedy framework, but I can assure you that few, if any, U.S. farmers who are actively engaged in the hard work of seasonal agriculture grasp or appreciate the logic of any of those arguments. I would go further to bet that comparatively few U.S. citizens outside the beltway would grasp or appreciate why our trade remedies are structured so as to disregard commercial reality.

I have likewise heard from those who oppose the measure that an analysis based on commercial reality is disallowed under international law. I would only respectfully point out that the U.S. Government, which negotiates our international obligations and which is responsible for upholding those obligations and protecting not some, but all, U.S. commercial interests, has carefully analyzed this bill and determined it to be both legal and highly desirable. I find that decisive and hope that the Committee will, too.

This Subcommittee has a tradition of understanding and trying to accommodate the special needs of seasonal agriculture. H.R. 2795, as much as any other measure previously considered, is fundamental to ensuring that trade remedies work for seasonal production. Seasonal farmers have for too long been denied equal access to safeguard relief, even when they can prove they are suffering significant injuries due to imports. With our neighboring countries to the south increasingly active in the production of perishable crops, U.S. producers deserve more responsive attention and analysis under U.S. trade remedy laws. Please help us achieve that by quickly approving H.R. 2795 and assisting in its rapid enactment.

That concludes my remarks, and I will be around for any questions, if you need them.

Mr. SHAW. Thank you.

Mr. Bozick.

STATEMENT OF MIKE BOZICK, NATIONAL ALLIANCE FOR SEASONAL AGRICULTURAL TRADE, SACRAMENTO, CALIFORNIA

Mr. BOZICK. Thank you, Mr. Chairman and Members of the Committee. My name is Mike Bozick. I am vice president and general manager of Richard Bagdasarian, Inc., a family farming company that raises citrus and table grapes in southern California.

Today, I am representing the National Alliance for Seasonal Agricultural Trade. NASAT is an ad hoc group of California associations committed to providing temporary relief from fresh fruit and vegetable surge imports for growers of the same crops in the United States. Our members are the California Farm Bureau, Western Growers Association, Imperial Valley Vegetable Growers, and the California Desert grapegrowers League, of which I am a president.

I am also representing 80 table grapegrowers who provide 14,000 seasonal jobs in southern California, farmworker jobs. I am giving you some numbers here because I am going to say something in a moment. In addition to the required benefits, such as disability insurance, workers' compensation insurance, and unemployment insurance, we also provide medical and health insurance and there are a few of us who provide profit sharing plans.

We, as an individual company, provide full-time employment for 150 people in our citrus packing plant. The entire valley's wages range from $5.70 to $6 an hour. I say that because I have been competing effectively with the Mexican table grapegrowers for 30 years.

You have received our statement. I would appreciate if you would put that in the record, sir.

Before I begin my statement, I want the Committee and Members to know that I am not a lawyer nor an economist. I am a grower of citrus and table grapes and have been growing these crops for 30 years. I know when I am faced with economic conditions beyond my control, such as Mexico's devaluation of its peso and the rampant planting of table grapes in Sinaloa.

I urge you and your staff to read NASAT's 1996 statement of March 1. It explains a lot of things today that people really did not understand. There are a lot of crops that are involved and it gives examples of the seasonality of these crops.

I am here today to oppose the North American Free Trade Agreement. NASAT believes if Mexico had not devalued its currency, we would not have found it necessary to create our organization. We hope history will not repeat itself as our Nation enters into other free trade agreements.

There is much confusion about the proposed legislation in the Mexican agriculture and the U.S. agriculture community. I would like to describe what the legislation will not—and I repeat, will not—do. This amendment will not, if enacted, immediately increase tariffs on tomatoes and bell peppers. The amendment will not make these procedures easier for the seasonal perishable commodity petitioners. And the amendment will not permanently increase the tariff or impose a quota on the imported produce.

The legislation will require a seasonal perishable crop experiencing an import surge to demonstrate to the International Trade Commission all the safeguard requirements currently in the law. In addition, the petitioner will have to show that all, or a substantial percentage of, the crop that is sold during the growing season, and that the demand for the crop is not met to any substantial degree by producers in a different growing region and a different season.

Seasonable perishable crops such as wheat, corn, apples, and pears can be stored. We cannot keep our fruit more than 2 to 3 weeks in storage. We do not have the option of storing the fruit. If there is an import surge, we do not have the luxury of moving our trees and vines anyplace else. We cannot go to Mexico. We cannot go to the San Joaquin Valley. There is a permanent investment that we are faced with.

The pending legislation will not provide for instant relief for seasonal perishable crops. All the requirements of the existing law would have to be proved, in addition to meeting the test that I de-

scribed. We must prove that we have a workable, adjustable plan, and finally, the President has to approve this program.

I go back and I say the rampant planting of Mexican table grapes, in 1994, the Mexican table grapegrowers exported 4 million boxes to the United States. In 1995, they exported 8 million boxes to the United States, double their production. This is due to the devaluation of the peso and another factor. They could not go to the national markets so they put it here in the United States.

The relief would give seasonal perishable crops a period of a few years to make adjustments, and that is all we are asking for. We are not asking for anything special.

I have heard that some were opposed to the legislation in fear that other nations will implement similar or mirror legislation. It was my understanding that in the NAFTA, there was a cap that you could put on. If they wanted to increase tariffs on a particular crop, they could only do it a certain percentage. It could not be an exorbitant amount.

If another crop, a crop of another nation, were affected in the same manner, I would have no problem supporting that, as long as they met the same guidelines and had to go through the same hoops that I would have to go through with a 201 case.

In closing, I ask you to reflect on the prospects of my family and other families that have decades of work invested in their trees and vines. There is simply no ability to move these plants to Mexico or other parts of the United States. Industrial plants may be capable of relocation, but we do not have that option.

The proposed legislation before you is not contrary to global trade, contrary to what we may have heard here earlier. Instead, it merely gives a grower impacted by an import surge a few years to make the necessary adjustments to that new competition.

I remember reading in the Congressional Record that a former Secretary of Agriculture said U.S. agriculture should not fear import competition since we had the best technology and scientists. What the Secretary did not mention, however, was that the cultural practices developed in our country, any new variety that we develop, are immediately picked up by our competition, by our foreign competitors. Nor did he mention the currency devaluation. All the best technology, scientists, and bank loans cannot protect the U.S. grower from a devaluation such as the December 1994 Mexican devaluation.

I might add that in meeting in Hermosillo, or outside of Hermosillo in Mexico, I think it was in February, the Mexican banks told Mexican growers, if you wanted a loan to bring your crop in this year, you had to export your grapes to the United States in order to bring the dollar into Mexico.

Thank you, and I will be happy to answer any questions you might have.

[The prepared statement and attachment follow:]

STATEMENT OF MIKE BOZICK
NATIONAL ALLIANCE FOR SEASONAL AGRICULTURAL TRADE

Good morning Mr. Chairman and Members of the committee. My name is Mike Bozick and I am the vice president and general manager of Richard Bagdasarian, Inc., a family farming company that raises citrus and table grapes in southern California.

Today I am representing the National Alliance for Seasonal Agricultural Trade. NASAT is an ad hoc group of associations committed to providing temporary relief from fresh fruit and vegetable surge imports for growers of the same crops in the U.S. Our members are the California Farm Bureau, Western Growers Association, Imperial Valley Vegetable Growers Association and the California Desert Grape League.

I am also representing eighty (80) table grape growers who provide 14,000 seasonal farmworker jobs. In addition to the required benefits such as disability insurance, workmen's compensation insurance, and unemployment insurance, we also provide medical and health insurance, and there are a few of us who have profit-sharing plans.

NASAT previously submitted our statement on the proposed amendment to section 201 to the Committee on March 1st; I would appreciate if the March 1st statement would be printed in your Committee's hearing record. I will summarize the NASAT statement today. (Pause to let the Chairman accept your statement).

Before I begin with my statement, I want the committee and members to know I am not a lawyer, nor an economist. I am a grower of citrus and table grapes and have been growing these crops for thirty (30) years. I know when I am faced with economic conditions beyond my control, such as Mexico's devaluation of its peso.

I urge you and your staff to read NASAT'S March 1996 statement. It describes the necessity for the legislation you are considering today, and why there is a lack of equal treatment under the existing law for our perishable seasonal crops, compared to industrial articles.

When I use the term "equal treatment," I mean in the sense that the Harley Davidson motorcycle company was able to receive Section 201 assistance in the early 1980's. Today the company is competing effectively in world markets.

I am not here today to oppose the North American Free Trade Agreement. NASAT believes if Mexico had not devalued its currency, we would not have found it necessary to create our organization. We hope history will not repeat itself as our nation enters into future free trade agreements.

Mr. Chairman and members of the committee, you have a policy decision before you today. Section 201 is a trade relief program that can provide relief for industrial products and many commodity crops -- but it does not provide relief for perishable seasonal agricultural crops. However, you have an opportunity to provide equal treatment for seasonal perishable crops.

I was hoping that the U.S. Department of Agriculture would testify here today, because the Department could explain the complexities and volatility of the fresh fruit and vegetable market. The average consumer does not see the price fluctuations because they are shielded by the supermarkets. However, it is not unusual to have prices move by 100, 200 or even 300 percent in a day or two in the fruit and vegetable markets.

There is much confusion about the proposed legislation in the Mexican agricultural and U.S. agricultural communities. I would like to describe what the legislation will not -- and I repeat, will not -- do:

- The amendment, if enacted, will not immediately increase tariffs on tomatoes and bell peppers;

- The amendment will not make the proceedings easier for the seasonal perishable commodity petitioner; and,

- The amendment will not permanently increase the tariff, or impose a quota on, the imported produce.

The legislation will require a seasonal perishable crop experiencing an import surge to demonstrate to the International Trade Commission all the safeguard requirements currently in the law. In addition, the petitioner will have to show that all, or a substantial percentage of, the crop is sold during the growing season, and that the demand for the crop is not met to any substantial degree by producers in a different growing region and in a different season.

Unique Characteristics of Seasonal Perishable Crops

Few people understand that our crops can be grown in only certain locations. To be successful, the appropriate micro-climate, soil and adequate water are needed.

Seasonal perishable crops (like the federal program crops, such as wheat and corn) mature as the growing seasons move north in the U.S. However, the program crops have the option as they harvest their crops, to market them immediately or to store the crop.

Our seasonal perishable crops do not have the option of being stored. First, our crops normally have a shelf life of two, three or four weeks and they must be consumed during this period.

If there is an import surge, we do not have the luxury of storing the crop even for a few days.

Under the existing 201 law, if we were to bring an action, our economic information would be rolled into the economic information for the entire nation, even though the other harvest(s) of the same seasonal perishable crop was not impacted by the import surge.

If the seasonal perishable crop experiences competition from an import surge, we cannot move grapevines or trees to another growing area, so that we could produce at another time.

When we are faced with the unique experience of competing against a significant currency devaluation, our orchards and vineyards will be abandoned if we cannot compete against the surge imports.

I would like to show you a picture of my citrus grove and vineyards, that would have to be abandoned, if we could not remain competitive against an import surge(s).

Scope of Relief

The pending legislation would not provide for instant relief for the seasonal perishable crop. All the requirements of the existing law would have to be proved, in addition to meeting the test that I described. We must prove that we have a workable adjustment plan, and finally the President has to approve the program.

In the last twenty years, only one agricultural crop, canned mushrooms, was successful in receiving Section 201 relief (and canned mushrooms are not even considered a perishable crop).

The relief would give our seasonal perishable crops a period of a few years to make adjustments in our cultural and marketing practices.

"Mirror" Legislation

I have heard that some who are opposed to this legislation fear that other nations will implement similar, or "mirror," legislation.

If a crop in another nation was faced with the same dilemma we are facing, I would support giving the foreign producers a few

years to make necessary adjustments, provided those nations followed the same strict procedures followed by our International Trade Commission.

Incidentally, we are frequently faced with reference price problems in the European Union, and I have heard the EU has even implemented a new license system for crops.

Conclusion

In closing, I ask you to reflect on the prospects of my family and other families that have decades of work invested in their trees and vines. There is simply no ability to move these plants to Mexico, or other parts of the U.S. Industrial plants may be capable of relocation, but we do not have that option with respect to our orchards and vineyards.

The proposed legislation before you is not contrary to global trade. Instead, it merely gives a grower impacted by an import surge, a few years to make the necessary adjustments to that new competition.

In 1987 your committee made great progress on Congressman Bill Thomas' fast track perishability amendment in attempting to protect perishable crops. We urge you to move H.R. 2795 forward to complete the legislative project.

I remember reading from a congressional hearing record that a former Secretary of Agriculture said U.S. agriculture should not fear import competition since we had the best technology and scientists. What the Secretary did not mention, however, was that all of our technology, any new variety or cultural practice developed in this country, is immediately picked up by our foreign competitors. Nor did he mention currency devaluation. All the best technology, scientists and bank loans, cannot protect the U.S. grower from a devaluation such as the December 1994 Mexican devaluation.

Thank you, and I will be happy to answer any questions you may have.

National Alliance For Seasonal Agricultural Trade

NASAT Statement
Submitted to
The House Ways and Means Committee
April 25, 1996

Introduction

The National Alliance for Seasonal Agricultural Trade (NASAT) supports H.R. 2795, legislation that would permit an industry growing seasonal perishable crops successfully to seek assistance under Section 201 et seq. of the Trade Act of 1974, as amended, commonly known as the "escape clause" or "safeguard" legislation.

NASAT membership includes organizations that represent growers of seasonal perishable fruit and vegetable crops. These annual and perennial crops are grown mostly in the State of California.

Action against Unfair Foreign Competition and Injurious Imports

Where there is injury to a domestic industry due to increased levels of imports of a like or directly competitive product, safeguard action may be taken under Sections 201 et seq.. Relief includes the imposition of, or increase in tariffs, or increased quotas, and trade adjustment assistance. Relief which is not automatic is temporary, and the domestic industry must inform the U.S. International Trade Commission ("USITC"), why the petition is filed, and how it will make a positive adjustment to import competition.

Problem

Distinction Between One Crop and Seasonal Industry (Perishable) Crops

NASAT's concerns are directed to those seasonal crops that are perishable. To understand why NASAT members support H.R. 2795, it is necessary to understand the difference between industrial articles, agricultural crops, and seasonal perishable crops.

Under Section 201 et seq., there appears to be no distinction between the industrial article, "industry" agricultural crops and semi-perishable seasonal crops. However, the seasonal perishable crop cannot qualify for an adjustment remedy under the safeguard law.

Industrial Product

The door knob industry is a good example of an industrial article. It can be made any place in the United States every day of the year; in places that are cold or hot with little rainfall or abundant rainfall; in the winter or in the summer; in the State of Washington, Maine, or Texas. The determining factors for location of such an industry would probably be sufficient labor, proximity to transportation and proper zoning for the plant. Unlike agriculture, seasons of the year do not normally impact the production of the industrial article - the door knob.

One "Industry" Agricultural Crops

Examples of a one "industry" season semi-perishable crop would be corn, wheat, soybeans, oats, barley, etc.. These crops are mainly grown in the Midwest and depend on a certain environment, but they are one-season crops and can be stored for months and perhaps more than one year. USITC would consider the nation's crop collectively as the "industry", whether it is grown in Iowa or Georgia.

Annual Seasonal Perishable Crops

Annual seasonal perishable crops are fruits and vegetables that require planting each season. Annual crops such as radishes, peppers, tomatoes, potatoes, strawberries, etc., will normally be a one season crop, (some regions may have the advantage of obtaining two crops in a growing season, as lettuce in Salinas, California), and the crops will be harvested and sold during a period of the year. The time period from planting to harvest will range from two to five months depending on the crop.

As an example, in January, strawberries are grown in south Florida and certain parts of California. Strawberries, like other seasonal perishable crops, need a certain type of soil, temperature, adequate water, and daylight. After several months when the temperature changes, the crop is harvested, sold and consumed, and it will be another year before the strawberry is planted in the area. A second, different region will be producing the strawberry after the first area completes its production. (Most likely if the strawberry were planted in a second region at the same time, the crop would be a failure because the second area lacks the necessary environment). If the first crop area experiences import surge competition, the crop will not be planted in that area in the following years, but later harvested strawberry production in different regions would continue in the future because they were not impacted as a result of the import surge.

Perennial Seasonal Perishable Crops

Perennial crops are crops that once planted, produce for more than one season (year). Unlike annual crops, perennial seasonal perishable crops do not produce in commercial quantities for three or more years after being planted. Some crops have more than $10,000 per acre invested, not counting the land, before the crops start producing.

Perennial crops can be segmented into two types: perishable and semi-perishable. Examples of perishable perennial crops are asparagus, peaches, nectarines, grapes, mangos, papayas, cane berries, etc. Semi-perishable perennial crops include dates, chestnuts, citrus, apples -- crops that need refrigeration and can last months before being consumed.

Specific Differences in Annual and Perennial Crops

Seasonal perennial perishable crops are different from annual perishable crops because they are permanently planted on the same acreage and demand different considerations. Annual crops normally are rotated because of pest build-up in the soil.

A major difference between the annual and perennial crop is the time required before the perennial crop can be commercially harvested. For example, dates may require some ten years before they can be commercially harvested; pistachios, some six years; citrus, three to four years; and asparagus, five years. Once perennial crops begin producing they continue to produce for a number of years. For example, asparagus plants produce for fifteen years, whereas, an annual crop like peppers produces for only one year.

Another principal difference between the seasonal annual crop and the seasonal perennial crop is the inability to relocate the perennial crop, if the crop suffers from an import surge. First, it is horticulturally impossible to relocate the seasonal perennial crop that has tree, vine or bush roots for production in the following season. Secondly, some of the seasonal crop regions are quite small in area because of environmental limitations. Many of these areas have supported the perennial crops for decades and the plants are replaced every ten, fifteen and even thirty years. How do you relocate 15,000 acres of peach trees, or relocate hundreds of acres of asparagus or mangos? The

farmer cannot relocate his or her plants. Or, how do you replace the micro-climate - this is impossible. But a door knob factory can move its equipment to another region in the U.S. - or even to another nation to compete in the world market.

Serious Injury or Threat of Serious Injury to a Seasonal Perishable Industry

A seasonal perishable crop industry is frequently one that sells its crop in a few weeks to two months, before another region in the U.S. starts its marketing season for that crop. If there is an import surge during the production and harvesting of the first seasonal crop, by the time the other domestic seasonal crops enter the market, the imported crop and the first seasonal crop have been sold in the market. Consequently, the first crop suffers the injury and the second, third and following seasonal crops are not injured by the import surge. Yet, under the existing law, all the seasonal perishable "like" crops are required to be considered as one industry. The effect of the current law is that, under the above scenario, the first harvested seasonal crop is eventually forced out of business.

Need for Legislation

The law does not recognize the seasonality situation of growers of perishable fruits and vegetables. At the current time, seasonal growers are considered to be a part of a national industry that may produce and sell during the whole year, which may include entirely different times of the year from that of seasonal growers. If growers in one region produce and sell at a time when no other domestic growers are producing and selling, economic data of all the domestic regions are nonetheless considered in determining whether there is import injury to the one region.

Application of H.R. 2795 Legislation in the Safeguard Program

A more specific example of how the legislation would function is provided in the following scenario:

A seasonal "like" perishable crop, asparagus, is grown in five distinct locations in the States of California, Oregon and Washington. The crop is grown in these different regions because of the micro-climate and soil type that is required for growing the crop successfully and to continue the supply of fresh produce to the consumer. The asparagus is first harvested in January in southern California and harvest is completed in the State of Washington in late June. British Columbia continues to harvest into July. The crop has a shelf life of two to three weeks, and each separate growing area normally sells a substantial percent of its crop before the next, further north area starts selling its crop. An import surge of the crop creates an injury or threat of injury to the first-in-time harvest and sold crop.

The seasonal perishable crop, asparagus, for the first particular growing season would have standing to file a petition, if the +crop demonstrates to the USITC all the existing safeguard requirements, plus if all of the production of the asparagus is sold during the growing season and the demand for asparagus in that season is not supplied, to any substantial degree, by producers of the article in a different growing region of the country and different season.

If the imported crop caused two seasonal perishable crops, not necessarily selling at the same time, to file the safeguard petition, then the two seasonal perishable industries would be required to provide the USITC with their economic data and perhaps have their cases merged into one case.

Scope of Relief

The proposed legislation would amend Section 201 et seq. to permit, for the first time, seasonal agricultural crops to receive the same opportunity that is provided other industries. The number of industries that would be eligible to seek relief under this legislation would be small, and the scope of relief would be extremely narrow. The legislation would not provide immediate relief, and any relief provided would not be permanent but temporary for a few years. In the last twenty one years, only one agricultural crop, canned mushrooms, was successful in receiving relief (adjustment assistance).[1]

The legislation would provide the opportunity for the seasonal perishable agricultural industry to have an opportunity to succeed with a safeguard case. If successful at the USITC level, the industry must still have its case approved by the President.

H.R. 2795 is Compatible with Article XIX of WTO

The Analytical Index[2] for the interpretation of Article XIX, Emergency Action on Imports of Particular Products, sets forth several conditions for the article to be fulfilled and these are:

> "(i) the product in question must be imported in increased quantities;
>
> "(ii) the increased imports must be the result of unforeseen developments and the effect of the tariff concession; and
>
> "(iii) the imports must enter in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.

Applying the above principles to the problem of seasonal crops the petitioner must comply with the above conditions or the safeguard petition will fail before the USITC. H.R. 2795 merely permits the seasonal perishable crop that is grown during a particular growing season and sells all or most all of the production during that growing season to have a reasonable chance of succeeding before the USITC if it can comply with the safeguard principles described above in this section.

Other Considerations

Mirrored Legislation

Concern has been expressed that if the U.S. adopts this amendment other nations will implement the same program. NASAT has been concerned with trade barriers that prevent their fresh fruits and vegetables from entering foreign nations. An example of a safeguard type of program is the European Union reference price for fruits and vegetables. This permits the E.U. to increase tariffs on fruits and vegetables every year when the E.U.'s produce is being sold. Switzerland, during the very small Swiss asparagus production, can place a $5.00 per pound duty on California asparagus. Yet the Uruguay Round did not eliminate these practices.

These foreign programs do not have the agency proceedings required by the U.S. safeguard statute. If the E.U. and other foreign countries were to mirror the U.S. safeguard law, as amended with the proposed seasonal perishable legislation, NASAT would be elated. U.S procedures would be preferable to the current trade system used by many nations to discourage exports.

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[1] U.S. ITC Inv. No. TA 201-43, Mushrooms

[2] GATT, Analytical Index: Guide to GATT Law and Practice, Updated 6th Edition (1995)

U.S. Fresh Fruit and Vegetable Protection in the NAFTA Agreement

Your Committee has received correspondence claiming that the fresh fruit and vegetable industry received protection in the NAFTA through tariff rate quotas and long tariff phase out periods. This observation requires a response.

First, the exporting NAFTA producers received a huge trade benefit through the currency devaluation that took place in December 1994. To equate a five percent NAFTA tariff to a fifty percent currency devaluation is not a "level playing field".

Second, the opponents to the legislation assume that all fresh fruits and vegetables maintained a tariff. In contrast, numerous United States crops had no tariff or an extremely low tariff. One cannot claim that these crops had a reasonable time to adjust to the sudden currency devaluation.

It is important to recognize that NASAT is not supporting the legislation because of opposition to NAFTA. NASAT membership has for many years recognized the import surge problem and in fact supported the Committee's fast track perishable legislation in 1988 as a temporary remedy for import surges from any country.

Unfinished Business of the 100th Congress

In the 100th Congress, the House Committee on Ways and Means provided the needed relief for the seasonal perishable crops during debate on legislation (H.R. 3, the primary provisions of which became the Omnibus Trade and Competitiveness Act of 1988 (PL 100-418). Page 98 of the Committee report (House Report 100-576) includes the following paragraph:

> 5. Seasonal Products. The bill adds a special provision that, in cases involving imports of seasonal agricultural products, the ITC may find serious injury or threat thereof when the increased imports are largely entering during a specific period or season of the year and are largely impacting only those domestic producers harvesting or marketing during that season or period of year. (emphasis added). In applying this new provision, the ITC should continue to examine historical trends in imports and industry conditions, but should do so in the context of the seasonal nature of the product.

Clearly, the Committee intended to include those producers that sold a perishable crop during a period of the year when the other producers of the same crop were not harvesting and selling their like crop. Unfortunately, this provision was dropped in a House-Senate conference.

Conclusion

As earlier stated, the application of the proposed legislation would be narrow. In order for a perishable seasonal crop to receive relief from overwhelming foreign competition in the form of new or increased import duties, tariff rate quotas or other types of trade assistance, it would have to meet all the existing statutory criteria in addition to the following proposed legislative criteria:

- all or almost all of the production of the article is sold during the growing season; and,

- the demand for the article is not supplied, to any substantial degree, by producers of the article in a different growing season.

This requirement means that the seasonal perishable crop will be grown at a different time of the year than other domestic production areas, and that the crop will have to be substantially sold prior to the other grower season of the "like product".

Mr. SHAW. Thank you.
Mr. Stewart.

STATEMENT OF TERENCE P. STEWART, MANAGING PARTNER, STEWART AND STEWART, WASHINGTON, DC

Mr. STEWART. Thank you, Mr. Chairman.

At the beginning of this hearing, some on the panel took the position that the correct standard for evaluating whether or not this legislation should be enacted would be whether or not it is WTO-consistent. You have heard the statement from the U.S. Trade Representative's Office that it is. I would like to add just a few comments in support of what the USTR's Office had to say.

There are several rules in the construction of the GATT and now the WTO documents. First, not all things have to be in an agreement for them to be doable by a country. Second, various agreements within the package can be looked at to try to glean an understanding of how the WTO might look at any particular issue.

With those principles in mind, let me refer the Trade Subcommittee to the agricultural agreement, article 5, which deals with special safeguards. This was the provision that was put in within agriculture for the most sensitive products of the countries who were negotiating, which was virtually the entire world.

Article 5.6 of that agreement specifically recognizes within a special safeguard provision the right, indeed, the necessity to consider whether products are perishable or seasonal, albeit the very situation that you all are considering here with regard to the rest of the safeguard agreement.

Let me just read paragraph 5.6.

> For perishable and seasonal products, the conditions set out above,

dealing with when special relief can be provided,

> shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under subparagraph 1(b).

In other words, in the agriculture agreement itself, there is a recognition that you have to give special treatment, special consideration, to the unique characteristics of perishable and seasonal products. That is all that this bill attempts to do within the context of our safeguard agreement.

U.S. law currently recognizes the right to deal with regional industries. That is consistent with WTO obligations in the antidumping context, even though there is nothing within article 19 or the safeguard agreement that deals with regional industries. No one has challenged the U.S. right to have a regional industry definition in its law.

Similarly, here, too, a seasonal provision would do nothing more than give commercial recognition of a commercial fact within our statute; and as far as retaliation goes, no country is entitled within the parameters of NAFTA or the WTO to retaliate against the United States for implementing law without taking a challenge. Any law of the United States that affects trade can, of course, be challenged if a country disagrees with its consistency. Should we

lose such a challenge, the first opportunity the United States has is to modify its law to bring it into conformance.

In the context of whether the sky would fall, whether all of the U.S. agricultural exports would suddenly find themselves subject to retaliation, first, such action would be clearly contrary to our trading partners' obligations with the United States and one need only take a look at the track record of 201 in the past to evaluate the reasonableness of the claim of potential retaliation.

Safeguards have been provided as a central element of every trade agreement the United States has entered since 1934. It has been the promise to American business and workers and communities that there will be time to adjust if things unanticipated happen. Yet less than 10 percent of cases that have ever been filed have resulted in relief actually being afforded to domestic industries. If one looks at regional industries, to my knowledge, there has never been a regional case brought under section 201. There have only been a handful of regional cases brought under the antidumping law.

So a concern about the sky falling and all of agriculture being subject to retaliation, even assuming our trading partners were not going to abide by their international obligations, is nonsense.

With regard to the issue, Mr. Chairman, that I heard you commenting about with regard to the Mexicans withdrawing product from the market in March of this year in tomatoes, there is a large sheaf of documents that has been submitted to both the Commerce Department and the International Trade Commission, which do not come from the State of Florida but come from Mexican newspapers that refer to the Mexican producer organizations holding back huge quantities of tomatoes for the specific purpose of increasing prices in the United States, the very risk to U.S. consumers when the only real competitor in the United States, namely the seasonal industry that directly competes with the imports, is knocked out of the box.

That is the risk in Florida with regard to tomatoes and bell peppers. It is the risk that occurs in California with regard to grapes. It is a risk that can occur to many seasonal industries. Thank you very much.

[The prepared statement follows:]

STATEMENT OF

Terence P. Stewart
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Before the Subcommittee on Trade
of
The Committee on Ways and Means
United States House of Representatives

Hearing on H.R. 2795

April 25, 1996

I. Introduction

Thank you for the opportunity to testify today on H.R. 2795 which would amend the Trade Act of 1974 and that Tariff Act of 1930. My firm currently represents the petitioners in the ongoing Section 201 investigation of fresh tomatoes and bell peppers. However, I appear here today not on behalf of any client or client group but in my individual capacity. As such, the views expressed are my personal views and do not necessarily reflect the views of any client or those of other members of my firm.

II. U.S. Escape Clause

Current U.S. escape clause provisions are contained in Section 201 et seq. of the Trade Act of 1974, as amended [19 U.S.C. §§ 2251-2254]. In a Section 201 investigation, the International Trade Commission is charged with the responsibility of determining whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

As stated in the annual Overview and Compilation of U.S. Trade Statutes prepared by the staff of this Committee:

> From the outset of the trade agreements program in 1934, U.S. policy of seeking liberalization of trade barriers has been accompanied by recognition that difficult economic adjustment problems could result for particular sectors of the economy and, if serious injury results from increased competition by not necessarily unfairly traded imports, then domestic industries should be provided a period of relief to allow them to adjust to new conditions of trade. Beginning with bilateral trade agreements in the early 1940s, U.S. trade agreements, and eventually U.S. domestic law, have provided for a so-called "escape clause" or "safeguard" mechanism for import relief. This mechanism, while amended over the years, has provided authority for the President to withdraw or modify concessions

> and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article, following an investigation and determination by the U.S. International Trade Commission (ITC)(formerly the U.S. Tariff Commission).

Id., 104th Cong., 1st Sess. at 96 (Committee Print, WMCP: 104-6).

Because unfair trade practices are not the basis for action, U.S. law and our international obligations under the GATT and now the WTO, have imposed the most difficult standard for obtaining relief. Injury must be "serious" not merely "material." Causation is similarly more difficult: "a substantial cause" vs. a cause. Finally, unlike antidumping or countervailing duty actions, where relief is provided, the United States must provide compensation in the form of other tariff reductions or face potential retaliation. This latter situation was modified in the Uruguay Round negotiations, so that no retaliation is permissible during the first three years of relief. See Agreement on Safeguards, Article 8:3; T. Stewart & M. Brilliant, "Safeguards," in The GATT Uruguay Round: A Negotiating History (1986-1992) at 1717 - 1820, Kluwer Law and Taxation Publishers (T. Stewart editor)(1993).

III. Past Experience and Existing Restrictions on Domestic Industry Definitions

Relatively few escape clause actions initiated over the years have resulted in relief actually being granted to domestic industries. There are a variety of reasons including the difficulty of the injury standard, the construction of the term "substantial cause" and the very limited willingness of past Administrations to grant relief where an industry was able to obtain an affirmative determination by the International Trade Commission. It is not clear to what extent Administration reluctance has been premised upon a desire not to grant further trade concessions on other products. If that has been the basis for refusal to grant relief, U.S. escape clause cases may be more successful in the future than they have been in the past.

The International Trade Commission in making determinations of whether domestic industries are materially injured or seriously injured under the antidumping and escape clause laws conducts an investigation to obtain information on the specifics of the particular industry and market situation. U.S. law and international agreements have recognized that industries and competition can be defined in terms of whether products are produced in certain regions for regional consumption or whether there is temporal and location overlap in how products are sold. See, e.g., Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 Article 3.3 (cumulation of imports permitted where "conditions of competition" indicate it is appropriate), 4.1(ii)(regional industry factors); 19 U.S.C. 1677(4)(C)(regional industry defined) and 1677(7)(G) (cumulation). Even in situations where the Commission has not found regional industry criteria to be met, the Commission has examined whether imports which primarily enter and compete in one market area have negatively impacted producers in that area. See, e.g., Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684-685 (Final), USITC Pub. 2862, at I-21 n.124 (March 1995); Potassium Chloride from Israel and Spain, Inv. Nos. 303-TA-15, 701-TA-213 (Final), USITC Pub. 1596 (Nov. 1984).

In the agricultural and horticultural arena, there are many products which have distinct growing seasons in particular parts of the country. While such products may be "identical" regardless of where grown, if the products are highly perishable, growers in the different regions will essentially not compete and not be capable of competing for significant parts of the year. Since there is no meaningful competition for large parts of the year by growers in such situations, the issue has arisen as to how the Commission should treat imports that effectively compete mainly with one of the regions of the countries. The Commission in 1995 in a "provisional remedy phase" determination under the U.S. escape clause decided that U.S. law should be construed to require an examination of a "national" industry in such situations despite the lack of meaningful competition between the imports and domestically grown product in areas other than Florida for much of the year. Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase)(April 1995).

H.R. 2795 is an effort to clarify U.S. law to permit an examination of injury and a definition of industry in perishable products along lines that reflect commercial reality in the marketplace. The bill should be adopted by the Committee. The Committee report should reflect that the provision is available to any agricultural or horticultural product that is highly perishable in nature.

IV. The Impact of H.R. 2795 on Section 202 Investigations

H.R. 2795 would modify current law in two ways. First, the bill would clarify the scope of the term "domestic industry" as used in Section 202 investigations. Current law allows the International Trade Commission to define the domestic industry as a subset of all producers of a particular product when the producers, their production, and the imports are concentrated in a geographic area.

The bill would provide another example of when the domestic industry may be properly defined in terms of actual competition. The bill would specifically authorize the Commission to define the domestic industry according to those producers who sell all or almost all of their production in a particular growing season. Last year, the International Trade Commission made a decision as part of its provisional relief phase determination in a Section 202 investigation of fresh winter tomatoes that the geographic industry provisions precluded finding the domestic industry limited to producers during an identifiable growing season. The Commission reasoned that if Congress intended alternative definitions of "domestic industry," the statute would have included those alternative definitions.

Passage of the proposed legislation would clarify to the Commission that the law permits seasonal industries to be recognized under the law.

Second, H.R. 2795 would modify the product definition for perishable agricultural producers who sell all or almost all of their production in a particular growing season. Under current law, the Commission must determine whether the imports are a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article "like or directly competitive" with the imported product. Although the terms "like" or "directly competitive" are not defined in the statute, the Commission has referred to the legislative history for guidance. The legislative history indicates that "like" products are those which are substantially identical in inherent or intrinsic characteristics while "directly competitive" products are substantially equivalent for commercial purposes because they are adapted to the same uses and are essentially interchangeable.

If the Commission were to adopt the seasonal definition of domestic industry under H.R. 2795, the bill would instruct the Commission to define the like product as that produced by the domestic industry during the applicable growing season. The imported product subject to investigation would likewise be limited to the products entered, or withdrawn from the warehouse for consumption, during that growing season.

The bill is consistent with commercial reality and permits relief to be provided to the limited industry directly affected by the import problem. Thus, the relief granted is consistent with the underlying spirit of U.S. law and our international obligations. See, e.g., Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 4.2 (in regional cases, relief should be limited to extent possible to regional imports); Agreement on Agriculture, Article 5.6 (agriculture special safeguard provision recognizes seasonal products and limits relief to seasonal period where criteria are met).

V. H.R. 2795 Would Be Consistent With U.S. WTO Obligations

H.R. 2795 would be entirely consistent with U.S. obligations under the Uruguay Round Final Act. For example, the Agreement on Agriculture contains a special safeguard provision which allows countries to provide special safeguard measures when the volume of imports of a specified agricultural product exceeds the "trigger level" during any given year. Agreement on Agriculture, Article 5. The Agreement only permits additional duties on these imports until the end of the year. The Agreement also permits safeguard measures when the price of the imports falls below a "trigger price."

In the case of perishable and seasonal products, however, the Agreement recognizes the need to take into account the special characteristics of the products. To wit,

> For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 [trigger volumes] may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under subparagraph 1(b)[trigger price].

Article 6 (bracketed material added).

Thus, member states are permitted to adopt trigger volume and price levels taking into account the specific characteristics of the perishable and seasonal products. Specifically, member states can shorten the time periods to measure import volumes for perishable and seasonal products. Likewise, "trigger prices" can include different reference prices for different periods. These provisions have been implemented in 19 U.S.C. § 3602.

Stated differently, the WTO already specifically recognizes the commercial reality of perishability and seasonality. There is no reason for such recognition not to be formally added to U.S. law. H.R. 2795 is a vehicle to clarify existing U.S. legal rights.

Thank you for the opportunity to testify. I would be pleased to respond to questions.

Mr. SHAW. Mr. Stewart, I would ask that a few of these accounts of Mexicans holding back on the crops be submitted, and I would ask unanimous consent that the record be kept open in order for you to submit that to the Committee to be a part of this record.

Mr. STEWART. We would be pleased to do that, Mr. Chairman.

Mr. SHAW. Without objection, so ordered.

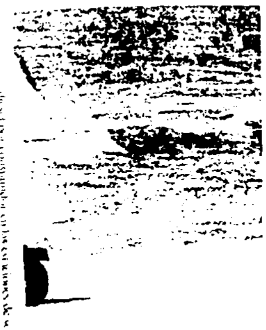
[The following was subsequently received:]

Translation from El Debate, March 7, 1996, p. 5-A:

Tomato Exports Reduced

This month, Sinaloa farmers have refrained from shipping approximately 400 thousand boxes - over two thousand tons - of tomatoes to the United States, which means an 86 percent reduction in their normal exports as of February 29, but CAADES argued that this is not a decline in activity, but a measure implemented by the producers themselves, in an attempt to improve the price of the vegetable "which is reacting upwards."

EL DEBATE 3/3/96



constante vigilancia en playas y campos

Reducen exportaciones de tomate

Horticultores sinaloenses han dejado de enviar en este mes alrededor de 400 mil bultos de tomate a Estados Unidos —unas dos mil toneladas—, lo que significa una reducción del 86 por ciento en sus exportaciones normales al 29 de febrero, pero la CAADES argumentó que no se trata de un desplome de la actividad sino de una medida implementada por los propios productores, buscando mejorar el precio de la hortaliza "que está reaccionando a la alza".

Luis Antonio Cárdenas Fonseca, presidente de la Confederación de Asociaciones Agrícolas del Estado de Sinaloa, informó que de 237 mil bultos que se enviaron el primer día de marzo, el volumen se redujo en 46 mil 545 el día dos; en 135 mil 254 bultos el día tres y el día cuatro, no se enviaron 201 mil 519, sumando en total 383 mil bultos.

El tomate producido en Florida se vende en 12 dólares la caja de 4.5 kilos y el tomate mexicano alcanza apenas los siete dólares, aun después de esta medida implementada por los sinaloenses, de acuerdo a cifras de los mercados de Chicago, Florida y Nueva York, aunque en este último promedia entre los ocho y diez dólares.

"El objetivo de esta iniciativa, es enviar la mejor calidad en las mejores condiciones de comercialización y ya estamos viendo los resultados, al reaccionar favorablemente el precio", asegura Cárdenas Fonseca.

La medida persistirá todos los días hasta que sea necesario, enfatizó.

El presidente de CAADES resaltó que solamente se enviará tomate con por lo menos un 90 por ciento de calidad y de colores 1 al 3, ya que a partir del cuatro se acentúa el proceso de maduración.

El pasado 29 de febrero terminó la primera venta de exportación, en la que se permitía enviar, de acuerdo al Tratado de Libre Comercio, 175 mil toneladas de tomate.

Que intervenga el Ejército: CES

El presidente del Consejo Estatal de Seguridad, José María Espinoza de los Monteros, se pronunció ayer a favor de la intervención del Ejército pero sólo en sectores donde el resto de los cuerpos policiacos no han podido controlar la violencia, dijo además que es un absurdo intentar limitar funciones.

Dijo que lo primordial para todos los ciudadanos es disminuir la violencia, vivir en paz y armonía por lo que si bien no es función del Ejército trabajar en áreas de sindicaturas, debe exigirse a quien corresponde que cumpla y si no es así entonces deben entrar quienes sí pueden hacerlo.

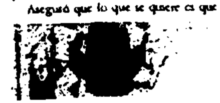
Aseguró que lo que se quiere es que se acabe el problema de la violencia que aumenta, de ahí que no se deben limitar funciones porque lo importante es disminuir la violencia en la forma en que sea más necesaria.

Precisó que si la propuesta del alcaldes es para que entre el Ejército a sectores específicos, muy determinados en donde definitivamente los cuerpos policiacos de prevención no han logrado nada o participar porque no hay elementos suficientes no hay el más mínimo inconveniente de que entre esta fuerza.

No hay, dijo el más mínimo inconveniente de que entre el Ejército a esas zonas sobre todo porque se habla de sectores donde se promulga mucho el narcotráfico y cosas por el estilo lo que además es función del Ejército.

Expuso que lo que se quiere es que el índice de violencia baje, que la ciudadanía pueda vivir tranquila y en armonía, por lo que si para esto es necesaria la participación del Ejército entonces sí vale la pena.

De hecho dijo que el Ejército ya realiza rondines, por lo que al parecer ahora sólo se trata de que llegue a zonas específicas, con mayor frecuencia pero siempre en coordinación con los cuerpos policiacos puesto que además las cifras indican que el problema sigue creciendo, finalizó.



Plantearán problemática

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diesel por consumidor en las estaciones de servicio.

En el oficio SLVGN-002/96, del 4 de marzo, dirigido a "todas las estaciones de servicio", se informa que "La gerencia de Estaciones de Servicio nos ha instruido a través de nuestro subgerente de Estaciones de Servicio, Ing. Lorenzo Araiza Aldana, para que a partir del día primero de marzo del año en curso todas las estaciones de servicio del país atiendan exclusivamente las ventas al menudeo, por lo que a partir de la fecha no se autorizan las ventas al medio mayoreo...

... de combustible a los agricultores sin proporcionarles alternativas.

Otro gremio que resultará seriamente afectado en caso de que no se dé marcha atrás en esta determinación calificada como absurda será el de los pescadores, que también requieren grandes cantidades de combustibles.

Expendedores de gasolina anunciaron que hoy sostendrán una reunión con el objeto de analizar el problema, y en caso de que éste no sea resuelto irán hasta la capital del país para

FREE TRADE

Lawsuit battles imports

ITC will study Florida's claims of harmful surges in Mexican volume.

By Larry Waterfield
Washington, D.C., Editor

In a move that's expected to increase tension between Florida and Mexican producers and exporters, Florida has filed a federal lawsuit under Sections 201 and 202 of the Trade Act claiming that its produce industry has been harmed by heavy imports of Mexican produce.

At a March 11 rally of growers and packers in Florida City, Fla., Bob Crawford, Florida's agriculture commissioner, announced the filing of the complaint, which will be investigated by the International Trade Commission.

Should Florida win the lawsuit, it is likely that trade relief, including emergency tariffs, would be implemented.

Crawford acknowledged that the North American Free Trade Agreement contains safeguards to protect against fruit and vegetable import surges, but Florida claims those safeguards are inadequate.

"The survival of our industry is

See Lawsuit, Page 3A ►

Lawsuit

(From Page 1A)

in serious doubt" unless NAFTA is enforced, Crawford said, claiming Florida stands to lose $1 billion a year if Mexican produce is dumped in the U.S. market at prices below the cost of production.

Florida growers and produce officials met March 8 with Mexican growers and officials in Dallas to discuss the situation. The meeting, described by participants as friendly, resulted in no concrete solutions that would resolve the trade dispute. At the meeting, which was sponsored by the U.S. and Mexican governments, Florida informed the Mexicans of their plans.

"We told them we were going to file the suit," said J. Luis Rodriguez, Florida trade consultant and former grower. "We didn't want them to read about it in the newspapers."

The Mexican Embassy, contacted by THE PACKER, had no official response to the Florida complaint. In the past, the Mexican ambassador has argued that the large export volume is justified under the provisions of NAFTA.

The parties plan to meet again in Mexico, though a date has not yet been set. Paul Drazek, special assistant for trade at the U.S. Department of Agriculture, is leading U.S. efforts to find a solution to the dispute.

Rodriguez said Florida also may file a dumping complaint against Mexico in April or early May, an event that also would trigger an investigation of shipments, prices and production costs.

Lee Frankel, executive vice president of the Fresh Produce Association of the Americas, Nogales, Ariz., said the supporters of the Florida lawsuit "don't even represent all of Florida. They are mostly from Dade County and Immokalee."

Courtesy Florida Fresh Fruit & Vegetable Association

Florida agriculture commissioner Bob Crawford announces the filing of a section 201 petition at a March 11 rally of growers and packers in Florida City, Fla.

He said the market needs two growing areas to keep prices reasonable and that Mexico is doing as much as it can to keep from flooding the market.

He also said it is common in the produce industry to sell at below cost during some periods to recoup some costs, with the hope of making money for the entire season.

But Florida produce groups are continuing to lobby Congress for legislation that will allow the ITC to take into account the seasonal aspect of the produce business when assessing trade damage.

That legislation is stalled in the House Ways and Means Committee. In addition, Florida is backing legislation introduced by Rep. Sonny Bono, R-Calif., that would require imported produce to carry country of origin labeling at retail.

Mike Stuart, executive vice president of the Florida Fruit & Vegetable Association, was in Washington, D.C., March 13-14 to meet with

Translation from El Debate, March 12, 1996, p. 14-A:

Tomatoes Shipped to the U.S. Returned

EL DEBATE de Los Mochis. - As a measure arising from an attempt to overcome the serious decline in the prices of ripe tomatoes faced starting last week in the United States, producers of this state agreed to return to their places of origin all the products present at the border of colors 5 and 6, the more mature; to suspend packing the product this weekend, and, starting tomorrow, to ship to the market only color 3 as a maximum, of 90% grade.

The agreement was signed Friday at a meeting with representatives of tomato growers of this state held within CAADES, Dr. Jorge Antolin Rojo Leyva said yesterday.

The head of the Department of Economic Studies of the Farmers' Association of Rio Fuerte Sur stated that this measure attempts to overcome the serious decline in prices of this product which began to appear starting last week in the neighboring market.

He pointed out that although the agreed upon measures are basic, it was necessary to establish them as a means to reduce the supply of the product in the U.S. market and to promote the resurgence of prices in the short term.

* * *

The problems which appeared since last week in the United States in the marketing of ripe tomatoes are rather serious, and arise precisely from the high production volumes which have been handled, but "we hope that with the measures taken the situation will return to normal in the short run."

14-A=ESTATALES CULIACAN, SIN. DOMINGO 3 DE MARZ

3/3/96

Regresan tomate enviado a EU

EL DEBATE deLos Mochis.- Como medida emergente para tratar de superar el grave desplome en los precios del tomate maduro enfrentado a partir de la semana pasada en los Estados Unidos, los productores del estado acordaron regresar a sus lugares de origen todo el producto existente en la frontera en los colores 5 y 6, los más maduros; suspender este fin de semana el empaque del producto, y a partir de mañana sólo canalizar al mercado el color 3 como máximo, al 90 % de calidad.

El acuerdo fue signado el viernes en una reunión sostenida con los representantes de los productores de tomate del estado celebrada en la Confederación de Asociaciones Agrícolas del Estado de Sinaloa, informó ayer el Lic. Jorge Antolín Rojo Leyva.

El titular del Departamento de Estudios Económicos de la Asociación de Agricultores del Río Fuerte Sur, señaló que con la medida se busca superar el grave desplome en los precios del producto que a partir de la semana pasada comenzaron a presentarse en la vecina plaza comercial.

Apuntó que sin bien las medidas acordadas son de fondo, era necesario implantarlas como una forma de reducir la oferta del producto en el mercado estadounidense y pensar en una reactivación de los precios en el corto plazo.

Indicó que para esto fue necesario también, además de retirar todo el producto inaduro existente en la frontera, fundamentalmente en los colores 5 y 6, suspender totalmente ayer sábado y hoy domingo el proceso de empacar la legumbre en todos los empaques del estado.

Rojo Leyva señaló que de la misma manera, a partir de mañana se impondrán restricciones de calidad en los envíos, ya que únicamente podrán movilizarse tomates con colores 3 como máximo y con el 90 por ciento de calidad.

Los problemas que se han presentado a partir de la semana recientemente concluida en los EU para la comercialización de los tomates maduros son bastante serios, derivado precisamente de los elevados volúmenes de producción que se han manejado, pero "esperamos que con las medidas implantadas la situación logre normalizarse en el corto plazo".

Amenaza la PGJE con reprimir a invasores

EL DEBATE de Los Mochis.- La Subprocuraduría de Justicia del Estado no permitirá que en la zona norte se violente el estado de derecho, y toda manifestación ilícita será combatida aunque se trate de un reclamo justo, declaró Efraín Alonso Gastélum Padilla.

La declaración surgió después de que varios manifestantes reclamaban respeto a la invasión de terrenos ejidales que sus dirigentes promovieron en demanda de un solar donde vivir.

"Todo ciudadano tiene el derecho de aspirar a un lote en donde vivir, pero nuestra responsabilidad es velar por que se respeten las leyes que privan en la sociedad; por lo tanto, ninguna invasión, por justa que sea, se permitirá, máxime cuando el hecho sea denunciado por los afectados", explicó.

Dijo que por ser una institución en donde se vigilan las garantías de los ciudadanos, no se da su incumbencia una

EL DEBATE de Guasavito.- El Sindicato de Trabajadores al Servicio del Ayuntamiento de Angostura, se adhirió a la CTM.

Presumen panistas irregularidades en las finanzas del Ayuntamiento de Guasave

EL DEBATE de Guasave.- Existe cerrazón en altos mandos del Ayuntamiento de Guasave, manifestó el presidente del Comité Municipal del PAN, Germán Díaz Malecón, quien muestra desconfianza de la auditoría que efectúa la Contaduría Mayor de Hacienda del Congreso del Estado, pues es evidente que se oculta información, sobre todo en lo referente al inventario actualizado de bienes e inmuebles, relación de nóminas de funcionarios" y otros malos manejos.

Esto lo sustenta en la solicitud que hiciera el también regidor Vicente Galaz López desde el pasado 2 de febrero de este año, la cual requería el informe de la entrega-recepción e inventario de bienes e inmuebles que dejó la administración pasada, efectivo en caja, fondos fijos, fondos especiales y cuentas bancarias.

La solicitud planteada por regidores ade-

Translation:

A review of prices conducted by [USDA] shows that in the first months of 1996 the prices paid to Florida vegetable growers were at levels still lower than the average for 1995 ($492.96/MT), and much lower than those of 1992 ($646.62/MT).

In the first weeks of March, however, various tomato packers, affiliated to CAADES in Sinaloa, regulated the flow of exports. [Emphasis added].

Source: Servicio Nacional de Informacion de Mercado [National Market Information Service--SNIM], Marketing in the U.S. of Six of the Main Vegetables Produced in Mexico in the 1993-96 Period, March 20, 1996, at 38. The SNIM report was prepared based on infomation from USDA sources (Vegetables and Specialties, Situation and Outlook Report; Agricultural Outlook; Market News Service). Id. at 40.

ha caído sensiblemente, ocasionando reducciones y sustituciones en el consumo interno de productos agrícolas. La baja en la demanda nacional, más la mayor rentabilidad del mercado externo, con un peso que se mantiene subvaluado frente al dólar, contribuyeron a liberar una mayor oferta exportable de estos bienes.

Sin embargo, no se debe perder de vista que los agricultores nacionales también han tenido que hacer frente a costos de producción crecientes, como resultado de la inflación, de las altas tasas de interés sobre créditos, y del nuevo tipo de cambio, ya que insumen también bienes de importación. Ante esta situación, se puede decir que los productores de nuestro país pudieron aprovechar la ventaja temporal que significó la devaluación del peso, ya que posteriormente el encarecimiento de los insumos nacionales e importados provocó un alza en los precios de los costos y precios de los productos mexicanos, lo que ha ido repercutiendo sobre la competitividad en los mercados internacionales. Por lo tanto, los efectos positivos de una devaluación sobre el comercio externo de un país sólo se da en el corto plazo. De tal manera, si persiste la ganancia de mercados de las hortalizas mexicanas en el mediano plazo, ésta se deberá a otros factores.

Se debe destacar que el valor de la producción de hortalizas invernales en Florida durante 1995 se ubicó en 837.80 millones de US Dls. (1.8 millones de TM). Este valor fue inferior en 38.5% en relación al obtenido en 1992, el cual alcanzó los 1,433.30 millones de US Dls. (2.2 millones de TM). Esto refleja una caída de la producción de las hortalizas en ese estado del 18.8% en volumen, y del 38% en valor. Además, la aportación de la entidad en la producción estadounidense de hortalizas pasó de 14.3% en 1992 a 10.2% en 1995. También la participación respecto al total de área cosechada en los E.U.A. también cayó, al ubicarse en 13.6% y 11%, respectivamente.

En conclusión, los analistas del USDA consideran que la fuerte competitividad de las hortalizas mexicanas prevista en el mercado estadounidense, provocaría que los agricultores de Florida de las seis hortalizas de invierno más importantes, continúen recibiendo menores niveles de precios por sus productos, por lo menos en el corto plazo.

Una revisión de los precios hecha por ese organismo muestra que en los primeros meses de 1996, los precios pagados al productor de hortalizas en Florida se ubicaron en niveles todavía inferiores al promedio de 1995 (492.96 dólares/TM), y muy por abajo de los de 1992 (646.62 Dls./TM).

Sin embargo, en las primeras semanas de marzo, varias empacadoras de tomate, afiliadas a la CAADES en Sinaloa, regularon los flujos de exportación. A ello se agregaron los daños consecutivos del huracán Opal en octubre, las precipitaciones intensas de noviembre'95 y enero'96, así como las heladas de fin de diciembre; todo lo cual redujo los rendimientos y en algunos casos, la calidad de la hortaliza. Estos daños aparentemente se reflejaron

hasta la menor cosecha de marzo de 1996.

Lo anterior incidió abruptamente en incrementos de precios en los productos fronterizos, y el mercado terminal de Los Angeles, Cal. El precio del tomate bola maduro, en caja de 20 libras, contenido 4x5, pasó de 0.94 US Dls./Kg. en la primer semana de marzo, a 2.20 y 2.47 US Dls./Kg. en la segunda y tercera semanas, respectivamente. Ello tendrá repercusiones en el volumen demandado para un producto que es de consumo generalizado en los E.U.A.

No obstante lo antes mencionado, con la puesta en marcha del TLC, la mayor entrada de hortalizas mexicanas a los E.U.A. era algo que se esperaba, aunque debido a los factores coyunturales ya mencionados, se ha penetrado el mercado estadounidense de manera anticipada.

En la segunda parte de esta nota se analizará el comercio bilateral entre México y los E.U.A. del pimiento, y los precios al mayoreo en algunos de los principales mercados de aquel país.

FUENTE: Elaborado por el **SNIM** con información de:
-**Vegetables and Specialties**. Situation and Outlook Report. /ERS/USDA.
-Agricultural Outlook. /ERS/USDA.
-Market News Service. /AMS/USDA.

Mr. SHAW. Mr. Thomas.

Mr. THOMAS. Thank you very much.

I apologize. I am trying to be in three places at once. This testimony begins to round out and broaden the concern of seasonal agriculture, although it is clearly focused on the tomato crop, because others have some good examples. For the life of me, I do not fully understand some of the folk who are conjuring up international bogeymen to stop us from having a fair opportunity to redress unfair trade practices.

I sometimes think, perhaps, that some folks have not spent either enough time or they do not appreciate specialty agriculture and seasonal agriculture. Everyone is, I think, pretty much aware of how important wheat and corn is to this country, but for those of us who are involved with products that somehow never equate with corn and wheat—and I grow hundreds of them, at least people in my district do—people, I think, fail to understand how much money is attached to these products. Almonds alone are a quarter-of-a-billion dollar industry.

You can go on and on with products that are grown not just in one State but in particular counties within the State. For us, artichokes and asparagus have very limited growing areas, grapes in the central valley. When they are treated in this way, it is enormously devastating to the economies in those areas.

What is not further appreciated is the fact that more and more, we are dealing with high-tech operations in which there is a very sophisticated agricultural espionage, because one of the things we have been able to do is through genetic manipulation and selective hybrids, develop new products for the marketplace which would give us a competitive advantage, notwithstanding the head-on conflict, because our products are better and they get stolen and the next season they are being grown in Mexico or somewhere else. I wish I could have gotten the cooperation of the Federal Government on how important stealing of these various products is, as well.

So I appreciate the testimony that you folks have delivered. Clearly, it is from the heart, because it is coming from the pocketbook. Once again, all you want is a fair chance to plead your case to seek relief.

Mr. Stewart, I have to agree with you. The argument that somehow there will be this massive retaliation—frankly, if you look at a number of countries and especially EU countries, they already have placed increased tariffs on our products during their growing seasons, and if, in fact, that occurs to us, that simply would be reciprocity rather than some new bold move on the part of the United States.

So I appreciate all of you. I especially appreciate Mr. Bozick coming all the way across the country. He is on the southern flank of the growing season. He should be first to market, and when you are first to market, you are supposed to get a fairly decent price for your crop.

But when you find out that someone is already there with an inferior product, undercutting you in a way that is not fair competition, you begin to want to say, I would like to have my day in court or at least in front of the International Trade Commission. This

legislation would allow you folks to do that. Then it is up to you to prove your case and plead it. All we want to do is try to give you the opportunity.

I want to thank you for the testimony. Thank you very much.

Mr. SHAW. Thank you.

Mr. Loop, let me ask you a question. You heard the testimony of the previous panel and the statement that the tomato was a perennial and how long the season could be, with one bush growing up to 10 or 7 feet, anyway, the witness indicated, way over his head. Are you familiar with that type of a tomato and what success would you have in adopting that type of a tomato to the State of Florida?

Mr. LOOP. No, sir, I am not familiar with it. I am not saying it cannot be done, but I cannot visualize it being a practical commercial way to do it.

Mr. SHAW. I would sure like to get some of those seeds. Of course, I would probably get in trouble with the Ethics Committee if I did not buy them, but I would like to buy some of those seeds and try them out. That sounds like a wonderful, wonderful thing.

I would like to thank this panel. I would like to thank all the panels and all the people who came to Washington this afternoon in order to share with us their experience, their fears, their concerns on both sides of this particular issue.

It is a most important issue when you are talking about the number of jobs that we are talking about, when you are talking about whole industries—and we are not only talking about Florida; this is not a special favor to Florida, when you are talking about a bill like this that is permissive in nature. It does not demand seasonality, it just allows the Trade Representative another consideration in his negotiation and his working out problems with other countries.

I think that the fear that has been stated by some of the witnesses is unfounded. However, I can understand that people do not like to rock the boat, particularly when you are talking about international trade.

But we are talking about industries leaving this country. Once they are gone, they are gone. You do not get them back. Then you will find yourselves really at the mercy of foreign countries. This fresh fruit and vegetables is a very important part of our lives here in the United States and we should have all the protection that is available under existing trade laws and is consistent with the trade laws as they have been negotiated in these agreements, as they have been negotiated with the other countries.

Thank you very much. This hearing is concluded.

[Whereupon, at 4:39 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATE OF ARIZONA
EXECUTIVE OFFICE

FIFE SYMINGTON
Governor

April 23, 1996

The Honorable Philip M. Crane, III
Chairman, Subcommittee on Trade
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Dear Phil:

I write to reiterate my opposition to H.R. 2795, which will be heard by the Subcommittee on Trade this coming Thursday. This legislation, if passed, will benefit a narrow segment of the winter produce industry at the expense of all other segments of that industry.

H.R. 2795 is a non-tariff trade barrier that would directly violate the intent and spirit of the North American Free Trade Agreement. It would result in increased costs and prices throughout the industry, much to the detriment of producers, suppliers, distributors and ultimately the customer. The burden of protecting Florida's industry will be borne by consumers throughout North America. This contradicts our commitments to free market ideologies and policies. This country was built on the foundations of fair trade and competition and our future depends on our ability to compete and trade freely throughout the world. H.R. 2795 is a flawed attempt to isolate a segment of America's economy from the global arena, which will result in loss of opportunities for the entire North American winter produce industry.

I strongly urge the Subcommittee on Trade to reject H.R. 2795 on the basis that it will adversely affect the entire North American winter produce industry and jeopardize thousands of jobs in the United States that are dependent on free trade.

Thank you for carefully considering this matter.

Sincerely,

Fife Symington
GOVERNOR

FS:ko
cc: Hon. Newt Gingrich, Speaker, U.S. House of Representatives
Hon. Bill Archer, Chairman, Committee on Ways and Means
Arizona Congressional Delegation
Keith Kelly, Director, Arizona Department of Agriculture
Border Trade Alliance
Fresh Produce Association of the Americas

By permission of the Chairman

ENW.E.1034.05.96

May 8, 1996

The Hon. Philip Crane, Chairman
Subcommittee on Trade
House Ways and Means Committee
1104 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We are writing on behalf of the Governments of Nicaragua, El Salvador, Honduras, Costa Rica and Guatemala to express our concerns over recent proposals (as enshrined in HR 2795, as introduced by Congressman Shaw, and S. 1463, which passed the Senate on January 26) that will alter the definitions of "domestic industry" for agricultural safeguard purposes to isolate seasonal production.

These legislative initiatives appear to contradict the United States of America's international obligations under several international trade agreements, such is the case concerning provisions under the North American Free Trade Agreement (NAFTA), and the Agreement on Safeguards in the Final Act of the Uruguay Round Agreement on the General Agreements on Tariffs and Trade.

Disaggregating domestic industries along seasonal lines would appear to violate the spirit, if not the letter, of these agreements. In this last regard, our countries --and other WTO members such as Canada, New Zealand, Brazil, Chile and Colombia -- have already expressed their preoccupation for the pending legislation before the WTO and urged the United States to reconsider the proposed amendment.

We feel that such an initiative sends the wrong signal regarding the promotion of liberalized trading regimes, both in the context of the WTO and in the context of the FTAA process, of which the NAFTA is an important element.

Moreover, efforts to unilaterally restrict access to the United States tomato market seem inconsistent with parallel efforts by the United States to open markets in other countries that are important trade partners in the agricultural sector.

While our governments understand the importance of maintaining viable domestic production against import surges, we also recognize that the discipline of trade liberalization requires the maintenance of open markets with predictable rules.

We are heartened to note that United States-Central American agricultural trade has steadily increased over the past few years. During 1994, for example, total United States agricultural exports to Central America exceeded $758 million, representing an increase of roughly 65 percent from the level five years earlier.

Similarly, the United States has become an increasingly important market for Central American agricultural products. From 1990 to 1995, US imports of Central American agricultural goods grew by 20 percent. These impressive trends, which will benefit both the farmers and consumers in the United States, in Central America, and throughout the world can only continue if together we advance, and abide by, a clear and consistent path of trade liberalization in agriculture.

We appreciate the opportunity to register these views. Please accept the assurances of our highest consideration.

Sincerely,

Roberto Maydrga-Cortes
Ambassador of Nicaragua

Ana Cristina Sol
Ambassador of El Salvador

Roberto Flores Bermúdez
Ambassador of Honduras

Sonia Picado
Ambassador of Costa Rica

Pedro Miguel Lamport
Ambassador of Guatemala

Before the Ways & Means Committee
Subcommittee on Trade
United States House of Representatives

Hearing on H.R. 2795 - A Bill Regarding Safeguard Investigations of Perishable Agricultural Products

Statement of the Florida Fruit and Vegetable Association

Mr. Michael Stuart
Executive Vice President
Florida Fruit & Vegetable Association
Post Office Box 140155
Orlando, Florida 32814-0155
Tel.: 407-894-1351

April 25, 1996

I. Introduction

The Florida Fruit and Vegetable Association ("FFVA") appreciates the privilege of submitting this statement on behalf of its members in strong support of H.R. 2795. FFVA is a non-profit, agricultural trade organization the mission of which is to enhance the competitive and business environment for producing fruits and vegetables in Florida by effectively managing issues and providing collective services for the benefits of its members. Its membership includes fruit and vegetable growers, packers, and handlers throughout the state of Florida.

The membership of FFVA is actively supporting passage of H.R. 2795 to correct an inequitable administrative application of Section 201 law that results in a denial of relief for some seasonal agricultural industries, even when those industries can show serious harm due to imports.

II. The Vital Need for Statutory Clarification

Florida fresh winter tomato producers have tried, but failed, to obtain essential relief from surges of harmful Mexican imports in the past year. Faced with near financial ruin during last year's winter season, the Florida winter tomato industry filed a petition on March 29, 1995, with the International Trade Commission ("ITC") under Section 202 of the Trade Act of 1974, seeking relief from profoundly increasing volumes of imports from Mexico. The industry further sought, under Section 202(d) of the 1974 law, provisional relief pending the completion of the ITC's full 180-day investigation and 60-day Presidential review period. Despite their urgent need for relief, petitioners were forced to withdraw the case after the ITC's negative provisional relief determination because three ITC commissioners ruled that the Florida winter tomato industry must artificially be grouped and analyzed with *all* U.S. tomato growers, even though those other growers did not produce or sell during the relevant season or compete with the harmful imports.

A. The Inequity and Illogic of a "Product Line" Analysis for Seasonal Industries

In last year's Section 201 proceeding, petitioners, the Florida Tomato Exchange and its members, sought relief from imports of fresh winter tomatoes entering the United States during the months of January through April. Those fresh tomato imports during January through April, and those imports only, were subject to the investigation.

The statute defines the term "domestic industry" to mean:

> "the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."

19 U.S.C. § 2252(c)(6)(A)(i).

Those Florida tomato producers comprising the Florida Tomato Exchange and its members represent the *entire* fresh winter tomato industry in the United States. They, and they alone, are the U.S. tomato producers during the winter season, January - April. Accordingly, they alone produce the U.S. products that compete with the imports subject to the investigation. On that basis, petitioners logically argued that an industry recognized by commercial market standards as distinct from all other industry segments, based on its unique seasonal nature, should be recognized as distinct for purposes of seeking essential relief under our trade laws. Indeed, the Section 201 statute seemed to require such a finding, since the "domestic industry" to be analyzed by the ITC must be one that *competes directly* with the subject imports. Where the scope of a 201 investigation is limited to imports during a distinct period of time -- framed by a clearly defined agricultural growing season -- and those imports are perishable products with a very limited "shelf-life," the relevant "domestic industry" in such a case must be the industry that produces and sells its products during the same time period.

Two ITC commissioners, Commissioners Rohr and Newquist, agreed based on the following reasoning:

> "Although it may be somewhat unusual to define an industry on the basis of less than full-year production, in this instance, in our view, such a definition more fully realizes the statute's disjunctive mandate that the industry produce an article 'directly competitive' with the imports. Clearly, tomatoes harvested in the U.S. in the summer and fall months do not compete directly, nor for that matter indirectly, with imports which enter the U.S. between January and April."

Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), Pub. 2881 (April 1995) at I-25.

The three-member "majority" acknowledged that the statute on its face does not expressly prohibit a four-month industry definition, but declined to depart from the administratively established "product line" analysis. Following that analysis -- which only takes into account factors such as physical properties of the article, customs treatment, and uses -- the Commission majority insisted on defining the domestic industry as *all* growers and packers of common round tomatoes within the United States during the full calendar year. This artificially expansive interpretation was used even though the record fully demonstrated that product grown outside of the January through April period did not compete with, and thus was not impacted by, the harmful imports.

By so ruling, the majority effectively held that a definable, deeply impacted segment of American agriculture could not avail itself of necessary import relief. On behalf of all winter vegetables that are now feeling the pain of import surges from Mexico and are legitimately entitled to the safety net of U.S. import relief laws, FFVA views this administratively dictated result with strongest alarm and opposition.

B. The Consistency of H.R. 2795 and S. 1463 with Statutory Intent

Nothing in the express language of the statute nor its legislative history indicates that Congress intended to preclude access to relief under Section 201 for seasonal industries that produce perishable agricultural products. Quite to the contrary, legislative history indicates that 201 relief was intended to be accessible to *all* legitimate U.S. industries, *as well as* certain relevant *subsets* of industries. The Senate Report on the 1974 Trade Act explicitly stated that the term "industry" in Section 201 included entities engaged in agricultural

activities. S. Rep. 93-1298, 93rd Cong., 2nd Sess., Nov. 26, 1974; reprinted in *U.S. Code Congressional and Administrative News*, 93rd Congress, Second Session 1974, Volume 4, at 7266. The Report further directs that

> "where a corporate entity has several independent operating divisions, and only some of these produce the domestic article in question, the divisions in which the domestic article is not produced may be excluded from the determination of what constitutes the 'industry' for the purposes of the Commission investigation and finding."

Id. Despite congressional intent that Section 201 relief be made available for all deserving domestic industries *and* relevant portions thereof, Florida vegetable growers in dire need of assistance have *de facto* been denied this recourse by reason of administrative interpretation.

The legislation introduced by Representatives Shaw and Canady, and similar legislation introduced by Senator Graham in the Senate (S. 1463) would remedy the unintended flaw in Section 201 by clearly defining the standing terms to provide recourse to industries producing perishable agricultural products in a distinct season. Legitimate seasonal perishable agricultural industries would no longer be prevented from seeking relief under Section 201 for serious injury caused substantially by increased imports.

III. The Continued Urgency of Import Relief for Florida Winter Vegetables

Since last year's Section 201 tomato ruling by the ITC, imports of Mexican vegetables have continued to surge. This is the case for virtually every major Florida winter crop: tomatoes, cucumbers, eggplant, peppers and squash. Early this season, Mexican shipments of some commodities were 60% ahead of 1995 shipments for the same period. (*See* attached.)

These ongoing surges have resulted in a dramatic collapse in prices for Florida growers. Many Florida producers cannot recover costs of production for their crops. Hundreds of Florida growers may not survive another season in this marketing environment.

The safeguard relief laws of this country must be made applicable to such circumstances if they are to have meaning to the whole of American agriculture. Moreover, if the laws are not clarified to address seasonal considerations, American consumers will be left in the very near future without a domestic winter vegetable industry, a result Congress surely must want to prevent.

IV. The Full Consistency of H.R. 2795 and S. 1463 With International Principles

The proposed legislation has been criticized by some who would argue that passage of this measure would violate the United States international obligations, and thereby expand protectionism and invite retaliation. No clear explanation has been given in support of these allegations. As USTR will affirm, nothing about this legislation conflicts with the international obligations of the United States. By clearly defining the "domestic industry" in Section 201, the proposed legislation remains consistent with the terms and definitions set out in NAFTA, GATT Article XIX (the "Safeguards" Article), and the WTO Safeguards Agreement.

With respect to the issue of NAFTA-consistency, which often receives special emphasis by the opposition, this legislation would not in any way diminish the rights of Mexico or Canada under NAFTA Article 802 to seek exclusion from any 201 proceeding on the grounds that exports of products from their countries do not account for a substantial share of total U.S. imports or contribute importantly to the serious injury at issue. *See* 19 U.S.C. §§ 3371, 3372.

For all international standards of law, relief under Section 201 would continue to be available only to legitimate domestic industries; a "domestic industry" could not be created simply to qualify for Section 201 relief. Relief under Section 201 would likewise continue to be granted only in those extraordinary cases where harm to the domestic industry is determined to be "serious" and where the relevant imports are determined to be the "substantial cause" of that harm.

Because the proposed legislation would correct the flaw in U.S. law in a limited way consistent with international agreements, there would be no legitimate international basis for foreign countries to "retaliate" against U.S. interests. Thus, any suggestion that retaliation may ensue from these measures is unsubstantiated and simply designed to stimulate opposition among the uninformed.

V. Conclusion

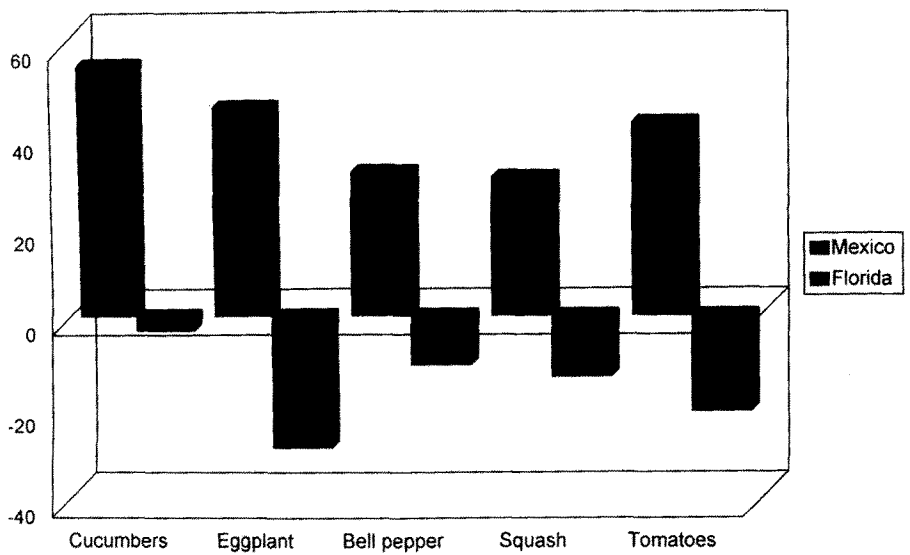
In sum, in order to remedy an unintended flaw in Section 201, which has prevented seasonal producers of perishable agricultural products from seeking legitimate relief from harmful imports, this Subcommittee should promptly approve H.R. 2795 and send it to the floor for action. Circumstances are so critical in Florida that time is of the essence for purposes of obtaining import relief.

FFVA will make itself available to all members of the Subcommittee to answer questions or address concerns about this vital measure.

Attachment

\38333\010\40TESMBA.001

Comparison of Florida/Mexico Fresh Vegetable Shipments



May 1, 1996

VIA HAND DELIVERY

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
U.S. House of Representatives
1104 Longworth House Office Building
Washington, D.C. 20515

Re: **H.R. 2795**

Dear Mr. Chairman:

The following comments are submitted for the record on behalf of the Florida Tomato Exchange in response to questions raised at last week's hearing on this legislation.

This bill would allow the International Trade Commission (ITC) to consider the seasonality of perishable agricultural commodities in connection with its determination of a domestic industry in Section 201 and 202 safeguard proceedings (Trade Act of 1974). The bill does not require the ITC to accept a seasonal industry petition. The language is merely permissive in nature, and will allow the ITC to consider the seasonality of a domestic perishable agricultural product industry. Presently, the ITC does not believe is has the authority to recognize a petition filed by a seasonal industry. However, the safeguard provisions do recognize manufacturing industries, other agricultural industries and even allow for recognizing an industry which is limited to a geographic or regional area.

The bill permits the ITC to consider in the definition of an industry only those producers who produce the perishable agricultural commodity during a particular growing season if the producers sell all (or almost all) of the production in that growing season, and during that growing season, other domestic producers of the commodity, who produce during a different growing season do not supply, to any substantial degree, demand for the commodity.

Hearing Before the Subcommittee on Trade, Ways and Means Committee

Opponents of the bill suggested it was not GATT/WTO or NAFTA consistent. However, the official arbiter of the issue is the U.S. Trade Representative (USTR). Ms. Jennifer Hillman, General Counsel, USTR, stated unequivocally that this bill was consistent with all the U.S. international trade obligations. Moreover, Ms. Hillman did not believe complaints of retaliation against other industries and other commodities were supportable. And, significantly, Ms. Hillman noted the administration's strong support for this bill. In other words, this bill is GATT and NAFTA legal and claims of dire consequences to various industries and threats of retaliation by our trading partners were simply, but completely, discredited.

In addition, Ms. Hillman noted that NAFTA was not the cause of increased imports of winter fruits and vegetables, and discussions of NAFTA changes were not relevant to the consideration of this bill. Ms. Hillman noted that periodic surges of winter fruits and vegetables had been noted over at least 20 years and

that this legislation was needed to allow the domestic industry even the possibility of addressing increased imports.

Another concern raised -- related to the recent 201 petition filed on behalf of the domestic tomato growers -- was whether this legislation is needed in light of the new investigation. It is important to note that the damage to the winter tomato industry is so devastating that the industry believes that it will show such great harm that even if every tomato grower in the country is considered as required under existing law, they will still be able to prove serious injury. Secondly, the winter tomato industry has taken this action and filed an anti-dumping petition because they believe they have to take every possible action to protect themselves against dumping and unfair practices which are devastating their industry.

This bill will not provide the winter tomato industry with a remedy; it will simply allow that industry (and all other seasonal industries), which produce and market when no one else is in the market, access to the trade remedy process. The industry will still have to prove what any other domestic industry must prove: that imports are a substantial cause of serious injury.

This really is not a question of whether this will solve seasonal industry's trade problems. It will help. The question really should be, however, should Congress exclude seasonal industries from having access to this trade remedy process. We believe there should be equal access to the process; that is what this legislation provides.

CONCLUSION

Under the existing law, all other industries have access to the 201/202 remedies. This bill mandates nothing. It is totally permissive. It simply provides a seasonal industry with access to a trade remedy process. That access is currently denied only to seasonal industries. This legislation is about fairness and equal access.

Sincerely,

cc: Florida Congressional Delegation

Wayne Hawkins
Executive Director
Florida Tomato Exchange

WAS-165027

FOOD MARKETING INSTITUTE

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May 3, 1996

The Honorable Philip Crane
Chairman
Trade Subcommittee
Ways & Means Committee
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Food Marketing Institute is pleased to provide this statement for the Trade subcommittee hearing on H.R. 2795. FMI opposes H.R. 2795, legislation amending the definitions of "domestic industry" and "like or directly competitive article" in safeguard investigations involving perishable agricultural products because it will lead to reduced choice and higher prices for U.S. consumers.

The Food Marketing Institute (FMI) is a nonprofit association conducting programs in research, education, industry relations and public affairs on behalf of its 1,500 members including their subsidiaries — food retailers and wholesalers and their customers in the United States and around the world. FMI's domestic member companies operate approximately 21,000 retail food stores with a combined annual sales volume of $220 billion — more than half of all grocery store sales in the United States. FMI's retail membership is composed of large multi-store chains, small regional firms and independent supermarkets. Its international membership includes 200 members from 60 countries.

As the purchasing agent for consumers, food retailers and their wholesalers are primarily concerned with providing their customers with a wide variety of high quality products at the lowest possible price. This is especially true for fresh fruits and vegetables. These products are an extremely important part of a healthy diet and the produce section is a crucial factor in bringing consumers into stores. Indeed, according to FMI's TRENDS research, quality produce is the most important feature in selecting a primary food store *(Trends in the United States: Consumer Attitudes and the Supermarket, 1995, Food Marketing Institute).*

According to the enclosed information from the U. S. Department of Agriculture's Agricultural Marketing Service, Florida is a major supplier of tomatoes, bell peppers, cucumbers, eggplant, snap beans and squash for about nine months (October to June) of the year. During the winter months of January to March, there are two primary sources for vegetables in the United States--Florida and Mexico. H.R. 2795 is intended to reduce or eliminate this competition to the U.S. market during these winter months by creating an artificial three month season for Florida winter vegetables. This would mean that consumers would face reduced supplies and higher retail prices for their winter vegetables. We strongly oppose this effort to artificially limit consumer choice in the produce departments around the country.

FMI and its members are sympathetic to the difficult market conditions for Florida growers. On the face of it, a U.S. industry that has lost market share to imports and that forecasts its own continued decline is a cause for concern. If the Florida winter vegetable industry were to be eliminated, consumers would be adversely effected. Consumers need both domestic and foreign produce during the winter months and in our view there is plenty of opportunity for both foreign and domestic products to expand the market and grow their products.

There are several factors that have caused this loss of market share. Adverse weather conditions in recent years have reduced Florida's growing season, reducing production. According to the U.S. Department of Agriculture, Mexico's percentage of the total winter vegetable supply has increased eleven percentage points from 37 percent to 48 percent since the peso was devalued in December 1994. See enclosed information.

This reduced market share is also a factor of price and *quality*. Winter vegetables are highly perishable items. The fact is that Mexican growers produce and pack vegetables that are equal, and often superior in quality, to product that is available domestically during the same time period. Many consumers prefer the better tasting tomatoes grown in Mexico over the product available from Florida.

California and other producers of seasonal agricultural crops who support H. R. 2795 claim that only a small number of industries would be eligible to seek this relief. Even if this claim is accurate the dollar value of the crops is significant. If foreign competition is kept out of the market U.S. consumers will encounter higher fruit and vegetable prices. Proponents also claim that H.R. 2795 would only provide temporary relief for a few years. However, current safeguard law allows up to eight years for relief. Eight years of higher priced seasonal produce is not a "temporary" condition from the consumer's point of view.

In addition to reducing U.S. supply and choice and raising prices for consumers, H.R. 2795 will have an even more far-reaching effect. The United States is the largest exporter of agricultural products. By changing the trade law in this fashion, we are inviting our trading partners to retaliate on exports from the United States. As a result, the enactment of the legislation will harm U.S. consumers, U.S. producers who export, and U.S. workers employed by companies who export.

For all these reasons, we respectfully urge the subcommittee to reject this protectionist legislation that will benefit a few domestic growers at the expense of consumers around the nation.

Sincerely,

Tim Hammonds

Tim Hammonds
President and CEO

Enclosure

Winter Vegetable Supply for 1990/91 - 1994/95
(October -June Season)

	Florida	Mexico	Other
	(Percent of Total Supply)*		
1990/91	48	35	17
1991/92	57	25	18
1992/93	47	37	17
1993/94	43	40	18
1994/95	34	48	17

	Florida	Mexico	Other	Total
	(100 lb. units)			
1990/91	22654	16286	8218	47158
1991/92	27007	11683	8775	47465
1992/93	22393	17616	8089	48098
1993/94	20883	19289	8630	48802
1994/95	15799	22159	8037	45995

*May not total 100% due to rounding. Winter vegetables include tomatoes, cucumbers, eggplant, squash, snap beans and peppers.

Source: USDA Agricultural Marketing Service

Florida & Mexico Compete in U.S. Fresh Vegetable Market

Increased U.S. imports of winter fresh vegetables from Mexico have led Florida growers to demand Federal and state action to lessen the impact on domestic producer prices. In January 1996, Florida began stepping up inspections of all produce coming into the state, focusing on potential sanitary and phytosanitary violations and proper labeling on produce shipping containers. Also, Florida growers are seeking more frequent monitoring of incoming produce at the U.S.-Mexico border as a means for more timely tariff protection.

Florida growers' concern focuses on six fresh vegetables (tomatoes, bell peppers, cucumbers, eggplant, snap beans, and squash) produced during October to June. The term "winter" fresh vegetables applies to this group because of intense competition during January to March. In the winter months, Mexico's exports peak, and Florida's production is concentrated in the southern part of the state, near Homestead and Immokalee.

In the late 1980's, Florida typically supplied 45-50 percent of the U.S. market (October-June) for these vegetables, Mexico supplied about 35 percent, and other sources (principally California) sold 15-20 percent. Florida's share has decreased from 57 percent in 1991/92 to 36 percent in 1994/95, and the 1995/96 share could decline further.

Weather has been a significant factor in Florida's market share during the last five seasons. Florida's share was above average in 1991/92 because several El Nino storms (arriving in Mexico in late December) sharply reduced Mexican supplies for export to the U.S. Similarly, weather reduced Florida's supply—and market share—during 1994/95, beginning with damage from Tropical Storm Gordon. The 1995/96 season started late in Florida, due to cool and rainy weather. In addition, Mexico's Baja California shipped tomatoes through December—several weeks later than usual. The extended Baja season further weakened Florida's fall-season market.

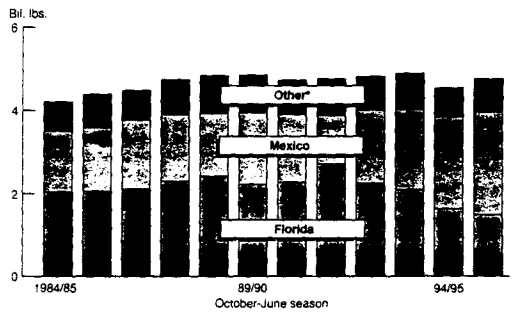
When the Mexican peso devalued in late December 1994, Mexican vegetable producers had an additional incentive to export winter fresh vegetables to the U.S. market. During January to June 1995, U.S. imports of the six vegetables increased 13 percent, even though much of Mexico's crop had been planted and there was limited opportunity to increase area planted. Diversion from Mexico's domestic market accounted for some of the increase, while higher yields also likely contributed.

The weakness of the peso continued into the current 1995/96 season, affecting Mexico's fruit and vegetable supply and demand. Mexico's inflation and unemployment rose, and consumer purchasing power declined. Reduced demand is a contributing factor in the 50-percent drop in U.S. horticultural exports to Mexico during 1995.

In response to sluggish domestic demand, Mexico's vegetable producers turned to the U.S. market to earn dollars. The peso's rate of exchange increased from 3 pesos per dollar in December 1994 to over 7 pesos in early 1996. In Mexico, growers are paying U.S. dollar-based prices for inputs like seed and fertilizer, and the higher costs may have reduced the supply response of Mexico's growers. However, the short-term net effect of peso devaluation appears to have given Mexican producers a profit advantage, because vegetable producers are paying lower real wages.

During calendar 1995, the value of Florida's winter fresh vegetable production decreased to $702 million, down from $1.2 billion in 1992. In early 1996, prices received by Florida growers for these vegetables, which account for three-fourths of Florida's fresh vegetable industry, have averaged below year-earlier levels and well below 1992. In the near term, with prospects for continued weakness of the peso, Florida growers are likely to continue facing stiff competition in the U.S. market for the six winter fresh vegetables.

Florida Supplies a Shrinking Share of U.S. Winter Fresh Vegetables



Tomatoes, bell peppers, cucumbers, eggplant, snap beans, and squash. 1995/96 forecast.
*Mainly California.
Calculated from USDA Agricultural Marketing Service data.

Economic Research Service, USDA

JIM KOLBE
5TH DISTRICT, ARIZONA
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, AND JUDICIARY
COMMITTEE ON THE BUDGET

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May 8, 1996

Honorable Philip M. Crane
Chairman
Committee on Ways and Means
Subcommittee on Trade
1104 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman: Phil-

I am writing to express my strong opposition to H.R. 2795, which is virtually identical to S. 1463.

H.R. 2795 would amend Section 201 of the Trade Act of 1974 by altering the definition of "domestic industry" and "like product" for purposes of determining whether a domestic industry is seriously injured by a surge of imports. The bill would allow seasonality to become a factor in determining the impact of imports on a domestic industry.

Admittedly, I have a parochial interest in this legislation. If passed, it would have a serious and detrimental impact on Arizona's economy. Many Arizona importers, customs brokers, transporters, and distributors rely upon the winter vegetable trade for their livelihood. Should this trade be curtailed, it could have a devastating impact on many small and medium sized businesses.

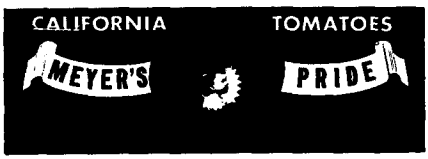
But my opposition to this legislation is deeper than Arizona's interest. The legislation invites retaliation from our trading partners and could undercut many of the gains the United States agricultural sector has made in the world marketplace. Many foreign countries, following our example, could justifiably target and exclude U.S. agricultural products such as apples, peaches, corn and wheat by utilizing "seasonality legislation" similar to that being considered here in the United States.

H.R. 2795 and S. 1463 harm the American consumer. They could be used to disrupt numerous "seasonal" products from other U.S. trading partners including products from Europe, Canada, Israel and Chile. Excluding these seasonal agricultural products from the U.S. market would adversely effect both the price and quality of agricultural products available to American consumers.

I appreciate your consideration of these factors as you examine the impact of this legislation on American agricultural brokers, producers and consumers. I request that this letter be made a part of the record on H.R. 2795.

Sincerely,

Jim Kolbe
Member of Congress



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April 19, 1996

Mr. Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: H.R. 2795

Dear Mr. Mosely:

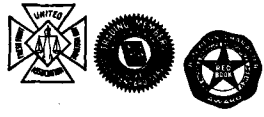
Due to prior scheduling, I regret that I will be unable to appear before the March 25, 1996 Subcommittee on Trade hearing concerning H.R. 2795, a bill regarding safeguard investigations of perishable agricultural products.

I would have liked the opportunity to explain to the Members why I and many others in California oppose this legislation, and why it would strike a blow against those of us who are working hard to develop an integrated North American market for fresh vegetables that benefits producers and consumers alike in the three NAFTA countries.

My family has been in the tomato business in California for over 40 years and in Mexico for over 25 years. Today, we are one of the largest grower-packer-shippers in California, and now we are one of the largest distributors of vegetables and tomatoes from Mexico into the United States and Canada. During the 1993-94 season we shipped into Mexico over 800,000 boxes of tomatoes grown in California.

We, therefore, oppose legislation or any actions that would impede the flow of tomatoes or other fresh vegetables within what has become for us an integrated North American market.

Why would this so called "seasonality" legislation impede commerce? It would do so because it is specifically designed to afford market protection to a small number of growers in a distinct geographic region. If passed, it would set a dangerous precedent that other so-called "seasonal" industries could use for market protection.



The growing and shipping of tomatoes and other vegetables is essential to the employment of thousands of field workers near the United States border in the States of Sonora and Sinaloa, Mexico. If not employed by Mexican agriculture, these field workers would be looking at illegal immigration into the United States in order to make a living.

Any disruption of the vegetable industry in Mexico brought about by a change in the present NAFTA Agreement, as far as agriculture is concerned, would also be a serious blow to American commerce and exports into Mexico. We alone, one company out of about 50 operating in agriculture in Western Mexico, import into that country from the United States approximately 8,000,000 corrugated boxes made in the United States with a value of approximately $6,400,000 (American dollars), seed worth approximately $1,000,000, drip irrigation systems, glue for boxes, box making machines, potting material for green house production, twine for staking vegetable plants, fertilizers, insecticides, fungicides and any other number of capital items. This process has been going on for years, and any disruption of this process or curtailing production will surely increase illegal immigration into the United States and disrupt a much needed flow of money into Mexico.

What all of us operators in the integrated North American market fear most is retaliation. We are afraid that Mexico would seize the opportunity to claim "seasonal relief" from our perishable products. This legislation could initiate a series of retaliation/counter retaliatory measures. In the agricultural production sector from my talks with Mexican interests, I am afraid that the Mexican government would retaliate by stopping the importation of grain, apples, California wine, and many other items produced in the United States and shipped into developing markets in Mexico. In the end, consumers would pay more because their buying options would be limited, and. the majority of U.S. growers that prefer to operate in an integrated North American market would have their sales opportunities limited.

As the world's leading exporter of agricultural products, the United States should be setting the right trade policy examples, not the wrong ones. I strongly believe that H.R. 2795 is a wrong example.

Sincerely,

Robert L. Meyer

cc: Hon. Leon Panetta
Rep. Sam Farr

NAPAR

5906 Wilmary Lane
Baltimore, Maryland 21210
410 532-7060 (Office)
410 532-8593 (Facsimile)
410 868-3911 (Mobile)

April 12, 1996

The Honorable Bill Archer, Chairman
Ways & Means Committee
United States House of Representatives
Washington, D. C. 20515

Dear Chairman Archer:

The National Association of Perishable Agricultural Receivers (NAPAR) represents about 90 of the premier produce business operators in the United States (attached is a list of the member companies). Their collective sales exceed $3.5 billion per year and they employ over 23,000 workers. They move 30% of our nation's perishable products.

On behalf of this important segment of the produce industry NAPAR wishes to express its concerns about a bill pending before your committee that promises to jeopardize U. S. exports of many agricultural goods as well as other American products and services.

The measure H. R. 2795 was created to protect a handful of Florida growers against competition from Mexican winter tomatoes. It would do this by breaking America's word given in global trade agreements, inviting other nations to retaliate against American products and undermining the critical U. S. drive to hold other countries to their trade commitments. If implemented, this proposal would set a disturbing trade policy precedent It could have serious implication for United States agricultural exports; and would imperil many more American jobs than the handful that might be protected.

The measure also enhances the monopoly that Florida tomato growers now enjoy at the detriment of the wholesale tomato handlers in the United States. Granting the Florida tomato industry further trade privileges will also adversely impact the American consumer. Tomatoes sold for as high as $30 per box during the most recent Florida season. Without Mexican better quality, better packaged tomatoes, the price could have been $60 per box. Surely, Congress has a greater responsibility to protect all Americans rather than a select and wealthy few in Florida.

H. R. 2795 redefines a "domestic industry" as a "seasonal industry" for the purpose of providing safeguard relief to those seriously injured by increased imports. In other words, Florida growers of winter tomatoes would suddenly make themselves eligible for protection, even though they represent a fraction of the U. S. tomato industry.

The United States has already given its word on how an "industry" is defined for safeguard purposes, both in the World Trade Organization (WTO) accord and the North American Free Trade Agreement (NAFTA). It cannot violate its word now without facing serious consequences. For example:

1. Both the NAFTA and the WTO require nations imposing new safeguard measures to compensate affected exporting nations by making "concessions having substantial equivalent trade effects." This instantly makes H. R. 2795 a no-win measure.
2. The bill would encourage other countries to employ the "seasonality" principle to restrict U. S. exports. Major American exporters -- of goods ranging from apples and peaches to corn and wheat -- could find themselves being denied the opportunity to compete fairly in their current export markets.
3 The legislation would diminish the ability of the U. S. to hold other countries to their trade commitments. The United States, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements would only make a mockery of this "enforcement" initiative, which is designed to assist exports of many United States goods and services.
4. The bill could disrupt imports of numerous "seasonal" products from other U. S. trading partners in Europe, Canada, Israel, Chile and elsewhere that are consumed or processed throughout the United States. Imports could face new barriers whenever a group of "seasonal" U. S. producers (no matter how small) is found to be injured by import competition.

For all these reasons, we strongly oppose this legislation. It is not about fair trade or "leveling the playing field", let alone about free trade. Rather, it is a misguided attempt to unilaterally change the rules of international trade by a self serving few that will do serious damage to U. S. interests.

Sincerely,

J. Gary Lee

Enclosures: NAPAR Member List

NATIONAL ASSOCIATION OF PERISHABLE AGRICULTURAL RECEIVERS

NAPAR MEMBERS - April 10, 1996

A. & J. Produce Corporation
Adams Produce Company, Inc.
Andrews Brothers Inc.
Arrow Farms, Inc.
Aunt Mid Produce Company
Maurice A. Auerbach, Inc.
Big Bear Stores Company
Boston Tomato Company, Inc.
Brigiotta's Produce & Garden Center
Brismark/The Queensland Chamber Co-Op
Capital City Fruit Company, Inc.
Carbonella & DeSarbo, Inc.
Caruso Inc.
Castellini Company
G. Cefalu' & Brother, Inc.
Chep USA
W. D. Class & Son
Coastal Sunbelt Produce Company
Collotti & Sons Inc.
Community-Suffolk, Inc.
Peter Condakes Company, Inc.
Consumers Produce Company, Inc.
Corey Brothers Inc.
Costa & Harris Produce, Inc.
D'Arrigo Bros. Co. of New York, Inc.
DiMare/New England Farms
Dixie Produce & Packaging Inc.
Fast Food Merchandisers, Inc.
G. Fava Fruit Company
Joseph Fierman & Son Inc.
Al Finer Company
Finest Fruits, Inc.
Ellis Fleisher Produce Company
Four Seasons Produce, Inc.
Fruitco Corporation
Giant Food Inc.
Paul Giordano & Sons, Inc.
Goodie Brands Packing Corporation
The Grand Union Company
R. S. Hanline & Company, Inc.
The L. Holloway & Brother Company
The Horton Fruit Company, Inc.
Hunter Brothers Inc.
J. C. Banana Company
J. L. W. Produce, Inc.
James Produce, Inc.
Jumbo Produce
E. W. Kean Company Inc.
Kleiman & Hochberg, Inc.
Klinghoffer Brothers, Inc.
T. M. Kovacevich-Philadelphia, Inc.
L & M Produce Company, Inc.
Lyons Distributors, Inc.
M. & R. Tomato Distributors, Inc.
Tom Maceri & Sons, Inc.
Maryland Fresh Tomato Company, Inc.
Massave Produce, Inc.
Nardella, Inc.
Joseph Notarianni & Company, Inc.
Morris Okun, Inc.
P & C Foods
Pennbox, a division of Libla Industries, Inc.
Pinto Brothers Inc.
Post & Taback Inc.
Procacci Brothers Sales Corporation
Quaker City Produce Company
RLB Food Distributors
Edward G. Rahll & Sons, Inc.
Reddy Brand Packers, Inc.
Riccelli Produce Inc.
Rocky Produce, Inc.
William Rosenstein & Sons Company
Rosenthal & Klein, Inc.
D. M. Rothman Company, Inc.
Royal Banana Company, Inc.
Rubin Brothers Produce Corporation
Ryeco Inc.
Safeway Inc.
The Sanson Company
Ben B. Schwartz & Sons, Inc.
Serra Brothers Inc.
Smelkinson/Sysco
Standard Fruit & Vegetable Co., Inc.
Stires Recording Thermometer Company
Storeys' Fruit And Produce, Inc.
Strube Celery & Vegetable Company
United Fruit & Produce Company, Inc.
United Fruit & Produce Company, Inc. PA
Verdelli Farms, Inc.
Tony Vitrano Company
Wakefern Food Corporation
D. Wiggins Sales, Inc.
Wishnatzki & Nathel, Inc.

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• J.F. MANSON CUSTOMS BROKER

April 16, 1996

Mr. Phillip Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.

Dear Mr. Moseley:

DANGERS OF H.R. 2795
"SEASONALITY" LEGISLATION

The House Ways & Means Committee will consider legislation at a hearing in April that is designed to provide a quick protectionist fix for Florida and some California fresh fruit and vegetable growers. Sponsored by Representative Clay Shaw (R-FL), this bill (H.R. 2795), identical to one Senator Bob Graham (D-FL) slipped through the Senate under unanimous consent procedures (S.1463), would invite reciprocity by Mexico, as well as other countries, and harm larger U.S. interests.

This bill is aimed at safeguards law, which, in the U.S. and elsewhere, provides relief when a "domestic industry" is seriously injured by increased imports. The legislation would violate the accepted purpose of safeguards law -- as well as the NAFTA and the WTO Safeguards Agreement - by redefining "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers.

Florida growers of winter tomatoes produce only a modest fraction of tomatoes grown annually by the U.S. industry. Last year, the U.S. International Trade Commission not only found that weather, rather than imports, was the chief source of the Floridians' problems -- but that in any case they were too small a portion of U.S. tomato growers to qualify as a "domestic industry." Hence, the unprecedented move to create a new "seasonal industry" category.

Sixteen nations have already objected to the legislation at the WTO and nearly twenty countries have written Congress and the Clinton Administration with their concerns. In addition, U.S. State commissioners of agriculture, grain and meat export

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associations, the food marketing industry, California tomato growers and U.S. trade law experts have all written to the Ways & Means Committee criticizing the bill. A significant cross-section of the pro-free trade community has also opposed the legislation. If successful, this bill would:

1. Require the U.S. to make trade concessions that could harm other U.S. exporters.

Both the NAFTA and the WTO require countries imposing safeguards measures to compensate the affected exporting countries by making "concessions having substantially equivalent trade effects." If the countries involved cannot agree on appropriate compensation, then the exporting countries may decide to unilaterally suspend "equivalent" benefits owed the United States, perhaps by raising tariffs or reducing quotas on some U.S. products. The United States would not be able to specify the industry which would suffer these new trade burdens. However, it would be normal for a foreign country hurt by new U.S. barriers to impose its compensatory measures on products which are most vulnerable to them.

2. Encourage other countries to employ the "seasonally" principle to restrict U.S. exports.

This proposal sets a dangerous example for other countries that may wish to enact similar changes in their own laws. Major American exporters -- of goods ranging from apples and peaches to corn and wheat, and perhaps even toys and seasonal clothing -- could find themselves being denied the opportunity to compete fairly in their current export markets. As the world's largest exporter, the United States has the most to lose from introducing new forms of protectionism.

3. Diminish the ability of the U.S. to hold other countries to their trade commitments.

The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements only undermines this "enforcement" initiative. U.S. industries hurt by the failure of foreign government to comply with their trade obligations could find it harder to obtain adequate remedies.

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4. Disrupt imports from other U.S. trading partners.

Although the "seasonality" legislation was proposed to protect Florida growers from imports of Mexican winter tomatoes, it could disrupt imports of numerous "seasonal" products from Europe, Canada, Israel, Chile and elsewhere that are consumed or processed throughout the United States. Imports could face new barriers whenever a group of "seasonal" U.S. producers (no matter how small) is found to be injured by import competition.

Very truly yours,

PACIFIC BROKERAGE CO.

By:
James F. Manson

JFM'gmm

On March 1, 1996, the Pro Trade Group (PTG) submitted comments to the Trade Subcommittee on miscellaneous trade proposals. In that submission, in part, we detailed the reasons for the opposition of the PTG to H.R. 2795, legislation designed to amend U.S. safeguards law.

As part of the Subcommittee's hearing today on this subject, one of the PTG members, the National Association of Corn Growers, will be testifying in opposition to this legislation. It will testify on behalf of a number of agriculture commodity associations.

We believe that it is important for the Subcommittee to recognize that the policy reasons for our opposition to this legislation transcend the interests of the agricultural community. Accordingly, we enclose here, and submit for the record of this hearing, a letter in opposition to this legislation which has been signed by, among others, a number of non-agricultural trade associations.

The PTG is a broad coalition of U.S.-based companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

Further comments reflecting our views will be covered in a post-hearing submission.

Respectfully submitted,

Edward J. Black

Edward J. Black
President, Computer & Communications
Industry Association,
Chair, Pro Trade Group

THE
PRO
TRADE
GROUP

April 25, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
United States House of Representatives
c/o 233 Cannon House Office Building
Washington, DC 20515

Dear Chairman Crane:

This is to commend the Ways and Means Committee for its decision to assert its jurisdiction to review H.R. 2795, a bill that would change U.S. safeguards law.

Under this legislation, the United States would unilaterally change the long-accepted global definition of a "domestic industry" to recognize separate "seasonal industries." This is a sweeping change that would, it effect, enable certain industries to obtain import restrictions despite the fact that their case has already been unsuccessfully filed with the U.S. International Trade Commission. The recent tomato case is an example.

Existing trade law has, in many cases, served our economy and U.S. business interests well. As the Committee considers this legislation, we urge you to remember that it is unwise to make substantial changes to our trade laws where a very strong case has not been made that that law is ineffective.

Although this legislation is driven by narrow interests, its negative ramifications for U.S. trade are broad. The passage of H.R. 2795 would put U.S. trade interests in immediate jeopardy because it violates the principles of international trade commitments made by the United States within NAFTA and the World Trade Organization (WTO). As a result, in addition to Mexico, the actual target of this legislation, 15 countries have already put the United States on notice on this matter. If H.R. 2795 or similar legislation becomes law, we would invite these countries and more to retaliate against U.S. exports. We also would invite a challenge before the WTO.

Passage of H.R. 2795 would signal that Congress has embraced protectionist legislation during this election year. As you know, the United States is the world's largest exporter, with exports accounting for 50 percent of our domestic economic growth in the last five years. We must not jeopardize this growth, and the jobs it creates.

The PTG is a broad coalition of U.S. companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

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CHAIRMAN: EDWARD J. BLACK, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
TREASURER: WILLIAM PETERSON, CONSTRUCTION INDUSTRY MANUFACTURERS ASSOCIATION
EXEC. DIR/COUNSEL: BRUCE AITKEN, AITKEN IRVIN LEWIN BERLIN VROOMAN & COHN

Recent political rhetoric in some circles has portrayed international trade agreements as enemies of economic prosperity. Nothing could be further from the truth. International trade agreements (e.g., WTO, NAFTA) assure that we can sell into foreign markets. They open foreign markets to U.S. exports and they give us levers to assure that these markets remain open. But if the United States fails to live up to its trade commitments by passing H.R. 2795 or similar legislation, we will do the reverse. In short, we will encourage others to renege on their commitments to us.

You have been a long-time champion of open trade, fully cognizant of the link between U.S. trade performance and our adherence to international trade agreements. We look to you now for leadership in assuring that H.R. 2795, or similar legislation, is not passed by the Congress.

Sincerely,

Association of International Automobile Manufacturers

Citizens for a Sound Economy

Computer & Communications Industry Association

Construction Industry Manufacturers Association

Consumers for World Trade

International Trade Council

National Grain and Feed Association

North American Export Grain Association, Inc.

U.S.-Mexico Chamber of Commerce

ISBN 0-16-054196-4

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